

19-56004

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN RUPP, et al.,

Plaintiffs-Appellants,

v.

**XAVIER BECERRA, in his official capacity
as Attorney General of the State of
California;**

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California

Case No. 8:17-cv-00746-JLS-JDE
The Honorable Josephine L. Staton, Judge

**DEFENDANT-APPELLEE'S
SUPPLEMENTAL EXCERPTS OF
RECORD**

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SUPPLEMENTAL EXCERPTS OF RECORD**

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

STEVEN RUPP, et al.,)
Plaintiffs,)
vs.) 8:17-cv-00746-JLS-JDE
XAVIER BECERRA, in his)
official capacity as)
Attorney General of the)
State of California; et al.,)
Defendants.)

DEPOSITION OF WILLIAM ENGLISH, Ph.D.

WASHINGTON, D.C.

DECEMBER 12, 2018

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IN THE UNITED STATES DISTRICT COURT
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STEVEN RUPP, et al.,)

Plaintiffs,)

vs.) 8:17-cv-00746-JLS-JDE

XAVIER BECERRA, in his)

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Defendants.)

Deposition of WILLIAM ENGLISH, Ph.D.,
taken on behalf of Defendants at the Law Offices of
Cooper & Kirk, PLLC, 1523 New Hampshire Avenue,
N.W., Washington, D.C. at 9:01 a.m., Wednesday,
December 12, 2018, before Jennifer M. O'Connor, a
Notary Public in and for the District of Columbia.

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1 A Very good.

2 Q -- 30510 and 30515 that we talked about
3 and that are being challenged here.

4 A Yes.

5 Q Just so we're on the same page on
6 terminology. And when I say -- I'll say -- and you
7 know, I may refer to the prohibited features. When
8 I say that, I will mean these five --

9 A Understood, yes.

10 Q -- features, not including grenade
11 launcher, but the other five features identified in
12 Penal Code Section 30515 (a)(1). Okay? All right,
13 go back. Okay.

14 When we left off -- we're on page 53 of
15 Exhibit 62. So, you know, this particular report
16 doesn't provide the 14 million fire -- number for
17 2015 for NICS -- adjusted NICS number, correct? But
18 you did some independent research and the 14 million
19 number was --

20 A The number's in fact correct, yes.

21 Q Is correct.

22 A And I had to estimate based on this

1 report, but it is indeed independently -- what I saw
2 there was subsequently verified as correct.

3 Q If you look on -- if you look on page 48
4 -- well, let me -- if you could look on page 49.

5 A 49.

6 Q So this is federal NICS long gun
7 background checks in 2015. And this number, just
8 like the other number we looked at, ends in
9 September 2015, correct?

10 A Yes. September's the last month.

11 Q Okay. Do you have -- do you know what the
12 numbers are for the remainder of 2015?

13 A No, that would be contained in the next
14 year's report. It would be easy to find, but I
15 don't know them off the top of my head.

16 Q And where did you get this -- this NSSF
17 report?

18 A Did you say where or when?

19 Q Where.

20 A Oh. So the law firm that had contacted
21 me, Sean Brady was a lawyer I was corresponding
22 with. And the -- as I began doing my research, I

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1 was able to identify reports that I thought would be
2 useful but I'd want to look at, and so I
3 corresponded with Sean Brady and asked the law firm
4 if they could procure these for me.

5 Q When did you make that request?

6 A Oh, I don't know the specific date, but --

7 Q Approximately.

8 A -- sometime in the last few months, yeah.

9 Or I guess it would have been shortly after I was
10 asked to --

11 Q Before you prepared this report, correct?

12 A Right. Yes. Before.

13 Q And say there -- in preparing your report,
14 you listed four separate NSSF reports --

15 A Yes.

16 Q -- as references in the reference section
17 of your opening report, correct?

18 A That's correct.

19 Q And Mr. Brady -- did Mr. Brady give you
20 copies of all these reports?

21 A I believe some of them I actually found
22 online. There were -- you had to do some searching.

1 So I think at least one. I'm not certain though,
2 but he did give me some of them.

3 Q Did you have to pay for any of them?

4 A I did not have to pay.

5 Q Okay. I'm going to hand you, it's Exhibit
6 63.

7 (English Deposition Exhibit No. 63 was
8 marked for identification.)

9 BY MR. CHANG:

10 Q Have you seen this document before,
11 Professor?

12 A Yes. I may have seen this 2017 version.
13 I'm not sure the precise year, but yes, this -- this
14 document, the Bureau of Alcohol, Tobacco and
15 Firearms, post year by year and I've certainly seen
16 versions of it. Yeah, this is the year that I
17 referred to.

18 Q So if you look at the second -- or the
19 page numbered one --

20 A Yes.

21 Q -- it's titled "Firearms Manufactured,"
22 correct?

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1 A Yes.

2 Q And if you look at the number for calendar
3 year 2015, it shows that according to this BATFE
4 report, 9,358,661 firearms were manufactured,
5 correct?

6 A Correct.

7 Q That's total in the United States?

8 A Yeah.

9 Q Do you know how many firearms were
10 imported into the United States in 2015?

11 A Not off the top of my head. It should be
12 contained in another bureau report that I cite.

13 Q Do you recall which bureau report?

14 A Yeah, so that -- you see the United States
15 Department of Justice Bureau Alcohol, Tobacco,
16 Firearms, Explosives, multiple years available at
17 that website. That website site right there has the
18 maybe export reports, import reports.

19 Q This --

20 A It may actually be here. Let me just
21 check clear -- rest of this report, that it might be
22 contained here as well.

1 centerfire rifle or a rimfire rifle.

2 So there is a high degree of modularity
3 and customization. So it's -- I know the NSSF
4 report on MSRs finds that 4 percent of AR platform
5 rifle MSRs are .22 rimfire and so that's a very
6 small number. You know, you can, if you like,
7 discount the 15 million by 4 percent, but the thing
8 to keep in mind though is even if it's -- it's
9 potential -- it's possible for an AR-15 rimfire
10 rifle to be converted to a centerfire rifle and vice
11 versa.

12 Now, there could be further, you know,
13 structural design changes that make those sorts of
14 conversions more or less possible, but there is a
15 certain intra-operability to this rifle. It's a
16 modular platform.

17 Q Sure. I'm just saying, the -- you know,
18 the 15 million AR-15 rifle number you provide in
19 your report, that's just on the, you know, the lower
20 receiver part. They can put a rimfire -- they can
21 make it rimfire, they can make it centerfire, they
22 can add features, they can remove the features. I

1 mean, the 15 million number that -- estimate that
2 you provide in your report includes all those
3 configurations, correct?

4 A So I should -- it's important to note here
5 that Clossman and Long are only counting rifles.
6 They're not counting lowers and they're explicit
7 about that. And they're also not counting pistols,
8 which in this case can be as simple as taking the
9 same firearm action and removing stock and having a
10 short barrel.

11 So that's important to know as well. So
12 the -- so they're not counting many things that also
13 might qualify here, but if you want to exercise an
14 abundance of caution, then yeah, the 15 million
15 number, based on the NSSF number, you could discount
16 that by 4 percent if you wanted to make sure that
17 you're excluding at least what the AR-15 users
18 account as the percentage of rimfire rifles out
19 there.

20 Q My question is just, you know, the number
21 you provide, if the estimate of 15 million AR-15
22 rifles --

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1 A That's right.

2 Q -- in the United States, that number
3 includes AR-15 rifles that are -- have been
4 configured to be rimfire rifles and the AR-15 rifles
5 have been configured to be featureless, correct?

6 A Yes.

7 Q I'd like you to turn to page 34 of the
8 Clossman and Long paper. Well, I guess let me ask a
9 more general question.

10 Based on the Clossman and Long paper, can
11 you tell how many M4/AR-15s were sold in California
12 between 2004 and 2013? Well, let me -- I'll direct
13 your --

14 A Yeah, so you're talking on page 34 here?

15 Q On page 34, right. So let me strike my
16 question. I'll restate it.

17 Page 34, Clossman and Long stated that --
18 they assumed California had purchased over 526,000
19 M4/AR-15s, correct?

20 A Yes.

21 Q Do you know how they reached that
22 estimate?

1 A So reading in the prior pages, it appears
2 that the -- this is based on the NICS checks. So
3 looking at NICS checks and multiplying that by the
4 percentage of AR-15s manufactured each year, that's
5 the kind a market share, I believe, if I've
6 understood this right, that the NICS data is broken
7 down by state. Yeah.

8 Q Okay. So looking at the NICS data,
9 Clossman and Long estimated that 526,000 -- or over
10 526,000 M4/AR-15s were sold in California between
11 2004 and 2013, correct?

12 A Yes, that's their estimate there on page
13 34.

14 Q Okay. And Clossman and Long also
15 estimated that between 2004 and 2016, 4.6 million
16 M4/AR-15s were sold in the United States, correct?

17 A That's correct.

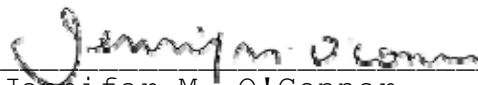
18 Q So based on those numbers, California was
19 about approximately 11 percent of the total U.S.
20 market for M4/AR-15s, correct?

21 A Again, just to clarify the methods here, I
22 take it that they're looking at NICS data from the

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CERTIFICATE OF NOTARY PUBLIC

I, JENNIFER M. O'CONNOR, the officer before
whom the foregoing deposition was taken, do hereby
certify that the foregoing witness whose testimony
appears in the foregoing deposition was duly sworn
by me; that the testimony of said witness was
recorded by me and thereafter reduced to typewriting
by me; that said transcript is a true record of the
testimony given by said witness; that I am neither
Counsel for, related to, nor employed by any of the
parties to the action in which this proceeding was
called; and, furthermore, that I am not a relative
or employee of any attorney or Counsel employed by
the parties hereto, nor financially or otherwise
interested in the outcome of this action



Jennifer M. O'Connor
Notary Public in and for the
District of Columbia
My Commission Expires on February 14, 2020

(Signature not waived.)

