

No. 11-5352
ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JEFFERSON WAYNE SCHRADER, ET AL.,

Plaintiffs-Appellants,

v.

ERIC H. HOLDER, JR. ET AL.,

Defendants-Appellees.

Appeal from a Judgment of the
United States District Court for the District of Columbia
The Hon. Rosemary M. Collyer, District Judge
(Dist. Ct. No. 1:10-cv-1736-RMC)

JOINT APPENDIX

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Dated: April 20, 2012

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**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:10-cv-01736-RMC**

SCHRADER et al v. HOLDER et al
Assigned to: Judge Rosemary M. Collyer
Case in other court: USCA, 11-05352
Cause: 28:2201 Declaratory Judgement

Date Filed: 10/13/2010
Date Terminated: 12/23/2011
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Defendant

Plaintiff

JEFFERSON WAYNE SCHRADER

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Plaintiff

**SECOND AMENDMENT
FOUNDATION, INC.**

represented by **Alan Gura**
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Thomas M. Huff
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ATTORNEY TO BE NOTICED

Defendant

ERIC HIMPTON HOLDER, JR.
Attorney General of the United States

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Defendant

**FEDERAL BUREAU OF
 INVESTIGATION**

represented by **Jane M. Lyons**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

UNITED STATES OF AMERICA

represented by **Jane M. Lyons**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/13/2010	<u>1</u>	COMPLAINT against FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER (Filing fee \$ 350, receipt number 4616033380) filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. (Attachments: # <u>1</u> Civil Cover Sheet)(jf,) (Entered: 10/14/2010)
10/13/2010		Summons (3) Issued as to All Defendants, USA (jf,) (Entered: 10/14/2010)
10/13/2010	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests NONE by SECOND AMENDMENT FOUNDATION, INC. (jf,) (Entered: 10/14/2010)
12/17/2010	<u>3</u>	Consent MOTION for Extension of Time to <i>Respond to Complaint and to Establish Briefing Schedule</i> by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER (Lyons, Jane) (Entered: 12/17/2010)
12/20/2010		MINUTE ORDER granting <u>3</u> Defendants' consent motion for an extension of time. Defendants shall file a motion to dismiss the complaint by no later than January 27, 2011.

		The parties' generously extended briefing schedule is also approved. Plaintiffs shall file an opposition to the motion to dismiss by March 11, 2011. Defendants may file a reply by April 7, 2011. No further extensions of time will be granted. Signed by Judge Rosemary M. Collyer on 12/20/2010. (lcrmc2) (Entered: 12/20/2010)
12/20/2010		Set/Reset Deadlines/Hearings: Motion to Dismiss due by 1/27/2011. Response due by 3/11/2011. Reply due by 4/7/2011. (cdw) (Entered: 12/21/2010)
01/26/2011	<u>4</u>	Consent MOTION for Extension of Time to File <i>Motion to Dismiss</i> by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER (Lyons, Jane) (Entered: 01/26/2011)
01/27/2011		MINUTE ORDER granting <u>4</u> Defendants' consent motion for an extension of time. Defendants shall file a dispositive motion by January 31, 2011. The briefing schedule will otherwise remain the same. Signed by Judge Rosemary M. Collyer on 1/27/2011. (lcrmc2) (Entered: 01/27/2011)
01/27/2011		Set/Reset Deadlines/Hearings: Defendant's Dispositive Motion due by 1/31/2011. (cdw) (Entered: 01/31/2011)
01/31/2011	<u>5</u>	MOTION to Dismiss by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER (Lyons, Jane) (Entered: 01/31/2011)
02/18/2011	<u>6</u>	FIRST AMENDED COMPLAINT against FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC..(znmw,) (Entered: 02/23/2011)
02/18/2011	<u>7</u>	STIPULATION re <u>6</u> Amended Complaint by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC. (znmw,) (Entered: 02/23/2011)
03/11/2011	<u>8</u>	Memorandum in opposition to re <u>5</u> MOTION to Dismiss <i>and in Support of Cross-Motion for Summary Judgment</i> filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. (Gura, Alan) (Entered: 03/11/2011)
03/11/2011	<u>9</u>	Cross MOTION for Summary Judgment by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC. (Attachments: # <u>1</u> Declaration of Jefferson Wayne Schrader, # <u>2</u> Exhibit A, NICS denial letter, # <u>3</u> Statement of Facts, # <u>4</u> Text of Proposed Order)(Gura, Alan) (Entered: 03/11/2011)
04/04/2011	<u>10</u>	Consent MOTION for Extension of Time to File Response/Reply by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA (Lyons, Jane) (Entered: 04/04/2011)
04/05/2011		MINUTE ORDER denying <u>10</u> Defendants' consent motion for an extension of the briefing schedule. As stated in the Court's Minute Order of December 20, 2010, the parties' briefing schedule was extremely generous to themselves and no further extensions of time would be granted. Plaintiffs may file a reply in support of their cross-motion by April 21, 2011. Signed by Judge Rosemary M. Collyer on 4/5/2011. (lcrmc2) (Entered: 04/05/2011)

04/05/2011		Set/Reset Deadlines/Hearings: Plaintiffs Reply to Cross Motion due by 4/21/2011. (cdw) (Entered: 04/06/2011)
04/07/2011	<u>11</u>	REPLY to opposition to motion re <u>5</u> MOTION to Dismiss, <u>2</u> Cross MOTION for Summary Judgment <i>Opposition</i> filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Lyons, Jane) (Entered: 04/07/2011)
04/07/2011	<u>12</u>	Memorandum in opposition to re <u>2</u> Cross MOTION for Summary Judgment filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Declaration of William L. Finch)(Lyons, Jane) (Entered: 04/07/2011)
04/15/2011	<u>13</u>	NOTICE of Appearance by Thomas M. Huff on behalf of All Plaintiffs (Huff, Thomas) (Entered: 04/15/2011)
04/21/2011	<u>14</u>	REPLY to opposition to motion re <u>2</u> Cross MOTION for Summary Judgment filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. (Attachments: # <u>1</u> Declaration of Jefferson Schrader, 4/19/11)(Gura, Alan) (Entered: 04/21/2011)
04/21/2011	<u>15</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC. (Attachments: # <u>1</u> Exhibit A: Dearth v. Holder)(Gura, Alan) (Entered: 04/21/2011)
04/21/2011	<u>16</u>	MOTION for Leave to File <i>Amended Complaint</i> by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order, # <u>3</u> Exhibit A)(Gura, Alan) (Entered: 04/21/2011)
05/09/2011	<u>17</u>	Memorandum in opposition to re <u>16</u> MOTION for Leave to File <i>Amended Complaint</i> filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Lyons, Jane) (Entered: 05/09/2011)
05/19/2011	<u>18</u>	REPLY to opposition to motion re <u>16</u> MOTION for Leave to File <i>Amended Complaint</i> filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. (Huff, Thomas) (Entered: 05/19/2011)
05/27/2011		MINUTE ORDER. Plaintiffs' motion for leave to file a second amended complaint <u>16</u> is GRANTED. Accordingly, Defendants' motion to dismiss <u>5</u> and Plaintiffs' cross-motion for summary judgment <u>2</u> are DENIED without prejudice. Defendants shall file an answer or amended motion to dismiss by no later than June 17, 2011. Signed by Judge Rosemary M. Collyer on 5/27/2011. (lcrmc2) (Entered: 05/27/2011)
05/27/2011	<u>19</u>	Second AMENDED COMPLAINT against FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.(rdj) (Entered: 05/27/2011)

06/17/2011	<u>20</u>	MOTION to Dismiss <i>Second Amended Complaint</i> by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA (Lyons, Jane) (Entered: 06/17/2011)
07/01/2011	<u>21</u>	Memorandum in opposition to re <u>20</u> MOTION to Dismiss <i>Second Amended Complaint and in Support of Renewed Cross-Motion for Summary Judgment</i> filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. (Huff, Thomas) (Entered: 07/01/2011)
07/01/2011	<u>22</u>	Cross MOTION for Summary Judgment (<i>renewed</i>) by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC. (Attachments: # <u>1</u> Declaration of Jefferson Wayne Schrader, # <u>2</u> Exhibit A, NICS denial letter, # <u>3</u> Statement of Facts, # <u>4</u> Text of Proposed Order)(Huff, Thomas) (Entered: 07/01/2011)
07/15/2011	<u>23</u>	Consent MOTION for Extension of Time to <i>File Combined Reply and Opposition on August 19, 2011</i> by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA (Lyons, Jane) (Entered: 07/15/2011)
07/18/2011		MINUTE ORDER granting <u>23</u> Defendants' consent motion for an extension of time. Defendants shall file their combined reply and opposition to Plaintiffs' cross-motion <u>22</u> by no later than August 19, 2011. Plaintiffs may file a reply by no later than September 2, 2011. Signed by Judge Rosemary M. Collyer on 7/18/2011. (lcrmc2) (Entered: 07/18/2011)
07/18/2011		Set/Reset Deadlines: Defendants' combined reply and opposition to Plaintiffs' Cross Motion due by 8/19/2011. Plaintiffs' Reply due by 9/2/2011. (tth) (Entered: 07/18/2011)
08/19/2011	<u>24</u>	RESPONSE to Statement of Facts re <u>22</u> MOTION for Summary Judgment <i>and Opposition to Plaintiffs' Renewed Cross Motion for Summary Judgment</i> filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Attachments: # <u>1</u> Exhibit A - BJS Study, # <u>2</u> Exhibit B - NIJ Study) (Lyons, Jane) Modified event title on 8/22/2011 (znmw,). (Entered: 08/19/2011)
08/19/2011	<u>25</u>	Memorandum in opposition to re <u>22</u> Cross MOTION for Summary Judgment (<i>renewed</i>)Cross MOTION for Summary Judgment (<i>renewed</i>) <i>See also ECF No. 24</i> filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Attachments: # <u>1</u> Statement of Facts)(Lyons, Jane) (Entered: 08/19/2011)
08/19/2011	<u>26</u>	REPLY to opposition to motion re <u>20</u> MOTION to Dismiss <i>Second Amended Complaint (Corrected)</i> filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Attachments: # <u>1</u> Exhibit A - BJS Study, # <u>2</u> Exhibit B - NIJ Study)(Lyons, Jane) (Entered: 08/19/2011)
09/02/2011	<u>27</u>	REPLY to opposition to motion re <u>22</u> Cross MOTION for Summary Judgment (<i>renewed</i>)Cross MOTION for Summary Judgment (<i>renewed</i>) filed by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. (Huff, Thomas) (Entered: 09/02/2011)
10/10/2011	<u>28</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by JEFFERSON WAYNE

		SCHRADER, SECOND AMENDMENT FOUNDATION, INC. (Gura, Alan) (Entered: 10/10/2011)
11/17/2011	<u>29</u>	RESPONSE re <u>28</u> NOTICE OF SUPPLEMENTAL AUTHORITY filed by FEDERAL BUREAU OF INVESTIGATION, ERIC HOLDER, UNITED STATES OF AMERICA. (Lyons, Jane) (Entered: 11/17/2011)
12/23/2011	<u>30</u>	MEMORANDUM AND OPINION. Signed by Judge Rosemary M. Collyer on 12/23/2011. (lcrmc2) (Entered: 12/23/2011)
12/23/2011	<u>31</u>	ORDER GRANTING <u>20</u> MOTION to Dismiss Second Amended Complaint and DENYING <u>22</u> Cross MOTION for Summary Judgment. This case is closed. Signed by Judge Rosemary M. Collyer on 12/23/2011. (lcrmc2) (Entered: 12/23/2011)
12/23/2011	<u>32</u>	NOTICE OF APPEAL as to <u>31</u> Order, <u>30</u> Memorandum & Opinion by JEFFERSON WAYNE SCHRADER, SECOND AMENDMENT FOUNDATION, INC.. Filing fee \$ 455, receipt number 0090-2776741. Fee Status: Fee Paid. Parties have been notified. (Gura, Alan) (Entered: 12/23/2011)
12/27/2011	<u>33</u>	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re <u>32</u> Notice of Appeal. (rdj) (Entered: 12/27/2011)
12/27/2011		USCA Case Number 11-5352 for <u>32</u> Notice of Appeal filed by SECOND AMENDMENT FOUNDATION, INC., JEFFERSON WAYNE SCHRADER. (mmh) (Entered: 12/29/2011)

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Description:	Docket Report	Search Criteria:	1:10-cv-01736-RMC
Billable Pages:	5	Cost:	0.50

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER, et al.,)	
)	Case No. 10-CV-1736-RMC
Plaintiffs,)	
)	DECLARATION OF
v.)	JEFFERSON WAYNE SCHRADER
)	
ERIC HOLDER, et al.,)	
)	
Defendants.)	
)	

DECLARATION OF JEFFERSON WAYNE SCHRADER

I, Jefferson Wayne Schrader, am competent to state, and declare the following based on my personal knowledge:

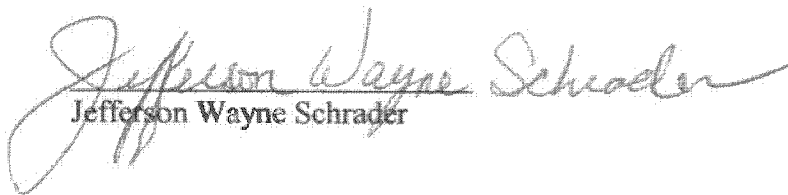
1. I am citizen of the United States and the State of Georgia. I was born in 1948.
2. I wish to own firearms for the purpose of self-defense.
3. I am not under indictment, have never been convicted of a felony or misdemeanor crime of domestic violence, and am not a fugitive from justice. I am not an unlawful controlled substance user or addict, and I have never been adjudicated as mentally defective or been committed to a mental institution. I have never been discharged from the Armed Forces under dishonorable conditions, and have never renounced my citizenship. I have never been the subject of a restraining order relating to an intimate partner.
4. On or about July of 1968, I was enlisted in the United States Navy, and stationed in Annapolis, Maryland. While walking peaceably in Annapolis, I was violently attacked by a street gang claiming that I had entered their territory.

5. On or about July 23, 1968, I was again walking peaceably in Annapolis, and encountered one of the men who had previously assaulted me. A dispute broke out between us, during which I punched him. A nearby police officer thereafter arrested me. My understanding is that I was arrested for assault and battery, and disorderly conduct, and that both were simple misdemeanor offenses.
6. On or about July 31, 1968, I was found guilty of misdemeanor assault and battery. My understanding and recollection is that I was ordered to pay a \$100 fine, plus court costs of \$9. I paid the fine and court costs. I was not sentenced to any jail time.
7. I was 20 years old at the time of my conviction.
8. Following a tour of Vietnam, I was honorably discharged from the Navy. Other than one traffic infraction, I have not had any further police encounters except for the conduct of Defendants described below.
9. On or about November 11, 2008, my companion attempted to purchase a shotgun for me as a gift. On or about January 14, 2009, I also ordered a handgun from a local firearms dealer in Georgia, which I planned to keep for self defense.
10. The shotgun transaction was unsuccessful. I was informed that the National Instant Criminal Background Check ("NICS") computer system indicated that I was prohibited under federal law from purchasing firearms. The NICS transaction number for this attempted purchase is "(NPN)-1B18X2G."

11. On June 3, 2009, the FBI sent me a letter and a document labeled "Criminal History Record." The letter stated that the FBI had based a "denial decision" of my attempted shotgun transaction on 18 U.S.C. § 922(g)(1) due to my 1968 Maryland misdemeanor assault conviction. A copy of this correspondence is attached as Exhibit A.
12. A short time later, I was contacted by Agent Lance Greer and told that I must dispose of or surrender any firearms I might possess or face criminal prosecution. As a result, I did not complete the purchase or otherwise take possession of the handgun I had ordered.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of March, 2011.


Jefferson Wayne Schrader



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

June 3, 2009

Mr. J. W. Schrader
874 Chattahoochee Acres Drive
Cleveland, GA 30528

SUBJECT: Firearm Denial Appeal Review
National Instant Criminal Background
Check System (NICS) Transaction
Number (NTN)-1B18X2G

Dear Mr. Schrader:

The fingerprints you submitted are identical with those in a record that was used to deny your firearm purchase or pawn redemption. A copy of your FBI identification record is enclosed for your review. Unless additional materials in the form of certified court documentation are submitted, we are unable to reverse our original denial decision. Your denial indicates that you have been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

If you wish to challenge the accuracy of the record upon which the denial is based, you may apply directly to the original submitting agency for correction of the record. The name and location of the agency that holds the denying record/information can be found on the enclosed copy of your FBI identification record in the highlighted area. The address for that agency is as follows:

Annapolis Police Department
199 North Taylor Avenue
Annapolis, MD 21401
Date of Arrest: July 23, 1968
Agency Case Number: 8292

Mr. J. W. Schrader

If your record is corrected, the FBI Criminal Justice Information Services (CJIS) Division's NICS Section must be in receipt of a copy of the agency's correction before we can authorize the transfer of a firearm. You may direct your written challenge to the NICS Section; however, it will not expedite your appeal.

To facilitate initial processing and eliminate unnecessary administration, once a disqualifier has been identified, the NICS Section Appeal Services Team (AST) will not review other records for additional disqualifiers. However, should your appeal be successful on the initially denied record, the AST will examine any additional records for disqualifying information which may result in sustaining the denial.

Ensure all correspondence/submissions contain your NTN. Failure to do so will only delay your appeal.

If you have any questions regarding this communication, you may contact the NICS Customer Service at 1-877-444-6427.

NICS Section
CJIS Division

Enclosure

***** CRIMINAL HISTORY RECORD *****
 DATA AS OF 2009-06-02
 ***** INTRODUCTION *****
 THIS RAP SHEET WAS PRODUCED IN RESPONSE TO THE FOLLOWING REQUEST:
 FBI NUMBER 517490G
 STATE ID NUMBER GA3383157T (GA)
 REQUEST ID 2202210255
 PURPOSE CODE F
 ATTENTION D091530837220221025588102057
 THE INFORMATION IN THIS RAP SHEET IS SUBJECT TO THE FOLLOWING CAVEATS:
 **THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2009-06-02
 (GA; 2007-08-11)
 IMPORTANT! CRIMINAL HISTORY RECORD INFORMATION IS OBTAINED ONE OF TWO
 WAYS: 1) BY CONDUCTING AN INQUIRY USING PERSONAL IDENTIFIERS SUCH AS
 NAME AND DATE OF BIRTH (NAME SEARCH), OR 2) BY SUBMITTING FINGERPRINT
 CARDS TO THE GEORGIA CRIME INFORMATION CENTER (GCIC). WHEN CONDUCTING A
 NAME SEARCH FOR CRIMINAL HISTORY RECORD INFORMATION, THERE IS A
 POSSIBILITY THAT THE INFORMATION RETURNED BELONGS TO A DIFFERENT PERSON
 WITH THE SAME, OR SIMILAR, IDENTIFIERS. IN THIS CASE, A POSITIVE MATCH
 OF THE PERSON WHOSE CRIMINAL HISTORY RECORD IS SOUGHT REQUIRES
 SUBMISSION OF FINGERPRINT CARDS TO GCIC. WHEN CONDUCTING A FINGERPRINT
 SEARCH FOR CRIMINAL HISTORY RECORD INFORMATION, THE INFORMATION
 RETURNED DOES, IN FACT, BELONG TO THE INDIVIDUAL. IN THIS CASE,
 CONDUCTING A NAME SEARCH USING THE INDIVIDUAL'S PERSONAL IDENTIFIERS
 WOULD BE THE SAME INFORMATION. (GA; 2007-08-11)
 WHEN THE INFORMATION CONTAINED IN A CRIMINAL HISTORY REPORT CAUSES AN
 ADVERSE EMPLOYMENT OR LICENSING DECISION THE INDIVIDUAL, BUSINESS OR
 AGENCY MAKING THE DECISION MUST INFORM THE APPLICANT OF ALL INFORMATION
 PERTINENT TO THE DECISION. THE DISCLOSURE MUST INCLUDE INFORMATION THAT
 A CRIMINAL HISTORY RECORD CHECK WAS CONDUCTED, THE SPECIFIC CONTENTS OF
 THE RECORD AND THE EFFECT THE RECORD HAD UPON THE DECISION. FAILURE TO
 PROVIDE ALL SUCH INFORMATION TO THE PERSON SUBJECT TO THE ADVERSE
 DECISION IS A MISDEMEANOR OFFENSE UNDER GEORGIA LAW. ADDITIONALLY, ANY
 UNAUTHORIZED DISSEMINATION OF THIS RECORD OR INFORMATION HEREIN ALSO
 VIOLATES GEORGIA LAW. (GA; 2007-08-11)
 IN THE EVENT THAT IDENTIFIERS ARE NOT CLEARLY ASSOCIATED TO A SPECIFIC
 CYCLE, THE INFORMATION IS MOST LIKELY NON-FINGERPRINT BASED INFORMATION
 RECEIVED FROM THE DEPARTMENT OF CORRECTIONS AT THE TIME OF RELEASE FROM
 INCARCERATION. (GA; 2007-08-11)
 ***** IDENTIFICATION *****
 SUBJECT NAME(S)
 SCHRADER, JEFFERSON WAYNE
 SUBJECT DESCRIPTION
 FBI NUMBER STATE ID NUMBER
 517490G GA3383157T (GA)
 SOCIAL SECURITY NUMBER
 SEX RACE
 MALE WHITE
 HEIGHT WEIGHT DATE OF BIRTH
 5'09" (2006-02-15) 195 (2006-02-15)
 HAIR COLOR EYE COLOR
 GRAY OR PARTIALLY GRAY (2006-02-15) BROWN (2006-02-15)
 SCARS, MARKS, AND TATTOOS
 CODE DESCRIPTION, COMMENTS, AND IMAGES
 TAT R ARM TATTOO, TATTOO - ARM, RIGHT,
 PLACE OF BIRTH
 FLORIDA
 CAUTION INFORMATION
 FIREARMS DISQUALIFIED FALSE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

WVNICS000

ICN D0915308372202210255

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

- FBI IDENTIFICATION RECORD -

WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE
DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE FBI.

NAME	FBI NO.	DATE REQUESTED
SCHRADER, JEFFERSON WAYNE	517490G	2009/06/02

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR
M	W		509	165	BRO	BRO

BIRTH PLACE
FLORIDA

FINGERPRINT CLASS PATTERN CLASS

1-ARRESTED OR RECEIVED 1968/07/23
AGENCY-POLICE DEPARTMENT ANNAPOLIS (MD0020100)
AGENCY CASE-8292
CHARGE 1-A&B
CHARGE 2-DIS

COURT-
CHARGE-A&B
SENTENCE-
7-31-68 GUILTY, \$100 FINE & COST COMMITTED IN DEFAULT FOR 30 DAYS
TO RUN CONSECUTIVE WITH COM #1, 8-2-68 \$109 PAID

RECORD UPDATED 2009/06/01

ALL ARREST ENTRIES CONTAINED IN THIS FBI RECORD ARE BASED ON
FINGERPRINT COMPARISONS AND PERTAIN TO THE SAME INDIVIDUAL.

THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL
USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED.

HDR/2L01881020561

XATN/D091530837220221025588102057

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFERSON WAYNE SCHRADER and
SECOND AMENDMENT FOUNDATION, INC.,

Plaintiff,

v.

ERIC HOLDER, Attorney General, and
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Civil Action No. 10-1736 (RMC)

DECLARATION OF WILLIAM L. FINCH

I, WILLIAM L. FINCH, hereby declare the following:

1. I am an attorney employed by the Federal Bureau of Investigation ("FBI") as an Assistant General Counsel with the Access Integrity Unit of the Office of the General Counsel. My duties include providing legal and policy guidance to the Criminal Justice Information Services ("CJIS") Division, National Instant Criminal Background Check System ("FBI NICS") Section in Clarksburg, West Virginia. The matters stated in this declaration are based on my personal knowledge, my review of FBI records and other documents, and information provided to me in my official capacity.
2. Under the Brady Handgun Violence Prevention Act ("Brady Act"), the United States Attorney General was charged with establishing a system, the National Instant Criminal Background Check System ("NICS") which Federal Firearms Licensees ("FFLs") must contact for a background check prior to transferring a firearm to a non-licensed person in order to determine if an individual is prohibited under federal or state law from

possessing a firearm. The authority and power to perform this function has been delegated to the FBI, and the FBI conducts background checks using the NICS.

3. This paragraph three provides a general, non-exhaustive overview and summary of the NICS and the background check process. The NICS is comprised of three electronic databases containing records which may reveal information demonstrating the existence of federal and/or state prohibitions against firearm possession. The three electronic databases are the Interstate Identification Index, which contains criminal history records regarding more than 58 million individuals; the National Crime Information Center, which contains more than 4.8 million records regarding wanted persons, protection orders, deported felons, and other matters; and the NICS Index, which contains over 6.4 million records regarding individuals subject to federal firearm prohibitions. Generally speaking, in connection with an attempted firearms purchase, an FFL will provide the FBI with descriptive data regarding the potential firearms purchaser, such as the potential purchaser's name. The FBI then checks this information against the records in the NICS to see if the potential purchaser is prohibited by federal or state law from receiving or possessing a firearm. If the name of the potential purchaser does not match any record searched by the NICS, then the firearms transaction can proceed, and the FFL is so notified. Alternatively, if the potential purchaser's name is matched with a record contained in any of the three NICS databases, and the FBI NICS Section determines that that receipt of a firearm by the potential purchaser would violate the Gun Control Act, 18 U.S.C. §§ 922(g) or (n) or state law, then the FBI NICS Section will contact the FFL and inform the FFL that the transfer of the firearm is denied. If the FBI NICS Section is unable to determine if a transaction should be denied within three business days of the

initiation of the background check, the FFL is not prohibited from transferring the firearm. See 18 U.S.C. § 922(t)(1).

4. There are two plaintiffs in the above-captioned lawsuit: Jefferson Wayne Schrader and Second Amendment Foundation, Inc. The plaintiffs' First Amended Complaint alleges that, "[o]n or about November 11, 2008, Schrader's companion attempted to purchase him a shotgun as a gift." Schrader's companion is not a plaintiff in the above-captioned lawsuit. In connection with an attempted firearms purchase, an FFL provides the FBI with descriptive data about the potential purchaser of the firearm, which is used to conduct the background check on the potential purchaser of the firearm. In connection with an attempted firearms purchase, an FFL does not provide the FBI with descriptive data about the ultimate intended recipient of the firearm. Because Schrader does not identify the name of his companion who allegedly purchased a shotgun on or about November 11, 2008, the FBI is unable to confirm whether or not this alleged attempted purchase took place. Moreover, even if Schrader's companion attempted to purchase a shotgun on or about November 11, 2008, and the transaction was denied, the denial would be the result of a determination that Schrader's companion, as opposed to Schrader himself, was prohibited under federal or state law from possessing a firearm.
5. On or about November 13, 2008, Schrader attempted to purchase a shotgun from an FFL in Georgia. The NICS transaction number ("NTN") for the background check into the shotgun purchase is 18N4NJ8.
6. On or about January 24, 2009, Schrader attempted to purchase a handgun from an FFL in Georgia. The FFL involved with the attempted handgun purchase is different than the

FFL, discussed in paragraph 5, involved with the shotgun purchase. The NTN for the background check into the handgun purchase is 1B18X2G.

7. The FBI NICS Section conducted research that revealed that Schrader had been convicted of misdemeanor assault in Maryland in 1968. At the time of Schrader's 1968 assault conviction, Maryland law did not set a maximum sentence for misdemeanor assault. The FBI NICS Section determined that the conviction triggered 18 U.S.C. § 921(a)(20) and 18 U.S.C. § 922(g)(1), which prohibit firearm possession by an individual convicted of a state offense classified by the state as a misdemeanor that is punishable by a term of imprisonment of more than two years. This determination applied to the handgun purchase discussed in paragraph 6, above, as well as to the shotgun purchase discussed in paragraph 5, above.
8. On or about January 26, 2009, the FBI NICS Section advised the two FFLs referenced in paragraphs 5 and 6 that Schrader's two firearm purchase applications for the shotgun and the handgun were denied. As of approximately January 26, 2009, the FFL involved in the shotgun transaction (referenced in paragraph 5) had already transferred the shotgun to Schrader. However, as of approximately January 26, 2009, the FFL involved in the handgun transaction (referenced in paragraph 6) had not transferred the handgun to Schrader. On or about January 26, 2009, the FBI NICS Section, in a firearm retrieval notice, advised the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") of a firearm transfer to a prohibited person (in this case, Schrader) and of the nature of the disabling offense.
9. On January 26, 2009, the FBI NICS Section received an email from Schrader with the subject line "[NICSAPPEALS] Appeal a Firearm Transfer Denial." Schrader's January

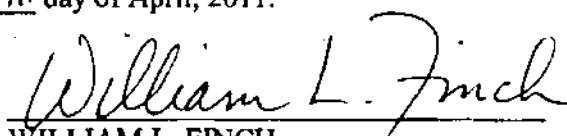
26, 2009 email stated that "I was advised by your office to send an email to inquire why I was denied." Schrader's January 26, 2009, email referenced NTN 1B18X2G, the NTN for the background check into the attempted handgun purchase.

10. The FBI NICS Section responded to Schrader's inquiry in a letter to Schrader, dated January 28, 2009. As set forth more fully therein, the January 28, 2009, letter generally advised Schrader that the background check for the attempted handgun purchase indicated that **"either [Schrader] or another individual with a similar name and/or similar descriptive features"** had been matched with a record that triggered 18 U.S.C. Sections 921(a)(20) and 922(g)(1) (emphasis in original). The January 28, 2009, letter further advised Schrader that, if he did not believe that he was "the individual whose FBI identification record is on file," that he must "submit positive proof of [his] identity" in the form of **"rolled fingerprints impressions prepared by a law enforcement or authorized fingerprinting agency . . ."** (emphasis in original). The January 28, 2009, letter further advised Schrader as follows: "Upon receipt of your fingerprints, we will conduct a fingerprint comparison. If the record used for the denial **does not** match your fingerprints, you will be notified. If the fingerprint comparison is identical, you will be furnished additional information regarding the record(s) on which the denial is based" (emphasis in original). A copy of the referenced January 28, 2009, letter (without the enclosures thereto) is attached hereto as Exhibit A.
11. Schrader subsequently furnished his fingerprints to the FBI NICS Section. By letter to Schrader, dated February 12, 2009, the FBI NICS Section confirmed receipt of Schrader's fingerprints. A copy of the referenced February 12, 2009 letter is attached hereto as Exhibit B.

12. The FBI/NICS Section subsequently wrote Schrader a letter, dated June 3, 2009. As set forth more fully therein, the June 3, 2009 letter generally advised Schrader that the fingerprints that he had submitted were "identical with those in a record that was used to deny [Schrader's] firearm purchase . . ." The June 3, 2009, letter reiterated that the basis for the denial of the handgun purchase was 18 U.S.C. Sections 921(a)(20) and 922(g)(1) and further advised Schrader that the "original denial decision" would not be reversed "[u]nless additional materials in the form of certified court documentation are submitted." A copy of the referenced June 3, 2009, letter (without the enclosure thereto) is attached hereto as Exhibit C. Schrader did not provide any subsequent documentation to the FBI/NICS Section in response to the June 3, 2009, letter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7TH day of April, 2011.



WILLIAM L. FINCH
Assistant General Counsel
Office of the General Counsel
Federal Bureau of Investigation
Clarksburg, WV

A



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

January 28, 2009

Mr. J. W. Schrader
874 Chattahoochee Acres Drive
Cleveland, GA 30528

SUBJECT: Firearm Denial Appeal Review
National Instant Criminal Background Check
System (NICS) Transaction
Number (NTN)-1B18X2G

Dear Mr. Schrader:

This letter is in response to your inquiry concerning your denial to purchase or redeem a firearm. By way of background, during a NICS check, our computer system searches several databases which contain records of persons with disqualifying conduct. As a name and descriptive-based system, the computer program is designed to screen individuals with similar names and/or similar descriptive features within certain parameters. Your denial indicates that **either you or another individual with a similar name and/or similar descriptive features** has been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

To expedite the validation process, if you believe you are the individual who meets this criteria, and are in possession of the original certified documents which contain an embossed agency seal and would like to submit them to our office, you may submit them to the FBI Criminal Justice Information Services Division=s National Instant Criminal Background Check System Section, Appeal Services Team, Post Office Box 4278, Clarksburg, West Virginia 26302-9922. Additionally, if you believe you **are** the individual whose FBI identification record is on file and

Mr. J. W. Schrader

desire a copy of that record, you must submit positive proof of your identity.

If you believe you **are not** the individual whose FBI identification record is on file, you must also submit positive proof of your identity. Positive proof of your identity requires that you provide a set of your **rolled fingerprint impressions prepared by a law enforcement or authorized fingerprinting agency** on the enclosed fingerprint card. The fingerprint card must contain the following information:

- \$ The law enforcement agency rolling the fingerprint impressions **must stamp** its agency name and address on the fingerprint card in the designated area. The agency's telephone number and employee signature also **must** be included.
- \$ Other authorized fingerprinting agencies **must** include their complete address, telephone number, and employee signature in the designated areas.
- \$ The fingerprint card **must be completed in its entirety. The Name, Date of Birth, Sex, Race, State of Residence, and Country of Citizenship** areas on the fingerprint card must be complete; however, the inclusion of any additional information may help expedite your appeal.

The NICS Section will not charge a fee for this procedure; however, a fee may be charged by the law enforcement agency.

Please be advised that failure to comply with any of the above-listed requirements may result in the rejection of your fingerprint card submission, thereby causing further delays in the processing of your appeal.

Upon receipt of your fingerprints, we will conduct a fingerprint comparison. If the record used for the denial **does not** match your fingerprints, you will be notified. If the fingerprint comparison is identical, you will be furnished additional information regarding the record(s) on which the denial is based.

Mr. J. W. Schrader

To facilitate initial processing and eliminate unnecessary administration, once a disqualifier has been identified, the NICS Section Appeal Services Team (AST) will not review other records for additional disqualifiers. However, should your appeal be successful on the initially denied record, the AST will examine any additional records for disqualifying information which may result in sustaining the denial.

A postage-paid return envelope is enclosed for your convenience. Ensure all correspondence/submissions contain your NTN. Failure to do so will only delay your appeal.

If you have any questions regarding this communication, you may contact the NICS Customer Service at 1-877-444-6427.

NICS Section
CJIS Division

Enclosures (2)

B



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

February 12, 2009

Mr. J.W. Schrader
874 Chattahoochee Acres Drive
Cleveland, GA 30528

SUBJECT: Firearm Appeal/Inquiry Receipt Acknowledgment
National Instant Criminal Background
Check System (NICS) Transaction
Number (NTN)-1B18X2G

Dear Mr. Schrader:

The FBI Criminal Justice Information Services (CJIS) Division's NICS Section received your fingerprint card. Your information has been forwarded to the NICS Section's Appeal Services Team for further review and analysis to determine the proper resolution.

Upon conclusion of our research and evaluation, you will be notified and provided additional information in writing regarding your appeal.

If you have any questions regarding this communication, you may contact the NICS Customer Service at 1-877-444-6427.

NICS Section
CJIS Division

C



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

June 3, 2009

Mr. J. W. Schrader
874 Chattahoochee Acres Drive
Cleveland, GA 30528

SUBJECT: Firearm Denial Appeal Review
National Instant Criminal Background
Check System (NICS) Transaction
Number (NTN)-1B18X2G

Dear Mr. Schrader:

The fingerprints you submitted are identical with those in a record that was used to deny your firearm purchase or pawn redemption. A copy of your FBI identification record is enclosed for your review. Unless additional materials in the form of certified court documentation are submitted, we are unable to reverse our original denial decision. Your denial indicates that you have been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

If you wish to challenge the accuracy of the record upon which the denial is based, you may apply directly to the original submitting agency for correction of the record. The name and location of the agency that holds the denying record/information can be found on the enclosed copy of your FBI identification record in the highlighted area. The address for that agency is as follows:

Annapolis Police Department
199 North Taylor Avenue
Annapolis, MD 21401
Date of Arrest: July 23, 1968
Agency Case Number: 8292

Mr. J. W. Schrader

If your record is corrected, the FBI Criminal Justice Information Services (CJIS) Division's NICS Section **must** be in receipt of a copy of the agency's correction before we can authorize the transfer of a firearm. You may direct your written challenge to the NICS Section; however, it will not **expedite** your appeal.

To facilitate initial processing and eliminate unnecessary administration, once a disqualifier has been identified, the NICS Section Appeal Services Team (AST) will not review other records for additional disqualifiers. However, should your appeal be successful on the initially denied record, the AST will examine any additional records for disqualifying information which may result in sustaining the denial.

Ensure all correspondence/submissions contain your NTN. Failure to do so will only delay your appeal.

If you have any questions regarding this communication, you may contact the NICS Customer Service at 1-877-444-6427.

NICS Section
CJIS Division

Enclosure

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER, et al.,)
)
 Plaintiffs,) Case No. 10-CV-1736-RMC
)
 v.) **SECOND DECLARATION OF**
) **JEFFERSON WAYNE SCHRADER**
)
 ERIC HOLDER, et al.,)
)
)
 Defendants.)
)

SECOND DECLARATION OF JEFFERSON WAYNE SCHRADER

I, Jefferson Wayne Schrader, am competent to state, and declare the following based on my personal knowledge:

1. I filed this lawsuit because I presently intend to purchase and possess a handgun and long gun for self-defense within my own home. I am prevented from doing so only by the Defendants in this case, who have twice denied my attempts to obtain such firearms, and who have advised me that federal law disqualifies me from purchasing or possessing such firearms.

2. As I stated in my *Declaration of Jefferson Wayne Schrader* [Dkt. # 9-1], I attempted in November of 2008 to obtain a shotgun and in January of 2009 to obtain a handgun. I planned to keep both of these firearms in my home for self-defense.

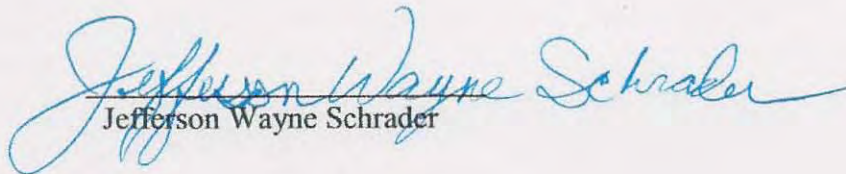
3. My November 2008 effort to obtain a shotgun to keep in my home for self-defense was ultimately unsuccessful and denied by the Defendants. I was informed by the FBI that the National Instant Criminal Background Check (“NICS”) computer system indicated that I was prohibited under federal law from purchasing firearms, and that the FBI had made a “denial decision” of my shotgun transaction. Based on a letter the FBI sent me, I had originally

understood the relevant NICS transaction number associated with this denial decision to be “(NPN)-1B18X2G.” (Dkt. # 9-1, ¶ 2 & Exh. A). I have reviewed paragraph 5 of the FBI’s *Declaration of William L. Finch* [Dkt. # 12-2], and I understand it claims the relevant NICS transaction number to be “(NPN)-18N4NJ8.” Regardless, I subsequently disposed of this shotgun, and it is no longer in my possession.

4. My January 2009 effort to obtain a handgun to keep in my home for self-defense was also ultimately unsuccessful and denied by the Defendants. I had ordered this handgun from a local firearms dealer in Georgia. But because the FBI subsequently advised me that I was prohibited from possessing a firearm, I did not complete the purchase or otherwise take possession of the handgun. I also understand from paragraphs 6-8 of the FBI’s *Declaration of William L. Finch* [Dkt. # 12-2] that the FBI issued a denial decision of this attempted handgun purchase, and that the associated NICS transaction number was “(NPN)-1B18X2G.”

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of April, 2011.


Jefferson Wayne Schrader

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFERSON WAYNE SCHRADER,)	Case. No. 10-1736-RMC
874 Chattahoochee Acres Drive)	
Cleveland, GA 30528)	
)	
and)	
)	
SECOND AMENDMENT FOUNDATION, INC.,)	
12500 N.E. 10 th Place)	
Bellevue, WA 98005)	
)	
Plaintiffs,)	
)	
v.)	
)	
ERIC HOLDER,)	
Attorney General of the United States)	
950 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20530-0001)	
)	
FEDERAL BUREAU OF INVESTIGATION,)	
935 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20535-0001)	
)	
UNITED STATES OF AMERICA,)	
serve: 950 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20530-0001)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Now come Plaintiffs Jefferson Wayne Schrader and Second Amendment Foundation, Inc., by and through undersigned counsel, and complain of Defendants as follows:

THE PARTIES

1. Plaintiff Jefferson Wayne Schrader is a natural person and citizen of the State of Georgia and of the United States. Mr. Schrader presently intends to purchase and possess a

handgun and long gun for self-defense within his own home, but is prevented from doing so only by defendants' active enforcement of unconstitutional policies complained of in this action.

2. Plaintiff Second Amendment Foundation, Inc. (hereafter "SAF"), is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control. SAF brings this action on behalf of itself and its members.

3. Defendant Eric Holder is the Attorney General of the United States, and as such is responsible for executing and administering laws, customs, practices, and policies of the United States. In that capacity, Mr. Holder is presently enforcing the laws, customs, practices and policies complained of in this action.

4. Defendant Federal Bureau of Investigation is an agency within the meaning of 18 U.S.C. § 925A, and is presently enforcing the laws, customs, practices and policies complained of in this action.

5. Defendant United States of America is the government whose law, customs, practices and policies are complained of in this action.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 18 U.S.C. § 925A.

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

STATEMENT OF FACTS

8. Plaintiff Schrader is over the age of 21, is not under indictment, has never been convicted of a felony or misdemeanor crime of domestic violence, is not a fugitive from justice, is not an unlawful user of or addicted to any controlled substance, has not been adjudicated a mental defective or committed to a mental institution, has not been discharged from the Armed Forces under dishonorable conditions, has never renounced his citizenship, and has never been the subject of a restraining order relating to an intimate partner. Plaintiff Schrader is fully qualified under the laws of the United States and of the State of Georgia to possess firearms.

9. On or about July, 1968, Plaintiff Schrader was enlisted in the United States Navy, and stationed in Annapolis, Maryland. While walking peaceably in Annapolis, Schrader was violently assaulted and battered by a street gang claiming that he had entered the gang's alleged territory.

10. On or about July 23, 1968, Plaintiff Schrader was again walking peaceably in Annapolis, and encountered one of the men who had previously assaulted him. A dispute broke out between the two, in the course of which Schrader punched his assailant. A nearby police officer thereafter arrested Schrader for assault and battery, and disorderly conduct, both simple misdemeanor offenses.

11. On or about July 31, 1968, Plaintiff Schrader was found guilty of misdemeanor assault and battery and ordered to pay a \$100 fine, plus court costs of \$9, or upon default serve thirty days in jail. Schrader paid the fine and court costs.

12. Following a tour of Vietnam, Plaintiff Schrader was honorably discharged from the Navy. He has not had any further police encounters, save for one traffic infraction, and the

conduct of Defendants described below.

13. At the time of Schrader's misdemeanor assault conviction, and until recently, Maryland law did not set forth any maximum sentence for the crime of misdemeanor assault. The only codified limitation upon sentencing for misdemeanor assault was the right secured by the Eighth Amendment to the United States Constitution.

14. On or about November 11, 2008, Schrader's companion attempted to purchase him a shotgun as a gift. On or about January 14, 2009, Schrader ordered a handgun from his local firearms dealer, which he would keep for self-defense.

15. The shotgun transaction resulted in a denial decision by the FBI when the National Instant Criminal Background Check ("NICS") computer system indicated that Mr. Schrader is prohibited under federal law from purchasing firearms. The NICS transaction number for this attempted shotgun purchase is "(NPN)-18N4NJ8." Mr. Schrader subsequently disposed of the shotgun. The handgun transaction also resulted in a denial decision by the FBI when the National Instant Criminal Background Check ("NICS") computer system indicated that Mr. Schrader is prohibited under federal law from purchasing firearms. The NICS transaction number for this attempted handgun purchase is "(NPN) - 1B18X2G." Mr. Schrader never obtained possession of the handgun.

16. On June 3, 2009, Defendant Federal Bureau of Investigations, which administers the NICS system, advised Schrader that the shotgun transaction was rejected pursuant to 18 U.S.C. § 922(g)(1) on the basis of his 1968 Maryland misdemeanor assault conviction. Subsequently, Agent Lance Greer advised Schrader to dispose of or surrender any firearms he might possess or face criminal prosecution. Schrader subsequently canceled his handgun order.

17. Plaintiff SAF's members and supporters, including Plaintiff Schrader, are directly impacted by application of 18 U.S.C. § 922(g)(1) to misdemeanor offenses. Additionally, Plaintiff SAF routinely expends resources responding to inquiries about the applicability of 18 U.S.C. § 922(g)(1) under a variety of circumstances, including those similar to plaintiff Schrader's.

FIRST CLAIM FOR RELIEF
CORRECTION OF ERRONEOUS NICS INFORMATION
18 U.S.C. § 925A
BY PLAINTIFF SCHRADER

18. The allegations of paragraphs 1 through 17 are incorporated as though fully set forth herein.

19. Plaintiff Schrader's conviction for misdemeanor assault cannot be the basis for a firearms disability under 18 U.S.C. § 922(g)(1), because Schrader was not actually sentenced to a term of imprisonment exceeding two years. Maryland's failure to codify a statutory penalty for a simple common law misdemeanor does not create a firearms disability under federal law for conviction of such common law misdemeanor offense.

20. Plaintiff Schrader is entitled to the removal of his firearms disability from NICS, and a declaratory judgment that his 1968 Maryland common law misdemeanor assault conviction is not a disabling offense for purposes of 18 U.S.C. § 922(g)(1).

SECOND CLAIM FOR RELIEF
RIGHT TO KEEP AND BEAR ARMS, U.S. CONST., AMEND. II
BY BOTH PLAINTIFFS

21. The allegations of paragraphs 1 through 20 are incorporated as though fully set forth herein.

22. Defendants' enforcement of 18 U.S.C. 922(g)(1) against Plaintiff Schrader, members of Plaintiff SAF, and others whose concern over Defendants' conduct taxes SAF resources, barring possession of firearms by individuals on account of simple common-law misdemeanor offenses carrying no statutory penalties, violates the Second Amendment right to keep and bear arms.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

1. Injunctive relief commanding Defendants to withdraw their record pertaining to Plaintiff Schrader from NICS, per 18 U.S.C. § 925A;
2. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing 18 U.S.C. § 922(g)(1) on the basis of simple common-law misdemeanor offenses carrying no statutory penalties;
3. Declaratory relief consistent with the injunction;
4. Costs of suit;
5. Attorney Fees and Costs pursuant to 18 U.S.C. § 925A and 28 U.S.C. § 2412; and
6. Any other further relief as the Court deems just and appropriate.

Dated: April 21, 2011

Respectfully Submitted,

Alan Gura (D.C. Bar No. 453449)
Thomas M. Huff (D.C. Bar No. 978294)
Gura & Possessky, PLLC
101 N. Columbus Street, Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665
alan@gurapossessky.com

By: /s/ Alan Gura
Alan Gura
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER, et al.,)
) Case No. 10-CV-1736-RMC
Plaintiffs,)
)
v.)
)
ERIC HOLDER, et al.,)
)
Defendants.)

PLAINTIFFS' RENEWED CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs, Jefferson Schrader and the Second Amendment Foundation, Inc., by and through undersigned counsel, hereby renew their cross-motion for summary judgment against Defendants Eric Holder, Federal Bureau of Investigation, and the United States of America. As grounds therefor, Plaintiffs respectfully refer the Court to the accompanying Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss the Second Amended Complaint and in Support of Plaintiffs' Renewed Cross-Motion for Summary Judgment, Plaintiffs' Separate Statement of Material Facts in Support of Plaintiffs' Renewed Cross-Motion for Summary Judgment, and the Declaration of Jefferson Wayne Schrader.

Dated: July 1, 2011

Respectfully submitted,

Alan Gura (D.C. Bar No. 453449)
Thomas M. Huff (D.C. Bar No. 978294)
Gura & Possessky, PLLC
101 N. Columbus Street, Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

By: /s/ Thomas M. Huff
Thomas M. Huff

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER, et al.,)	
)	Case No. 10-CV-1736-RMC
Plaintiffs,)	
)	DECLARATION OF
v.)	JEFFERSON WAYNE SCHRADER
)	
ERIC HOLDER, et al.,)	
)	
Defendants.)	
<hr/>		

DECLARATION OF JEFFERSON WAYNE SCHRADER

I, Jefferson Wayne Schrader, am competent to state, and declare the following based on my personal knowledge:

1. I am citizen of the United States and the State of Georgia. I was born in 1948, and I am 63 years old.

2. I filed this lawsuit because I presently intend to purchase and possess a handgun and long gun for self-defense within my own home. I am prevented from doing so only by the Defendants in this case, who have twice denied my attempts to obtain such firearms, and who have advised me that federal law disqualifies me from purchasing or possessing such firearms.

3. I am not under indictment, have never been convicted of a felony or misdemeanor crime of domestic violence, and am not a fugitive from justice. I am not an unlawful controlled substance user or addict, and I have never been adjudicated as mentally defective or been committed to a mental institution. I have never been discharged from the Armed Forces under dishonorable conditions, and have never renounced my citizenship. I have never been the subject of a restraining order relating to an intimate partner.

4. On or about July of 1968, I was enlisted in the United States Navy, and stationed in Annapolis, Maryland. While walking peaceably in Annapolis, I was violently attacked by a street gang claiming that I had entered their territory.

5. On or about July 23, 1968, I was again walking peaceably in Annapolis, and encountered one of the men who had previously assaulted me. A dispute broke out between us, during which I punched him. A nearby police officer thereafter arrested me. My understanding is that I was arrested for assault and battery, and disorderly conduct, and that both were simple misdemeanor offenses.

6. On or about July 31, 1968, I was found guilty of misdemeanor assault and battery. My understanding and recollection is that I was ordered to pay a \$100 fine, plus court costs of \$9. I paid the fine and court costs. I was not sentenced to any jail time.

7. I was 20 years old at the time of my conviction.

8. Following a tour of Vietnam, I was honorably discharged from the Navy. Other than one traffic infraction, I have not had any further police encounters except for the conduct of Defendants described below.

9. In November of 2008, my companion attempted to purchase a shotgun for me as a gift from a local firearms dealer in Georgia, which I had planned to keep in my home for self defense. While my companion sought to pay for the shotgun for me as a gift, I was to be the owner of the gun and so we made the transaction in my name.

10. In January of 2009, I also ordered a handgun from a local firearms dealer in Georgia, which I had planned to keep in my home for self defense.

11. The November 2008 effort to obtain the shotgun resulted in a denial decision by

Defendants. I understand from paragraphs 5 and 7-8 of the FBI's Declaration of William L. Finch [Dkt. # 12-2] that the FBI issued a denial decision of this attempted shotgun transaction, and that the associated National Instant Criminal Background Check ("NICS") transaction number was "(NPN)-18N4NJ8."

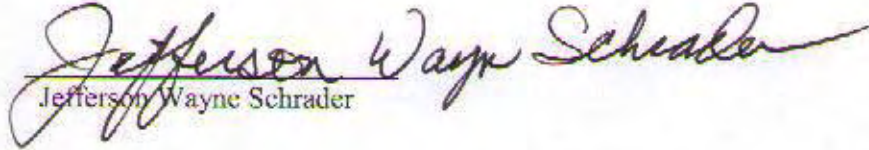
12. My January 2009 effort to obtain a handgun to keep in my home for self-defense was also unsuccessful and resulted in a denial decision by the Defendants. I understand from paragraphs 6-8 of the FBI's Declaration of William L. Finch [Dkt. # 12-2] that the FBI issued a denial decision of this attempted handgun purchase, and that the associated NICS transaction number was "(NPN)-IB18X2G."

13. On June 3, 2009, the FBI sent me a letter and a document labeled "Criminal History Record." The letter stated that the FBI had made a "denial decision" of my attempted firearms transaction based on 18 U.S.C. § 922(g)(1) due to my 1968 Maryland misdemeanor assault and battery conviction. A copy of this correspondence is attached as Exhibit A.

14. A short time later, I was contacted by Agent Lance Greer and told that I must dispose of or surrender any firearms I might possess or face criminal prosecution. As a result, I subsequently disposed of the shotgun, and it is no longer in my possession. Accordingly, I also canceled the order for the denied handgun transaction and never took possession of it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29 day of June, 2011.


Jefferson Wayne Schrader



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

June 3, 2009

Mr. J. W. Schrader
874 Chattahoochee Acres Drive
Cleveland, GA 30528

SUBJECT: Firearm Denial Appeal Review
National Instant Criminal Background
Check System (NICS) Transaction
Number (NTN)-1B18X2G

Dear Mr. Schrader:

The fingerprints you submitted are identical with those in a record that was used to deny your firearm purchase or pawn redemption. A copy of your FBI identification record is enclosed for your review. Unless additional materials in the form of certified court documentation are submitted, we are unable to reverse our original denial decision. Your denial indicates that you have been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

If you wish to challenge the accuracy of the record upon which the denial is based, you may apply directly to the original submitting agency for correction of the record. The name and location of the agency that holds the denying record/information can be found on the enclosed copy of your FBI identification record in the highlighted area. The address for that agency is as follows:

Annapolis Police Department
199 North Taylor Avenue
Annapolis, MD 21401
Date of Arrest: July 23, 1968
Agency Case Number: 8292

Mr. J. W. Schrader

If your record is corrected, the FBI Criminal Justice Information Services (CJIS) Division's NICS Section must be in receipt of a copy of the agency's correction before we can authorize the transfer of a firearm. You may direct your written challenge to the NICS Section; however, it will not expedite your appeal.

To facilitate initial processing and eliminate unnecessary administration, once a disqualifier has been identified, the NICS Section Appeal Services Team (AST) will not review other records for additional disqualifiers. However, should your appeal be successful on the initially denied record, the AST will examine any additional records for disqualifying information which may result in sustaining the denial.

Ensure all correspondence/submissions contain your NTN. Failure to do so will only delay your appeal.

If you have any questions regarding this communication, you may contact the NICS Customer Service at 1-877-444-6427.

NICS Section
CJIS Division

Enclosure

***** CRIMINAL HISTORY RECORD *****
DATA AS OF 2009-06-02
***** INTRODUCTION *****
THIS RAP SHEET WAS PRODUCED IN RESPONSE TO THE FOLLOWING REQUEST:
FBI NUMBER 517490G
STATE ID NUMBER GA3383157T (GA)
REQUEST ID 2202210255
PURPOSE CODE F
ATTENTION D091530837220221025588102057
THE INFORMATION IN THIS RAP SHEET IS SUBJECT TO THE FOLLOWING CAVEATS:
**THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2009-06-02
(GA; 2007-08-11)
IMPORTANT! CRIMINAL HISTORY RECORD INFORMATION IS OBTAINED ONE OF TWO
WAYS: 1) BY CONDUCTING AN INQUIRY USING PERSONAL IDENTIFIERS SUCH AS
NAME AND DATE OF BIRTH (NAME SEARCH), OR 2) BY SUBMITTING FINGERPRINT
CARDS TO THE GEORGIA CRIME INFORMATION CENTER (GCIC). WHEN CONDUCTING A
NAME SEARCH FOR CRIMINAL HISTORY RECORD INFORMATION, THERE IS A
POSSIBILITY THAT THE INFORMATION RETURNED BELONGS TO A DIFFERENT PERSON
WITH THE SAME, OR SIMILAR, IDENTIFIERS. IN THIS CASE, A POSITIVE MATCH
OF THE PERSON WHOSE CRIMINAL HISTORY RECORD IS SOUGHT REQUIRES
SUBMISSION OF FINGERPRINT CARDS TO GCIC. WHEN CONDUCTING A FINGERPRINT
SEARCH FOR CRIMINAL HISTORY RECORD INFORMATION, THE INFORMATION
RETURNED DOES, IN FACT, BELONG TO THE INDIVIDUAL. IN THIS CASE,
CONDUCTING A NAME SEARCH USING THE INDIVIDUAL'S PERSONAL IDENTIFIERS
WOULD BE THE SAME INFORMATION. (GA; 2007-08-11)
WHEN THE INFORMATION CONTAINED IN A CRIMINAL HISTORY REPORT CAUSES AN
ADVERSE EMPLOYMENT OR LICENSING DECISION THE INDIVIDUAL, BUSINESS OR
AGENCY MAKING THE DECISION MUST INFORM THE APPLICANT OF ALL INFORMATION
PERTINENT TO THE DECISION. THE DISCLOSURE MUST INCLUDE INFORMATION THAT
A CRIMINAL HISTORY RECORD CHECK WAS CONDUCTED, THE SPECIFIC CONTENTS OF
THE RECORD AND THE EFFECT THE RECORD HAD UPON THE DECISION. FAILURE TO
PROVIDE ALL SUCH INFORMATION TO THE PERSON SUBJECT TO THE ADVERSE
DECISION IS A MISDEMEANOR OFFENSE UNDER GEORGIA LAW. ADDITIONALLY, ANY
UNAUTHORIZED DISSEMINATION OF THIS RECORD OR INFORMATION HEREIN ALSO
VIOLATES GEORGIA LAW. (GA; 2007-08-11)
IN THE EVENT THAT IDENTIFIERS ARE NOT CLEARLY ASSOCIATED TO A SPECIFIC
CYCLE, THE INFORMATION IS MOST LIKELY NON-FINGERPRINT BASED INFORMATION
RECEIVED FROM THE DEPARTMENT OF CORRECTIONS AT THE TIME OF RELEASE FROM
INCARCERATION. (GA; 2007-08-11)
***** IDENTIFICATION *****
SUBJECT NAME(S)
SCHRADER, JEFFERSON WAYNE
SUBJECT DESCRIPTION
FBI NUMBER STATE ID NUMBER
517490G GA3383157T (GA)
SOCIAL SECURITY NUMBER
[REDACTED]
SEX RACE
MALE WHITE
HEIGHT WEIGHT DATE OF BIRTH
5'09" (2006-02-15) 195 (2006-02-15) [REDACTED]
HAIR COLOR EYE COLOR
GRAY OR PARTIALLY GRAY (2006-02-15) BROWN (2006-02-15)
SCARS, MARKS, AND TATTOOS
CODE DESCRIPTION, COMMENTS, AND IMAGES
TAT R ARM TATTOO, TATTOO - ARM, RIGHT,
PLACE OF BIRTH
FLORIDA
CAUTION INFORMATION
FIREARMS DISQUALIFIED FALSE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

WVNICS000

ICN D0915308372202210255

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

- FBI IDENTIFICATION RECORD -

WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE
DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE FBI.

NAME	FBI NO.	DATE REQUESTED
SCHRADER, JEFFERSON WAYNE	517490G	2009/06/02

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR
M	W		509	165	BRO	BRO

BIRTH PLACE
FLORIDA

FINGERPRINT CLASS	PATTERN CLASS
PO PO 14 PO PO	WU WU RS WU WU WU LS LS WU WU
PO 09 17 PO PI	WU

1-ARRESTED OR RECEIVED 1968/07/23
AGENCY-POLICE DEPARTMENT ANNAPOLIS (MD0020100)
AGENCY CASE-8292
CHARGE 1-A&B
CHARGE 2-DIS

COURT-
CHARGE-A&B
SENTENCE-
7-31-68 GUILTY, \$100 FINE & COST COMMITTED IN DEFAULT FOR 30 DAYS
TO RUN CONSECUTIVE WITH COM #1, 8-2-68 \$109 PAID

RECORD UPDATED 2009/06/01

ALL ARREST ENTRIES CONTAINED IN THIS FBI RECORD ARE BASED ON
FINGERPRINT COMPARISONS AND PERTAIN TO THE SAME INDIVIDUAL.

THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL
USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED.

HDR/2L01881020561

ATN/D091530837220221025588102057

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER, et al.,)
) Case No. 10-CV-1736-RMC
 Plaintiffs,)
)
 v.)
)
 ERIC HOLDER, et al.,)
)
 Defendants.)
_____)_____

**SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' RENEWED CROSS-MOTION FOR SUMMARY JUDGMENT**

COME NOW the Plaintiffs, Jefferson Schrader and the Second Amendment Foundation, Inc., by and through undersigned counsel, and submit their Separate Statement of Undisputed Material Facts in Support of their Renewed Cross-Motion for Summary Judgment.

Dated: July 1, 2011

Respectfully submitted,

Alan Gura (D.C. Bar No. 453449)
Thomas M. Huff (D.C. Bar No. 978294)
Gura & Possessky, PLLC
101 N. Columbus Street, Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

By: /s/ Thomas M. Huff
Thomas M. Huff

Attorneys for Plaintiffs

SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' RENEWED CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Plaintiffs contends there is no genuine issue about the following material facts:

<u>No.</u>	<u>Material Fact</u>	<u>Support for Material Fact</u>
1.	Federal criminal law declares it "unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."	18 U.S.C. § 922(g)(1).
2.	Violation of 18 U.S.C. § 922(g)(1) is a criminal offense punishable by a prison sentence of up to ten years.	18 U.S. C. § 924(a)(2).
3.	Plaintiff Jefferson Wayne Schrader is citizen of the United States and the State of Georgia who presently intends to purchase and possess a handgun and long gun for self-defense within his home.	Second Amended Complaint ("2 nd Am. Compl.") [Dkt. #19] at ¶¶ 1, 14; Declaration of Jefferson Wayne Schrader ("Schrader Decl.") [Dkt. # 22-1] at ¶¶ 1-2.

4.	Schrader is not under indictment, has never been convicted of a felony or misdemeanor crime of domestic violence, is not a fugitive from justice, is not an unlawful controlled substance user or addict, has never been adjudicated as a mental defective or committed to a mental institution, has not been discharged from the Armed Forces under dishonorable conditions, has never renounced his citizenship, and has never been the subject of a restraining order relating to an intimate partner. Schrader is qualified to possess firearms under the laws of Georgia—his State of citizenship.	2 nd Am. Compl. at ¶ 8; Schrader Decl. at ¶ 3; Ga. Code § 16-11-100 et seq.; <i>see also State v. Langlands</i> , 276 Ga. 721, 724-725 (Ga. 2003) (holding that Georgia’s state felon-in-possession statute may not be applied to out-of-state misdemeanor offenses).
5.	On or about July of 1968, Schrader was enlisted in the United States Navy, and stationed in Annapolis, Maryland. While walking peaceably in Annapolis, Schrader was violently assaulted and battered by a street gang claiming that he had entered the gang’s alleged territory.	2 nd Am. Compl. at ¶ 9; Schrader Decl. at ¶ 4.
6.	On or about July 23, 1968, Schrader was again walking peaceably in Annapolis, and encountered one of the men who had previously assaulted him. A dispute broke out between the two, in the course of which Schrader punched his assailant. A nearby police officer thereafter arrested Schrader for assault and battery, and disorderly conduct, both simple misdemeanor offenses.	2 nd Am. Compl. at ¶ 10; Schrader Decl. at ¶ 5.
7.	On or about July 31, 1968, Schrader was found guilty of misdemeanor assault and battery and ordered to pay a \$100 fine, plus court costs of \$9. Schrader paid the fine and court costs, and was not sentenced to any jail time.	2 nd Am. Compl. at ¶ 11; Schrader Decl. at ¶ 6.

8.	Schrader was born in 1948 and is presently 63 years old. He was 20 years old at the time of his conviction.	Schrader Decl. at ¶¶ 1, 7.
9.	Following a tour of Vietnam, Plaintiff Schrader was honorably discharged from the Navy. He has not had any further police encounters, save for one traffic infraction, and the conduct of Defendants described below.	2 nd Am. Compl. at ¶ 12; Schrader Decl. at ¶ 8.
10.	At the time of Schrader's misdemeanor assault conviction, and until recently, Maryland law did not set forth any maximum sentence for the crime of misdemeanor assault. The only codified limitation upon sentencing for misdemeanor assault was the right secured by the Eighth Amendment to the United States Constitution.	<i>Simms v. State</i> , 288 Md. 712, 714 (Md. 1980); 2 nd Am. Compl. at ¶ 13; <i>see also Robinson v. State</i> , 353 Md. 683, 686 687 (Md. 1999) (holding that Maryland common law assault and battery was abrogated by statute in 1996).
11.	In November of 2008, Schrader's companion attempted to purchase him a shotgun as a gift from a local firearms dealer in Georgia, which he planned to keep in his home for self-defense. While Schrader's companion sought to pay for the gun, the transaction was made in the name of Mr. Schrader—the intended owner of the gun. In January of 2009, Schrader also ordered a handgun from a local firearms dealer in Georgia, which he planned to keep in this home for self-defense.	2 nd Am. Compl. at ¶ 14; Schrader Decl. at ¶¶ 9-10; Declaration of William L. Finch ("FBI Decl.") [Dkt. #12-2] at ¶¶ 5-6.
12.	The shotgun transaction described in ¶ 11 resulted in a denial decision by Defendant FBI when the National Instant Criminal Background Check ("NICS") computer system indicated that Mr. Schrader is prohibited under federal law from purchasing firearms. The NICS transaction number for this attempted purchase is "(NPN) - 18N4NJ8."	2 nd Am. Compl. at ¶ 15; Schrader Decl. at ¶ 11; FBI Decl. at ¶¶ 7-12.

13.	The handgun transaction described in ¶ 11 also resulted in a denial decision by Defendant FBI when the NICS computer system indicated that Mr. Schrader is prohibited under federal law from purchasing firearms. The NICS transaction number for this attempted purchase is “(NPN) - 1B18X2G.”	2 nd Am. Compl. at ¶ 15; Schrader Decl. at ¶¶ 12-13, & Exh. A; FBI Decl. at ¶¶ 7-12.
14.	On June 3, 2009, Defendant Federal Bureau of Investigations, which administers the NICS system, advised Schrader via letter that his firearms transaction was rejected pursuant to 18 U.S.C. § 922(g)(1) on the basis of his 1968 Maryland misdemeanor assault and battery conviction. Subsequently, Agent Lance Greer advised Schrader to dispose of or surrender any firearms he might possess or face criminal prosecution. As a result, Schrader subsequently disposed of the shotgun, and it is no longer in his possession. Accordingly, Schrader also canceled the order for his denied handgun transaction and never took possession of it.	2 nd Am. Compl. at ¶ 16; Schrader Decl. at ¶¶ 13-14, & Exh. A; FBI Decl. at ¶ 12 & Exh. C.

15.	<p>Defendant's correspondence to Schrader, described above in ¶ 14, states in part: "The fingerprints you submitted are identical with those in a record that was used to deny your firearm purchase or pawn redemption. A copy of your FBI identification record is enclosed for your review. Unless additional materials in the form of certified court documentation are submitted, we are unable to reverse our original denial decision. Your denial indicates that you have been matched with the following federally prohibitive criteria under Title 18, United States Code, Sections 921(a)(20) and 922(g)(1): A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years. If you wish to Challenge the accuracy of the record upon which the denial is based, you may apply directly to the original submitting agency for correction of the record."</p>	Schrader Decl., Exh. A.
16.	<p>Defendant's correspondence to Schrader, described above in ¶ 14, included a copy of his FBI identification record on which Defendants based their denial decision. This record listed a "State ID Number" of "GA3383157T (GA)," which corresponds to the State of Georgia.</p>	Schrader Decl., Exh. A.

17.	Pursuant to their interpretation of 18 U.S.C. § 922(g)(1), Defendants are prohibiting Schrader from possessing any firearms based on his 1968 Maryland conviction for misdemeanor assault and battery—a common law offense that had no statutory punishment criteria at the time of his conviction.	Defendants’ Motion to Dismiss The Second Amended Complaint [Dkt. #20] at 19-24.
18.	Plaintiff SAF’s members and supporters, including Plaintiff Schrader, are directly impacted by application of 18 U.S.C. § 922(g)(1) to misdemeanor offenses. Additionally, Plaintiff SAF routinely expends resources responding to inquiries about the applicability of 18 U.S.C. § 922(g)(1) under a variety of circumstances, including those similar to plaintiff Schrader’s.	2 nd Am. Compl. at ¶ 17.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER, et al.,)

) Case No. 10-CV-1736-RMC

Plaintiffs,)

V.

ERIC HOLDER, et al.,)

Defendants.)

[PROPOSED] ORDER

This matter came before the Court on Defendants’ Motion to Dismiss the Second Amended Complaint and Plaintiffs’ Renewed Cross-Motion for Summary Judgment. There being no issue of material fact, and as Plaintiffs are entitled as a matter of law, the Court hereby DENIES Defendants’ Motion to Dismiss the Second Amended Complaint and GRANTS Plaintiffs’ Renewed Cross-Motion for Summary Judgment.

Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, are ORDERED to withdraw their record pertaining to Plaintiff Jefferson Wayne Schrader from the National Instant Criminal Background Check (“NICS”) database, per 18 U.S.C. § 925A.

Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, are PERMANENTLY ENJOINED from enforcing 18 U.S.C. § 922(g)(1) on the basis of convictions for simple common law misdemeanor offenses that carry no statutory no statutory penalties. Such enforcement is declared to be unconstitutional as applied.

SO ORDERED.

This the ____ day of _____, 2011.

The Hon. Rosemary M. Collyer
United States District Judge

Copies to:
ECF Counsel

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFERSON WAYNE SCHRADER and)	
SECOND AMENDMENT FOUNDATION, INC.,)	
)	
Plaintiffs,)	
)	Civil Action No. 10-1736 (RMC)
v.)	
)	
ERIC HOLDER, Attorney General, and)	
FEDERAL BUREAU OF INVESTIGATION,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED
MATERIAL FACTS AND STATEMENT OF GENUINE ISSUES REGARDING
PLAINTIFFS' RENEWED CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendants respectfully provide this response to Plaintiffs' Statement of Undisputed Material Facts pursuant to Fed. R. Civ. P. 56(c)(1) and Local Civil Rule 56.1. This response relates to Plaintiffs' Renewed Cross-Motion for Summary Judgment [ECF No. 22].

Each of Plaintiffs' individual statements is addressed below. In general, many of the facts Plaintiffs identify are immaterial. For purposes of resolving a summary judgment motion, material facts are only those that might impact the outcome of the case under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

1. This paragraph does not contain a statement of fact; Plaintiffs quote a portion of a statute, which is the best evidence of its contents. To the extent the Plaintiffs are noting the existence of the statute, that is undisputed.

2. This paragraph contains a conclusion of law and does not contain any statement of material fact. To the extent Plaintiffs are noting the existence of 18 U.S.C. § 921(g)(1), that is undisputed.

3. This paragraph states only one of several material facts relating to Plaintiff Schrader's standing to maintain this action. Defendants have no way of knowing whether Plaintiff Schrader "presently intends to purchase and possess a handgun and long gun for self-defense within his home." However, for purposes of this motion only, Defendants do not dispute that Plaintiff Schrader "presently intends to purchase and possess a handgun and long gun for self-defense within his home," but Defendants dispute that Plaintiff Schrader has provided sufficient detail concerning any plan he may have to implement his present intention. *See* Declaration of Jefferson Wayne Schrader dated June 29, 2011 [ECF No. 22-1], ¶¶ 1-2. Viewing this evidence in the light most favorable to Defendants, the omission of facts and details relating to, among other things, where, when, or how Plaintiff Schrader would purchase firearms, and precisely what models of firearms Plaintiff Schrader may intend to purchase, should cause the Court to find that Schrader's motion is not properly supported. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986) (summary judgment only appropriate where no genuine issues of material fact exist and courts must view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences drawn from that evidence); *Laningham v. U.S. Navy*, 813 F.2d 1236, 1242-43 (D.C. Cir. 1987) (same); *see* Fed. R. Civ. P. 56(e)(2) (party's obligation to respond to summary judgment is triggered by a "properly made and supported" motion). The allegations in the complaint are not evidence for purposes of summary judgment, and converting only some of them into evidence suggests that Plaintiff Schrader may be unable to convert the remainder into admissible evidence.

4. This paragraph contains multiple statements of fact relating to Plaintiff Schrader's personal history which are immaterial because he admits he has a conviction for assault in

Maryland and that he committed the assault. *See* June 29, 2011 Schrader Dec. ¶¶ 4-7. The final sentence of this paragraph contains a conclusion of law lacking foundation, but the legal assertion is also immaterial because whether Plaintiff Schrader is eligible to possess a firearm under Georgia law is independent of whether federal law prohibits his possession of firearms. There are no claims in this case involving the laws of Georgia.

5. In this lawsuit, Plaintiffs allege that Plaintiff Schrader was convicted for committing an assault on July 23, 1968. Plaintiffs' paragraph 5 contains Plaintiff Schrader's self-serving description and recollection of different events that took place on a different day – i.e., “[o]n or about July of 1968.” The statements in paragraph 5, which do not pertain to July 23, 1968, are thus immaterial. In addition, Plaintiffs' description is supported only by Plaintiff Schrader's own statement, which is typically viewed with some skepticism at summary judgment. *See Bonieskie v. Mukasey*, 540 F. Supp. 2d 190, 195 (D.D.C. 2008) (“Summary judgment for a defendant is most likely when a plaintiff's claim is supported solely by the plaintiff's own self-serving, conclusory statements.”). In any event, even if these facts are taken as true, Plaintiff Schrader's description of his assault on a single individual on a different date – i.e., July 23, 1968 (and which Plaintiff Schrader has not stated was in the same or a nearby location as the purported events of “July of 1968”), and when that individual had done nothing to provoke Plaintiff Schrader or cause him to be in any reasonable fear of imminent harm, fail to establish facts suggesting that Plaintiff Schrader was acting in self-defense on July 23, 1968.

To the extent the facts in this paragraph are deemed material, Defendants should be given an opportunity to take discovery, at a minimum, from the individual Plaintiff Schrader assaulted on July 23, 1968 and the police officer.

6. The facts in this paragraph are undisputed for purposes of this motion, but Defendants have not had an opportunity to conduct discovery regarding the assault committed by Plaintiff Schrader on July 23, 1968 or from Plaintiff Schrader's victim. Defendants dispute that the alleged events of "July of 1968" are material. In addition, the conclusion that assault and battery and disorderly conduct are "simple misdemeanor offenses" is a conclusion of law, or Plaintiffs' characterization, which is not binding on the Court. *See* Fed. R. Civ. P. 56(e)(1). The classification of the offense under state law or more generally is not a material fact because it is undisputed that Plaintiff Schrader could have been imprisoned for more than two years based on his conviction.

7. The facts in this paragraph are undisputed for purposes of this motion, but Defendants have not had an opportunity to take discovery or to obtain related military or employment records.

8. The facts in this paragraph are immaterial, particularly because Plaintiff Schrader admits he was over the age of 18 at the time of the assault in 1968 or his conviction. *See* June 29, 2011 Schrader Dec., ¶ 7. Neither Plaintiff Schrader's age at the time of his assault conviction or now is relevant to any claim or argument in this case.

9. The facts in this paragraph are immaterial. The federal firearms provisions apply to veterans and non-veterans alike, as well as to people with more or less frequent or extensive "police encounters" than Plaintiff Schrader. The only material fact is Plaintiff Schrader's admitted offense and record of conviction. *See* 18 U.S.C. §§ 922(g)(1); 921(a)(20)(B); *United States v. Coleman*, 158 F.3d 199 (4th Cir. 1998).

10. The facts in this paragraph are undisputed and material.

11. This paragraph is based entirely on inadmissible evidence that may not be considered at summary judgment because Plaintiff Schrader's declaration does not establish a foundation for his personal knowledge of the actions of his unidentified "companion." Rule 56(c)(2). This paragraph appears to contain hearsay. *Douglas v. Donovan*, 559 F.3d 549, 556 (D.C. Cir. 2009); *Gleklen v. Democratic Cong. Campaign Comm., Inc.*, 199 F.3d 1365, 1369 (D.C. Cir. 2000) (holding hearsay evidence insufficient in sex discrimination case to avoid summary judgment: "Verdicts cannot rest on inadmissible evidence. Gleklen's evidence about the conversation is sheer hearsay; she would not be permitted to testify about the conversation at trial. . . . It therefore counts for nothing."). Defendants have no way of knowing or determining if Plaintiff Schrader's unidentified "companion" attempted to purchase a shotgun in "November of 2008." *See* Declaration of William L. Finch ("Finch Dec."), ¶¶ 2-4.¹ In addition, even if Plaintiff Schrader's "companion" attempted to purchase a shotgun in "November of 2008," and even if this transaction was denied, the facts associated with that transaction are immaterial because the "companion" is not a plaintiff in the present lawsuit.

Defendants do not dispute that Plaintiff Schrader attempted to purchase a shotgun on or about November 13, 2008, or that the NICS transaction number ("NTN") for the background check into the shotgun purchase is 18N4NJ8. Finch Decl., ¶ 5. Defendants do not dispute that Plaintiff Schrader attempted to purchase a handgun on or about January 24, 2009, or that the NTN for the background check into the handgun purchase is 1B18X2G. *Id.*, ¶ 6. Defendants do not dispute that Defendant FBI determined that Plaintiff Schrader's 1968 Maryland assault

¹ The Declaration of William L. Finch was filed previously with Defendants' Reply and Opposition to Plaintiffs' Cross-Motion for Summary Judgment. *See* ECF No. 12-2. Defendants incorporate that declaration by reference.

conviction triggered 18 U.S.C. §§ 921(a)(20) and 922(g)(1), or that this determination applied to Schrader's attempted shotgun and handgun purchases. *Id.*, ¶ 7.

Defendants dispute that a shotgun is a weapon appropriate for use of self-defense in the home.

12. This paragraph is based entirely on inadmissible evidence that may not be considered at summary judgment because Plaintiff Schrader's declaration does not establish a foundation for his personal knowledge of the actions of his "companion" or the reasons for them. Rule 56(c)(2). Defendants presently have no way of knowing if Plaintiff Schrader's alleged, unidentified "companion" attempted to purchase a shotgun in "November of 2008." *See* Finch Dec., ¶ 4. In addition, even if Plaintiff Schrader's "companion" attempted to purchase a shotgun in "November of 2008," and even if this transaction was denied, it is irrelevant since the "companion" is not a plaintiff in the present lawsuit. *Id.*

Defendants dispute that NTN 18N4NJ8 relates to the alleged attempted shotgun purchase by Plaintiff Schrader's companion. *Id.*, ¶¶ 4, 5. Defendants do not dispute that 18N4NJ8 is the NTN for the background check into the shotgun that Schrader attempted to purchase on or about November 13, 2008. *Id.*, ¶ 5. The statement that the shotgun transaction which was the subject of NTN 18N4NJ8 "resulted in a denial decision by Defendant FBI" is a characterization, and not a statement of fact. Defendants do not dispute that the firearms dealer transferred the shotgun that was the subject of NTN 18N4NJ8 to Plaintiff Schrader after the lapse of three business days; that Defendant FBI later determined that Plaintiff Schrader's 1968 Maryland assault conviction triggered 18 U.S.C. §§ 921(a)(20) and 922(g)(1); and that Defendant FBI sent a

firearm retrieval notice concerning Plaintiff Schrader to the Bureau of Alcohol, Tobacco, Firearms and Explosives. *Id.*, ¶¶ 3, 5, 7, and 8.

13. Defendants do not dispute that 1B18X2G is the NTN for the background check into the handgun that Schrader attempted to purchase on or about January 24, 2009. Finch Decl., ¶ 6. The statement that the handgun transaction which was the subject of NTN 1B18X2G “resulted in a denial decision by Defendant FBI” is a characterization, and not a statement of fact. Defendants do not dispute that Defendant FBI determined that Plaintiff Schrader’s 1968 Maryland assault conviction triggered 18 U.S.C. §§ 921(a)(20) and 922(g)(1), or that this determination applied to Plaintiff Schrader’s attempted handgun purchase associated with NTN 1B18X2G. *Id.*, ¶ 7.

14. With respect to the first sentence, Defendants dispute this statement because it is incomplete and respectfully note that the cited June 3, 2009 letter is the best evidence of its contents. *See* Finch Dec. ¶¶ 9-12 & Exh. C. The June 3, 2009 letter, moreover, related to Schrader’s attempted purchase of a handgun in January, 2009. *See* Finch Dec. ¶¶ 6, 9, 12 & Ex.C. Defendants dispute that the cited June 3, 2009 letter relates to the shotgun that Schrader attempted to purchase on or about November 13, 2008. *Id.*, ¶¶ 5, 6, 9, 12 & Ex. C.

Defendants do not dispute that, in January 2009, Plaintiff Schrader sent an inquiry to Defendant FBI about the basis for the denial of his handgun purchase, or that the FBI subsequently sent correspondence to Plaintiff Schrader, including the cited June 3, 2009 letter, in this regard. *Id.*, ¶¶ 9-12 & Exhs. A, B, and C. Defendants do not dispute that the cited June 3, 2009 letter related to Plaintiff Schrader’s attempted handgun purchase and reiterated that the

basis for the denial of the attempted handgun purchase was 18 U.S.C. §§ 921(a)(20) and 922(g)(1). *Id.*

Defendants are without knowledge concerning the statements in the second sentence of paragraph 14. With regard to the second and third sentences of paragraph 14,, Defendants do not dispute, for purposes of this motion only, that Plaintiff Schrader disposed of and no longer has possession of the shotgun that he attempted to acquire, or that Plaintiff Schrader never took possession of the handgun that he attempted to purchase. Defendants otherwise dispute the statements in the third and fourth sentences of paragraph 14. Defendants dispute the statement in the fourth sentence of paragraph 14 that, “Accordingly, Schrader also canceled the order for his denied handgun transaction.” In addition, Defendants dispute the suggested link between the June 3, 2009 letter and Plaintiff Schrader’s decision to comply with federal law by dispossessing himself of the shotgun and not taking possession of the handgun.

15. This paragraph contains Plaintiffs’ quotation of a portion of a letter dated June 3, 2009, which is the best evidence of its contents. Defendants dispute that the cited June 3, 2009 letter relates to the shotgun that Schrader attempted to purchase on or about November 13, 2008. Finch Decl., ¶ 12 & Ex. C. Defendants do not dispute that the cited June 3, 2009 letter related to Plaintiff Schrader’s attempted handgun purchase and reiterated that the basis for the denial of the attempted handgun purchase was 18 U.S.C. §§ 921(a)(20) and 922(g)(1). *Id.*

16. This paragraph contains Plaintiffs’ description of enclosures to the letter dated June 3, 2009, which are the best evidence of their contents. The second sentence includes a statement for which Plaintiff Schrader lacks personal knowledge, but the statement is immaterial. Defendants dispute that the cited June 3, 2009 letter relates to the shotgun that Schrader

attempted purchase on or about November 13, 2008. Finch Decl., ¶ 12 & Ex. C. Defendants do not dispute that the cited June 3, 2009 letter related to Plaintiff Schrader's attempted handgun purchase and reiterated that the basis for the denial of the attempted handgun purchase was 18 U.S.C. §§ 921(a)(20) and 922(g)(1). *Id*

17. Through the plain language of the 18 U.S.C. §§ 922(g)(1) and 921(a)(20)(B), Congress prohibits Plaintiff Schrader's possession of firearms based on his conviction, and Defendants are charged with enforcing the laws. Defendants dispute Plaintiffs' assertion that this prohibition is the result of a flawed "interpretation" of 18 U.S.C. § 922(g)(1). Defendants note that Plaintiff Schrader has not been charged with a violation of 18 U.S.C. § 922(g)(1).

18. This paragraph is not supported by admissible evidence as required by Fed. R. Civ. P. 56(e)(1), and are disputed for purposes of this motion. The allegations in a pleading are not evidence. *Equal Rights Center v. Post Properties, Inc.*, 633 F.3d 1136, 1141 n.3 (D. C. Cir. 2011).

Defendants' Statement of Genuine Issues

1. What specific type(s) of firearms (including but not limited to the manufacturer, model, and any modifications) Plaintiff Schrader intends to purchase and possess and the details concerning when, where, or how Plaintiff Schrader would purchase these firearms in the future.

2. Whether Plaintiff Schrader has had his conviction for assault expunged by the State of Maryland or made any attempt to request a pardon.

Dated: August 19, 2011.

Respectfully submitted,

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EXHIBIT A



Bureau of Justice Statistics Special Report

June 2002, NCJ 193427

Recidivism of Prisoners Released in 1994

By Patrick A. Langan, Ph.D.
David J. Levin, Ph.D.
BJS Statisticians

This study of the rearrest, reconviction, and reincarceration of prisoners tracked 272,111 former inmates for 3 years after their release in 1994. The 272,111 — representing two-thirds of all prisoners released in the United States that year — were discharged from prisons in 15 States:

Arizona	Maryland	North Carolina
California	Michigan	Ohio
Delaware	Minnesota	Oregon
Florida	New Jersey	Texas
Illinois	New York	Virginia

Four measures of recidivism

The study uses four measures of recidivism: rearrest, reconviction, resentence to prison, and return to prison with or without a new sentence. Except where expressly stated otherwise, all four study measures of recidivism —

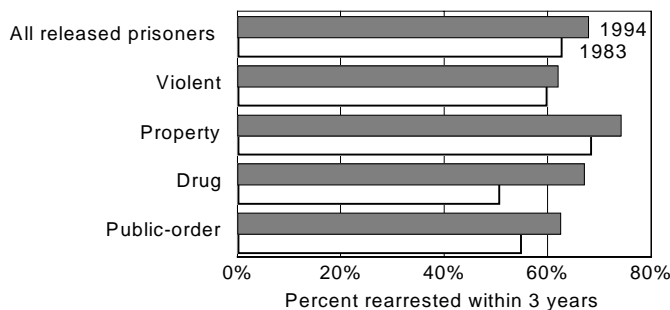
- refer to the 3-year period following the prisoner's release in 1994
- include both "in-State" and "out-of-State" recidivism.

"In-State" recidivism refers to new offenses committed within the State that released the prisoner. "Out-of-State" recidivism refers to new offenses in States other than the one where the prisoner served time.

Highlights

Among nearly 300,000 prisoners released in 15 States in 1994, 67.5% were rearrested within 3 years. A study of 1983 releases estimated 62.5%.

Offense of prisoners released in 1983 and 1994



- Within 3 years from their release in 1994 —

67.5% of the prisoners were rearrested for a new offense (almost exclusively a felony or a serious misdemeanor)

46.9% were reconvicted for a new crime

25.4% were resented to prison for a new crime

51.8% were back in prison, serving time for a new prison sentence or for a technical violation of their release, like failing a drug test, missing an appointment with their parole officer, or being arrested for a new crime.

- Released prisoners with the highest rearrest rates were robbers (70.2%), burglars (74.0%), larcenists (74.6%),

motor vehicle thieves (78.8%), those in prison for possessing or selling stolen property (77.4%), and those in prison for possessing, using, or selling illegal weapons (70.2%).

- Released prisoners with the lowest rearrest rates were those in prison for homicide (40.7%), rape (46.0%), other sexual assault (41.4%), and driving under the influence (51.5%).

- Within 3 years, 2.5% of released rapists were arrested for another rape, and 1.2% of those who had served time for homicide were arrested for homicide.

- The 272,111 offenders discharged in 1994 had accumulated 4.1 million arrest charges before their most recent imprisonment and another 744,000 charges within 3 years of release.

Three of the recidivism measures — rearrest, reconviction, resentence to prison — are based exclusively on official criminal records kept in State and FBI criminal history repositories. One recidivism measure — return to prison with or without a new prison sentence — is formed from a combination of records from criminal history repositories plus prison records kept by State departments of corrections.

More highlights

- Within 3 years of their release in 1994, 61.7% of offenders sentenced for violence were arrested for a new offense, though not necessarily another violent offense. Property offenders had the highest rearrest rate, 73.8%; released drug offenders, 66.7%; and public-order offenders (mostly those in prison for driving while intoxicated or a weapons offense), a 62.2% rate.
- Men were more likely to be rearrested (68.4%) than women (57.6%); blacks (72.9%) more likely than whites (62.7%); non-Hispanics (71.4%) more likely than Hispanics (64.6%); younger prisoners more likely than older ones; and prisoners with longer prior records more likely than those with shorter records.
- An estimated 7.6% of all released prisoners were rearrested for a new crime in a State other than the one that released them. They were charged with committing 55,760 such crimes.
- No evidence was found that spending more time in prison raises the recidivism rate. The evidence was mixed regarding whether serving more time reduces recidivism.

To an unknown extent, recidivism rates based on State and FBI criminal history repositories understate actual levels of recidivism. The police agency making the arrest or the court disposing of the case may fail to send the notifying document to the State or FBI repository. Even if the document is sent, the repository may be unable to match the person in the document to the correct person in the repository or may neglect to enter the new information. For these reasons, studies such as this one that rely on these repositories for complete criminal history information will understate recidivism rates.

Characteristics of the 272,111 released prisoners

Of offenders released from prisons in 15 States in 1994:

- 91.3% were male (table 1)
- 50.4% were white
- 48.5% were black
- 24.5% were Hispanic
- 44.1% were under age 30.

The 272,111 were in prison for a wide variety of offenses, primarily felonies:

- 22.5% for a violent offense (for example, murder, sexual assault, and robbery)
- 33.5% for a property offense (for example, burglary, auto theft, and fraud)
- 32.6% for a drug offense (primarily drug trafficking and possession)
- 9.7% for a public-order offense (roughly 33% driving while intoxicated/driving under the influence, 32% a weapons offense, 8% a traffic offense, 9% a probation violation, and the remainder, such crimes as escape, obstruction of justice, court offense, parole violation, contributing to the delinquency of a minor, bigamy, and habitual offender)

1.7% for some other offense (for example, an unspecified felony or misdemeanor).

Table 1. Profile of prisoners released in 1994 from prisons in 15 States

Characteristic	Percent of released inmates
Gender	
Male	91.3%
Female	8.7
Race	
White	50.4%
Black	48.5
Other	1.1
Ethnicity	
Hispanic	24.5%
Non-Hispanic	75.5
Age at release	
14-17	0.3%
18-24	21.0
25-29	22.8
30-34	22.7
35-39	16.2
40-44	9.4
45 or older	7.6
Offense for which inmate was serving a sentence	
Violent	22.5%
Property	33.5
Drugs	32.6
Public-order	9.7
Other	1.7
Sentence length	
Mean	58.9 mos
Median	48.0 mos
Time served before release	
Mean*	20.3 mos
Median*	13.3 mos
Percent of sentence served before release*	35.2%
Prior arrest	93.1%
Mean number of prior arrests	8.8
Median number	6.0
Prior conviction	81.4%
Mean number	3.8
Median number	3.0
Prior prison sentence	43.6%

Number released in 15 States 272,111

Note: "Prior" does not include the arrest, conviction, or prison sentence for which the 272,111 were in prison in 1994. Calculation of prior conviction excludes Ohio. Calculation of sentence length (defined as total maximum sentence) and time served is based on "first releases" only and excludes Michigan (which reported minimum, not maximum, sentence) and Ohio (which did not report data to identify "first releases").

*Excludes credited jail time.

The average prison sentence length was nearly 5 years. On average, the prisoners were released after serving 35% of their sentence, or about 20 months.

Seventy percent had 5 or more prior arrests (not including the arrest that brought them to prison), and half had 2 or more prior convictions (not including the conviction that resulted in their prison sentence).

For 56.4% of the released prisoners the prison sentence they were serving when released was their first-ever sentence to prison. Almost 44% had served a prior prison sentence.

Recidivism rates at different lengths of time after release

Within the first 6 months of their release, 29.9% of the 272,111 offenders were rearrested for a felony or serious misdemeanor (table 2 and figure 1).

Within the first year the cumulative total grew to 44.1% and within the first 2 years, 59.2%. Within the first 3 years of their release, an estimated 67.5% of the 272,111 released prisoners were rearrested at least once.

The first year is the period when much of the recidivism occurs, accounting for nearly two-thirds of all the recidivism of the first 3 years.

Within the first year of release, an estimated 21.5% of the 272,111 released offenders were reconvicted for a new felony or misdemeanor; within the first 2 years, a combined total of 36.4% were reconvicted; and within the first 3 years, a combined total of 46.9% were reconvicted.

Table 2. Recidivism rates of prisoners released in 1994 from prisons in 15 States, by time after release

Time after release	Cumulative percent of released prisoners who were —		
	Rearrested	Reconvicted ^a	Returned to prison with new sentence ^b
6 months	29.9%	10.6%	5.0%
1 year	44.1	21.5	10.4
2 years	59.2	36.4	18.8
3 years	67.5	46.9	25.4

^aBecause of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.

^b"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of "Percent returned to prison with a new prison sentence."

Not all of the reconvicted prisoners were sentenced to another prison term for their new crime. Some were sentenced to confinement in a local jail. Some were sentenced to neither prison nor jail but to probation, which allowed them to remain free in their communities but under the supervision of a probation officer.

Within the first year of release, 10.4% of the 272,111 released prisoners were back in prison as a result of a conviction and prison sentence for a new crime; within the first 2 years, 18.8%; and within the first 3 years, 25.4%.

The number of crimes committed by the 272,111 released prisoners

How many crimes the 272,111 prisoners ever committed — both prior to and following their release — is unknown. The best estimate available from official sources is the volume of criminal charges found in arrest records. The volume of arrest charges is not the same thing as the volume of arrests.

The volume of arrests is the number of different times a person was arrested. The volume of arrest charges is the sum of the charges over all the different times the person was arrested.

Arrest records provide an incomplete measure of actual criminal activity. While people are sometimes arrested for crimes they did not commit, research indicates that offenders commit more crimes than their arrest records show.*

*Alfred Blumstein and others, *Criminal Careers and "Career Criminals,"* vol. 1, Washington, DC: National Academy Press, 1986, p. 55.

Within a year of release from prison, 44.1% of prisoners were rearrested; within 3 years, 67.5% were rearrested and 25.4% had a new prison sentence

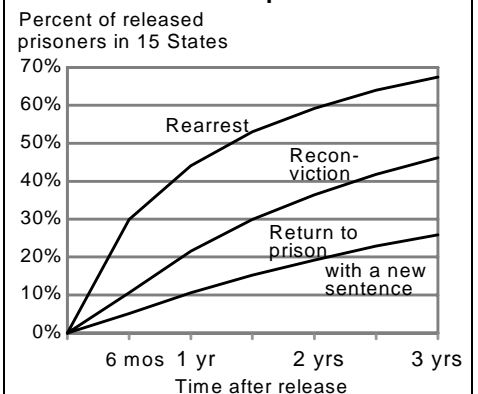


Figure 1

New arrest charges following release from prison

The 67.5% of releases rearrested within 3 years, or 183,675 persons, were charged with 744,480 new crimes, or an average of 4 new crimes each (table 3). Over 100,000 were new charges for a violent crime, including 2,900 new homicides, 2,400 new kidnappings, 2,400 rapes, 3,200 other sexual assaults, 21,200 robberies, 54,600 assaults, and nearly 13,900 other violent crimes.

During the 3-year follow-up period, the released prisoners had new arrest charges for 40,300 burglaries and about 16,000 thefts of motor vehicles. They also had 79,400 new charges for drug possession, 46,200 new charges for drug trafficking, about 26,000 new charges for a weapons offense (such as illegal possession of a firearm), and approximately 5,800 new charges for driving while under the influence of drugs or alcohol.

The 744,480 new charges during the 3-year follow-up period consisted of 688,720 committed in the same State that released the prisoner plus 55,760 committed in other States.

Old arrest charges prior to their release from prison

Prior to entering prison, the 272,111 released prisoners had been arrested for about 4.1 million crimes, as indicated by the number of arrest charges in their criminal history files. The 4.1 million included the arrest charges that brought them to prison, plus all previous charges. Roughly 550,000 of the 4.1 million prior arrest charges were for a violent crime, including 18,000 prior charges for homicide, 10,700 prior charges for kidnapping, 44,400 prior charges for a violent sex offense (21,600 rapes and 22,800 sexual assaults), and 172,300 prior charges for robbery.

Combining new and old arrest charges

Over their adult criminal history (both prior to and following their release) the 272,111 offenders were arrested for nearly 4.9 million offenses altogether: 4.1 million prior to release plus nearly 0.8 million after release. That is an average of about 17.9 charges each.

A small fraction of offenders was responsible for a large number of the 4.9 million crimes. An estimated 6.4% of the prisoners were each charged with 45 or more offenses before and after their release in 1994 (table 4). These high-rate offenders accounted for nearly 14% of all arrest charges.

Table 3. Number of arrest charges for 272,111 State prisoners released in 1994, by type of charge

Arrest charge	Number of arrest charges			
	Prior to release		In first 3 years after release	
	In-State plus out-of-State charges	Out-of-State charges only	In-State plus out-of-State charges	Out-of-State charges only
All offenses	4,132,174	338,877	744,480	55,760
Violent offenses	550,004	42,330	100,531	6,433
Homicide*	18,001	1,267	2,871	180
Kidnaping	10,733	1,124	2,362	151
Rape	21,638	2,165	2,444	181
Other sexual assault	22,778	1,934	3,151	332
Robbery	172,274	14,361	21,245	1,309
Assault	243,654	19,973	54,604	3,846
Other violent	60,926	1,505	13,854	434
Property offenses	1,477,442	120,007	208,451	15,760
Burglary	360,861	31,400	40,303	2,904
Larceny/theft	508,222	46,589	79,158	5,919
Motor vehicle theft	125,239	1,198	15,797	1,198
Arson	6,523	387	758	39
Fraud	141,636	19,905	21,360	2,388
Stolen property	173,731	13,288	21,993	2,082
Other property	161,230	7,240	29,082	1,230
Drug offenses	919,586	43,516	191,347	9,556
Possession	380,117	21,819	79,435	4,255
Trafficking	223,192	10,274	46,220	2,835
Other/unspecified	316,277	11,423	65,692	2,466
Public-order offenses	703,996	76,049	155,751	13,863
Weapons	161,318	11,543	25,647	1,914
Probation/parole violations	13,466	3,119	20,939	874
Traffic offenses	57,571	8,515	13,097	1,288
Driving under the influence	43,123	10,335	5,788	1,526
Other public-order	428,518	42,537	90,280	8,261
Other offenses	82,392	12,198	20,049	3,519
Unknown	398,754	44,777	68,351	6,629

Note: Table is based on 272,111 prisoners released in 1994 in 15 States.

All had at least 1 charge prior to release, and 183,675 (67.5%) also had at least 1 charge after release.

*Homicide includes murder, nonnegligent manslaughter, and negligent manslaughter.

Offenders with 25 or more charges represented nearly 24% of all offenders but about 52% of all charges.

By contrast, released prisoners with fewer than 5 arrest charges represented nearly 14% of all prisoners but

accounted for about 6.4% of the 4.9 million arrest charges.

How many of the 272,111 were ever arrested for violence

Although 22.5% of the 272,111 were released from prison in 1994 following an arrest and conviction for a violent crime, 53.7% of all the prisoners had a prior arrest for violence, and 21.6% were arrested for a violent crime after their release. Altogether, 67.8% of the prisoners released in 1994 had a record of violence.

Nature of violent record	Percent arrested for a violent offense
Prior arrest charge	53.7%
Most serious charge when released	22.5
Arrest charge within 3 years of release	21.6
Ever charged	67.8

Note: "Prior" does not include the arrest that ultimately led to the 272,111 being in prison in 1994.

The 67.8% is less than the sum of three categories — 22.5% in prison for violence plus 53.7% with prior violence plus 21.6% rearrested for violence — because some prisoners were in more than one category.

The fraction of all crimes that released prisoners accounted for

The study cannot measure precisely what fraction of all crime the former prisoners were responsible for during the 3 years following their release. The closest measure is the fraction of all arrests for seven serious crimes (murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft). The number of "arrests" is not the number of "arrest charges" but the number of different days on which a person was arrested.

In 13 States (because of missing data Florida and Illinois could not be in this analysis) from 1994 to 1997, 234,358 released prisoners accounted for 140,534 arrests (table 5). During the period in the 13 States, 2,994,868 adults were arrested for the 7 serious crimes according to the FBI.

Table 4. Total number of arrest charges for 272,111 State prisoners released in 1994

Total number of arrest charges*	Percent of all released prisoners	Cumulative percent	
		Released prisoners	Arrest charges
45 or more	6.4%	6.4%	13.7%
35-44	5.6	12.0	34.4
25-34	11.9	23.9	52.3
20-24	10.1	34.0	66.1
15-19	13.7	47.7	76.1
10-14	17.9	65.6	88.1
5-9	20.7	86.3	93.6
1-4	13.7	100	100
Total number	272,111	272,111	4,876,654

*Arrest charges include those prior to release and those in the 3 years following release.

Table 5. Percent of adult arrests that prisoners released in 1994 in 13 States accounted for following their release

Year arrested	Arrests in the 13 States for 7 crimes from 1994 to 1997		
	Total	Number accounted for by released prisoners in the 13 States ^a	Percent of all arrests for the 7 crimes that the released prisoners accounted for
Total, 1994-1997	2,994,868	140,534	4.7%
1994 ^b	462,793	28,411	6.1
1995	899,582	43,682	4.9
1996	840,980	34,800	4.1
1997	791,513	33,641	4.3

Note: Number of arrests is based on 234,358 released prisoners. Arrests of these released prisoners in 1997 are counted in the 1997 figures regardless of whether the arrest occurred beyond the 3-year follow-up period.

^aIncludes only arrests in the State in which the prisoner was released. For arrests involving multiple charges, only the most serious charge was counted. The 7 crimes, listed from most to least serious, are: murder (including nonnegligent manslaughter), rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

^bBecause on average there were 6 months of exposure to rearrest, the estimated total number of arrests in 1994 was divided by 2.

Table 6. Percent of adult arrests for 7 crimes that released prisoners in 13 States accounted for, by type of crime and year

Crime arrested for	Year of arrest and percent of adult arrests in 13 States that were arrests of prisoners released in 1994				
	Total 1994-97	1994	1995	1996	1997
Murder and nonnegligent manslaughter	7.7%	10.9%	8.4%	6.5%	5.8%
Rape	4.4	5.4	5.6	3.3	3.6
Robbery	9.0	9.9	9.2	7.5	10.0
Aggravated assault	4.5	4.4	4.6	4.3	4.6
Burglary	7.5	12.4	7.5	6.3	5.7
Larceny/theft	3.2	4.2	3.4	2.8	3.0
Motor vehicle theft	6.2	9.9	6.1	5.6	4.7

Note: For each percentage the numerator is the number of arrests for the crime among prisoners released in 1994 in the 13 States, and the denominator is the estimated total number of adult arrests for the crime in the 13 States. Also, percentages for 1994 were adjusted for the partial-year exposure to rearrest. The number of arrests is based on 234,358 released prisoners. Arrests of these released prisoners in 1997 are counted in the 1997 figures even if the arrest occurred beyond the 3-year follow-up period.

Table 7. Number of out-of-State rearrest charges against prisoners released in 1994 in 14 States, by State where rearrested

State of rearrest	Out-of-State rearrest charges	State of rearrest	Out-of-State rearrest charges
Total	55,760	Nebraska	0
Alabama	573	Nevada	2,288
Alaska	45	New Hampshire	25
Arizona	3,943	New Jersey	424
Arkansas	320	New Mexico	1,040
California	3,819	New York	5,858
Colorado	1,506	North Carolina	284
Connecticut	530	North Dakota	96
Delaware	414	Ohio	1,477
District of Columbia	1,596	Oklahoma	641
Florida	1,101	Oregon	165
Georgia	3,447	Pennsylvania	2,907
Hawaii	209	Rhode Island	17
Idaho	345	South Carolina	2,623
Illinois	1,285	South Dakota	168
Indiana	314	Tennessee	717
Iowa	0	Texas	1,633
Kansas	424	Utah	1,919
Kentucky	923	Vermont	33
Louisiana	945	Virginia	2,152
Maine	19	Washington	2,805
Maryland	1,082	West Virginia	106
Massachusetts	139	Wisconsin	1,713
Michigan	489	Wyoming	128
Minnesota	744	Federal	114
Mississippi	379	Guam	0
Missouri	1,249	Puerto Rico	31
Montana	141	Virgin Islands	9
		Unknown	406

Note: The data pertain just to out-of-State rearrest charges among prisoners released from prisons in 14 States in 1994; charges against New York released prisoners could not be included. Rearrest charges in the same State that had released the prisoner were not included.

Therefore, rearrests of the released prisoners were 4.7% of all arrests for serious crime from 1994 to 1997.

According to arrest records compiled in this study, of the 272,111 prisoners released in 1994, 719 were rearrested for homicide in the 13 States in 1995. The FBI reports that the number of adult arrests for homicide in the 13 States in 1995 was 8,521 altogether. The released prisoners accounted for 8.4% of all the homicides in the 13 States in 1995 (table 6). Similarly, prisoners released in 1994 accounted for 5.4% of all the arrests for rape in the 13 States in 1994 and 9.0% of all the arrests for robbery in the 13 States from 1994 to 1997.

Although these percentages may seem small, they are actually the product of high rates of criminality. For example, to account for the 8.4% of 1995 homicides, the 234,358 released prisoners were arrested for homicide at a rate 53 times higher than the homicide

arrest rate for the adult population.

Note also that the 8.4% does not include homicides by

(a) prisoners released in 1995, (b) prisoners released before 1994, or (c) released prisoners who had crossed State lines. The percentage of homicides attributable to released prisoners would be substantially greater if it included persons in categories *a*, *b*, and *c*.

Released prisoners who crossed State lines to commit new crimes

Some released prisoners crossed State lines and committed new crimes. For example, some of the prisoners released in Delaware in 1994 were arrested for new crimes in Pennsylvania in 1995; Oregon released some prisoners in 1994 who were rearrested in 1996 for new crimes in the State of Washington.

For 14 of the 15 States in the study (all but New York), it was possible to determine what fraction of the released prisoners had at least one out-of-State arrest for a new crime. These 14 States account for 241,810 of the 272,111 released prisoners.

Within 3 years following their release, just over 7.6% of the 241,810 — or 18,460 released prisoners — were rearrested for a new crime committed in a State other than the one that released them. The 7.6% consisted of about 3.9% rearrested both in the State that released them and in another State (9,500 persons) plus an additional 3.7% only rearrested in another State (8,960 persons). The 18,460 are distinct from the 144,738 only rearrested in the State that released them.

The 18,460 released prisoners were rearrested for committing a total of 55,760 new crimes outside the State that released them. An estimated 5,858 of the new crimes were committed in New York by prisoners who had been released in the study's 14 other States (table 7). Other States most affected by released prisoners crossing State lines to commit crimes were Arizona (3,943 new crimes by released prisoners from other States in this study), California (3,819), Georgia (3,447), Pennsylvania (2,907), Washington (2,805), South Carolina (2,623), Nevada (2,288), Virginia (2,152), Utah (1,919), Texas (1,633), and the District of Columbia (1,596).

A variety of factors such as large size and proximity to other States in the study explains why States like New York, California, and Arizona stand out. For example, a relatively large number of the new arrests took place in Georgia, which was not in the study. But Georgia is close to two States in the study, North Carolina and Florida.

Table 8. Rate of recidivism of State prisoners released in 1994, by prisoner characteristics

Prisoner characteristic	Percent of all released prisoners	Percent of released prisoners who, within 3 years, were —			
		Re-arrested	Reconvicted ^a	Returned to prison with a new prison sentence ^b	Returned to prison with or without a new prison sentence ^c
All released prisoners	100%	67.5%	46.9%	25.4%	51.8%
Gender					
Male	91.3%	68.4%	47.6%	26.2%	53.0%
Female	8.7	57.6	39.9	17.3	39.4
Race					
White	50.4%	62.7%	43.3%	22.6%	49.9%
Black	48.5	72.9	51.1	28.5	54.2
Other	1.1	55.2	34.2	13.3	49.5
Ethnicity					
Hispanic	24.5%	64.6%	43.9%	24.7%	51.9%
Non-Hispanic	75.5	71.4	50.7	26.8	57.3
Age at release					
14-17	0.3%	82.1%	55.7%	38.6%	56.6%
18-24	21.0	75.4	52.0	30.2	52.0
25-29	22.8	70.5	50.1	26.9	52.5
30-34	22.7	68.8	48.8	25.9	54.8
35-39	16.2	66.2	46.3	24.0	52.0
40-44	9.4	58.4	38.0	18.3	50.0
45 or older	7.6	45.3	29.7	16.9	40.9
Number of released prisoners	272,111	272,111	260,226	254,720	227,788

Note: Data on sex were reported for 100% of 272,111 releases, data on race for 97.6%, Hispanic origin for 81.9%, and age at release for 99.9%.

^aBecause of missing data, prisoners released in 1 State (Ohio) were excluded from the calculation of "Percent reconvicted."

^b"New prison sentence" does include new sentences to State or Federal prisons but does not include sentences to local jails. Because of missing data, prisoners released in 2 States (Ohio and Virginia) were excluded from the calculation of "Percent returned to prison with a new prison sentence."

^c"With or without a new prison sentence" includes both prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released from 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of "Percent returned to prison with or without a new prison sentence." New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 51.8%. When California is excluded, the return-to-prison rate falls to 40.1%.

Overall recidivism rate for the 272,111

Rearrest — An estimated 67.5% of the 272,111 released prisoners were rearrested for a new crime (either a felony or a serious misdemeanor) within 3 years following their release (table 8).

Reconviction — A total of 46.9% were reconvicted in State or Federal court for a new crime (a felony or misdemeanor).

Resentence — Over a quarter — 25.4% — were back in prison as a result of another prison sentence.

Sentences to State or Federal prisons but not to local jails are included in the 25.4%.

Return to prison with or without a new prison sentence — A total of 51.8% were back in prison because they had received another prison sentence or because they had violated a technical condition of their release, such as failing a drug test, missing an appointment with their parole officer, or being rearrested for a new crime. The percentage returned to prison solely for a technical violation, 26.4%, is approximated by taking the difference between the 51.8% and the 25.4%.

Recidivism rate according to demographic characteristics

Gender Men were more likely than women to be —
rearrested (68.4% versus 57.6%)
reconvicted (47.6% versus 39.9%)
resentenced to prison for a new crime (26.2% versus 17.3%)
returned to prison with or without a new prison sentence (53.0% versus 39.4%).

Race Blacks were more likely than whites to be —
rearrested (72.9% versus 62.7%)
reconvicted (51.1% versus 43.3%)
returned to prison with a new prison sentence (28.5% versus 22.6%)
returned to prison with or without a new prison sentence (54.2% versus 49.9%).

Hispanic origin Non-Hispanics were more likely than Hispanics to be —
rearrested (71.4% versus 64.6%)
reconvicted (50.7% versus 43.9%)
returned to prison with or without a new prison sentence (57.3% versus 51.9%).

However, Hispanics (24.7%) and non-Hispanics (26.8%) did not differ significantly in terms of likelihood of being returned to prison with a new prison sentence.

Age The younger the prisoner when released, the higher the rate of recidivism. For example, over 80% of those under age 18 were rearrested, compared to 45.3% of those 45 or older.

What they were in prison for

Of the 272,111 offenders, 1.7% were in prison for homicide (table 9). Following their release, 40.7% of these convicted homicide offenders were rearrested for a new crime (not necessarily a new homicide) within 3 years.

Convicted rapists made up 1.2% of the 272,111, and 46.0% of these released rapists were rearrested within 3 years for some type of felony or serious misdemeanor (not necessarily another violent sex offense).

Table 9. Rate of recidivism of State prisoners released in 1994, by most serious offense for which released

Most serious offense for which released	Percent of all released prisoners	Percent of released prisoners who, within 3 years, were —			
		Re-arrested	Reconvicted ^a	Returned to prison with a new prison sentence ^b	Returned to prison with or without a new prison sentence ^c
All released prisoners	100%	67.5%	46.9%	25.4%	51.8%
Violent offenses	22.5%	61.7%	39.9%	20.4%	48.8%
Homicide	1.7	40.7	20.5	10.8	31.4
Kidnaping	0.4	59.4	37.8	25.1	29.5
Rape	1.2	46.0	27.4	12.6	43.5
Other sexual assault	2.4	41.4	22.3	10.5	36.0
Robbery	9.9	70.2	46.5	25.0	54.7
Assault	6.5	65.1	44.2	21.0	51.2
Other violent	0.4	51.7	29.8	12.7	40.9
Property offenses	33.5%	73.8%	53.4%	30.5%	56.4%
Burglary	15.2	74.0	54.2	30.8	56.1
Larceny/theft	9.7	74.6	55.7	32.6	60.0
Motor vehicle theft	3.5	78.8	54.3	31.3	59.1
Arson	0.5	57.7	41.0	20.1	38.7
Fraud	2.9	66.3	42.1	22.8	45.4
Stolen property	1.4	77.4	57.2	31.8	62.1
Other property	0.3	71.1	47.6	28.5	40.0
Drug offenses	32.6%	66.7%	47.0%	25.2%	49.2%
Possession	7.5	67.5	46.6	23.9	42.6
Trafficking	20.2	64.2	44.0	24.8	46.1
Other/unspecified	4.9	75.5	60.5	28.8	71.8
Public-order offenses	9.7%	62.2%	42.0%	21.6%	48.0%
Weapons	3.1	70.2	46.6	24.3	55.5
Driving under the influence	3.3	51.5	31.7	16.6	43.7
Other public-order	3.3	65.1	48.0	24.4	43.6
Other offenses	1.7%	64.7%	42.1%	20.7%	66.9%

^aBecause of missing data, prisoners released in 1 State (Ohio) were excluded from the calculation of "Percent reconvicted."

^b"New prison sentence" does include new sentences to State or Federal prisons but does not include sentences to local jails. Because of missing data, prisoners released in 2 States (Ohio and Virginia) were excluded from the calculation of "Percent returned to prison with a new prison sentence."

^c"With or without a new prison sentence" includes both prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released from 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of "Percent returned to prison with or without a new prison sentence." New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 51.8%. When California is excluded, the return-to-prison rate falls to 40.1%.

Over a third of the released prisoners had been in prison for a property offense (for example, burglary, auto theft, fraud). Released property offenders had higher recidivism rates than those released for violent, drug, or public-order offenses. An estimated 73.8% of the property offenders released in 1994 were rearrested within 3 years, compared to 61.7% of the violent offenders, 62.2% of the public-order offenders, and 66.7% of the drug offenders. Property offenders also had higher rates of reconviction and

reincarceration than other types of offenders.

Released prisoners with the highest rearrest rates were —

robbers (70.2%)
burglars (74.0%)
larcenists (74.6%)
motor vehicle thieves (78.8%)
possessors/sellers of
stolen property (77.4%)
possessors/sellers of
illegal weapons (70.2%).

What these high-rate offenders have in common is that they were all in prison for what are generally thought of as crimes for money. By contrast, many of those with the lowest rearrest rates — persons convicted of homicide (40.7%), rapists (46.0%), other sexual assaulters (41.4%), other violent offenders (51.7%), and those convicted of driving under the influence (51.5%) — were in prison for crimes not generally motivated by desire for material gain.

An exception to the pattern was drug traffickers. Their motive often is to make money, yet their rearrest rate (64.2%) was not above average.

What prisoners were rearrested for

Within the first 3 years of the release, of the 272,111 prisoners —

21.6% were rearrested for a violent offense
31.9%, for a property offense
30.3%, for a drug offense
28.3%, for a public-order offense (table 10).

These four percentages exceed 67.5% of released prisoners overall because some were rearrested for more than one type of offense. For example, a released Minnesota prisoner was rearrested for receiving stolen property (a property offense) in 1995 and for assault (a violent offense) in 1996. Similarly, a released Delaware prisoner was rearrested for cocaine trafficking (a drug offense) in 1995 and then for aggravated assault (a violent offense) in 1996.

Within the first 3 years of release, of the 272,111 prisoners —

0.8% were rearrested for homicide
0.6%, for rape
13.7%, for assault
9.9%, for burglary.

Within 3 years, 2.5% of the 3,138 released rapists were rearrested for another rape, and 1.2% of the 4,443 persons who had served time for homicide were rearrested for a homicide. Among other offenses, the

Table 10. Rearrest rates of State prisoners released in 1994, by most serious offense for which released and charge at rearrest

Rearrest charge	Percent of prisoners rearrested within 3 years of release whose most serious offense at time of release was —												
	All offenses ^a	Violent offense					Property offense						
		Total ^b	Homicide ^c	Rape ^d	Robbery	Assault ^d	Total ^e	Burglary	Larceny/theft	Motor vehicle theft	Fraud	Drug offense ^f	Public-order offense ^g
All charges ^a	67.5 %	61.7 %	40.7 %	46.0 %	70.2 %	65.1 %	73.8 %	74.0 %	74.6 %	78.8 %	66.3 %	66.7 %	62.2 %
Violent offenses^b	21.6 %	27.5 %	16.7 %	18.6 %	29.6 %	31.4 %	21.9 %	21.9 %	22.3 %	26.5 %	14.8 %	18.4 %	18.5 %
Homicide ^c	0.8	1.1	1.2	0.7	1.1	1.6	0.8	0.7	0.6	2.4	0.5	0.7	0.6
Rape ^d	0.6	1.1	0	2.5	1.2	1.0	0.7	0.8	0.5	1.6	0.3	0.3	0.4
Robbery	6.2	8.5	3.4	3.9	13.4	6.1	6.3	5.9	7.3	8.4	3.3	4.9	4.6
Assault ^d	13.7	16.4	11.9	8.7	15.1	22.0	13.7	13.8	14.4	16.1	9.0	12.4	12.1
Property offenses^e	31.9 %	25.5 %	10.8 %	14.8 %	32.9 %	25.6 %	46.3 %	45.4 %	47.8 %	45.7 %	44.8 %	24.0 %	22.9 %
Burglary	9.9	6.9	2.0	4.4	8.7	7.7	17.6	23.4	13.9	11.1	9.1	5.5	5.0
Larceny/theft	16.3	12.0	4.1	6.2	16.5	10.6	26.1	23.0	33.9	18.9	23.4	11.5	8.9
Motor vehicle theft	4.5	3.9	1.0	2.3	5.3	4.4	6.0	5.5	4.7	11.5	4.5	3.5	4.1
Fraud	4.7	3.2	2.1	1.8	4.0	3.2	7.1	5.1	6.8	6.6	19.0	3.3	5.1
Drug offenses^f	30.3 %	22.6 %	13.0 %	11.2 %	29.4 %	21.5 %	27.2 %	27.6 %	27.1 %	33.9 %	18.5 %	41.2 %	22.1 %
Public-order offenses^g	28.3 %	27.4 %	17.7 %	20.5 %	29.3 %	31.1 %	29.2 %	30.3 %	25.5 %	33.5 %	26.3 %	27.7 %	31.2 %
Number of released prisoners	272,111	61,107	4,443	3,138	26,862	17,708	91,061	41,257	26,259	9,478	7,853	88,516	26,329

Note: The numerator for each percent is the number of persons rearrested for a new charge, and the denominator is the number released for each type of offense. Detail may not add to totals because persons may be rearrested for more than one type of charge.

^aAll offenses include any offense type listed in footnotes b through g plus "other" and "unknown" offenses.

^bTotal violent offenses include homicide, kidnapping, rape, other sexual assault, robbery, assaults, and other violence.

^cHomicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide.

^dDoes not include sexual assault.

^eTotal property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses.

^fDrug offenses include drug trafficking, drug possession, and other forms of drug offenses.

^gPublic-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses.

percentages rearrested for the same category of offense for which they were just in prison were —

13.4% of released robbers
22.0% of released assaulters
23.4% of released burglars
33.9% of released larcenists
11.5% of released thieves of motor vehicles
19.0% of released defrauders
41.2% of released drug offenders.

Of the 3,138 released rapists —

overall 46.0% were rearrested for a new crime within 3 years
18.6% were rearrested for a new violent offense
2.5% were rearrested for another rape
8.7% were rearrested for a new non-sexual assault
11.2% were rearrested for a drug offense.

Specialists

"Specialists" are prisoners who, after being released, commit the same crime they were just in prison for, while "non-specialists" are those whose new offense differs from what they were in prison for. Degrees of both specialization and non-specialization can be seen in the types of offenses the prisoners were rearrested for following their release.

For example, a degree of specializing is evident in the fact that, of all the different offense categories, the released robber was the one most likely to be rearrested for robbery (13.4%), the released assaulter was the one most likely to be rearrested for assault (22.0%), the released burglar was the one most likely to be rearrested for burglary (23.4%), and the released motor vehicle thief was

the one most likely to be rearrested for vehicle theft (11.5%).

There is also ample reason for viewing the released prisoners as non-specialists. For example, of the 4,443 prisoners who were in prison for killing someone, more were subsequently rearrested for a property offense (10.8%) or drug offense (13.0%) than were rearrested for another homicide (1.2%). Of the 3,138 released rapists, more were rearrested for something other than rape (for example, 8.7% for nonsexual assault and 6.2% for theft) than were rearrested for another rape (2.5%).

Another way of investigating specialization is with odds ratios. To illustrate, of the 3,138 released rapists, 78 (2.5%) were rearrested for rape, and the remaining 3,060 were either rearrested for something else or not rearrested. The odds of a released rapist being

Table 11. Relative likelihood of rearrest for same offense as release offense, among State prisoners released in 1994

Rearrest charge	Relative likelihood of rearrest
Violent offenses	1.3
Homicide	1.4
Rape	4.2
Other sexual assault	5.9
Robbery	2.7
Assault	1.9
Property offenses	2.7
Burglary	3.7
Larceny/theft	3.0
Motor vehicle theft	2.9
Fraud	5.3
Stolen property	3.4
Drug offenses	2.1
Public-order offenses	1.2

Note: Each ratio expresses the odds of rearrest among prisoners released on a similar offense relative to the odds of rearrest among those released on a different type of offense. For each type of rearrest charge, the numerator is the odds of rearrest for that charge among prisoners released for the same type of offense; the denominator is the odds of rearrest for that charge among prisoners released for a different type of offense.

rearrested for rape are $((78 / 3,138) / ((3,138-78) / 3,138))$, or .0254902. By contrast, of the 268,631 non-rapists (the 268,631 does not include 342 released prisoners who were in prison for an unknown offense), 1,639 were rearrested for rape, and the remaining 266,814 were either rearrested for something else or were not rearrested. Their odds of being rearrested for rape are $((1,639 / 268,631) / ((268,631-1,639) / 268,631))$, or .0061387. The ratio of the two odds — .0254902 / .0061387 — indicates that a rapist's odds are 4.2 times a non-rapist's odds of being rearrested for rape $(.0254902 / .0061387 = 4.2)$ (table 11).

Odds ratios are frequently misinterpreted. The "4.2" does not mean that a rapist's odds of committing a new rape are 4.2 times "greater" than a non-rapist's odds. A released rapist's odds of committing a new rape are actually 3.2 (not 4.2) times greater than a non-rapist's odds of a rape. Either

statistic — 4.2 or 3.2 — suggests a degree of specializing among rapists. A degree of specializing is evident in the statistics for other offenses as well. For example, a released robber's odds of rearrest for robbery are 2.7 times a non-robber's odds of rearrest for robbery. Put another way, a released robber's odds of repeating his crime are 1.7 times "greater" than the odds of a non-robber leaving prison and committing a robbery. Similarly, the odds of a released violent offender being rearrested for another violent crime are 1.3 times the odds (or 30% "greater" than the odds) of a nonviolent offender being arrested for a violent crime.

Number of prior arrests

The number of times a prisoner has been arrested in the past is a good predictor of whether that prisoner will continue to commit crimes after being released. Prisoners with just 1 prior arrest have a 40.6% rearrest rate within 3 years (table 12). With 2 priors, the percentage rearrested is 47.5% . With 3 it goes up to 55.2%. With additional priors, it continues to rise, reaching 82.1% among released prisoners with more than 15 prior arrests in their criminal history record.

The number of past arrests a prisoner has also provides a good predictor of how quickly that prisoner will resume

his or her criminality after being released. A measure of how quickly prisoners resume their criminality can be constructed by combining information from 1-year and 3-year arrest rates.

To illustrate: Prisoners with 1 prior arrest have a 20.6% 1-year arrest rate and a 40.6% 3-year rearrest rate. The first-year rate (20.6%) is 51% of the cumulative rate at the end of the third year (40.6%). In other words, 51% of the recidivism of prisoners with 1 prior arrest occurs within the first year. The comparable figure for prisoners with 2 priors is 55%; 3 priors, 58%; 4 priors, 59%; 5 priors, 62%. Among those with 16 or more prior arrests, 74% of their recidivism occurs in the first year $(61.0\% / 82.1\% = 74\%)$. The pattern here is clear: the longer the prior record, the greater the likelihood that the recidivating prisoner will commit another crime soon after release.

Prior prison sentence

For 56% of the 272,111, the prison sentence they were serving when released in 1994 was their first-ever prison sentence (not shown in table). Of these "first-timers," 63.8% were rearrested following their release. Among those who had been in prison at least once before, a higher percentage — 73.5% — were rearrested.

Table 12. Rearrest rates of State prisoners released in 1994, by number of prior arrests

Number of arrests prior to release	Percent of all releases	Percent of releases who were rearrested within —	
		3 years	1 year
All released prisoners	100%	67.5%	44.2%
1 prior arrest	6.9	40.6	20.6
2	7.4	47.5	26.2
3	7.8	55.2	32.2
4	7.7	59.6	35.1
5	7.7	64.2	39.7
6	7.4	67.4	43.2
7-10	20.9	70.3	45.5
11-15	16.2	79.1	54.5
16 or more	18.0	82.1	61.0

Note: Percents are based on 272,111 released prisoners. By definition, all 272,111 had at least one arrest prior to their release. Consequently, "0 prior arrests" does not apply.

Time served in prison

No evidence was found that spending more time in prison raises the recidivism rate. The evidence was mixed regarding the question of whether spending more time in prison reduces the recidivism rate.

Recidivism rates did not differ significantly among those released after serving 6 months or less (66.0%), those released after 7 to 12 months (64.8%), those released after 13 to 18 months (64.2%), those released after 19 to 24 months (65.4%), and those released after 25 to 30 months (68.3%) (table 13).

Those who served the longest time — 61 months or more — had a significantly lower rearrest rate (54.2%) than every other category of prisoners defined by time in confinement.

Also, both those who served 31 to 36 months (62.6%) and those who served 37 to 60 months (63.2%) had a significantly lower rearrest rate than those who served 25 to 30 months (68.3%).

Methodology

Step 1: Draw the sample

In 1998 BJS (the Bureau of Justice Statistics in the U.S. Department of Justice) asked 15 State departments of corrections to participate in a national study of recidivism by supplying BJS with information on all prison releases in 1994. (For Illinois, releases were for fiscal year 1994 rather than calendar year 1994.) The States are large and diverse, collectively accounting for the majority of prisoners released in 1994.

Eleven of the 15 were chosen because they were in an earlier BJS recidivism study (*Recidivism of Prisoners*

Released in 1983, April 1989, NCJ 116261). Inclusion of the 11 makes possible a comparison of recidivism

Table 13. Rate of rearrest of 162,195 State prisoners released in 1994, by time served in prison

Time served in prison	Percent of all "first releases"	
	All	Rearrested within 3 years
Total	100%	64.6%
6 months or less	23.5	66.0
7-12	25.8	64.8
13-18	15.6	64.2
19-24	9.5	65.4
25-30	6.8	68.3
31-36	4.7	62.6
37-60	9.6	63.2
61 months or more	4.5	54.2

Note: A first release includes only those offenders leaving prison for the first time since beginning their sentence. It excludes those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release. The table excludes Michigan and Ohio releases.

Comparison of recidivism rates for prisoners released in 1983 and 1994

In a previous BJS study, 108,580 State prisoners released from prison in 11 States in 1983 were tracked for 3 years (Allen J. Beck and Bernard E. Shipley, *Recidivism of Prisoners Released in 1983*, BJS Special Report, NCJ 116261, April 1989). All 11 are among the 15 States in this report.

Rearrest The overall rearrest rate rose significantly. Of the 108,580 prisoners released in 1983, 62.5% were rearrested within 3 years. Of the 272,111 released in 1994, the figure is 67.5%. Likewise, there was a significant rise from 1983 to 1994 in the rearrest rate for released property

offenders (68.1% and 73.8%, respectively), released drug offenders (50.4% and 66.7%), and released public-order offenders (54.6% and 62.2%). However, the rearrest rate did not rise significantly for released violent offenders (59.6% and 61.7%).

Reconviction The overall reconviction rate did not change significantly. Among prisoners released in 1983, 46.8% were subsequently reconvicted; among those released in 1994, 46.9%.

Likewise, the reconviction rate did not change between 1983 and 1994 for released violent offenders (41.9% and 39.9%), released property offenders (53.0% and 53.4%), and released public-order offenders (41.5% and 42.0%).

Recidivism rates by offense type and year of release

Most serious offense for which released	Percent of prisoners released in —		Percent rearrested within 3 years, among prisoners released in —		Percent reconvicted within 3 years, among prisoners released in —	
	1983	1994	1983	1994	1983	1994
All released prisoners	100%	100%	62.5%	67.5%	46.8%	46.9%
Violent	34.6	22.5	59.6	61.7	41.9	39.9
Property	48.3	33.5	68.1	73.8	53.0	53.4
Drug	9.5	32.6	50.4	66.7	35.3	47.0
Public-order	6.4	9.7	54.6	62.2	41.5	42.0
Other	1.1	1.7	76.8	64.7	62.9	42.1
Number of released prisoners	108,580	272,111				

The only significant change in reconviction rates was the increase for drug offenders. Among drug offenders released in 1983, 35.3% were reconvicted for a new crime (not necessarily another drug offense). Among those released in 1994, the reconviction percentage was higher — 47.0%.

rates between prisoners released in 1994 and those released earlier.

Altogether the 15 States released 302,309 prisoners in 1994. The 15 States supplied BJS with a computerized record on each of the 302,309 containing the prisoner's name, date of birth, sex, race, department of corrections identification number, State identification number, FBI identification number, what offense he/she was in prison for, how long the sentence was, the date the prisoner entered the prison, the month and day the prisoner was released in 1994, and so forth. Using the 302,309 records, BJS drew a sample for each State (appendix table 1). The sample totaled 38,624 out of the 302,309 released prisoners.

For drawing the sample, each of the 302,309 was placed into 1 of 13 offense categories corresponding to the conviction offense that brought the prison term. (For those with multiple conviction offenses, the offense with the longest prison sentence was designated as the conviction offense.) For example, each of the 5,386 whose conviction offense was homicide went into the "homicide" category. Each of the 10,510 convicted violent sex offenders was placed in the "rape/sexual assault" category.

Each of the 13 categories was sampled within each State. A target set for each category determined the size of the sample (appendix table 2). For the homicide category, the target in each State was a sample of 80 released homicide offenders. For rape/sexual assault, the target was all the violent sex offenders. For robbery, the target for each State was a sample of 180 released robbers.

A major deviation from the targeted sample sizes occurred for California; it was necessary to double sample sizes to improve the precision of estimates. In other major deviations, all the released prisoners, not a sample of them, in Delaware and Minnesota were selected to be in the database.

To extrapolate from the sample to the universe from which the sample was drawn, each case was assigned a weight corresponding to the inverse of the probability of selection. For example, the 80 sampled Florida homicide offenders were 80 out of 362 homicide offenders released in Florida in 1994. The inverse of their probability of selection was 362/80, or 4.525. Each sampled homicide offender in Florida therefore represented 4.525 released Florida homicide offenders.

Step 2: Obtain criminal history records from States that released prisoners

BJS contacted the State agency that held criminal history files and asked for the computerized "RAP" sheet (Record of Arrest and Prosecution) on each prisoner sampled from the State. Using individual identifiers (not including fingerprints) supplied by BJS to match released prisoners to criminal history files, these agencies provided BJS with computerized RAP sheets on 37,647 (97%) of the 38,624 released prisoners. Among other things, these RAP sheets typically contained the person's name, date of birth, gender, race, date of each arrest in the State, each arrest charge (designated by the penal code and/or a literal version of the penal code) and level (felony or misdemeanor), date of each court

adjudication, each adjudicated offense and level, each court outcome (guilty or not guilty), and sentence (prison, jail, probation, sentence length).

RAP sheets do not provide a complete record of every instance where a person was arrested or prosecuted in the State. Arrests and prosecutions of juveniles are generally not included. Arrests and prosecutions are routinely included for felonies or serious misdemeanors but not for petty offenses (such as minor traffic violations, drunkenness, and vagrancy). The latest year covered in the RAP sheets varied by State, depending on when the sheets were sent to BJS. All RAP sheets covered all of 1997. Many went beyond 1997.

Step 3: Obtain criminal history records from FBI

After receiving a State's RAP sheets, BJS asked the FBI for the computerized RAP sheets it had on the sampled prisoner. The FBI identification numbers from the department of corrections (on 29,053 releases) or from criminal history repositories (on an additional 2,695 releases) helped the FBI to match sampled prisoners to criminal history records in the FBI database called "Triple I," or "III". Without the number, the FBI performed matches using other identifiers. BJS supplied the FBI with the FBI identification number, name, date of birth, and

Appendix table 1. Population, sample, and analysis subset, by State

	Total number	Prisoners released in 1994	
		Selected from total to be in the sample	Selected from sample to be in this report
Total	302,309	38,624	33,796
Arizona	7,418	2,000	1,433
California	105,527	7,183	7,048
Delaware	721	721	659
Florida	24,751	2,893	2,564
Illinois	18,606	2,615	2,317
Maryland	11,639	2,117	1,599
Michigan	8,049	2,315	1,965
Minnesota	1,929	1,929	1,730
New Jersey	13,567	2,289	2,130
New York	31,406	2,639	2,466
N. Carolina	25,797	2,314	2,047
Ohio	19,313	2,664	1,822
Oregon	5,009	2,292	1,560
Texas	22,852	2,550	2,430
Virginia	5,725	2,103	2,026

Appendix table 2. Targeted sample sizes by offense type

Most serious release offense	Targeted sample size in each State
Homicide	80
Rape/Sexual assault	All
Robbery	180
Aggravated assault	180
Burglary	220
Larceny/motor vehicle theft	220
Fraud	60
Drug trafficking	380
Drug possession	120
Weapons offense	40
Driving under the influence	120
Other public order	120
Other	120

Note: For one State (California), targeted sample sizes are 2 times those shown.

other identifiers on 35,985 of the 38,624 prisoners. (The 35,985 did not include New York's 2,639 prisoners because New York law prevented BJS from supplying the FBI with identifiers.) The FBI supplied BJS with RAP sheets on 34,439 (96% of the 35,985 released prisoners).

Although the 34,439 computerized RAP sheets contained records of all arrests and prosecutions, the BJS study used only the out-of-State records of arrests and prosecutions that took place outside the State that released the prisoner. The in-State records in the FBI RAP sheets were not used because in-State records were already available in the RAP sheets supplied by the State that released the prisoner. The unique value of the FBI RAP sheets was the *out-of-State* records (both prior to and following release) they contained on arrests and prosecutions.

A least one RAP sheet was found on 38,049 (nearly 99%) of the 38,624 prisoners. For 34,037 (88%), a RAP sheet was found in both repositories (the percentage would have been greater than 88% had New York's released prisoners been included).

Step 4: Create the study database

The information obtained from the 3 sources — the 15 departments of corrections, the 15 criminal history repositories, and the FBI — was combined into a single database. The database is a rectangular file with 6,520 variables on 38,624 released prisoners. Of the 6,520 variables, 6,435 document a prisoner's entire adult criminal history record: each arrest date and any court records of conviction or nonconviction arising from the arrest that day. Arrests are arranged from the earliest arrest date to the latest. The database documents a maximum of 99 separate arrest dates. (For the 10 prisoners out of the 38,624 who were arrested on more than 99 separate dates — the maximum was 175 for one person — the database documents their 99 latest.)

The database identifies the total number of offenses the person was charged with on each day of arrest, what each offense was, the level of each offense (felony versus misdemeanor), and other characteristics of each offense. If the person was arrested for more than three offenses that day, only the three most serious — as determined by a hierarchy of seriousness — are separately identified.

The hierarchy defines felonies as more serious than misdemeanors. Within these levels, for arrests and prosecutorial charges, the hierarchy from most to least serious is as follows: homicide, rape/other sexual assault, robbery, aggravated assault, burglary, larceny/motor vehicle theft, fraud, drug trafficking, drug possession, weapons offense, driving under the influence, other public-order, and other.

For each arrest date, the database also documents any court adjudications that resulted from the arrest that day. The date of the adjudication is recorded, along with the number of adjudicated charges, what the separate adjudicated offenses were, the level of each offense, how each charge was disposed of (convicted, not convicted), how each offense was sentenced (prison, jail, probation, sentence length), and other details about each offense. If the person was charged in court with more than three offenses on the adjudication date, only the three most serious — as determined by a hierarchy of seriousness — are separately identified. The hierarchy defines charges resulting in conviction as more serious than charges resulting in non-conviction. For each of those categories, felony charges are defined as more serious than misdemeanor charges, within the levels of the previously described hierarchy of offense seriousness.

Adding North Carolina arrests to the database

Sometimes in RAP sheets for North Carolina prisoners, the date of arrest in a custody record submitted by

correctional authorities did not match a date on any arrest record for that person. In such cases, BJS created an arrest record using the arrest date from the custody record. This was the only instance in which an imputed value appeared in the database.

Adding information to the database to identify technical violators

Court records in State and FBI RAP sheets indicated that 25.4% of released prisoners were back in prison with a new prison sentence (table 8). To document how many were back for any reason (either a new sentence or a parole violation), data were obtained from the National Corrections Reporting Program (NCRP) that identifies all persons entering prison in a year. Individual identifiers (for example, Department of Corrections identification number, date of birth, sex, race) were used to match sampled prisoners to persons entering prison according to NCRP data.

Because of incomplete NCRP data in New York, additional information on prison returns was obtained from custody records in New York State RAP sheets. Based on three sources —

1. courts records in State and FBI RAP sheets for nine States,
2. NCRP records for nine States, and
3. custody records in New York State RAP sheets —

51.8% of released prisoners in the nine States were back in prison for either a new prison sentence or a technical violation (table 8). The percentage returned to prison solely for a technical violation (26.4%) is approximated by taking the difference between the 51.8% and the 25.4%.

New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, the 51.8% return-to-prison rate is heavily affected by the inclusion of one large State, California, with a relatively high rate. When California is excluded, the return-to-prison rate falls to 40.1%.

Step 5: Data analysis

This report is based on 33,796 of the 38,624 sampled prisoners released in 1994. Persons selected for inclusion had to meet all four of these criteria:

1. A RAP sheet on the prisoner was found in the State criminal history repository.
2. The released prisoner was alive through the 3-year follow-up period. As a result of this requirement, 133 prisoners were excluded.
3. The prisoner's sentence (or, as it is called in the database, the "total maximum sentence length") was greater than 1 year (missing sentences were treated as greater than 1 year).
4. The prisoner's 1994 release was not recorded by the State department of corrections as any of these: release to custody/detainer/warrant, absent without leave, escape, transfer, administrative release, or release on appeal.

Weighted, the 33,796 prisoners meeting the 4 selection criteria represent 272,111 prisoners released in the study's 15 States in 1994. Correctional practitioners might refer to the sampled prisoners with the shorthand term "releases with sentences greater than a year." The 272,111 are an estimated two-thirds of all the Nation's "releases with sentences greater than a year" in 1994.

Note on missing court dates in FBI RAP sheets

FBI RAP sheets often failed to contain the date of adjudication. When the data was not reported, for analysis purposes only, BJS temporarily assigned a court date based on the arrest date in the arrest record. National statistics indicate that there are 173 days on average from arrest to adjudication. Therefore, during analysis, court records without a court date were temporarily assigned a date 173 days past the date of arrest.

Appendix table 3. Estimates of 1 standard error for table 8

Prisoner characteristic	Percent of all released prisoners	Percent of released prisoners who, within 3 years, were —			
		Re-arrested	Reconvicted	Returned to prison with a new prison sentence	Returned to prison with or without a new prison sentence
All released prisoners	0%	0.4%	0.5%	0.4%	0.5%
Gender					
Male	0.3%	0.4%	0.5%	0.4%	0.5%
Female	0.3	1.6	1.6	1.3	1.8
Race					
White	0.4%	0.6%	0.7%	0.6%	0.7%
Black	0.4	0.5	0.6	0.6	0.7
Other	0.1	4.1	4.0	2.5	4.7
Ethnicity					
Hispanic	0.4%	1.0%	1.1%	1.0%	1.2%
Non-Hispanic	0.4	0.5	0.6	0.6	0.6
Age at release					
14-17	0.1%	4.9%	6.3%	6.6%	6.7%
18-24	0.3	0.8	1.0	0.9	1.1
25-29	0.4	0.8	1.0	0.9	1.1
30-34	0.4	0.8	1.0	0.9	1.1
35-39	0.3	1.0	1.2	1.0	1.3
40-44	0.3	1.4	1.5	1.2	1.7
45 or older	0.2	1.5	1.5	1.4	1.8

Appendix table 4. Estimate of 1 standard error for table 9

Most serious offense for which released	Percent of all released prisoners	Percent of released prisoners who, within 3 years, were —			
		Re-arrested	Reconvicted	Returned to prison with a new prison sentence	Returned to prison with or without a new prison sentence
All released prisoners	0%	0.4%	0.5%	0.4%	0.5%
Violent offenses	0.1%	0.7%	0.8%	0.7%	0.8%
Homicide	0	1.7	1.4	1.1	1.9
Kidnaping	0.1	9.2	9.2	9.5	10.3
Rape	0	0	0	0	0
Other sexual assault	0.0	0.1	0.1	0	0.1
Robbery	0	1.2	1.4	1.2	1.5
Assault	0	1.2	1.3	1.1	1.4
Other violent	0.1	7.5	7.1	5.6	9.3
Property offenses	0.1%	0.7%	0.8%	0.8%	0.8%
Burglary	0	1.0	1.2	1.1	1.2
Larceny/theft	0.2	1.2	1.5	1.5	1.6
Motor vehicle theft	0.2	2.2	2.7	2.5	2.5
Arson	0.1	6.5	6.2	5.8	7.3
Fraud	0	2.1	2.2	2.0	2.3
Stolen property	0.1	3.2	4.1	4.2	4.3
Other property	0	3.8	4.3	4.5	5.0
Drug offenses	0.2%	0.8%	0.8%	0.8%	0.9%
Possession	0.1	1.6	1.6	1.4	1.7
Trafficking	0.1	0.8	0.9	0.8	1.0
Other/unspecified	0.2	2.7	3.4	3.2	3.3
Public-order offenses	0%	1.3%	1.4%	1.2%	1.5%
Weapons	0	2.8	3.2	2.8	3.3
Driving under the influence	0	2.1	1.9	1.6	2.2
Other public-order	0	1.6	1.7	1.6	1.7
Other offenses	0.2%	5.3%	5.8%	4.8%	5.7%

Note: Values of 0 generally mean less than .05%.

Definition of 3-year follow-up period

For analytic purposes, "3 years" was defined as 1,096 days from the day of release from prison. Any rearrest, reconviction, or re-imprisonment occurring after 1,096 days from the 1994 release was not included. A conviction after 1,096 days was not counted even if it resulted from an arrest within the period.

Comparing recidivism rates

For virtually every number in the report there is a margin of error arising from the fact that the number is based on a sample rather than a complete enumeration. For example, the estimate that 67.5% of all released prisoners were rearrested within 3 years has a margin of error (or 95%-confidence interval) of approximately plus or minus 1 percentage point. In this report where the text states or implies that one recidivism rate is higher or lower than another, the difference had been tested and found to be "statistically significant," meaning it was an unlikely result of sampling. The 95%-confidence intervals used to test differences between recidivism rates were obtained from statistical software (called "SUDAAN") designed for estimating sampling error from complex sample surveys. Standard errors used to construct 95%-confidence intervals are shown in appendix tables 3 and 4.

Where this report compares these recidivism rates to those for prisoners released in 1983, the 95%-confidence intervals for 1994 recidivism rates were used as the 95%-confidence intervals for 1983 rates which were no longer available.

Offense definitions

All offense categories except homicide include attempts.

Violent offenses: homicide, kidnaping, rape, other sexual assault, robbery, assault and other violent.

Homicide: Murder is (1) intentionally causing the death of another person without extreme provocation or legal justification or (2) causing the death of another while committing or attempting to commit another crime.

Nonnegligent (or voluntary) manslaughter is intentionally and without legal justification causing the death of another when acting under extreme provocation. The combined category of murder and nonnegligent manslaughter.

Negligent (or involuntary) manslaughter is causing the death of another person through recklessness or gross negligence, without intending to cause death. Includes vehicular manslaughter, but excludes vehicular murder (intentionally killing someone with a motor vehicle), which should be classified as murder).

Kidnaping: the unlawful seizure, transportation, or detention of a person against his or her will, or of a minor without the consent of his or her guardian. Includes forcible detainment, false imprisonment, abduction, or unlawful restraint. Does not require that ransom or extortion be the purpose of the act.

Rape: includes forcible intercourse (vaginal, anal, or oral) with a female or male. Includes forcible sodomy or penetration with a foreign object (sometimes called "deviate sexual assault"); excludes statutory rape or any other nonforcible sexual acts with a minor or with someone unable to give legal or factual consent.

Other sexual assault: (1) forcible or violent sexual acts not involving intercourse with an adult or minor, (2) nonforcible sexual acts with a minor (such as statutory rape or incest with a minor), and (3) nonforcible sexual acts with someone unable to give legal or factual consent because of mental or physical defect or intoxication.

Robbery: the unlawful taking of property that is in the immediate possession of another, by force or the threat of force. Includes forcible purse snatching, but excludes nonforcible purse snatching.

Assault: Aggravated assault includes (1) intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon or (2) using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury, if any. Includes attempted murder, aggravated battery,

felonious assault, and assault with a deadly weapon.

Simple assault: intentionally and without legal justification causing less than serious bodily injury without a deadly or dangerous weapon, or attempting or threatening bodily injury without a dangerous or deadly weapon.

Other violent: includes offenses such as intimidation, illegal abortion, extortion, cruelty towards a child or wife, hit-and-run driving with bodily injury, and miscellaneous crimes against the person.

Property offenses: burglary, larceny, motor vehicle theft, arson, fraud/ forgery/embezzlement, stolen property, and other property.

Burglary: the unlawful entry of a fixed structure used for regular residence, industry, or business, with or without the use of force, to commit a felony or theft.

Larceny: the unlawful taking of property other than a motor vehicle from the possession of another, by stealth, without force or deceit. Includes pocket picking, nonforcible purse snatching, shoplifting, and thefts from motor vehicles. Excludes receiving and/or reselling stolen property, and thefts through fraud or deceit.

Motor vehicle theft: the unlawful taking of a self-propelled road vehicle owned by another. Includes the theft of automobiles, trucks, and motorcycles, but not the theft of boats, aircraft, or farm equipment (classified as larceny/theft). Also includes receiving, possessing, stripping, transporting, and reselling stolen vehicles, and unauthorized use of a vehicle (joyriding).

Arson: intentionally damaging or destroying property by fire or explosion.

Fraud, forgery, and embezzlement: using deceit or intentional misrepresentation to unlawfully deprive a persons of his or her property or legal rights. Includes offenses such as check fraud, confidence game, counterfeiting, and credit card fraud.

Stolen property: all types of knowingly dealing in stolen property, such as receiving, transporting, possessing, concealing, and selling, excluding motor vehicle theft) and illegal drugs.

Other property: includes possession of burglary tools, damage to property, smuggling, and miscellaneous property crime.

Drug offenses: drug trafficking, drug possession, and other drug offenses.

Drug trafficking: includes manufacturing, distributing, selling, smuggling, and possession with intent to sell.

Drug possession: includes possession of an illegal drug, but excludes possession with intent to sell.

Other drug offenses: includes offenses involving drug paraphernalia and forged or unauthorized prescriptions.

Public-order offenses: are those that violate the peace or order of the community or threaten the public health or safety through unacceptable conduct, interference with governmental authority, or the violation of civil rights or liberties. In this study, persons in prison in 1994 for "public-order" offenses were roughly 33% driving while intoxicated/driving under the influence, 33% weapons offense, 8% traffic offense, and 9% probation violation.

Weapons offenses: unlawful sale, distribution, manufacture, alteration, transportation, possession, or use of a deadly or dangerous weapon or accessory.

Traffic offenses: illegal driving behaviors that do not include vehicular manslaughter or DUI/DWI.

DUI/DWI: driving under the influence and driving while intoxicated.

Other public-order offenses: includes probation or parole violation, traffic offenses (not including DWI or DUI), escape, obstruction of justice, court offenses, nonviolent sex offenses, commercialized vice, family offenses, liquor law

violations, bribery, invasion of privacy, disorderly conduct, contributing to the delinquency of a minor and miscellaneous public-order offenses. In this study, persons in prison in 1994 for "other public-order" offenses were roughly 25% probation violation, 24% traffic offense (not including DWI or DUI), 12% escape (including flight to avoid prosecution), 9% obstruction of justice, and 6% court offenses.

Other offenses: all offenses unlisted above.

This report in portable document format and in ASCII, its tables, and related statistical data are available at the BJS World Wide Web Internet site: <<http://www.ojp.usdoj.gov/bjs/>>

To keep current on criminal justice statistics at no cost, subscribe to e-mail notification of the latest statistical releases from BJS, the FBI, and the Office of Juvenile Justice and Delinquency Prevention. To learn how to subscribe to JUSTSTATS, see <<http://www.ojp.usdoj.gov/bjs/juststats.htm>>

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is acting director.

Patrick A. Langan, Senior Statistician, and David J. Levin, Statistician, both of BJS, analyzed the data and wrote and verified this report. Jodi M. Brown, a former BJS statistician, assisted in data processing. Data and assistance interpreting criminal histories were contributed by the Information Technology Management Section of the FBI's Criminal Justice Information Services Division and officials of criminal history repositories and departments of corrections in the 15 States that participated in the study. The Regional Justice Information Service assisted in data collection and processing. The FBI and the Corrections Program Office of the Office of Justice Programs contributed funding for the study.

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EXHIBIT B

Effectiveness of Denial of Handgun Purchase by Violent Misdemeanants

Final Report
Presented to the
National Institute of Justice
NIJ Grant 98-IJ-CX-0024
May 29, 2002

Violence Prevention Research Program

University of California, Davis

Garen J. Wintemute, M.D., M.P.H.

Principal Investigator

Mona A. Wright, M.P.H.

Christiana M. Drake, Ph.D.

James J. Beaumont, Ph.D.

Co-Investigators

FINAL REPORT

Approved By: _____

Date: _____

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ABSTRACT

Background: Federal and state laws prohibit the purchase of firearms by felons and certain others. Some states additionally prohibit the purchase of handguns by persons convicted of selected misdemeanor crimes, but most do not. California has denied handgun purchases by violent misdemeanants since 1991; the prohibition remains in effect for ten years following the conviction. Such policies enjoy widespread public support, but their effectiveness is unknown.

Description of Current Study: The present study is an evaluation of California's prohibition on the purchase of firearms by violent misdemeanants. The study uses a retrospective cohort design. We sought first to determine the risk factors for new criminal activity among violent misdemeanants who seek to purchase handguns. We then determined whether the denial of handgun purchase by violent misdemeanants affected their risk of arrest for new crimes, particularly gun and/or violent crimes.

The study population consisted of all persons 21-34 years of age who sought to purchase a handgun from a federally licensed firearm dealer in California during 1989-1991 and who had at least one conviction, in the preceding ten years, for a violent misdemeanor that became grounds for denial of handgun purchase in 1991. After exclusions, study cohorts consisted of 986 persons whose purchase applications were made in 1991 and were denied ("denied persons") and 787 persons whose purchase applications were made in 1989-1990, before the new law took effect, and were approved ("purchasers").

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The main outcome measures were the incidence and relative risk of first arrest for new gun and/or violent crimes and non-gun, nonviolent crimes over three years after actual or attempted handgun purchase. The Kaplan-Meier product limit method and Cox proportional hazards regression were used to assess difference in risk between the two study cohorts.

Results: Over three years following their actual or attempted handgun purchases, 546 (33.0%) of 1,654 subjects with follow-up were arrested for a new crime, including 296 (31.9%) of 927 denied persons and 250 (34.4%) of 727 purchasers. After adjusting for differences in age, sex, and prior criminal history characteristics, purchasers were more likely than denied persons to be arrested for new gun and/or violent crimes (Relative Hazard (RH), 1.29; 95% Confidence Interval (CI), 1.04-1.60), but not for non-gun, non-violent crimes (RH, 0.96; 95% CI, 0.78-1.19). In both groups, risk of arrest was also strongly related to age and number of convictions accrued prior to actual or attempted handgun purchase.

Conclusions: Denial of handgun purchase to violent misdemeanants is associated with a specific decrease in risk of arrest for new gun and/or violent crimes.

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INTRODUCTION

Although decreasing, rates of firearm violence remain high. In 2000, an estimated 544,000 firearm-related violent crimes were committed in the United States, including approximately 10,180 firearm homicides (FBI 2001; Rennison 2001). One widely accepted policy to prevent such violence is to prohibit the purchase and possession of firearms by persons believed to be at high risk for future criminal activity. The Gun Control Act of 1968 outlaws the purchase and possession of firearms by convicted felons, fugitives from justice, narcotics addicts, and certain others. More recent federal initiatives have extended these denial criteria to include persons convicted of misdemeanor domestic violence offenses and those subject to domestic violence restraining orders. By 2000, California and 17 other states had extended their criteria for denial of firearm purchase to include convictions for a number of violent misdemeanors and other offenses (RJIS 2001). Since the enactment of the Brady Handgun Violence Prevention Act in 1993, prospective handgun purchasers throughout the United States have been subject to a mandatory waiting period and background check. Many states had implemented such requirements earlier. This federal requirement for a criminal records background check of prospective handgun purchasers has been one of the major federal crime prevention initiatives of the past decade. It remains controversial and has been challenged in court. Criminal and mental health record background checks of prospective handgun purchasers now identify 150,000-200,000 prohibited persons per year, 42% of whom are not convicted felons (Bowling, Lauver et al. 2001).

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One scholar of the subject has noted that "an effective transfer-regulating scheme that prevents guns from going to dangerous people would be nearly as successful as a much more intrusive scheme targeted at current gun owners" (Cook, Molliconi et al. 1995). There is broad public support for such programs. There is also substantial support for expanding the current federal criteria for denial of firearm purchase. Results of a recent national survey indicate that, depending on the exact offense, 60-95% of the American public favor broadening the criteria for denial of firearm purchase to include persons convicted of selected misdemeanors (Johns Hopkins Center for Gun Policy and Research and National Opinion Research Center 1997).

However, the effectiveness of the denial of firearm purchase in reducing rates of criminal activity has never been established. There is great interest in measuring the effectiveness of denial policies; such information would have obvious and immediate public policy implications.

We have previously completed a study of the effectiveness of denying handgun purchases by felons in California; denial was associated with a decrease in rates of recidivism that averaged 20-30% and was substantially higher for some groups (Wright, Wintemute et al. 1999).

Scholars at a 1997 meeting of the Homicide Research Working Group, however, agreed that a nationwide evaluation of the Brady Act would be difficult, and perhaps impossible, to conduct adequately (Kleck 1997; Webster 1997).

We report here on a large-scale controlled assessment of the effect of denial of handgun purchase on rates of subsequent criminal activity among violent misdemeanants in California. In 1991, California's criteria for denial of handgun purchase were expanded to include prior convictions for any of a list of specified violent misdemeanors. The prohibition remained in place for ten years following the conviction.

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Our primary *a priori* hypothesis was that, in an analysis that adjusted for other known risk factors for future criminal activity, persons who were denied the purchase of a handgun in California in 1991 as a result of a conviction for selected violent misdemeanors would have rates of subsequent violent criminal activity that were significantly lower than those among misdemeanants who purchased handguns in 1989 or 1990, before the new criteria became operative. This effect, we proposed, would be greatest for those offenses involving firearms and/or violence.

At the same time, we assessed the independent effects of demographic factors and the nature and severity of prior criminal history on the subsequent rates of criminal activity among authorized purchasers of handguns and persons denied such purchases.

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BACKGROUND

The Problem of Firearm Violence

Rates of violent crime remain unacceptably high. In 2000 an estimated 544,000 firearm-related violent crimes were committed in the United States, including approximately 10,180 firearm homicides (FBI 2001; Rennison 2001). During 1992-1998, an average 27,700 persons each year suffered nonfatal assaultive gunshot wounds (Simon, Mercy et al. 2001). The aggregate cost of firearm violence has been estimated to be \$100 billion per year (Cook and Ludwig 2000). The costs associated with firearm injuries themselves are substantial: an estimated \$20 billion in lifetime costs for firearm injuries sustained in 1990, of which at least 80% are borne by public funds (Wintemute and Wright 1992; Max and Rice 1993).

Moreover, offenders armed with a firearm are substantially more likely to complete some violent crimes, particularly rape, than are offenders armed with other weapons (BJS 1986; Rand 1990; Rand 1995). Firearm use particularly appears to facilitate violent crime in which the perpetrator is a stranger to the victim; such crimes now constitute a majority of all violent crimes in the United States (Rennison 2001).

Firearms are not all at the same risk for use in violent crime. Handguns constitute approximately 40-45% of all firearms manufactured in the United State each year (Unpublished data, BATF) but are used in at least 80% of all violent crimes involving firearms (FBI 1996; Perkins, Klaus et al. 1996). Many policies intending to prevent firearm violence focus specifically on handguns.

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And crime guns tend to be newly, or recently, released into circulation. In 1999, the most recent year for which data are available, the median age of recovered crime guns was 5.7 years; for some frequently-recovered guns the median time from first sale to recovery was under three years (BATF 2000). By contrast, private gun owners report that they have owned nearly two-thirds of their guns for six years or more; the average time since acquisition is 12.8 years, and some portion of these guns were acquired used (Cook and Ludwig 1996). This suggests that policies seeking to prevent the flow of new guns into criminal hands might be particularly effective.

Research on Regulating the Purchase, Carrying, and Use of Firearms

Surprisingly little recent research has been conducted on illegal commerce in and use of firearms, considering the size of the problem itself and the number of policies that have been promulgated to address it. This section reviews the most pertinent studies.

One increasingly widespread policy is that of targeted street-level enforcement of laws forbidding the carrying of concealed weapons without permits. This policy has become widespread in part because of the favorable results of an evaluation of a pilot program in Kansas City (Sherman, Shaw et al. 1995). In that study, increased police patrols targeting firearm confiscation were associated with a modest increase in the number of firearms confiscated and a 49% decrease in the incidence of gun crimes. Similar changes were not seen in a control area. The evaluators concluded that both general and specific deterrence of gun carrying may have resulted from the increased police patrols.

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The impact of mandatory sentencing laws for gun crimes, a widely implemented and widely-supported strategy, has also been evaluated (McDowall, Loftin et al. 1992). McDowall and colleagues conducted six independent time series analyses in cities in four eastern states. Data for the individual cities did not provide consistent support for an effect of mandatory sentencing. Pooling the results from all six cities provided what the authors described as "exceptionally strong support" for an effect on homicide, but little effect on gun assault or robbery. Compatible results have been seen in evaluations of a Massachusetts law imposing *per se* enforcement and mandatory sentencing for the illegal carrying of concealed firearms (Beha 1977A)(Beha 1977B). However, in an analysis of nearly all such laws using a multiple time series design -- but, in what may be a significant design flaw, using all other states as controls for any one state -- Marvell and Moody found that such "laws produce any impact in no more than a few states and that there is little evidence that the laws generally reduced crime or increased prison populations" (Marvell and Moody 1995).

Several evaluations have recently been conducted of policies that seek to lower rates of violence by increasing, rather than decreasing, the percentage of the population that is armed while in public. These laws create a mandate for local law enforcement agencies to issue concealed carry permits to persons who request those permits and are legally able to purchase and own firearms.

Individual evaluations yielded results that were frequently interpreted as contradictory but which in fact suggest that shall issue policies had little, if any, effect on crime rates. The first such study examined effects of shall issue policies on homicide rates in five metropolitan areas in Florida, Mississippi, and Oregon (McDowall, Loftin et al. 1995). Homicides increased in four of

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the five sites and decreased in the other. One of the four increases and the one decrease were statistically significant. On average, homicides rose 25% after shall issue policies were adopted, but the authors cautioned that the variation between sites made this an unreliable result.

Another study, this one widely publicized, examined trends in county-level crime rates in ten states that adopted shall issue policies (Lott and Mustard 1997). There were decreases of 5 to 8% in most violent crimes and increases, which the authors considered to be compensatory, in property crimes. But when others examined data for individual states, they found neither consistent increases nor decreases. As with child access prevention laws, many of the critical results could not be reproduced with Florida removed from the analysis (Black and Nagin 1998). Criminologist Gary Kleck concluded that most likely "the declines in crime coinciding with relaxation of carry laws were largely attributable to other factors," and not to the laws themselves (Kleck 1997B, p 376).

A related study determined that the decrease in homicide in the postlaw period in states that adopted shall-issue policies consisted almost entirely of a decrease in juvenile homicides (Ludwig 1998). Homicide rates for adults may even have increased. The significance of this finding is that juveniles, who could not obtain concealed weapons permits under any circumstances, could not have been protected by more liberal access to these permits. This study also found wide variation across individual states.

The reason for the lack of a clear effect is now emerging. About 7% of adults — 3.4 million persons — carry firearms in public on a regular basis and for reasons not related to their work (Cook and Ludwig 1996). Of these, 22% carry every day and 10% carry at least one-half the time; some 900,000 people may be carrying firearms on their person on a typical day. In

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states that adopted shall issue policies, typically no more than 1 or 2% of the eligible population requested a permit (Ludwig 1998), and a number of these new permittees probably carried firearms already. It is doubtful that the frequency of weapon-carrying was significantly affected by the adoption of shall issue statutes.

A wide array of policies regulate the purchase of firearms. Recently, attention has focused on the purchase of multiple firearms on a single occasion or within a short period of time. ATF tracing data show that, among recently purchased and traced guns, those bought in multiple purchases were particularly likely to have had an attempt made to obliterate their serial numbers — a clear indication of criminal intent (BATF 2000). Weil and Knox recently evaluated the effect on gun trafficking of a Virginia law that limited handgun purchases to one per month (Weil and Knox 1996). The percentage of gun traces initiated in the so-called northeast corridor states -- New York, New Jersey, Connecticut, Rhode Island, Massachusetts -- that identified guns as being transported from Virginia was 35% before the passage of the law and 16% afterwards. The authors concluded that, in this case at least, regulating the rate of handgun purchase had substantial beneficial effects on firearms trafficking.

A number of lines of research have suggested that limiting ease of access to firearms for entire populations is associated with decreased rates of firearm violence. Sloan and colleagues, for example, compared rates of homicide and other violent crimes in Seattle and Vancouver (Sloan, Kellermann et al. 1988). They asserted that the two cities were similar with respect to most risk factors for firearm violence, but differed substantially in the degree to which they regulated sale and possession of handguns. They found selective increases in rates of firearm-related violent crime in Seattle, as compared to Vancouver. For homicides, they demonstrated

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that this rate was specific to handgun crimes. Cook has reviewed a number of other studies on this point (Cook 1991).

Finally, recent studies have examined the effect of banning outright the purchase of specific classes of firearms. Loftin and colleagues studied the effect of restrictive licensing of handguns on homicide and suicide in the District of Columbia (Loftin, McDowall et al. 1991). Adoption of the law was associated with a 25% reduction in firearm homicide that became evident almost immediately. There was no compensatory increase in homicide by other means in the District of Columbia, nor were there similar reductions in firearm homicide in nearby Maryland or Virginia. Other observers have criticized this study for terminating follow-up in 1987, after which homicide again rose coincident with the appearance of crack cocaine.

A ban on specified assault-type firearms was enacted as part of the 1994 Crime Bill, and in 1998 the Clinton administration halted the manufacture and importation, but not sale, of large-capacity semiautomatic "copy cat" rifles that had been designed to avoid the prior bans on technical grounds (BATF 1998). The ban imposed by the 1994 Crime Bill has been evaluated by researchers at the Urban Institute (Roth and Koper 1997; Roth and Koper 1999). In the short run the ban appeared to have beneficial, but modest, effects. In the first year and a half after the ban became effective, trace requests to ATF fell by 20% for banned weapons but just 11% for other guns. There was no such decrease in traces in this period in those states where assault-type firearms had been banned earlier. In St. Louis and Boston, where all confiscated firearms were traced, traces for banned weapons fell 29% and 24%, respectively. The ban may have contributed to a 7% drop in firearm homicide from 1994 to 1995, but it was not clear at that

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time whether the decrease represented a downward trend or simple year-to-year variation. A re-evaluation over a longer time period is underway.

A number of jurisdictions acted to ban domestic production and sale of the poorly made, inexpensive handguns known as Saturday night specials. By 1997, four states had established a minimum melting point criterion for the metal used to produce gun frames; the inexpensive zinc alloy from which these guns are often made has a lower melting point than does high grade steel. In California, more than 40 cities and counties sought to eliminate Saturday night specials by outlawing the manufacture and sale of guns that failed to meet a series of design and materials criteria. Results varied, apparently as a result of variable monitoring and enforcement (Wintemute 2000A).

In 1989, Maryland created a Handgun Roster Board to develop a list of handguns that could legally be manufactured or sold in the state. The board was required to consider such characteristics as size, quality of materials, reliability, and suitability for sporting use, among others; no specific standards were set (Teret, Alexander et al. 1990). A preliminary evaluation of the impact of the Maryland law has been completed. As with assault-type weapons, there was a substantial increase in sales of non-approved guns prior to the law's effective date. Nonetheless, non-approved guns accounted for a progressively smaller percentage of crime guns confiscated by law enforcement agencies (Vernick, Webster et al. 1998). The effect of the ban on crime was unclear; crime rates did not fall appreciably faster in Maryland than in neighboring states without similar legislation (Webster, Vernick et al. 1998).

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Denial of Firearm Purchase

The Gun Control Act of 1968 specified classes of persons who were prohibited from purchasing or possessing firearms. Other classes have been added by subsequent legislation. Today, these classes include convicted felons, persons under felony indictment, persons convicted of domestic violence misdemeanors or subject to domestic violence restraining orders, illegal aliens, controlled substance addicts, persons adjudicated mentally ill, and others. This intervention seeks to be effective early in the chain of events leading to firearm violence, regulating the acquisition of firearms rather than their use.

The clear presumption behind this policy is that members of the prohibited classes are at unacceptable risk for future criminal activity involving firearms. In some cases this presumption is well supported. For example, a large body of evidence has established that persons with a prior history of criminal activity are more likely than persons without such a history to do crime in the future. Among many others, (Blumstein, Cohen et al. 1986; Tillman 1987; Tracy, Wolfgang et al. 1990; Greenberg 1991). In other cases the picture is less clear. Some commentators have suggested that these classes are over-inclusive, and that persons with mental illness and noncitizens are arguably at no greater risk for criminal activity than are others (Jacobs and Potter 1995).

It has also been argued that these criteria are not inclusive enough. No jurisdiction denies firearm purchase to all persons having a criminal history, and many thousands of persons with criminal histories legally purchase firearms every year. Given that a prior criminal history is a well established risk factor for future criminal activity, the possibility therefore exists that identifiable subgroups of authorized handgun purchasers are at increased risk for later criminal

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activity. This is not just a theoretical concern; one commentator had suggested that “a considerable fraction of people who commit violent crimes are legally entitled to own guns” (Cook and Blose 1981).

Our own research has established that, among legal purchasers of handguns in California, those with a prior criminal history are at substantially increased risk for criminal activity after handgun purchase (Wintemute, Drake et al. 1998). We undertook a retrospective cohort study of 5,923 authorized purchasers of handguns in California in 1977 who were younger than 50 years of age, identified by random sample. These purchasers acquired their handguns long before California law prohibited selected misdemeanants from purchasing handguns; all study subjects passed mandatory criminal records background checks. Our main outcome measures were incidence and relative risk (RR) of first charges for new criminal offenses after handgun purchase. Follow-up to the end of the 15-year observation period or to death was available for 77.8% of study subjects and for a median 8.9 years for another 9.6%. Handgun purchasers with at least one prior misdemeanor conviction were more than seven times as likely as those with no prior criminal history to be charged with a new offense after handgun purchase (RR, 7.5; 95% confidence interval [CI], 6.6-8.7). Among men, those with two or more prior convictions for misdemeanor violence were at greatest risk for nonviolent firearm-related offenses such as weapon carrying (RR, 11.7; 95% CI, 6.8-20.0), violent offenses generally (RR, 10.4; 95% CI, 6.9-15.8), and Violent Crime Index offenses (murder or non-negligent manslaughter, forcible rape, robbery, or aggravated assault) (RR, 15.1; 95% CI, 9.4-24.3). However, even handgun purchasers with only one prior misdemeanor conviction and no convictions for offenses

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involving firearms or violence were nearly five times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.

As a practical matter, the enforcement of a policy to deny firearm purchase to specified classes of persons has been contingent upon the enactment of mandatory background checks for persons seeking to purchase firearms. At the national level, this became possible only in 1994 following the enactment of the Brady Handgun Violence Prevention Act. The Brady Act required a five-day waiting period prior to handgun purchase, and initially also required a designated state or local chief law enforcement officer to conduct a criminal records background check. The latter requirement was declared unconstitutional by the Supreme Court in June 1997. Most chief law enforcement officers continued to perform background checks on a voluntary basis.

By 2000, when The Brady Act had been in operation for seven years, all states and federal agencies together had screened a total of 30 million applications to purchase guns and had issued 689,000 denials. In 2000, 42% of denials were for reasons other than felony conviction or pending indictment (Bowling, Lauver et al. 2001).

Procedures for screening handgun purchasers in the states operating under Brady Act procedures were reconfigured in November 1998. Both the waiting period and the background checks conducted by state or local law enforcement agencies were replaced by a National Instant Check System (NICS) administered by the FBI. During NICS' first year of operation, nearly 90% of background checks were completed within two hours of application; 72% were completed within 30 seconds. Difficult checks could take several days, however, and the law allowed dealers to release firearms to purchasers after three business days, whether or not the

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background checks were completed. By the end of 1999, 3,353 prohibited persons, most of them felons, had acquired firearms in this manner; just 442 had surrendered their guns. Federal law enforcement experts have suggested that this problem would largely be eliminated if the waiting period for firearm purchases were lengthened (FBI 2000; GAO 2000).

California has required the recording of all sales of firearms on a Dealer's Record of Sale (DROS) form since 1917. Background checks have been conducted since the late 1960s following standardized procedures. There has been a mandatory waiting period to allow the background check to be conducted, which was shortened from 15 to ten days in 1997, after our study period. In 1991, the background check requirement was extended to include sales between private parties. In addition, the criteria for denial of firearm purchase were expanded to include prior convictions for a number of violent misdemeanors. The most important of these were misdemeanor assault and battery, brandishing a firearm, and discharging a firearm. A complete listing is in Table 1.

At the time this study was undertaken, California procedures were as follows: The prospective purchaser and the selling dealer completed a DROS form. A copy was forwarded to the California Department of Justice (CDOJ) in Sacramento; another was sent to the chief law enforcement officer of the jurisdiction in which the subject resided. CDOJ personnel searched the state's criminal history and mental health records databases for records pertaining to this applicant, using a sophisticated Soundex matching system. They also queried national databases for records maintained in other states. If records were identified, they were reviewed for disqualifying events. If incomplete information existed, such as arrests without dispositions, contact was made with the appropriate agencies; many of these contacts were with agencies in

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other states. Additional information was obtained from mental health personnel and others as needed.

If dealers do not receive a negative report within the allotted time, the sale is consummated. With some variation from year to year, 1.5-2.5% of sales are denied. Under California law, as distinct from federal law, sales that are put on "delay" status by CDOJ screeners may not be consummated when the waiting period ends, but only after CDOJ has obtained the information needed to make a final determination of the prospective purchaser's eligibility. Additional sales (well under 1%) are therefore denied initially and later permitted, sometimes after the passage of weeks to months, when this critical missing information becomes available.

Incapacitation is the principal mechanism by which denial of firearm purchase is thought to lower crime rates: such policies are intended to deprive high-risk persons of access to firearms, and thereby reduce their capacity for committing violent crimes. The effectiveness of these policies might therefore be expected to vary directly with the importance of firearm use in affecting completion rates. Thus, the impact of these laws should be greatest for gun and/or violent crime. In the case of homicide, the weapons effect is very substantial (Cook 1991). This also appears to be true for robbery (Rand 1995). One might hypothesize an additional deterrent effect, particularly in a legal environment such as California's that includes "three strikes" or similar legislation. A prospective firearm purchaser would be aware that his or her criminal history is known to the Justice Department. This might deter some potential offenders from incurring further "strikes." However, a number of critics have questioned whether these laws have any substantial deterrence effect, and one analysis has associated them with a substantial

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increase in homicide, both immediately and over the long term (Marvell and Moody 2001).

It is possible that the main effect of such policies in much of the United States is simply to deter ineligible persons from acquiring firearms from licensed firearms dealers, leaving them free to acquire firearms by other methods instead. Cook and colleagues have defined two markets for firearms: a primary market consisting of sales made by holders of federal firearms licenses and a secondary market consisting of all other gun sales, licit or illicit (Cook, Molliconi et al. 1995). Cook and Ludwig estimate approximately a 60:40 ratio in sales between the primary and secondary markets. And they note that, "the secondary market will look increasingly attractive as the regulations governing the primary market become more restrictive" (Cook, Molliconi et al. 1995, pg 71). There is evidence to support this position. In the 1991 Survey of State Prison Inmates, half of those who purchased their most recent handgun from an illegal source stated that they had not bought the weapon from a retail store because of concerns about a background check (BJS 1994).

Waiting period and background check policies, in that they only affect sales by licensed dealers, clearly are targeted at the primary market. However, the primary market may be of more importance, even for high risk purchasers, than is commonly supposed. In that same 1991 survey, those who used a handgun in the offense leading to their incarceration were as likely to have purchased that firearm from a licensed dealer as from "the black market, a drug dealer, or a fence" (Beck, Gilliard et al. 1993). And "sales by licensed firearm dealers" has a broader meaning in some jurisdictions than others. California and several other states have effectively outlawed the secondary market, requiring that almost all transfers of firearms between private parties be routed through a licensed dealer so that a background check could be conducted. The

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California law took effect in 1991, at the same time that the state's broader denial criteria became operative. This might be expected to enhance the effect of expanded denial criteria, by making it more difficult for prohibited persons to make illegal purchases. But enforcement is problematic. California maintains a computerized archive of all transfers of handguns that are conducted by FFLs. Based on the Cook and Ludwig estimate, we would expect perhaps 40% of these records to indicate that they concerned private party transfers facilitated by FFLs. But in actuality, fewer than 10% of the records so signify.

Critics have suggested that easy access to the secondary firearms market renders waiting period/background check programs ineffective. Jacobs and Potter, for example, argue that the regulatory goals of such policies far exceed their regulatory capacity and that their chief effect is to create pressure for straw purchases and purchases in the secondary market. They consider such policies to be nothing more than "a sop to the widespread fear of crime" (Jacobs and Potter 1995).

However, Cook and colleagues have argued that the effect of denial policies should not be considered in isolation (Cook, Molliconi et al. 1995). They may work synergistically with enhanced sentences for and enforcement of illegal possession statutes that make acquisitions in the secondary market less attractive. Their incapacitative effect could be enhanced by extending their scope, as has been done in California by requiring all private party sales to be routed through a licensed dealer.

Moreover, criticism such as that of Jacobs and Potter must be seen as speculation in the absence of data on whether these policies produce their intended final effect: reducing rates of

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criminal activity among those whose primary-market handgun purchases are denied. It is that outcome that the present proposal addresses.

We have already conducted a small-scale evaluation of the denial of firearm purchases by felons (Wright, Wintemute et al. 1999). We examined a sample of persons who were denied handgun purchase in California in 1977 on the basis of a prior felony conviction and a sample of those whose handgun purchases were approved although they had a prior felony arrest (this group had no felony convictions or other disqualifying events.) Subjects were followed for three years. In multivariate analysis, the arrestees whose purchases were allowed were at greater risk for offenses involving a gun (Relative Risk (RR)= 1.2, 95% Confidence Interval (CI), 1.1-1.4) or violence (RR= 1.2, 95% CI, 1.1-1.4). Among those having only a single prior arrest for an offense involving weapons or violence, those whose handgun purchases were approved appeared to be at substantially increased risk for a new gun offense (RR= 2.7, 95% CI, 0.4-19.5) or violent offense (RR= 3.9, 95% CI, 0.6-28.3); the small sample sizes limited the power of the analysis.

These findings suggest that, even among serious offenders, denial of handgun purchase may lower rates of expected criminal activity for offenses involving firearms or violence by 20-30% and much more for some subgroups. Additional preliminary evidence comes from McDowall and colleagues' study of Florida's "shall issue" statute. They observed a decline in homicide rates in that state beginning only several years after its "shall issue" statute was enacted and roughly contemporaneous to its adoption of a waiting period and background check requirement (McDowall, Loftin et al. 1995).

In 2000, after the study we report on here had been largely completed, Ludwig and Cook published an evaluation of the Brady Handgun Violence Prevention Act that compared homicide

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trends in states where the act led to new screening programs for gun purchasers with trends in homicide in states that had pre-existing screening programs. They found no significant difference in homicide rates in the two groups in states, and their findings have been widely interpreted as demonstrating that Brady has been ineffective.

It can be argued, however, that the outcome of their study was determined by the method chosen. The law is designed to affect the behavior of a very small part of the likely population at risk. Using a population-wide outcome measure, rather than one pertaining to those directly affected, means that a real effect may well be overlooked. A population-wide outcome measure would be appropriate an intervention that impacts an entire population, but that is not what gun purchaser screening programs do. Consider as an analogy a vaccine trial, in which an intervention is taken to prevent an adverse outcome. The proper assessment of that vaccine is in its effect on those vaccinated, as compared to others; population-based results would not be accepted. In the case of Brady, the number of persons affected is small enough that even a complete and permanent elimination of homicide risk in that affected population would probably not be reflected in any discernible change in population-wide homicide rates (Wintemute 2000C).

Long-Term Studies of Criminal Behavior

In this study, the independent effect of the denial of legal purchase of a handgun on subsequent rates of criminal activity among identified persons at risk, not entire populations, is the primary subject of interest. We therefore very briefly review here selected longitudinal

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studies of criminal behavior. To our knowledge, no studies other than our own have been conducted on criminal behavior among legal purchasers of firearms.

The importance of gender as a risk factor both for initial arrest and for recidivism has been well established (Blumstein, Cohen et al. 1986). Race/ethnicity is also related to substantial differences in rates of first arrest but generally not to rates of recidivism (Blumstein and Graddy 1982; Blumstein, Cohen et al. 1986; Tracy, Wolfgang et al. 1990; Greenberg 1991). When race/ethnicity is taken into account, the effect of socioeconomic status appears to be relatively minor and inconsistent (Tittle and Meier 1990; Visher, Lattimore et al. 1991). The number of prior offenses is also strongly correlated with the likelihood of new offending (Tillman 1987; Greenberg 1991).

Previous longitudinal studies have used a variety of measures of criminal behavior. One such measure is self report, which is not available to us. Studies making use of records have variably relied on arrest, conviction, violations of probation or parole, and others. As one of our study cohorts has no prior criminal history, only arrest and conviction are applicable to all subgroups of our study population. Each has strengths and drawbacks. The use of arrest alone creates the possibility of misclassification on the basis of false positives, or Type 1 errors. The use of arrest is widespread, however (Belkin, Blumstein et al. 1973; Blumstein and Graddy 1982; Tillman 1987; Beck and Shipley 1989). Crimes rates estimated from documented arrest histories are similar to those derived from self report data (Blumstein and Cohen 1979). Sole reliance on conviction, even assuming that dispositions are always available, creates a high likelihood of a Type 2 error, or misclassification based on false negatives. The majority of felony arrests do not result in felony convictions, even when there is substantial evidence of guilt. Many other causes

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for nonconviction exist (Maltz 1984). Our own prior longitudinal studies have used data for both arrests and convictions. We have found that results based on conviction are quite similar to those based on arrest (Wintemute, Drake et al. 1998).

METHODS

Overview

This is a historical cohort study. Subjects are identified and classified as to their characteristics as of a certain point in the past and followed forward in time, toward the present.

We have taken the critical exposure in this study to be the legal purchase of a handgun. Our primary study cohort, the denied cohort, is by this definition the unexposed cohort: persons who were denied the purchase of a handgun in 1991 because of a prior conviction for a violent misdemeanor within the preceding ten years. This was the first year in which such convictions were grounds for denial. Our comparison cohort, the exposed or purchaser cohort, is made up of persons whose applications to purchase handguns in 1989 or 1990 were approved and whose criminal records at that time contained a conviction within the preceding ten years for an offense which would have been disqualifying had they sought to purchase handguns in 1991.

Subjects were followed for three years from the date 15 days after the date on their application for handgun purchase. This is the earliest date on which handgun acquisition could have occurred given the length of California's mandatory waiting period at the time. The outcomes of major interest were rates and relative risks of arrest and conviction for new offenses, particularly those involving firearms, other weapons, and/or interpersonal violence. Arrests and convictions for other offenses were also examined to assess the specificity of any observed effect with denial of handgun purchase.

Because offenses occurring in other states were likely not to appear on California's criminal records, only those subsequent offenses occurring in California were identified as

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outcome events. To establish that study subjects remained at risk for such events, records linkage procedures that we have refined in previous studies were used to verify that subjects' continuing residence in California.

Data Sources

Dealer's Record of Sale File: Since the early 1970s, selected data elements from California's Dealer's Records of Sale (DROS) forms for all approved handgun purchases have been computerized. The files for 1989 and 1990 were used as the sampling frame for our control or purchaser cohort. If the CDOJ background check identifies a criminal record for a person whose handgun purchase is eventually approved, that person's unique Criminal Identification and Information (CII) number is added to the computerized record of that approved purchase. Thus, it is possible to identify prior to sampling those persons who have a criminal history at the time of their approved handgun purchase.

The computerized record also includes the unique record number for the Dealer's Record of Sale form; this number is used by CDOJ as the identifier for that particular handgun purchase. Not all of the data elements on the DROS form are entered into the automated file. However, originals or microfilm copies of the reports are retained by CDOJ. These were made accessible to us.

Prohibited Persons File: Since 1989, a computer file of elements of all applications that are denied has also been maintained. This file contains personal identifiers, the unique Dealer's Record of Sale number for the denied purchase, the CII number for all persons having a criminal history, and the reason for denial. For those denied as a result of prior criminal activity, the

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computer file includes the specific offense for which a conviction that resulted in the denial. CDOJ provided us with a copy of this file for 1991, which we used to identify all persons whose applications for handgun purchase were denied as a result of prior violent misdemeanor convictions.

Longitudinal File: California's Adult Criminal Justice Statistical System Longitudinal Database was created to allow batch sorting of subjects with criminal histories for research purposes (CDOJ, 1985). It contains complete identifier data, including the unique CII number, and salient criminal history transaction data on all persons whose adult criminal history records began in 1974 or subsequently. Thus, it contains these data for all persons who reached the age of 18 on January 1, 1974 or later (and would therefore have been 35 years of age or younger in 1990). Records in the longitudinal file may be sorted and retrieved by any of the automated variables and nested sorts can be performed. Thus, the file can be used to produce a list of all persons with criminal histories in California who have selected demographic and or criminal history characteristics.

From this file, CDOJ provided us a registry of all persons who reached 18 years of age on or after January 1, 1974 who, in 1990 or earlier, had been convicted of one of those violent misdemeanor offenses that became grounds for denial of handgun purchase in California in 1991.

Criminal History System: The Criminal History System (CHS) contains data on all adults arrested in California. These criminal records include extensive personal identifier information to maximize the possibility that a newly arrested person will be linked to his prior criminal record. In a trial run involving several hundred handgun purchasers known by us to have criminal histories, we verified a 100% "hit" rate.

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The quality and completeness of data in CHS are high. In the late 1980s, other researchers established that felony dispositions were available in at least 80% of cases in California, compared with only 40-60% nationally (Orsagh 1989). In 1991 we performed a pilot review of several hundred rapsheets to validate the data quality and establish our abstracting procedures. This review determined that nearly 80% of *all* dispositions, whether felony or misdemeanor, were available. Consequent to that time a backlog of the entry of new criminal justice transactions into CHS developed (BJS 1995). That backlog has since been cleared. The criminal history records we obtained for this study show arrests that occurred within a few weeks of our request for the records.

Since the early 1970s, CHS has been subject to an episodic records purge designed to remove inactive records. Records become eligible for removal following specified criteria; mandatory retention periods are related to the nature and severity of an individual's criminal history. No offense involving weapons or interpersonal violence may be purged, and no record containing any such offense can be purged before the subject reaches age 70. Records for persons whose handgun purchase is denied are maintained until the subject's 100th birthday (CDOJ 1990). As a result, the purge process has had minimal impact on our ability to obtain records for study subjects.

Cohort Assembly

Last name and date of birth were used to identify tentative matches between persons listed in the 1989-1990 handgun purchaser data and persons recorded in our extract of the longitudinal file as having violent misdemeanor convictions by 1990. All tentative matches were

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confirmed by manual records review. Criminal records for all subjects in both cohorts were reviewed to verify that each had a disqualifying violent misdemeanor conviction within ten years of actual or attempted handgun purchase.

We identified 1,099 persons under age 35 whose handgun purchases had been denied for a prior violent misdemeanor conviction in 1991, and 877 persons under age 35 who had purchased handguns in 1989 or 1990 and within the preceding ten years had been convicted of a violent misdemeanor that became grounds for denial in 1991. We excluded 23 persons from the denied cohort who appeared to have been denied in error: 22 whose convictions were more than ten years prior to the date of their handgun purchase applications and one whose conviction was for a crime that did not constitute grounds for denial. Another 90 persons purchased handguns in 1989 or 1990 and then were denied when they attempted to purchase handguns in 1991. Preliminary analyses performed with these persons included and excluded yielded nearly identical results, and they were therefore excluded.

Power calculations were based on results from our prior studies. We found that a previously arrested cohort of successful gun purchasers under 50 years of age and having a prior criminal history would experience approximately a 40% incidence of arrest for all offenses and a 20% incidence of arrest for violent crimes or less serious weapons offenses over a defined period of follow-up, with most first arrests occurring within a few years of the onset of follow-up. Recidivism for younger offenders will be higher (Beck and Shipley 1989), and these power calculations are therefore conservative.

The sample size requirements were derived from data presented by Breslow and Day (1987 pg 283), and Kahn and Sempos (1989). We predicted that our cohort sizes would be

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sufficient to detect relatively small changes in risk with sufficient power. For the outcome arrest for any offense, we would be able to detect a relative risk of between 1.2 and 1.3 in the purchaser cohort, equivalent to a risk reduction of 15-25% in the denied group. For the outcome arrest for an offense involving violence or weapons we would be able to detect a relative risk of between 1.3 and 1.5 in the purchaser cohort, equivalent to a risk reduction of 25-33% in the denied cohort.

Data Acquisition and Management

Dealer's Record of Sale and criminal history records were obtained for members of both study cohorts. Project staff reviewed the records to confirm a match between the study subject and the record supplied.

Data were entered and cleaned by three-member teams. In the case of the DROS records, two team members independently entered each record into computer files. These databases were compared by computer and discrepancies were then resolved by a third team member who consulted the original record.

Similar, but more complex, procedures were used for criminal history data. All data staff were trained by CDOJ's records technicians in criminal history interpretation. Two team members independently abstracted each rapsheet onto a standardized paper form. These forms were compared for obvious discrepancies by a third team member who reconciled them while making reference to the original record. For ambiguous cases the principal investigator was consulted. The paper record was then computerized by two team members working independently, such that there were two separate files for each record. The two files were compared by computer, and all discrepancies were again resolved by the third member of the

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team, with consultation by the principal investigator and others as needed. While they were labor intensive, these procedures minimized both abstracting and data entry error.

Data entry was performed in Foxpro for Windows, using specialized screens developed by us. Data comparison was performed in SAS. We used the OCA number, a unique number identifying a specific Dealer's Record of Sale form and thus a specific application for handgun purchase, as our linking identifier for data assembled from multiple sources. The number was added to the rapsheet database as records were key entered.

The following variables, listed here by data source, were abstracted:

From Dealer's Record of Sale Forms/ Data Tape:

Personal Data: Name, Date of Birth, Driver's License number, Criminal Information and Identification number (if present), Social security number (if present), Other identifying number (if present), Sex, Race, Occupation, Local address, Permanent address

Transaction Data: OCA number (unique transaction identifier for this purchase only), Date of transaction, Dealer name, Dealer address, Private sale (yes/no)

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From the Prohibited Persons File:

Denial type (Felony conviction, misdemeanor conviction, restraining
order, mental health, under age, etc.) , Specific denial offense (e.g. 245 PC
for aggravated assault), Out of state offense (Y/N), Denial date

From criminal history rapsheets (in addition to identifiers):

Nature of action, Date, Statute violated (Section, Paragraph, Statute Code),
Data source (arrest report, court report, probation or custody report)

The nature of action variable on criminal history rapsheets was coded as follows to allow for
detailed specification:

<u>TRANSACTION CATEGORY</u>	<u>ACTION TYPE AND CODE</u>
Charges	Arrest/Cite New charge(filed during criminal justice proceedings) Arrest--Released-Detention only Additional/eXtra charges
Convictions	Conviction, level of offense unspecified Felony Kid (Juvenile) Convictions Misdemeanor

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Commitments	DiaGnostic & Narcotics
Applications	Law enforcement, other security Concealed Weapon
Other	RegiZtration, Deceased

Crimes were grouped into the following discrete classes: non-gun, nonviolent crimes (e.g., petty theft, driving under the influence of alcohol); nonviolent gun crimes (e.g., carrying a concealed firearm in a public place); and violent crimes (e.g., simple and aggravated assault, robbery, murder).

Our initial intent had been to categorize all crimes as to whether they had involved a gun, violence, both, or neither. This would have permitted us the strongest possible analysis of the effect of the nature of prior offenses on subjects' risk of recidivism, and of the specificity of any effect of the policy we were evaluating. Unfortunately, California's criminal records did not reliably distinguish between violent crimes that involved guns and those that did not. This was particularly important with regard to such offenses as aggravated assault, which may or may not involve a firearm. The state's Penal Code contained separate subparagraphs indicating firearm involvement or its absence but the rapsheets frequently omitted this level of coding. Our records review established that, in the period prior to actual or attempted handgun purchase, convictions for nonviolent gun crimes made up only 4.4% of convictions for all crimes involving guns, violence, or both guns and violence. We therefore defined the main outcome event for the study as the first arrest for a new gun and/or violent crime. Additional analyses provided separate

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results for non-gun, nonviolent crimes; nonviolent gun crimes; violent crimes; and all crimes combined.

Verification of At-Risk Status

The follow-up period began 15 days following application for handgun purchase – the first day on which legal acquisition of the handgun could have occurred, if permitted – and ended three years later. Our surveillance for criminal events after handgun purchase was limited to those occurring in California as information on offenses occurring elsewhere was not available. We employed a series of procedures developed by us in earlier research to verify that study subjects remained in California and at risk for outcome events. These procedures relied on data other than records of outcome events, to avoid outcome bias. Following standard procedure for longitudinal studies, follow-up for subjects who could not be independently determined to be at risk throughout the study period was censored as of their last known date of residence in the state.

Our procedures were as follows. Subject identifiers, including a driver's license number when available, were first provided to the state Department of Motor Vehicles for linkage to their driver's license files. As our period of follow-up ended no later than December 31, 1994, nearly all subjects wishing to maintain an active driver's license would have renewed that license after the end of the study period and before our records requests were made in 1999. Our data included a driver's license number for over 90% of all subjects. Subjects were considered to have remained California residents until the date of their most recent license renewal.

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For subjects for whom further data was needed, we queried registries maintained by credit agencies and telephone listings. We also queried the California Master Mortality File and social security-derived mortality registries available on the World Wide Web. Finally, a hand search was made of telephone books and registries of property owners available from the California State Library.

Subjects for whom no independent confirmation of continued residence in California could be obtained were excluded from outcome analyses. However, to allow for an estimate of the possible bias introduced by lack of follow-up, data on new arrests were also collected for these subjects and were tabulated for comparison purposes.

Analysis

We originally conducted an analysis that was very similar to that which we had developed and used in prior similar studies. Outcome rates were calculated as incidence density rates using person years at-risk for the denominators and the number of events for numerators (Kleinbaum, Kupper et al. 1982). Rates were standardized by stratification, and relative risks estimated by calculating the ratio of rates. Probabilities and confidence limits were calculated using statistics programs for the comparison of two Poisson distributed rates (Breslow and Day 1987).

Outcome rates were additionally analyzed by Poisson regression (Frome and Checkoway 1985), which allowed more thorough consideration of risk patterns and interactions between risk factors. One set of regressions addressed entire study cohorts. In those regressions, the main effect (explanatory) variables included cohort membership, gender, race/ethnicity, and severity of

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criminal history prior to purchase. Separate analyses were performed for each of the outcomes of interest. Two way interactions were tested.

On review, however, we found that risk differentials were time-dependent and determined to reanalyze the data using survival analysis techniques. Reviewers of an earlier version of this report also suggested this modification. In this second analysis, the probability of experiencing a first new arrest was estimated by the Kaplan–Meier method (Kaplan and Meier 1958). The significance of differences in probabilities was assessed by the log-rank statistic.

Cox proportional hazards regression was used to calculate univariate and adjusted relative hazards and 95% confidence intervals (Cox 1972). A model including age, sex, race, and number of prior criminal convictions was used to estimate adjusted relative hazards. Time since actual or attempted handgun purchase was measured in days. Other continuous variables were stratified: age, 21-24, 25-29, and 30-34 years; prior convictions for any crime: one, two, three, and four or more; prior convictions for gun and/or violent crimes: one, two, and three or more. Subjects for whom the number of prior convictions could not be determined (12 persons in the case of prior convictions for any crime, 21 persons for prior gun and/or violent crime convictions) were excluded from multivariate analyses; all were denied persons.

The addition of terms for interactions between study cohort and age, study cohort and number of prior convictions, and age and number of prior convictions did not improve the fit of the model; none were included in the final model. Similarly, inclusion of measures of the elapsed time between the most recent prior conviction for any crime and for any gun and/or violent crime did not improve the fit of the model, and these were not retained. Reliance on the

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proportional hazards assumption was validated by plotting Schoenberg residuals for individual covariates against time (Hosmer and Lemeshow 1999).

The primary regression analysis examined risk for experiencing a first arrest. A conditional, total time recurrent-events model was developed to study effects as additional arrests occurred and as time since actual or attempted purchase increased. In the recurrent events analysis an overall effect estimate was generated for each covariate (Prentice, Williams et al. 1981; Hosmer and Lemeshow 1999; Kelly and Lim 2000).

The significance of differences between subjects with and without independent follow-up was estimated using the chi-squared statistic.

All tests of significance were two-sided, with a P value of <0.05 considered to indicate statistical significance. SAS software was used for all analyses (PC-SAS, Version 8, SAS Institute, Cary, NC).

RESULTS

After exclusions, the study cohorts were made up of 986 persons who were denied the purchase of a handgun in 1991 ("denied persons") and 787 persons who purchased a handgun in 1989 or 1990 ("purchasers"). The demographic and prior criminal history characteristics of the two cohorts were very similar; 23.1% of denied persons and 27.2% of purchasers had been convicted of more than one violent misdemeanor that had become grounds for denial of handgun purchase in 1991 (Table 2).

Independent evidence of subjects' continued residence in California for the entire three-year follow-up period was available for 83.9% of denied persons and 84.6% of purchasers. Another 10.1% of denied persons and 7.8% of purchasers were confirmed as alive and in the state for part of the follow-up period (median 1.7 years for both groups). No follow-up information was available for 119 subjects. Absence of follow-up was not related to subjects' study cohort (7.6% (n=60) for purchasers and 6.0% (n=59) for denied persons, $P=0.172$), sex ($P=0.564$), age group ($P=0.892$) or number of prior convictions for any crime ($P=0.084$) or gun and/or violent crimes ($P=0.295$).

Over three years following their actual or attempted handgun purchases, 546 (33.0%) of 1,654 subjects with follow-up were arrested for a new crime, including 296 (31.9%) of 927 denied persons and 250 (34.4%) of 727 purchasers (Table 2). Purchasers were more likely than denied persons to be arrested for a new gun and/or violent crime (23.9% and 20.1% respectively, log-rank $P=0.048$)(Figure 1a), but not for a new non-gun, non-violent crime (21.3% and 22.8%, respectively, log-rank $P=0.461$)(Figure 1b).

Among the 119 subjects with no follow-up, purchasers were more likely than denied persons to experience a new arrest for any crime, (46.7% and 28.8%, respectively, $P=0.044$), a non-gun, nonviolent crime (33.3% and 23.7%, respectively, $P=0.245$), and a gun and/or violent crime (31.7% and 22.0%, respectively, $P=0.235$). Among purchasers, the crude incidence of arrest was substantially higher for those without follow-up than for those with follow-up available -- by an absolute 12.3% for any crime, 12.0% for non-gun, non-violent crimes, and 7.8% for gun and/or violent crimes. For denied subjects, these absolute differences were much smaller and, in the case of arrest for any crime, reversed. The crude incidence of arrest among denied persons without follow-up, as compared to those with follow-up, was 3.1% lower for any crime, 0.9% higher for non-gun, non-violent crimes, and 1.9% higher for gun and/or violent crimes.

The results of univariate analysis are presented in Table 3. Crude first-arrest rates for new gun and/or violent crimes were 9.9/100 person-years (py) for purchasers and 8.0/100 py for denied persons (Relative Hazard (RH), 1.23; 95% Confidence Interval (CI), 1.00-1.52). There was no significant difference between the two groups in risk of arrest for non-gun, nonviolent crimes. Among purchasers the arrest rate for gun and/or violent crimes exceeded that for non-gun, nonviolent crimes; among denied persons the opposite was true. When both denied persons and purchasers were considered together, males were at increased risk of arrest for gun and/or violent crimes; risk of arrest for all crime categories was strongly related to age (Table 2, Figure 2) and number of prior criminal convictions (Table 3, Figure 3).

These results were generally confirmed in multivariate analysis (Table 4). Purchasers remained more likely than denied persons to be arrested for new gun and/or violent crimes (RH,

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1.29; 95% CI, 1.04-1.60) but not for non-gun, non-violent crimes (RH, 0.96; 95% CI, 0.78-1.19).

Adjusted risk of first arrest for all crime types decreased by more than 50% as age increased.

Risk of arrest increased for all crime types with the number of prior convictions for any crime, but an increasing number of prior convictions for gun and/or violent crimes was associated only with an increased risk of arrest for new crimes of that type.

When nonviolent gun crimes and violent crimes were considered separately, results were similar to those for all gun and/or violent crimes considered together. After adjustment, purchasers were more likely than denied persons to be arrested for both violent crimes (RH, 1.24; 95% CI, 0.98-1.58) and nonviolent gun crimes (RH, 1.46; 95% CI, 0.98-2.17). For both study cohorts combined, subjects age 30-34 were substantially less likely than those ages 21-24 to be arrested for either violent crimes (RH, 0.49; 95% CI, 0.36-0.67) or nonviolent gun crimes (RH, 0.36, 95% CI; 0.21-0.62). Subjects with three or more prior convictions for a gun and/or violent crime were more likely than were subjects with one such conviction to be arrested for a violent crime (RH, 1.57; 95% CI, 0.97-2.54), but not a nonviolent gun crime (RH, 1.04; 95% CI, 0.38-2.83).

There was relatively little variation across age and prior criminal history strata in the increased risk of arrest for gun and/or violent crimes associated with handgun purchase (Table 5). The increase in risk was modest, and not statistically significant, in many instances.

Over the entire period of follow-up, and including both first and subsequent arrests, the crude arrest rate for gun and/or violent crimes was 10.6/100 py for handgun purchasers and 9.5/100 py for denied persons; rates for non-gun, non-violent crimes were 11.8/100 py and 12.8/100 py, respectively. After adjustment, purchasers were at slightly greater risk of arrest for

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gun and/or violent crimes (RH, 1.12; 95% CI, 0.93-1.35) but not for non-gun, non-violent crimes (RH, 0.96; 95% CI, 0.81-1.14). Among subjects who were arrested for gun and/or violent crimes following actual or attempted handgun purchase, denied persons were slightly more likely than purchasers to be arrested more than once for such crimes (25.6% and 24.0% respectively, $P=0.120$).

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COMMENTS

In this population of violent misdemeanants who sought to purchase handguns, risk for subsequent criminal activity was high. One person in three was arrested for a new crime at least once within three years of purchasing a handgun; more than one in five were arrested at least once for a new crime involving guns and/or violence. Risk of arrest was directly related to the number of prior convictions subjects had acquired and inversely related to age, relationships that have been documented previously (Blumstein and Cohen 1979; Blumstein, Cohen et al. 1986; Farrington 1987; Tillman 1987; Visher, Lattimore et al. 1991; Wintemute, Drake et al. 1998).

Aggressive efforts to lower the incidence of new crimes among violent misdemeanants appear to be well founded. This may particularly be the case among younger misdemeanants and those with multiple prior convictions, who appear to be at highest risk. However, precisely because of their established pattern of criminal activity, repeat offenders may be less responsive than other misdemeanants to many interventions.

Such interventions operate by one or both of the mechanisms of deterrence and incapacitation. Denial of handgun purchase can be seen as potentially operating by both: deterrence, in that it stigmatizes the behavior of handgun purchase by prohibited persons, and incapacitation, in that it also prevents that purchase, at least from licensed and regulated firearm retailers.

As such, it will be incompletely effective. While some misdemeanants may be susceptible to the level of control embodied in such a policy, others will not. Assuming (erroneously) the existence of entirely complete and up-to-date registries of prohibited persons, no misdemeanants

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would be able to purchase guns from licensed retailers; some would not try. But others might falsify their identification, employ a surrogate or straw purchaser, or -- and perhaps most commonly -- purchase guns from unlicensed and unregulated private vendors. Nationwide, perhaps 40% of all firearm transfers involved these vendors (Cook and Ludwig 1996). While licensed retailers must identify prospective purchasers, initiate background checks, and keep records, unlicensed vendors need see no identification, cannot initiate background checks, and need not keep records (BATF 1999).

Nonetheless, denial of handgun purchase was associated with a moderate decrease in risk of arrest for new gun and/or violent crimes, even when gender, age and prior criminal history were taken into account. Several aspects of our findings suggest that this is a causal association. First, it is specific: denial of handgun purchase had no impact on risk for non-gun, nonviolent crimes. Second, it is plausible: reduced access to guns in a high risk population could be expected to reduce their risk of committing new gun and/or violent crimes, but not other crimes. Third, it is consistent: denial of handgun purchase was associated with a reduced risk for gun and/or violent crimes across the ranges of both age and severity of subjects' prior criminal activity. The magnitude of the effect, furthermore, is similar to that seen in an earlier study of the effectiveness of prohibiting handgun purchases by felons (Wright, Wintemute et al. 1999).

Not surprisingly, denial of handgun purchase appears to have its greatest effect in reducing risk for a first arrest for a gun and/or violent crime. Its effectiveness may diminish as time since actual or attempted handgun purchase increases and among subjects who have already incurred new arrests for gun and/or violent crimes.

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Three attributes of this study suggest that our findings may have minimized the effect of denial of handgun purchase. First, our study compared persons denied in the first year of the new law to those whose purchases were approved in the two prior years. It can plausibly be argued that those who attempted to purchase guns immediately after it became illegal for them to do so - - and the adoption of the law was widely publicized -- demonstrated a continued willingness to violate laws concerning the possession and use of firearms. It reasonably follows from this that such persons would also be at increased risk for committing gun crimes. Nonetheless, our denied persons manifested a lower risk of crimes involving guns or violence.

Second, as a commentator on an earlier version of this study has noted (Blackman 2001), background crime rates were varying at this time; this raises the possibility that a period effect could account for our results. By simple inspection, as Blackman reports, violent crime rose about 9% in the three years following the approved purchases in our comparison cohort, and fell 7% during the three years following the denials. But this comparison is misleading. If one directly compares the crime rate for the first year of follow-up for the approved purchasers to the crime rate for the first year of follow-up for the denied persons, then compares the respective second years, and then compares the respective third years, a very different pattern emerges. California's violent crime rate was higher during each of the first two years of follow-up for persons denied the purchase of a handgun than during the comparable years of follow-up for those whose purchases were approved. The denied persons were nonetheless at lower risk of arrest for gun and/or violent crimes.

The third concerns the 6.7% of study subjects for whom we were unable to obtain independent follow-up. The proportion of subjects without follow-up was not related to study

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cohort assignment (or any other hypothesized risk factor). Among these subjects, purchasers were more likely than denied persons to be arrested for new crimes — by much larger margins than those seen among subjects for whom follow-up was available. Moreover, loss to follow-up was associated with an absolute increase in incidence of first arrest for all types of crime among purchasers, but not among denied persons; including results for persons without follow-up would have raised the incidence of arrest in the former group, but not the latter. These findings suggest that excluding subjects without follow-up has caused us to underestimate both the risk of arrest for new crimes among handgun purchasers and the effects of denial of purchase.

Our findings are subject to several limitations. The small size of the study population limited our statistical power to detect relative risks that were below approximately 1.25, or higher for subgroup analyses. When relative risks are below 1.5, results should be interpreted with caution regardless of the size of the study population due to the potential impact of unmeasured factors.

Rising crime rates may account in part for the puzzling finding that the number of violent misdemeanants seeking to purchase handguns in 1991 was greater than that for 1989 and 1990 combined. Violent crime rates are closely linked to demand for handguns (Wintemute 2000B), and handgun sales in California rose annually between 1986 and 1993. It is also possible that the upsurge in attempted purchases in 1991 represented a misinformed effort on the part of newly-ineligible persons to purchase handguns before the new law was enforced, rather than deliberate attempts to make illegal purchases as discussed above. Accelerated gun sales in anticipation of possible restrictions have been observed previously (Roth and Koper 1997).

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Because the criminal records data were not sufficiently specific, we were unable to categorize crimes systematically as involving guns, violence, both, or neither. We were therefore unable to study the specific effect of California's denial policy on risk of arrest for violent gun crimes. We were, however, able to separate nonviolent gun crimes from violent crimes; the results were very similar to those for all gun and/or violent crimes considered together.

It could be argued that the prevention of nonviolent gun crimes, particularly the illegal carrying of a concealed firearm in public, should not be an objective of policies that deny handgun purchases by persons believed to be at high risk of committing gun violence. We would disagree; illegal gun carrying is a necessary precursor to much violent gun crime, and controlled experiments have shown that law enforcement efforts to interdict illegal carrying have had substantial effects on the incidence of gun violence (Sherman, Shaw et al. 1995; OJJDP 1999).

As in other states, information regarding juvenile offenses is frequently missing from the criminal records. As a result, we are to some degree undercounting offenses prior to handgun purchase. However, it is an important aspect of this study that we are relying on data as they are now routinely gathered and maintained by law enforcement agencies.

Finally, this is a single state study, and no two states have adopted the same expanded denial criteria. New Jersey, for example, denies the purchase of a handgun to "any person who has been convicted of a crime" (RJIS 2000). Replications in several states would provide a more general estimate of the effectiveness of denial of handgun purchase.

Critics of programs to screen prospective purchasers of firearms and deny purchases by prohibited persons have suggested that they are unlikely to be effective, describing them in one case as a "sop to the widespread fear of crime" (Jacobs and Potter 1995). They have argued that

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persons with criminal intent who are prevented from buying guns in the legal market will simply acquire them illegally. However, the formal, legal gun market is an important source of guns for purchasers with criminal intent. Among state prison inmates who were incarcerated for a crime involving a handgun, that handgun was as likely to have come from a gun store as from an obviously illegal supplier (Beck, Gilliard et al. 1993). And aggressive law enforcement has begun to disrupt the operations of the illegal gun market (Wintemute 2000B). Denial of legal access to handguns may have even greater impact now, as illegal access becomes more difficult, than during our study period.

We note that a recent evaluation of the impact of the Brady Handgun Violence Prevention Act, the federally-mandated waiting period and background check for handgun purchases, did not detect an effect on criminal violence (Ludwig and Cook 2000). That evaluation measured changes in state-level homicide rates from 1994-1998. During those years, however, so few persons were denied the purchase of handguns that their expected 20-25% reduction in risk of committing gun and/or violent crimes (Wright, Wintemute et al. 1999) could not have produced a measurable effect on homicide rates (Ludwig and Cook 2000; Wintemute 2000C).

The evidence presented here suggests that denying the purchase of handguns by violent misdemeanants is an effective means of preventing gun-related and violent crime in a high risk population. However, there are substantial logistic considerations to be addressed before such a policy could be implemented nationwide. No federal registry of violent misdemeanants exists, and it may be difficult to compile one (Tien and Rich 1990; OTA 1991). Such a registry would need to be updated on a continuing basis to prevent newly-ineligible persons from purchasing handguns. As discussed earlier, under the present National Instant Check System (NICS), more

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than 3,353 prohibited persons, most of them felons, had inadvertently been permitted to purchase firearms by the end of 1999; their background checks had not been completed within the 72 hours allowed by NICS (GAO 2000). This risk could be minimized by reinstituting a waiting period to allow all background checks to be completed.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<u>JEFFERSON WAYNE SCHRADER, <i>et al.</i></u>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 10-1736(RMC)
)	
ERIC HOLDER, Attorney General, <i>et al.</i> ,)	
)	
Defendants.)	
<u></u>)	

MEMORANDUM OPINION

Back in 1968 when Jefferson Schrader was 20 years old and in the Navy, he was in a fistfight with a member of a gang that had previously attacked him on the street in Annapolis, Maryland. He was arrested and convicted in a Maryland State court of common law misdemeanor assault and battery. He received a \$100 fine and no jail time. Because it was an uncoded common law violation, no State statute specified a maximum term of incarceration. Forty years later, as Mr. Schrader attempted to purchase firearms, his attempts were rebuffed when he was identified in the National Instant Criminal Background Check System ("NICS") as ineligible since his 1968 conviction could have resulted in a sentence of two years or more and federal law prohibited his purchase. *See* 18 U.S.C. § 922(g).

Mr. Schrader challenges the government's application of § 922(g) to his facts and asserts that he has a constitutional right under the Second Amendment to purchase firearms. All parties recognize that federal law bars anyone convicted of certain crimes from purchasing guns, including those convicted of a State-law misdemeanor that is punishable by more than two years in prison. *See* 18 U.S.C. § 921(a)(20)(B). The questions presented are whether an uncoded

misdeemeanor of a garden-variety sort comes within the federal definition and whether, if so, such treatment violates Mr. Schrader's rights under the Second Amendment. The government moves to dismiss and Mr. Schrader cross moves for summary judgment.

I. FACTS

The relevant facts are simple and, unless otherwise stated, uncontested. In July of 1968, Mr. Schrader was enlisted in the Navy and stationed in Annapolis, Maryland. While walking on the streets of Annapolis, Mr. Schrader was assaulted by a street gang for allegedly entering their territory. Sometime later, on or about July 23, 1968, Mr. Schrader was again walking in Annapolis and encountered one of the gang members who had previously assaulted him.¹ A fight broke out, and Mr. Schrader punched the gang member. A nearby police officer arrested Mr. Schrader for assault and battery and disorderly conduct. Eight days later, Mr. Schrader was found guilty of assault and battery and ordered to pay a \$100 fine and \$9 in court costs. Mr. Schrader paid the fine and costs and was released. Aside from this incident, Mr. Schrader has no other convictions and has had no other meaningful encounters with law enforcement.

Forty years later, Mr. Schrader attempted to acquire a shotgun and a handgun for self-defense purposes. As required by the Brady Handgun Violence and Prevention Act, Pub. L. 103-159, 107 Stat. 1536, Mr. Schrader's name and information was checked against the National

¹ Defendants view with skepticism Mr. Schrader's statement that he was previously assaulted by a street gang but have no basis to deny the account. Even if the account were properly disputed it is not material to this decision. Moreover, in granting Defendants' motion, the Court views the facts in a light most favorable to Mr. Schrader. *See, e.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Instant Criminal Background System (“NICS”) to see if he was eligible to purchase a firearm.

The background check revealed Mr. Schrader’s prior conviction, and he was deemed ineligible.

Mr. Schrader wrote to the FBI and asked why his firearms transactions had been cancelled. On June 3, 2009, the FBI advised that it had made a “denial decision” under 18 U.S.C. § 922(g)(1) on the basis of the 1968 Maryland misdemeanor common law assault and battery conviction. The FBI further advised him to dispose of or surrender any firearms he might possess or he could face criminal prosecution. Because the common law misdemeanor for which Mr. Schrader was convicted had no legislatively-capped punishment range, the government treats him as it would a convicted felon for the purpose of federal law, banning him for life from possessing any firearm for any purpose and listing his name in the NICS database as disqualified from owning firearms.

Mr. Schrader complains that the government’s expansive reading of § 922(g)(1) is mistaken. Even assuming that the federal scheme could be read to encompass common law misdemeanants, he complains that the government’s attempt to limit his right to purchase guns under § 922(g)(1) fails constitutional scrutiny under the Second Amendment. Mr. Schrader and the Second Amendment Foundation² filed this lawsuit seeking an order requiring Defendants to remove Mr. Schrader’s firearms disability from NICS pursuant to 18 U.S.C. § 925(a) and permanently enjoining Defendants from enforcing 18 U.S.C. § 922(g)(1) with respect to his

² The Second Amendment Foundation is a non-profit membership organization incorporated under the laws of the State of Washington, with its principal place of business in Bellevue, Washington. It says that it has over 650,000 members and supporters nationwide. 2nd Am. Compl. ¶ 2.

uncodified common law misdemeanor offense on the ground that it has no statutory punishment criteria.

II. LEGAL STANDARDS

A. Jurisdiction and Venue

The Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 2201 (Declaratory Judgment Act). Venue is proper under 28 U.S.C. § 1391.

B. Motion to Dismiss

A motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) challenges the adequacy of a complaint on its face. Fed. R. Civ. P. 12(b)(6). A complaint must be sufficient “to give a defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (2007) (internal citations omitted). Although a complaint does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is “plausible on its face.” *Twombly*, 550 U.S. at 570.

A court must treat the complaint’s factual allegations as true, “even if doubtful in fact.” *Twombly*, 550 U.S. at 555. But a court need not accept as true legal conclusions set forth in a complaint. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). In deciding a motion under Rule 12(b)(6), a court may consider the facts alleged in the complaint, documents attached to the

complaint as exhibits or incorporated by reference, and matters about which the court may take judicial notice. *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059 (D.C. Cir. 2007).

C. Standing

A plaintiff bears the burden of establishing his own standing for each claim that he makes. *Northeastern Fla. Chapter, Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 663 (1993); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1002). Federal courts are courts of limited jurisdiction and a plaintiff must show a “justiciable controversy” with the defendant—one that is “definite and concrete, touching the legal relations of parties having adverse legal interests.” *Aetna Life Ins. Co. V. Haworth*, 300 U.S. 227, 240-41 (1937). To establish constitutional standing, a plaintiff must show an “injury-in-fact,” which means “an invasion of a legally protected interests that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 & n.1. A plaintiff must also demonstrate a “causal connection between the injury and the conduct complained of.” *Id.* Finally, the injury must be redressable by the relief sought in the complaint. *Id.* at 561.

Organizations can establish standing in one of two ways. First, they can demonstrate injury, causality, and redressability in the same way as a traditional plaintiff. *See, e.g., American Legal Found. v. FCC*, 808 F.2d 84, 89 (D.C. Cir. 1987) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982)). Second, an organization can have representational standing “on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of

individual members in the lawsuit.” *Friends of the Earth, Inc. v. Laidlaw Envt’l Servs., Inc.*, 528 U.S. 167, 181 (2000).

III. ANALYSIS

A. Standing

The government contests the standing of both Mr. Schrader and the Second Amendment Foundation. According to the government, Mr. Schrader lacks standing for three reasons. First, he fails to identify where, when or how he intends to purchase or possess a handgun and long gun. Second, his past inability to acquire or possess a firearm legally is not presently harming him so that there is no existing “actual controversy.” *See Haase v. Sessions*, 835 F.2d 902, 911 (D.C. Cir. 1987). Third, the allegations in the Second Amended Complaint are too vague to find that any injury concerning future firearms purchases or possession is traceable to the Defendants or redressable by the Court.

Mr. Schrader presently intends to purchase and possess a handgun and long gun for self-defense within his home. He does not face any of the typical disqualifying barriers under federal gun control laws. He is not under indictment, has never been convicted of a felony or misdemeanor crime of domestic violence, is not a fugitive from justice, is not a user of unlawful controlled substances or an addict, has never been adjudicated as having a mental defect or been committed to a mental institution, has not been discharged under dishonorable circumstances, has never renounced his citizenship, and has never been the subject of a restraining order relating to an intimate partner. *See* 18 U.S.C. § 922(g). He is also fully qualified to possess firearms under the laws of Georgia, his State of citizenship.

Mr. Schrader has been denied the right to purchase guns on two occasions because he is listed in the NICS database as disqualified. He complains that this listing prevents him, now and into the future, from any such exercise of his Second Amendment rights. The government does not dispute this fact but protests that his future intentions are too imprecise.

The Court disagrees. The D.C. Circuit has “consistently treated a license or permit denial pursuant to a state or federal administrative scheme as an Article III injury.” *Parker v. District of Columbia*, 370 F.3d 376 (2007) (collecting cases), *aff’d sub nom. Dist. of Columbia v. Heller*, 554 U.S. 570 (2008). The FBI explained its denial decision in 2009 and Mr. Schrader sued in 2010. There is not a “pre-enforcement challenge,” as to which the Circuit has concluded a plaintiff lacks standing due to the absence of an injury-in-fact. *Id.* at 374 (citing *Seegars v. Gonzales*, 393 F.3d 1248 (D.C. Cir. 2005)). Moreover, Mr. Schrader presents “an actual and well-founded fear that the law will be enforced against [him.]” *Id.* at 375 (quoting *Virginia v. American Booksellers Ass’n*, 484 U.S. 383 (1988)). The Court finds no ambiguity, undue delay, or uncertainty here about Mr. Schrader’s suit or claims. His standing is at least as secure as Dick Heller in *Parker v. D.C.* See also *Dearth v. Holder*, 641 F.3d 499 (D.C. Cir. 2011) (finding standing when plaintiff alleged that he intended to purchase and store a firearm in the United States and that the federal regulatory scheme thwarted his continuing desire to purchase a firearm).

Because the Second Amendment Foundation has not raised issues separate from those raised by Mr. Schrader, the Court need not decide whether it has standing. See *Dearth v. Holder*, 641 F.3d 499, 503 n.* (2011) (citing *Environmental Action, Inc. v. FERC*, 939 F.2d 1057, 1061 n.* (D.C. Cir. 1991)).

B. Applicability of § 922(g)

Although § 922(g)(1) is colloquially referred to as the felon-in-possession statute, that description is underinclusive. *See United States v. Williams*, No. 09-00044-CG-C, 2009 U.S. Dist. LEXIS 70299, at *3 (S.D. Ala. Aug. 11, 2009) (“In fact, felon-in-possession is a misnomer because it is possible under 18 U.S.C. § § 922(g)(1) and 921(a)(20)(B) for a misdemeanor conviction to disqualify a person from possessing a firearm.”). The relevant language prohibits any person convicted of “a crime punishable by imprisonment for a term exceeding one year” from possessing firearms. 18 U.S.C. § 922(g)(1). The statute defines the term “crime punishable by imprisonment for a term exceeding one year” to exclude “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.” 18 U.S.C. § 921(a)(20). The question, thus, is whether Mr. Schrader’s common law assault and battery conviction is a crime “punishable by a term of imprisonment of two years or less.” *Id.*

Neither party disagrees with this analysis. Where they part company is in its application to these facts. The United States contends that when a common law crime is involved, for which a State legislature has set no specific penalty, a court’s sentencing discretion is limited only by the bar to cruel and unusual punishment guaranteed by the Eighth Amendment.³ By this calculus, Mr. Schrader’s assault and battery conviction constituted a State misdemeanor punishable by more than two years. Mr. Schrader responds that uncodified common-law offenses are not “punishable” by any particular statutory criteria and, therefore, do

³ The Eight Amendment states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII.

not fall within the purview of § 922(g) at all. The Government complains that adopting Mr. Schrader's reading of § 922 would eliminate all uncodified common law offenses, regardless of their violence or seriousness, from precluding an individual from carrying firearms. Mr. Scharder responds that adopting the Government's reading of § 922 would lump even the simplest common law offense with violent felonies.

While the parties spend time combing history and dictionaries to make their arguments, the Court need not tarry. There is one insurmountable hole in Mr. Schrader's logic. His argument that the lack of *statutory* criteria makes a common law crime not "punishable" within the meaning of federal law imports a requirement that neither the law nor logic requires or suggests. Whether any particular State has codified its criminal common law cannot limit the effect of federal law. The absence of a legislatively-defined sentence leaves sentencing to the discretion of the judge, limited only by constitutional (federal or State) provisions. Mr. Schrader does not argue, nor could he, that a Maryland State court judge could not have sentenced him, or another offender of the same common law crime, to more than two years in jail.⁴ Thus, his offense was "punishable" by a term of more than two years in jail.

⁴ The actual term of the sentence given is not controlling; only the possibility of punishment of more than two years for a misdemeanor matters for purposes of § 922(g)(1). *See, e.g., United States v. Hill*, 539 F.3d 1213, 1219-21 (10th Cir. 2008) (Section 922(g)(1) was satisfied where maximum federal penalty was 23 months imprisonment even though defendant was only sentenced to ten months); *United States v. Jones*, 195 F.3d 205, 207 (4th Cir. 1999) ("[I]t was plainly irrelevant to Congress whether the individual in question actually receives a prison term; the statute imposes disabilities on one convicted of a crime punishable by imprisonment for a term exceeding one year."); *United States v. Arnold*, 113 F.3d 1146, 1148 (10th Cir. 1997) ("Appellant attempts to rewrite 18 U.S.C. § 922(g)(1) by converting the word 'punishable' into 'punished.' What matters is not the actual sentence . . . but the maximum possible sentence."); *United States v. Qualls*, 108 F.3d 1019, 1021-22 (9th Cir. 1997).

Mr. Schrader further argues that the federalism concerns that undergird our government structure in the United States allow only a State's legislature to decide how harshly it chooses to punish its own crimes and Congress defers to the wisdom of that localized judgment. *See United States v. McKenzie*, 99 F.3d 813, 820 (7th Cir. 1977) (“[W]hile states may vary on what offenses are punishable by a term exceeding one year, it does not alter Congress’ intent to keep guns out of the hands of anyone that a given state determines to be a felon.”). However, the choice of a State legislature to rely on judicial discretion at sentencing on certain common law misdemeanors represents a legislative choice just as the adoption of a statute would. To the extent that reliance on judicial discretion represents legislative “inaction,” only the citizens of the State might change that, not the federal government.⁵ Giving “punishable” its common sense definition does not undermine Maryland’s ability to choose how to punish its citizens who are convicted of State crimes.

Moreover, if Maryland wanted to limit the reach of § 922 to misdemeanants who have been convicted of crimes that carry a *statutory* penalty, it knew how to do so. *See* MD Public Safety Code Ann. § § 5-101, 5-133 (Maryland’s gun control statute prohibits gun ownership by a person convicted of a “misdemeanor in the State that carries a *statutory penalty* of more than 2 years”) (emphasis added). Maryland’s gun control statute indicates that the State legislature appreciated the difference between codified and uncoded penalties and chose

⁵ In fact, since Mr. Schrader’s conviction in 1968, the State of Maryland has codified the common law crime of assault. First Degree Assault is a felony punishable by up to 25 years imprisonment and covers assault that causes or attempts to cause serious physical injuries or that is carried out with a firearm. *See* Md. Criminal Law Code Ann. § 3-202. Second Degree Assault is a misdemeanor punishable by up to 10 years imprisonment and covers all other forms of assault. *See id.* at § 3-203.

not to make such a distinction before it codified this common law criminal misdemeanor. Again, the silence of the State legislature is as telling as its post-1968 action.

The Fourth Circuit Court of Appeals encompasses Maryland, and the United States urges the Court to adopt the reasoning and holdings of Fourth Circuit decisions on point. *See United States v. Coleman*, 158 F.3d 199, 203-04 (4th Cir. 1998) (*en banc*);⁶ *United States v. Hassan El*, 5 F.3d 726, 732-33 (4th Cir. 1993). Mr. Schrader argues that these decisions are flawed and unpersuasive and predated *District of Columbia v. Heller*, 554 U.S. 570 (2008), which held that the Second Amendment protects an individual right to keep and bear arms. Unless there is a possible Second Amendment problem, however, the Court is otherwise persuaded by the Fourth Circuit.

Two more points should be added. First, because Mr. Schrader's Maryland assault and battery conviction actually involved violence, which he admits, his offense was of a kind to which § 922(g)(1) speaks to keep firearms out of the hands of violent offenders. Second, clarity of the criminal laws is necessary for both law enforcement and the people to know and foresee when the law applies. In 1968, Mr. Schrader had no idea that Congress would later pass the Brady Handgun Violence and Prevention Act. As to the precise question here, and without intending any broader application, the Court concludes that federal criminal law enforcement cannot depend on divining the meaning of legislative silence in the 50 States.

⁶ *Coleman* overruled *United States v. Schultheis*, 486 F.2d 1331 (4th Cir. 1973), which had adopted the practice of using the actual sentence imposed on common law offenders to determine status, rather than the range of incarceration for which a crime was "punishable."

B. Alleged Second Amendment Violation

Mr. Schrader also advances a constitutional claim: reading § 922(g) as broadly as the government proposes would run afoul of the Second Amendment as construed by *District of Columbia v. Heller*. *Heller* decided that the Second Amendment confers an individual right to keep and bear arms and not just a collective right to participate in State militias. 554 U.S. at 592 (finding the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation”); *id.* at 594 (“[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.” (emphasis in original)).

Mr. Schrader’s desire to have one or more guns in his house for safety echoes through American history. *Id.* at 611 (quoting *Johnson v. Tompkins*, 13 F. Cas. 840, 850, 852 (CC Pa. 1833) (“a citizen has ‘a right to carry arms in defense of his property or person, and to use them, if either were assailed with such force, numbers or violence as made it necessary for the protection or safety of either.’”)). He correctly relies on *Heller*’s exposition of the history and application of the Second Amendment to argue that there is an individual constitutional right to “keep and bear arms.” U.S. CONST. amend II. *See also Heller*, 554 U.S. at 628 (noting “the inherent right of self-defense has been central to the Second Amendment right”).

Section III of *Heller*, however, notes that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. Most importantly for present purposes, the Supreme Court specified that:

[N]othing in our opinion should be taken to cast doubt on longstanding *prohibitions on the possession of firearms by felons* and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.*

*We identify these presumptively lawful regulatory measures only as examples

Heller, 554 U.S. at 626-27 & n.26. In the decision under review in *Heller*, known below as *Parker v. District of Columbia*, the D.C. Circuit made the same point: “Personal characteristics, such as insanity or felonious conduct, . . . make gun ownership dangerous to society” *Parker*, 478 F.3d at 399.

Parker cited *Lewis v. United States*, 445 U.S. 55, 65 n.8 (1974), for the proposition that “convicted felons may be deprived of their right to keep and bear arms.” 478 F.3d at 399. *Lewis*, in turn, had approvingly cited *United States v. Johnson*, 497 F.2d 34 (4th Cir. 1974), for its holding that § 922(g) does not violate the Second Amendment because “the Second Amendment only confers a collective right of keeping and bearing arms which bear a ‘reasonable relationship to the preservation or efficiency of a well regulated militia.’” *Lewis*, 445 U.S. at 65 n.8 (citation omitted). *Parker* and *Heller*, of course, discarded the theory that the Second Amendment does not guarantee an individual right. The D.C. Circuit explained its reliance on the result, if not the rationale, of *Lewis* and *Johnson*, by instructing that regulations on the use and ownership of guns “promote the government’s interest in public safety consistent with our common law tradition . . . [and] do not impair the core conduct upon which the right was premised.” *Parker*, 478 F.3d at 399.

It must be noted that the definition which so offends Mr. Schrader's constitutional sensibilities was added to § 921(a) on October 22, 1968, the year of his infamous encounter with a gang member whom he punched on the streets of Annapolis. *See Gun Control Act of 1968*, Pub. L. 90-618, 82 Stat. 1213. The law was adopted "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence" but not to "place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens" *Id.* The bill amended 18 U.S.C. § 921(a)(20)(B) to provide that the term "'crime punishable by imprisonment for a term exceeding one year' shall not include . . . (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." *Id.* While § 921(a)(20)(B) no longer includes the parenthetical phrase, the language which covers Mr. Schrader's old crime was made a part of the statute in the very year of its commission. No challenge to the definition has been raised successfully in the decades since. Its hoary age strongly suggests no constitutional impediment and, indeed, the Court finds none under *Heller*'s reading of the Second Amendment or the caselaw that preceded *Heller*.

IV. CONCLUSION

Mr. Schrader presents neither a statutory claim nor a constitutional one against the enforcement of 18 U.S.C. §§ 922(g)(1) and 921(a)(20)(B) against him. His real complaint is with the 1993 Brady Handgun Violence Prevention Act which ordered the Attorney General to establish and rely on NICS for nationwide tracking of federal and State crimes. Mr. Schrader may have completely forgotten his fistfight of 40 years ago but this Court cannot say that the FBI's memory of it was faulty in any respect. The Defendants' motion to dismiss [Dkt. # 20]

will be granted, and Mr. Schrader's cross motion for summary judgment [Dkt. # 21] will be denied. A memorializing Order accompanies this Memorandum Opinion.

Date: December 23, 2011

/s/
ROSEMARY M. COLLYER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFERSON WAYNE SCHRADER *et al.*

Plaintiffs,

v.

ERIC HOLDER, Attorney General, *et al.*,

Defendants.

Civil Action No. 10-1736(RMC)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is:

ORDERED that Defendants' motion to dismiss [Dkt. # 20] is **GRANTED**; and it is

FURTHER ORDERED that Plaintiffs' motion for summary judgment [Dkt. # 21] is **DENIED**; and it is

FURTHER ORDERED that the case is **DISMISSED**. This is a final appealable order. *See* Fed. R. App. P. 4(a). This case is closed.

Date: December 23, 2011

/s/
ROSEMARY M. COLLYER
United States District Judge

[CHAPTER 850]		AN ACT
June 30, 1938 [S. 3] [Public, No. 785]		To regulate commerce in firearms.
Federal Firearms Act.	Definitions.	<i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act—</i>
	"Person."	(1) The term "person" includes an individual, partnership, association, or corporation.
	"Interstate or foreign commerce."	(2) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession (including the Philippine Islands but not including the Canal Zone), or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession (including the Philippine Islands but not including the Canal Zone), or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.
	"Firearm."	(3) The term "firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon.
	"Manufacturer."	(4) The term "manufacturer" means any person engaged in the manufacture or importation of firearms, or ammunition or cartridge cases, primers, bullets, or propellant powder for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this Act.
	"Dealer."	(5) The term "dealer" means any person engaged in the business of selling firearms or ammunition or cartridge cases, primers, bullets or propellant powder, at wholesale or retail, or any person engaged in the business of repairing such firearms or of manufacturing or fitting special barrels, stocks, trigger mechanisms, or breach ¹ mechanisms to firearms, and the term "licensed dealer" means any such person licensed under the provisions of this Act.
	"Licensed dealer."	
	"Crime of violence."	(6) The term "crime of violence" means murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.
	"Fugitive from justice."	(7) The term "fugitive from justice" means any person who has fled from any State, Territory, the District of Columbia, or possession of the United States to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.
	"Ammunition."	(8) The term "ammunition" shall include all pistol or revolver ammunition except .22-caliber rim-fire ammunition.
Unlawful acts, etc., of firearms or ammunition without license.		SEC. 2. (a) It shall be unlawful for any manufacturer or dealer, except a manufacturer or dealer having a license issued under the provisions of this Act, to transport, ship, or receive any firearm or ammunition in interstate or foreign commerce.
Knowingly receiving same.		(b) It shall be unlawful for any person to receive any firearm or ammunition transported or shipped in interstate or foreign commerce in violation of subdivision (a) of this section, knowing or having reasonable cause to believe such firearms or ammunition to have been transported or shipped in violation of subdivision (a) of this section.
Transportation, etc., to other than licensed manufacturer or dealer.		(c) It shall be unlawful for any licensed manufacturer or dealer to transport or ship any firearm in interstate or foreign commerce to any person other than a licensed manufacturer or dealer in any State the laws of which require that a license be obtained for the purchase of such firearm, unless such license is exhibited to such manufacturer or dealer by the prospective purchaser.

¹ So in original.

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(d) It shall be unlawful for any person to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is under indictment or has been convicted in any court of the United States, the several States, Territories, possessions (including the Philippine Islands), or the District of Columbia of a crime of violence or is a fugitive¹ from justice.

Shipment to person
under indictment, etc.

(e) It shall be unlawful for any person who is under indictment or who has been convicted of a crime of violence or who is a fugitive¹ from justice to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm or ammunition.

Shipment by person
under indictment, etc.

(f) It shall be unlawful for any person who has been convicted of a crime of violence or is a fugitive¹ from justice to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this Act.

Receipt by person
convicted of crime of
violence, etc.

(g) It shall be unlawful for any person to transport or ship or cause to be transported or shipped in interstate or foreign commerce any stolen firearm or ammunition, knowing, or having reasonable cause to believe, same to have been stolen.

Transportation of
stolen firearms, etc.

(h) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any firearm or ammunition or to pledge or accept as security for a loan any firearm or ammunition moving in or which is a part of interstate or foreign commerce, and which while so moving or constituting such part has been stolen, knowing, or having reasonable cause to believe the same to have been stolen.

Traffic in stolen
firearms.

(i) It shall be unlawful for any person to transport, ship, or knowingly receive in interstate or foreign commerce any firearm from which the manufacturer's serial number has been removed, obliterated, or altered, and the possession of any such firearm shall be presumptive evidence that such firearm was transported, shipped, or received, as the case may be, by the possessor in violation of this Act.

Transportation of
firearms from which
serial number has been
removed.

SEC. 3. (a) Any manufacturer or dealer desiring a license to transport, ship, or receive firearms or ammunition in interstate or foreign commerce shall make application to the Secretary of the Treasury, who shall prescribe by rules and regulations the information to be contained in such application. The applicant shall, if a manufacturer, pay a fee of \$25 per annum and, if a dealer, shall pay a fee of \$1 per annum.

Licenses, applica-
tion, fee.

(b) Upon payment of the prescribed fee, the Secretary of the Treasury shall issue to such applicant a license which shall entitle the licensee to transport, ship, and receive firearms and ammunition in interstate and foreign commerce unless and until the license is suspended or revoked in accordance with the provisions of this Act: *Provided*, That no license shall be issued to any applicant within two years after the revocation of a previous license.

Issuance.

(c) Whenever any licensee is convicted of a violation of any of the provisions of this Act, it shall be the duty of the clerk of the court to notify the Secretary of the Treasury within forty-eight hours after such conviction and said Secretary shall revoke such license: *Provided*, That in the case of appeal from such conviction the licensee may furnish a bond in the amount of \$1,000, and upon receipt of such bond acceptable to the Secretary of the Treasury he may permit the licensee to continue business during the period of the appeal, or should the licensee refuse or neglect to furnish such bond, the Secre-

Proviso.
Issuance after revo-
cation.

Revocation on con-
viction of licensee.

Proviso.
Temporary continu-
ance; bond.

¹ So in original.

	tary of the Treasury shall suspend such license until he is notified by the clerk of the court of last appeal as to the final disposition of the case.
Dealers' records.	(d) Licensed dealers shall maintain such permanent records of importation, shipment, and other disposal of firearms and ammunition as the Secretary of the Treasury shall prescribe.
Exemptions.	SEC. 4. The provisions of this Act shall not apply with respect to the transportation, shipment, receipt, or importation of any firearm, or ammunition, sold or shipped to, or issued for the use of, (1) the United States or any department, independent establishment, or agency thereof; (2) any State, Territory, or possession, or the District of Columbia, or any department, independent establishment, agency, or any political subdivision thereof; (3) any duly commissioned officer or agent of the United States, a State, Territory, or possession, or the District of Columbia, or any political subdivision thereof; (4) or to any bank, public carrier, express, or armored-truck company organized and operating in good faith for the transportation of money and valuables; (5) or to any research laboratory designated by the Secretary of the Treasury: <i>Provided</i> , That such bank, public carriers, express, and armored-truck companies are granted exemption by the Secretary of the Treasury; nor to the transportation, shipment, or receipt of any antique or unserviceable firearms, or ammunition, possessed and held as curios or museum pieces: <i>Provided</i> , That nothing herein contained shall be construed to prevent shipments of firearms and ammunition to institutions, organizations, or persons to whom such firearms and ammunition may be lawfully delivered by the Secretary of War, nor to prevent the transportation of such firearms and ammunition so delivered by their lawful possessors while they are engaged in military training or in competitions.
Federal, State governments, agencies, etc.	
Banks, carriers, etc.	
Research laboratories.	
Provisos.	
Exemptions granted by Secretary of Treasury.	
Antiques, curios, etc.	
Shipments to designated institutions or persons.	
Military training, etc.	
Penalty provisions.	SEC. 5. Any person violating any of the provisions of this Act or any rules and regulations promulgated hereunder, or who makes any statement in applying for the license or exemption provided for in this Act, knowing such statement to be false, shall, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than five years, or both.
Effective date.	SEC. 6. This Act shall take effect thirty days after its enactment.
Rules and regulations.	SEC. 7. The Secretary of the Treasury may prescribe such rules and regulations as he deems necessary to carry out the provisions of this Act.
Separability of provisions.	SEC. 8. Should any section or subsection of this Act be declared unconstitutional, the remaining portion of the Act shall remain in full force and effect.
Short title.	SEC. 9. This Act may be cited as the Federal Firearms Act.
	Approved, June 30, 1938.

[CHAPTER 851]

AN ACT

June 30, 1938
[S. 1131]
[Public, No. 786]

To amend the part of the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1921, and for other purposes", approved June 4, 1920, relating to the conservation, care, custody, protection, and operation of the naval petroleum and oil-shale reserves.

Naval petroleum reserves.
41 Stat. 813.
34 U. S. C. § 524.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the part of the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1921, and for other purposes", approved June 4, 1920 (41 Stat. 813), relating to the conservation, care, custody, protection, and operation of the naval petroleum and

"Sec. 309. Suspension of licenses; cease and desist orders.

"Sec. 310. Investigations.

"Sec. 311. Injunctions and other orders."

(2) The table of contents of such Act is further amended by striking out

"TITLE IV—CONVERSION OF STATE CHARTERED INVESTMENT COMPANIES AND STATE DEVELOPMENT COMPANIES".

(h) (1) Section 202 of such Act is amended by striking out "(a)" where it appears immediately after "SEC. 202.", and by striking out subsection (b).

15 USC 633.

15 USC 672.

15 USC 631 note.

(2) Section 20 of the Small Business Act is amended by inserting before the period at the end thereof the following: "other than those for which appropriations to the revolving fund are authorized by section 4(c)".

Ante, pp. 167, 666.

(3) So much of the first sentence of section 4(c) of the Small Business Act (as amended by section 3 of the Small Business Act Amendments of 1961) as precedes "not to exceed" is amended to read as follows: "The Administration is authorized to obtain money from the Treasury of the United States for use in the exercise of its functions under sections 7(a), 7(b), and 8(a) and under the Small Business Investment Act of 1958 (including the payment of administrative expenses in connection with such functions)."

Ante, p. 666.

Ante, p. 167.
15 USC 636, 637.
72 Stat. 689.
15 USC 661 note.

(4) Section 4(c) of such Act (as so amended) is further amended by striking out the fourth sentence.

SEC. 12. Section 4(c) of the Small Business Act (as amended by section 3 of the Small Business Act Amendments of 1961) is further amended—

(1) by striking out "\$1,125,000,000" each place it appears and inserting in lieu thereof "\$1,200,000,000"; and

(2) by striking out "\$250,000,000" and inserting in lieu thereof "\$325,000,000".

Approved October 3, 1961.

Public Law 87-342

AN ACT

To strengthen the Federal Firearms Act.

October 3, 1961
[S. 1750]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Federal Firearms Act, as amended (52 Stat. 1250; 15 U.S.C. 901-909), is further amended by repealing paragraph (6), by deleting the words "crime of violence" in paragraph (7) and inserting in lieu thereof the words "crime punishable by imprisonment for a term exceeding one year", and by renumbering paragraphs (7) and (8) as paragraphs (6) and (7).

Transportation of firearms.

SEC. 2. Section 2 of such Act is amended by deleting the words "crime of violence" in subsections (d), (e), and (f) and inserting in lieu thereof the words "crime punishable by imprisonment for a term exceeding one year".

Approved October 3, 1961.

CERTIFICATE OF SERVICE

I certify that on this 20th day of April, 2012, I filed the foregoing Appendix electronically with the Clerk of the Court using the CM/ECF System. On April 20th, 2012, I served a true and correct copy of the foregoing Appendix on the following by Federal Express:

Jane M. Lyons
United States Attorney's Office
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7161

I further certify that on this, the 20th day of April, 2012, I served the electronic copy of the foregoing Appendix on above-listed counsel by email to jane.lyons@usdoj.gov

The Appendix was also filed this day by dispatch to the Clerk via Federal Express.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 20th day of April, 2012.

/s/ Alan Gura
Alan Gura

Counsel for Plaintiffs-Appellants