

No. 23-55276

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LANCE BOLAND; MARIO SANTELLAN; RENO MAY; JEROME SCHAMMEL; AND
CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED,
Plaintiffs-Appellees,

v.

ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant-Appellant.

**On Appeal from the United States District Court
for the Central District of California**
No. 22-cv-1421-CJC-ADS
The Honorable Cormac J. Carney, Judge

**EXCERPTS OF RECORD
VOLUME 2 OF 7**

ROB BONTA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
P. PATTY LI
Supervising Deputy Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General
ANTHONY R. HAKL
Supervising Deputy Attorney General

CHARLES J. SAROSY
Deputy Attorney General
State Bar No. 302439
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6356
Fax: (916) 731-2119
Email: Charles.Sarosy@doj.ca.gov
Attorneys for Defendant-Appellant

April 28, 2023

ER-0026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 31 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LANCE BOLAND, an individual; et al.,

Plaintiffs-Appellees,

v.

ROB BONTA, in his official capacity as
Attorney General of the State of California,

Defendant-Appellant,

and

DOES, 1-10,

Defendant.

No. 23-55276

D.C. No.

8:22-cv-01421-CJC-ADS

Central District of California,
Santa Ana

ORDER

Before: TASHIMA, S.R. THOMAS, and KOH, Circuit Judges.

The motion (Docket Entry No. 5) to take judicial notice in support of the opposition to the emergency motion for partial stay is granted.

The emergency motion (Docket Entry No. 2) to stay in part the district court's March 20, 2023 preliminary injunction pending appeal is granted. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). The preliminary injunction is stayed as to the chamber load indicator and magazine disconnect mechanism requirements of California's Unsafe Handgun Act. *See* Cal. Penal Code § 31910(b)(4), (5).

The opening brief is due April 28, 2023. The answering brief is due May

26, 2023. The option reply brief is due within 21 days after service of the answering brief. *See* 9th Cir. R. 3.3.

No streamlined extensions of time will be approved. *See* 9th Cir. R. 31-2.2(a)(3). The Clerk will place this on the next available calendar upon the completion of briefing. *See* 9th Cir. Gen. Ord. 3.3(f).

C.D. Michel – SBN 144258
cmichel@michellawyers.com
Joshua Robert Dale – SBN 209942
jdale@michellawyers.com
Sean A. Brady – SBN 262007
sbrady@michellawyers.com
Alexander A. Frank – SBN 311718
afrank@michellawyers.com
Konstadinos T. Moros – SBN 306610
kmoros@michellawyers.com
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445

Attorneys for Plaintiffs Lance Boland, Mario
Santellan, Reno May, Jerome Schammel, and
California Rifle & Pistol Association,
Incorporated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LANCE BOLAND, an individual;
MARIO SANTELLAN, an individual;
RENO MAY, an individual; JEROME
SCHAMMEL, an individual;
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED, a
California corporation;

Plaintiff,

v.

ROBERT BONTA, in his official capacity
as Attorney General of the State of
California; and DOES 1-10

Defendants.

Case No. 8:22-cv-01421-CJC(ADSx)

**DECLARATION OF ALEXANDER
A. FRANK IN SUPPORT OF
PLAINTIFFS' COURT-ORDERED
SUPPLEMENTAL BRIEFING IN
SUPPORT OF THEIR MOTION FOR
PRELIMINARY INJUNCTION**

DECLARATION OF ALEXANDER A. FRANK

I, Alexander A. Frank, declare:

1. I am a member of the bars of the State of California. I am an attorney at law, duly licensed to practice in the State of California and before the United States District Court for the Central District of California. My law firm, Michel & Associates, P.C., is counsel of record for Plaintiffs in this action. I submit this declaration in support of Plaintiffs' court ordered post MPI supplemental briefing.

2. Attached as **Exhibit 1** is a true and correct copy of a research study conducted by academic researchers affiliated with University of California, Davis, which found that for the period of 2005-2015, non-fatal firearm injuries in California remained "relatively" stable. Spitzer, et al., Incidence, Distribution, and Lethality of Firearm Injuries in California From 2005 to 2015, JAMA Network Open 1 (2020) https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2769831?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=082620. (Last visited February 14, 2023).

3. Attached as **Exhibit 2** is a true and correct copy of Senator Skinner's Senate Bill 377.

4. Attached as **Exhibit 3** is a true and correct copy of Mr. Cornell's declaration submitted in the *Renna v. Bonta* matter.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed within the United States on February 24, 2023.

s/Alexander A. Frank

Alexander A. Frank, declarant

EXHIBIT “1”

ER-0031



Original Investigation | Public Health

Incidence, Distribution, and Lethality of Firearm Injuries in California From 2005 to 2015

Sarabeth A. Spitzer, MD; Veronica A. Pear, MPH; Christopher D. McCort, MS; Garen J. Wintemute, MD, MPH

Abstract

IMPORTANCE Little is known about nonfatal firearm injuries in the United States, and national estimates based on emergency department samples may not be accurate.

OBJECTIVE To describe the incidence and distribution of nonfatal firearm injuries and estimate case fatality ratios (CFRs) for firearm injuries by external cause of injury code within California overall and by race/ethnicity, including an assessment of trends over time and geographic variation within the state.

DESIGN, SETTING, AND PARTICIPANTS This serial cross-sectional study used complete statewide data for firearm-related mortality, emergency department visits, and hospitalizations among California residents from January 1, 2005, through December 31, 2015, to analyze incidence, distribution, and CFRs of firearm injury. Data were analyzed from 2018 to 2019.

EXPOSURES All individuals in California with a firearm injury based on *International Classification of Diseases, Ninth Revision* or *International Statistical Classification of Diseases and Related Health Problems, Tenth Revision* codes were included.

MAIN OUTCOMES AND MEASURES Counts and rates of nonfatal firearm injuries overall and stratified by external cause, sex, and race/ethnicity; total and clinical CFRs. Clinical CFR was calculated based on individuals treated in emergency departments or hospitals.

RESULTS Over the study period, there were 81 085 firearm-related emergency department visits and hospitalizations among individuals with a mean (SD) age of 27.5 (11.9) years, 72 567 (89.6%) of whom were men. Nonfatal firearm injuries in California decreased by 38.1% between 2005 and 2015, driven by a 46.4% decrease in assaultive injuries. Self-inflicted injuries and unintentional injuries remained relatively stable. The overall CFR for firearm injuries increased from 27.6% in 2005 to 32.2% in 2015 for a relative increase of 20.7%, while the clinical CFR remained stable between 7.0% and 9.0%.

CONCLUSIONS AND RELEVANCE These findings suggest that although the number of firearm injuries has decreased in California, the lethality of these injuries has not. Similar studies from other states could provide more information about these trends nationwide.

JAMA Network Open. 2020;3(8):e2014736. doi:10.1001/jamanetworkopen.2020.14736

Key Points

Question What were the trends and distributions of nonfatal firearm injuries and how lethal were firearm injuries in California from 2005 to 2015?

Findings This serial cross-sectional study including 81 085 firearm-related emergency department visits and hospitalizations found that nonfatal firearm injuries decreased by 38.1% between 2005 and 2015, driven by a 46.4% decrease in assaultive injuries; self-inflicted injuries decreased by 13.4% and unintentional injuries decreased by 12.7%. However, the overall case fatality ratio increased a relative 20.7%, while the clinical case fatality ratio remained stable.

Meaning These findings suggest that although the number of firearm injuries has decreased in California, the lethality of these injuries has not; studies from other states could help clarify national trends.

+ Supplemental content

Author affiliations and article information are listed at the end of this article.

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JAMA Network Open. 2020;3(8):e2014736. doi:10.1001/jamanetworkopen.2020.14736

August 26, 2020 1/11

Introduction

Firearm injury is a significant cause of morbidity and mortality in the United States, resulting in more than 350 000 deaths and a far larger number of nonfatal injuries nationwide from 2005 through 2015.¹ In 2018, firearm-related deaths in the US exceeded those from motor vehicle crashes.¹ For individuals who survive firearm injuries, the long-term physical and psychological effects can be devastating.² Survivors and their families may face large costs as a result of their injuries, both economically and socially. Total societal costs have been previously estimated to be as high as \$229 billion annually and have likely increased.³

There are currently only imprecise estimates of the number of annual nonfatal firearm injuries in the US. The accuracy of nonfatal firearm injury estimates by the Centers for Disease Control and Prevention (CDC) have come under scrutiny, sparked by a surprising 37% reported increase in nonfatal injuries from 2015 to 2016, when fatal injuries increased by only 6.6%.¹ The contrast motivated several research reports regarding the case fatality ratio (CFR) of firearm injury.⁴⁻⁹ The CDC data, if accurate, would suggest that the lethality of firearm injury is decreasing.³ However, this suggestion has been contested by clinicians and researchers alike.⁴⁻⁸ The CDC no longer provides estimates of nonfatal firearm assaults for the years 2007 and 2013 to 2018 or of nonfatal self-harm with a firearm for 2001 to 2011 and 2013 to 2018, stating that the estimates are unstable.¹

California's statewide enumeration of emergency department (ED) visits and hospitalizations for firearm injuries, coupled with mortality data, offers a unique opportunity to explore the incidence and distribution of nonfatal firearm injury and estimate trends in the CFR over time overall and by external cause of injury (ie, assault, self-inflicted, unintended, and undetermined) codes. A study by Pear and colleagues¹⁰ previously described the incidence and distribution of firearm mortality in California, but to our knowledge, there are no peer-reviewed studies that explore the incidence and distribution of nonfatal firearm injury in the state. This report complements our previous mortality study¹⁰; together, given California's size as well as its demographic and geographic diversity, these studies advance our understanding of the incidence, distribution, and lethality of firearm injuries.

Methods

This study was approved by the University of California, Davis, institutional review board and the California Committee for the Protection of Human Subjects (CPHS). Informed consent was waived per CPHS policy because this study involved no more than minimal risk to participants and data were not identified. This study is reported following the Strengthening the Reporting of Observational Studies in Epidemiology (STROBE) reporting guideline.

This serial cross-sectional study used state-wide data from California's Office of Statewide Health Planning and Development (OSHPD) for individuals treated in an ED or discharged from a hospital between January 1, 2005, and December 31, 2015. These databases contain all ED and inpatient records from California-licensed hospitals. Additionally, CDC WISQARS data were used for fatal firearm injury data.

We used *International Classification of Diseases, Ninth Revision (ICD-9)*¹¹ codes E922 (O.0-.3, O.8, O.9), E955 (O.0-.4), E965 (O.0-.4), E979.4, E985 (O.0-.4), and E970 to identify all admissions for firearm injuries from 2005 through 2015. Reporting changed from ICD-9 to *International Statistical Classification of Diseases and Related Health Problems, Tenth Revision (ICD-10)*¹² codes in October 2015. Therefore, for the last quarter of 2015, we used initial encounter (A) ICD-10 codes W32-33, W34 (O.00, O.09, O.10, O.19), X72, X73, X74 (O.8, O.9), X93, X94, X95 (O.8, O.9), Y22-3, Y24 (O.8, O.9), Y35.0, and Y38.4. External cause of injury codes are used to identify admissions related to injury, and these codes correspond to firearm injuries of all causes (eg, assault, self-harm) and all weapon types (eg, handguns, rifles). Owing to small numbers, we grouped codes for terrorism or legal intervention with assaults. We used admission dates to identify firearm injuries; results for 2015 represent a slight undercount because our data did not include injuries for which patients were

admitted in 2015 but discharged in 2016. However, we explored the spillover rates for years with complete data and found that less than 1% of patients were admitted in one year and discharged the following year.

To capture only nonfatal injuries, we excluded records with a discharge disposition of death. To avoid double-counting injuries, we excluded records for non-acute care hospitalizations, as these were unlikely to be for new injuries. We also fit a predictive model using Super Learner¹³ to distinguish between acute care cases that were for a new injury and those that were related to a previous injury. Super Learner uses cross-validation to create a single predictive model that minimizes bias by weighting several potential models that are provided by the user.¹³ Model development is described in detail elsewhere.¹⁴ We excluded records for visits with an Injury Severity Score (ISS) of 0, as this is unlikely to be an acute firearm injury, and those for individuals who were not residents of California. To prevent patient reidentification and in accordance with California state regulations, we removed from our reported results the findings for any study subgroup with fewer than 15 patients.

Other data available from OSHPD included age, sex, payer status, disposition, race/ethnicity, and hospital length of stay. Race/ethnicity was reported as non-Hispanic White, non-Hispanic Black, Hispanic, American Indian, Asian or Pacific Islander, and other. Race and ethnicity were defined by OSHPD and assessed to evaluate epidemiological trends. Standardization of disposition codes across ED and inpatient data can be seen in the eTable in the [Supplement](#).

The US Department of Agriculture Rural-Urban Continuum Codes data were used to determine the urban-rural status of each county. Rural-Urban Continuum Code data distinguish counties based on population and adjacency to metropolitan areas; we collapsed the 9 categories of Rural-Urban Continuum Codes into 2 broader categories of metropolitan (urban) and nonmetropolitan (rural) counties.¹⁵ We linked this to our OSHPD data by patient county of residency. American Community Survey data were used to determine the median income of zip codes, which we categorized into quartiles. We linked this to patient residential zip codes.

The CDC WISQARS and CDC WONDER databases were used to determine yearly county-level population data, race/ethnicity subpopulation data, and fatal firearm injury data.^{1,16} These values were used as the denominators to create population injury rates and overall CFRs. A verified Stata module (StataCorp), ICD-PLC, was used to translate ICD-9 codes into standard Injury Severity Scores (ISSs).¹⁷ ICDPICR, a tool translating ICD-PLC into an R package (R Project for Statistical Computing), was used to translate ICD-10 codes into standard ISS.¹⁸

The primary outcome measures were counts and rates of nonfatal firearm injuries and the overall and clinical CFRs of firearm injuries in California. Counts and rates were described over time and grouped by external cause.

Statistical Analysis

The overall CFR was calculated by dividing all firearm deaths in California as measured by WISQARS by the total number of firearm injuries (WISQARS fatal + OSHPD nonfatal) per year. The clinical CFR was calculated by dividing the number of firearm fatalities in the OSHPD data (both ED and hospital inpatients) by the total number of firearm injuries (fatal + nonfatal) in the OSHPD data.

County-level rates of nonfatal injury in California were mapped to show the geographic distribution of firearm morbidity. To account for the small numbers and concomitant unstable rates in some counties, we used a random-intercept Poisson mixed-effects model to smooth the rates, with random effects for year and county, as well as an offset for the log-population. These smoothed rates were then used to map the geographic distribution of nonfatal firearm injuries in California by county. Negative binomial regressions that included the counts of firearm injuries per county per year and a binary urban-rural variable were used to determine the significance of urbanicity on firearm injuries.

All rates of change and percentage changes over the study period were calculated using generalized linear (Poisson for injury rates, binomial for CFR) mixed-effects models with a linear fixed

effect for time incorporated into each to more robustly estimate significant changes over our study years, reported as percentage change in model mean, instead of merely reporting the end points. All rates are reported per 100 000 residents of the relevant population.

We used *t* tests for continuous data and χ^2 tests to compare categorical variables. We considered 2-sided $P < .05$ to be significant. R version 3.4.4 with R Studio version 1.1.453 (RStudio) and Stata SE version 14.1 were used for analyses. Data were analyzed from 2018 to 2019.

Results

A total of 81 085 nonfatal firearm injuries were identified from 2005 through 2015, including 56 367 assaultive injuries (69.7%), 19 316 unintentional injuries (23.6%), 1372 self-inflicted injuries (1.7%), and 4030 injuries of undetermined intent (5.0%) (**Table**). The mean (SD) age of individuals with firearm injuries was 27.5 (11.9) years, and 72 567 (89.6%) were men. A total of 45 570 injuries (56.2%) were treated within the ED and did not include hospital admission, while 35 515 injuries (43.8%) included admission to an inpatient facility. Those with assaultive injuries tended to be younger (mean [SD] age, 26.8 [10.7] years) and Black (18 355 patients [33.3%]) or Hispanic (25 423 patients [46.1%]), while those with self-inflicted injuries were more likely to be older (mean (SD) age, 42.3 [18.6] years) and White (817 patients [62.2%]). There were differences in income and payment source by cause of injury as well: individuals with assaultive injuries, compared with those with self-inflicted injuries, were more likely to be within the lowest income quartile (16 081 patients [29.5%] vs 225 patients [16.4%]) and have self-pay (18 553 patients [32.9%] vs 300 patients [21.9%]) or government (20 852 patients [37.0%] vs 322 patients [23.5%]) payer status. Individuals with injuries from self-inflicted gunshot wounds had worse markers for increased severity compared with other injury causes, including higher median (interquartile range) ISS (self-inflicted: 9 [1-16]; assaultive: 4.0 [2-9]; unintentional: 4.0 [1-7]; undetermined: 3.0 [1-7]; $P < .001$), longer median (interquartile range) length of stay (self-inflicted: 8.0 [3-17] days; assaultive: 4.0 [2-9] days; unintentional: 4.0 [1-7] days; undetermined: 3.0 [1-7] days; $P < .001$), and a smaller proportion of routine discharges to home (self-inflicted: 502 patients [36.6%]; assaultive: 46 034 patients [81.7%]; unintentional: 15 830 patients [82.0%]; undetermined: 3212 patients [79.7%]; $P < .001$).

The overall rate of nonfatal firearm injuries decreased by 38.1% from 2005 through 2015, driven primarily by a 46.4% decrease in assaults (**Figure 1**). Self-inflicted and unintentional injuries remained stable.

Among men, the overall rate of nonfatal firearm injuries decreased from 45.2 per 100 000 people to 30.2 per 100 000 people from 2005 through 2015, driven primarily by a decrease in assaults of nearly 50%. The rate of self-inflicted and unintentional injuries among men remained stable over the period. Similar trends can be seen for women, although on a much smaller scale; firearm injury rates among women were significantly lower than among men (eFigure 1 in the **Supplement**). This makes it difficult to assess subcategories of firearm injury among women, such as by race/ethnicity.

Overall, Black men had an annual firearm assault injury rate of 126.5 per 100 000 people, 4-fold that of Hispanic men, the racial/ethnic group with the next highest rate (30.6 per 100 000 people). Assaultive firearm injuries among Black men decreased from 161.1 per 100 000 people to 94.2 per 100 000 people over the study period. The rate among Hispanic men decreased from 42.0 per 100 000 people to 23.4 per 100 000 people, for a relative decrease of 52.9% (**Figure 2**).

Black men had the highest rate of unintentional nonfatal firearm injuries, with a slight increase over the study period from 30.2 per 100 000 people to 34.6 per 100 000 people. In contrast, Hispanic men had an 18.8% modeled relative decrease in unintentional firearm injuries. The rate among White men was stable. (eFigure 2 in the **Supplement**).

Native American data are reported where appropriate per our methods and otherwise suppressed. Trends for women and for both sexes were similar as those presented for men but on a much smaller scale (eFigure 3 in the **Supplement**).

CFRs

The model-smoothed overall CFR increased from 27.6% in 2005 to 32.2% in 2015, for a relative increase of 20.7% (eFigure 4 in the Supplement). The overall CFR for assaultive firearm injuries increased from 23.3% to 26.6%, while that for self-inflicted injuries was stable and remained greater than 90% each year in the study period. The overall CFR for unintentional injuries decreased from 5.3% to 1.1% (modeled relative decrease, 77.0%).

While the clinical CFR did not change significantly over the study period for all injuries combined, there was a significant decrease in the clinical CFR for assault injuries by 1.5% (Figure 3).

Table. Demographic Characteristics Among Survivors of Nonfatal Firearm Injuries by e-Coded External Cause From 2005 to 2015

| Characteristic | Assault (n = 56 367) | Self-inflicted (n = 1372) | Unintentional (n = 19 316) | Undetermined (n = 4030) | Total (N = 81 085) | P value |
|--|-------------------------|------------------------------|-------------------------------|----------------------------|-----------------------|---------|
| Age, y ^a | | | | | | |
| Mean (SD) | 26.8 (10.7) | 42.3 (18.6) | 28.9 (13.8) | 26.5 (11.1) | 27.5 (11.9) | |
| Median (IQR) | 24.0 (19-32) | 41.0 (26-55) | 24.0 (19-35) | 23.0 (19-32) | 24.0 (19-33) | <.001 |
| Sex | | | | | | |
| Women | 5513 (9.8) | 248 (18.1) | 2217 (11.5) | 416 (10.4) | 8394 (10.4) | |
| Men | 50753 (90.2) | 1124 (81.9) | 17 087 (88.5) | 3603 (89.6) | 72 567 (89.6) | <.001 |
| Payer status | | | | | | |
| Medicare | 1383 (2.5) | 213 (15.5) | 825 (4.3) | 115 (2.9) | 2536 (3.1) | |
| Government–low income | 20852 (37.0) | 322 (23.5) | 5263 (27.2) | 1263 (31.3) | 27 700 (34.2) | |
| Private or work-based | 14752 (26.2) | 519 (37.8) | 6406 (33.2) | 1015 (25.2) | 22 692 (28) | |
| Self-pay | 18553 (32.9) | 300 (21.9) | 6563 (34) | 1563 (38.8) | 26979 (33.3) | <.001 |
| Other, not reported, or invalid | 826 (1.5) | 18 (1.3) | 259 (1.3) | 74 (1.8) | 1177 (1.5) | |
| Disposition | | | | | | |
| Routine | 46 034 (81.7) | 502 (36.6) | 15 830 (82.0) | 3212 (79.7) | 65 578 (80.9) | |
| Inpatient care transfer | 5089 (9) | 573 (41.8) | 2043 (10.6) | 502 (12.5) | 8207 (10.1) | |
| Skilled nursing or resident care facility | 397 (0.7) | 56 (4.1) | 106 (0.5) | 23 (0.6) | 582 (0.7) | |
| Intermediate care | 139 (0.2) | 5 (0.4) | 35 (0.2) | 6 (0.1) | 185 (0.2) | |
| Children's hospital or cancer center | 65 (0.1) | 7 (0.5) | 42 (0.2) | 4 (0.1) | 118 (0.1) | <.001 |
| Against medical advice | 1004 (1.8) | 10 (0.7) | 363 (1.9) | 82 (2) | 1459 (1.8) | |
| Law enforcement or prison | 1651 (2.9) | 36 (2.6) | 291 (1.5) | 72 (1.8) | 2050 (2.5) | |
| Other | 1988 (3.5) | 183 (13.3) | 606 (3.1) | 129 (3.2) | 2906 (3.6) | |
| Race/ethnicity | | | | | | |
| White | 7456 (13.5) | 817 (62.2) | 4991 (26.8) | 645 (16.6) | 13 909 (17.6) | |
| Black | 18 355 (33.3) | 85 (6.5) | 4623 (24.8) | 1258 (32.5) | 24 321 (30.8) | |
| Hispanic | 25 423 (46.1) | 316 (24.1) | 7657 (41.2) | 1662 (42.9) | 35 058 (44.4) | |
| Asian or Pacific Islander | 1665 (3) | 36 (2.7) | 595 (3.2) | 145 (3.7) | 2441 (3.1) | <.001 |
| Native American, Alaska Native | 145 (0.3) | 4 (0.3) | 90 (0.5) | 18 (0.5) | 257 (0.3) | |
| Other | 2099 (3.8) | 55 (4.2) | 651 (3.5) | 147 (3.8) | 2952 (3.7) | |
| Unspecified weapon type | 38 260 (67.9) | 548 (39.9) | 13 765 (71.3) | 3319 (82.4) | 55 892 (68.9) | <.001 |
| Income quartile | | | | | | |
| 0-25th | 16 081 (28.5) | 225 (16.4) | 4361 (22.6) | 887 (22) | 21 554 (26.6) | |
| 25-50th | 14 947 (26.5) | 278 (20.3) | 4910 (25.4) | 1183 (29.4) | 21 318 (26.3) | |
| 50-75th | 14 573 (25.9) | 382 (27.8) | 5331 (27.6) | 1106 (27.4) | 21 392 (26.4) | <.001 |
| 75-100th | 10 759 (19.1) | 487 (35.5) | 4700 (24.3) | 854 (21.2) | 16 800 (20.7) | |
| Residence | | | | | | |
| Metropolitan | 55 992 (99.3) | 1279 (93.2) | 18 712 (96.9) | 3970 (98.5) | 79 953 (98.6) | |
| Nonmetropolitan | 375 (0.7) | 93 (6.8) | 604 (3.1) | 60 (1.5) | 1132 (1.4) | <.001 |
| Length of stay, median (IQR), d ^b | 4.0 (2-9) | 8.0 (3-17) | 4.0 (1-7) | 3.0 (1-7) | 4.0 (2-8) | <.001 |
| Injury Severity Score, median (IQR) | 4 (1-9) | 9 (1-16) | 1 (1-4) | 5 (1-5) | 6 (1-9) | <.001 |

Abbreviation: IQR, interquartile range.

^a Does not include individuals aged 100 years or older.

^b Measured only for those individuals who were admitted, not those released from the emergency department.

Geographic Variation

The smoothed rates of nonfatal injury by county varied substantially in 2015, from a high of 39.7 injuries per 100 000 people in San Joaquin County to a low of 3.6 injuries per 100 000 people in Sonoma County (Figure 4A). Alpine County was suppressed owing to small population and insignificant trends. We also found a significantly increased rate of nonfatal firearm injury in urban relative to rural counties (incidence rate ratio, 1.40; 95% CI, 1.00-1.95).

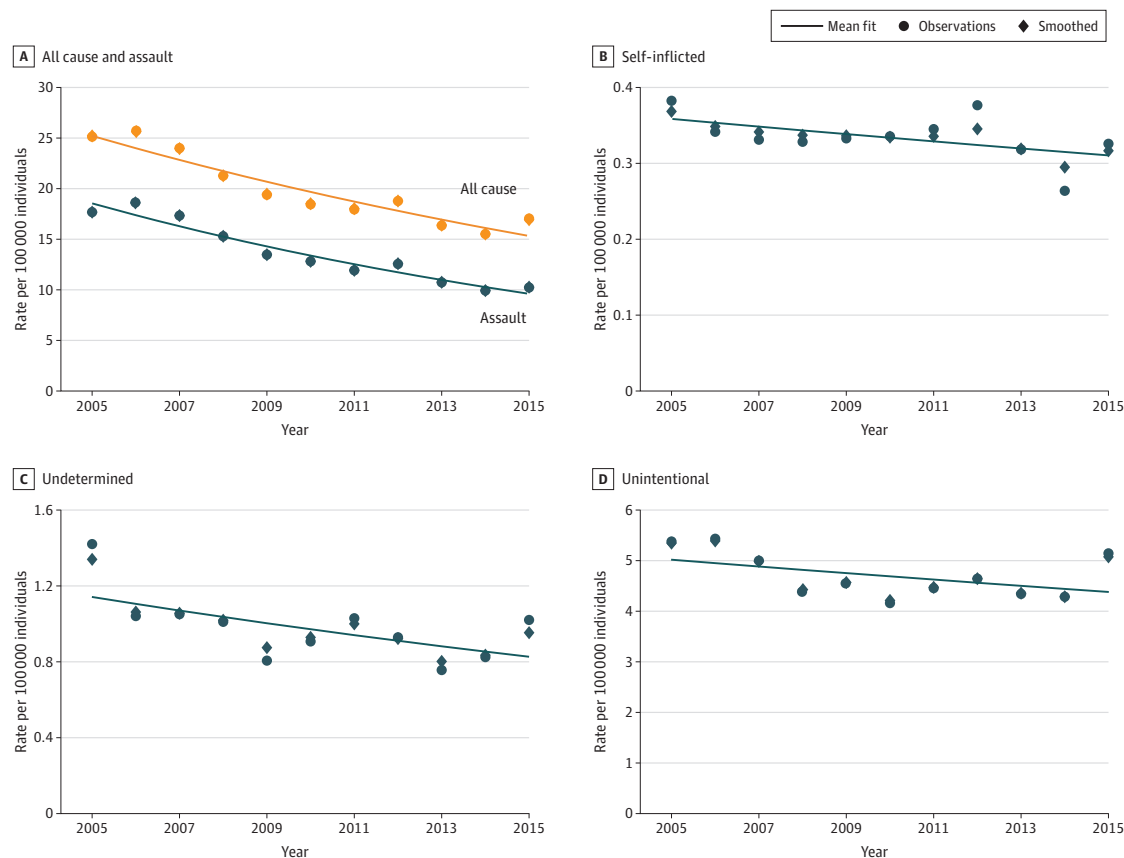
Sonoma and Los Angeles counties had the largest relative decrease in firearm injuries, at 73.8% in Sonoma County and 58.2% in Los Angeles County (Figure 4B). Of California's 58 counties, 28 (48.3%) experienced a decrease in the rate of nonfatal firearm injury during the study period. Counties with rate increases tended to be in Northern California. Absolute changes in fitted rates are reported in Figure 4C.

Discussion

This serial cross-sectional study found that nonfatal firearm injuries in California decreased by nearly 40% from 2005 to 2015, driven primarily by a decrease in assaults across all racial/ethnic groups and sexes, although the difference was most pronounced among Black men.

The demographic distribution of patients was consistent with known epidemiological patterns in firearm injuries, with rates much higher for men than women, assaultive injuries concentrated among young Black and Hispanic individuals from urban, lower-income areas, and self-inflicted

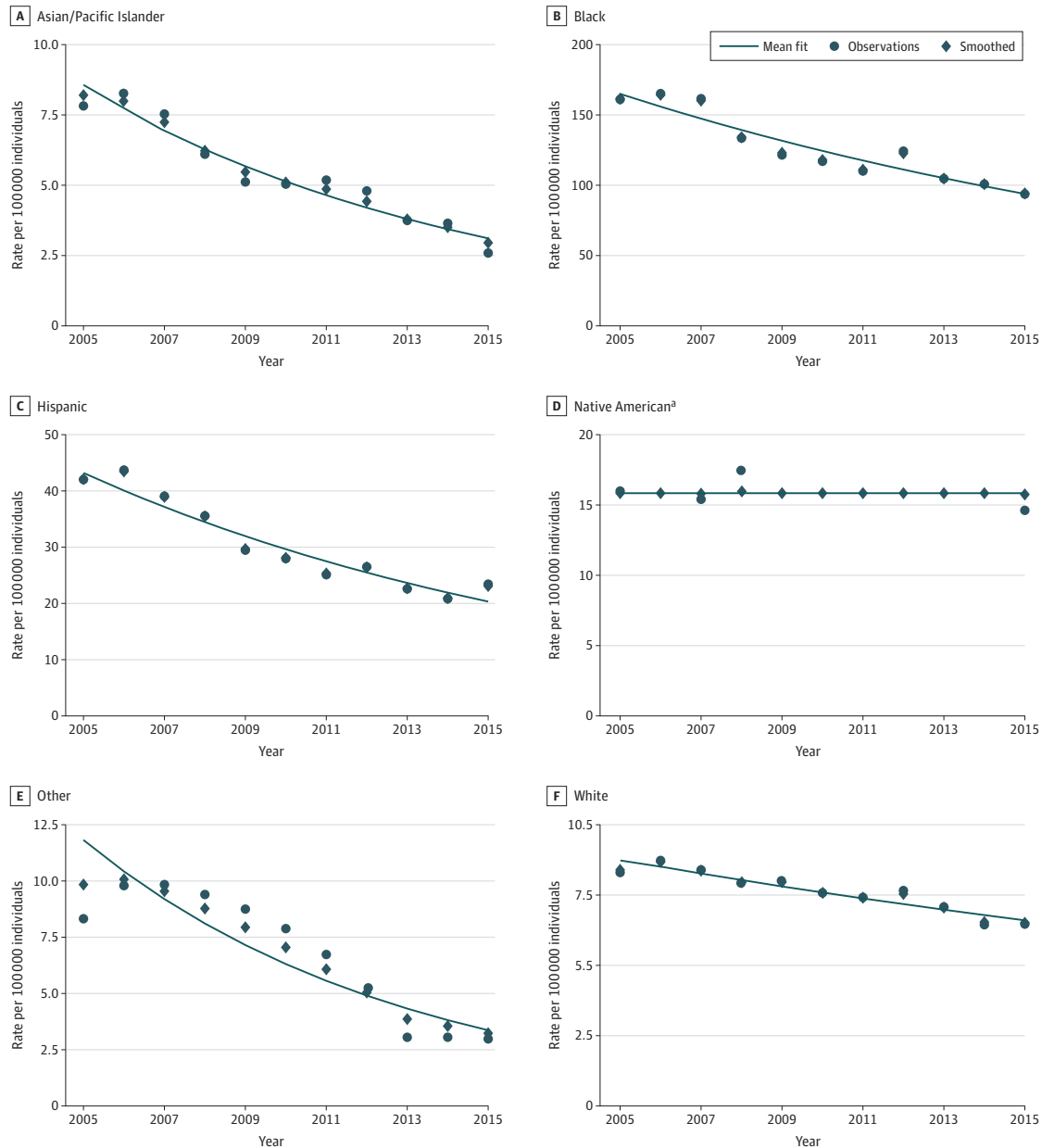
Figure 1. Annual Rate of Nonfatal Firearm Injury per 100 000 People From 2005 to 2015



injuries concentrated among White individuals in higher-income areas.^{10,19} As expected, ISSs and hospital length of stay were higher for self-inflicted injuries than for other injury causes. We found that urban counties had higher rates of firearm injury than their rural counterparts, with the highest rates seen in the San Joaquin Valley in central California.

From 2005 to 2015, California's overall CFR for firearm injuries increased by more than 20% in relative terms. This increase was partially driven by an increase in the proportion of self-inflicted injuries, which are more lethal than assaults; even so, the CFR for assaults also increased by nearly 15% in

Figure 2. Annual Rate of Assaultive Nonfatal Firearm Injuries per 100 000 People Among Men From 2005 to 2015



^a Insufficient unsuppressed observations to estimate slope.

Figure 3. Clinical Firearm Case Fatality Ratio by External Cause From 2005 to 2015

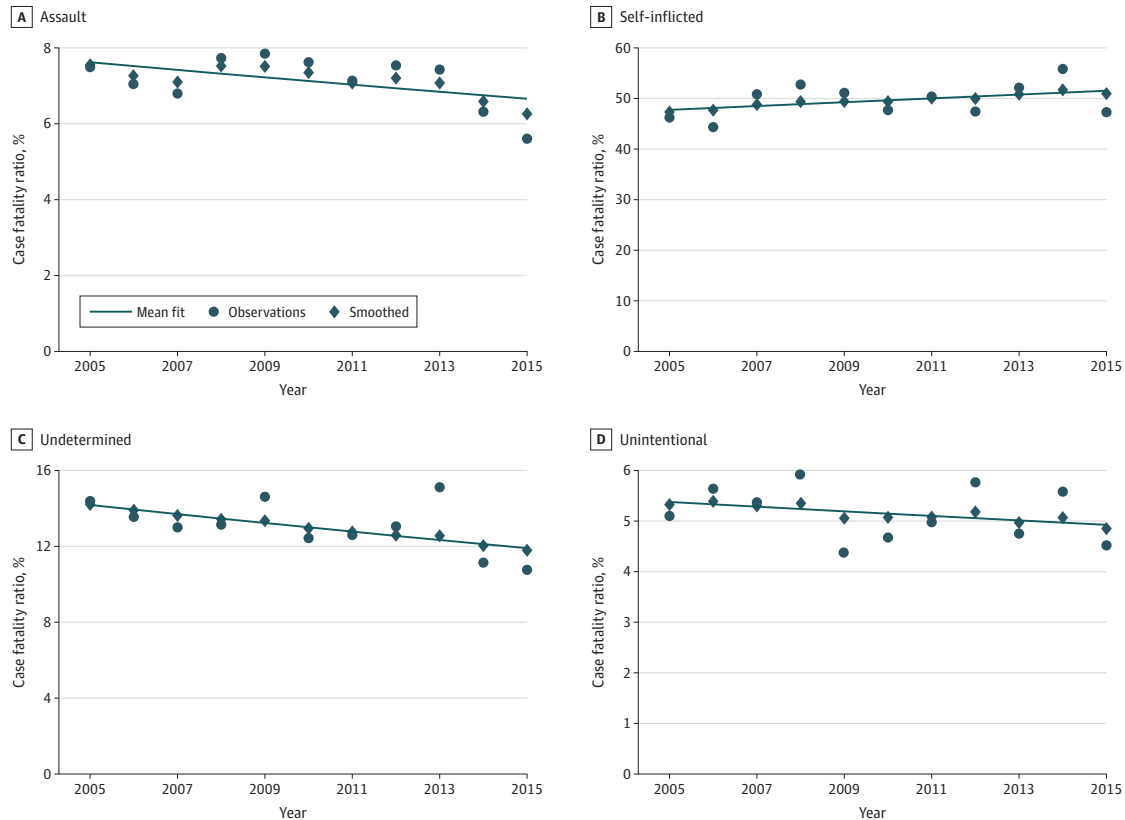
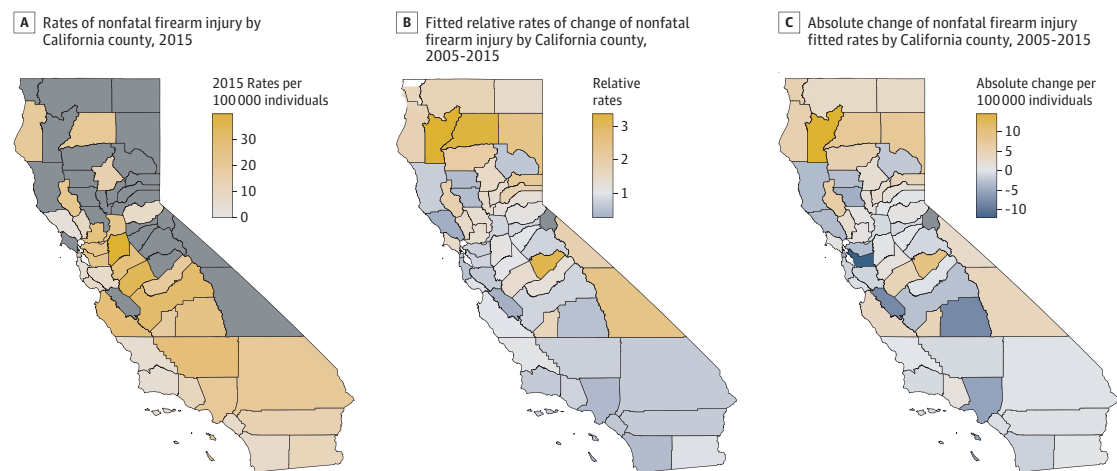


Figure 4. Rates of Nonfatal Firearm Injury by California County in 2015



Counties with fewer than 15 firearm injuries were suppressed.

relative terms, especially in the most recent year of data. This is consistent with other literature examining CFRs of firearm injury^{20,21} and may be explained by an increase in nonsurvivable assaultive injuries. This is contrary to unintentional injuries, for which the overall CFR decreased significantly during the study period.

Despite the increase in overall CFR, clinical CFR remained relatively stable. This discrepancy suggests an increase in the proportion of individuals with fatal injuries who did not reach the ED or hospital to be treated. Researchers have offered at least 2 possible explanations for the stable clinical CFR. One is that injury severity among patients who receive acute medical care has increased, such that improved care has not reduced mortality. However, our data suggest that injury severity has not increased over the study period. The second and more likely explanation in the context of these data is that, in California and during our study period, treatment of patients with life-threatening firearm injuries who reach the hospital has remained stable.

However, findings from a 2020 study by Tessler et al⁹ of injuries from firearms and motor vehicle crashes suggest that the first hypothesized explanation is correct: given that the CFR for motor vehicle crash injuries decreased while that for firearm injuries did not, and assuming that firearm and motor vehicle crash injuries receive the same level of care, there is evidence for there being an increase in firearm injury severity. Tessler et al reported that, except for firearm suicide, ISSs for firearm and motor vehicle crash injuries remained stable over their study period. They suggested that ISS might not be sensitive enough to detect changes in true severity. If this is true, it is also possible that the severity of motor vehicle crash injuries is subtly decreasing. Alternatively, trauma care for motor vehicle crash injuries and firearm injuries might not be improving at equivalent rates.

One strength of this study is that it relies on a complete enumeration of nonfatal injuries. Such data are not often available. Our CFR findings contradict the findings of a study by Kalesan et al⁴ that relied on the CDC's national estimates for nonfatal injuries and suggested that there was a "hidden epidemic" of nonfatal firearm assaults. Work by our group^{5,8} and others^{6,7} suggests these findings may be invalid.

The findings of this study suggest more research is needed to determine why the overall and cause-specific CFRs did not decrease. It is possible that the wounds are simply not survivable. To explore these questions, further studies to determine trends over time in preventable deaths among individuals who reach level 1 trauma centers are needed. However, over the study period, only 25.2% of deaths were found in the OSHPD data; the rest never reached the ED.

It is well known that most firearm-related deaths occur in the field.²² This might make a case for faster or improved transport and further study of the practices of emergency responders, such as the practice of "scoop and run" that is routine in Philadelphia.²³ Most directly, this makes the case for improved primary prevention efforts, such as discussing firearms with patients who are at risk for harm to self and others²⁴ and more effective violence prevention policies, and secondary prevention efforts, such as hospital-based violence prevention programs.²⁵

Limitations

This study has some limitations, the most important of which is that its data are for a single state, limiting generalizability. However, state data are needed because policy efforts to prevent firearm-related violence are primarily enacted at the state level. The US Congress has not enacted major changes to firearm policy in decades.

Additionally, reliance on *ICD-9* and *ICD-10* codes to capture firearm injuries is predicated on accurate and complete coding; misclassified firearm injuries are missed in this data set. In addition, the switch from *ICD-9* to *ICD-10* codes could introduce a change in capture rate of firearm injury in the last quarter of 2015. Third, self-inflicted injuries represent a very small percentage of nonfatal injuries given their high CFR, making it difficult to draw conclusions regarding trends from these data. Fourth, 5% of nonfatal injuries had an undetermined intent, and weapon type was missing in 69% of all injuries, making the weapon type unsuitable for analysis.

Conclusions

The results of this cross-sectional study could help clarify trends in the incidence and distribution of nonfatal firearm injury and the lethality of firearm injury in California. The results may be valuable to policy makers, public health professionals, clinicians, and researchers as they better tailor clinical practice and public policy to prevent firearm injuries and deaths. We hope this analysis will act as a model for other states, and we wish to emphasize the importance of access to statewide data for researchers in completing similar studies. The conjunction of multiple state-based analyses would allow us to come to a better understanding of nonfatal firearm injuries, which result in substantial burden to individuals, communities, and society at large.

ARTICLE INFORMATION

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Corresponding Author: Sarabeth A. Spitzer, MD, Department of Surgery, Brigham and Women's Hospital, 75 Francis St, Boston, MA 02115 (sspitzer@bwh.harvard.edu).

Author Affiliations: Now with the Department of Surgery, Brigham and Women's Hospital, Boston, Massachusetts (Spitzer); University of California Firearm Violence Research Center, Sacramento (Spitzer, Pear, McCort, Wintemute); Violence Prevention Research Program, Department of Emergency Medicine, UC Davis School of Medicine, Sacramento (Pear, McCort, Wintemute).

Author Contributions: Drs Spitzer and Wintemute had full access to all of the data in the study and take responsibility for the integrity of the data and the accuracy of the data analysis.

Concept and design: Spitzer, Pear, Wintemute.

Acquisition, analysis, or interpretation of data: All authors.

Drafting of the manuscript: Spitzer.

Critical revision of the manuscript for important intellectual content: All authors.

Statistical analysis: Spitzer, Pear, McCort.

Obtained funding: Wintemute.

Supervision: Wintemute.

Conflict of Interest Disclosures: None reported.

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Role of the Funder/Sponsor: The funders had no role in the design and conduct of the study; collection, management, analysis, and interpretation of the data; preparation, review, or approval of the manuscript; and decision to submit the manuscript for publication.

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SUPPLEMENT.

eTable. Defining Disposition

eFigure 1. Annual Rate of Nonfatal Firearm Injury Per 100 000 People in 2005-2015 Stratified by Sex

eFigure 2. Annual Rate of Unintentional Nonfatal Firearm Injuries Per 100 000 People Among Men

eFigure 3. Annual Rate of Assaultive and Unintentional Nonfatal Firearm Injuries Per 100 000 People Among Women

eFigure 4. Overall Firearm Case Fatality Ratio by External Cause From 2005 to 2015

EXHIBIT “2”

ER-0043



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SB-377 Firearms: peace officer exemptions. (2023-2024)

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL

NO. 377

Introduced by Senator Skinner

February 09, 2023

An act to amend Sections 26950 and 32000 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as introduced, Skinner. Firearms: peace officer exemptions.

(1) Existing law prohibits a firearms dealer from delivering a firearm within 10 days after the application to purchase or after notice by the Department of Justice that the applicant is not ineligible to possess a firearm, as specified, whichever is later. Existing law exempts from this prohibition the delivery of a firearm to a full-time paid peace officer, as defined, with written authorization from the head of the officer's employing agency. Existing law also exempts from this prohibition the delivery of a firearm to another dealer, the delivery of a firearm to a person possessing a special weapons permit issued by the Department of Justice, or the delivery of a firearm that is a curio or relic, as defined.

This bill would remove the 10-day waiting period exemption for a peace officer and instead exempt the delivery of a firearm purchased by a law enforcement agency, as defined, to an authorized law enforcement representative of that law enforcement agency for exclusive use by that agency if written authorization, as defined, from the head of the agency authorizing the delivery is presented to the person making the delivery.

(2) Existing law defines the characteristics of an unsafe handgun. Existing law requires the Department of Justice to compile, publish, and thereafter maintain a roster listing all of the handguns that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state. Existing law prohibits the sale or transfer of a handgun not listed on this roster.

Existing law exempts from this prohibition the sale or purchase of a handgun sold to certain law enforcement agencies and any sworn member of those entities, as specified.

This bill would remove from this exemption the sale or purchase of a handgun sold to a sworn member of these exempt agencies, thereby applying the exemption only to the sale or purchase of a handgun directly to the exempt law enforcement agencies.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 26950 of the Penal Code is amended to read:

26950. (a) The waiting period described in Section 26815 does not apply to the sale, delivery, or transfer of firearms ~~made to any person who satisfies both of the following requirements:~~ *purchased by a law enforcement agency and received by an authorized law enforcement representative of that law enforcement agency for exclusive use by that agency if written authorization from the head of the agency authorizing the transaction is presented to the person delivering the firearm.*

~~(1) The person is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.~~

~~(2) The officer's employer has authorized the officer to carry firearms while in the performance of duties.~~

~~(b)(1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of duties, and authorizing the purchase or transfer.~~

~~(2) The certification shall be delivered to the dealer at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification.~~

~~(3) The dealer shall keep the certification with the record of sale.~~

~~(4) On the date that the sale, delivery, or transfer is made, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in Section 28160 or 28165.~~

(b) As used in this section, the following terms have the following meanings:

(1) "Law enforcement agency" means any agency or department of the state or any political subdivision thereof that employs any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Written authorization" means verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to accept delivery of the firearm and that the firearm is for the exclusive use of the agency by which that person is employed.

SEC. 2. Section 32000 of the Penal Code is amended to read:

32000. (a) (1) A person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(2) The failure to report to the Department of Justice in accordance with the provisions of paragraph (2) of subdivision (e) the sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(3) In addition to any criminal penalty provided in paragraph (1), the unlawful sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 32010 to conduct an independent test to determine whether that handgun is prohibited by Sections 31900 to 32110, inclusive, and, if not, allowing the department to add the firearm to the roster of handguns that may be sold in this state pursuant to Section 32015.

(2) The importation or lending of a handgun by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of a handgun, if the handgun is sold to, or purchased by, the Department of Justice, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not ~~prohibit~~ *authorize* the sale to, or purchase by, sworn members of these agencies ~~of a handgun~~ *in a personal capacity*.

(5) The sale, purchase, or delivery of a handgun, if the sale, purchase, or delivery of the handgun is made pursuant to subdivision (d) of Section 10334 of the Public Contract Code.

(6) *(A)* Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun for use as a service weapon, if the handgun is sold to, or purchased by, any of the following entities for use ~~by, or sold to or purchased by,~~ *by* sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST) pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:

~~(A)~~

(i) The Department of Parks and Recreation.

~~(B)~~

(ii) The Department of Alcoholic Beverage Control.

~~(C)~~

(iii) The Division of Investigation of the Department of Consumer Affairs.

~~(D)~~

(iv) The Department of Motor Vehicles.

~~(E)~~

(v) The Fraud Division of the Department of Insurance.

~~(F)~~

(vi) The State Department of State Hospitals.

~~(G)~~

(vii) The Department of Fish and Wildlife.

~~(H)~~

(viii) The State Department of Developmental Services.

~~(I)~~

(ix) The Department of Forestry and Fire Protection.

~~(J)~~

(x) A county probation department.

~~(K)~~

(xi) The Los Angeles World Airports, as defined in Section 830.15.

~~(L)~~

(xii) A K-12 public school district for use by a school police officer, as described in Section 830.32.

~~(M)~~

(xiii) A municipal water district for use by a park ranger, as described in Section 830.34.

~~(N)~~

(xiv) A county for use by a welfare fraud investigator or inspector, as described in Section 830.35.

~~(O)~~

(xv) A county for use by the coroner or the deputy coroner, as described in Section 830.35.

~~(P)~~

(xvi) The Supreme Court and the courts of appeal for use by marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, as described in Section 830.36.

~~(Q)~~

(xvii) A fire department or fire protection agency of a county, city, city and county, district, or the state for use by either of the following:

~~(i)~~

(I) A member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.

~~(ii)~~

(II) A member other than a member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.

~~(R)~~

(xviii) The University of California Police Department, or the California State University Police Departments, as described in Section 830.2.

~~(S)~~

(xix) A California Community College police department, as described in Section 830.32.

~~(T)~~

(xx) A harbor or port district or other entity employing peace officers described in subdivision (b) of Section 830.33, the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles.

~~(U)~~

(xxi) A local agency employing park rangers described in subdivision (b) of Section 830.31.

~~(V)~~

(xxii) The Department of Cannabis Control.

(B) This paragraph does not authorize the sale to, or purchase by, sworn members of the entities specified in subparagraph (A) in a personal capacity.

(7) (A) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun, if the handgun is sold to, or purchased by, any of the following entities for use as a service weapon by the sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the POST pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:

- (i) The California Horse Racing Board.
- (ii) The State Department of Health Care Services.
- (iii) The State Department of Public Health.
- (iv) The State Department of Social Services.
- (v) The Department of Toxic Substances Control.
- (vi) The Office of Statewide Health Planning and Development.
- (vii) The Public Employees' Retirement System.
- (viii) The Department of Housing and Community Development.
- (ix) Investigators of the Department of Financial Protection and Innovation.
- (x) The Law Enforcement Branch of the Office of Emergency Services.
- (xi) The California State Lottery.
- (xii) The Franchise Tax Board.

(B) This paragraph does not authorize the sale to, or purchase by, sworn members of the entities specified in subparagraph (A) in a personal capacity.

(c) (1) Notwithstanding Section 26825, a person licensed pursuant to Sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in paragraph (6) or (7) of subdivision (b) and a person who is not exempt from the requirements of this section.

(2) (A) A person who obtains or has use of an unsafe handgun pursuant to paragraph (6) or (7) of subdivision (b) shall, when leaving the handgun in an unattended vehicle, lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

(B) A violation of subparagraph (A) is an infraction punishable by a fine not exceeding one thousand dollars (\$1,000).

(C) For purposes of this paragraph, the following definitions shall apply:

- (i) "Vehicle" has the same meaning as defined in Section 670 of the Vehicle Code.
- (ii) A vehicle is "unattended" when a person who is lawfully carrying or transporting a handgun in the vehicle is not within close proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.
- (iii) "Locked container" has the same meaning as defined in Section 16850.

(D) Subparagraph (A) does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course of their official duties.

(E) This paragraph does not supersede any local ordinance that regulates the storage of handguns in unattended vehicles if the ordinance was in effect before January 1, 2017.

(d) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

(e) (1) The Department of Justice shall maintain a database of unsafe handguns obtained pursuant to paragraph (4), (6), or (7) of subdivision (b). This requirement shall apply retroactively to include information in the department's possession. The department may satisfy this requirement by maintaining this information in any existing firearm database that reasonably facilitates compliance with this subdivision.

(2) A person or entity that is in possession of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b), shall notify the department of any sale or transfer of that handgun within 72 hours of the sale or transfer in a manner and format prescribed by the department. This requirement shall be deemed satisfied if the sale or transfer is processed through a licensed firearms dealer pursuant to Section 27545. A sale or transfer accomplished through an exception to Section 27545 is not exempt from this reporting requirement.

(3) By no later than March 1, 2021, the department shall provide a notification to persons or entities possessing an unsafe handgun pursuant to paragraph (4), (6), or (7) of subdivision (b) regarding the prohibitions on the sale or transfer of that handgun contained in this section. Thereafter, the department shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred pursuant to those provisions.

EXHIBIT “3”

ER-0050

ROB BONTA
Attorney General of California
ANTHONY R. HAKL
Supervising Deputy Attorney General
GABRIELLE D. BOUTIN
Deputy Attorney General
State Bar No. 267308
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6053
Fax: (916) 324-8835
E-mail: Gabrielle.Boutin@doj.ca.gov
*Attorneys for Defendants Rob Bonta, in his official
capacity as California Attorney General, and
Allison Mendoza, in her official capacity as Acting
Director of the Department of Justice Bureau of
Firearms*

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

LANA RAE RENNA et al.,

Plaintiffs,

v.

**ROB BONTA, in his official capacity
as Attorney General of California;
and ALLISON MENDOZA, in her
official capacity as Acting Director of
the Department of Justice Bureau of
Firearms,**

Defendants.

8:17-cv-00746-JLS-JDE

**DECLARATION OF SAUL
CORNELL IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION OR,
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

Date: February 10, 2023
Time: 1:30 p.m.
Dept: 13A (13th Floor)
Judge: The Honorable Dana M.
Sabraw
Trial Date: None set
Action Filed: 11/10/2020

1 I, Saul Cornell, declare that the following is true and correct:

2 1. I have been asked by the Office of the Attorney General for the State
3 of California to provide an expert opinion on the history of firearms regulation in
4 the Anglo-American legal tradition, with a particular focus on how the Founding
5 era understood the right to bear arms, as well as the understanding of the right to
6 bear arms held at the time of the ratification of the Fourteenth Amendment to the
7 United States Constitution. In *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*,
8 the U.S. Supreme Court underscored that text, history, and tradition are the
9 foundation of modern Second Amendment jurisprudence. This modality of
10 constitutional analysis requires that courts analyze history and evaluate the
11 connections between modern gun laws and earlier approaches to firearms regulation
12 in the American past. My report explores these issues in some detail. Finally, I
13 have been asked to evaluate the statutes at issue in this case, particularly regarding
14 their connection to the tradition of firearms regulation in American legal history.

15 2. This declaration is based on my own personal knowledge and
16 experience, and if I am called to testify as a witness, I could and would testify
17 competently to the truth of the matters discussed in this declaration.

18 **BACKGROUND AND QUALIFICATIONS**

19 3. I am the Paul and Diane Guenther Chair in American History at
20 Fordham University. The Guenther Chair is one of three endowed chairs in the
21 history department at Fordham and the only one in American history. In addition to
22 teaching constitutional history at Fordham University to undergraduates and
23 graduate students, I teach constitutional law at Fordham Law School. I have been a
24 Senior Visiting research scholar on the faculty of Yale Law School, the University
25 of Connecticut Law School, and Benjamin Cardozo Law School. I have given
26 invited lectures, presented papers at faculty workshops, and participated in
27 conferences on the topic of the Second Amendment and the history of gun
28 regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA

1 Law School, the University of Pennsylvania Law School, Columbia Law School,
2 Duke Law School, Pembroke College Oxford, Robinson College, Cambridge,
3 Leiden University, and McGill University.¹

4 My writings on the Second Amendment and gun regulation have been widely
5 cited by state and federal courts, including the majority and dissenting opinions in
6 *Bruen*.² My scholarship on this topic has appeared in leading law reviews and top
7 peer-reviewed legal history journals. I authored the chapter on the right to bear
8 arms in *The Oxford Handbook of the U.S. Constitution* and co-authored the chapter
9 in *The Cambridge History of Law in America* on the Founding era and the Marshall
10 Court, the period that includes the adoption of the Constitution and the Second
11 Amendment.³ Thus, my expertise not only includes the history of gun regulation
12 and the right to keep and bear arms, but also extends to American legal and
13 constitutional history broadly defined. I have provided expert witness testimony in
14 *Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, No. 14-cv-02850
15 (D. Colo.); *Chambers, v. City of Boulder*, No. 2018 CV 30581 (Colo. D. Ct.,
16 Boulder Cty.), *Zeleny v. Newsom*, No. 14-cv-02850 (N.D. Cal.), and *Miller v. Smith*,
17 No. 2018-cv-3085 (C.D. Ill.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG (S.D. Cal.);
18 *Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.); *Worth v. Harrington*, No. 21-cv-
19 1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.);
20 *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal.); *Rupp v. Bonta*, No.
21 8:17-cv-00746-JLS-JDE (C.D. Cal.); and Nat'l Assoc. for Gun Rights, et al., v.
22 Campbell, D. Mass. No. 1:22-cv-11431-FDS (filed Jan. 31, 2023).

23 ¹ For a full *curriculum vitae* listing relevant invited and scholarly
24 presentations, see Exhibit 1.

25 ² *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

26 ³ Saul Cornell, *The Right to Bear Arms*, in THE OXFORD HANDBOOK OF THE
27 U.S. CONSTITUTION 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber
28 eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the
Early Federal System*, in 1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 518–544
(Christopher Tomlins & Michael Grossberg eds., 2008).

RETENTION AND COMPENSATION

4. I am being compensated for services performed in the above-entitled case at an hourly rate of \$500 for reviewing materials, participating in meetings, and preparing reports; \$750 per hour for depositions and court appearances; and an additional \$100 per hour for travel time. My compensation is not contingent on the results of my analysis or the substance of any testimony.

BASIS FOR OPINION AND MATERIALS CONSIDERED

5. The opinion I provide in this report is based on my review of the operative complaint filed in this lawsuit, my review of the state laws at issue in this lawsuit, my education, expertise, and research in the field of legal history. The opinions contained herein are made pursuant to a reasonable degree of professional certainty.

SUMMARY OF OPINIONS

6. Understanding text, history, and tradition require a sophisticated grasp of historical context. One must canvass the relevant primary sources, secondary literature, and jurisprudence to arrive at an understanding of the scope of permissible regulation consistent with the Second Amendment.

7. It is impossible to understand the meaning and scope of Second Amendment protections without understanding the way Americans in the Founding era approached legal questions and rights claims. In contrast to most modern lawyers, the members of the First Congress who wrote the words of the Second Amendment and the American people who enacted the text into law were well schooled in English common law ideas. Not every feature of English common law survived the American Revolution, but there were important continuities between English law and the common law in America.⁴ Each of the new states, either by

⁴ William B. Stoebuck, *Reception of English Common Law in the American Colonies*, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776, DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, *Law for*

1 statute or judicial decision, adopted multiple aspects of the common law, focusing
 2 primarily on those features of English law that had been in effect in the English
 3 colonies for generations.⁵ No legal principle was more important to the common
 4 law than the concept of the peace.⁶ As one early American justice of the peace
 5 manual noted: “the term peace, denotes the condition of the body politic in which
 6 no person suffers, or has just cause to fear any injury.”⁷ Blackstone, a leading
 7 source of early American views about English law, opined that the common law
 8 “hath ever had a special care and regard for the conservation of the peace; for peace
 9 is the very end and foundation of civil society.”⁸

10 8. In *Bruen*, Justice Kavanaugh reiterated *Heller*’s invocation of
 11 Blackstone’s authority as a guide to how early Americans understood their
 12 inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous
 13 terms that there was a “well established historical tradition of prohibiting the
 14 carrying of dangerous and unusual weapons.”⁹ The dominant understanding of

15 *the Empire: The Common Law in Colonial America and the Problem of Legal*
 16 *Diversity*, 89 CHI.-KENT L. REV. 937 (2014).

17 ⁵ 9 STATUTES AT LARGE OF PENNSYLVANIA 29-30 (Mitchell & Flanders eds.
 18 1903); FRANCOIS XAVIER MARTIN, A COLLECTION OF STATUTES OF THE
 19 PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA 60–61
 20 (Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

21 ⁶ LAURA F. EDWARDS, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND
 22 THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH
 23 (University of North Carolina Press, 2009).

24 ⁷ JOSEPH BACKUS, THE JUSTICE OF THE PEACE 23 (1816).

25 ⁸ 1 WILLIAM BLACKSTONE, COMMENTARIES *349.

26 ⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008), and n. 26.
 27 Blackstone and Hawkins, two of the most influential English legal writers consulted
 28 by the Founding generation, described these types of limits in slightly different
 terms. The two different formulations related to weapons described as dangerous
 and unusual in one case and sometimes as dangerous or unusual in the other
 instance, see Saul Cornell, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 FORDHAM URB. L.J.
 1695134 (2012). It is also possible that the phrase was an example of an archaic
 grammatical and rhetorical form hendiadys; see Samuel Bray, *Necessary AND*

1 the Second Amendment and its state constitutional analogues at the time of their
2 adoption in the Founding period forged an indissoluble link between the right to
3 keep and bear arms with the goal of preserving the peace.¹⁰

4 9. “Constitutional rights,” Justice Scalia wrote in *Heller*, “are enshrined
5 with the scope they were thought to have when the people adopted them.”¹¹
6 Included in this right was the most basic right of all: the right of the people to
7 regulate their own internal police. Although modern lawyers and jurists are
8 accustomed to thinking of state police power, the Founding generation viewed this
9 concept as a right, not a power.¹² The first state constitutions clearly articulated
10 such a right — including it alongside more familiar rights such as the right to bear
11 arms.¹³ Pennsylvania’s Constitution framed this estimable right succinctly: “That

12 _____
13 *Proper’ and ‘Cruel AND Unusual’: Hendiadys in the Constitution*, 102 VIRGINIA L.
REV. 687 (2016).

14 ¹⁰ On Founding-era conceptions of liberty, see JOHN J. ZUBLY, *THE LAW OF*
15 *LIBERTY* (1775). The modern terminology to describe this concept is “ordered
16 liberty.” See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent
17 elaboration of the concept, see generally JAMES E. FLEMING & LINDA C. MCCLAIN,
18 *ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES* (Harvard University
19 Press, 2013). On Justice Cardozo and the ideal of ordered liberty, see *Palko v.*
Connecticut, 302 U.S. 319, 325 (1937); John T. Noonan, Jr., *Ordered Liberty:*
20 *Cardozo and the Constitution*, 1 CARDOZO L. REV. 257 (1979); Jud Campbell,
Judicial Review, and the Enumeration of Rights, 15 GEO. J.L. & PUB. POL’Y 569
21 (2017).

22 ¹¹ *Heller*, 554 U.S. at 634–35; William J. Novak, *Common Regulation: Legal*
Origins of State Power in America, 45 HASTINGS L.J. 1061, 1081–83 (1994);
23 Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the*
Constitution, 20 J. POL’Y HIST. 47 (2008).

24 ¹² On the transformation of the Founding era’s ideas about a “police right”
25 into the more familiar concept of “police power,” See generally Aaron T. Knapp,
The Judicialization of Police, 2 CRITICAL ANALYSIS OF L. 64 (2015); see also
26 MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS*
OF AMERICAN GOVERNMENT (2005); Christopher Tomlins, *Necessities of State:*
Police, Sovereignty, and the Constitution, 20 J. OF POL’Y HIST. 47 (2008).

27 ¹³ PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV
28 (1776); N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and VT. DECLARATION OF
RIGHTS, art. V (1777).

the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same. Thus, if Justice Scalia’s rule applies to the scope of the right to bear arms, it must also apply to the scope of the right of the people to regulate their internal police, a point that Chief Justice Roberts and Justice Kavanaugh have each underscored.¹⁴ The history of gun regulation in the decades after the right to bear arms was codified in both the first state constitutions and the federal bill of rights underscores this important point.

10. In the years following the adoption of the Second Amendment and its state analogues, firearm regulation increased. Indeed, the individual states exercised their police powers to address longstanding issues and novel problems created by firearms in American society.

I. THE HISTORICAL INQUIRY REQUIRED BY *BRUEN*, *MCDONALD*, AND *HELLER*

11. The United States Supreme Court’s decisions in *Heller*, *McDonald*¹⁵, and *Bruen* have directed courts to look to text and history for guideposts in evaluating the scope of permissible firearms regulation under the Second Amendment. In another case involving historical determinations, Justice Thomas, the author of the majority opinion in *Bruen*, has noted that judges must avoid approaching history, text, and tradition with an “ahistorical literalism.”¹⁶ Legal texts must not be read in a decontextualized fashion detached from the web of historical meaning that made them comprehensible to Americans living in the past.

¹⁴ John Roberts, Transcript of Oral Argument at 44, *Heller*, 554 U.S. 570; *Heller v. District of Columbia* (Heller II), 670 F.3d 1244, 1270 (D.C. Cir. 2011) (Kavanaugh, J., dissenting); Joseph S. Hartunian, Gun Safety in the Age of Kavanaugh 117 Michigan Law Review online 104 (2019).

¹⁵ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

¹⁶ *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019) (Thomas, J.) (criticizing “ahistorical literalism”).

1 Instead, understanding the public meaning of constitutional texts requires a solid
2 grasp of the relevant historical contexts.¹⁷

3 12. Following the mandates set out in *Heller*, *McDonald* and more recently
4 in *Bruen*, history provides essential guideposts in evaluating the scope of
5 permissible regulation under the Second Amendment.¹⁸ Moreover, as *Bruen* makes
6 clear, history neither imposes “a regulatory straightjacket nor a regulatory blank
7 check.”¹⁹ The Court acknowledged that when novel problems created by firearms
8 are issue the analysis must reflect this fact: “other cases implicating unprecedented
9 societal concerns or dramatic technological changes may require a more nuanced
10 approach.” *Bruen* differentiates between cases in which contested regulations are
11 responses to long standing problems and situations in which modern regulations
12 address novel problems with no clear historical analogues from the Founding era or
13 the era of the Fourteenth Amendment.

14 13. In the years between *Heller* and *Bruen*, historical scholarship has
15 expanded our understanding of the history of arms regulation in the Anglo-
16 American legal tradition, but much more work needs to be done to fill out this
17 picture.²⁰ Indeed, such research is still ongoing: new materials continue to emerge;
18 and in the months since *Bruen* was decided, additional evidence about the history of
19 regulation has surfaced and new scholarship interpreting it has appeared in leading
20 law reviews and other scholarly venues.²¹

21 ¹⁷ See Jonathan Gienapp, *Historicism and Holism: Failures of Originalist*
22 *Translation*, 84 FORDHAM L. REV. 935 (2015).

23 ¹⁸ *Bruen*, 142 S. Ct. 2111.

24 ¹⁹ *Id.*

25 ²⁰ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of*
Second Amendment Law & Policy, 80 L. & CONTEMP. PROBS. 1 (2017).

26 ²¹ *Symposium — The 2nd Amendment at the Supreme Court: “700 Years Of*
27 *History” and the Modern Effects of Guns in Public*, 55 U.C. DAVIS L. REV. 2495
28 (2022); NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE
OF GUNS IN AMERICAN LAW AND SOCIETY (Joseph Blocher, Jacob D. Charles &

1 14. Justice Kavanaugh underscored a key holding of *Heller* in his *Bruen*
2 concurrence: “Like most rights, the right secured by the Second Amendment is not
3 unlimited. From Blackstone through the 19th-century cases, commentators and
4 courts routinely explained that the right was not a right to keep and carry any
5 weapon whatsoever in any manner whatsoever and for whatever purpose.”
6 Crucially, the Court further noted that “we do think that *Heller* and *McDonald* point
7 toward at least two metrics: how and why the regulations burden a law-abiding
8 citizen’s right to armed self-defense.”²²

9 15. One overarching principle regarding firearms regulation does
10 emerge from this period and it reflects not only the common law assumptions
11 familiar to the Founding generation, but it is hard-wired into the Second
12 Amendment itself. As Justice Scalia noted in *Heller*, and Justice Thomas reiterated
13 in *Bruen*, the original Second Amendment was a result of interest balancing
14 undertaken by the people themselves in framing the federal Constitution and the
15 Bill of Rights. Although “free-standing balancing” is precluded by *Heller*, the plain
16 meaning of the Amendment’s text recognizes a role for regulation explicitly and
17 further underscores that actions inimical to a free state fall outside of the scope of
18 the right instantiated in the text.²³ Thus, from its outset the Second Amendment
19 recognizes both the right to keep and bear arms and the right of the people to
20 regulate arms to promote the goals of preserving a free state. An exclusive focus on
21 rights and a disparagement of regulation is thus antithetical to the plain meaning of
22 the text of the Second Amendment. Although rights and regulation are often cast as
23 antithetical in the modern gun debate, the Founding generation saw the two goals as
24 complimentary.

25
26 _____
27 Darrell A.H. Miller eds., forthcoming 2023).

28 ²² *Bruen*, 142 S. Ct. at 2132–33.

²³ U.S. Const. amend. II.

1 16. Comparing the language of the Constitution’s first two amendments
 2 and their different structures and word choice makes this point crystal clear. The
 3 First Amendment prohibits “abridging” the rights it protects. In standard American
 4 English in the Founding era, to “abridge” meant to “reduce.” Thus, the First
 5 Amendment prohibits a diminishment of the rights it protects. The Second
 6 Amendment’s language employs a very different term, requiring that the right to
 7 bear arms not be “infringed.”²⁴ In Founding-era American English, the word
 8 “infringement” meant to “violate” or “destroy.” In short, when read with the
 9 Founding era’s interpretive assumptions and legal definitions in mind, the two
 10 Amendments set up radically different frameworks for evaluating the rights they
 11 enshrined in constitutional text. Members of the Founding generation would have
 12 understood that the legislature could regulate the *conduct* protected by the Second
 13 Amendment and comparable state arms bearing provisions as long as such
 14 regulations did not destroy the underlying *right*.

15 17. John Burn, author of an influential eighteenth-century legal dictionary,
 16 illustrated the concept of infringement in the context of his discussion of violations
 17 of rights protected by the common law. Liberty, according to Burns, was not
 18 identical to that “wild and savage liberty” of the state of nature. True liberty, by
 19 contrast, only existed when individuals created civil society and enacted laws and
 20 regulations that promoted *ordered* liberty.²⁵

21 ²⁴ The distinction emerges clearly in a discussion of natural law and the law
 22 of nations in an influential treatise on international law much esteemed by the
 23 Founding generation: “Princes who infringe the law of nations, commit as great a
 24 crime as private people, who violate the law of nature,” J.J. BURLAMAQUI, THE
 25 PRINCIPLES OF NATURAL LAW (Thomas Nugent trans., 1753) at 201. This book was
 among those included in the list of important texts Congress needed to procure, *see*
 Report on Books for Congress, [23 January] 1783,” *Founders Online*, National
 Archives, <https://founders.archives.gov/documents/Madison/01-06-02-0031>.

26 ²⁵ *Liberty*, A NEW LAW DICTIONARY (1792) *See also*, Jud Campbell,
 27 *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW &
 28 CONTEMP. PROBS. 31, 32–33 (2020)

18. Similarly, Nathan Bailey’s *Dictionarium Britannicum* (1730) defined “abridge” as to “shorten,” while “infringe” was defined as to “break a law.”²⁶ And his 1763 *New Universal Dictionary* repeats the definition of “abridge” as “shorten” and “infringe” as “to break a law, custom, or privilege.”²⁷ Samuel Johnson’s *Dictionary of the English Language* (1755) defines “infringe” as “to violate; to break laws or contracts” or “to destroy; to hinder.”²⁸ Johnson’s definition of “abridge” was “to shorten” and “to diminish” or “to deprive of.”²⁹ And Noah Webster’s *An American Dictionary of the English Language* (1828) largely repeats Johnson’s definitions of “infringe” and “abridge.”³⁰ Copies of these dictionary entries are attached hereto as Exhibit 2. Although today the two terms are conflated by some, the meanings of abridge and infringe were and remain distinct. The Founding generation was far more nuanced in distinguishing between the differences between these two terms.

19. Regulation, including robust laws, were not understood to be an “infringement” of the right to bear arms, but rather the necessary foundation for the proper exercise of that right as required by the concept of ordered liberty.³¹ As one

²⁶ *Abridge*, DICTIONARIUM BRITANNICUM (1730).

²⁷ *Abridge*, NEW UNIVERSAL DICTIONARY (1763).

²⁸ *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

²⁹ *Abridge*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

³⁰ *Abridge, Infringe*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828).

³¹ Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). See generally GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY, EXCLUSION, AND THE FALL OF THE FOUNDERS’ CONSTITUTION, 1780s–1830s*, at 2; Victoria Kahn, *Early Modern Rights Talk*, 13 YALE J.L. & HUMAN. 391 (2001) (discussing how the early modern language of rights incorporated aspects of natural rights and other philosophical traditions); Joseph Postell, *Regulation During the American Founding: Achieving Liberalism and Republicanism*, 5 AM. POL. THOUGHT 80 (2016) (examining the importance of regulation to Founding political and constitutional thought).

1 patriotic revolutionary era orator observed, almost a decade after the adoption of the
 2 Constitution: “True liberty consists, not in having *no government*, not in a
 3 *destitution of all law*, but in our having an equal voice in the formation and
 4 execution of the laws, according as they effect [*sic*] our persons and property.”³²
 5 By allowing individuals to participate in politics and enact laws aimed at promoting
 6 the health, safety, and well-being of the people, liberty flourished.³³

7 20. The key insight derived from taking the Founding era conception of
 8 rights seriously and applying the original understanding of the Founding era’s
 9 conception of liberty is the recognition that regulation and liberty were not
 10 antithetical to one another. The inclusion of rights guarantees in constitutional texts
 11 was not meant to place them beyond the scope of legislative control. “The point of
 12 retaining natural rights,” originalist scholar Jud Campbell reminds us “was not to
 13 make certain aspects of natural liberty immune from governmental regulation.
 14 Rather, retained natural rights were aspects of natural liberty that could be restricted
 15 only with just cause and only with consent of the body politic.”³⁴ Rather than limit
 16 rights, regulation was the essential means of preserving rights, including self-
 17 defense.³⁵ In fact, without robust regulation of arms, it would have been impossible

18 ³² Joseph Russell, *An Oration; Pronounced in Princeton, Massachusetts, on*
 19 *the Anniversary of American Independence, July 4, 1799*, at 7 (July 4, 1799), (text
 available in the Evans Early American Imprint Collection) (emphasis in original).

20 ³³ See generally QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998)
 21 (examining neo-Roman theories of free citizens and how it impacted the
 22 development of political theory in England); THE NATURE OF RIGHTS AT THE
 23 AMERICAN FOUNDING AND BEYOND (Barry Alan Shain ed., 2007) (discussing how
 the Founding generation approached rights, including the republican model of
 protecting rights by representation).

24 ³⁴ Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L.
 25 REV. 517, 527 (2019) (emphasis in original). See generally Saul Cornell, *Half*
 26 *Cocked: The Persistence of Anachronism and Presentism in the Academic Debate*
 27 *Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206
 (2016) *s* (noting that the Second Amendment was not understood in terms of the
 simple dichotomies that have shaped modern debate over the right to bear arms).

28 ³⁵ See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15

1 to implement the Second Amendment and its state analogues. Mustering the militia
2 required keeping track of who had weapons and included the authority to inspect
3 those weapons and fine individuals who failed to store them safely and keep them
4 in good working order.³⁶ The individual states also imposed loyalty oaths,
5 disarming those who refused to take such oaths. No state imposed a similar oath as
6 pre-requisite to the exercise of First Amendment-type liberties. Thus, some forms
7 of prior restraint, impermissible in the case of expressive freedoms protected by the
8 First Amendment or comparable state provisions, were understood by the Founding
9 generation to be perfectly consistent with the constitutional right to keep and bear
10 arms.³⁷

11 21. In keeping with the clear public meaning of the Second Amendment's
12 text and comparable state provisions, early American governments enacted laws to
13 preserve the rights of law-abiding citizens to keep and bear arms and promote the
14 equally vital goals of promoting public safety. As long as such laws did not destroy
15 the right of self-defense, the individual states enjoyed broad latitude to regulate
16 arms.³⁸

17
18 GEO. J.L. & PUB. POL'Y 569, 576–77 (2017). Campbell's work is paradigm-
19 shifting, and it renders Justice Scalia's unsubstantiated claim in *Heller* that the
20 inclusion of the Second Amendment in the Bill of Rights placed certain forms of
21 regulation out of bounds totally anachronistic. This claim has no foundation in
22 Founding-era constitutional thought, but reflects the contentious modern debate
23 between Justice Black and Justice Frankfurter over judicial balancing, on Scalia's
24 debt to this modern debate, *see generally* SAUL CORNELL, THE POLICE POWER AND
25 THE AUTHORITY TO REGULATE FIREARMS IN EARLY AMERICA 1–2 (2021),
26 https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf
27 [<https://perma.cc/J6QD-4YXG>] and Joseph Blocher, *Response: Rights as Trumps of*
28 *What?*, 132 HARV. L. REV. 120, 123 (2019).

36 H. RICHARD UVILLER & WILLIAM G. MERKEL, THE MILITIA AND THE
RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT 150 (2002).

37 Saul Cornell, *Commonplace or Anachronism: The Standard Model, the*
Second Amendment, and the Problem of History in Contemporary Constitutional
Theory 16 CONSTITUTIONAL COMMENTARY 988 (1999).

38 Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early*

II. FROM MUSKETS TO PISTOLS: CHANGE AND CONTINUITY IN EARLY AMERICAN FIREARMS REGULATION

22. Guns have been regulated from the dawn of American history.³⁹ At the time *Heller* was decided, there was little scholarship on the history of gun regulation and a paucity of quality scholarship on early American gun culture.⁴⁰ Fortunately, a burgeoning body of scholarship has illuminated both topics, deepening scholarly understanding of the relevant contexts needed to implement *Bruen*'s framework.⁴¹

23. The common law that Americans inherited from England always acknowledged that the right of self-defense was not unlimited but existed within a well-delineated jurisprudential framework. The entire body of the common law was designed to preserve the peace.⁴² Statutory law, both in England and America functioned to further secure the peace and public safety. Given these indisputable facts, the Supreme Court correctly noted, the right to keep and bear arms was never understood to prevent government from enacting a broad range of regulations to promote the peace and maintain public safety.⁴³ To deny such an authority would be to convert the Constitution into a suicide pact and not a charter of government. In keeping with this principle, the Second Amendment and its state analogues were understood to enhance the concept of ordered liberty, not undermine it.⁴⁴

American Origins of Gun Control, 73 FORDHAM L. REV. 487 (2004).

³⁹ Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 L. & CONTEMP. PROBS. 55 (2017).

⁴⁰ *Id.*

⁴¹ Ruben & Miller, *supra* note 20, at 1.

⁴² Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 L. & CONTEMP. PROBS. 11 (2017).

⁴³ *McDonald*, 561 U.S. at 785 (noting “[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment”).

⁴⁴ See generally Saul Cornell, *The Long Arc Of Arms Regulation In Public:*

24. *Bruen*'s methodology requires judges to distinguish between the relevant history necessary to understand early American constitutional texts and a series of myths about guns and regulation that were created by later generations to sell novels, movies, and guns themselves.⁴⁵ Unfortunately, many of these myths continue to cloud legal discussions of American gun policy and Second Amendment jurisprudence.⁴⁶

25. Although it is hard for many modern Americans to grasp, there was no comparable societal ill to the modern gun violence problem for Americans to solve in the era of the Second Amendment. A combination of factors, including the nature of firearms technology and the realities of living life in small, face-to-face, and mostly homogenous rural communities that typified many parts of early America, militated against the development of such a problem. In contrast to modern America, homicide was not the problem that government firearm policy needed to address at the time of the Second Amendment.⁴⁷

26. The surviving data from New England is particularly rich and has allowed scholars to formulate a much better understanding of the dynamics of early American gun policy and relate it to early American gun culture.⁴⁸ Levels of gun

From Surety To Permitting, 1328-1928, 55 U.C. DAVIS L. REV. 2547 (2022)

⁴⁵ PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF AMERICAN GUN CULTURE* (2016).

⁴⁶ RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH-CENTURY AMERICA* (1993); JOAN BURBICK, *GUN SHOW NATION: GUN CULTURE AND AMERICAN DEMOCRACY* (2006).

⁴⁷ RANDOLPH ROTH, *AMERICAN HOMICIDE* 56, 315 (2009).

⁴⁸ It is important to recognize that there were profound regional differences in early America. *See* JACK P. GREENE, *PURSUITS OF HAPPINESS: THE SOCIAL DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF AMERICAN CULTURE* (1988). These differences also had important consequences for the evolution of American law. *See generally* David Thomas König, *Regionalism in Early American Law*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

1 violence among those of white European ancestry in the era of the Second
2 Amendment were relatively low compared to modern America. These low levels of
3 violence among persons of European ancestry contrasted with the high levels of
4 violence involving the tribal populations of the region. The data presented in
5 Figure 1 is based on the pioneering research of Ohio State historian Randolph Roth.
6 It captures one of the essential facts necessary to understand what fears motivated
7 American gun policy in the era of the Second Amendment. The pressing problem
8 Americans faced at the time of the Second Amendment was that citizens were
9 reluctant to purchase military style weapons which were relatively expensive and
10 had little utility in a rural society. Americans were far better armed than their
11 British ancestors, but the guns most Americans owned and desired were those most
12 useful for life in an agrarian society: fowling pieces and light hunting muskets.⁴⁹
13 Killing pests and hunting birds were the main concern of farmers, and their choice
14 of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols
15 were of limited utility for anyone outside of a small elite group of wealthy,
16 powerful, and influential men who needed these weapons if they were forced to
17 face an opponent on the field of honor in a duel, as the tragic fate of Alexander
18 Hamilton so vividly illustrates.⁵⁰

19 27. Limits in Founding-era firearms technology also militated against the
20 use of guns as effective tools of interpersonal violence in this period. Eighteenth-
21 century muzzle-loading weapons, especially muskets, took too long to load and
22 were therefore seldom used to commit crimes. Nor was keeping guns loaded a
23 viable option because the black powder used in these weapons was not only

24 ⁴⁹ Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and*
25 *Eighteenth Century England and America*, in *A RIGHT TO BEAR ARMS?: THE*
26 *CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND*
AMENDMENT (Jennifer Tucker et al. eds., 2019).

27 ⁵⁰ Joanne B. Freeman, *AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW*
28 *REPUBLIC* (2001).

corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles and muskets hung over the mantle place in early American homes was not primarily a function of aesthetics or the potent symbolism of the hearth, as many today assume. As historian Roth notes: “black powder’s hygroscopic, it absorbs water, it corrodes your barrel, you can’t keep it loaded. Why do they always show the gun over the fireplace? Because that’s the warmest, driest place in the house.”⁵¹ Similar problems also limited the utility of muzzle-loading pistols as practical tools for self-defense or criminal offenses. Indeed, at the time of the Second Amendment, over 90% of the weapons owned by Americans were long guns, not pistols.⁵²

Figure 1

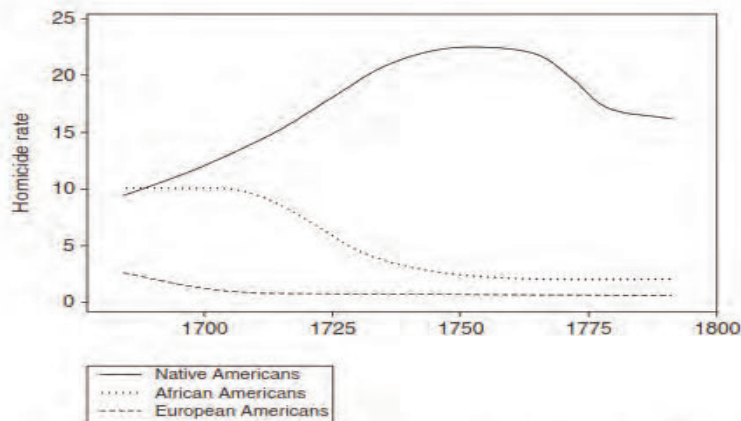


Figure 2.3 Unrelated-adult homicide rates in New England by race, 1677–1797 (per 100,000 persons per year).

28. As Roth’s data makes clear, there was not a serious homicide problem looming over debates about the Second Amendment. Nor were guns the primary

⁵¹ Randolph Roth, Transcript: *Why is the United States the Most Homicidal in the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013), <https://nij.ojp.gov/media/video/24061#transcript--0>.

⁵² Sweeney, *supra* note 49.

1 weapon of choice for those with evil intent during this period.⁵³ The skill and time
2 required to load and fire flintlock muzzle loading black powder weapons meant that
3 they were less likely to be used in crimes of passion. The preference for storing
4 them unloaded also meant they posed fewer dangers to children from accidental
5 discharge.

6 29. The Founding generation did not confront a gun violence problem
7 similar in nature or scope to the ills that plague modern America. The Founding
8 generation faced a different, but no less serious problem, American reluctance to
9 purchase the type of weapons needed to effectively arm their militias. Despite
10 repeated efforts to exhort and legislate to promote this goal, many states were
11 failing to adequately equip the militia with suitable firearms that could withstand
12 the rigors of the type of close-quarters hand-to-hand combat required by military
13 tactics. A gun had to be able to receive a bayonet and serve as a bludgeon if
14 necessary. The light weight guns favored by the overwhelmingly rural population
15 of early America were well designed to put food on the table and rid fields of
16 vermin, but were not well suited to eighteenth-century ground wars. When the U.S.
17 government surveyed the state of the militia's preparedness shortly after Jefferson
18 took office in 1800, the problem had not been solved. Although Massachusetts
19 boasted above 80% of its militia armed with military quality weapons, many of the
20 southern states lagged far behind, with Virginia and North Carolina hovering at
21 about less than half the militia properly armed.⁵⁴

22 30. Government policy, both at the state and federal level, responded to
23 these realities by requiring a subset of white citizens, those capable of bearing arms,
24 to acquire at their own expense a military quality musket and participate in
25 mandatory training and other martial activities. Gun policy in the Founding era
26

27 ⁵³ HAAG, *supra* note 45.

28 ⁵⁴ Sweeney, *supra* note 49.

1 reflected these realities, and accordingly, one must approach any analogies drawn
2 from this period's regulations with some caution when applying them to a modern
3 heterogeneous industrial society capable of producing a bewildering assortment of
4 firearms whose lethality would have been almost unimaginable to the Founding
5 generation.⁵⁵ Put another way, laws created for a society without much of a gun
6 violence problem enacted at a time of relative gun scarcity, at least in terms of
7 militia weapons, have limited value in illuminating the challenges Americans face
8 today.

9 31. Another aspect of Founding era gun policy that needs to be
10 acknowledged is the active role that government took in encouraging the
11 manufacturing of arms. The American firearms industry in its infancy was largely
12 dependent on government contracts and subsidies. Thus, government had a vested
13 interest in determining what types of weapons would be produced. Government
14 regulation of the firearms industry also included the authority to inspect the
15 manufactures of weapons and impose safety standards on the industry.

16 32. As business historian Lindsay Schakenbach Regele notes, "by 1810,
17 western Massachusetts produced more small arms than anywhere else in the
18 Northeast."⁵⁶ Beginning in 1794 the federal armory in Springfield, Massachusetts
19 served as a spur to technological innovation in the region. In the years following
20 the War of 1812, the Armory served as an incubator for other local producers and
21 gunsmiths, so much so that one Pittsfield gunsmith, Lemuel Pomeroy praised the
22 federal government for its actions which encouraged gunsmiths "to fabricate arms
23

24 ⁵⁵ Darrell A. H. Miller & Jennifer Tucker, *Common Use, Lineage, and*
25 *Lethality*, 55 U.C. DAVIS L. REV. 2495 (2022).

26 ⁵⁶ Lindsay Schakenbach Regele, *A Different Constitutionality for Gun*
27 *Regulation*, 46 HASTINGS CONST. L.Q. 523, 524 (2019); Andrew J. B. Fagal,
28 *American Arms Manufacturing and the Onset of the War of 1812*, 87 NEW ENG. Q.
526, 526 (2014).

1 of the first quality.”⁵⁷ The Springfield Armory’s output accounted for most of the
2 guns produced in the state.

3 33. In 1805, Massachusetts enacted a law requiring all guns, before sale,
4 to be inspected, marked, and stamped by an inspector. The state revised the proof
5 statute two more times in the decades leading up to the Civil War.⁵⁸ These
6 requirements ensured that the guns sold to the public were safe and suitable for
7 use. Although the guns produced by the Springfield Armory were not subject to
8 state law, because they were under federal control, these arms were nonetheless
9 subjected to thorough testing and were stamped as well. Indeed, the fact that these
10 arms had undergone a rigorous testing and evaluation process became a major
11 selling point that was advertised to increase their value and desirability as surplus
12 military arms in the booming consumer market for guns that exploded in the
13 decades after the War of 1812.⁵⁹

14 34. The calculus of individual self-defense changed dramatically in the
15 decades following the adoption of the Second Amendment.⁶⁰ The early decades of
16 the nineteenth century witnessed a revolution in the production and marketing of
17 guns.⁶¹ The same technological changes and economic forces that made wooden
18

19 ⁵⁷ Lindsay Schakenbach Regele, *MANUFACTURING ADVANTAGE: WAR, THE*
20 *STATE, AND THE ORIGINS OF AMERICAN INDUSTRY, 1776–1848* (2019) at 65-66.

21 ⁵⁸ 1805 Mass. Acts 588, An Act to Provide for the Proof of Fire Arms
22 Manufactured Within This Commonwealth, Ch. 35. A copy of this law is attached
23 hereto as Exhibit 3. The law was revised in 1837 and later in 1859, see Chap 49,
24 Sec. 27 (Firearms), General Statutes of the Commonwealth of Massachusetts:
25 Revised by Commissioners Appointed under a Resolve of February 16, 1855,
26 Amended by the Legislature, and Passed December 28, 1859 (1860).

27 ⁵⁹ Lindsay Schakenbach Regele, *Guns for the Government: Ordnance, the Military*
28 *‘Peacetime Establishment,’ and Executive Governance in the Early Republic*
34 *STUDIES IN AMERICAN POLITICAL DEVELOPMENT* 132, 145 (2020).

⁶⁰ Cornell, *supra* note 3, at 745.

⁶¹ Lindsay Schakenbach Regele, *Industrial Manifest Destiny: American*
Firearms Manufacturing and Antebellum Expansion, 93 *BUS. HIST. REV.* 57 (2018).

1 clocks and other consumer goods such as Currier and Ives prints common items in
2 many homes also transformed American gun culture.⁶² These same changes also
3 made handguns and a gruesome assortment of deadly knives, including the dreaded
4 Bowie knife, more common. The culmination of this gradual evolution in both
5 firearms and ammunition technology was the development of Samuel Colt's pistols
6 around the time of the Mexican-American War.⁶³ Economic transformation was
7 accompanied by a host of profound social changes that gave rise to America's first
8 gun violence crisis. As cheaper, more dependable, and easily concealable handguns
9 proliferated in large numbers, Americans, particularly southerners, began sporting
10 them with alarming regularity. The change in behavior was most noticeable in the
11 case of handguns.⁶⁴

12 35. The response of states to the emergence of new firearms that
13 threatened the peace was a plethora of new laws. In sort, when faced with changes
14 in technology, consumer behavior, and faced with novel threats to public safety, the
15 individual states enacted laws to address these problems. In every instance apart
16 from a few outlier cases in the Slave South, courts upheld such limits on the
17 unfettered exercise a right to keep and bear arms. The primary limit identified by
18 courts in evaluating such laws was the threshold question about abridgement: did
19 the law negate the ability to act in self-defense.⁶⁵ In keeping with the clear
20 imperative hard-wired into the Second Amendment, states singled out weapons that
21 posed a particular danger for regulation or prohibition. Responding in this fashion

22 _____
23 ⁶² Sean Wilentz, *Society, Politics, and the Market Revolution*, in *THE NEW AMERICAN HISTORY* (Eric Foner ed., 1990).

24 ⁶³ WILLIAM N. HOSLEY, *COLT: THE MAKING OF AN AMERICAN LEGEND* (1st
25 ed. 1996).

26 ⁶⁴ Cornell, *supra* note 3, at 716.

27 ⁶⁵ On southern gun rights exceptionalism, see Eric M. Ruben & Saul Cornell,
28 *Firearms Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 YALE L.J. F. 121, 128 (2015).

1 was entirely consistent with Founding-era conceptions of ordered liberty and the
2 Second Amendment.

3 36. Not all guns were treated equally by the law in early America. Some
4 guns were given heightened constitutional protection and others were treated as
5 ordinary property subject to the full force of state police power authority.⁶⁶ The
6 people themselves acting through their legislatures retained the fundamental right to
7 determine which dangerous weapons were exempted from the full protection of the
8 constitutional right to keep and bear arms. The antebellum case law examined by
9 *Heller* makes clear that the metric used by courts to evaluate laws was simple and
10 reflected the concept of infringement. Laws that undermined the right of self-
11 defense were generally struck down, regulations that limited but did not destroy the
12 right were upheld.⁶⁷

13 37. Some states opted to tax some common weapons to discourage their
14 proliferation.⁶⁸

15 ⁶⁶ Saul Cornell, *History and Tradition or Fantasy and Fiction: Which*
16 *Version of the Past Will the Supreme Court Choose in NYSRPA v. Bruen?*, 49
HASTINGS CONST. L.Q. 145 (2022).

17 ⁶⁷ The best illustration of this rule is *Reid*, discussed by *Heller* at 629.

18 ⁶⁸ 1858-1859 N.C. Sess. Laws 34-36, Pub. Laws, An Act Entitled Revenue,
19 chap. 25, § 27, pt. 15. (“The following subjects The following subjects shall be
20 annually listed, and be taxed the amounts specified: . . . Every dirk, bowie-knife,
21 pistol, sword-cane, dirk-cane and rifle cane, used or worn about the person of any
22 one at any time during the year, one dollar and twenty-five cents. Arms used for
23 mustering shall be exempt from taxation.”). Anderson Hutchinson, *Code of*
24 *Mississippi: Being an Analytical Compilation of the Public and General Statutes of*
25 *the Territory and State, with Tabular References to the Local and Private Acts, from*
26 *1798 to 1848 : With the National and State Constitutions, Cessions of the Country*
27 *by the Choctaw and Chickasaw Indians, and Acts of Congress for the Survey and*
28 *Sale of the Lands, and Granting Donations Thereof to the State (1848)* at 182. *See*
also 1866 Ga. Law 27, An Act to authorize the Justices of the Inferior Courts of
Camden, Glynn and Effingham counties to levy a special tax for county purposes,
and to regulate the same.

38. In particular not all hand guns were created equal in the eyes of the law. During Reconstruction a number of states prohibited guns that were deemed to pose a particular risk because they were easily concealed.⁶⁹

III. THE POLICE POWER AND FIREARMS REGULATION

39. The 1776 Pennsylvania Constitution, the first revolutionary constitution to assert a right to bear arms, preceded the assertion of this right by affirming a more basic rights claim: “That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.”⁷⁰ The phrase “internal police” had already become common, particularly in laws establishing towns and defining the scope of their legislative authority.⁷¹ By the early nineteenth century, the term “police” was a fixture in American law.⁷² Thus, an 1832 American encyclopedia confidently asserted that police, “in the common acceptance of the word, in the U. States and England, is applied to the municipal rules, institutions and officers provided for maintaining order, cleanliness &c.”⁷³ The Founding era’s conception of a basic police right located in legislatures

⁶⁹ 1879 Tenn. Pub. Acts 135-36, An Act to Prevent the Sale of Pistols, chap. 96, § 1; 1881 Ark. Acts 192, An Act to Preserve the Public Peace and Prevent Crime, ch. XCVI (96), § 3.

⁷⁰ PA. CONST. OF 1776, Ch. I, art iii.

⁷¹ For other examples of constitutional language similar to Pennsylvania’s provision, N.C. CONST. OF 1776, DECLARATION OF RIGHTS, art. II; VT. CONST. OF 1777, DECLARATION OF RIGHTS, art. IV. For other examples of this usage, *see* An Act Incorporating the residents residing within limits therein mentioned, *in* 2 NEW YORK LAWS 158 (1785) (establishing the town of Hudson, NY); An Act to incorporate the Town of Marietta, *in* LAWS PASSED IN THE TERRITORY NORTHWEST OF THE RIVER OHIO 29 (1791). For later examples, *see* 1 STATUTES OF THE STATE OF NEW JERSEY 561 (rev. ed. 1847); 1 SUPPLEMENTS TO THE REVISED STATUTES. LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, PASSED SUBSEQUENTLY TO THE REVISED STATUTES: 1836 TO 1849, INCLUSIVE 413 (Theron Metcalf & Luther S. Cushing, eds. 1849).

⁷² ERNST FREUND, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS 2, n.2 (1904).

⁷³ 10 ENCYCLOPEDIA AMERICANA 214 new edition (Francis Lieber ed.).

1 was transmuted during the Marshall Court’s era into the judicial doctrine of the
2 police power and would become a fixture in American law.

3 40. The power to regulate firearms and gunpowder has always been
4 central to the police power and historically was shared among states, local
5 municipalities, and the federal government when it was legislating conduct on
6 federal land and in buildings.⁷⁴ The adoption of the Constitution and the Bill of
7 Rights did not deprive states of their police powers. Indeed, if it had, the
8 Constitution would not have been ratified and there would be no Second
9 Amendment today. Ratification was only possible because Federalists offered
10 Anti-Federalists strong assurances that nothing about the new government
11 threatened the traditional scope of the individual state’s police power authority,
12 including the authority to regulate guns and gun powder.⁷⁵

13 41. Federalists and Anti-Federalists bitterly disagreed over many legal
14 issues, but this one point of accord was incontrovertible. Brutus, a leading Anti-
15 Federalist, emphatically declared that “[I]t ought to be left to the state governments
16 to provide for the protection and defence [sic] of the citizen against the hand of
17 private violence, and the wrongs done or attempted by individuals to each other
18”⁷⁶ Federalist Tench Coxe concurred, asserting that: “[t]he states will regulate
19 and administer the criminal law, exclusively of Congress.” States, he assured the
20 American people during ratification, would continue to legislate on all matters
21 related to the police power “such as unlicensed public houses, nuisances, and many
22
23

24 ⁷⁴ Harry N. Scheiber, *State Police Power*, in 4 ENCYCLOPEDIA OF THE
25 AMERICAN CONSTITUTION 1744 (Leonard W. Levy et al. eds., 1986).

26 ⁷⁵ Saul Cornell, *THE OTHER FOUNDERS: ANTIFEDERALISM AND THE*
27 *DISSENTING TRADITION IN AMERICA, 1788-1828* (1999).

28 ⁷⁶ Brutus, *Essays of Brutus VII*, reprinted in 2 *THE COMPLETE*
ANTIFEDERALIST 358, 400–05 (Herbert J. Storing ed., 1981).

1 other things of the like nature.”⁷⁷ State police power authority was at its pinnacle in
2 matters relating to guns or gun powder.⁷⁸

3 42. Every aspect of the manufacture, sale, and storage of gun powder was
4 regulated due to the substance’s dangerous potential to detonate if exposed to fire or
5 heat. Firearms were also subject to a wide range of regulations, including laws
6 pertaining to the manufacture, sale, and storage of weapons.⁷⁹

7 43. Thus, Massachusetts enacted a law that prohibited storing a loaded
8 weapon in a home, a firearms safety law that recognized that the unintended
9 discharge of firearms posed a serious threat to life and limb.⁸⁰ New York City even
10 granted broad power to the government to search for gun powder and transfer
11 powder to the public magazine for safe storage:

12 it shall and may be lawful for the mayor or recorder, or any two
13 Alderman of the said city, upon application made by any inhabitant or
14 inhabitants of the said city, and upon his or their making oath of
15 reasonable cause of suspicion (of the sufficiency of which the said
16 mayor or recorder, or Aldermen, is and are to be the judge or judges)
17 to issue his or their warrant or warrants, under his or their hand and
18 seal, or hands and seals for searching for such gun powder, in the day
19 time, in any building or place whatsoever.⁸¹

19 ⁷⁷ Tench Coxe, A Freeman, *Pa. Gazette*, Jan. 23, 1788, reprinted in FRIENDS
20 OF THE CONSTITUTION: WRITINGS OF THE “OTHER” FEDERALISTS 82 (Colleen A.
21 Sheehan & Gary L. McDowell eds., 1998).

21 ⁷⁸ CORNELL, *supra* note 35.

22 ⁷⁹ Cornell and DeDino, *supra* note 38; public carry by contrast was limited
23 by common law and criminal statutes, see, Cornell, *supra* note 42.

24 ⁸⁰ Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to
25 the Several Acts Already Made for the Prudent Storage of Gun Powder within the
26 Town of Boston, § 2. A copy of this law is attached hereto as Exhibit 4.

27 ⁸¹ An Act to Prevent the Storing of Gun Powder, within in Certain Parts of
28 New York City, 2 LAWS OF THE STATE OF NEW-YORK, COMPRISING THE
CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION,
FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE at 191-2 (Thomas
Greenleaf, ed., 1792). A copy of this law is attached hereto as Exhibit 5.

44. The power to regulate firearms and gunpowder was therefore at the very core of the police power and inheres in both states and local municipalities. The application of the police power to firearms and ammunition was singled out as the quintessential example of state police power by Chief Justice John Marshall in his 1827 discussion of laws regulating gun powder in *Brown v. Maryland*.⁸² This was so even though gunpowder was essential to the operation of firearms at that time and gun powder regulations necessarily affected the ability of gun owners to use firearms for self-defense, even inside the home.

45. A slow process of judicializing this concept of police, transforming the Founding era's idea of a "police right" into a judicially enforceable concept of the "police power" occurred beginning with the Marshall Court and continuing with the Taney Court.⁸³

46. Nor was Chief Justice John Marshall unique in highlighting the centrality of this idea to American law.⁸⁴ The ubiquity of the police power framework for evaluating the constitutionality of legislation regarding firearms reflected the centrality of this approach to nearly every question of municipal

⁸² 25 U.S. (12 Wheat.) 419, 442-43 (1827) ("The power to direct the removal of gunpowder is a branch of the police power").

⁸³ Eras of Supreme Court history are typically defined by the tenure of the Chief Justice. The Marshall Court Period covered the years 1801-1835. For a brief overview, see "The Marshall Court, 1801-1835", SUPREME COURT HISTORICAL SOCIETY (last visited Oct. 5, 2022), <https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/>. The Taney Court period covered the years 1836-1864. See "The Taney Court, 1836-1864", SUPREME COURT HISTORICAL SOCIETY (last visited Oct. 5, 2022), <https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/>.

⁸⁴ In the extensive notes he added as editor of the 12th edition of James Kent's classic *Commentaries on American Law*, Oliver Wendell Holmes, Jr., wrote that regulation of firearms was the *locus classicus* of the police power. See 2 JAMES KENT COMMENTARIES ON AMERICAN LAW (340) 464 n.2 (Oliver Wendell Holmes, Jr., ed. 12 ed. 1873).

1 legislation touching health or public safety in early America.⁸⁵ Massachusetts
2 Judge Lemuel Shaw, one of the most celebrated state jurists of the pre-Civil War era
3 elaborated this point in his influential 1851 opinion in *Commonwealth v. Alger*, a
4 decision that became a foundational text for lawyers, judges, and legislators looking
5 for guidance on the meaning and scope of the police power. Shaw described the
6 police power in the following manner:

7 [T]he power vested in the legislature by the constitution, to make,
8 ordain and establish all manner of wholesome and reasonable laws,
9 statutes and ordinances, either with penalties or without, not
10 repugnant to the constitution, as they shall judge to be for the good
11 and welfare of the commonwealth, and of the subjects of the same.
12 It is much easier to perceive and realize the existence and sources
13 of this power, than to mark its boundaries, or prescribe limits to its
14 exercise. There are many cases in which such a power is exercised
15 by all well-ordered governments, and where its fitness is so
16 obvious, that all well regulated minds will regard it as reasonable.
17 Such are the laws to prohibit the use of warehouses for the storage
18 of gunpowder.⁸⁶

14 47. In short, there was unanimous agreement among leading antebellum
15 jurists, at both the federal and state level, that the regulation of arms and gun
16 powder was at the core of the police power enjoyed by legislatures. Indeed, the
17 scope of government power to regulate, prohibit, and inspect gunpowder has been
18 among the most far reaching of any exercise of the police power throughout
19

21
22 ⁸⁵ FREUND, *supra* note 72, at 2, n.2 (1904). WILLIAM J. NOVAK, *THE PEOPLE'S*
23 *WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* (1996);
24 Christopher Tomlins, *To Improve the State and Condition of Man: The Power to*
25 *Police and the History of American Governance*, 53 *BUFF. L. REV.* 1215 (2005);
26 DUBBER, *supra* note 12; GARY GERSTLE, *LIBERTY AND COERCION: THE PARADOX OF*
27 *AMERICAN GOVERNMENT, FROM THE FOUNDING TO THE PRESENT* (Princeton Univ.
28 Press, 2015).

26 ⁸⁶ *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53 (1851). For another good
27 discussion of how state jurisprudence treated the concept, see *Thorpe v. Rutland*, 27
28 Vt. 140, 149 (1855).

American history.⁸⁷ A Maine law enacted in 1821 authorized town officials to enter any building in town to search for gun powder:

Be it further enacted, That it shall, and may be lawful for any one or more of the selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefore according to law.⁸⁸

48. No jurisdiction enumerated the full contours of the police power they possessed in a single text or in a single statute or ordinance. Rather, it was well understood that the exercise of this power would need to adapt to changing circumstances and new challenges as they emerged. This conception of law was familiar to most early American lawyers and judges who had been schooled in common law modes of thinking and analysis.⁸⁹ Throughout the long sweep of Anglo-American legal history, government applications of the police power were marked by flexibility, allowing local communities to adapt to changing circumstances and craft appropriate legislation to deal with the shifting challenges they faced.⁹⁰ This vision of the police power was articulated forcefully by the Supreme Court in the License Cases when Justice McClean wrote this about the scope of state police power:

It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society. In the progress of population, of wealth, and of civilization, new and vicious indulgences spring up, which require restraints that can only be imposed by new legislative power.

⁸⁷ CORNELL, THE POLICE POWER, *supra* note 35.

⁸⁸ 1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, chap. 25, § 5. A copy of this law is attached hereto as Exhibit 6.

⁸⁹ KUNAL M. PARKER, COMMON LAW HISTORY, AND DEMOCRACY IN AMERICA, 190-1900: LEGAL THOUGHT BEFORE MODERNISM (2013).

⁹⁰ William J. Novak, *A State of Legislatures*, 40 POLITY 340 (2008).

1 When this power shall be exerted, how far it shall be carried, and where it
2 shall cease, must mainly depend upon the evil to be remedied.⁹¹

3 49. One of the most important early American gun-related cases discussed
4 in *Heller*, *State v. Reid*, offers an excellent illustration of the way police power
5 jurisprudence was used by antebellum judges to adjudicate claims about gun rights
6 and the right of the people to regulate.⁹² The case is a classic example of
7 antebellum police power jurisprudence. The Supreme Court of Alabama evaluated
8 the statute by focusing on the scope of state police power authority over guns. “The
9 terms in which this provision is phrased,” the court noted, “leave with the
10 Legislature the authority to adopt such regulations of police, as may be dictated by
11 the safety of the people and the advancement of public morals.”⁹³ In the court’s
12 view, the regulation of arms was at the very core of state police power.⁹⁴ The
13 judicial determination was straightforward: was the challenged law a legitimate
14 exercise of the police power or not?

15 **IV. RECONSTRUCTION AND THE EXPANSION OF STATE POLICE POWER TO** 16 **REGULATE FIREARMS (1863-1877)**

17 50. Founding-era constitutions treated the right of the people to regulate
18 their internal police separately from the equally important right of the people to
19 bear arms. These two rights were separate in the Founding era but were mutually
20 reinforcing: both rights were exercised in a manner that furthered the goal of
21 ordered liberty. Reconstruction-era constitutions adopted a new textual formulation

22 ⁹¹ *License Cases* (*Thurlow v. Massachusetts*; *Fletcher v. Rhode Island*; *Peirce*
23 *v. New Hampshire*), 5 How. (46 U.S.) 504, 592 (1847).

24 ⁹² *See State v. Reid*, 1 Ala. 612, 612 (1840).

25 ⁹³ *Id.* at 616.

26 ⁹⁴ Apart from rare outlier decisions, such as *Bliss v. Commonwealth*, 12 Ky.
27 (2 Litt.) 90, 92 (1822) courts employed a police power framework to adjudicate
28 claims about the scope of state power to regulate arms. For a useful discussion of
Bliss in terms of the police power, *see* FREUND, *supra* note 72, at 91.

1 of the connection between these two formerly distinct rights, fusing the two
 2 together as one single constitutional principle. This change reflected two profound
 3 transformations in American politics and law between 1776 and 1868. First, the
 4 judicial concept of police power gradually usurped the older notion of a police right
 5 grounded in the idea of popular sovereignty. As a result, state constitutions no
 6 longer included positive affirmations of a police right. Secondly, the constitutional
 7 “mischief to be remedied” had changed as well.⁹⁵ Constitution writers in the era of
 8 the American Revolution feared powerful standing armies and sought to entrench
 9 civilian control of the military. By contrast, constitution writers in the era of the
 10 Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart
 11 Kings using their standing army to oppress American colonists. In place of these
 12 ancient fears, a new apprehension stalked Americans: the proliferation of
 13 especially dangerous weapons and the societal harms they caused.⁹⁶

14 51. The new language state constitutions employed to describe the right to
 15 bear arms enacted during Reconstruction responded to these changed circumstances
 16 by adopting a new formulation of the venerable right codified in 1776, linking the
 17 right to bear arms inextricably with the states broad police power to regulate
 18 conduct to promote health and public safety.⁹⁷ For example, the 1868 Texas

19 _____
 20 ⁹⁵ The mischief rule was first advanced in *Heydon’s Case*, (1584) 76 Eng.
 21 Rep. 637 (KB) — the legal principle that the meaning of a legal text was shaped by
 22 an understanding of the state of the common law prior to its enactment and the
 23 mischief that the common law had failed to address and legislation had intended to
 24 remedy — continued to shape Anglo-American views of statutory construction, and
 25 legal interpretation more generally, well into the nineteenth century. For
 26 Blackstone’s articulation of the rule, see 1 BLACKSTONE, *supra* note 8, at *61. The
 27 relevance of common law modes of statutory construction to interpreting
 28 antebellum law, including the mischief rule, is clearly articulated in 1 ZEPHANIAH
 SWIFT, A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT 11 (New Haven, S.
 Converse 1822). For a modern scholarly discussion of the rule, see Samuel L.
 Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 970 (2021).

⁹⁶ See *McDonald*, 561 U.S. at 767–68

⁹⁷ Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth*

1 Constitution included new language that underscored the indissoluble connection
 2 that Anglo-American law had long recognized between the right to keep and bear
 3 arms and regulation of guns. “Every person shall have the right to keep and bear
 4 arms, in the lawful defence of himself or the government, under such regulations as
 5 the Legislature may prescribe.”⁹⁸ Nor was Texas an outlier in this regard. Sixteen
 6 state constitutions adopted during this period employed similarly expansive
 7 language.⁹⁹ Millions of Americans living in the newly organized western states and
 8 newly reconstructed states of the former confederacy adopted constitutional
 9 provisions that reflected this new formulation of the right to bear arms. Thus,
 10 millions of Americans were living under constitutional regimes that acknowledged
 11 that the individual states’ police power authority over firearms was at its apogee
 12 when regulating guns.¹⁰⁰

13 52. This expansion of regulation was entirely consistent with the
 14 Fourteenth Amendment’s emphasis on the protection of rights and the need to
 15 regulate conduct that threatened the hard-won freedoms of recently free people of
 16 the South and their Republican allies. The goals of Reconstruction were therefore
 17 intimately tied to the passage and enforcement of racially neutral gun regulations.¹⁰¹

18
 19 *Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 U.C. DAVIS L. REV. 65 (2022).

20 ⁹⁸ TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional
 21 provision enacted after the Civil War, *see* IDAHO CONST. OF 1889, art. I, § 11 (“The
 22 people have the right to bear arms for their security and defense; but the legislature
 23 shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6
 (“[T]he people have the right to bear arms for their security and defense, but the
 legislature may regulate the exercise of this right by law.”).

24 ⁹⁹ Cornell, *supra* note 97, at 75–76.

25 ¹⁰⁰ *Id.*

26 ¹⁰¹ ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND*
 27 *RECONSTRUCTION REMADE THE CONSTITUTION* (2019); Brennan Gardner Rivas,
 28 *Enforcement of Public Carry Restrictions: Texas as a Case Study*, 55 U.C. DAVIS L.
 REV. 2603 (2022).

53. Reconstruction ushered in profound changes in American law, but it did not fundamentally alter the antebellum legal view that a states' police powers were rooted in the people's right to make laws to protect the peace and promote public safety. Nor did Reconstruction challenge the notion that these powers were at their zenith when dealing with guns and gun powder. In fact, the Republicans who wrote the Fourteenth Amendment were among the most ardent champions of an expansive view of state police power. As heirs to the antebellum Whig vision of a well-regulated society, Reconstruction-era Republicans used government power aggressively to protect the rights of recently freed slaves and promote their vision of ordered liberty.¹⁰²

54. Indeed, the passage of the Fourteenth Amendment was premised on the notion that the individual states would not lose their police power authority to the federal government. The author of Section One of the Fourteenth Amendment, John Bingham, reassured voters that the states would continue to bear the primary responsibility for "local administration and personal security."¹⁰³ As long as state and local laws were racially neutral and favored no person over any other, the people themselves, acting through their representatives, were free to enact reasonable measures necessary to promote public safety and further the common good.¹⁰⁴

¹⁰² Robert J. Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights: Lessons from Federal Remedies the Framers Enacted*, 42 HARV. J. ON LEGIS. 187 (2005); Christopher Tomlins, *To Improve the State and Condition of Man: The Power to Police and the History of American Governance* 53 BUFFALO L. REV. 1215 (2005/2006).

¹⁰³ John Bingham, *Speech*, CINCINNATI DAILY GAZETTE (Sept. 2, 1867), as quoted in Saul Cornell and Justin Florence, *The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation*, 50 SANTA CLARA L. REV. 1043, 1058 (2010).

¹⁰⁴ For a discussion of how the courts wrestled with the meaning of the Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* (1998).

55. It would be difficult to understate the impact of this new paradigm for gun regulation on post-Civil War legislation. Across the nation legislatures took advantage of the new formulation of the right to bear arms included in state constitutions and enacted a staggering range of new laws to regulate arms. Indeed, the number of laws enacted skyrocketed, increasing by over four hundred percent from antebellum levels.¹⁰⁵ Not only did the number of laws increase, but the number of states and localities passing such laws also expanded.¹⁰⁶

56. Henry Campbell Black, the author of *Black's Law Dictionary*, described the police power as “inalienable” and echoed the view of a long line of jurists who noted that the scope of the power was not easily defined and the determination of its limits was best left to courts on a case-by-case basis.¹⁰⁷ Indeed, even the most ardent critics of the police power, such as conservative legal scholar Christopher G. Tiedeman, acknowledged that “police power of the State extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State.”¹⁰⁸

57. In keeping with the larger goals of Reconstruction, Republicans sought to protect the rights of African Americans to bear arms but were equally insistent on enacting strong racially neutral regulations aimed at public safety. Violence directed against African Americans, particularly the campaign of terror orchestrated by white supremacist para-military groups prompted Republican dominated legislatures in the Reconstruction South to pass a range of racially neutral gun

¹⁰⁵ See Spitzer, *supra* note 39, at 59–61 tbl. 1.

¹⁰⁶ *Id.*

¹⁰⁷ HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344 (2d ed., 1897).

¹⁰⁸ CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE POLICE POWER IN THE UNITED STATES 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27 Vt. 140, 149–50 (1854)).

1 regulations.¹⁰⁹ The racially neutral gun laws enacted by Republicans were in part a
 2 reaction to the discriminatory black codes passed by neo-confederate legislatures
 3 earlier in Reconstruction. The Black Codes violated the Second Amendment, but
 4 the wave of firearms legislation passed by Republican controlled state legislatures
 5 in the South were consciously crafted to honor the Second Amendment and protect
 6 individuals from gun violence.¹¹⁰

7 58. The laws enacted during Reconstruction underscore the fact that robust
 8 regulation of firearms during Reconstruction was not a novel application of the
 9 police power, but an expansion and continuation of antebellum practices. Moreover,
 10 these efforts illustrated a point beyond dispute: the flexibility inherent in police
 11 power regulations of guns. American states had regulated arms since the dawn of
 12 the republic and Reconstruction simply renewed America's commitment to the idea
 13 of well-regulated liberty.

14 **V. BRUEN'S FRAMEWORK AND THE SCOPE OF PERMISSIBLE REGULATION**

15 59. The power to regulate and in some cases prohibit guns and gun powder
 16 has always been central to the police power authority of states and localities. At
 17 different moments in American history communities have regulated weapons. As
 18 the Second Amendment's text makes clear, weapons that undermine the security of
 19 a free state are not within the scope of its protections. In short, social, and
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22 ¹⁰⁹ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in*
 23 *Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas,
 24 *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in*
Texas, 1836-1900, 121 SOUTHWESTERN QUARTERLY 284 (2020).

25 ¹¹⁰ See Darrell A. H. Miller, *Peruta, The Home-Bound Second Amendment,*
 26 *and Fractal Originalism*, 127 HARV. L. REV. 238, 241 (2014); see also Robert J.
 27 Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights:*
 28 *Lessons from Federal Remedies the Framers Enacted*, 42 HARV. J. ON LEGIS. 187,
 205 (2005) (discussing Republican use of federal power to further their aims,
 including to enforce the Fourteenth Amendment).

1 economic transformation were always accompanied by legal transformation. Put
2 another way, as times change, the law changes with them.¹¹¹

3 60. Political scientist Robert Spitzer’s overview of the history of firearms
4 regulation underscores a basic point about American law: “The lesson of gun
5 regulation history here is that new technologies bred new laws when circumstances
6 warranted.”¹¹² States and localities have regulated gunpowder and arms, since the
7 earliest days of the American Republic. The statutes at issue in this case are
8 analogous to a long-established tradition of firearms regulation in America,
9 beginning in the colonial period and stretching across time to the present. This
10 venerable tradition of using police power authority to craft specific laws to meet
11 shifting challenges has continued to the present day.¹¹³ The adaptability of state
12 and local police power provided the flexibility governments needed to deal with the
13 problems created by changes in firearms technology and gun culture.

14 61. The metric used by courts to adjudicate questions about the scope of
15 permissible regulation has remain constant over the long arc of American history.
16 To constitute an infringement of the right the law must burden the right of self-
17 defense to such a degree that it effectively negates it. As long as laws stay within
18 this threshold they have been held to be constitutional.

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¹¹¹ Spitzer, *supra* note 37.

27 ¹¹² *Id.*

28 ¹¹³ GERSTLE, *supra* note 85.

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

2 Executed on January 27, 2023 at Redding, CT.

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Saul Cornell

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Saul Cornell

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Exhibit 1

Saul Cornell

Paul and Diane Guenther Chair in American History

Department of History

Fordham University

441 East Fordham Road * Bronx, NY 10458 * 203 826-6608 (c) * scornell1@fordham.edu**Education**

| | | | |
|---------|---|-------|---|
| 1989 | University of Pennsylvania | Ph.D. | Dissertation: "The Political Thought and Culture of the Anti-Federalists" |
| 1985 | University of Pennsylvania | MA | History |
| 1982 | Amherst College | BA | History - Magna Cum Laude |
| 1980-81 | University of Sussex, Brighton, England | | |

Teaching Experience

| | | |
|-----------|------------------------------------|---------------------------------------|
| 2009-2020 | Guenther Chair in American History | Fordham University |
| 2011-2022 | Adjunct Professor of Law | Fordham Law School |
| 2005-2008 | Professor of History | The Ohio State University |
| 1997-2005 | Associate Professor, History | The Ohio State University |
| 1995 | Thomas Jefferson Chair | University of Leiden, The Netherlands |
| 1991-1997 | Assistant Professor, History | The Ohio State University |
| 1989-1991 | Assistant Professor, History | College of William and Mary |

Fellowships and Grants

- 2019-2020 The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University
- 2018-2019 Senior Research Scholar in Residence, Floersheimer Center for Constitutional Democracy, Cardozo Law School
- 2014 Senior Research Scholar in Residence, University of Connecticut Law School
- 2011 Senior Research Scholar in Residence, Yale Law School
- 2003-2008 Joyce Foundation, Second Amendment Center Grant, \$575,000
- 2003-2004 NEH Fellowship
- 2002-2005 Department of Education, Teaching American History Grant, Historyworks, \$2,000,000
- 2002 Gilder-Lehrman Fellowship
- 2001-2002 Joyce Foundation Planning Grant, \$40,000
- 2001 American Council of Learned Societies (ACLS)
- 1999-2000 Betha Grant, Batelle Memorial Endowment, Ohio Teaching Institute, \$100,000
- 1998 Thomas Jefferson Memorial Foundation, Research Fellowship
- 1995 Thomas Jefferson Chair in American Studies, Fulbright Lecturing Award
- 1994 Ohio State University Seed Grant
- 1993 Ohio State University Special Research Assignment
- 1992 Ohio State University Grant-In-Aid
- 1989-1991 NEH Post-Doctoral Fellow, Institute of Early American History and Culture

| |
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| Prizes and Awards |
|--------------------------|

- 2006 Langum Prize in Legal History 2006
- 2006 History News Network, Book of the Month
- 2006 History News Network, Top Young Historian
- 2001 Society of the Cincinnati, History Book Prize, a Triennial Award for the Best Book on the American Revolutionary Era
- 2000 Choice Outstanding Academic Book

| |
|--------------------------|
| Book Publications |
|--------------------------|

The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders Constitution
New Histories of American Law, series eds., Michael Grossberg and Christopher Tomlins (Cambridge University Press, 2019) [With Gerald Leonard]

The Second Amendment On Trial: Critical Essays on District of Columbia v. Heller
 (University of Massachusetts Press, 2013) [with Nathan Kozuskanich]

Visions of America: A History of the United States [co-authored with Jennifer Keene and Ed O'Donnell]
 (First edition, 2009),(second edition 2013) (third edition, 2016)

"A Well Regulated Militia": The Founding Fathers and the Origins of Gun Control (Oxford University Press, 2006) (paperback edition 2008)

Whose Right to Bear Arms Did the Second Amendment Protect? (Bedford/St. Martins Press, 2000)
 (Paperback 2000)

The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828 (Institute of Early American History and Culture, University of North Carolina Press, 1999) (paperback edition 2001)

Editor, Retrieving the American Past: Documents and Essays on American History, (Pearson, 1994-2008)

Scholarly Articles, Book Chapters, and Essays:

"History and Tradition or Fantasy and Fiction: Which Version of the Past Will the Supreme Court Choose in NYSRPA v. Bruen?," 49 *Hastings Constitutional Law Quarterly* (2022): 145-177.

"The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328–1928," 55 University of California, Davis Law Review (2022): 2545-2602

"'Infants' and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record," 40 Yale Law & Policy Review Inter Alia 1 (2021)

"The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America" 55 University of California, Davis Law Review Online (2021): 65-90.

- “President Madison's Living Constitution: Fixation, Liquidation, and Constitutional Politics in the Jeffersonian Era”, 89 Fordham Law Review (2021): 1761-1781.
- “History, Text, Tradition, and the Future of Second Amendment Jurisprudence: Limits on Armed Travel Under Anglo-American Law, 1688–1868,” 83 Law and Contemporary Problems (2020): 73-95
- “Reading the Constitution, 1787–91: History, Originalism, and Constitutional Meaning.” Law and History Review 37 (2019): 821–45
- “Constitutional Mythology and the Future of Second Amendment Jurisprudence after *Heller*,” in Firearms and Freedom: The Second Amendment in the Twenty-First Century Controversies in American Constitutional Law Series (Routledge, 2017): 8-24
- “The Right to Keep and Carry Arms in Anglo-American Law, Preserving Liberty and Keeping the Peace,” 80 Law and Contemporary Problems (2017): 11-54
- “Half Cocked’: The Persistence of Anachronism and Presentism in the Academic Debate over the Second Amendment,” 107 Northwestern Journal of Criminal Law 107 (2017): 203-218
- “The 1790 Naturalization Act and the Original Meaning of the Natural Born Citizen Clause: A Short Primer on Historical Method and the Limits of Originalism,” Wisconsin Law Review Forward 92 (2016)
- “Constitutional Meaning and Semantic Instability: Federalists and Anti-Federalists on the Nature of Constitutional Language,” in special issue on “The Future of Legal History,” American Journal of Legal History 56 (2016): 21-29
- “Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context,” Yale Law Journal Forum 125(2015-16):121-135 [with Eric Ruben]
- “Originalism As Thin Description: An Interdisciplinary Critique” Fordham Law Review Res Gestae 84 (2015): 1-10
- “The Right to Bear Arms,” The Oxford Handbook of the US Constitution, eds., Mark Tushnet, Sanford Levinson, and Mark Graber (2015): 739-759
- “Conflict, Consensus & Constitutional Meaning: The Enduring Legacy of Charles Beard” Constitutional Commentary 29(2014): 383-409
- “Meaning and Understanding in the History of Constitutional Ideas: the Intellectual History Alternative to Originalism” Fordham Law Review 82 (2013): 721-755
- “The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities” Fordham Urban Law Journal 39 (2012): 1695-1726
- “Evidence, Explanation, and the Ghost of Charles Beard” William & Mary Quarterly 69 (2012): 393-4
- “Idiocy, Illiteracy, and the Forgotten Voices of Popular Constitutionalism: Ratification and the Ideology of Originalism” William & Mary Quarterly 69 (2012): 365-368
- “The People’s Constitution v. The Lawyer’s Constitution: Popular Constitutionalism and the Original Debate Over Originalism,” Yale Journal of Law and the Humanities 23 (2011): 295-337
- “St. George Tucker's Lecture Notes, The Second Amendment, and Originalist Methodology: A Critical Comment,” Northwestern University Law Review 103 (2009): 406-416

- “Heller, New Originalism, and Law Office History: ‘Meet the New Boss, Same as the Old Boss’” UCLA Law Journal 56 (2009): 1095-1125
- “Originalism on Trial: The Use and Abuse of History in *District of Columbia v. Heller*” Ohio-State Law Journal 69 (2008): 625-640
- “Consolidation of the Early Federal System,” Chapter 10 of the Cambridge History of American Law (Cambridge University Press, 2008) [With Gerry Leonard]
- “The Ironic Second Amendment” Albany Government Law Review 2 (2008): 292-311.
- “The Original Meaning of Original Understanding: A Neo-Blackstonian Critique,” Maryland Law Review (2008): 101-115
- “Mobs, Militias, and Magistrates: Popular Constitutionalism During the Whiskey Rebellion,” Chicago-Kent Law Review (2007): 883-903
- “The Second Amendment and Early American Gun Regulation: a Closer Look at the Evidence,” Law and History Review (2007): 197-204
- “St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings,” William and Mary Law Review 47 (2006): 1123-55
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, the Lessons of History,” Stanford Law and Policy Review (2006): 571-596
- “Well Regulated: The Early American Origins of Gun Control,” Fordham Law Review 73 (2004): 487-528 [With Nathan DeDino]
- “Beyond the Myth of Consensus: The Struggle to Define the Right to Bear Arms in the Early Republic,” in Beyond the Founders: New Essays on the Political History of the Early Republic (UNC Press, 2005)
- “A New Paradigm for the Second Amendment,” Law and History Review 22 (2004): 161-7
- “Gun Laws and Policies: A Dialogue,” Focus on Law Studies: Teaching about Law in the Liberal Arts (American Bar Association, 2003)
- “The Militia Movement,” Oxford Companion to American Law (Oxford University Press, 2002)
- “Don’t Know Much About History: The Current Crisis in Second Amendment Scholarship,” Northern Kentucky Law Review (2003)
- “A Right to Bear Quills or Kill Bears? A Critical Commentary on the Linkage between the 1st and 2nd Amendment in Recent Constitutional Theory,” in The Limits of Freedom in A Democratic Society (Kent State University Press, 2001)
- “The Irony of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional History,” in American Law Ways and Folkways (Odense University Press, Denmark 2001)
- “Commonplace or Anachronism: The Standard Model, The Second Amendment, and the Problem of History in Contemporary Constitutional Theory,” Constitutional Commentary (1999): 221-246
- “Mere Parchment Barriers? Anti-Federalists, the Bill of Rights, and the Question of Rights Consciousness,” in Government Proscribed: The Bill of Rights (University of Virginia Press, 1998): 175-208

- "Moving Beyond the Great Story: Post-Modern Prospects, Post-Modern Problems, A Forum on Robert Berkhofer, Jr. Beyond the Great Story" American Quarterly (1998): 349-357
- "The Anti-Federalists," in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- "The Bill of Rights," in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- "Splitting the Difference: Textualism, Contextualism, and Post-Modern History," American Studies (1995): 57-80
- "Canon Wars II: The Return of the Founders," Reviews in American History 22 (1994): 413-417
- "Moving Beyond the Canon of Traditional Constitutional History: Anti-Federalists, the Bill of Rights and the Promise of Post-Modern Historiography," Law and History Review (1994): 1-28
- "Early American History in a Post-Modern Age," William and Mary Quarterly 50 (1993): 329-341
- "Liberal Republicans, Republican Liberals?: The Political Thought of the Founders Reconsidered," Reviews in American History 21 (1993): 26-30
- "Politics of the Middling Sort: The Bourgeois Radicalism of Abraham Yates, Melancton Smith, and the New York Anti-Federalists," in New York in the Age of the Constitution (New York Historical Society, 1992): 151-175
- "Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Anti-Federalist Ideology," Journal of American History (1990): 1148-1172
- "The Changing Historical Fortunes of the Anti-Federalists," Northwestern University Law Review (1989): 39-73
- "Reflections on the 'Late Remarkable Revolution in Government,' Aedanus Burke and Samuel Bryan's Unpublished History of the Ratification of the Federal Constitution," The Pennsylvania Magazine of History and Biography (1988): 103-130

Book Reviews:

- Journal of American History
- William and Mary Quarterly
- American Studies Journal of the Early Republic
- Pennsylvania Magazine of History and Biography
- American Quarterly
- American Journal of Legal History
- Law and History Review

Journal Manuscript Referee:

- Journal of American History
- William and Mary Quarterly
- Diplomatic History
- Pennsylvania Magazine of History and Biography
- Law and History Review
- Harvard Law Review

- Stanford Law Review
- Yale Law Journal

Book Manuscript Reviewer:

- University Press of Virginia
- University of North Carolina Press
- Stanford University Press
- University of Massachusetts Press
- Oxford University Press
- Cambridge University Press
- University of Michigan Press
- Harvard University Press

Invited Lectures:

“Race, Regulation, and Guns: The Battleground in the Debate Over the Second Amendment,”
Haber/Edelman Lecture: University of Vermont, Fall 2021

“Second Amendment Myths and Realities,” University of Tampa, Honors College Symposium,
November 30, 2018.

“The Common Law and Gun Regulation: Neglected Aspects of the Second Amendment Debate,” Guns
in Law, Amherst College, Law Justice and Society (2016)

“The New Movement to End Gun Violence.” UCLA Hammer Museum (2016)

“No Person May Go Armed”: A Forgotten Chapter in the History of Gun Regulation” The Elizabeth
Battelle Clark Legal History Series, Boston University College of Law, 2016

Legacy Speaker Series: “Guns in the United States,” University of Connecticut (2016) “How does the
Second Amendment Apply to Today?”

American Constitution Society/ Federalist Society Debate, Tulane Law School, New Orleans (2016)

“The Second Amendment and The Future of Gun Regulation: Forgotten Lessons From U.S. History,”
Constitution Day Lecture, Goucher College, (2015)

Keynote Lecture: “The Second Amendment and American Cultural Anxieties: From Standing Armies to
the Zombie Apocalypse” Firearms and Freedom: The Relevance of the Second Amendment in the
Twenty First Century, Eccles Center, British Library (Spring 2015)

“Narratives of Fear and Narratives of Freedom: A Short Cultural History of the Second Amendment,”
Comparing Civil Gun Cultures: Do Emotions Make a Difference? Max Plank Institute, Berlin (2014)

“History and Mythology in the Second Amendment Debate,” Kollman Memorial Lecture, Cornell
College, Iowa (Spring, 2013)

“Will the Real Founding Fathers Please Stand Up or Why are so few Historians Originalists”
Constitution Day Lecture, Lehman College, Fall 2011

“Lawyers, Guns, and Historians: The Second Amendment Goes to Court,” SHEAR/HSP Public Lecture,
Philadelphia, July, 2008

- The Robert H. and Alma J. Wade Endowment Lecture, Kentucky Wesleyan University, “The Early American Origins of Gun Control” (2006)
- “Jefferson, Mason, and Beccaria: Three Visions of the Right to Bear Arms in the Founding Era,” Bill of Rights Lecture, Gunston Hall Plantation, Fairfax, VA (2003)
- “A New Paradigm for the Second Amendment,” Finlay Memorial Lecture, George Mason University, (2001)
- “Academic Gunsmoke: The Use and Abuse of History in the Second Amendment Debate,” Cadenhead Memorial Lecture, University of Tulsa, (2000)
- “Why the Losers Won: The Rediscovery of Anti-Federalism in the Reagan Years,” Thomas Jefferson Inaugural Lecture, University of Leiden, Netherlands, (1995)

Presentations:

- “From Ideology to Empiricism: Second Amendment Scholarship After Heller, “ Hastings Constitutional Law Quarterly Symposium, Heller at Ten, January 18, 2019
- “Firearms and the Common Law Tradition,” Aspen Institute, Washington, DC (2016)
- “The Original Debate over Original Meaning Revisited, ” British Group in Early American History, Annual Meeting, Cambridge, England (2016)
- “Second Amendment Historicism and Philosophy” The Second Generation of Second Amendment Scholarship” Brennan Center, NYU 2016
- “The Reception of the Statute of Northampton in Early America: Regionalism and the Evolution of Common Law Constitutionalism” OIEAHC and the USC/Huntington Library Early Modern Studies Institute May 29–30, 2015
- “The Right to Travel Armed in Early America: From English Restrictions to Southern Rights,” British Group in Early American History, Annual Conference Edinburgh, Scotland (2014)
- “Progressives, Originalists, and Pragmatists: The New Constitutional Historicism and the Enduring Legacy of Charles Beard,” Charles Beard, Economic Interpretation and History, Rothmere Center, Oxford University (2012)
- CUNY Early American Seminar, “The People’s Constitution v. the Lawyer’s Constitution,” 2011 Roundtable : “The Work of J.R. Pole,” SHEAR , Philadelphia, Pennsylvania 2011)
- “The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation?” Bearing Arms, Policy, Policing, and Incorporation After Heller, Santa Clara Law School (2010)
- “Re-envisioning Early American History,” American Historical Association Annual Meeting, San Diego (2010)
- “The Ironic Second Amendment” Firearms, the Militia, and Safe Cities: Merging History, Constitutional Law and Public Policy, Albany Law School (2007)
- “*District of Columbia v. Heller* and the Problem of Originalism,” University of Pennsylvania Constitutional Law Workshop, Philadelphia (2007)

- “Progressives and the Gun Control Debate,” American Constitution Society, Harvard Law School, (2006)
- “The Problem of Popular Constitutionalism in Early American Constitutional Theory,” American Association of Law Schools, Annual Conference (2006)
- “Popular Constitutionalism and the Whiskey Rebellion,” Symposium on Larry Kramer’s The People Themselves, Chicago-Kent Law School (2005)
- Roundtable Discussion on the Second Amendment and Gun Regulation, NRA/ GMU Student’s For the Second Amendment Symposium (2005)
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History,” Gun Control: Old Problems, New Problems, Joint Conference Sponsored by the John Glenn Institute and Stanford Law School (2005)
- “Original Rules for Originalists?” University of Minnesota Law School (2005)
- “The Fourteenth Amendment and the Origins of the Modern Gun Debate,” UCLA, Legal History Workshop (2004)
- “Beyond Consensus, Beyond Embarrassment: The Use and Abuse of History in the Second Amendment Debate,” American Society of Legal History, Austin, TX (2004)
- “Armed in the Holy Cause of Liberty: Guns and the American Constitution,” NYU Legal History Colloquium (2004)
- “Digital Searches and Early American History,” SHEAR Brown University (2004)
- “Well Regulated: The Early American Origins of Gun Control,” The Second Amendment and the Future of Gun Regulation,” Joint Conference Sponsored by the John Glenn Institute and Fordham Law School, New York (2004)
- “Minuteman, Mobs, and Murder: Forgotten Contexts of the Second Amendment,” Department of History, University of California Berkeley (2003)
- “History vs. Originalism in the Second Amendment Debate,” Federalist Society/ American Constitution Society, George Washington University Law School, Washington D.C. (2003)
- “Self-defense, Public Defense, and the Politics of Honor in the Early Republic,” Lake Champlain Early American Seminar, Montreal (2003)
- “The Ironic Second Amendment” “Gun Control: Controversy, Social Values, and Policy,” University of Delaware Legal Studies Conference, Newark, Delaware (2003)
- “Individuals, Militias, and the Right to Bear Arms: The Antebellum Debate Over Guns,” Institute for Legal Studies, University of Wisconsin School of Law (2004)
- “Guns in the British Atlantic World: New Research, New Directions” Society for the Historians of the Early American Republic, Ohio State University (2003)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” American Bar Foundation, Chicago (2003)
- “The Changing Meaning of the Armed Citizen in American History,” “Americanism Conference,” Georgetown University (2003)

- “A New Paradigm for the Second Amendment?” Supreme Court Historical Society, Washington, D.C. (2002)
- “Constitutional History as Cultural History: The Case of the Second Amendment” European American Studies Association, Bordeaux, France (2002)
- “Don’t Know Much About History: The Current Crises in Second Amendment Scholarship,” Salmon P. Chase College of Law, Symposium, “The Second Amendment Today,” (2002)
- “History, Public Policy, and the Cyber-Age: Gun Control Policy after the Emerson Decision,” Sanford Institute of Public Policy, Duke University (2002)
- “Constitutional History After the New Cultural History: The Curious Case of the Second Amendment,” Society of the Historians of the Early American Republic, Baltimore (2001)
- Roundtable Discussion, “The State of Second Amendment Scholarship,” American Historical Association (2001)
- “Armed in the Holy Cause of Liberty: Critical Reflections on the Second Amendment Debate,” Vanderbilt University Law School (2001)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” Boston University Law School, (2000)
- “The Current State of Second Amendment Scholarship,” National Press Club Washington, D.C. American Bar Association, (2000)
- “Taking the Hype out of Hyper-Text, Or What Should Textbook Companies Be Doing for us on the Web,” OAH St. Louis, Missouri (1999)
- “The Ironies of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional Theory,” European American Studies Association, Lisbon, Portugal (1998)
- “Deconstructing the Canon of American Constitutional History” American Society of Legal History, Seattle, Washington (1998)
- “Beyond Meta-narrative: The Promise of Hypertext,” American Studies Association, Seattle, Washington (1998)
- “Text, Context, Hypertext,” American Historical Association, Washington D.C. (1998)
- “Jefferson and Enlightenment,” International Center for Jefferson Studies, Charlottesville, VA, (1998)
- “Copley’s Watson and the Shark: Interpreting Visual Texts with Multi-media Technology,” American Studies Association, Washington, D.C. (1997)
- “Multi-Media and Post-Modernism,” H-Net Conference, Technology and the Future of History, East Lansing, Michigan (1997)
- Comment on Jack Rakove’s Original Meanings, Society of the Historians of the Early Republic, State College, PA (1997)
- “Teaching with Multi-Media Technology,” Indiana University, spring 1997 “Constitutional History from the Bottom Up: The Second Amendment as a Test Case,” McGill University, Montreal, Canada (1996)

- “Just Because You Are Paranoid, Does Not Mean the Federalists Are Not Out to Get You: Freedom of the Press in Pennsylvania,” University of Pennsylvania (1995)
- “Multi-Media and Post-Modernism: The Future of American Studies?” Lecture, Erasmus University, Rotterdam, Netherlands (1995)
- “Post-Modern American History? Ratification as a Test Case,” St. Cross College, Oxford University, Oxford, England (1994)
- “The Other Founders,” NYU Legal History Seminar,” NYU Law School (1994)
- “Reading the Rhetoric of Ratification,” paper presented at “Possible Pasts: Critical Encounters in Early America,” Philadelphia Center for Early American Studies, Philadelphia, PA (1994)
- “American Historiography and Post-Modernism,” Organization of American Historians, Atlanta, GA (1994)
- “The Anti-Federalist Origins of Jeffersonianism,” Columbia Seminar on Early American History (1994)
- “American History in a Post-Modern Age?” American Historical Association, San Francisco, CA (1994)
- “Post-Modern Constitutional History?” Indiana University School of Law, Bloomington, IN (1993)
- Participant, Institute of Early American History and Culture, planning conference, "New Approaches to Early American History," Williamsburg, VA (1992)
- “Mere Parchment Barriers? Federalists, Anti-Federalists and the Problem of Rights Consciousness,” American Studies Association, Baltimore, MD (1991)
- “James Madison and the Bill of Rights: a comment on papers by Jack Rakove, Ralph Ketcham and Max Mintz,” Organization of American Historians and Center for the Study of the Presidency Conference, "America's Bill of Rights at 200 Years," Richmond, VA, (1991)
- Symposium participant, “Algernon Sidney and John Locke: Brothers in Liberty?” Liberty Fund Conference, Houston, TX (1991)
- “Mere Parchment Barriers? Antifederalists, the Bill of Rights and the Question of Rights Consciousness,” Capitol Historical Society, Washington, D.C. (1991)
- “Anti-Federalism and the American Political Tradition,” Institute of Early American History and Culture Symposium, Williamsburg, VA (1989)

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- “Sandy Hook and the Original Meaning of the Second Amendment,” *Time* December, 2017
- “The State of the Second Amendment,” National Constitution Center, Podcast October, 2017
- “Gun Anarchy and the Unfree State: The Real History of the Second Amendment,” *The Baffler On-line* October 2017
- “Five Types of Gun Laws the Founding Fathers Loved” *Salon* October 22, 2017
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- “Let’s Make an Honest Man of Ted Cruz. Here’s how we Resolve his “Birther” Dilemma with Integrity” *Salon* January 23, 2016
- “Guns Have Always Been Regulated,” *The Atlantic Online* December 17, 2015
- “The Slave-State Origins of Modern Gun Rights” *The Atlantic Online* 30, 2015 [with Eric Ruben]
- PBS, “Need to Know: ‘Debating the Second Amendment: Roundtable’” April 26, 2013
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- “History and the Second Amendment,” *The Kojo Nnamdi Show*, WAMU (NPR) March 17, 2008
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- “Taking a Bite out of the Second Amendment,” *History News Network*, January 30, 2005
- “Gun Control,” *Odyssey*, Chicago NPR September 8, 2004
- “Loaded Questions,” *Washington Post Book World* February 2, 2003
- “The Right to Bear Arms,” Interview *The Newshour*, PBS May 8, 2002
- “Real and Imagined,” *New York Times*, June 24, 1999

Other Professional Activities

- Editorial Board, Constitutional Study, University of Wisconsin Press (2014-present)
- Advisory Council, Society of Historians of the Early American Republic (SHEAR) (2007-2009)
- Program Committee, Annual Conference, Society of the Historians of the Early American Republic, Philadelphia, PA 2008
- Editorial Board, American Quarterly (2004-2007)
- Director, Second Amendment Research Center, John Glenn Institute for Public Service and Public Policy, 2002- 2007
- Fellow, Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University 2001- 2004
- Local Arrangements Committee, Annual Conference, Society of the Historians of the Early American Republic, Columbus, OH 2003
- Project Gutenberg Prize Committee, American Historical Association, 2004, 2002
- Program Committee, Annual Conference, Society of the Historians of the Early Republic, 2001
- Co-Founder Ohio Early American Studies Seminar
- NEH Fellowship Evaluator, New Media Projects, Television Projects
- Multi-media Consultant and Evaluator, National Endowment for the Humanities, Special, Projects, Division of Public Programs, Grants Review Committee (1999)

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A B

ABOMASUM [with *Anatomists*] One of the four Stomachs of ruminant Animals, *i.e.* such as chew the Cud; the other three are called *Pancreas*, *Reticulum*, and *Omasum*.

ABOMINABLE [*abominari*, according to the native Sense of the Word, from *ab* and *omen*, *L.* signifies to account a Thing for an ill Omen, or an unlucky Sign, and therefore to pray against it by certain Forms of Speech] to be abhorred, loathed or hated.

To **ABOMINATE** [*abominari*, of *ab* and *omen*] properly signifies to take a Thing for an ill Sign or unlucky Omen; to pray against it, or with the contrary, by certain Forms and Speeches, we use it for to abhor, hate or loath.

ABOMINATION, a thing to be abhorred or loathed, a detestable thing.

ABOMINOSE [*abominosus*, *L.*] full of Abomination.

ABORIGINES [of *ab* and *origo*] the People of Italy by *Saturn*, or such Nations as the *Italians*, who pretend to have been anciently without Original or Derivation from any other Nation or People.

ABON [with the ancient *Britains*] signified a River, *AVON* is a general Name for all Rivers.

To **ABORT** [*abortire*, *F.* of *ab* and *ortus*, *L.*] to miscarry, or bring forth the Fetus, before it is arrived at its Maturity for Birth.

ABORTION [of *abortire*, *L.* to rise or spring up untimely] the untimely Exclusion of the Fetus, commonly called a Miscarriage in Women.

ABORTION [with *Gardeners*] a Term used of Fruits that are produced too early before their Time, as when Trees happening to be blasted by noxious Winds, are subject to this Malady, never bringing their Fruit to Maturity.

ABORTION [of *abortire*, *F.*] Miscarriage in Women, or the bringing forth a Child before its Time, that is not in a Capacity to live.

ABORTIVE [*abortivus*, *L.*] pertaining to such a Birth, still-born, untimely, also that comes to nothing, as an abortive Design.

An **ABORTIVE**, a sort of fine Vellum made of the Skin of a Calf or Lamb.

ABORTIVENESS, Miscarriage; also Unsuccessfulness.

ABOVE [of *aboycan*, *Sax.*] aloft, higher; also more than, as over and above.

ABOUT [of *abotan*, *Sax.*] round about, also near in Time and Place; also ready, as *about to go*.

ABOUTED [with *Gardeners*] a Term used to denote that Trees are budded. It properly signifies a Swelling formed in the human Body, which has come to a Head or Abscess, and is applied to Trees, in that the Buds of them do in like manner arise like small Heads.

ABRACADABRA, this Word is a Spell or Charm, which is still in Use and Esteem with some superstitious Persons, who pretend to do Wonders by it in the Cure of Agues and Fevers, which is to be written in the Form of a Triangle, decreasing one Letter every Line till it comes to a Point; and the Illiterate write the Letters in *English* Characters in the same Form.



ABRACAR, a Name which *Basilides*, an Heretick of the second Century, gave to God, who he said was the Author of 365, *i.e.* the 365 Days in the Year, to which the Letters *ΑΒΡΑΚΑΒΑ* *Abacadabra*, are said to amount. The Author of this Superstition is said to have lived in the Time of *Adrian*, and had his Name after *Abram*, or *Abraham* [*Abraham*, *Gr.*] a Deity that the Author adored, this he made his supreme Deity, and ascribed to him several petty subordinate Divinities, as 7 Angels, who presided over the Heavens, and also according to the Number of Days in the Year, he held 365 Virtues or Powers, or dependent Intelligences, the Value of the Letters in the Word, according to the *Greek* Numbers made 365 thus,

A B P A = A 3
T 2 100 1 60 1 200

ABRAHAM'S BALM [in *Ratany*] the Hemp-tree.

To **ABRADE** [*abradere*, *L.*] to shave off.

ABRASION, a shaving off; also a razing or blotting out.

A B

ABRA'SION [with *Surgeons*] a superficial raising of the Skin.

ABRASION [in a *Medicinal Sense*] the wearing away the natural Mucus, which covers the Membranes, particularly those of the Stomach and Guts, by corollive or sharp Humours.

ABRASION [with *Philosophers*] that Matter which is worn off by Attrition of Bodies one against another.

ABRENUNCIATION, a renouncing or forsaking any thing entirely. *P. of L.*

ABRIC [with *Chymists*] Sulphur.

To **ABRIDGE** [*abridge*, *F.*] to make shorter in Words, to contract, still retaining the Sense and Substance.

To **ABRIDGE** [in *Law*] to make a Declaration, or count short, by leaving out Part of the Plea or Demand, and praying that the Defendant may answer to the other.

ABRIDGMENT [*abridgement*, *F.*] an abridging, *Gr.* wherein the less material Things are omitted on but briefly, and so the whole brought into a lesser Compass; an Epitome or short Account of a Matter; a Summary or short Account of the Matter of a Book.

ABRIDGMENT [of account, *Gr.* in *Law*] is the making it shorter by abridging some of its Circumstances.

ABROCAMENTUM See *Abroachment*.

To **ABROGATE** [*abrogatum*, *Gr.* Sup. of *abrogare*, *L.*] to disannul or abolish, especially to repeal or make a Law void, which was before in Force.

ABROGATION, a disannulling, *Gr.* *L.*

ABROOD [of *abrood*, *Sax.*] as to sit abroad as an Hen on Eggs, to cherish.

ABROTANITES [*Abrotanites*, *Gr.*] Wine made of Southernwood.

ABROTANUM [*Abrotanum*, *Gr.*] the Herb Southernwood.

ABROTONITES [*Abrotonites*, *Gr.*] Wormwood Wine.

ABRUPT [*abruptus*, *L.*] Breaking off suddenly; unseasonable; also rough, hasty.

The **ABRUPT** [*abruptum*, *L.*] the uneven, rough, broken, or craggy, Part of the Abyss. *Milton*.

ABRUPTNESS, the breaking or being broken off on a sudden; also Craginess of a Rock, Mountain, *Gr.*

ABSCISS [*abscissus*, *L.* of *abs* and *cedo*, *L.* to retire; because the Parts are disunited by the Matter] a gross Tumor, Ulcer, or Swelling in any Part of the Body, which may either be dissolved, or be brought to run with Matter.

To **ABSCIND** [*abscindere*, *L.*] to cut off.

ABSCISSA [in *Conick Section*, or other *Conicoidal Figures*] are the Parts of the Axis cut off by the Ordinates, and accounted downwards from the Vertex of the Section, thus V b or V B are the *Abscissa* in this Figure. Some Writers call these the *Intercepted Axes* or *intercepted Diameters*.

ABSCISSION [of *abs* and *scindo*, *L.*] to cut; a cutting off. *L.*

ABSCISSION [with *Astrologers*] a Term used, when three Planets being within the Bounds of their Orbs, and in different Degrees of the Sign; the third comes to a Conjunction with the middle Planet, and cuts off the Light of the first.

To **ABSCOND** [*abscondere*, *L.*] to hide one's self.

ABSENT [*absens*, *L.*] that is out of the Way, missing or wanting.

To **ABSENT one's self**, to be voluntarily absent, not to appear, to keep out of the Way.

ABSENTA'NEOUS [*absentaneus*, *L.*] pertaining to Absence, done in Absence.

ABSENTER'S, a Parliament held in *Dublin* the 28th of *Henry VIII*.

ABSENTHIATED [*absinthiatum*, *L.*] mingled with Wormwood.

ABSINTHIO'MENON [*Ἀψινθίουμ*, *Gr.*] Southernwood, or Wormwood gentle.

ABSINTHITES [*Ἀπονθίτης*, *Gr.*] Wine made of Wormwood.

ABSINTHIUM [*Ἀψινθιον*, *Gr.*] Wormwood.

ABSIS [*Ἀψις*, *Gr.*] the bowed or arched Roof of a Room, House, Oven, *Gr.* also the Ring or Compass of a Wheel.

ABSIS [in *Astronomy*] is when the Planets moving to *Apogee* their highest or lowest Places are at a Stay; the high *Apogee* being called the *Apogeeum*, and the low *Perigee* the *Perigeeum*.

To **ABST** [*abstere*, *L.*] to cease or leave off.

ABSOLUTE [*absolutus*, *L.*] out of Use, neglected.

ABSOLVATORY [of *absolutio*, *L.*] pertaining to a Discharge or Acquittal.

ABSO-

IN

INFORM, [*Infirmus*, L.] weak, feeble, crazy, sickly.
INFIRMARY [*Infirmarium*, L. *Infirmarie*, F.] an Apartment, or Lodgings, for sick People.
INFIRMNESS } [*Infirmities*, L.] Weakness, feebleness of
INFIRMITY } Body, Sickness.
INFISTULATED [*in* and *fulatus*, L.] turned to or become fistulous; also full of fistula's.
TO INFIX, [*infixum*, sup. of *infigere*, L.] to fix or fasten into.

TO INFLAME, [*Inflamare*, L.] to set ones Heart on fire, to heat, to irritate or incense; also to provoke, to put into a Passion.

INFLAMMABLENESS [of *inflammabile*, F; *inflammare*, L.] capableness of being inflamed or set on fire.

INFLAMMATION [*in Medicine*] a blistering heat, a Tumor occasioned by an obstruction, by means whereof the Blood in the Flesh and Muscles, flowing into some part faster than it can run off again, swells up and excites a Tension with an unusual foreness, redness and heat.

INFLAMMATIVE, of an inflaming Nature or Quality.
INFLATE [*Expreffio*, an Expression swelling with big Words; but to no great purpose.

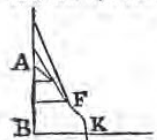
TO INFLATE [*inflatus*, L.] to blow, swell, or puff up with Wind.

INFLATION [*in Medicine*] a puffing up, a windy Swelling, the extension of a part occasioned by windy Humours.

TO INFLECT [*inflecteri*, L.] to bend or bow.
INFLECTION } a bending or bowing.
INFLEXION }

INFLECTION [with *Grammar*] is the variation of Nouns and Verbs in their several Cases, Tenses and Declensions.

INFLECTION [*in Opticks*] a multiplex Refraction of the Rays of Light, caused by the unequal thickness of any Medium; so that the Motion or Progress of the Ray is hindered from going on in a right Line, and is *inflected* or bent back on the inside by a Curve.



INFLECTION Point of any Curve [*Geometry*] is that Point or Place, where the Curve begins to bend back again a contrary way. As for instance, when a Curve Line as A, F, K, is partly concave and partly convex towards any right Line, as A, B, or towards a flat point, as then the Point F, which divides the concave from the convex part, and consequently is at the beginning of the one, and the end of the other, is called the Point of Inflection, as long as the Curve being continued in towards F, keeps its course the same; but the Point K is called the Point of Retrogression, where it begins to reflect back again towards that part or side where it took its original.

INFLEXIBILITY [*inflexibilitas*, L. *inflexibilitas*, F.] that which cannot be bowed or bent; also an inflexible Temper, obstinateness, stiffness.

TO INFLICT [*influxum*, sup.] to lay a Punishment upon.

INFLECTION, a smiting, a laying a Punishment upon. L.

INFLUENCE [*influentia*, L.] an Emission of a Power or Virtue; also the working or prevailing upon; power over, &c.

INFLUENCE [*in Astrology*] a quality supposed to flow from the Bodies of the Stars, or the Effect of their Heat and Light, to which, the pretenders to that Art, attribute all the Events that happen on the Earth.

INFLUENCED [*influensia*, L.] swayed, biased, inclined towards, wrought upon.

TO INFLUENCE [of *influensia*, of *influen*, L.] to flow into, to have an influence upon, to produce or cause; to sway or have power over.

INFLUENT [*influent*, L.] flowing into.

INFLUENT Juices [*in Medicine*] such Juices of a human Body, that by the contrivance of Nature and laws of Circulation, fall into another Current or Receptacle; as the Bile into the Gall-Bladder, &c.

INFLUENTIAL, influencing or bearing sway.

INFLUX [*influxum*, L.] a flowing or running into, especially of one River into another.

TO INFOLD [*in* and *foldan*, Sax.] to fold or wrap up.

TO INFORCE [*inforcere*, F.] to prevail upon by force of Argument, to constrain or oblige.

INFORCEMENT, such a compulsion or restraint.

TO INFORM [*informare*, L.] to give notice, to tell, to instruct, to teach, to make acquainted with.

INFORM [*informis*, L.] unshapen, without form; also ugly.

IN FORMA Pauperis [*i. e.* under the form of a poor Person] is when a Person having made Oath before a Judge, that he is not worth 5 Pound, his Debts paid, is admitted to sue, having Council or an Attorney assigned to manage his Business without any Fees. L.

INFORMATION, an informing relation, advice; also instruction, a making known; also an accusation brought against one before a Magistrate. F. of L.

INFORMATUS *non sum* [*i. e.* I am not informed] a formal answer made in Court, by an Attorney who has no more to say in the defence of his Client.

INFORMED Stars [with *Astrologers*] are such fixed Stars as are not ranged under any form or particular constellation.

INFORMER, one who in any Court of Judicature informs against, or prosecutes any Persons who transgress any Law or penal Statute.

INFORMOUS [*informis*, L.] that is without form, fashion or shape.

INFORTUNATE [*infortunatus*, L.] unfortunate, unlucky, unhappy.

INFORTUNATENESS, unhappiness, unluckiness.

INFORTUNES [with *Astrologers*] the Planets Saturn and Mars, so called by reason of their ill-disposed Natures and unfortunate Influences.

INFRA Scapularis Musculus [with *Anatomists*] a broad of fleshy Muscle of the Arm, arising from the lower side of the Scapula, and ending in the third Ligament of the Shoulder. L.

INFRA Spinatus Musculus [with *Anat.*] a Muscle of the Arm, so termed from the being placed below the Spine, under which it arises from the Scapula, and is inserted to the Shoulder Bone. This Muscle moves the Arm directly backwards.

INFRACTION, a breaking in, a rupture or violation of a Treaty, a Law, Ordinance, &c.

TO INFRANCHISE [of *affranchire*, F.] to set free, to give one his Liberty; to make a Freeman or Denizen; to incorporate into a Society or Body politick.

INFRANCHISEMENT [*affranchisement*, F.] a making free, &c. also delivery, discharge, release.

INFRA LAPSA'RIANS, a Sect who hold that God has created a certain number of Men, before the fall of Adam, only to be damned, without allowing them the means necessary for their Salvation, if they would labour never so much after it.

INFRA NGIBLE [of *infrangibilis*, L.] not to be broken; durable, strong.

INFRA NGIBLENESS, uncapableness of being broken.

INFREQUENCY [of *infrequentia*, L.] seldomness.

INFREQUENT [of *infrequens*, L.] seldom happening, rare, uncommon.

INFRICTION } a rubbing or chafing. L.

TO INFRICTION [*infingere*, L.] to break a Law, Custom or Privilege.

INFRICTIONMENT, such violation or breach.

INFRACTUOUS [*infractusus*, L.] unfruitful.

INFRACTUOUSNESS [*infractusus*, L.] bearing no Fruit.

INFUCATED [*infucatus*, L.] painted over.

INFUCATION, a painting of the Face, a colouring or disguising. L.

INFULA, a Name antiently given to some of the pontifical Ornaments, which are said to be Filaments or Fringes of Wool, with which Priests, Victims and even Temples were adorned.

TO INFUMATE [*infumare*, L.] to Smoke or dry in the Smoke.

INFUMATION, a drying in the Smoke. L.

INFUNDIBULIFORMES [with *Botanists*] a term applied to such Flowers, as are shaped like a Funnel.

INFUNDIBULUM, a Tunnel or Funnel for the pouring of Liquors into a Vessel. L.

INFUNDIBULUM Cerebri [*Anatomy*] the Brain Tunnel, a hollow place in the Root of the Brain, through which serous Humours are discharged. L.

INFUNDIBULUM Renum [*Anatomy*] the Pelvis or Basin of the Reins, thro' which the Urine passes to the Ureters and Bladder. L.

INFURATE [of *in* and *furatus*, L.] stark Mad; also recovered from Madness.

INFUSATION, a making dark or dusky. L.

TO INFUSE [*infundere*, sup. of *infundere*, L.] to pour in, or into; to steep or soak; also to inspire or endue with.

INFUSION, a pouring in, &c. L.

INFUSION [in Pharmacy] is a steeping of any kinds of Drugs, Roots, Leaves, &c. in some Liquor proper to draw out their Virtues.

TO INGAUGE. See *To Engage*.

TO INCEMINATE [*ineminare*, L.] to double or repeat often.

INCEMINATED Flowers [with *Botanists*] are such when one Flower stands on, or grows out, of another.

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An Universal Etymological
E N G L I S H
DICTIONARY;

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A B

Company, at first called *Abram*, High Father] the great Patriarch of the Nation of the Jews.

ABRAHAM'S *Balm*, the Hemp-tree, a kind of Willow so called.

ABRAID [of Abrebian, or Abroden, Sax.] awaked, raised up. *Chauc.*

ABRAM [אֲבְרָם *H. i. e.* High Father; of אֲבִי a Father, and אֲרִי High] the original Name of the Patriarch *Abraham*.

ABRAM *Cout*, naked or poor man. *Cant.*

ABRA'SION, a shaving off, a raising or crossing out.

ABRE/DE, abroad. *Chauc.*

To ABRE/DGE } to abridge, to shorten,

To ABREGGE } *Abreger*, F. *Chauc.*

To ABRE/IDE } to start up, to awake,

To ABREYD } arise. *Chauc.*

ABRE/DING, upbraiding. *Chauc.*

ABRENUNCIATION, a renouncing or forsaking a Thing entirely. *L.*

ABRIG

ABRICK } [among Chymists] Sulphur.

To ABRIDGE [abreger, F.] to make shorter in Words, still retaining the Sense and Substance; also to restrain a Person from some Liberty, &c. before enjoyed.

To ABRIDGE [in Common Law] to make a Declaration or Count shorter, by leaving out Part of the Plaintiff or Demand, and praying the Defendant may answer to the other only.

AN ABRIDGEMENT [Abridgement, F.] an Epitome, a short Account of a Book Writing, or Matter.

To ABROGATE [atrogere, F. *abrogatum*, L.] to disannul, to abolish, to take away; to repeal or make void a Law which was before in Force.

ABROGA'TION, the Act of Repealing, &c. F. of L.

ABRUPT' [abruptus, L.] broken off, on a sudden, hasty, rough, unseasonable.

AB'SALOM [אַבְשָׁלוֹם *H. i. e.* the Father's Peace, of אֲבִי a Father, and שָׁלוֹם Peace] King David's rebellious Son.

AB'SALONISM, the Practice of Rebellion against a Father.

AB'SCESS } [Abscess, F. *Abscessus*, L.] an
AB'SCESSE } Ulceration arising in any Part of the Body, and tending to Suppuration; the same with Imposthume.

ABCES'SION, a going away. *L.*

ABCIS'SÆ [in Conic Sections] are the Parts of the Axis cut off by the Ordinates.

ABSCISS'ION, a cutting off. *L.*

ABSCISS'ION [in Astrology] is when three Planets being within the Bounds of their Orbs, and in different Degrees of the Sign, the third comes to a Conjunction with the middle Planet, and cuts off the Light of the first.

To ABSCOND' [abscondere, L.] to conceal or hide one's self.

A B

ABSCON'SION, an hiding. *L.*

AB'SENT [absens, L.] not present, out of the Way, missing. *F.*

ABSENTA'NEOUS [absentaneus, L.] done in Absence, pertaining to Absence.

AB'SIS } [of A, B, C,] Alphabets of Let-
AP'SIS } ters to be learned; Horn-Books, Primers, &c.

AB'SIS } [Αΐς, Gr.] the bowed or arched
AP'SIS } Roof of an Oven, Room, House, &c. the Ring or Compass of a Wheel: Also a Term used by Astronomers, when the Planets moving to their Apogæum or Perigæum are at a stay.

ABSOLU, absolved. *F.*

ABSOLVATORY [absolutoire, F. of absolutorius, L.] belonging to a Pardon or Acquittal.

To ABSOLVE [absolvere, L.] to acquit or discharge of an Accusation or Crime laid against one. *L.*

ABSOLUTE [absolu, F. of absolutus, L.] free from the Power of another; that has Perfection in itself, arbitrary, unlimited.

ABSOLUTE Equation [in Astronomy] are the Summs of the Eccentric and Optic Equations.

ABSOLUTE Estate [Law Term] is one free of all manner of Incumbrances and Conditions.

ABSOLUTE Gravity [among Philosophers] is that Property in Bodies by which they are said to weigh so much, without any regard to any Circumstances of Modification, and is always as the Quantity of Matter therein contained.

An ABSOLUTE Number [in an Algebraick Equation] is that which possesseth one entire Part or Side of the Equation, and is always a known Quantity.

ABSOLUTE Space is that which, considered in its own Nature, without regard to any outward Thing, always continues the same, and is immoveable.

AB'SOLUTELY [absolument, F. of absolute, L.] after an absolute Manner, as the Terms of a Proposition are said to be taken absolutely, i. e. without relation to any thing else. Sometimes it is used in opposition to Terms and Conditions; as, *God does not forgive Men absolutely, but upon Condition of Repentance and Amendment.*

ABSOLU'TION, a Pardoning, Remission or Forgiveness of Sins pronounced by a Priest. F. of L.

AB'SONANT [absonans, L.] properly sounding harsh, disagreeing from the Purpose, absurd.

AB'SONOUS [absonus, L.] the same as Absonans.

ABSONIA'RE [Old Records] to shun, avoid, detest.

To ABSORB' [absorbere, F. *absorbere*, L.] to swallow up, to waste or consume.

ABSORB'

| I N | I N |
|--|---|
| <p>INFLEXIBLENESS, } Obstinacy, Stiff- INFLEXIBILITY, } nels, an inflexi- ble Humour. F. of L.</p> | <p>and Mars, so called, because of their unfor- tunate Influences.</p> |
| <p>INFLEXIBLE [<i>inflexibilis</i>, L. i. e. <i>non flexibilis</i>] which cannot be bended or bowed; not to be prevailed upon or persuaded.</p> | <p>INFORTUNID [<i>infortunatus</i>, L.] unfor- tunate. <i>Chauc.</i></p> |
| <p>INFLEXION, a Bending, Turning, Winding. L.</p> | <p>To INFRANCHISE [of <i>franc</i>, F. <i>france</i>, Ital. <i>free</i>] to make a Freeman or Denizen; to incorporate into a Society or Body Politick.</p> |
| <p>To INFLICT [<i>infigere</i>, F. <i>infectum</i>, L. q. d. <i>figere in</i>] to dash or strike against, to lay a Punishment upon.</p> | <p>INFRANCHISEMENT, infranchising, setting free, Discharge, Release.</p> |
| <p>INFLICTION, a laying a Punishment upon, a Smiting. L.</p> | <p>INFRA <i>Scopularis Musculus</i> [in <i>Anatomy</i>] a Muscle of the Arm, which arises from the lower Part of the <i>Scopula</i>. L.</p> |
| <p>INFLUENCE [<i>influentia</i>, L.] a flowing into, a sending forth Power or Virtue; the Power of a Superior over an Inferior.</p> | <p>INFRA <i>Spinatus Musculus</i> [in <i>Anatomy</i>] a Muscle of the Arm placed below the <i>Spina</i>. L.</p> |
| <p>To INFLUENCE [<i>influer</i>, F.] to sway, or have Power over.</p> | <p>INFRAC'TION, a breaking in. L.</p> |
| <p>INFLUENT [<i>influens</i>, L.] flowing into.</p> | <p>INFRAN'GIBLE [<i>infrangibilis</i>, L.] not to be broken, durable, strong.</p> |
| <p>INFLUENT Juices [among <i>Physicians</i>] Juices of a human Body, that by the Contrivance of Nature, and Laws of Circulation, fall into another Current or Receptacle; as the <i>Bile</i> to the <i>Gall-Bladder</i>, &c.</p> | <p>INFRE'QUENT [<i>infrequens</i>, L.] that seldom happens, rare, uncommon. F.</p> |
| <p>INFLUENTIAL, influencing, or bearing Sway.</p> | <p>INFRICA'TION, } a rubbing or cha- INFRIC'TION, } sing. F.</p> |
| <p>INFLUX [<i>influxus</i>, L.] a flowing, or running into.</p> | <p>To INFRING'E [<i>infringere</i>, L. q. d. <i>to break in upon</i>] to break a Law, Custom, or Privilege.</p> |
| <p>To INFOLD [of <i>in</i> and <i>pealban</i>, <i>Sax.</i> <i>einfaleten</i>, <i>Teut.</i>] to fold or wrap up.</p> | <p>INFRING'MENT, such Violation, Breach, &c.</p> |
| <p>To INFORCE [<i>enforcer</i>, F.] to prevail upon by Force of Argument, to strengthen.</p> | <p>INFRUGIFEROUS [<i>infrugiferus</i>, L.] not bearing Fruit.</p> |
| <p>INFORCEMENT, a Compulsion, or Constraint. F.</p> | <p>INFUCA'TION, a painting of the Face, a colouring or disguising. L.</p> |
| <p>To INFORM [<i>informet</i>, F. <i>informare</i>, L. q. d. <i>in formam ducere</i>] to give notice, to tell, to teach, instruct, or make acquainted with.</p> | <p>INFUMA'TION, a drying in Smoak. L.</p> |
| <p>INFORM' [<i>informis</i>, L.] mis-shapen, without Form.</p> | <p>INFUNDIBULIFORMES [among <i>Botanists</i>] any Flowers shaped like a Funnel.</p> |
| <p>In FORMA <i>Pauperis</i> [<i>Law Phrase</i>] is having Clerks and Counsel assigned without Fees, upon Affidavit made, that, the Suitor's Debts being paid, he is not worth five Pounds. L.</p> | <p>INFUNDIBULUM <i>Cerebri</i> [in <i>Anatomy</i>] the Brain Tunnel, a hollow Place in the Root of the Brain, through which serous Humours are discharged. L.</p> |
| <p>INFORMATION, a making known, Telling, Advice, Instruction; an Accusation or Charge brought against one. L.</p> | <p>INFUNDIB'ULUM <i>Renum</i> [in <i>Anatomy</i>] the Basin through which the Urine passes to the Ureters and Bladder. L.</p> |
| <p>INFORMATUS <i>non sum</i> [i. e. I am not informed] a formal Answer made in Court by an Attorney, when he has no more to say in defence of his Client. L. T.</p> | <p>INFUR'RIATE [of <i>in</i> and <i>furiatus</i>, L.] stark mad or recovered from Madness.</p> |
| <p>INFORM'ED Stars [in <i>Astronomy</i>] are such of the fixed Stars as are cast into, or ranged under, any Form.</p> | <p>To INFUSCATE [<i>infuscatum</i>, L.] to make dark or dusky.</p> |
| <p>INFORM'ER, one who informs in a Court of Judicature, or before a Magistrate, against such as transgress the Law.</p> | <p>INFUSCA'TION, a making dark or dusky. L.</p> |
| <p>INFORM'OUS [<i>informe</i>, F. <i>informis</i>, L.] without Form, Shape, or Fashion.</p> | <p>To INFUSE [<i>infuser</i> F. of <i>infusum</i>, Sup. L. i. e. <i>fundere in</i>] to pour in or into, to soak or steep, to endue with, or inspire.</p> |
| <p>INFORTUNATE [<i>infortunatus</i>, F. of <i>infortunatus</i>, L. i. e. <i>non fortunatus</i>] unhappy, unlucky.</p> | <p>INFU'SION, a pouring in. F. of L.</p> |
| <p>INFORTUNE, Misfortune. <i>Chauc.</i></p> | <p>INFU'SION [in <i>Pharmacy</i>] a steeping of Drugs, Leaves, Roots, &c. in some Liqueur, in order to get out their Virtue.</p> |
| <p>INFORTUNES [in <i>Astrology</i>] <i>Sacrum</i></p> | <p>An'ING [Ing, Dan.] a Meadow or low Ground, a Common. <i>Lincolnshire</i>.</p> |
| | <p>To INGEMI'NATE [<i>ingeminatum</i>, L.] to double or repeat often.</p> |
| | <p>INGEM'INATED Flowers [among <i>Florists</i>] is when one Flower grows out of another.</p> |
| | <p>INGEMINA'TION, a Doubling or Repeating.</p> |
| | <p>L 11 To</p> |

A

DICTIONARY
OF THE
ENGLISH LANGUAGE:
IN WHICH
The WORDS are deduced from their ORIGINALS,
AND
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EXAMPLES from the best WRITERS.
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AN ENGLISH GRAMMAR.

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IN TWO VOLUMES:

VOL. I.

THE SECOND EDITION.

Cum tabulis animum censoris sumet honesti:
Audebit quæcunque parum splendoris habebunt,
Et sine pondere erunt, et honore indigna ferentur,
Verba movere loco; quamvis invita recedant,
Et versentur adhuc intra penetralia Vestæ:
Obscurata diu populo bonus eruet, atque
Proferet in lucem speciosa vocabula rerum,
Quæ prisca memorata Catonibus atque Cethegis,
Nunc situs informis premit et deserta vetustas.

HOR.

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GRAMMARS

IN TWO VOLUMES

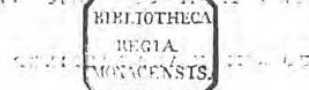
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BY THE AUTHOR

AND

BY

THE EDITOR



AND

THE ENGLISH GRAMMAR

IN TWO VOLUMES

VOLUME I

THE SECOND EDITION

When I first began to write this Grammar, I was not aware of the necessity of a second edition. It was, however, so soon after the first edition that I was obliged to revise it. I have now revised it, and I have added many new examples, and I have corrected many of the old ones. I have also added many new exercises, and I have corrected many of the old ones. I have also added many new exercises, and I have corrected many of the old ones.

NEW YORK: PUBLISHED BY J. B. LIPPINCOTT & CO., 15 N. 2ND ST. 1857.

A B R

6. Relating to the person, as a servant.
Liking very well the young gentleman, such I took him to be, admitted this Deiphantes *about* me, who well shewed there is no service like his that serves because he loves. *Sidney, b. ii.*
Good matter, corporal, captain, for my old dame's sake, stand my friend: she hath no body to do any thing *about* her when I am gone, and she is old and cannot help herself. *Shakespeare's Henry IV. p. ii.*

ABR'UT. *adv.*

1. Circularly.
The wayward sisters, hand in hand,
Posters of the sea and land,
Thus do go *about*, *about*,
Thrice to thine, and thrice to mine,
And thrice again to make up nine. *Shakespeare, Macbeth.*

2. In circuit.
My honest lads, I'll tell you what I am *about*.—Two yards and more.—No quips now Pistol: indeed I am in the waste two yards *about*; but I am about no waste, I am about thrift. *Shakespeare's Merry Wives of Windsor.*

A tun *about* was ev'ry pillar there,
A pil'd mirrour shone not half so clear. *Dryd. Fables.*

3. Nearly.
When the boats were come within *about* sixty yards of the pillar, they found themselves all bound, and could go no farther; yet so as they might move to go *about*, but might not approach nearer. *Bacon's New Atlantis.*

4. Here and there; every way.
Up rode the gentle virgin from her place,
And looked all *about*, if she might spy
Her lovely knight to move his manly pace. *Fairy Queen, b. i. cant. 2. stanza. 33.*

A wolf that was past labour, had the wit in his old age, yet to make the best of a bad game; he borrows a habit, and so *about* he goes, begging charity, from door to door, under the disguise of a pilgrim. *L'Estrange.*

5. With to before a verb; as, *about to fly*; upon the point, within a small distance of.

These dying lovers, and their floating sons,
Suspend the fight, and silence all our guns;
Beauty and youth, *about* to perish, find
Such noble pity in brave English minds. *Waller.*

6. The longest way, in opposition to the short straight way.
Gold hath these natures; greatness of weight; closeness of parts; fixation; plantiness, or softness; immunity from rust; colour, or tincture of yellow: To refine the pure way (though most *about*) to make gold, is to know the causes of the several natures before rehearsed. *Bacon's Natural Hist. N^o 328.*

Spies of the Volcians
Held me in chafe, that I was forc'd to wheel
Three or four miles *about*; else had I, Sir,
Half an hour since brought my report. *Shakespeare, Coriolanus.*

7. To bring about; to bring to the point or state desired; as, *he has brought about his purpose.*

Whether this will be brought *about*, by breaking his head, I very much question. *Spektator.*

8. To come about; to come to some certain state or point.
Wherefore it came to pass, when the time was come *about*, after Hannah had conceived, that she bare a son. *1 Sam. i. 20.*

One evening it befel, that looking out,
The wind they long had wish'd was come *about*;
Well pleas'd they went to rest; and if the gale
'Till morn continu'd, both retir'd to fall. *Dryd. Fables.*

9. To go about a thing; to prepare to do it.
Did not Moses give you the law, and yet none of you keep the law? Why go ye *about* to kill me? *John vii. 19.*

In common language, they say, to come *about* a man, to circumvent him.

Some of these phrases seem to derive their original from the French *a bout*; *venir a bout d'une chose*; *venir bout de question*.

A. Bp. for Archbishop; which see.

ABRACADABRA. A superstitious charm against agues.

ABRA'DE. *v. a.* [abrado, Lat.] To rub off; to wear away from the other parts; to waste by degrees.

By this means there may be a continued supply of what is successively *abraded* from them by decurion of waters.

Hale's Origin of Mankind.

ABRAHAM'S BALM. The name of an herb.

ABRA'W. [See ABRAD.]

1. The act of abrading; a rubbing off.

2. [In medicine.] The wearing away of the natural mucus, which covers the membranes, particularly those of the stomach and guts, by corrosive or sharp medicines, or humours. *Quincy.*

3. The matter worn off by the attrition of bodies.

ABRA'AST. *adv.* [See BREAST.] Side by side; in such a position that the breasts may bear against the same line.

My cousin Suffolk,
My soul shall thine keep company to heaven:
Tarry, sweet soul, for mine, then fly *abreast*. *Shak. Henry V.*

For honour travels in a freight so narrow,
Where one but goes *abreast*. *Shakespeare, Troilus and Cressida.*

A B R

The riders rode *abreast*, and one his shield,
His lance of cornel-wood another held;
The third his bow, and glorious to behold!
The costly quiver, all of burnish'd gold. *Dryden's Fables.*

ABRI'COT. See APRICOT.

ABRI'DGE. *v. a.* [abreger, Fr. *abrevis*, Lat.]

1. To make shorter in words, keeping still the same substance.

All these sayings, being declared by Jason of Cyrene in five books, we will essay to *abridge* in one volume. *2 Mac. ii. 23.*

2. To contract, to diminish, to cut short.

The determination of the will, upon enquiry, is following the direction of that guide; and he, that has a power to act or not to act, according as such determination directs, is free. Such determination *abridges* not that power wherein liberty consists. *Locke.*

3. To deprive of; in which sense it is followed by the particle *from* or *of*, preceding the thing taken away.

I have disabled mine estate,
By shewing something a more swelling port,
Than my faint means would grant continuance;
Nor do I now make moan to be *abridg'd*.
From such a noble rate. *Shakespeare's Merchant of Venice.*

They were formerly, by the common law, discharged from pontage and murage; but this privilege has been *abridged* them since by several statutes. *Ayliffe's Parergon Juris Canonici.*

ABRI'DGED OF. Deprived of, debarred from, cut short.

AN ABRIDGER.

1. He that abridges; a shortener.

2. A writer of compendiums or abridgments.

ABRIDGMENT. *n. f.* [abregement, Fr.]

1. The contraction of a larger work into a small compass.

Surely this commandment containeth the law and the prophets; and, in this one word, is the *abridgment* of all volumes of scripture. *Hosier, b. ii. § 5.*

Myself have play'd
The int'rim, by remembering you 'tis past;
Then brook *abridgment*, and your eyes advance
After your thought, straight back again to France? *Shakespeare's Henry V.*

Idolatry is certainly the first-born of folly, the great and leading paradox; nay, the very *abridgment* and sum total of all absurdities. *South's Sermons.*

2. A diminution in general.

All trying, by a love of littleness,
To make *abridgments*, and to draw to less,
Even that nothing which at first we were. *Donne.*

3. Restraint, or abridgment of liberty.

The constant desire of happiness, and the constraint it puts upon us, no body, I think, accounts an *abridgment* of liberty, or at least an *abridgment* of liberty, to be complained of. *Locke.*

ABRO'ACH. *adv.* [See To BROACH.]

1. In a posture to run out; to yield the liquor contained; properly spoken of vessels.

The Templer spruce, while ev'ry spout's *abroach*,
Stays 'till 'tis fair, yet seems to call a coach. *Saunders's Mis.*

The jars of gen'rous wine (Acestes' gift,
When his Trinacrian shores the navy left)
He set *abroach*, and for the feast prepar'd,
In equal portions with the ven'ous star'd. *Dryden's Virgil's Aeneid, vol. ii.*

2. In a figurative sense; in a state to be diffused or advanced; in a state of such beginning as promises a progress.

That man, that sits within a monarch's heart,
And ripens in the sunshine of his favour,
Would he abuse the countenance of the king,
Alack! what mischiefs might be set *abroach*,
In shadow of such greatness? *Shakespeare's Henry IV. p. ii.*

ABRO'AD. *adv.* [compounded of *a* and *broad*. See BROAD.]

1. Without confinement; widely; at large.

Intermit no watch
Against a wakeful foe, while I *abroad*,
Thro' all the coasts of dark destruction, seek
Deliverance. *Milton's Paradise Lost, b. ii. l. 463.*

Again, the lonely fox roams far *abroad*,
On secret rapine bent, and midnight fraud;
Now haunts the cliff, now traverses the lawn,
And flies the hated neighbourhood of man. *Prior.*

2. Out of the house.

Welcome, sir,
This cell's my court; here have I few attendants,
And subjects none *abroad*. *Shakespeare's Tempest.*

Lady—walked a whole hour *abroad*, without dying aist it; at least in the time I staid; though she seemed to be fainting, and had convulsive motions several times in her head. *Pope's Letters.*

3. In another country.

They thought it better to be somewhat hardly yoked at home, than for ever *abroad*, and discredited. *Hosier. Pref.*

Whoever offers at verbal translation, shall have the misfortune of that young traveller, who lost his own language *abroad*, and brought home no other instead of it. *Sir J. Denham.*

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He should regard the propriety of his words, and get some information in the subject he intends to handle. *Swift.*

These men have had longer opportunities of information, and are equally concerned with ourselves. *Rogers.*

2. Charge or accusation exhibited.

3. The act of informing or accusing.

INFORMER. *n. f.* [from *inform*.]

1. One who gives intelligence.

This writer is either byassed by an inclination to believe the worth, or a want of judgment to chuse his informers. *Swift.*

2. One who discovers offenders to the magistrate.

There were spies and informers set at work to watch the company. *L'Estrange.*

Let no court sycophant pervert my sense, Nor fly informer watch these words to draw Within the reach of treason. *Pope.*

Informers are a detestable race of people, although sometimes necessary. *Swift.*

INFORMIDABLE. *adj.* [in and *formidabilis*, Latin.] Not to be feared; not to be dreaded

Of strength, of courage haughty, and of limb Heroick built, thou' of terrestrial mold;

Foe not informidable, exempt from wound. *Milton.*

INFORMITY. *n. f.* [from *informis*, Latin.] Shapelessness. From this narrow time of gestation may ensue a smallness in the exclusion; but this inferreth no informity. *Brown.*

INFORMOUS. *adj.* [informe, French; *informis*, Latin.] Shapeless; of no regular figure.

That a bear brings forth her young *informis* and unshapen, which the fashioneth after by licking them over, is an opinion not only common with us at present, but hath been delivered by ancient writers. *Brown's Vulgar Errors.*

UNFORTUNATE. *adj.* [infertunus, Fr. *infertunatus*, Latin.] Unhappy. See UNFORTUNATE, which is commonly used.

Perkin, seeing himself prisoner, and destitute of all hopes, having found all either false, faint, or *infertunate*, did gladly accept of the condition. *Bacon's Henry VII.*

TO INFRACT. *v. a.* [infraclatus, Latin.] To break. Falling fast, from gradual slope to slope, With wild *infraclated* course and less'n'd roat, It gains a safer bed. *Thomson's Summer.*

INFRAC'TION. *n. f.* [infraction, French; *infraction*, Latin.] The act of breaking; breach; violation.

By the same gods, the justice of whose wrath Punish'd the *infraction* of my former faith. *Waller.*

The wolves, pretending an *infraction* in the abuse of their hostages, fell upon the sheep immediately without their dogs. *L'Estrange's Fables.*

INFRANGIBLE. *adj.* [in and *frangibilis*.] Not to be broken. These atoms are supposed *infrangible*, extremely compacted and hard, which compactness and hardness is a demonstration that nothing could be produced by them, since they could never cohere. *Chryse's Phil. Princ.*

INFREQUENCY. *n. f.* [infrequentia, Latin.] Uncommonness; rarity.

The absence of the gods, and the infrequency of objects, made her yield. *Brown's Notes on Pope's Gossamer.*

INFREQUENT. *adj.* [infrequens, Latin.] Rare; uncommon.

TO INFRIGIDATE. *v. a.* [in and *frigidus*, Latin.] To chill; to make cold.

The drops reached little further than the surface of the liquor, whose coldness did not *infri-gidate* those upper parts of the glass. *Boyle.*

TO INFRI'NGE. *v. a.* [infringe, Latin.]

1. To violate; to break laws or contracts. Those many had not dar'd to do that evil, If the first man that did th' edict *infringe*, Had answer'd for his deed. *Shakespeare.*

Having *infring'd* the law, I wave my right As king, and thus submit myself to fight. *Waller.*

2. To destroy; to hinder. Homilies, being plain and popular instructions, do not *infringe* the efficacy, although but read. *Hosker.*

Bright as the deathless gods and happy, she From all that may *infringe* delight is free. *Waller.*

INFRINGEMENT. *n. f.* [from *infringe*.] Breach; violation. The punishing of this *infringement* is proper to that jurisdiction against which the contempt is. *Clarendon.*

INFRINGEX. *n. f.* [from *infringe*.] A breaker; a violator. A clergyman's habit ought to be without any lace, under a severe penalty to be inflicted on the *infringers* of the provincial constitution. *Abbe's Parergon.*

INFUNDIBULIFORM. *n. f.* [infundibulum and *formis*, Lat.] Of the shape of a funnel or mouth.

INFURIATE. *adj.* [in and *furor*, Latin.] Enraged; raging. At th' other bore, with touch of fire Dilated and *infuriate*. *Milton.*

Fier'd by the torch of noon to tenfold rage, Th' *infuriate* hill north shoots the pillar'd flame. *Thomson.*

INFUSCA'TION. *n. f.* [infuscatus, Latin.] The act of darkening or blackening.

TO INFUSE. *v. a.* [infuse, French; *infundere*, Latin.]

1. To pour in; to instil.

Thou almost mak'st me waver in my faith, To hold opinion with Pythagoras, That souls of animals *infuse* themselves Into the trunks of men. *Shakespeare, Merchant of Venice.*

My early mistle, now my ancient mule, That strong Circian liquor cease t' *infuse*, Wherewith thou didst intoxicate my youth. *Denham.*

Why should he desire to have qualities *infused* into his soul, which himself never possessed? *Swift.*

Meat must be with money bought; She therefore, upon second thought, *Infus'd*, yet as it were by stealth, Some small regard for state and wealth. *Swift.*

2. To pour into the mind; to inspire into. For when God's hand had written in the hearts Of our first parents all the rules of good, So that their skill *infus'd* surpass'd all arts That ever were before, or since the flood. *Druid.*

Sublime ideas, and apt words *infuse*; The muse instruct my voice, and thou inspire the muse. *Rapin.*

He *infus'd* Bad influence into th' unwary breast. *Milton.*

Infuse into their young breasts such a noble ardour as will make them renowned. *Milton.*

3. To steep in any liquor with a gentle heat; to macerate so as to extract the virtues of any thing. Take violets, and *infuse* a good pugil of them in a quart of vinegar. *Bacon's Natural History.*

4. To make an infusion with any ingredient; to supply, to tincture, to saturate with any thing infused. Drink, *infused* with flesh, will nourish faster and easier than meat and drink together. *Bacon's Natural History.*

5. To inspire with. Thou didst smile, *Infus'd* with a fortitude from heav'n. *Shakespeare, Tempest.*

Infuse his breast with magnanimity, And make him, naked, foil a man at arms. *Shakespeare.*

INFUSIBLE. *adj.* [from *infuse*.]

1. Possible to be infused. From whom the doctrines being *infusible* into all, it will be more necessary to forewarn all of the danger of them. *Hamm.*

2. Incapable of dissolution; not fusible. Vitrification is the last work of fire, and a fusion of the salt and earth, wherein the fusible salt draws the earth and *infusible* part into one continuum. *Brown's Vulgar Errors.*

INFUSION. *n. f.* [infusum, French; *infusio*, Latin.]

1. The act of pouring in; infiltration. Our language has received innumerable elegancies and improvements from that *infusion* of Hebraisms, which are derived to it out of the poetical passages in holy writ. *Addison.*

2. The act of pouring into the mine; inspiration. We participate Christ partly by imputation, as when those things which he did and suffered for us are imputed to us for righteousness; partly by habitual and real *infusion*, as when grace is inwardly bestowed on earth, and afterwards more fully both our souls and bodies in glory. *Hosker.*

They found it would be matter of great debate, and spend much time; during which they did not desire their company, nor to be troubled with their *infusions*. *Clarendon.*

Here his folly and his wisdom are of his own growth, not the echo or *infusion* of other men. *Swift.*

3. The act of steeping any thing in moisture without boiling. Repeat the *infusion* of the body oftener. *Bacon.*

4. The liquor made by infusion. To have the *infusion* strong, in those bodies which have finer spirits, repeat the infusion of the body oftener. *Bacon.*

INFUSIVE. *adj.* [from *infuse*.] Having the power of infusion, or being infused. A word not authorized. Still let my song a nobler note assume, And sing th' *infusive* force of Spring on man. *Thomson.*

INGATE. *n. f.* [in and *gate*.] Entrance; passage in. One noble person stoppeth the *ingate* of all that evil which is looked for, and holdeth in all those which are at his back. *Spenser on Ireland.*

INGANNATION. *n. f.* [ingannare, Italian.] Cheat; fraud; deception; juggle; delusion; impolture; trick; slight. A word neither used nor necessary.

Whoever shall resign their reasons, either from the root of deceit in themselves, or inability to resist such trivial *ingannations* from others, are within the line of vulgarity. *Brown.*

INGATHERING. *n. f.* [in and *gathering*.] The act of getting in the harvest. Thou shalt keep the feast of *ingathering*, when thou hast gathered in thy labours out of the field. *Ex. xliii. 16.*

INGE, in the names of places, signifies a meadow, from the Saxon *ing*, of the same import. *Gibson's Conden.*

TO INGE'MINATE. *v. a.* [ingeminare, Latin.] To double; to repeat.

He would often *ingeminate* the word peace, peace. *Clar. n. n.*

INGEMINATION. *n. f.* [in and *geminatio*, Latin.] Repetition; reduplication.

INGENDERER.

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Abridge

ABRIDGE', *verb transitive* abridj', [G. short, or its root, from the root of break or a verb of that family.]

1. To make shorter; to epitomize; to contract by using fewer words, yet retaining the sense in substance - used of writings.

Justin abridged the history of Trogus Pompeius.

2. To lessen; to diminish; as to *abridge* labor; to *abridge* power of rights.

3. To deprive; to cut off from; followed by of; as to *abridge* one of his rights, or enjoyments. to *abridge* from, is now obsolete or improper.

4. In algebra, to reduce a compound quantity or equation to its more simple expression. The equation thus abridged is called a formula.

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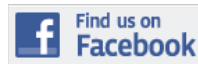
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Infringe

INFRINGE, *verb transitive* infrinj'. [Latin *infringo*; *in* and *frango*, to break. See Break.]

1. To break, as contracts; to violate, either positively by contravention, or negatively by non-fulfillment or neglect of performance. A prince or a private person infringes an agreement or covenant by neglecting to perform its conditions, as well as by doing what is stipulated not to be done.
2. To break; to violate; to transgress; to neglect to fulfill or obey; as, to *infringe* a law.
3. To destroy or hinder; as, to *infringe* efficacy. [*Little Used.*]

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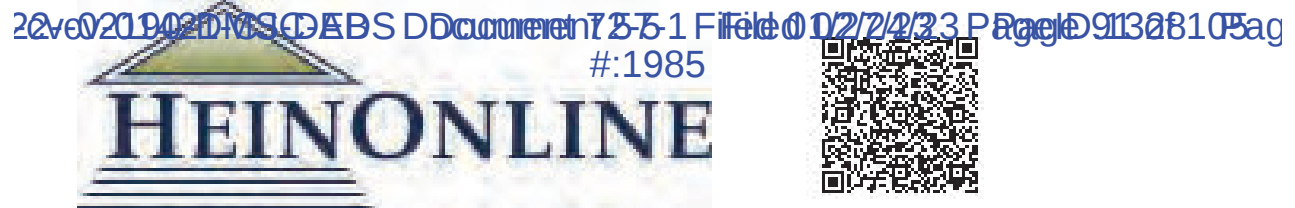
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Proof of Fire-Arms.

ble inhabitant of said town of *Harrison*, requiring him to notify and warn the inhabitants of said town, who are qualified by law to vote in town affairs, to meet at such time and place as shall be expressed in said warrant, to choose all such officers as other towns within this Commonwealth are required by law to choose in the months of March or April annually; and the officers so chosen shall be qualified as other town officers are.
[This act passed March 8, 1805.]

CHAP. XXXV.

An act to provide for the proof of fire arms manufactured within this Commonwealth.

Preamble. WHEREAS no provision hath been made by law for the proof of fire arms manufactured in this Commonwealth, by which it is apprehended that many may be introduced into use which are unsafe, and thereby the lives of the citizens be exposed, to prevent which

Provers of fire-arms to be appointed. SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Governor, by and with the advice and consent of the Council, be, and he hereby is empowered to appoint, in any part of this Commonwealth where the manufacture of fire arms is carried on, suitable persons to be provers of fire arms, not exceeding two in any county, who shall be sworn to the faithful discharge of their trust, whose duty it shall be to prove all musket barrels and pistol barrels, which being sufficiently ground, bored and breeched, shall be offered to him to be proved; who shall prove the musket barrels twice in manner following, viz. first with a charge consisting of one eighteenth part of a pound of powder, one ounce of which, in a five & an half inch howitz, at an elevation of forty five degrees, will carry a twenty four pound shot, eighty yards, with a ball suited to the bore of the barrel; the second proof to be with a charge consisting of one twenty second part of the same powder, with a ball suited to the bore of the barrel; and shall prove the pistol barrels once with a charge consisting of one twenty second part of a pound of powder, one ounce of which, in a five and half inch howitz at an elevation of forty five degrees, will carry a twenty four pound shot seventy yards, with a ball suited to the bore of the barrel; which said powder and ball it shall be the duty of the prover to provide; and if the said musket and pistol barrels shall stand the proof aforesaid, and shall in no respect fail, then it shall be the duty of the said prover to stamp the same on the upper side, and within one and an half inches of the breech of said barrels, with a stamp consisting of the initial letters of the prover's name, and over those letters the letter P. also, in the line of the said initial letters, and further up said barrel the figures designating the year of our Lord in which the proof is made, and over the said figures the letter M. which said letters and figures shall be so deeply impressed on said barrel,

IN THE YEAR OF OUR LORD, 1805.

589

First Baptist Society in *Limington*.

as that the same cannot be erased or disfigured, and shall be in the form

^{P M}
following A.B. 1805; and when any barrels shall burst or shall in any manner fail in the proving as aforesaid, so that in the opinion of the prover they are unfit for use, they shall not be stamped, but the said prover shall suffer the owner to take them away; and any prover so proving musket or pistol barrels as aforesaid, shall be entitled to receive from the owner, for each musket barrel *thirty three cents*, and for each pistol barrel *twenty five cents*, whether the same stand proof and are stamped or not.

SECT. 2. *And be it further enacted*, That if any person, after the first day of June next, shall manufacture within this Commonwealth, any musket or pistol, without having the barrels proved and stamped as aforesaid, except such as are or may be manufactured in the armory of the *United States*, or in fulfilment of some contract made and entered into, or that may hereafter be made and entered into, for the manufacturing of fire arms for the *United States*, shall forfeit and pay for every such musket or pistol the sum of *ten dollars*, to be recovered in an action of debt, before any court proper to try the same, by any person who shall sue for and recover the same, to his own use.

SECT. 3. *And be it further enacted*, That if any person after the said first day of June next, shall sell and deliver, or shall knowingly purchase, any musket or pistol, which shall have been manufactured within this Commonwealth after the said first day of June next, which shall not have the marks of proof above required, the person so selling and the person so purchasing shall each forfeit the sum of *ten dollars*, to be recovered by action of debt before any court proper to try the same, to the use of any person who shall sue for and recover the same.

SECT. 4. *And be it further enacted*, That if any person shall falsely forge or alter the stamp of any prover of fire arms, so appointed as aforesaid, impressed on any musket or pistol barrel, pursuant to this act, and be convicted thereof before the Supreme Judicial Court, he shall be punished by fine, not exceeding *fifty dollars*, nor less than *twenty dollars*, according to the nature and aggravation of the offence.

[This act passed March 8, 1805.]

CHAP. XXXVI.

An act to incorporate a number of the inhabitants in the town of *Limington*, in the county of *York*, into a separate religious society, by the name of *The First Baptist Society in Limington*.

SECT. 1. *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That Ebenezer Clarke, James Marrs, Solomon Stone, William Chick, Barzillai

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Year(s):



- 1783 (<https://firearmslaw.duke.edu/years/1783/>)

"That all cannon, swivels, mortars, howitzers, cohorns, fire arms, bombs, grenades, and iron shells of any kind, that shall be found in any dwelling-house, out-house, stable, barn, store, ware-house, shop, or other building, charged with, or having in them any gun-powder, shall be liable to be seized by either of the Firewards of the said Town: And upon complaint made by the said Firewards to the Court of Common Pleas, of such cannon, swivels, mortar, or howitzers, being so found, the Court shall proceed to try the merits of such complaint by a jury; and if the jury shall find such complaint supported, such cannon, swivel, mortar, or howitzer, shall be adjudged forfeit, and be sold at public auction.

<https://firearmslaw.duke.edu/laws/1783-mass-acts-37-an-act-in-addition-to-the-several-acts-already-made-for-the-prudent-storage-of-gun-powder-withi...> 1/2

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1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Tow...

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Duke Center for Firearms Law | 210 Science Drive, Durham, NC 27708 | firearmslaw@law.duke.edu
(<mailto:firearmslaw@law.duke.edu>)

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Exhibit 5

1902 MCS DABS Document 75-1 Filed 01/27/23 Page 93 of 136
#:1992

L A W S

OF THE

STATE OF NEW-YORK,

COMPRISING THE

CONSTITUTION,

AND THE

ACTS OF THE LEGISLATURE,

SINCE THE REVOLUTION, FROM THE

FIRST TO THE FIFTEENTH SESSION, INCLUSIVE.



IN TWO VOLUMES.

VOLUME II.

Quam Leges alie super alias accumulatz, eas de integro retractare, et in Corpus sanum et habile redigere, ex Utro lit.

Mifera Servitus est ubi Jus est vagum aut incognitum.

BACON.
4 Inst. 246.

NEW-YORK—PRINTED BY THOMAS GREENLEAF—M,DCC,XC,11.

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ER-0126

1902-MS-CES Document 15-1 Filed 02/22/23 Page 93
 #:1993

Inhabitants at their town-meetings may direct monies to be raised for repairing engines. *it further enabled by the authority aforesaid,* That it shall and may be lawful for the freeholders and inhabitants of the said town of Brooklyn residing within the limits aforesaid, at any town-meeting, to direct such sum or sums of money as they shall deem necessary and proper for the purpose aforesaid, to be raised, levied and collected, at the same time, and in the same manner as the monies for the maintenance and support of the poor, within the same town are by law directed to be raised, levied and collected, and to be paid into the hands of the town-clerk of the same town, to be by him paid and applied for the purposes aforesaid, at such time and times, and in such manner as the major part of the firemen aforesaid, shall from time to time direct and appoint.

C H A P. LXXXI.

An ACT to prevent the storing of Gun-Powder, within certain Parts of the City of New-York.

Passed 15th March, 1788.

WHEREAS the practice of storing gun-powder within certain parts of the city of New-York, is dangerous to the safety of the said city ;
 Therefore,

I. *Be it enabled by the people of the state of New-York, represented in senate and assembly, and it is hereby enabled by the authority of the same,* That it

No person to keep more than 28 pounds of powder, in any one place within one mile of the city-hall, and that to be divided into four parcels.

shall not be lawful for any person or persons, to have or keep any quantity of gun-powder exceeding twenty-eight pounds weight, in any one place, house, store or out-house, less than one mile to the northward of the city-hall of the said city, except in the public magazine at the fresh-water, which said quantity of twenty-eight pounds, shall be separated in four stone jugs or tin canisters, each of which shall not contain more than seven pounds ; and if any person or persons shall keep any greater quantity than twenty-eight pounds, in any one place, house, store or out-house, or if the same gun-powder so permitted to be kept as aforesaid, shall not be separated in the manner herein above directed, he, she or they shall forfeit all such gun powder so kept, contrary to the true intent and meaning of this act, or so permitted to be kept, and which shall not be separated as aforesaid ; and shall also forfeit the sum of fifty pounds for every hundred weight of powder, and in that proportion for a greater or less quantity, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue for the same. Provided always, That all actions and suits to be commenced, sued or prosecuted, against any person or persons for any thing done contrary to this act, shall be commenced, sued or prosecuted within two calendar months next after the offence committed, and not at any time thereafter.

II. And to avoid dangers from gun-powder laden on board of any ship or other vessel, arriving from sea ; *Be it further enabled by the authority aforesaid,* That the commander or owner or owners of every

Commanders of vessels to land and store gun-powder within 24 hours after their arrival.

ship or other vessel arriving from sea, and having gun-powder on board, shall, within twenty-four hours after her arrival in the harbour, and before such ship or other vessel be hauled along side of any wharf, pier or key within the said city, land the said gun-powder, by means of a boat or boats, or other small craft at any place on the East-

92-D-045483 Document 17351 Filed 02/24/23 Page 103
 192. L.A. Warrant No. 17351, City of L.A., Criminal Section
 #:1994

River, east of the wharf now building by Thomas Buchanan, or at any place on the North-River, to the northward of the air-furnace, which may be most contiguous to any of the magazines, and shall cause the same to be stored in one of the magazines now built, or hereafter to be built for that purpose, on pain of forfeiting all such gun-powder to any person or persons who will sue and prosecute for the same to effect, in manner aforesaid.

III. And to prevent any evil consequences which may arise from the carriage of gun-powder, *Be it further enacted by the authority aforesaid*, That

No gun-powder to be carried thro' the streets but in tight casks put in bags, on pain of forfeiting the same. all gun-powder which shall be carried through the streets of the said city, by carts, carriages, or by hand, or otherwise, shall be in tight casks, well headed and hooped, and shall be put into bags or leather cases, and entirely covered there-

with, so that no powder may be spilled or scattered in the passage thereof, on pain of forfeiting all such gun-powder as shall be conveyed through any of the streets aforesaid, in any other manner than is hereby directed; and it shall and may be lawful for any person or persons, to seize the same to his or their own use and benefit, and to convey the same to one of the magazines aforesaid, and thereupon to prosecute the person or persons offending against this act before the mayor or recorder, and any two aldermen of the said city; and such gun-powder shall upon conviction be condemned to the use of the person or persons seizing the same.

IV. *And be it further enacted by the authority aforesaid*,

Mayor, recorder or any two aldermen, may, on suspicion of gun-powder being concealed, issue a warrant to search for and seize the same. That it shall and may be lawful for the mayor or recorder, or any two aldermen of the said city, upon application made by any inhabitant or inhabitants of the said city, and upon his or their making oath of reasonable cause of suspicion (of the sufficiency of which the said mayor or recorder, or aldermen, is and are to be the judge or judges) to issue his or their warrant or warrants, under his or their hand and seal, or hands and seals, for searching for such gun-powder, in the day time, in any building or place whatsoever, within the limits aforesaid, or in any ship or other vessel, within forty-eight hours after her arrival in the harbour, or at any time after such ship or other vessel shall and may have hauled along side any wharf, pier or key, within the limits aforesaid: And that upon any such search it shall be lawful for the persons finding any such gun-powder, immediately to seize, and at any time within twelve hours after such seizure, to convey the same to one of the magazines aforesaid; and the same gun-powder being so removed, to detain and keep, until it shall be determined by the mayor or recorder and any two aldermen of the said city, whether the same is forfeited by virtue of this act: And the person or persons so detaining the same, shall not be subject or liable to any action or suit for the detention thereof. Provided always, That nothing in this clause of this act contained, shall be construed to authorize any person having such warrant, to take advantage of the same, for serving any civil process of any kind whatsoever. Provided also, That nothing in this act contained shall extend to ships of war, or packets in the service of the United States or any of them, or of any foreign prince or state; nor to authorize the searching for gun-powder on board of any such ship or vessel while laying in the stream, and upwards of one hundred yards from the wharf or shore.

V. *And be it further enacted by the authority aforesaid*,

Gun-powder exceeding 28lb. found during a fire, may be seized without warrant. That if any gun-powder, exceeding twenty-eight pounds, shall be found in the custody of any person, during any fire or alarm of fire, in the said city, by any fireman of the said

12-D-013-013 Document 72751 Filed 03/22/23 Page 103
 GEORGE CLINTON, Esq. Governor. 1793
 #:1995

city, it shall be lawful for him to seize the same, without warrant from the mayor, or recorder or aldermen, and to cause the same to be condemned, in manner aforesaid, to his own use; any thing in this act to the contrary notwithstanding.

C H A P. LXXXII

An ACT to prevent the Destruction of Deer.

Passed 15th March, 1788.

I *BE it enacted by the people of the State of New-York, represented in Senate and assembly; and it is hereby enacted by the authority of the same,*

Any person killing a deer in January, February, March, April, May, June or July, to forfeit 3l. That if any person or persons shall kill or destroy any wild buck, doe or fawn, or any other sort of deer whatsoever, at any time in the months of January, February, March, April, May, June or July, every such person shall, for every buck, doe or fawn, or other deer so killed or destroyed as aforesaid, contrary to the true intent and meaning of this act, forfeit and pay the sum of three pounds, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue and prosecute for the same; the one moiety of which forfeiture, when recovered, to be paid to the overseers of the poor of the town or place where the offence shall be committed for the use of the poor thereof; and the other moiety to such person or persons as shall sue and prosecute for the same as aforesaid.

II. *And be it further enacted by the authority aforesaid,* That every person in whose custody shall be found, or who shall expose to sale any green deer skin, fresh venison, or deer's flesh, at any time in any of the months before mentioned, and shall be thereof convicted before any justice of the peace, by the oath of one credible witness, or by the confession of the party, shall, unless such party shall prove that some other person killed such buck, doe, fawn, or other deer, be deemed and adjudged guilty of the said offence.

III. *And in order the more easily to convict offenders against this act, Be it further enacted by the authority aforesaid,* That it shall be lawful for any justice of the peace in any county of this state, and every such justice is hereby required, upon demand made by any person, assigning a reasonable cause of suspicion, upon oath (of the sufficiency of which the said justice is to judge) at any time in any of the months before mentioned, to issue his warrant under his hand and seal, to any constable of any town or place in the same county, for searching in the day time in any house, store, out-house, or other place whatsoever, where any green deer skin, fresh venison or deer's flesh, is suspected to be concealed: And in case any green deer skin, fresh venison or deer's flesh, shall upon such search be found, the person in whose custody the same shall be found, or who concealed the same, shall forfeit the sum of three pounds, to be recovered and applied in manner aforesaid.

Any person hunting or killing deer with blood-hounds or beagles, except in Suffolk county, to forfeit three pounds. **IV.** *And be it further enacted by the authority aforesaid,* That if any person or persons shall at any time hunt, pursue or destroy any wild buck, doe, or fawn, or other deer (except in the county of Suffolk) with any blood-hound or blood-hounds, beagle or beagles, every such person shall, for every such offence, forfeit and pay the sum of three pounds, to be recovered and applied as aforesaid. Provided, That nothing in this clause of this act contained, shall be construed to prevent any person or persons from mak-

Vol. II.

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Exhibit 6

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1821 Me. Laws 98-99, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, ch. 25, § 5 | Duke Ce...



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1821 Me. Laws 98-99, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, ch. 25, § 5

Subject(s):

- Storage (<https://firearmslaw.duke.edu/subjects/storage/>)

Jurisdiction(s):

- Maine (<https://firearmslaw.duke.edu/jurisdictions/maine/>)

Year(s):


- 1821 (<https://firearmslaw.duke.edu/years/1821/>)

Be it further enacted, That it shall, and may be lawful for any one or more of the Selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefor according to law.

-  (<https://twitter.com/dukefirearmslaw>)

10/18/22, 2:26 PM

1821 Me. Laws 98-99, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, ch. 25, § 5 | Duke Ce...

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Duke Center for Firearms Law | 210 Science Drive, Durham, NC 27708 | firearmslaw@law.duke.edu
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CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Boland, et al. v. Bonta*

Case No.: 8:22-cv-01421-CJC(ADSx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

DECLARATION OF ALEXANDER A. FRANK IN SUPPORT OF PLAINTIFFS' COURT-ORDERED SUPPLEMENTAL BRIEFING IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Robert L. Meyerhoff, Deputy Attorney General

robert.meyerhoff@doj.ca.gov

Gabrielle D. Boutin

Gabrielle.Boutin@doj.ca.gov

Charles J. Sarosy

charles.sarosy@doj.ca.gov

300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230

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

Executed February 24, 2023.


Christina Castron

C.D. Michel – SBN 144258
cmichel@michellawyers.com
Joshua Robert Dale – SBN 209942
jdale@michellawyers.com
Sean A. Brady – SBN 262007
sbrady@michellawyers.com
Alexander A. Frank – SBN 311718
afrank@michellawyers.com
Konstadinos T. Moros – SBN 306610
kmoros@michellawyers.com
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445

Attorneys for Plaintiffs Lance Boland, Mario
Santellan, Reno May, Jerome Schammel, and
California Rifle & Pistol Association,
Incorporated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LANCE BOLAND, an individual;
MARIO SANTELLAN, an individual;
RENO MAY, an individual; JEROME
SCHAMMEL, an individual;
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED, a
California corporation;

Plaintiff,

v.

ROBERT BONTA, in his official capacity
as Attorney General of the State of
California; and DOES 1-10

Defendants.

Case No. 8:22-cv-01421-CJC(ADSx)

**DECLARATION OF BRIAN R.
MARVEL, PRESIDENT OF PEACE
OFFICERS RESEARCH
ASSOCIATION OF CALIFORNIA,
IN SUPPORT OF PLAINTIFFS'
COURT-ORDERED
SUPPLEMENTAL BRIEFING IN
SUPPORT OF THEIR MOTION FOR
PRELIMINARY INJUNCTION**

DECLARATION OF BRIAN R. MARVEL

I, Brian R. Marvel, declare:

1. Since 2018, I have served as the elected President of Peace Officers Research Association of California ("PORAC"). I am a Police Officer, and the President of PORAC, I represent the interests of law enforcement on a daily basis both in California and nationally. I also serve on the Governor's Medal of Valor Review Board, and the California Peace Officers Memorial Foundation ("CPOMF"). I am a former Navy veteran qualified as a small arms instructor and armorer.

2. Founded in 1953, PORAC is a professional federation of local, state, and federal law enforcement agencies that represents over 77,000 law enforcement and public safety professionals in California. It is the largest law enforcement organization in California and the largest statewide association in the Nation. It has a significant presence in Sacramento where it lobbies on behalf of its membership.

3. PORAC's mission is to maintain a leadership role in organizing, empowering, and representing the interests of rank-and-file peace officers. It works to identify the needs of the law enforcement community and provide programs to meet those needs through conducting research, providing education and training, and defining and enhancing standards for professionalism. Its goal is to protect the rights and benefits of officers while also creating an environment in which the law enforcement community can interact and work toward achieving common goals and objectives.

4. I am submitting this declaration because California's Unsafe Handgun Act is out of step with PORAC's values. PORAC believes that the relationship between law enforcement and society is critical, and laws that unjustifiably privilege law enforcement over the average citizen are bad for the relationship between law enforcement and the communities they police.

5. Additionally, the UHA's rules simply make no sense, from a law enforcement perspective. The UHA has little impact on individuals who commit crimes with firearms, which are usually stolen. Its microstamping provision is a fool's errand.

1 Even if it worked, microstamping would not assist the apprehension of a criminal who
2 used stolen firearms, and we can already match registered owners to guns used in a crime
3 through ballistics. As to the other required “features,” the magazine safety disconnect and
4 the chamber load indicator, they add nothing noticeable to the overall safety of a firearm.
5 If they did, PORAC would be demanding agencies issue their members firearms with
6 those features. Most agencies issue officers the latest models of either Glock or Sig Sauer
7 handguns, which lack magazine safety disconnects, chamber load indicators, and of
8 course microstamping.

9 6. The guns issued or authorized by law enforcement agencies in California are
10 not unsafe. PORAC and I would never tolerate the provision of inferior or unsafe
11 firearms or equipment to our sworn members. Their lives and the lives of those they
12 protect are at stake. Throughout its history, PORAC has consistently advocated for our
13 members to have the newest, safest, and best equipment, including handguns. These
14 handguns do not become unsafe at the end of an officer’s shift or career, nor are they
15 unsafe in the hands of a law-abiding citizen.

16 7. Ironically, the UHA proports to ban unsafe handguns, but actually bars
17 newer, improved and safer generations of handguns already on the roster. For example,
18 many officers are issued 4th or 5th-generation Glock pistols, which are off-roster and lack
19 magazine safety disconnects, chamber load indicators, and of course microstamping.
20 Indeed, the size and functionality of the different generation models is essentially the
21 same. Thus, the newest generation Glock handguns are deemed unsafe for the public, but
22 safe enough to protect our peace officers and for them to protect members of the public.

23 8. Moreover, citizens have a Constitutional right to be armed for self-defense.
24 Self-defense "is one of the inalienable rights guaranteed by the constitution of the state."
25 (*People v. McDonnell* (1917) 32 Cal.App. 694; Cal. Const. Art. 1, § 1.) “Central to the
26 rights guaranteed by the Second Amendment is ‘the inherent right of self-defense.’”
27 (*United States v. Torres*, 911 F.3d 1253 (9th Cir. 2019), citing *District of Columbia v.*
28 *Heller* (554 U.S. 570 (2008).) Thus, the Second Amendment is an important part of

1 American life for both law enforcement officers and members of the public. Armed
2 citizens do for themselves what law enforcement cannot always be there to do.

3 9. There is no principled reason why all law-abiding citizens in California,
4 including off-duty and retired peace officers, should not be able to buy, at a gun store, the
5 same type of handguns that are commonly issued to approximately 77,000 peace officers
6 while they are on-duty in California. PORAC believes in the legitimacy of the entire
7 Constitution, and that means the right of the people to keep and bear arms under the
8 Second Amendment. As peace officers, we have an obligation to safeguard people's
9 Constitutional rights.

10 10. Law enforcement agencies routinely upgrade their choice of duty-issued
11 handguns to ensure that officers have the best tools for the job. But California's UHA
12 limits the handguns available to law abiding citizens and relegates them to older
13 generations and/or models that agencies largely no longer issue.

14 11. In early 2023, legislation has been introduced that will exacerbate the
15 inconsistency of mischaracterizing police issued handguns as otherwise unsafe, by
16 prohibiting even police officers from buying modern handguns. SB 377, recently
17 introduced, would eliminate the law enforcement exemption to the handgun roster, except
18 for handguns purchased by an agency for use while on duty.

19 12. According to its Legislative Counsel's Digest for S.B. 377: "Existing law
20 defines the characteristics of an unsafe handgun. Existing law requires the Department of
21 Justice to compile, publish, and thereafter maintain a roster listing all of the handguns
22 that have been tested by a certified testing laboratory, have been determined not to be
23 unsafe handguns, and may be sold in this state. Existing law prohibits the sale or transfer
24 of a handgun not listed on this roster. Existing law exempts from this prohibition the sale
25 or purchase of a handgun sold to certain law enforcement agencies and any sworn
26 member of those entities, as specified. This bill would remove from this exemption the
27 sale or purchase of a handgun sold to a sworn member of these exempt agencies, thereby
28

1 applying the exemption only to the sale or purchase of a handgun directly to the exempt
2 law enforcement agencies.”

3 13. Thus, S.B. 377 illustrates the incongruity of the entire predicate for the UHA
4 in purporting to exempt the purchase of unsafe handguns by law enforcement agencies
5 for the use of unsafe handguns by officers while on duty, when the officer is most likely
6 to have to use the weapon for self defense or defense of others. However, this Bill would
7 prohibit the very officers required to carry the allegedly unsafe handguns on duty from
8 purchasing the same gun for personal protection. If the handgun is safe enough to be
9 carried while on duty, it’s safe enough for an officer or member of the public to purchase
10 for personal protection.

11 14. PORAC actively opposes S.B. 377.

12 15. The UHA arbitrarily deems as “unsafe” the handguns that thousands of
13 police officers in the state use to protect society and to protect themselves on a daily
14 basis. If these weapons were truly unsafe, that would be a serious issue. But these
15 weapons are not truly unsafe, and are merely deemed unsafe for political reasons.

16 16. To improve safety regarding firearms, the State should make sure that the
17 CA Department of Justice has the necessary resources and directives to clear out the
18 prohibited persons in possession of a firearm list, which stands at approximately 24,000
19 individuals. As there are already hundreds of gun laws in force in California, the State
20 could mandate that District Attorneys fully enforce gun violations and the Attorney
21 General should intervene when prosecutors refuse to do so. Sadly, on June 14, 2022, two
22 El Monte peace officers were murdered by a gang member who, by all accounts, should
23 have been in prison after being arrested for unlawful possession of a firearm. Due to the
24 failure of the District Attorney in Los Angeles to enforce prohibited persons laws these
25 two officers were murdered.

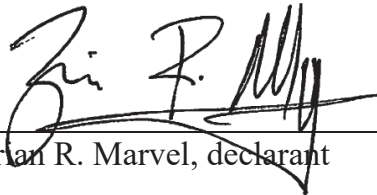
26 17. In addition, the State should actively engage firearm dealers, owners, law
27 enforcement, and community stakeholders on viable solutions that work. It is critical to
28 the safety of the public that we keep guns out of the hands of prohibited persons and

1 disincentivizing the unlawful use of firearms through both enforcement and criminal
2 enhancements.

3 18. We found out about the existence of this case too late to file an amicus brief
4 with this Court in time for its ruling on the preliminary injunction. We intend to request
5 leave to file such a brief prior to trial or summary judgment in this matter. But as this
6 Court is about to rule on a preliminary injunction, PORAC would like the Court to be
7 aware of its position.

8 I declare under penalty of perjury of the laws of State of California and the United
9 States that the foregoing is true and correct. Executed within the United States on
10 February 23, 2023.

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Brian R. Marvel, declarant

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Boland, et al. v. Bonta*

Case No.: 8:22-cv-01421-CJC(ADSx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

DECLARATION OF BRIAN R. MARVEL, PRESIDENT OF PEACE OFFICERS RESEARCH ASSOCIATION OF CALIFORNIA, IN SUPPORT OF PLAINTIFFS' COURT-ORDERED SUPPLEMENTAL BRIEFING IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Robert L. Meyerhoff, Deputy Attorney General

robert.meyerhoff@doj.ca.gov

Gabrielle D. Boutin

Gabrielle.Boutin@doj.ca.gov

Charles J. Sarosy

charles.sarosy@doj.ca.gov

300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230

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

Executed February 24, 2023.


Christina Castron

1 ROB BONTA
Attorney General of California
2 MARK R. BECKINGTON
Supervising Deputy Attorney General
3 ROBERT L. MEYERHOFF, SBN 298196
GABRIELLE D. BOUTIN, SBN 267308
4 S. CLINTON WOODS, SBN 246054
CHARLES J. SAROSY, SBN 302439
5 Deputy Attorneys General
State Bar No. 302439
6 300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
7 Telephone: (213) 269-6356
Fax: (916) 731-2119
8 E-mail: Charles.Sarosy@doj.ca.gov
Attorneys for Rob Bonta, in his official capacity
9 *as Attorney General of the State of California*

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12
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15 **LANCE BOLAND, ET AL.,**

16 Plaintiffs,

17 v.

18 **ROB BONTA, IN HIS OFFICIAL**
19 **CAPACITY AS ATTORNEY GENERAL OF**
20 **THE STATE OF CALIFORNIA, ET AL.**

21 Defendants.
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26
27
28

Case No. 8:22-cv-01421-CJC-ADS

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANT'S FIRST CLOSING
BRIEF FOLLOWING
EVIDENTIARY HEARING ON
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Courtroom: 9B
Judge: Hon. Cormac J. Carney
Trial Date: None set
Action Filed: August 1, 2022

1 Under Federal Rule of Evidence 201, Defendant Attorney General Rob Bonta
2 respectfully requests the Court to take judicial notice of **Defendant's Exhibit 29**,¹
3 which is the Introduction to Volume II (Crime Gun Intelligence and Analysis) of
4 the National Firearms Commerce & Trafficking Assessment ("NFCTA"), and
5 **Defendant's Exhibit 30**, which is Part III (Crime Guns Recovered and Traced
6 within the United States and its Territories) of Volume II of the NFCTA. These
7 documents were published by the U.S. Bureau of Alcohol, Tobacco, Firearms, and
8 Explosives ("ATF"), and the publication was announced on February 1, 2023.
9 Press Release, United States Department of Justice, *Justice Department Announces*
10 *Publication of Second Volume of National Firearms Commerce and Trafficking*
11 *Assessment* (Feb. 1, 2023), [https://www.justice.gov/opa/pr/justice-department-](https://www.justice.gov/opa/pr/justice-department-announces-publication-second-volume-national-firearms-commerce-and)
12 [announces-publication-second-volume-national-firearms-commerce-and](https://www.justice.gov/opa/pr/justice-department-announces-publication-second-volume-national-firearms-commerce-and).

13 **Defendant's Exhibit 29** is publicly available at this hyperlink,
14 <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-intro/download>.
15 **Defendant's Exhibit 30** is publicly available at this hyperlink,
16 [https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-](https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download)
17 [recovered-and-traced-us/download](https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download). The other parts within the NFCTA Volume II
18 are available at this hyperlink, [https://www.atf.gov/firearms/national-firearms-](https://www.atf.gov/firearms/national-firearms-commerce-and-trafficking-assessment-nfcta-crime-guns-volume-two)
19 [commerce-and-trafficking-assessment-nfcta-crime-guns-volume-two](https://www.atf.gov/firearms/national-firearms-commerce-and-trafficking-assessment-nfcta-crime-guns-volume-two).

20 The Court may take judicial notice of any fact that is "not subject to
21 reasonable dispute because it: (1) is generally known within the trial court's
22 territorial jurisdiction; or (2) can be accurately and readily determined from sources
23 whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)-(2). A
24 court shall take judicial notice of such a fact if requested by a party and supplied
25 with the necessary information. *Id.* 201(c)(2).

26
27 ¹ This exhibit number follows the 28 Defendant exhibits admitted at the
28 evidentiary hearing on Plaintiffs' Motion for a Preliminary Injunction. ECF Nos.
48, 53.

1 Courts may take judicial notice of “records and reports of administrative
2 bodies,” such as government reports, as well as “information obtained from
3 government websites. *Allergan USA, Inc. v. Prescribers Choice, Inc.*, 364 F. Supp.
4 3d 1089, 1095 (C.D. Cal. 2019) (citing *United States v. Ritchie*, 342 F.3d 903, 909
5 (9th Cir. 2003) and taking judicial notice of five federal Food and Drug
6 Administration (“FDA”) documents available on the FDA’s website); *see also*
7 *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1167, n.2 (C.D. Cal. 2022) (taking
8 judicial notice of “government reports”); *Garcia v. City of Los Angeles*, 481 F.
9 Supp. 3d 1031, 1036, n.4 (taking judicial notice of “government reports” prepared
10 by the city’s Bureau of Sanitation). **Defendant’s Exhibits 29 and 30** are part of a
11 government report published by a federal bureau and is publicly available on the
12 ATF’s website at the hyperlinks provided above. Accordingly, **Defendant’s**
13 **Exhibits 29 and 30** are properly subject to judicial notice under Federal Rule of
14 Evidence 201(b).

15
16
17 Dated: February 24, 2023

Respectfully submitted,

18 ROB BONTA
19 Attorney General of California
20 MARK BECKINGTON
21 Supervising Deputy Attorney General
22 ROBERT L. MEYERHOFF
23 GABRIELLE D. BOUTIN
24 S. CLINTON WOODS
25 Deputy Attorneys General

26 /s/ Charles J. Sarosy
27 CHARLES J. SAROSY
28 Deputy Attorney General
*Attorneys for Rob Bonta, in his official
capacity as Attorney General of the
State of California*

DEFENDANT'S EXHIBIT 29



NATIONAL FIREARMS COMMERCE AND TRAFFICKING ASSESSMENT (NFCTA):

**Crime Gun Intelligence and Analysis
Volume Two**

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

INTRODUCTION

The National Firearms Commerce and Trafficking Assessment (NFCTA) is a comprehensive examination of commerce in firearms in the United States and the diversion of firearms to illegal markets. Produced by a team comprised of ATF subject-matter experts, academics from a variety of disciplines specializing in research relating to firearms, and other law enforcement professionals, the NFCTA is designed to provide the public, researchers, and policymakers with analysis of data lawfully collected by ATF as part of its regulatory and law enforcement missions to inform the dialogue on firearm law and policy. To ensure comprehensive analysis, the NFCTA is being produced in several volumes. In May 2022, ATF published Volume I, *Firearms in Commerce*. Volume I presents data, information, and analysis specific to the manufacture, import, export, and sale of firearms by the regulated firearms industry in the United States. This second volume of the NFCTA, *Crime Gun Intelligence and Analysis*, focuses on data, information, and analysis relating to crime guns recovered by law enforcement during domestic and international investigations. Importantly, ATF accesses this data and information pursuant to specific statutory authorities and within the restrictions set by Congress to protect the privacy of lawful firearms owners.

The information that ATF relies upon to execute its law enforcement mission of protecting the public from firearm-related violence is derived from several sources. Collectively known as “Crime Gun Intelligence” (“CGI”) these sources include crime gun trace results derived from records that federal law requires federal firearms licensees (FFLs) to maintain about firearms they manufacture and distribute; ballistics data and analysis generated by ATF’s National Integrated Ballistic Information Network (NIBIN); and investigative information developed by ATF agents, other federal law enforcement agencies (LEAs), and local, state, territorial, tribal, and international law enforcement partners. Using these information sources, ATF routinely generates bulletins for law enforcement and industry, and issues public safety advisories for all citizens. This Volume of the NFCTA, however, represents the first comprehensive report incorporating crime gun information from the full range of sources used by ATF in more than twenty years. Advancements in ballistic analytical technology and information processing during this period have enhanced ATF’s capacity to support law enforcement efforts to identify, investigate, and prosecute those who use firearms to commit violent offenses and the traffickers who illegally divert those crime guns to criminals. Volume II describes in detail the sources of information that constitute CGI, and how CGI is leveraged to promote effective investigation of firearm-related violence.

Finally, the information and analysis in NFCTA Volumes I and II set the foundation for the subject that will be addressed in Volume III, *Firearms Trafficking*.

Records Maintained by FFLs

The Gun Control Act of 1968 (GCA) requires any individual or entity engaged in the business of manufacturing firearms or ammunition to obtain an FFL. The nine different types of licenses, which are explained in detail in NFCTA Volume I, are:

- Type 01, Dealer in Firearms Other Than Destructive Devices
- Type 02, Pawnbroker in Firearms Other Than Destructive Devices
- Type 03, Collector of Curios and Relics
- Type 06, Manufacturer of Ammunition for Firearms Other Than Ammunition for Destructive Devices or Armor Piercing Ammunition
- Type 07, Manufacturer of Firearms Other Than Destructive Devices
- Type 08, Importer of Firearms Other Than Destructive Devices or Ammunition for Firearms Other Than Destructive Devices, or Ammunition Other Than Armor Piercing Ammunition
- Type 09, Dealer in Destructive Devices
- Type 10, Manufacturer of Destructive Devices, Ammunition for Destructive Devices or Armor Piercing Ammunition
- Type 11, Importer of Destructive Devices, Ammunition for Destructive Devices or Armor Piercing Ammunition

The GCA requires all licensed importers and manufacturers to identify each firearm imported or manufactured by means of a serial number engraved or cast on the frame or receiver of the weapon, in such manner directed by the Attorney General through the promulgation of regulations. Firearms markings also include the manufacturer or importer name, city and state of manufacturer or country of origin, model designation (if assigned), and caliber or gauge. These unique identifiers are used by FFLs to effectively track their firearm inventories and maintain required records. Specifically, all FFLs are required to maintain an acquisition and disposition (A&D Record) of every firearm acquired and subsequently transferred. The acquisition records must include the manufacturer, model, serial number, type, and caliber of the firearm, as well as the date it was acquired and from whom it was acquired. The disposition information must include the date the FFL physically transferred the firearm and the name and address of the individual, or name and FFL number, to whom the firearm was transferred. FFLs that discontinue business are required under the GCA to submit their firearm transaction records to the ATF Out of Business Records Center.

These GCA provisions enable ATF to trace the transactional history of a crime gun.¹ Crime gun tracing is an investigative tool that provides critical information to LEAs to assist in solving and preventing firearm-related crimes. Tracing is the systematic process of tracking the movement of a firearm from its first sale by the manufacturer or importer through the distribution chain (wholesaler/retailer) to the *first retail purchaser*. In some cases, a firearm may reenter regulated commerce after the original retail sale. To help identify when a firearm is resold by an FFL and determine the identity of the subsequent, more recent purchaser ATF has developed the Firearm Resale Program, which is further described in Part II (National Tracing Center Overview). These subsequent, more recent retail purchasers are referred by ATF and law enforcement as the *last known purchaser*.

ATF is the sole federal agency authorized to contact FFLs and request firearms transaction information during the completion of a crime gun trace. In 1972, ATF established the National Tracing Center (NTC) whose mission is to conduct crime gun tracing accurately and efficiently. Part II of this Volume evaluates the overall workload and performance of the NTC in tracing crime guns and providing investigative leads and strategic information to LEAs. The NTC is

only authorized to trace a crime gun for a LEA involved in a bona fide criminal investigation. When the NTC receives a trace request, the NTC uses the firearm's markings and A&D Records maintained by the FFLs or housed at the Out of Business Records Center to trace the firearm through its chain of custody. FFLs must respond to a trace request from ATF within 24 hours. The chain of custody and purchaser information is then made available to the requesting agency for criminal intelligence purposes.

The crime gun tracing process requires the NTC to interact with federal, state, local, territorial, tribal, and international LEAs, as well as with FFLs. As such, crime gun tracing is inherently dependent upon the completeness and accuracy of FFL records. If requesting LEAs submit inaccurate or incomplete requests, such as an inadequate firearm description, this will result in unsuccessful traces and reduce strategic and actionable intelligence development. ATF continually strives to improve the data quality and accuracy of submitted and processed trace requests through operational and technological enhancements. For example, since 2003, ATF has been promoting and expanding its eTrace system, a 24/7 web-based system that allows domestic and international LEAs to conduct comprehensive crime gun tracing and more quickly develop investigative strategies to reduce violent crime.

The GCA authorizes ATF to analyze crime gun trace data and publish reports with statistical aggregate data. Parts III (Crime Guns Recovered and Traced Within the United States and Its Territories) and IV (Crime Guns Recovered Outside the United States and Traced by Law Enforcement) of this Volume presents data on crime guns recovered within the U.S. and foreign countries. Those recovered and traced within the U.S. are broken down in a variety of ways, including by state and selected city. Cities were divided among four population groups based on 2020 U.S. Census data. From within each population group, the top ten cities with the highest number of crime guns recovered between 2017 and 2021 and traced were selected and used throughout this Volume as reflected in Table INT-01.

Table INT-01: Top Ten Selected U.S. Cities Within Four Population Groups

| Mega Cities <i>(Populations of 1,000,000 residents or greater)</i> | Large Cities <i>(Populations of 500,000 to 999,999 residents)</i> | Medium Cities <i>(Populations of 250,000 to 499,999 residents)</i> | Small Cities <i>(Populations of 100,000 to 249,999 residents)</i> |
|--|--|---|---|
| Chicago, IL Dallas, TX Houston, TX Los Angeles, CA New York, NY Philadelphia, PA Phoenix, AZ San Antonio, CA San Diego, CA San Jose, CA | Baltimore, MD Charlotte, NC Columbus, OH Detroit, MI Indianapolis, IN Jacksonville, FL Las Vegas, NV Louisville, KY Memphis, TN Milwaukee, WI | Atlanta, GA Cincinnati, OH Cleveland, OH Miami, FL New Orleans, LA Orlando, FL Saint Louis, MO Tampa, FL Tulsa, OK Wichita, KS | Baton Rouge, LA Chattanooga, TN Columbia, SC Dayton, OH Huntsville, AL Mobile, AL Richmond, VA San Bernardino, CA Shreveport, LA Winston Salem, NC |

The data included in Parts III and IV is frequently used by LEAs to detect firearms trafficking. Firearm trace data allows ATF to calculate *time-to-crime* (TTC), the length of time between the date of a firearm's last known purchase to the date of its recovery in a crime. A short TTC suggests that traced crime guns were rapidly diverted from lawful firearms commerce into criminal hands. Through ATF's Firearm Resale Program, *described above*, ATF is able to obtain

information that results in shorter TTC rates. Investigating crime guns with short TTC allows LEAs to identify sources of crime guns and disrupt the flow of illegal firearms trafficking.

Firearm trace data also identifies patterns and trends on the age and gender of the firearm purchaser, as well as the license type of the FFL that transferred the crime gun. This information allows ATF and law enforcement partners to focus investigations and compliance efforts on FFL types most at risk to be wittingly or unwittingly involved in criminal diversion. For example, while Type 01, 02, 07, 08, 09, 10, and 11 FFLs are all authorized to engage in transfer of firearms, between 2017 and 2021, nearly all crime guns traced to an FFL with a known purchaser were transferred by 01, 02, or 07 FFLs. (Type 06 FFLs are only authorized to engage in commerce involving the manufacturing of ammunition and Type 03 FFLs are not authorized to engage in the business of manufacturing, importing, or dealing in firearms. Consequently, Type 03 and 06 FFLs are infrequently referenced in this report.)

The NTC manages numerous programs and sections that provide valuable firearms information in support of firearms tracing. As merely one example discussed throughout this Volume, FFLs are required by law to report any firearm lost or stolen from their inventory within 48 hours of discovery to ATF. The NTC receives these reports and is able to develop investigative leads if any of these firearms are subsequently recovered and traced. This information, as shown in Part V (Firearm Thefts), can help identify patterns in characteristics and firearms involved in FFL thefts. Between 2017 and 2021, the most commonly stolen firearms from an FFL were 9mm caliber and the type of firearms most commonly stolen were pistols. Somewhat unsurprisingly, this follows patterns in lawful firearm commerce that was reported in NFCTA Volume I, which showed consumer preferences for pistols in general and 9mm pistols in particular.

Ballistic Data and Information

ATF also develops, analyzes, and distributes intelligence data through NIBIN. Covered in detail in Parts I (National Integrated Ballistic Information Network) and VI (NIBIN & Ballistic Evidence) of this Volume, since 1997, NIBIN has been imaging and storing information on ballistic evidence from shooting scenes and recovered firearms that can aid in solving and preventing firearm-related crime. NIBIN technology identifies and analyzes the unique markings that a firearm imprints on casings when fired. These unique markings allow NIBIN to analyze ballistic evidence to identify potential matches between casings and firearms. These matches, commonly referred to as “NIBIN leads,” enable LEAs to identify, investigate, and arrest shooters and the traffickers who illegally supply them.

In 2018, ATF began development of the NIBIN Enforcement Support System (NESS), an investigative tool that overlays NIBIN data with local law enforcement shooting and gun recovery case information on one web-based platform. As described in Part VI, NESS provides near real-time information on interrelated violent firearm crime to law enforcement. This includes information that allows the identification of the *time-to-first shooting* (TTFS), which is the number of days between a recovered crime gun’s last known retail purchase and its first shooting event. Like a short TTC, a TTFS is an indicator of illegal firearm trafficking as it suggests a crime gun was discharged in the commission of a crime shortly after it was purchased. Together, TTC and TTFS provide a more comprehensive understanding of a firearm’s criminal

use history and can assist LEAs in investigating the underlying crimes and the methods that criminals use to obtain crime guns.

During the more than twenty-year period since ATF last issued comprehensive reports to the general public on crime gun analysis, advances in information processing and NIBIN technology have undergone significant improvement enhancing ATF's capacity to develop actionable intelligence and leads for law enforcement investigations of shootings and firearm trafficking crimes. ATF has combined this increased capacity with other investigative tools through its CGI strategy. CGI layers trace and NIBIN data with all other available information about crime guns to generate more timely and valuable investigative leads for both ATF investigations and those conducted by law enforcement partners, particularly local agencies that are almost always the first responders to shooting incidents. As described in Part VI, by further incorporating investigative information from law enforcement partners with trace and NIBIN information, ATF's NESS program is further enhancing the strategic effectiveness of CGI. Notwithstanding these substantial and promising developments, Part VII (Recommendations and Future Enhancements) of this Volume identifies opportunities for ATF and law enforcement partners to enhance lawful access, collection, and analysis of crime gun information to improve effective gun violence reduction efforts.

Each part of this Volume includes a conclusion which summarizes the underlying data and incorporates context as to the meaning of the data and information. Academic studies, reports and concepts introduced in these sections are based on how the academic contractors and other law enforcement experts associated with this project interpret the data.

ATF Firearms Trace Data Disclaimer

Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any investigative reason, and those reasons are not necessarily reported to the federal government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

Firearms selected for tracing are not chosen for purposes of determining which types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

Data Limitations

The data analyzed in this report represent crime guns and crime gun evidence recovered by LEAs between 2017 and 2021 that were submitted to ATF for tracing (Firearms Tracing System (FTS)) and/or processed for ballistic evidence (NIBIN). Firearm tracing and ballistic imaging policies and practices vary across LEAs. For those jurisdictions with comprehensive firearm tracing and ballistic imaging policies in place, crime gun trace data and ballistic imaging data can be considered representative samples of the population of guns used by offenders in those jurisdictions. As such, the analytic results presented in this report are limited to this sample of recovered crime guns and crime gun evidence and are not necessarily representative of all crime guns used by offenders in the U.S. or in other countries during the study period.

ENDNOTES

¹A “crime gun” is any firearm used in a crime or identified by law enforcement as suspected of having been used in a crime.

DEFENDANT'S EXHIBIT 30

PART III:

Crime Guns Recovered and Traced Within the United States and Its Territories

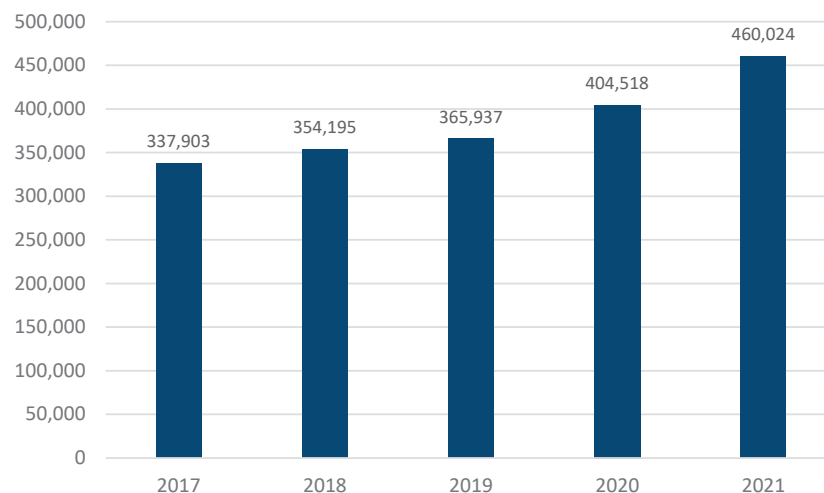
Overview of Crime Gun Tracing

Total Number of Crime Guns Traced

Law enforcement agencies submitted a total of 1,922,577¹ crime guns to ATF for tracing between 2017 and 2021. During this period, most of the trace requests made by LEAs were routine priority submissions (99%; 1,895,421 of 1,922,577), while a very small share of trace requests were urgent priority submissions (1%; 27,156 of 1,922,577). An urgent trace is deemed necessary when the criminal violations are significant, and circumstances warrant or require that the firearm be traced without undue delay. Examples of this include mass shootings, homicides, bank robberies, and other immediate threats to officer and public safety.

The total number of annual crime gun trace requests increased by 36% from 2017 (337,903) to 2021 (404,024) (Figure OFT-01). The largest single year increase occurred when the number of crime gun trace requests rose by 14% from 2020 (404,518) to 2021 (460,024).

Figure OFT-01: Total Number of Crime Gun Trace Requests, 2017 – 2021



As reflected in Table OFT-01a, California LEAs had the highest number of crime gun traces between 2017 and 2021 (12%; 231,784). Other states with the highest numbers of crime gun traces included Texas, Florida, North Carolina, and Illinois. Hawaii LEAs had the lowest number of crime gun traces

between 2017 and 2021 (<1%; 1,194). Other states with the lowest numbers of crime gun traces included Vermont, Wyoming, Rhode Island, and New Hampshire.

Table OFT-01a: Most Frequent and Least Frequent Crime Guns Traces by State, 2017 – 2021

| Most Frequent States | | | Least Frequent States | | |
|----------------------|---------|---------|-----------------------|--------|---------|
| State | Number | Percent | State | Number | Percent |
| California | 231,784 | 12.1% | Hawaii | 1,194 | 0.1% |
| Texas | 177,786 | 9.3% | Vermont | 1,256 | 0.1% |
| Florida | 134,601 | 7.0% | Wyoming | 1,665 | 0.1% |
| North Carolina | 90,225 | 4.7% | Rhode Island | 2,570 | 0.1% |
| Illinois | 90,014 | 4.7% | New Hampshire | 2,629 | 0.1% |

See Table OFT-01 in Appendix OFT – Overview of Firearm Tracing for a full ranking of U.S. states and territories by traced crime guns between 2017 and 2021.

Between 2017 and 2021, among cities with populations of 1,000,000 residents or greater (“mega cities”), Chicago had the largest number of crime gun traces (50,312) followed by Houston, Los Angeles, Philadelphia, and Dallas (Table OFT-02a). Detroit submitted the largest number of crime gun traces (26,065) among cities with populations of 500,000 to 999,999 residents (“large cities”). Atlanta had the largest number of crime gun traces (15,333) among cities with populations of 250,000 to 499,999 residents (“medium cities”). Baton Rouge had the largest number of crime gun traces (8,544) among cities with populations of 100,000 to 249,999 residents (“small cities”).

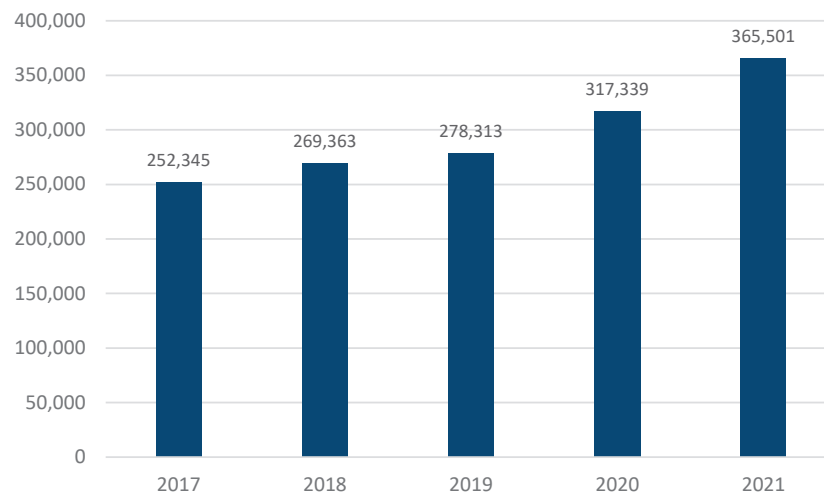
Table OFT-02a: Most Crime Gun Traces by City Population Groups, 2017 - 2021

| Mega Cities | | Large Cities | | Medium Cities | | Small Cities | |
|------------------|--------|------------------|--------|-----------------|--------|-----------------|--------|
| City | Number | City | Number | City | Number | City | Number |
| Chicago, IL | 50,312 | Detroit, MI | 26,065 | Atlanta, GA | 15,333 | Baton Rouge, LA | 8,544 |
| Houston, TX | 45,812 | Memphis, TN | 24,796 | Saint Louis, MO | 14,672 | Richmond, VA | 7,056 |
| Los Angeles, CA | 30,798 | Las Vegas, NV | 23,389 | Orlando, FL | 11,177 | Columbia, SC | 6,279 |
| Philadelphia, PA | 23,460 | Indianapolis, IN | 20,242 | Tampa, FL | 10,376 | Chattanooga, TN | 5,775 |
| Dallas, TX | 19,756 | Louisville, KY | 15,331 | Cincinnati, OH | 9,982 | Huntsville, AL | 5,773 |

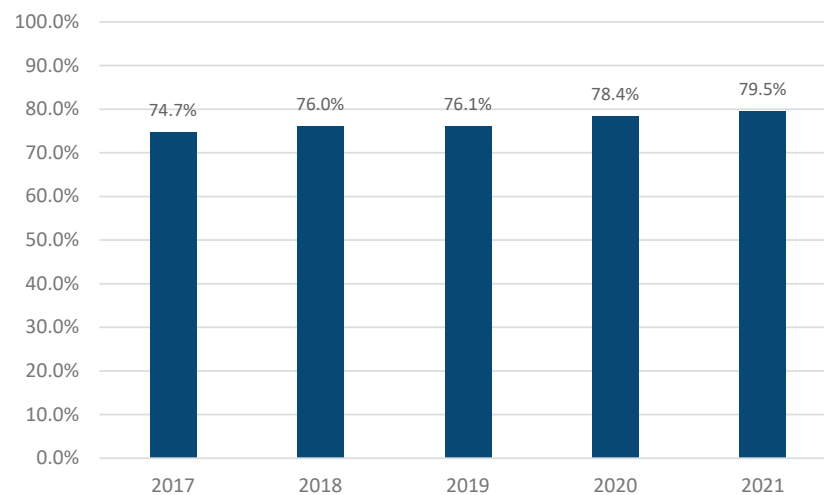
See Table OFT-02 in Appendix OFT – Overview of Firearm Tracing for selected U.S. cities by population grouping ranked by the frequency of crime guns traces between 2017 and 2021.

Traced to Purchaser

Between 2017 and 2021 there were 1,922,577 requested crime gun traces, of which ATF was able to determine the purchaser in 77% (1,482,861). Similar to the increase in the total number of crime guns submitted for tracing by LEAs, the number of crime guns traced to a purchaser increased by 45% from 2017 (252,345) to 2021 (365,501) (Figure OFT-02).

Figure OFT-02: Total Number of Crime Guns Traced to Purchaser, 2017 – 2021

The percentage of crime gun traces in which a purchaser was identified increased by five percentage points over the course of the study period from 75% (252,345 of 337,903) in 2017 to 80% in 2021 (365,501 of 460,024) (Figure OFT-03).

Figure OFT-03: Percentage of Crime Guns Traced to Purchaser, 2017 – 2021

From 2017 to 2021, the percentage of crime guns traced to a purchaser varied across U.S. states (Table OFT-03a). Wisconsin had the highest percentage of crime guns traced to a purchaser (85%) followed by South Carolina, Georgia, Ohio, and Alabama. Hawaii had the lowest percentage of crime guns traced to a purchaser (60%) followed by California, New Jersey, New York, and Connecticut.

Table OFT-03a: Highest and Lowest Percentage of Crime Guns Traced to Purchaser by State, 2017 – 2021

| Highest Percentages Traced to Purchaser | | Lowest Percentages Traced to Purchaser | |
|---|---------|--|---------|
| State | Percent | State | Percent |
| Wisconsin | 84.8% | Hawaii | 60.1% |
| South Carolina | 84.3% | California | 61.9% |
| Georgia | 84.1% | New Jersey | 65.6% |
| Ohio | 83.5% | New York | 66.2% |
| Alabama | 83.1% | Connecticut | 66.5% |

See Table OFT-03 in Appendix OFT – Overview of Firearm Tracing for a full ranking of U.S. states and territories by the percentage of crime guns traced to a purchaser between 2017 and 2021.

From 2017 to 2021, the percentage of crime guns traced to a purchaser also varied across selected U.S. cities (Table OFT-04a). Milwaukee had the highest percentage of crime guns traced to a purchaser (88%) followed by Orlando, Columbia, Mobile, and Jacksonville. San Diego had the lowest percentage of crime guns traced to a purchaser (58%) followed by Baltimore, Los Angeles, San Jose, and New York.

Table OFT-04a: Highest and Lowest Percentage of Crime Guns Traced to Purchaser by City, 2017 – 2021

| Highest Percentages Traced to Purchaser | | Lowest Percentages Traced to Purchaser | |
|---|---------|--|---------|
| City | Percent | City | Percent |
| Milwaukee, WI | 88.3% | San Diego, CA | 57.9% |
| Orlando, FL | 87.6% | Baltimore, MD | 60.4% |
| Columbia, SC | 87.4% | Los Angeles, CA | 63.8% |
| Mobile, AL | 87.0% | San Jose, CA | 67.1% |
| Jacksonville, FL | 86.2% | New York, NY | 67.9% |

See Table OFT-04 in Appendix OFT – Overview of Firearm Tracing for a full ranking of selected U.S. cities by population grouping by the percentage of crime guns traced to a purchaser between 2017 and 2021.

Crime Guns Not Traced to a Purchaser

Table OFT-05 reflects the results of ATF attempts to trace crime guns to a purchaser.² The most frequent reasons for a trace not identifying a purchaser included: incomplete or invalid firearm information provided by the law enforcement agency submitting the request (7%; 137,765); the FFL did not have acquisition and disposition (A&D) records (5%; 95,395); the firearm was too old to trace and/or manufactured before the 1968 Gun Control Act required manufacturers to mark firearms with serial numbers (3%; 65,945); the serial numbers on the firearms had been obliterated (3%; 48,601); and the firearm was traced to a government agency, law enforcement agency, or the US Military (1%; 25,904).

Table OFT-05: Reasons Crime Guns are Not Traced to a Purchaser, 2017 – 2021

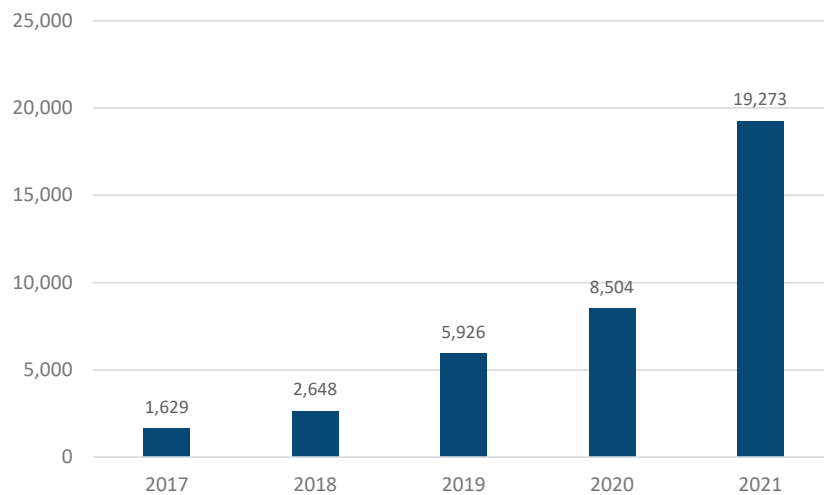
| Trace Completion Status | Number | Percent |
|--|----------------|----------------|
| Incomplete / Invalid Firearm Information Provided | 137,765 | 7.2% |
| FFL Acquisition and Disposition Record Missing | 95,395 | 5.0% |
| Pre-1968 Firearm Manufacture / Too Old to Trace | 65,945 | 3.4% |
| Obliterated Serial Number | 48,601 | 2.5% |
| Traced to Government Entity, Law Enforcement Agency, or Military | 25,904 | 1.3% |
| Other | 66,106 | 3.4% |
| Total | 439,716 | |

Privately Made Firearms

Law enforcement agencies recovered and submitted 37,980 suspected privately made firearms³ (PMFs) to ATF for tracing between 2017 and 2021. It is probable that current trace data significantly underrepresents the number of PMFs recovered in crimes by LEAs due to a variety of challenges presented by PMFs, to include:

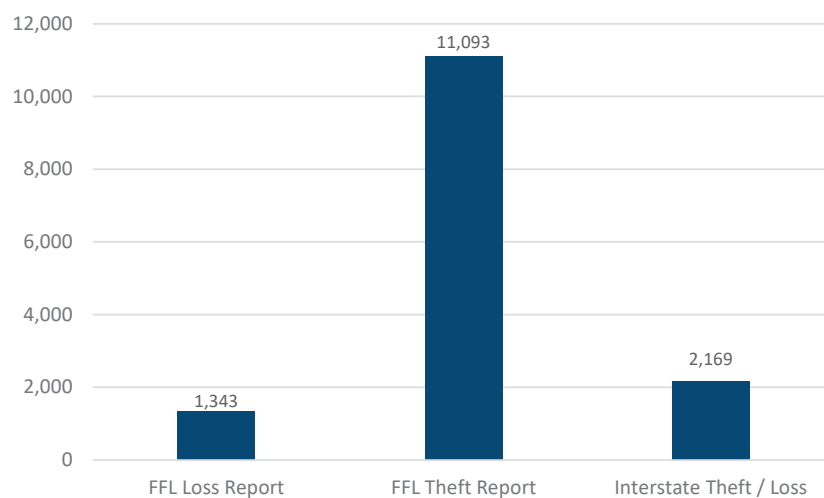
- PMFs involvement in crime is an emerging issue and LEAs are just beginning to institute uniform training on the recognition, identification, and reporting of PMFs that can lead to more accurate PMF data being collected.
- PMFs by their nature may have no markings at all, duplicative markings, counterfeit markings, or markings that appear to be serial numbers on parts of the firearm other than the frame or receiver. These duplicative, counterfeit, or erroneous markings can be mistaken for authentic serial numbers and markings causing law enforcement to not recognize the firearm as a PMF and/or potentially follow false leads based on these markings.

As Figure OFT-04 reflects, the number of suspected PMFs recovered by law enforcement agencies and submitted to ATF for tracing increased by 1,083% from 2017 (1,629) to 2021 (19,273). The dramatic rise in trace submissions involving PMF's reflects both increased criminal use of these firearms and enhanced awareness among law enforcement that ATF will process trace requests for PMFs. In particular, the substantial increase in PMF trace submissions since 2020 is in part attributable to education, outreach, and training that ATF has provided to LEAs on how to identify PMFs and the importance of submitting them for tracing. In September 2020, ATF issued guidance to all eTrace users explaining how to identify and trace PMFs. This guidance was formalized in the updated ATF Publication 3312.12 – Police Officer's Guide to Recovered Firearms. In 2021, ATF trained more than 1,700 law enforcement personnel in approximately 14 PMF presentations across the country.

Figure OFT-04: Suspected PMFs Recovered and Traced, 2017 – 2021

Firearms Recovered and Traced Associated with Reported FFL Theft, FFL Loss, and Interstate Shipment Theft / Loss

Between 2017 and 2021, 14,605 crime guns were recovered and traced by LEAs and determined by ATF to be associated with FFL theft, FFL loss, and interstate shipment theft / loss reports. Some 11,093 crime guns were associated with FFL theft reports⁴, 1,343 were associated with FFL loss reports, and 2,169 were associated with Interstate shipment theft / loss reports⁵ (Figure OFT-05). As described in Part V of this report, FFL theft, FFL loss, and Interstate shipment theft / loss reports represent a small fraction of total firearm theft in the U.S.

Figure OFT-05: Recovered and Traced Crime Guns associated with Reported FFL Theft, FFL Loss, and Interstate Shipment Theft/ Loss, 2017 – 2021

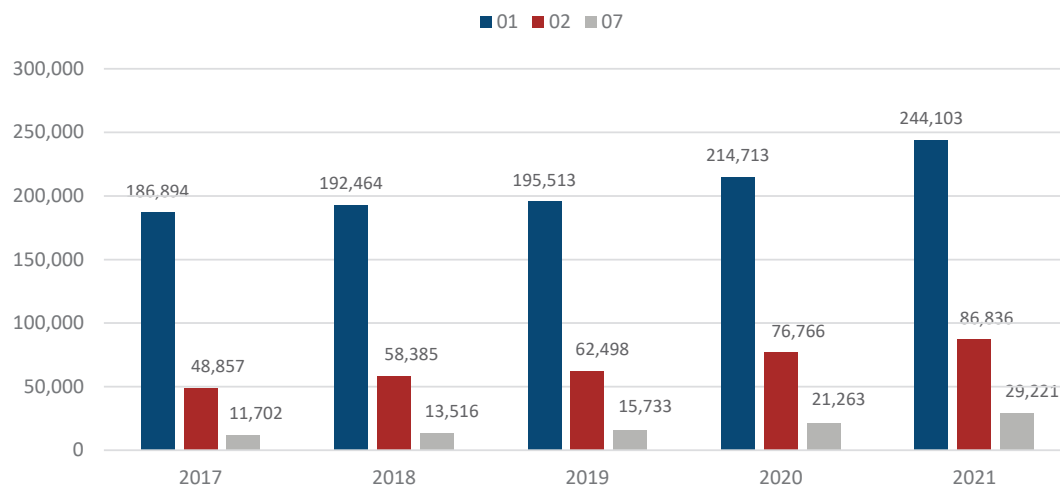
Crime Gun Traces by FFL Type

Between 2017 and 2021, 1,473,105 crime guns were traced to a known purchaser and an FFL type was also recorded. About 99% of these firearms were acquired from Type 01 (dealer), Type 02 (pawnbroker), or Type 07 (manufacturer) FFLs (1,458,464 of 1,473,105). As reflected by Table OFT-06, from 2017 to 2021, the majority of crime guns traced to a purchaser were acquired from a Type 01 FFL. Type 01 FFLs transferred 70% (1,033,687) of the crime guns during the study period. Type 02 FFLs transferred 23% (333,342) and Type 07 FFLs transferred 6% (91,435) of the crime guns traced to a purchaser during the study period. Type 08, 10, 11, 09, and 03 FFLs transferred less than 1% (4,421) of crime guns traced to a purchaser between 2017 and 2021.

Table OFT-06: Number of Crime Gun Traces to Purchaser by FFL Type, 2017 - 2021

| FFL Type | Number of Traces | Percent |
|-----------------|-------------------------|----------------|
| 01 | 1,033,687 | 70.2% |
| 02 | 333,342 | 22.6% |
| 07 | 91,435 | 6.2% |
| 08 | 10,220 | 0.7% |
| 10 | 2,088 | 0.1% |
| 11 | 1,222 | 0.1% |
| 09 | 632 | 0.0% |
| 03 | 479 | 0.0% |
| Total | 1,473,105 | 100% |

Figure OFT-06 reflects the annual number of crime guns acquired from Type 01, 02, and 07 FFLs and traced to a purchaser between 2017 and 2021. The number of crime guns traced to a purchaser acquired from a Type 01 FFL increased by 31% from 2017 (186,894) to 2021 (244,103). The number of crime guns traced to a purchaser acquired from a Type 02 FFL increased by 78% from 2017 (48,857) to 2021 (86,836). The number of crime guns traced to a purchaser acquired from a Type 07 FFL increased by 150% from 2017 (11,702) to 2021 (29,221).

Figure OFT-06: Traced Crime Guns Acquired from Type 01, 02, and 07 FFLs, 2017 – 2021

During the study period, nearly all crime gun traces, in which a purchaser was identified, were acquired from Type 01, 02, and 07 FFLs (Figure OFT-07). As shown in Figure OFT-08, the annual percentage of traced crime guns acquired from Type 01 FFLs declined by eight percentage points from 75% in 2017 to 67% in 2021 (reflecting a 10% decrease in share of traced crime guns). The yearly percentage of traced crime guns sold by Type 02 FFLs increased by four percentage points from almost 20% in 2017 to 24% in 2021 (reflecting a 22% increase in share of traced crime guns). The yearly percentage of traced crime guns sold by Type 07 FFLs increased by three percentage points from about 5% in 2017 to 8% in 2021 (reflecting a 70% increase in share of traced crime guns).

Figure OFT-07: Percentage of Traced Crime Guns Acquired from Type 01, 02, and 07 FFLs, 2017 – 2021

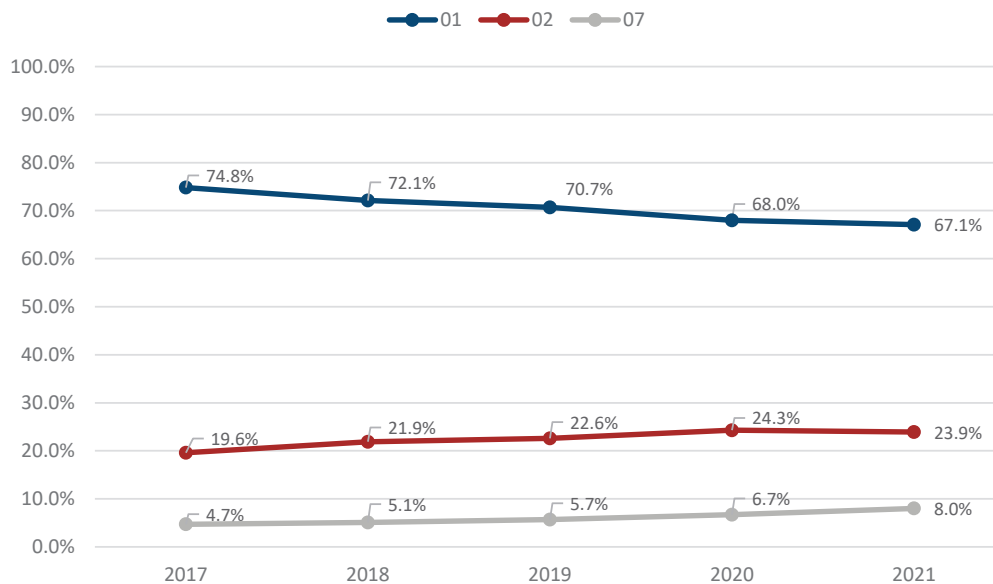
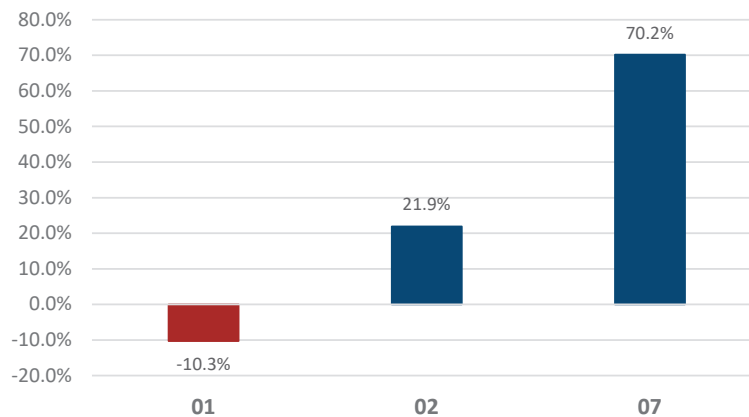
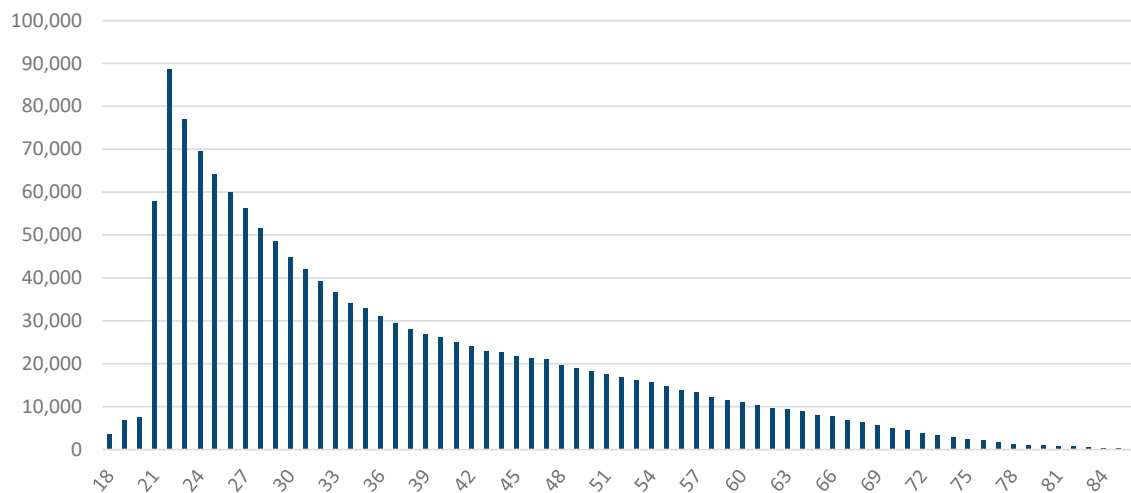


Figure OFT-08: Total Percent Change in Traced Crime Guns Acquired from Type 01, 02, and 07 FFLs, 2017-2021

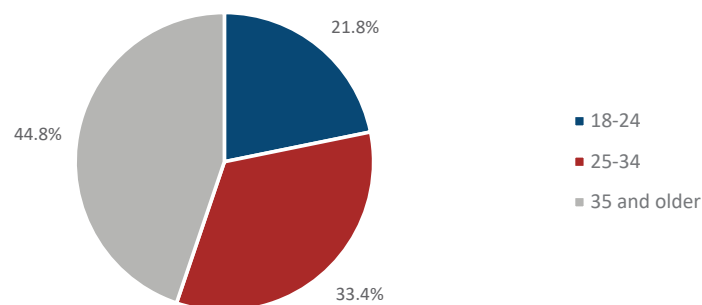


Purchaser Age and Gender

The Gun Control Act, [Title 18 U.S.C. §922\(b\)\(1\)](#) provides that FFLs may only transfer shotguns and rifles to persons over the age of 18 and handguns to persons over the age of 21. The age of the purchaser was determined in almost 97% (1,430,479) of the 1,482,861 recovered crime guns traced to a purchaser. Purchaser ages ranged from 18 through more than 86 years old with individuals in their twenties and early thirties representing the most frequent purchasers of traced crime guns (Figure OFT-09). The most frequent age of a purchaser of a crime gun was 22 years old (88,718) with purchasers between 21 and 25 years-old accounting for almost as many traced crime guns (357,489) as all purchasers ages 45 and older (371,469).

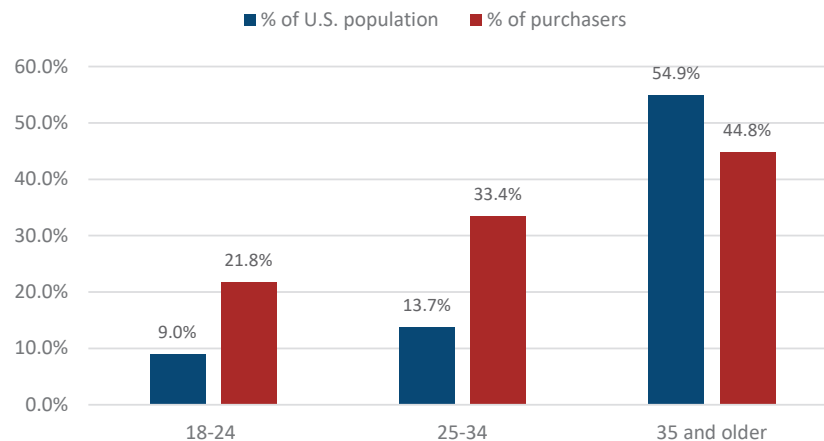
Figure OFT-09: Purchaser Age for Traced Crime Guns, 2017 – 2021

Aggregating this data into three age groupings, youths ages 18 to 24 represented 22% (311,536) of the identified crime gun purchasers, young adults ages 25-34 represented 33% (477,966) of the identified crime gun purchasers, and adults ages 35 and older accounted for the remaining 45% (640,977) of the identified purchasers (Figure OFT-10).

Figure OFT-10: Purchaser Age Groupings for Traced Crime Guns, 2017 – 2021

According to the 2020 U.S. Census,⁶ residents ages 18 to 24 represented 9%, residents ages 25 to 34 represented 14%, and residents ages 35 and older represented 55% of the U.S. population, respectively. As reflected in Figure OFT-11, the youth and young adult age groupings are over-represented among purchasers of traced crime guns.

Figure OFT-11: U.S. Population and Purchaser Percentages by Age Groupings, 2017 - 2021



The percentages of traced crime guns purchased by individuals in these three age groupings were generally stable through 2019 (Figure OFT-12). Over the next three years, the percentage of traced crime guns purchased by youths ages 18 to 24 increased by three percentage points from 2019 (21%) to 2021 (24%), reflecting a 17% increase in the share of crime guns purchased by this age group. The percentage of traced crime guns purchased by young adults ages 25 to 34 increased by two percentage points from 2019 (33%) to 2021 (35%), reflecting a 6% increase in the share of guns purchased by this age group, and the percentage of trace guns purchased by older adults ages 35 and older decreased by five percentage points from 2019 (47%) to 2021 (42%), reflecting an 11% decrease in the share of crime guns purchased by this age group (see Figure OFT-13).

Figure OFT-12: Percentage of Traced Crime Guns by Purchaser Age Group, 2017 – 2021

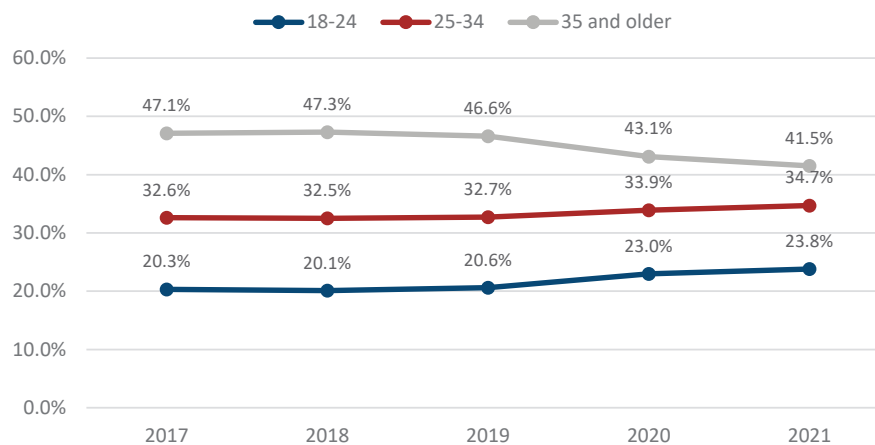
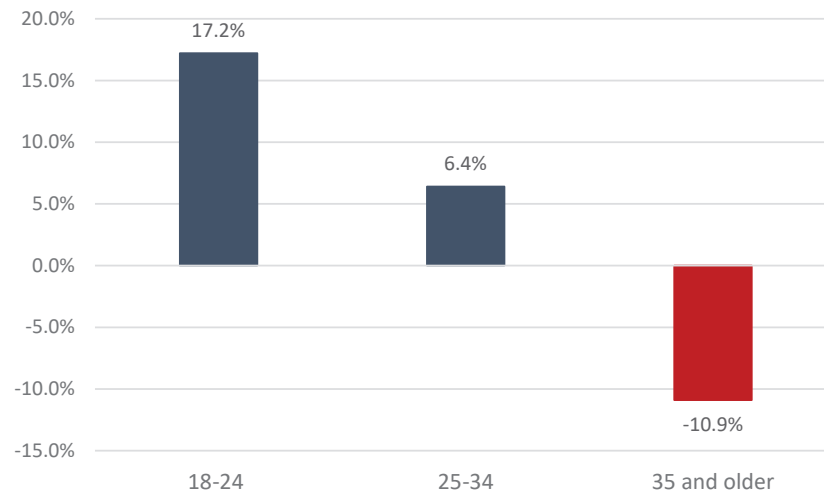
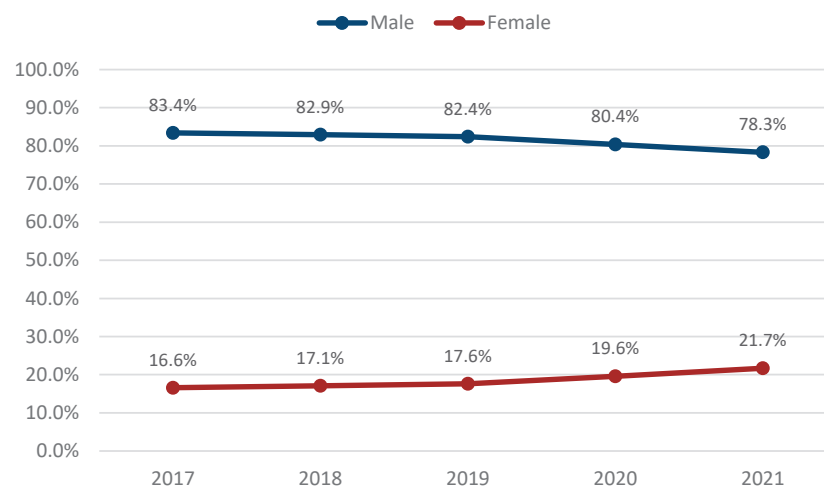


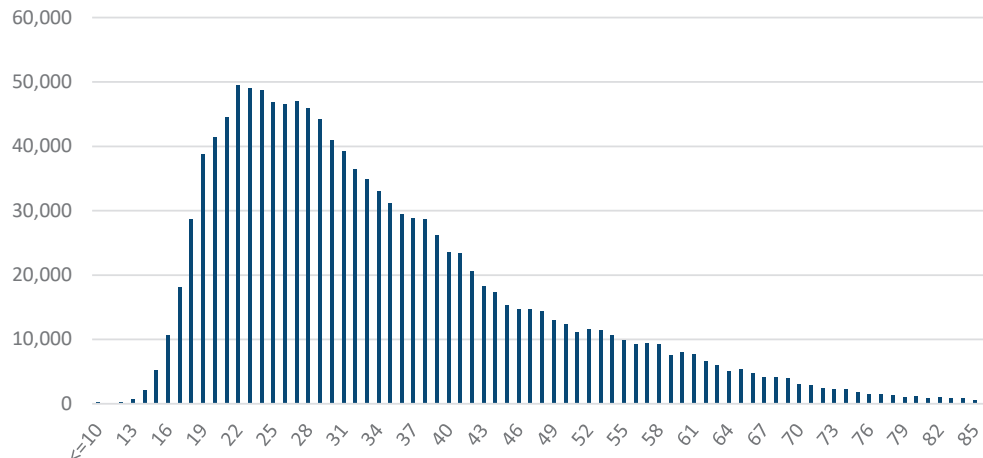
Figure OFT-13: Total Percent Change in Traced Crime Guns by Purchaser Age Group, 2019 - 2021

The gender of the purchaser was determined in nearly all (94%; 1,397,812) of the 1,482,861 recovered crime guns traced to a purchaser between 2017 and 2021. Males purchased a larger share of traced crime guns (81%; 1,134,736) while females purchased a smaller share of traced crime guns (19%; 263,060) during the study period⁷. However, as reflected in Figure OFT-14, the percentage of traced crime guns purchased by females increased by five percentage points from 2017 (17%) to 2021 (22%), representing a 31% increase in the share of traced crime guns purchased by females. The percentage of traced crime guns purchased by males decreased by a corresponding five percentage points from 2017 (83%) to 2021 (78%), representing a 6% decrease in the share of traced crime guns purchased by males.

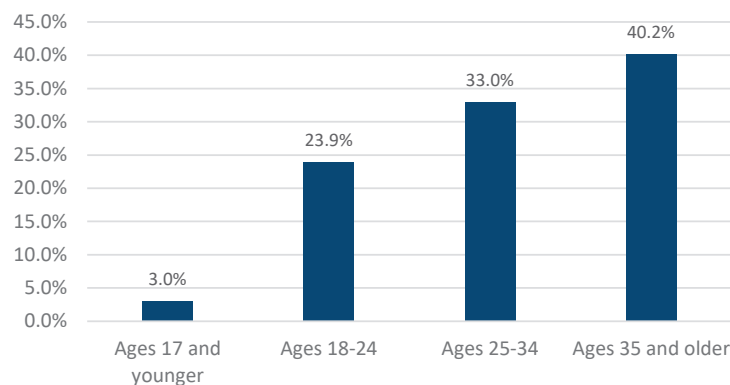
Figure OFT-14: Percentage of Traced Crime Guns by Purchaser Gender, 2017 - 2021

Possessor Age and Gender

The age of the possessor was determined in 65% (1,258,340) of the 1,922,577 crime guns recovered by law enforcement agencies and submitted for tracing between 2017 and 2021. Possessor ages ranged from 10 and younger through more than 86 years old with the individuals in their late teens, twenties, and early thirties representing the most frequent possessors of traced crime guns (Figure OFT-15).

Figure OFT-15: Possessor Age for Traced Crime Guns, 2017 - 2021

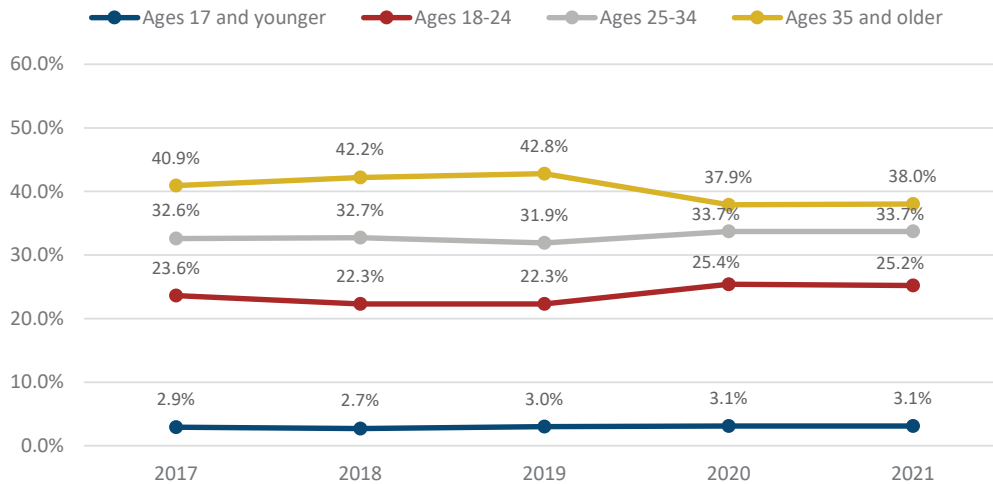
As shown in Figure OFT-16, 60% (752,903) of the traced crime gun possessors were 34 years old or younger: 33% (414,996) were ages 25 to 34, 24% (300,501) were ages 18 to 24, and only 3% (37,406) were ages 17 and younger. According to data from the 2020 U.S. Census,⁸ residents ages 17 and younger represented 22%, residents ages 18 to 24 represented 9%, residents ages 25 to 34 represented 14%, and residents ages 35 and older represented 55% of the U.S. population.

Figure OFT-16: Possessor Age Categories for Traced Crime Guns, 2017 - 2021

The percentages of traced crime guns possessed by individuals in these four age groupings were generally stable through 2019 (Figure OFT-17). Over the next three years, the percentage of traced crime guns possessed by juveniles ages 17 and younger and by adults ages 25 to 34 remained relatively flat.

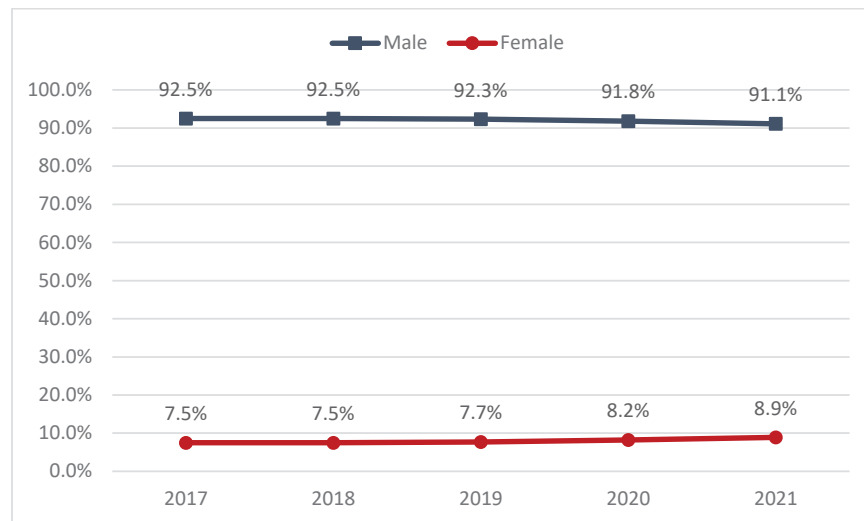
However, the percentage possessed by youths ages 18 to 24 increased by three percentage points from 2019 (22%) to 2021 (25%), reflecting a 14% increase in the share of crime guns possessed in this age group. The percentage possessed by adults ages 35 and older declined by five percentage points from 2019 (43%) to 2021 (38%), reflecting a 11% decrease in the share of crime guns possessed in this age group.

Figure OFT-17: Percentage of Traced Crime Guns by Possessor Age Group, 2017 – 2021



The gender of the possessor was recorded in 58% (1,124,275) of the 1,922,577 crime guns recovered by LEAs and submitted for tracing between 2017 and 2021. Males possessed most of the traced crime guns (91%; 1,034,303) while females possessed a very small share of traced crime guns (9%; 89,972) during the study period. As reflected in Figure OFT-18, the overwhelmingly large percentage of traced crime guns possessed by males remained stable between 2017 and 2021.

Figure OFT-18: Percentage of Traced Crime Guns by Possessor Gender, 2017 – 2021

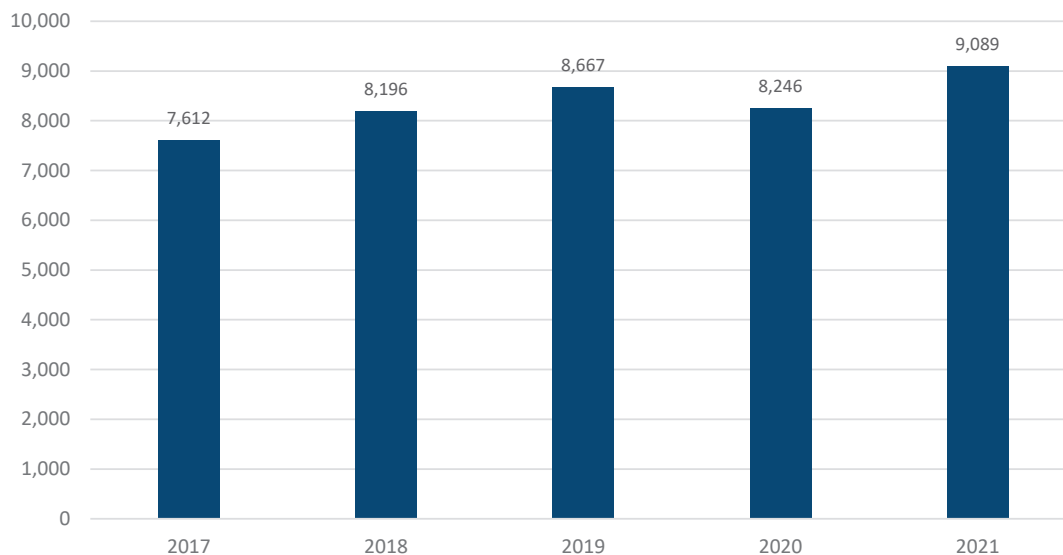


Crime Guns Acquired from an FFL at a Gun Show

As defined in [27 C.F.R. §478.100\(b\)](#), a gun show or an event is a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community. Only FFLs licensed in the state of the gun show are authorized to transfer firearms. Any firearm transfers made by these FFLs at gun shows are documented on the ATF Form 4473. All other FFLs may only display firearms and take orders. All out-of-state FFLs must return to their licensed business premises prior to transferring any firearms. Unless prohibited by state law, unlicensed individuals are allowed to sell firearms at gun shows, provided they are not engaged in the business of selling firearms with the principal objective of livelihood and profit as defined in [27 C.F.R §478.11](#).⁹ Federal law does not require unlicensed persons who are not engaged in the business of dealing firearms to maintain records of firearms sold at gun shows, nor are such unlicensed persons required to complete background checks on a purchaser.

Between 2017 and 2021, only 3% (41,810) of the 1,482,861 crime guns traced to a purchaser were acquired from FFLs at a gun show. It is important to recognize that this figure does not represent the total percentage of recovered crime guns that were sold at a gun show during the study period as private citizens and unlicensed dealers sell firearms at gun show venues. National data, however, are not available on unregulated firearm transfers at gun shows. Figure OFT-19 presents the yearly counts of crime guns traced to a purchaser that were known to be acquired from FFLs at gun shows. The number of traced crime guns acquired from FFLs at gun shows increased by 14% from 2017 (7,612) to 2019 (8,667). The number of traced crime guns acquired from FFLs at gun shows then decreased by 5% in 2020 (8,246), most likely due to local restrictions on gun shows associated with the COVID-19 pandemic. Overall, the number of traced crime guns acquired from FFLs at gun shows increased by 19% from 2017 (7,612) to 2021 (9,089).

Figure OFT-19: Traced Crime Guns Acquired from FFLs at Gun Shows, 2017 – 2021

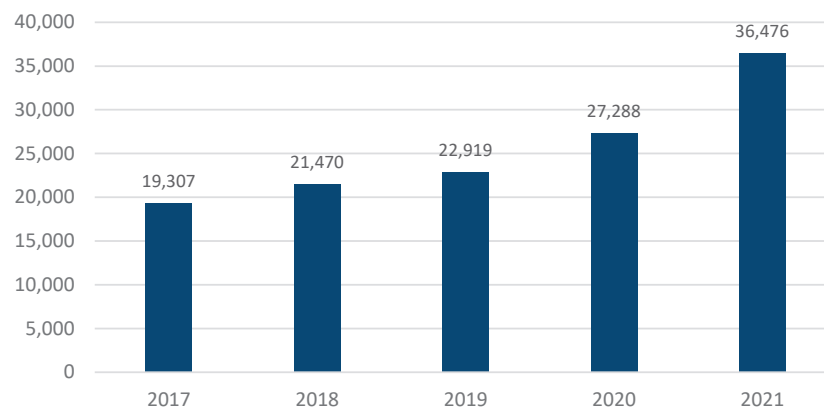


Traces Associated with Multiple Sales Transactions

FFLs are required to complete and submit a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totaling two or more, to an unlicensed person. Additionally, Type 01 and 02 FFLs located in Arizona, California, New Mexico, and Texas are required to complete and submit a multiple sales report when an unlicensed person acquires, at one time or during five consecutive business days, two or more semi-automatic rifles larger than .22 caliber (including .223/5.56 caliber) with the ability to accept a detachable magazine.

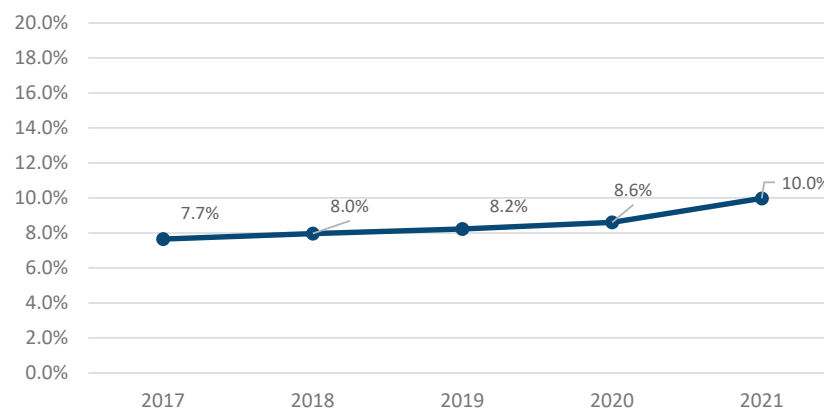
Slightly less than 9% (127,460) of the 1,482,861 crime guns traced to a purchaser were part of a multiple sale transaction. The yearly number of crime guns traced to a purchaser that were part of a multiple sale transaction increased by almost 89% from 2017 (19,307) to 2021 (36,476) (Figure OFT-20).

Figure OFT-20: Traced Crime Guns Associated with a Multiple Sale, 2017 – 2021



The yearly share of traced crime guns associated with a multiple sale increased more modestly from almost 8% in 2017 (19,307) to 10.0% (36,476) in 2021, reflecting a 25% increase in the annual percentage (Figure OFT-21).

Figure OFT-21: Percentage of Traced Crime Guns Associated with a Multiple Sale, 2017 – 2021



Summary of Crime Gun Tracing

The annual number of crime gun trace requests made by LEAs increased by more than a third from nearly 340,000 in 2017 to more than 460,000 in 2021. This trend generally follows increases in the numbers of GCA firearms domestically manufactured and imported into the U.S. over the past decade.¹⁰ ATF was able to trace more than three-fourths of recovered crimes to a purchaser during the study period.

Importantly, the percentage of submitted crime guns traced to a purchaser increased from 75% in 2017 to 80% in 2021. The annual number of suspected PMFs recovered by LEAs and submitted for tracing grew very rapidly from about 1,600 in 2017 to more than 19,000 in 2021. ATF also determined that more than 14,600 recovered and traced crime guns were associated with reported FFL theft, FFL loss, and interstate shipment theft or loss reports.

Nearly all crime guns traced to an FFL with a known purchaser were acquired from Type 01, 02, or 07 FFLs with 70% acquired from Type 01 FFLs. FBI National Instant Check System data analyses shows that Type 01, 02, and 07 FFLs account for nearly all firearm transfers with 01 FFLs generating 75% of firearm transfers.¹¹ Very small proportions of recovered and traced crime guns were acquired from an FFL at a gun show or sold to a purchaser as part of a multiple sale transaction. Males purchased and possessed very large percentages of crime guns. Relative to the share of the U.S. population in the 18 to 24 and 25 to 34 age groups, traced crime guns were disproportionately purchased and possessed by people in these younger age categories.

Characteristics of Traced Crime Guns

Types of Traced Crime Guns

Between 2017 and 2021, pistols were the most frequently traced crime gun (Table CCG-01). Of the 1,922,577 traced crime guns, pistols accounted for 68% (1,306,804), rifles accounted for 12% (237,532), revolvers accounted for 11% (211,590), and shotguns accounted for 7% (133,024).

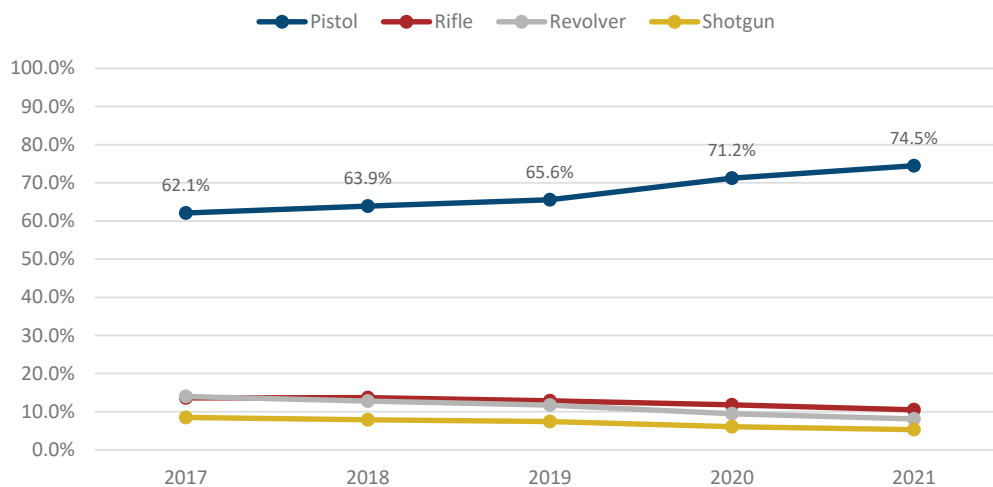
Table CCG-01: Types of Traced Crime Guns, 2017 – 2021

| Firearm Type | Number | Percent |
|---------------------|------------------|----------------|
| Pistol | 1,306,804 | 68.0% |
| Rifle | 237,532 | 12.4% |
| Revolver | 211,590 | 11.0% |
| Shotgun | 133,024 | 6.9% |
| Other / Unknown | 33,627 | 1.7% |
| Total | 1,922,577 | 100.0% |

The percentage of traced pistols increased by 12 percentage points from 2017 (62%) to 2021 (75%), representing a 20% increase in market share for pistols. The percentage of revolvers, rifles, and shotguns among traced crime guns all declined over the study period (Table CCG-02 and Figure CCG-01).

Table CCG-02: Percentage of Traced Crime Guns by Type, 2017 – 2021

| Firearm Type | 2017 | 2018 | 2019 | 2020 | 2021 |
|--------------|-------|-------|-------|-------|-------|
| Pistol | 62.1% | 63.9% | 65.6% | 71.2% | 74.5% |
| Rifle | 13.6% | 13.7% | 12.9% | 11.8% | 10.5% |
| Revolver | 14.0% | 12.8% | 11.7% | 9.5% | 8.1% |
| Shotgun | 8.5% | 7.9% | 7.4% | 6.1% | 5.3% |

Figure CCG-01: Percentage of Traced Crime Guns by Type, 2017 – 2021

Between 2017 and 2021, the percentage of crime gun traces, by major firearm type, varied across the 50 U.S. states and territories. As reflected in Table CCG-03a, Ohio had the highest percentage of pistols (76%) among crime gun traces during the study period among the 50 U.S. states. Moreover, New Jersey had the largest percentage of revolver type crime guns traced (18%) while Montana had the highest percentages of rifle type crime guns traced (33%), and Vermont had the highest percentage of shotgun type crime guns traced among the 50 U.S. states (14%).

Table CCG-03a: Most Frequent Percentages by Type of Traced Crime Guns by State, 2017 - 2021

| State | % Pistols | State | % Revolvers | State | % Rifles | State | % Shotguns |
|-----------|-----------|--------------|-------------|--------------|----------|--------------|------------|
| Ohio | 76.3% | New Jersey | 17.6% | Montana | 32.7% | Vermont | 14.4% |
| Missouri | 75.9% | New York | 17.2% | Hawaii | 31.7% | Maryland | 14.1% |
| Georgia | 75.1% | Connecticut | 15.0% | Vermont | 27.5% | Maine | 12.7% |
| Wisconsin | 75.0% | Rhode Island | 13.3% | South Dakota | 25.7% | North Dakota | 12.7% |
| Illinois | 74.9% | California | 13.3% | Wyoming | 25.6% | Nebraska | 12.4% |

See Table CCG-03 in Appendix CCG - Characteristics of Crime Guns for the percentage of traced crime guns by firearm type in all U.S. states and territories during the study period.

The percentage of traced crime guns by type of firearm also varied across selected U.S. cities between 2017 and 2021. As reflected in Table CCG-04a, Atlanta had the highest percentage of pistols (85%), New York had the largest percentage of revolvers (19%), San Diego had the highest percentages of rifles (15%), and Baltimore had the highest percentage of shotguns (10%).

Table CCG-04a: Most Frequent Percentages by Type of Traced Crime Guns by City, 2017 – 2021

| City | % Pistols | City | % Revolvers | City | % Rifles | City | % Shotguns |
|-----------------|--------------|-------------------|----------------|--------------------|-------------|--------------------|---------------|
| Atlanta, GA | 85.4% | New York, NY | 18.7% | San Diego, CA | 15.3% | Baltimore, MD | 9.8% |
| Cleveland, OH | 84.0% | Baltimore, MD | 17.6% | San Bernardino, CA | 14.5% | San Bernardino, CA | 8.5% |
| New Orleans, LA | 83.0% | Los Angeles, CA | 15.2% | Shreveport, LA | 12.4% | San Diego, CA | 7.8% |
| Milwaukee, WI | 82.1% | San Diego, CA | 14.3% | San Jose, CA | 11.7% | Winston-Salem, NC | 7.6% |
| Saint Louis, MO | 81.7% | Winston-Salem, NC | 13.0% | Baltimore, MD | 11.5% | San Jose, CA | 7.2% |

See Table CCG-04, in Appendix CCG – Characteristics of Crime Guns, for a complete list of percentage and count of traced crime guns recovered by firearm type in selected U.S. cities from 2017 through 2021.

Calibers of Traced Crime Guns

There were 1,306,804 pistol type crime guns traced between 2017 and 2021. As indicated by Table CCG-05, the top 10 calibers of traced pistols accounted for almost 98% (1,276,004) of all traced pistols. Nearly 50% (647,014) of the traced pistols were 9mm, while .40 caliber accounted for 17% (219,112), .380 accounted for 12% (151,105), and .45 caliber accounted for 10% (128,049).

Table CCG-05: Top 10 Calibers of Traced Pistols, 2017 – 2021

| Caliber | Number | Percent |
|---------|---------|---------|
| 9mm | 647,014 | 49.5% |
| .40 | 219,112 | 16.8% |
| .380 | 151,105 | 11.6% |
| .45 | 128,049 | 9.8% |
| .22 | 62,744 | 4.8% |
| .25 | 31,591 | 2.4% |
| .32 | 11,747 | 0.9% |
| 7.62mm | 10,713 | 0.8% |
| 10mm | 6,989 | 0.5% |
| 5.56mm | 6,940 | 0.5% |

There were 237,532 rifle type crime guns traced between 2017 and 2021. As reflected in Table CCG-06, the top 10 calibers of traced rifles accounted for slightly more than 82% (196,033) of all traced rifles. Specifically, .22 caliber accounted for 30% (70,872), 5.56mm accounted for 13% (31,406), and 7.62mm accounted for 9% (27,930).

Table CCG-06: Top 10 Calibers of Traced Rifles, 2017 – 2021

| Caliber | Number | Percent |
|----------|--------|---------|
| .22 | 70,872 | 29.8% |
| 5.56mm | 31,406 | 13.2% |
| 7.62mm | 27,930 | 11.8% |
| .223 | 21,180 | 8.9% |
| Multiple | 10,397 | 4.4% |
| .30-06 | 8,587 | 3.6% |
| .308 | 7,766 | 3.3% |
| .30-30 | 7,243 | 3.0% |
| 9mm | 6,530 | 2.7% |
| .270 | 4,122 | 1.7% |

There were 211,590 revolver type crime guns traced between 2017 and 2021. The top 10 calibers of traced revolvers accounted for almost 98% (206,803) of all traced revolvers. The .38 caliber (41%), .22 caliber (23%), and the .357 (19%) accounted for 83% (173,760) of all revolver type crime guns. Table CCG-07 provides the top 10 revolver calibers of traced crime guns.

Table CCG-07: Top 10 Calibers of Traced Revolvers, 2017 – 2021

| <u>Caliber</u> | <u>Number</u> | <u>Percent</u> |
|----------------|---------------|----------------|
| .38 | 86,793 | 41.0% |
| .22 | 47,779 | 22.6% |
| .357 | 39,188 | 18.5% |
| .32 | 13,806 | 6.5% |
| .44 | 9,150 | 4.3% |
| .45/410 GA | 5,203 | 2.5% |
| .45 | 3,209 | 1.5% |
| 9mm | 721 | 0.3% |
| .41 | 620 | 0.3% |
| .500 | 334 | 0.2% |

There were 133,024 shotgun type crime guns traced between 2017 and 2021. The top five gauges of traced shotguns accounted for almost 98% (130,224) of all traced shotguns. The 12 gauge (76%), .20 gauge (13%), and the .410 (6%) accounted for more than 95% (126,651) of all shotgun type crime guns. Table CCG-08 provides the top five shotgun gauges of traced shotguns.

Table CCG-08: Top Five Gauges of Traced Shotguns, 2017 – 2021

| <u>Gauge</u> | <u>Number</u> | <u>Percent</u> |
|--------------|---------------|----------------|
| 12 GA | 100,688 | 75.7% |
| 20 GA | 17,748 | 13.3% |
| 410 GA | 8,215 | 6.2% |
| 16 GA | 3,125 | 2.3% |
| 10 GA | 448 | 0.1% |

Manufacturers of Traced Crime Guns

NOTE: Data analysis identifying firearm manufacturers whose firearms were most frequently recovered in crimes does not imply any illegal activity by the manufacturer and may be attributable to several factors to include production and sales volume, pricing, and brand reputation.

Of the 1,306,804 pistol type crime guns traced between 2017 and 2021, nearly 20% (255,055) were manufactured by Glock. The top five manufacturers of traced pistols accounted for almost 60% (779,566) of all traced pistols. Other top manufacturers of traced pistols were Smith & Wesson (14%), Taurus (12%), Sturm Ruger (9%), and HS Produkt¹² (5%). Table CCG-09 provides the top five manufacturers of pistol type crime guns traced during the study period.

Table CCG-09: Top Five Manufacturers of Traced Pistols, 2017 – 2021

| <u>Manufacturer</u> | <u>Number</u> | <u>Percent</u> |
|---------------------|---------------|----------------|
| Glock | 255,055 | 19.6% |
| Smith & Wesson | 182,728 | 14.0% |
| Taurus | 159,360 | 12.2% |
| Sturm Ruger | 113,654 | 8.7% |
| HS Produkt | 68,769 | 5.3% |

As reflected in Table CCG-10, of the 237,532 rifle type crime guns traced between 2017 and 2021, the top five manufacturers were Marlin (9%), Sturm Ruger (9%), Remington (8%), Savage Arms (6%), and Winchester (5%). The top five manufacturers of traced rifles accounted for almost 37% (87,507) of all traced rifles.

Table CCG-10: Top Five Manufacturers of Traced Rifles, 2017 – 2021

| Manufacturer | Number | Percent |
|---------------------|---------------|----------------|
| Marlin | 21,435 | 9.0% |
| Sturm Ruger | 21,378 | 9.0% |
| Remington | 17,700 | 7.5% |
| Savage Arms | 14,911 | 6.3% |
| Winchester | 12,083 | 5.1% |

Of the 211,590 revolver type crime guns traced between 2017 and 2021, nearly 26% (54,377) were manufactured by Smith & Wesson. Other top manufacturers of traced revolvers included Taurus (16%), Sturm Ruger (11%), Colt (5%), and Harrington & Richardson (5%). The top five manufacturers of traced revolvers accounted for 63% (133,311) of all traced revolvers (Table CCG-11).

Table CCG-11: Top Five Manufacturers of Traced Revolvers, 2017 – 2021

| Manufacturer | Number | Percent |
|-------------------------|---------------|----------------|
| Smith & Wesson | 54,377 | 25.7% |
| Taurus | 33,542 | 15.9% |
| Sturm Ruger | 23,278 | 11.0% |
| Colt | 11,449 | 5.4% |
| Harrington & Richardson | 10,665 | 5.0% |

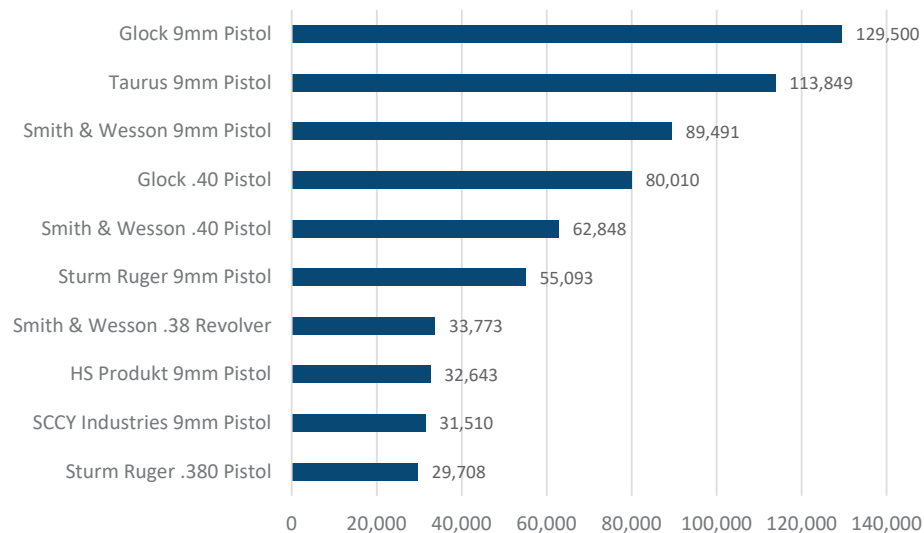
Of the 133,024 shotgun type crime guns traced between 2017 and 2021, more than 20% (26,964) were manufactured by Mossberg. Other top manufacturers of traced shotguns include Remington (16%), Winchester (8%), Savage Arms (7%), and Maverick Arms (6%). The top five manufacturers of traced shotguns accounted for almost 58% (76,730) of all traced shotguns (Table CCG-12).

Table CCG-12: Top Five Manufacturers of Traced Shotguns, 2017 – 2021

| Manufacturer | Number | Percent |
|---------------------|---------------|----------------|
| Mossberg | 26,964 | 20.3% |
| Remington | 21,748 | 16.3% |
| Winchester | 10,701 | 8.0% |
| Savage Arms | 9,174 | 6.9% |
| Maverick Arms | 8,143 | 6.1% |

Traced Crime Guns by Manufacturer, Type and Caliber

The top ten most frequently traced crime guns by manufacturer, type, and caliber combinations accounted for 34% (658,425) of the 1,922,577 crime guns traced between 2017 and 2021 (Figure CCG-02). The Glock 9mm pistol was the most frequently traced crime gun by make, type and caliber, accounting for almost 7% of all crime guns (129,500 of 1,922,577) traced during the study period.

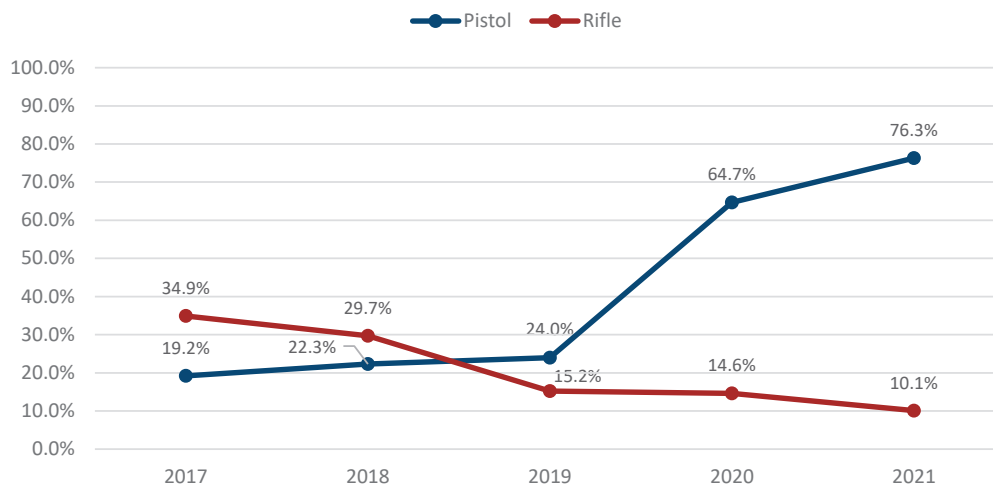
Figure CCG-02: Top Ten Traced Crime Guns by Manufacturer, Type, and Caliber Combination, 2017 – 2021***Types and Calibers of Traced PMFs***

Pistols represented the most frequently recovered suspected PMF submitted to ATF for tracing by LEAs between 2017 and 2021 (Table CCG-13). Of the 37,980 recovered and traced suspected PMFs, pistols accounted for 59% (22,546), rifles accounted for 14% (5,446), machine guns accounted for 12% (4,459), firearm receivers or frames accounted for 4% (1,588), and silencers accounted for 1% (345).

Table CCG-13: Recovered and Traced Suspected PMFs by Weapon Type, 2017 – 2021

| Firearm Type | Number | Percent |
|------------------|---------------|---------------|
| Pistol | 22,546 | 59.4% |
| Rifle | 5,446 | 14.3% |
| Machinegun | 4,459 | 11.7% |
| Receiver / Frame | 1,588 | 4.2% |
| Silencer | 345 | 0.9% |
| Other / Unknown | 3,596 | 9.5% |
| Total | 37,980 | 100.0% |

Figure CCG-03 presents the annual percentage of suspected PMFs recovered for the two most frequently recovered firearm types, pistols, and rifles. The percentage of pistols increased by 57 percentage points from 2017 (19%; 312) to 2021 (76%; 14,713), representing a 297% increase in the market share of these suspected PMFs. In contrast, the percentage of rifles declined by 25 percentage points from 2017 (35%; 569) to 2021 (10%; 1,950), representing a 71% decrease in the market share of these PMFs.

Figure CCG-03: Percentage of Suspected PMF Pistols and Rifles Recovered and Traced, 2017 – 2021

Due to the lack of required markings, and law enforcement's unfamiliarity with PMFs, complete tracing information is lacking. Nearly 33% (12,497) of all recovered and traced suspected PMFs did not have a known caliber listed. However, based on the tracing data received between 2017 and 2021, 46% (17,365) of all PMFs recovered and traced were 9mm, 6% (2,327) were .40 caliber, 6% (2,225) were .223 caliber, and 4% (1,412) were 5.56mm.

Since PMFs are not manufactured by FFLs, the firearm is not subject to the same marking requirements. With the enactment of [Final Rule 2021R-05F](#), beginning in August 2022, any PMF that enters regulated commerce must be identified through required markings by an FFL prior to being further transferred. When tracing a PMF, law enforcement is encouraged to provide any identifying information found on the PMF. More than 56% (21,374) of the PMFs recovered and traced during the study period did not list any information regarding the manufacturer of any part of the firearm. However, of the PMFs with a manufacturer name identified, more than 88% (14,675) were identified as Polymer80, Inc.

Summary of Characteristics of Crime Guns

Pistols were the most dominant type of firearm domestically manufactured, imported into the U.S., and transferred by licensed dealers between 2016 and 2020.¹³ Pistols represented nearly 70% of the crime guns traced between 2017 and 2021. The percentage of pistols recovered in crimes and submitted for tracing by LEAs increased from 62% in 2017 to 75% in 2020. 9mm, .40, .380, and .45 caliber pistols were the most frequently traced pistol calibers. The top manufacturers of traced pistols include Glock, Smith & Wesson, Taurus, Sturm Ruger, and HS Produkt. Pistols also represented almost 60% of the PMFs recovered in crimes and submitted to ATF for tracing between 2017 and 2021. Other frequently recovered types of PMFs included rifles (14%), machineguns (12%), and firearm receivers or frames (4%). Polymer 80, Inc. was the most frequently identified manufacturer of PMFs.

Indicators of Firearms Trafficking

Time-to-Crime of Traced Crime Guns

As described in Part II of this report, the GCA ensures that a firearm can be traced from an FFL to the first retail purchaser. If, after the first retail purchase, the firearm re-enters regulated commerce, the tracing process may identify additional unlicensed purchasers beyond the first retail purchaser. These unlicensed secondary purchasers are commonly referred to as the last known purchaser. An important consideration in understanding firearms trafficking is the length of time between the date of a firearm's last known purchase (often to the first retail purchaser or, when additional transfer information is available to the last known purchaser) to the date of its recovery by law enforcement as a crime gun. This is referred to as time-to-crime (TTC). A short TTC can be an indicator of illegal firearms trafficking. Focusing on these firearms can produce significant trafficking trends and patterns in recently transferred firearms. Investigating crime guns with a short TTC allows law enforcement to seek out sources of recently transferred crime guns and disrupt the flow of illegal firearms through identified trafficking channels.

TTC was calculated for nearly all (1,479,046) of the 1,482,861 firearms traced to a purchaser between 2017 and 2021. For the entire study period, the median TTC was 1,293 days or slightly more than three years, meaning that half of the traced crime guns were purchased within this time period.¹⁴ Figure IFT-01 displays the cumulative percent of traced crime guns by years since purchase and shows that 54% of traced crime guns were recovered by law enforcement more than three years after their purchase, while nearly 46% were recovered less than three years after their purchase. As shown in Figure IFT-02, about 25% of traced crime guns were recovered within one year of their purchase.

Figure IFT-01: Cumulative Percentage of Traced Crime Guns by TTC (Years), 2017 – 2021

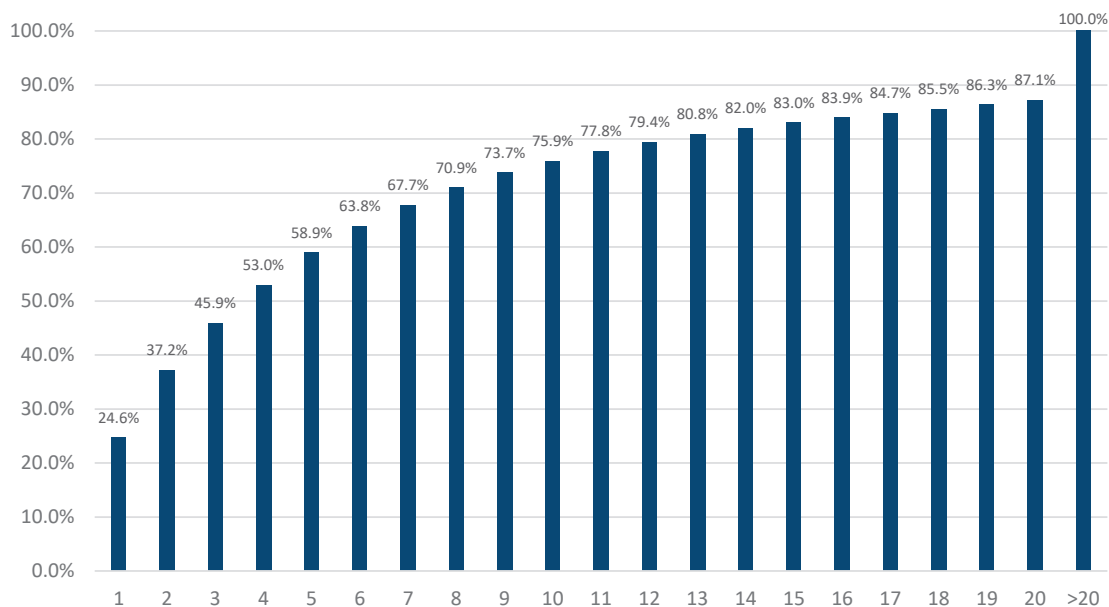


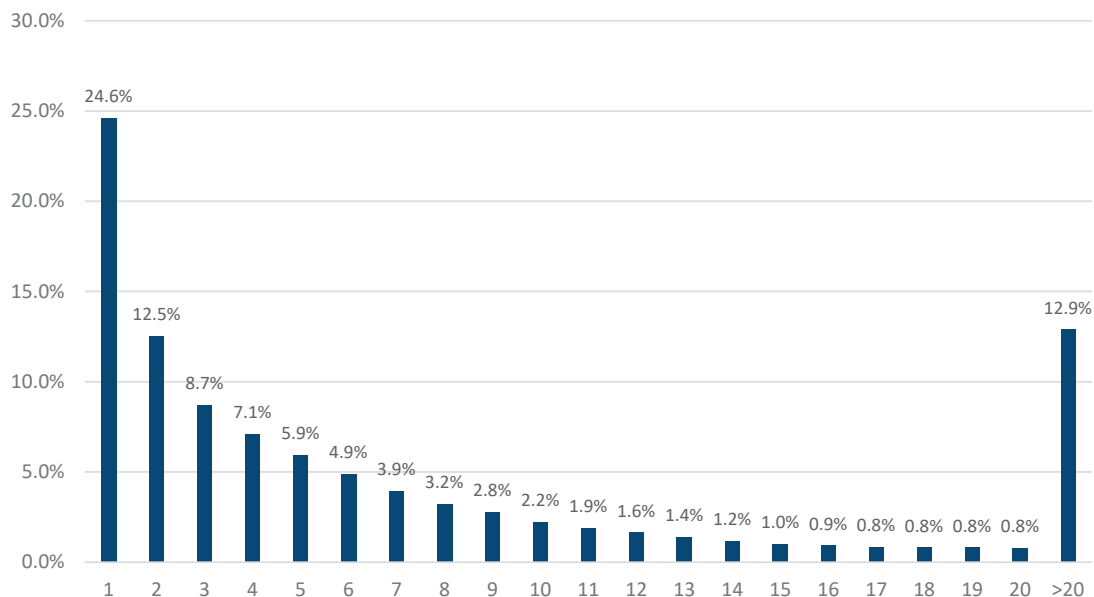
Figure IFT-02: Percentage of Traced Crime Guns by TTC (Years), 2017 – 2021

Figure IFT-03 presents the TTC distribution with greater detail in the time categories under three years. During the study period, many crime guns moved very quickly from purchase to recovery in a crime: 9% (137,555) were recovered under three months, 6% (90,642) were recovered between three months and under seven months, 9% (137,957) were recovered between seven months and under one year, 13% (185,281) were recovered between one year and under two years, and 9% (128,788) were recovered between two years and under three years.

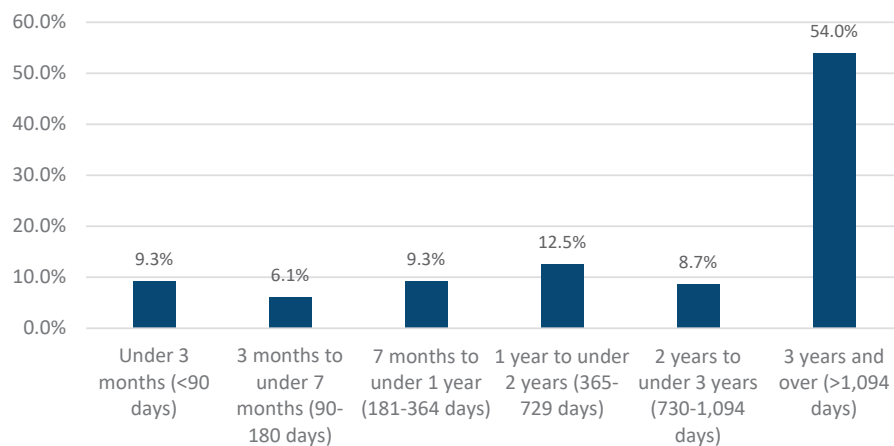
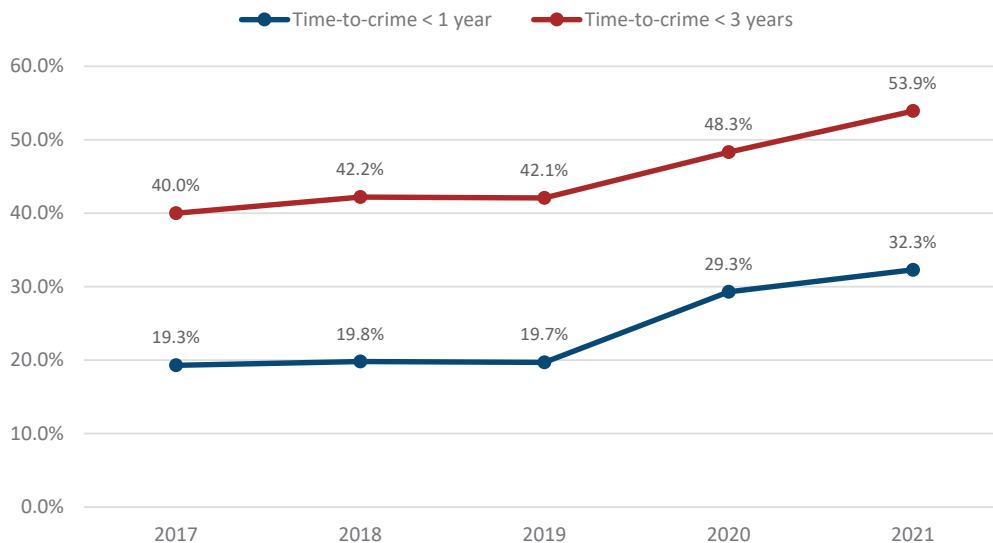
Figure IFT-03: Percentage of Traced Crime Guns by TTC Categories, 2017 – 2021

Figure IFT-04 presents the annual percentage of traced crime guns that were recovered within one year of purchase and recovered within three years of purchase between 2017 and 2021. The percentage of traces with a TTC less than one year was relatively stable between 2017 and 2019. However, this percentage

increased by 12 percentage points from 2019 (20%) to 2021 (32%), reflecting a 64% increase in the share of traced guns with TTC less than one year. The percentage of crime guns recovered within three years of purchaser increased by 12 percentage points from 2019 (42%) to 2021 (54%), reflecting a 28% increase in the share of traced guns with TTC less than three years. This was driven almost entirely by an increase in traced guns with TTC of less than one year.

Figure IFT-04: Less Than One-Year TTC vs Less Than Three-Year TTC, 2017 – 2021



Median TTC varied considerably across U.S. states from 2017 to 2021 (Table IFT-01a). Virginia had the shortest median TTC (1.6 years) followed by Michigan, Arizona, Missouri, and Mississippi. Hawaii had the longest median TTC at 7.5 years followed by Connecticut, New York, New Jersey, and Maryland.

Table IFT-01a: U.S. States with Shortest and Longest Median TTC, 2017 – 2021

| Shortest TTC States | | Longest TTC States | |
|---------------------|--------------------|--------------------|--------------------|
| State | Median TTC (Years) | State | Median TTC (Years) |
| Virginia | 1.6 | Hawaii | 7.5 |
| Michigan | 2.0 | Connecticut | 5.9 |
| Arizona | 2.1 | New York | 5.7 |
| Missouri | 2.2 | New Jersey | 5.3 |
| Mississippi | 2.2 | Maryland | 5.0 |

See Table IFT-01 in Appendix IFT – Indicators of Firearm Trafficking for a list of the median TTC (years) for the 50 U.S. states and territories during the study period.

Median TTC also varied considerably across selected U.S. cities from 2017 to 2021 (Table IFT-02a). Richmond had the shortest median TTC (1.5 years) followed by Detroit, Columbia, and Phoenix. Memphis and Saint Louis both had a median TTC of 1.9 years. New York had the longest median TTC at 6.3 years, followed by Baltimore and San Jose. San Bernardino, San Diego, and Los Angeles all had a median TTC of 4.2 years.

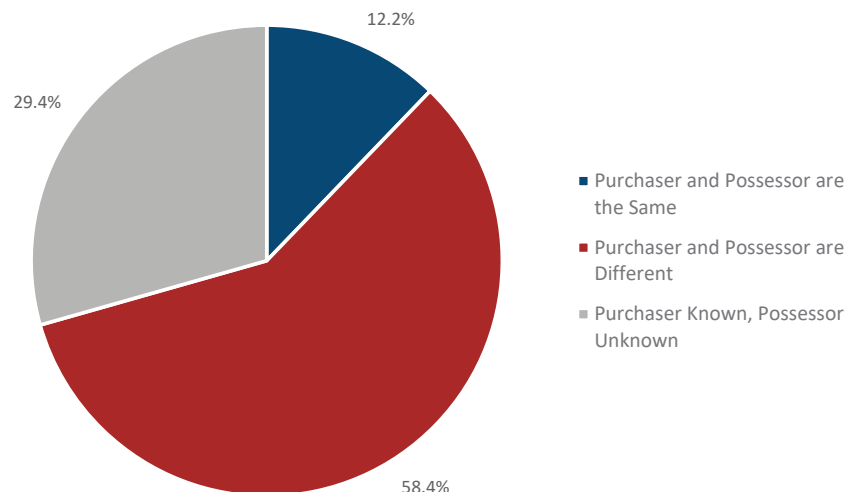
Table IFT-02a: U.S. Cities with Shortest and Longest Median TTC, 2017 – 2021

| Shortest TTC Cities | | Longest TTC Cities | |
|---------------------|--------------------|--------------------|--------------------|
| City | Median TTC (Years) | City | Median TTC (Years) |
| Richmond, VA | 1.5 | New York, NY | 6.3 |
| Detroit, MI | 1.6 | Baltimore, MD | 5.3 |
| Columbia, SC | 1.7 | San Jose, CA | 4.6 |
| Phoenix, AZ | 1.8 | San Bernardino, CA | 4.2 |
| Memphis, TN | 1.9 | San Diego, CA | 4.2 |
| Saint Louis, MO | 1.9 | Los Angeles, CA | 4.2 |

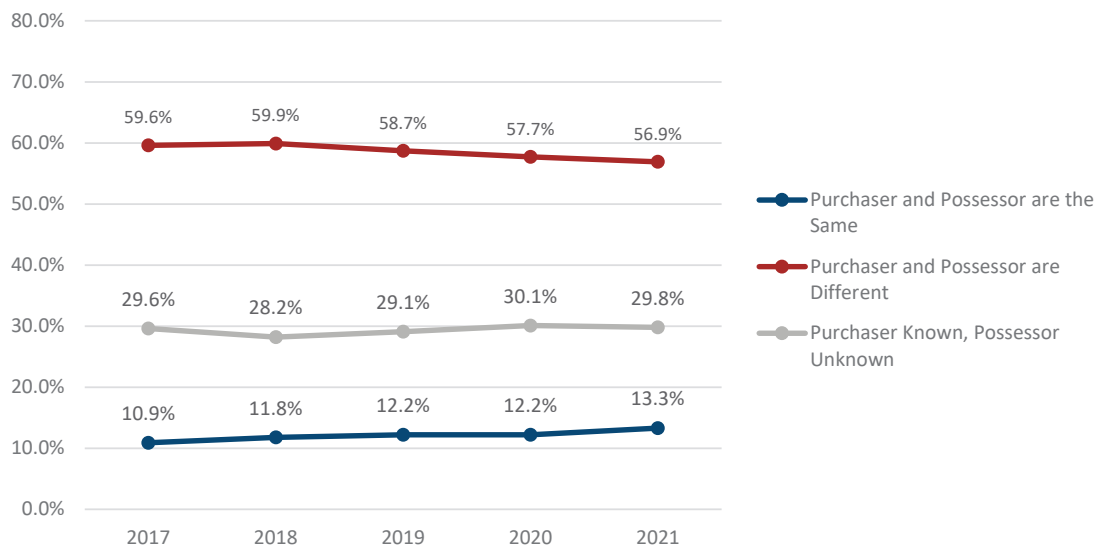
See Table IFT – 02 in Appendix IFT – Indicators of Firearm Trafficking for a complete list of median TTC (years) for selected U.S. cities from 2017 through 2021.

Purchasers and Possessors of Traced Crime Guns

Between 2017 and 2021, nearly all (1,482,702) of the 1,482,861 traces contained purchaser and/or possessor information. Of these crime guns, 58% (866,120 of 1,482,702) had a different purchaser than possessor, another 29% (435,833) were recovered without a known possessor associated with the crime gun, and only 12% (180,749 of 1,482,702) had the same purchaser and possessor (Figure IFT-05).

Figure IFT-05: Percentage of Traced Crime Guns by Purchaser and Possessor Relationships, 2017 – 2021

As reflected in Figure IFT-06, the yearly percentage of traced crime guns that had a different purchaser than possessor, the same purchaser and possessor, and no known possessor remained relatively stable between 2017 and 2021.

Figure IFT-06: Percentage of Traced Crime Guns by Purchaser and Possessor Relationships, 2017 – 2021

U.S. states varied in the percentages of recovered crime guns that were traced to a purchaser who was not the identified possessor (Table IFT-03a). Arkansas had the highest percentage of traced crime guns where the purchasers and identified possessor were different individuals (70%) followed by Kentucky, West Virginia, Oklahoma, and New York. Texas had the lowest percentage of recovered crime guns where the purchaser and identified possessor were different individuals (48%) followed by Nevada, Massachusetts, Florida, and South Dakota.

Table IFT-03a: U.S. States with Highest and Lowest Percentages of Traced Crime Guns with Different Purchaser than Possessor, 2017 – 2021

| Highest Percentage of Different Purchaser than Possessor | | Lowest Percentage of Different Purchasers than Possessor | |
|--|---------|--|---------|
| Recovery State | Percent | Recovery State | Percent |
| Arkansas | 70.2% | Texas | 47.7% |
| Kentucky | 69.9% | Nevada | 50.7% |
| West Virginia | 69.7% | Massachusetts | 51.7% |
| Oklahoma | 69.5% | Florida | 51.8% |
| New York | 68.1% | South Dakota | 52.2% |

See Table IFT-03 in Appendix IFT – Indicators of Firearm Trafficking for a complete list of the purchaser and possessor relationships for recovered crime guns in the 50 U.S. states and territories from 2017 through 2021.

Selected U.S. cities also varied in the percentages of recovered crime guns that were traced to a purchaser who was not the identified possessor (Table IFT-04a). Wichita had the highest percentage of traced crime guns where the purchaser and the identified possessor were different people (79%) followed by San Bernardino, Cincinnati, New York, and Louisville. Winston-Salem had the lowest percentage of traced crime guns where the purchaser and possessor were different people (4%) followed by Houston, Chattanooga, Richmond, and Phoenix.

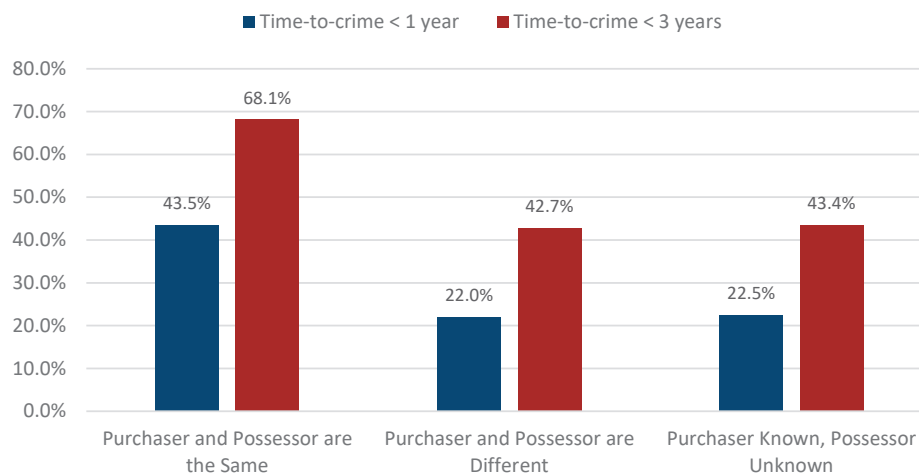
Table IFT-04a: U.S. Cities with Highest and Lowest Percentages of Traced Guns with Different Purchaser than Possessor, 2017 – 2021

| Highest Percentage of Different Purchaser than Possessor | | Lowest Percentage of Different Purchaser than Possessor | |
|--|---------|---|---------|
| Recovery City | Percent | Recovery City | Percent |
| Wichita, KS | 79.3% | Winston-Salem, NC | 4.1% |
| San Bernardino, CA | 75.8% | Houston, TX | 18.0% |
| Cincinnati, OH | 73.7% | Chattanooga, TN | 28.9% |
| New York, NY | 72.0% | Richmond, VA | 41.0% |
| Louisville, KY | 71.8% | Phoenix, AZ | 45.5% |

See Table IFT-04 in Appendix IFT – Indicators of Firearm Trafficking for a complete list of the purchaser and possessor relationships for recovered crime guns in selected U.S. cities from 2017 through 2021.

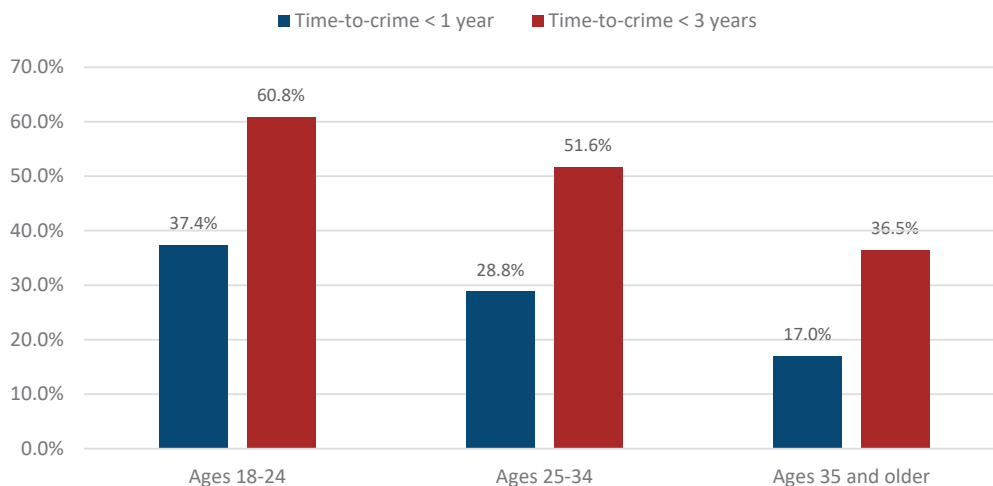
TTC by Purchaser and Possessor Relationship

Between 2017 and 2021, the median TTC for traced crime guns recovered in the possession of the purchaser (411 days or 1.1 years) was notably shorter than the median TTC for traced crime guns recovered without a known possessor (1,188 days or 3.3 years) and traced crime guns recovered from a possessor who was not the purchaser (1,237 days or 3.4 years). As reflected in Figure IFT-07, 44% (78,547) of traced crime guns with the same purchaser and possessor were recovered within one year of purchase, while 22% (190,295) of traced crime guns with a different purchaser than possessor were recovered within one year of purchase. In contrast, 68% (122,842) of traced crime guns with the same purchaser and possessor were recovered within three years of purchase, while 43% (368,972) of the traced crime guns with a different purchaser than possessor were recovered within three years of purchase. Some 23% (97,999) of traced crime guns with a known purchaser but without a known possessor were recovered within one year of purchase, and 43% (188,668) were recovered within three years of purchase.

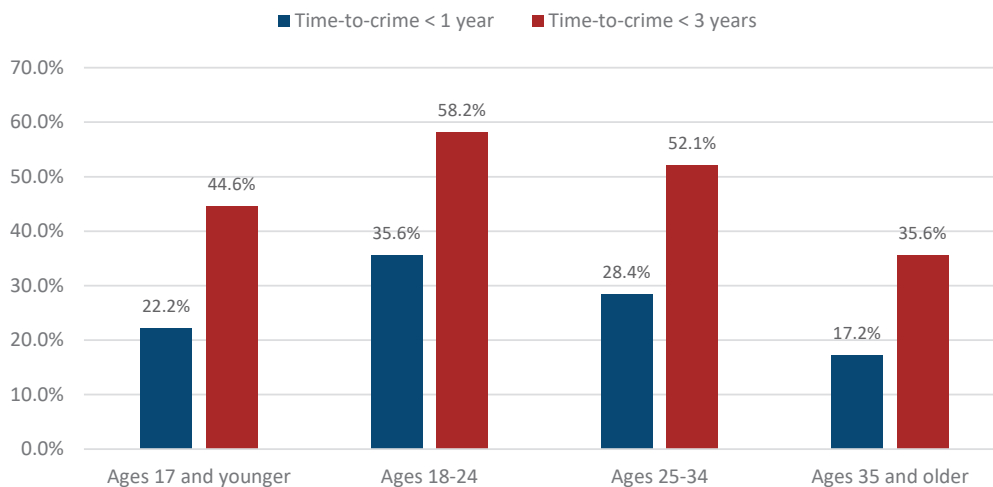
Figure IFT-07: TTC Category by Purchaser and Possessor Relationship, 2017 – 2021

TTC by Purchaser Age and Possessor Age

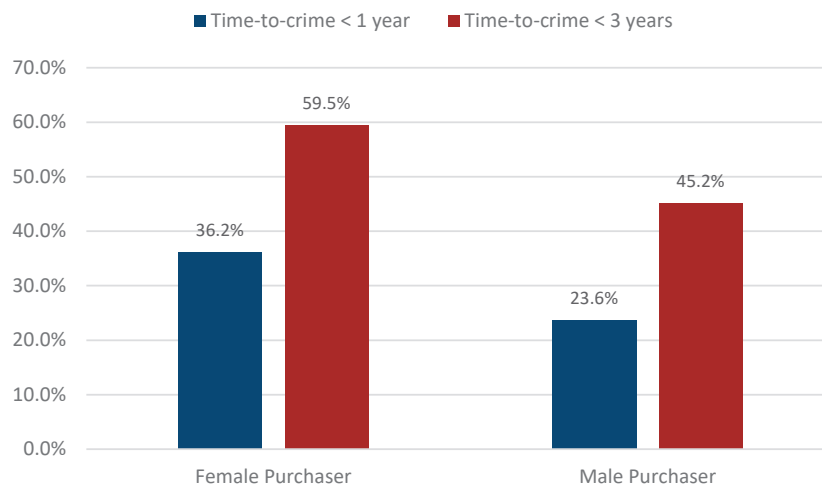
Between 2017 and 2021, the median TTC for traced crime guns purchased by youths ages 18 to 24 (510 days or 1.4 years) was shorter than the TTC for crime guns purchased by young adults ages 25 to 34 (924 days or 2.5 years) and much shorter than the TTC for crime guns purchased by adults ages 35 and older (1,619 days or 4.4 years). As reflected in Figure IFT-08, 37% (116,523) of the traced crime guns purchased by youths ages 18 to 24, 29% (137,521) purchased by young adults ages 25 to 34, and 17% (109,027) purchased by adults ages 35 and older were recovered within one year of purchase, respectively. Similarly, 61% (189,511) of the traced crime guns purchased by youths ages 18 to 24, 52% (246,329) purchased by young adults ages 25 to 34, and 37% (234,054) purchased by adults ages 35 and older were recovered within three years of purchase.

Figure IFT-08: TTC by Purchaser Age Group, 2017 – 2021

Between 2017 and 2021, the median TTC for traced crime guns possessed by youths ages 18 to 24 (720 days or 2 years) was shorter than the TTC for those possessed by young adults ages 25 to 34 (910 days or 2.5 years), possessed by juveniles ages 17 and younger (1,266 days or 3.5 years), and possessed by adults ages 35 and older (1,669 days or 4.6 years). As reflected in Figure IFT-09, 36% (87,673) of the traced crime guns possessed by youths ages 18 to 24, 28% (95,811) possessed by young adults ages 25 to 34, 22% (6,539) possessed by juveniles ages 17 and younger, and 17% (62,730) possessed by adults ages 35 and older were recovered within one year of purchase. Similarly, 58% (143,291) of the traced crime guns possessed by youths ages 18 to 24, 52% possessed by young adults ages 25 to 34, 45% (13,130) possessed by juveniles ages 17 and younger, and 36% (129,362) possessed by adults ages 35 and older were recovered within three years of purchase.

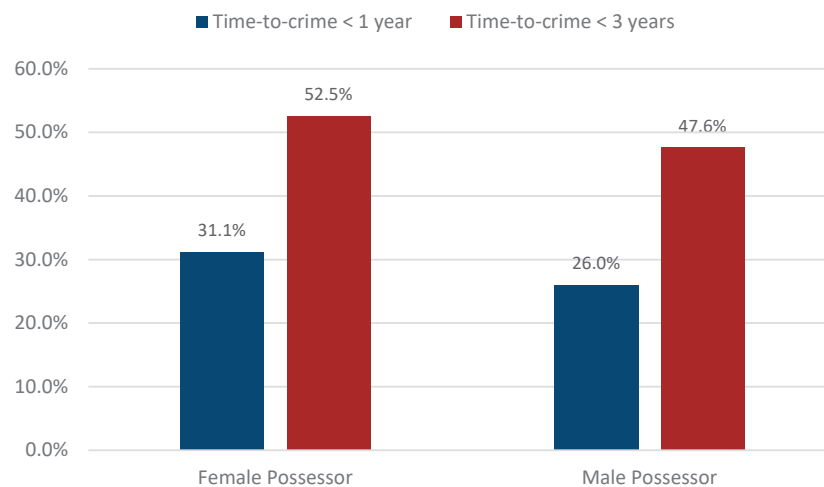
Figure IFT-09: TTC by Possessor Age Group, 2017 – 2021***TTC by Purchaser Gender and Possessor Gender***

Between 2017 and 2021, the median TTC for traced crime guns that were purchased by a female (620 days or 1.7 years) was notably shorter than the TTC for traced crime guns purchased by a male (1,137 days or 3.1 years). As reflected in Figure IFT-10, 36% (95,180) of the traced crime guns purchased by a female were recovered within one year of purchase, while 24% (26,198) purchased by a male were recovered within one year of purchase. Similarly, 60% (156,319) of the traced crime guns purchased by a female were recovered within three years of purchase, while 45% (511,237) purchased by a male were recovered within three years of purchase.

Figure IFT-10: TTC by Purchaser Gender, 2017 – 2021

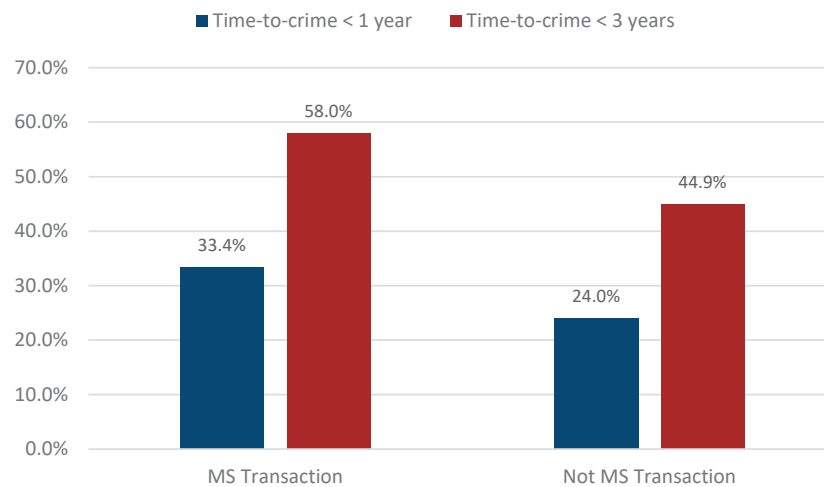
Traced crime guns recovered from female possessors had a moderately shorter median TTC (831 days or 2.3 years) relative to traced crime guns recovered from male possessors (1,021 days or 2.8 years). As reflected in Figure IFT-11, 31% (22,830) of the traced crime guns possessed by a female were recovered within one year of purchase and 26% (211,114) possessed by a male were recovered within one year of purchase. Similarly, 53% (38,549) of the traced crime guns possessed by a female were recovered within one year of purchase and 48% (386,874) possessed by a male were recovered within three years of purchase.

Figure IFT-11: Possessor Gender by Selected TTC Categories, 2017 – 2021

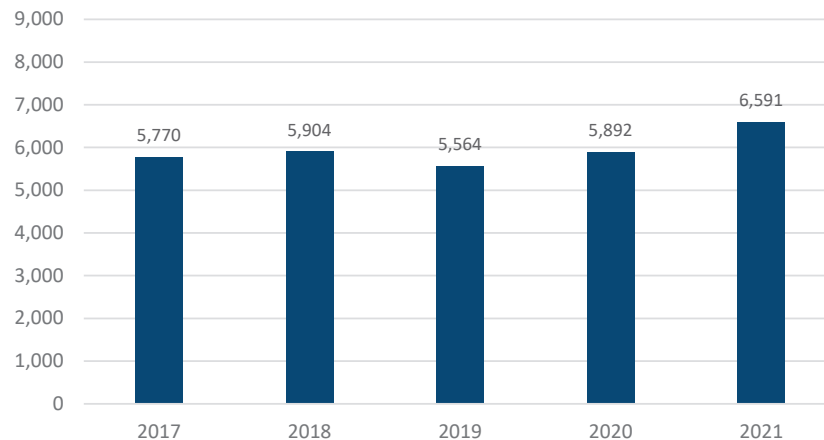


TTC and Multiple Sales Transactions

Slightly less than 9% (127,315) of the 1,479,046 crime guns traced to a purchaser, and with a TTC calculated, were part of a multiple sale. Traced crime guns that were part of a multiple sale had a considerably shorter median TTC (782 days or 2.1 years) relative to traced crime guns that were not part of a multiple sale (1,115 days or 3.1 years). As reflected in Figure IFT-12, 33% (42,565) of the traced crime guns that were part of a multiple sale were recovered within one year of purchase while only 24% (324,298) of traced crime guns that were not part of a multiple sale transaction were recovered within one year of purchase. Similarly, 58% (73,790) of the traced crime guns that were part of a multiple sale transaction were recovered within three years of purchase while less than 45% (606,742) that were not part of a multiple sale transaction were recovered within three years of purchase.

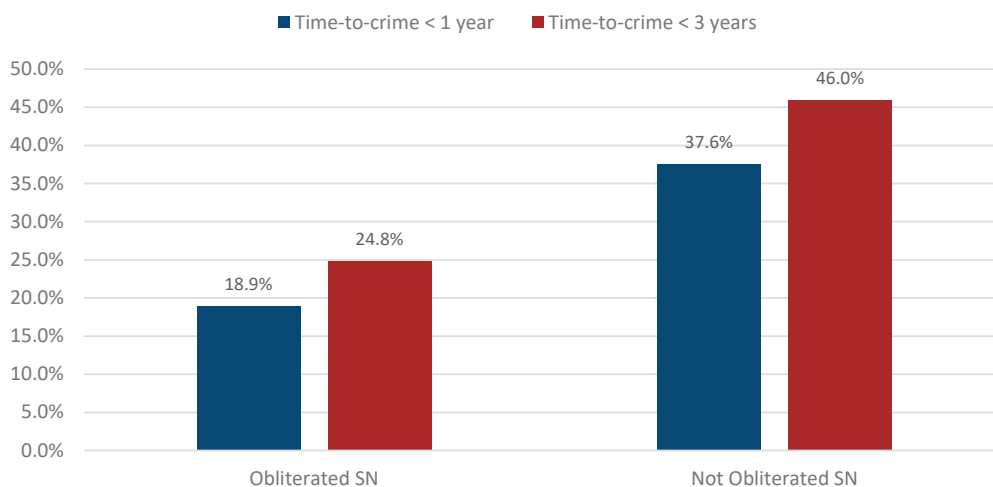
Figure IFT-12: Multiple Sales Transactions and TTC, 2017 – 2021***Obliterated Serial Numbers and TTC***

Pursuant to [18 U.S.C. §922\(k\)](#), it is unlawful for any person to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered. When crime guns are recovered and determined to have had their serial number obliterated, specially trained forensic technicians at [ATF's National Laboratory](#) or state and local counterparts will attempt to restore the serial number. Altering or obliterating the firearm serial number is often utilized by persons attempting to evade detection and disrupt ATF's ability to trace firearms. LEAs recovered and submitted 29,721 crime guns with obliterated serial numbers to ATF for tracing (2% of 1,922,577) between 2017 and 2021. Over the past three years, the number of recovered and traced crime guns with an obliterated serial has increased by 18% from 2019 (5,564) to 2021 (6,591) (Figure IFT-13).

Figure IFT-13: Crime Guns Submitted with Obliterated Serial Numbers, 2017 – 2021

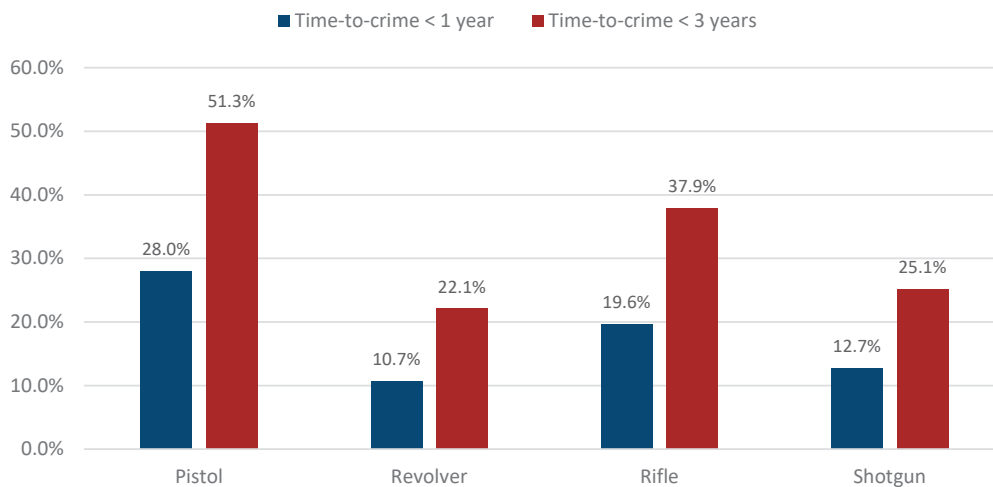
A purchaser was identified in 18% (5,398 of 29,721) of these traces, and TTC was calculated for nearly all of them (5,388 of 5,398). Traced crime guns with obliterated serial numbers had a much longer median TTC (1,633 days or 4.5 years) relative to traced crime guns that did not have obliterated serial numbers (1,092 days or 3.0 years based on 1,473,658 traced crime guns without obliterated serial numbers and with TTC calculated). As reflected in Figure IFT-14, 19% (1,021) of the traced crime guns with obliterated serial numbers were recovered within one year of purchase, while 38% (2,027) of traced crime guns that did not have obliterated serial numbers were recovered within one year of purchase. Similarly, 25% (365,842) of the traced crime guns with obliterated serial numbers were recovered within three years of purchase, and 46% (678,506) that did not have obliterated serial numbers were recovered within three years of purchase.

Figure IFT-14: Obliterated Serial Numbers and TTC, 2017 - 2021

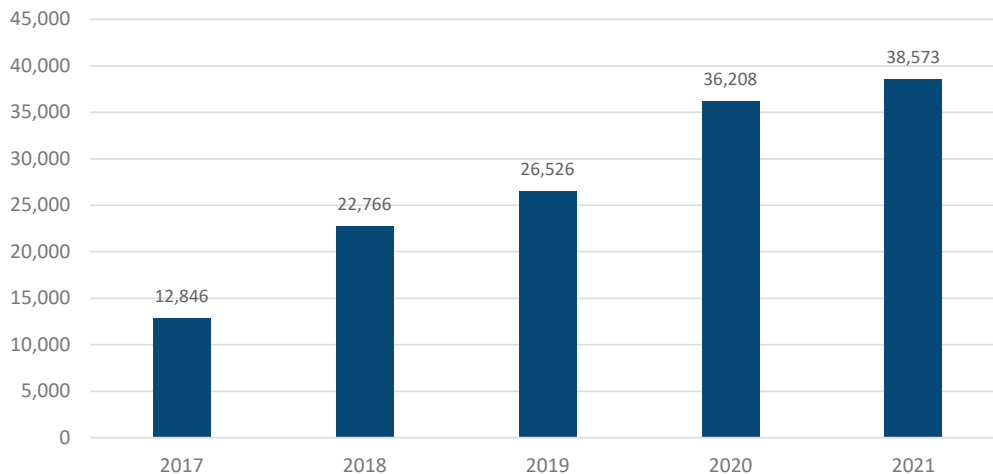


Type of Crime Gun and TTC

From 2017 to 2021, there were 1,117,008 pistols, 152,367 rifles, 78,667 shotguns, and 121,541 revolvers traced to a purchaser with a TTC calculated. Pistols had a much shorter median TTC (912 days or 2.5 years) relative to rifles (1,513 days or 4.1 years), shotguns (2,713 days or 7.4 years), and revolvers (3,280 days or 9.0 years). As reflected in Figure IFT-15, 28% (312,263 of 1,117,008) of pistols were recovered within one year of purchase, as were 20% (29,886) of rifles, 13% (9,952) of shotguns, and 11% (13,042) of revolvers. Similarly, 51% (573,155) of pistols were recovered within three years of purchase, as were 38% (57,724) of rifles, 25% (19,739) of shotguns, and 22% (26,890) of revolvers.

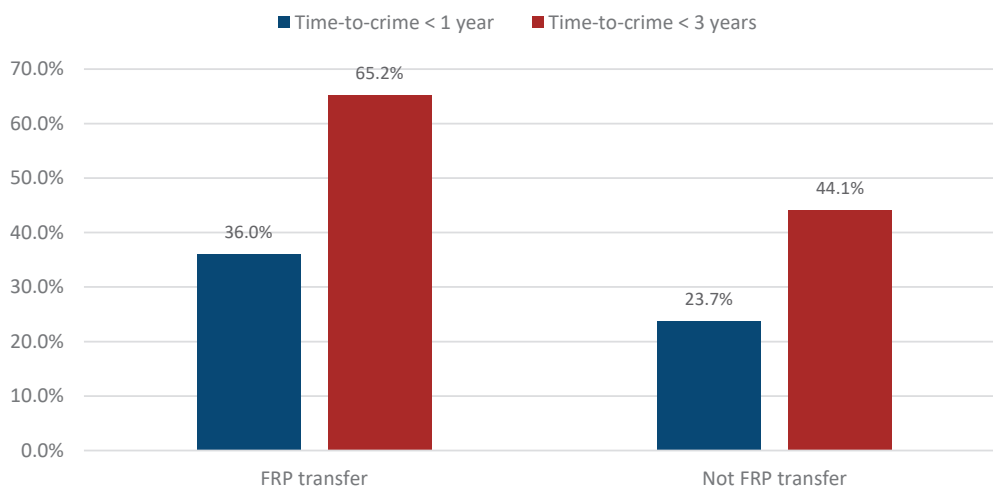
Figure IFT-15: Firearm Type and TTC, 2017 – 2021***FFL Resale Program***

As described in Part II, the FFL Resale Program (FRP) identifies used firearms that FFLs have acquired from unlicensed individuals to enhance the efficiency of the crime gun tracing process. When a used firearm, that has been acquired by an FFL after an original retail sale is identified through the FRP, the NTC can directly contact the specific FFL (after an original retail sale) to identify the last known purchaser. A small number of firearms recovered by law enforcement agencies were traced to the last known purchaser via the FRP between 2017 and 2021. Only 9% (136,919) of the 1,482,861 recovered firearms traced to a purchaser were sold via a FRP transaction during the study period. The yearly number of firearms traced to a last known purchaser that were associated with FRP transactions increased by 200% from 12,846 in 2017 to 38,573 in 2021 (see Figure IFT-16).

Figure IFT-16: Crime Guns Traced via FRP, 2017 – 2021

There were 136,570 firearms traced to a last known purchaser via FRP transfers where TTC could be calculated, and 1,342,476 firearms traced to a purchaser and not acquired via FRP transfers where TTC could be calculated. Traced crime guns that were identified through FRP transfers had a nearly two-year shorter median TTC (541 days or 1.5 years) than traced guns that were not identified through FRP transfers (1,220 days or 3.3 years). As reflected in Figure IFT-17, 36% (49,220) of FRP traced crime guns were recovered within one year of purchase, while only 24% (317,643) of traced crime guns that were not identified through FRP transactions were recovered within one year of purchase. Similarly, 65% (89,070) of FRP traced crime guns were recovered within three years of purchase, while 44% (591,463) of traced crime guns that were not identified through FRP transactions were recovered within three years of purchase.

Figure IFT-17: FRP Transactions and TTC, 2017 – 2021



Summary of Indicators of Firearm Trafficking

Short TTC suggests that traced crime guns were rapidly diverted from lawful firearms commerce into criminal hands and represents a key indicator of firearm trafficking. Between 2017 and 2021, half of traced crime guns were purchased and recovered within three years of the last known sale. The percentage of crime guns recovered within one year of purchase increased from 20% in 2019 to 32% in 2021. As a result, the percentage of crime guns recovered within three years of purchase increased from 42% in 2019 to 54% in 2021. The prominence of recently transferred firearms amongst recovered crime guns is consistent with recent increases in the number of firearms manufactured domestically and imported into the U.S. over the past three years. The number of Gun Control Act firearms manufactured domestically increased by 22% from approximately nine million in 2018 to 11 million in 2020 and the number of Gun Control Act firearms imported into the U.S. increased by 50% from approximately four million in 2018 to 6 million in 2020.¹⁵

Traced recovered pistols had much shorter median TTC relative to other recovered and traced firearm types. Shorter TTC for recovered crime guns was also associated with a number of patterns such as when recovered in the possession of the identified purchaser, purchase and possession by younger people,

purchased by a female, acquired through a multiple sale transaction, and when transferred through a FRP transaction.

Geographical Patterns

Distances Between FFLs, Purchasers, and Possessors¹⁶

When purchasing a firearm from an FFL, the purchaser is required to complete portions of an ATF Form 4473. This includes recording their current residence address. The ATF Form 4473 is retained by the FFL and provided to ATF for tracing purposes and upon discontinuance of business. The distances in miles between the purchaser's address, and the addresses of the FFL where the transfer occurred, were calculated for 93% (1,373,160) of the 1,482,861 crime guns traced to a purchaser between 2017 and 2021. Distances in miles between the purchaser's address and the known possessor's address were calculated for 53% (778,887 of 1,482,861) of traced crime guns. Distances in miles between the address of the FFL where the crime gun was acquired and the address where a LEA recovered a crime gun was calculated for 80% (1,189,916 of 1,482,861) of traced crime guns.

A majority of traced crime gun purchasers lived very close to FFLs that sold the recovered gun (Table GP-01). Some 61% of recovered crime guns were purchased by individuals who lived within 10 miles of the FFLs where they acquired the crime gun. Purchasers also tended to live near identified possessors of traced crime guns, with 46% of purchaser and possessor home addresses located 10 miles or less apart in distance. However, 32% of the traced crime guns recovered at these short distances were found in possession of the identified purchaser (115,829 of 358,157). Only 35% of traced crime guns were recovered within 10 miles or less of the FFLs where these firearms were acquired. The median distances grow for traced crime guns between the distance from purchaser to FFL (8 miles), to the distance between purchaser and possessor (13 miles), and the distance between FFL and recovery location (23 miles).

Table GP-01: Distances from Purchaser to FFL, Purchaser to Possessor, and FFL to Recovery Location, 2017 – 2021

| Distance | Purchaser to FFL | | Purchaser to Possessor | | FFL to Recovery | |
|---------------------|------------------|---------|------------------------|---------|------------------|---------|
| | Number | Percent | Number | Percent | Number | Percent |
| <=10 miles | 832,142 | 60.60% | 358,157 | 46.00% | 414,131 | 34.80% |
| 11 - 25 miles | 317,436 | 23.10% | 113,764 | 14.60% | 222,767 | 18.70% |
| 26 - 50 miles | 109,461 | 8.00% | 60,157 | 7.70% | 111,830 | 9.40% |
| 51 - 100 miles | 54,402 | 4.00% | 47,613 | 6.10% | 92,648 | 7.80% |
| 101 - 200 miles | 35,699 | 2.60% | 47,775 | 6.10% | 90,826 | 7.60% |
| 201 - 300 miles | 12,200 | 0.90% | 27,069 | 3.50% | 50,410 | 4.20% |
| >300 miles | 11,820 | 0.90% | 124,352 | 16.00% | 207,304 | 17.40% |
| Total | 1,373,160 | | 778,887 | | 1,189,916 | |
| Median miles | 8 | | 13 | | 23 | |

When the dataset excludes traced crime guns where the purchaser and possessor are the same person, the pattern observed in Table GP-01 remains generally the same. As reflected in Table GP-02, traced crime gun purchasers generally lived near the FFLs where they acquired the crime gun (60% <=10 miles), many purchasers lived near the traced crime gun possessors (38% <=10 miles), and crime guns were often recovered near the FFL where they were acquired (32% <=10 miles). Similarly, in this sample, the

median distances grow for traced crime guns between the distance from purchaser to FFL (8 miles), the distance between purchaser and possessor (18 miles), and the distance between FFL and recovery location (28 miles).

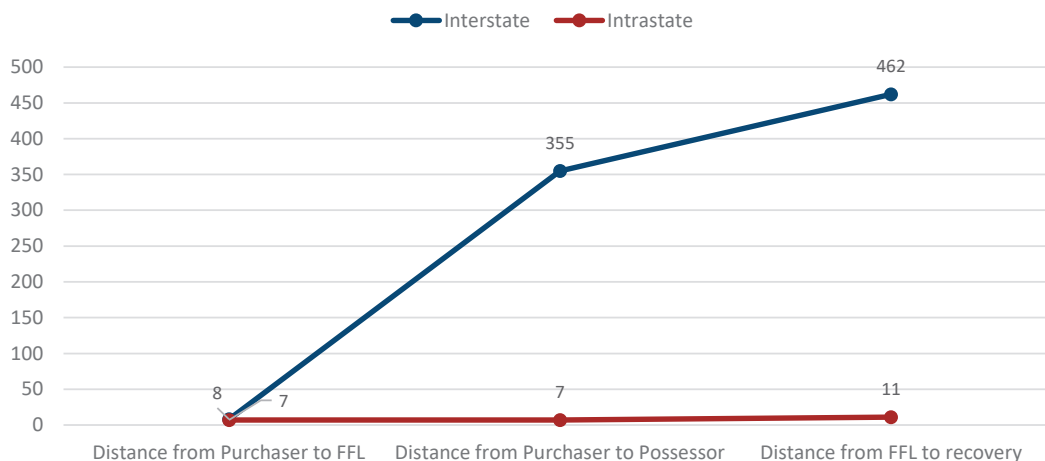
Table GP-02 Distances from Purchaser to FFL, Purchaser to Possessor, and FFL to Recovery for Traced Crime Guns with Different Purchasers than Possessors, 2017 – 2021

| Distance | Purchaser to FFL | | Purchaser to Possessor | | FFL to Recovery | |
|---------------------|------------------|---------|------------------------|---------|------------------|---------|
| | Number | Percent | Number | Percent | Number | Percent |
| <=10 miles | 723,248 | 60.1% | 242,328 | 38.1% | 331,062 | 32.0% |
| 11 - 25 miles | 279,362 | 23.2% | 103,987 | 16.3% | 188,859 | 18.3% |
| 26 - 50 miles | 97,598 | 8.1% | 57,008 | 9.0% | 99,889 | 9.7% |
| 51 - 100 miles | 48,962 | 4.1% | 45,434 | 7.1% | 86,002 | 8.3% |
| 101 - 200 miles | 32,141 | 2.7% | 45,430 | 7.1% | 85,162 | 8.2% |
| 201 - 300 miles | 10,911 | 0.9% | 25,775 | 4.0% | 47,713 | 4.6% |
| >300 miles | 10,654 | 0.9% | 116,802 | 18.3% | 195,962 | 18.9% |
| Total | 1,202,876 | | 636,764 | | 1,034,649 | |
| Median miles | 8 | | 18 | | 28 | |

Distances for Intrastate and Interstate Recovered Crime Guns

Traced crime guns travel very different distances depending on whether the traced crime gun is recovered in the same state or a different state than the FFL it was acquired from. As reflected in Figure GP-01, guns recovered intrastate do not travel very far. The median distance between the purchaser and the FFL is only seven miles; the median distance between the purchasers and identified possessors is only seven miles (due to the large share of purchasers who are also identified possessors as documented above), and the median distance between the FFL and the recovery location is 11 miles. Interstate crime guns have similar patterns between the purchaser and FFL, with a median distance of eight miles. However, these interstate crime gun recoveries then show a median distance of 355 miles between the purchasers and the identified possessors and a median distance of 463 miles between FFL and the recovery location.

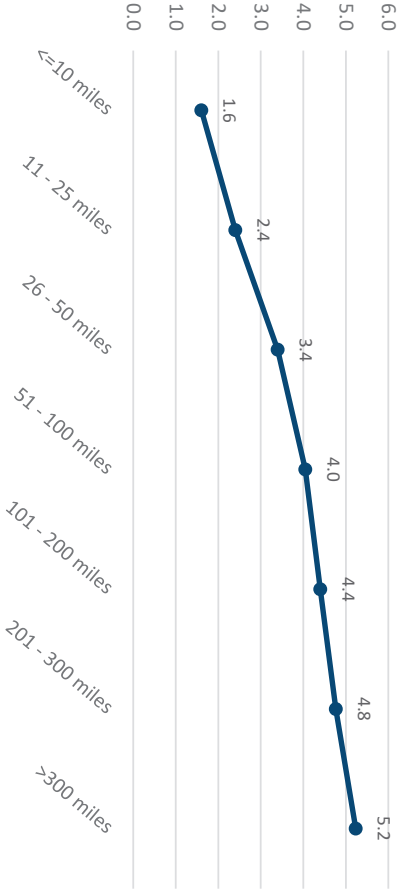
Figure GP-01: Distances (Miles) for Intrastate and Interstate Recovered Crime Guns, 2017 – 2021



TTC by Distances from FFL to Recovery Location

For purposes of this section, a U.S. “source state” is the state where the last known purchaser acquired the crime gun from an FFL. As the distance increases between source and recovery locations of traced crime guns, the median TTC also increases. As reflected in Figure GP-02, median TTC increased by 225% from 1.6 years when traced crime guns were recovered within 10 miles from the FFL, it was acquired from to 5.2 years when traced crime guns are recovered 300 miles or more from the FFL it was acquired from.

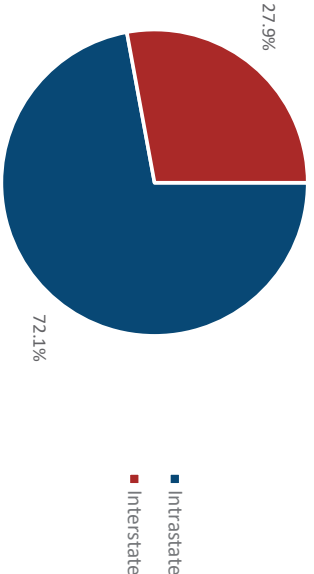
Figure GP-02: Median TTC in Years by Selected Distances Between FFL and Law Enforcement Recovery Location, 2017 - 2021



Source Location and Recovery Location

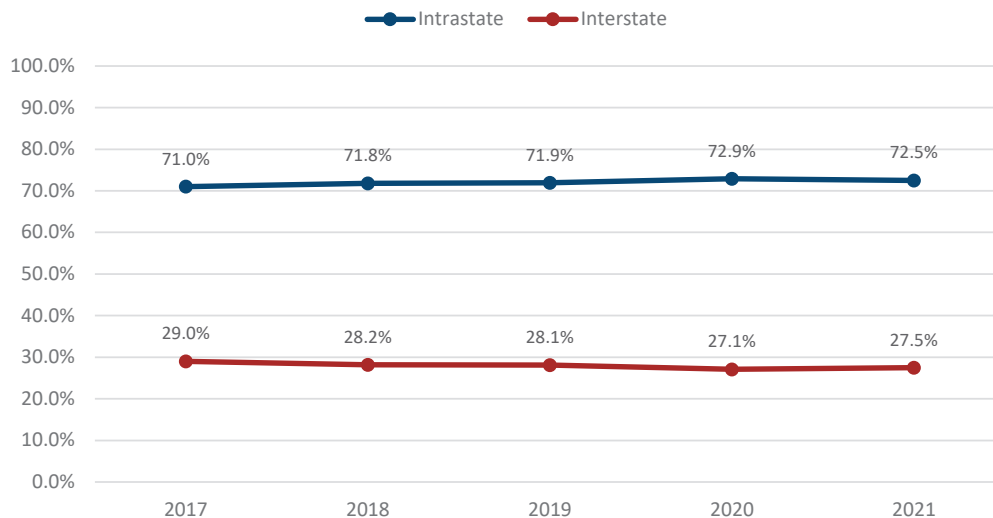
The location of the FFL (source) that transferred the firearm to the final known purchaser and the state of the recovery location of crime guns was determined in 1,480,675 traces (>99% of 1,482,861 crime guns traced to a purchaser). Between 2017 and 2021, 72% of the traced crime guns were recovered in the same state where they were sourced from (1,067,401) and 28% of the traced crime guns were recovered in a different state (413,274) (Figure GP-03).

Figure GP-03: Intrastate vs Interstate Recovery Location as Compared to FFL Location, 2017 - 2021



As reflected in Figure GP-04, the percentages of intrastate recoveries and interstate recoveries were very stable between 2017 and 2021.

Figure GP-04: Intrastate vs. Interstate Recovery Location, 2017 – 2021



U.S. states varied in the percentage of crime guns recovered that were purchased from interstate and intrastate sources of firearms (Table GP-03a). New Jersey had the highest percentage of recovered crime guns acquired at FFLs in other states (82%) followed by New York, Massachusetts, Hawaii, and Maryland. Texas had the highest percentage of recovered crime guns acquired at FFLs in the same state (86%) followed by Wisconsin, Ohio, Virginia, and Indiana.

Table GP-03a: U.S. States with Highest Percentages of Interstate and Intrastate Sourced Crime Guns Recovered and Traced, 2017 – 2021

| Highest Percentage Interstate | | Highest Percentage Intrastate | |
|-------------------------------|---------|-------------------------------|---------|
| State | Percent | State | Percent |
| New Jersey | 81.8% | Texas | 85.5% |
| New York | 79.7% | Wisconsin | 84.3% |
| Massachusetts | 67.1% | Ohio | 83.4% |
| Hawaii | 54.1% | Virginia | 83.2% |
| Maryland | 53.4% | Indiana | 82.9% |

See Table GP-03 in Appendix GP- Geographic Patterns for a complete list of the percentages of interstate and intrastate sources of recovered crime guns for the 50 U.S. states and territories during the study period.

Selected U.S. cities also varied in the percentage of crime guns recovered that were acquired from interstate and intrastate sources of firearms (Table GP-04a). New York had the highest percentage of recovered crime guns acquired at FFLs in other states (93%) followed by Baltimore, Chicago, Los Angeles, and San Jose. Richmond had the highest percentage of recovered crime guns acquired at FFLs in the same state (90%) followed by San Antonio, Cleveland, Houston, and Indianapolis.

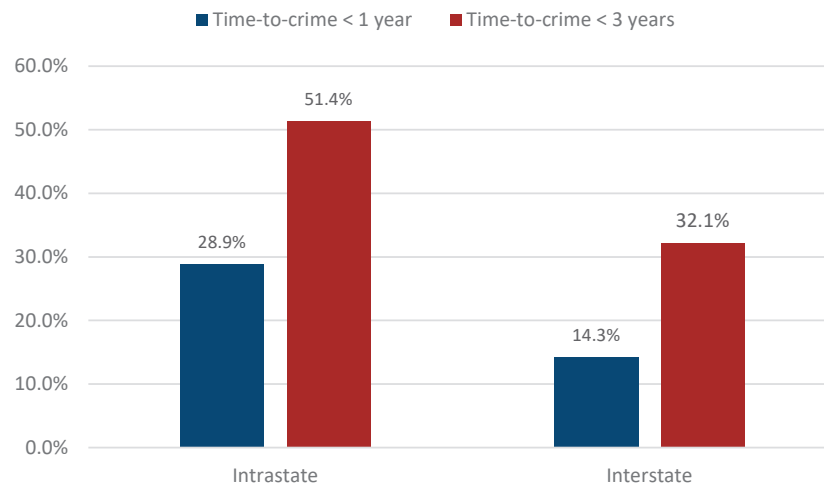
Table GP-04a: Selected U.S. Cities with Highest Percentages of Interstate and Intrastate Sourced Crime Guns Recovered and Traced, 2017 – 2021

| Highest Percentage Interstate | | Highest Percentage Intrastate | |
|-------------------------------|---------|-------------------------------|---------|
| City | Percent | City | Percent |
| New York, NY | 92.7% | Richmond, VA | 90.1% |
| Baltimore, MD | 60.9% | San Antonio, TX | 88.8% |
| Chicago, IL | 56.2% | Cleveland, OH | 88.8% |
| Los Angeles, CA | 51.1% | Houston, TX | 87.5% |
| San Jose, CA | 45.5% | Indianapolis, IN | 87.5% |

See Table GP-04 in Appendix GP – Geographic Patterns for a complete list of percentages of interstate and intrastate sources of recovered crime guns for selected U.S. cities from 2017 through 2021.

TTC by Source and Recovery Locations

The median TTC for intrastate recoveries (879 days or 2.4 years) was notably shorter than the TTC for interstate recoveries (1,801 days or 4.9 years) between 2017 and 2021. As reflected in Figure GP-05, 29% of the traced crime guns recovered intrastate had a TTC of one year or less, while only 14% of traced crime guns recovered interstate had a TTC of one year or less. Similarly, 51% of the traced crime guns recovered intrastate were recovered within three years of purchase and only 32% of traced crime guns recovered interstate were recovered within three years of purchase.

Figure GP-05: Intrastate versus Interstate TTC, 2017 – 2021

Summary of Geographic Patterns

More than half of traced crime guns were recovered less than 25 miles away from the FFLs where those crime guns were acquired. However, most crime gun purchasers and possessors lived close to the FFL where the crime gun was acquired. More than 60% of traced and recovered crime guns were purchased by individuals who lived within 10 miles of the FFL where the transaction occurred. Nearly half of crime gun possessors lived within 10 miles of the person who purchased the crime gun in part due to a third of these recovered crime guns being used in crimes by the same person that acquired them.

Some 72% of traced crime guns were recovered in the same state in which they were acquired from an FFL, while the remaining 28% of crime guns were recovered in a different state than where these guns were acquired at an FFL. The median distance between crime gun recovery location and the FFL where the crime guns were acquired was 11 miles for those that were recovered in the same state where they were acquired. In contrast, median distance between crime gun recovery location and the FFL where the crime gun was purchased was 463 miles for crime guns recovered in a different state than where they were acquired. Crime guns with intrastate recovery locations had shorter TTC when compared to crime guns with interstate recovery locations. Traced crime guns that traveled longer distances tended to have longer TTC. For instance, the median TTC was only 1.6 years for traced crime guns recovered within 10 miles of the FFL from which they were acquired, but was 5.2 years for traced crime guns recovered 300 miles or more from the FFL from which they were acquired.

Domestic Tracing Conclusion

The results presented in this section are consistent with the findings of prior ATF reports and academic research on the illicit acquisition of firearms by prohibited persons.¹⁷ Traced crime guns typically originate from the legal supply chain of manufacture (or import), distribution, and retail sale. Crime guns may change hands a number of times after that first retail sale, and some of those transactions may be a theft or violate one or more regulations on firearm commerce.¹⁸ Individuals who are prohibited due to their criminal records or other conditions are unlikely to purchase directly from a licensed federal firearms dealer.¹⁹ Instead, prohibited persons determined to get crime guns acquire them through underground crime gun markets that involve unregulated transactions with acquaintances and illicit “street” sources.²⁰ Many ATF crime gun trafficking investigations involve close-to-retail diversions of crime guns from legal firearms commerce including straw purchasing from FFLs, trafficking by FFLs, and illegal transfers by unlicensed sellers.²¹ A variety of illegally transferred crime guns sources sustain underground crime gun markets that supply prohibited persons and other dangerous individuals.²²

The analysis of state and city crime gun trace data presented here suggests the pathways through which criminals acquire crime guns can vary significantly across jurisdictions depending on the stringency of state firearm laws and the prevalence of firearm ownership.²³ Underground crime gun markets evolve over time as demonstrated by the surge in recovered PMFs and the increasing percentage of recovered short TTC traced crime guns between 2017 and 2021.²⁴ Ongoing comprehensive data collection and analysis of recovered traced crime guns are necessary to understand both persistent and emergent flows of crime guns into local underground crime gun markets. Strong collaborations among federal, state, and local law enforcement agencies and timely intelligence on local diversion patterns and interregional movements of traced crime guns are critical to the development of strategies to shutdown illegal supply lines of crime guns to criminals.

APPENDIX OFT – OVERVIEW OF FIREARM TRACING

Table OFT-01: Crime Guns Recovered and Traced for U.S. States and Territories, 2017-2021

| Recovery State or Territory | Total | % Total |
|--------------------------------|---------|---------|
| AE ²⁵ | 2 | 0.0% |
| AK | 5,412 | 0.3% |
| AL | 37,855 | 2.0% |
| AM ²⁶ | 3 | 0.0% |
| AR | 13,458 | 0.7% |
| AZ | 49,292 | 2.6% |
| CA | 231,784 | 12.1% |
| CO | 31,145 | 1.6% |
| CT | 7,416 | 0.4% |
| DC | 11,045 | 0.6% |
| DE | 6,626 | 0.3% |
| FL | 134,601 | 7.0% |
| GA | 88,069 | 4.6% |
| GU ²⁷ | 168 | 0.0% |
| HI | 1,194 | 0.1% |
| IA | 12,688 | 0.7% |
| ID | 6,872 | 0.4% |
| IL | 90,014 | 4.7% |
| IN | 45,535 | 2.4% |
| KS | 18,024 | 0.9% |
| KY | 32,844 | 1.7% |
| LA | 56,601 | 2.9% |
| MA | 13,733 | 0.7% |
| MD | 48,600 | 2.5% |
| ME | 2,728 | 0.1% |
| MI | 43,599 | 2.3% |
| MN | 20,728 | 1.1% |
| MO | 44,793 | 2.3% |
| MP ²⁸ | 7 | 0.0% |
| MS | 22,522 | 1.2% |
| MT | 5,063 | 0.3% |
| NC | 90,225 | 4.7% |
| ND | 3,554 | 0.2% |
| NE | 9,991 | 0.5% |
| NH | 2,629 | 0.1% |
| NJ | 21,453 | 1.1% |
| NM | 15,923 | 0.8% |
| NV | 30,160 | 1.6% |
| NY | 43,298 | 2.3% |
| OH | 79,035 | 4.1% |
| OK | 18,210 | 1.0% |
| OR | 26,046 | 1.4% |
| PA | 64,782 | 3.4% |
| PR | 4,796 | 0.3% |
| RI | 2,570 | 0.1% |
| SC | 42,532 | 2.2% |
| SD | 3,340 | 0.2% |
| TN | 64,598 | 3.4% |
| TX | 177,786 | 9.3% |
| UT | 13,257 | 0.7% |
| VA | 56,797 | 3.0% |
| VI | 745 | 0.0% |
| VT | 1,256 | 0.1% |
| WA | 27,715 | 1.4% |
| WI | 28,122 | 1.5% |

| | | |
|-----------------------|------------------|---------------|
| WV | 9,509 | 0.5% |
| WY | 1,665 | 0.1% |
| Unknown ²⁹ | 162 | 0.0% |
| Total | 1,922,577 | 100.0% |

Table OFT-02: Number of Crime Guns Recovered and Traced for Selected U.S. Cities, 2017-2021

| Recovery City | Total Traces | % Total |
|----------------------|---------------------|----------------|
| Mega Cities | 230,334 | 40.2% |
| Chicago, IL | 50,312 | 8.8% |
| Dallas, TX | 19,756 | 3.4% |
| Houston, TX | 45,812 | 8.0% |
| Los Angeles, CA | 30,798 | 5.4% |
| New York, NY | 19,013 | 3.3% |
| Philadelphia, PA | 23,460 | 4.1% |
| Phoenix, AZ | 15,799 | 2.8% |
| San Antonio, CA | 17,392 | 3.0% |
| San Diego, CA | 5,702 | 1.0% |
| San Jose, CA | 2,290 | 0.4% |
| Large Cities | 180,598 | 31.5% |
| Baltimore, MD | 13,336 | 2.3% |
| Charlotte, NC | 14,357 | 2.5% |
| Columbus, OH | 14,651 | 2.6% |
| Detroit, MI | 26,065 | 4.5% |
| Indianapolis, IN | 20,242 | 3.5% |
| Jacksonville, FL | 13,619 | 2.4% |
| Las Vegas, NV | 23,389 | 4.1% |
| Louisville, KY | 15,331 | 2.7% |
| Memphis, TN | 24,796 | 4.3% |
| Milwaukee, WI | 14,812 | 2.6% |
| Medium Cities | 103,490 | 18.0% |
| Atlanta, GA | 15,333 | 2.7% |
| Cincinnati, OH | 9,982 | 1.7% |
| Cleveland, OH | 9,642 | 1.7% |
| Miami, FL | 8,760 | 1.5% |
| New Orleans, LA | 9,020 | 1.6% |
| Orlando, FL | 11,177 | 1.9% |
| Saint Louis, MO | 14,672 | 2.6% |
| Tampa, FL | 10,376 | 1.8% |
| Tulsa, OK | 7,707 | 1.3% |
| Wichita, KS | 6,821 | 1.2% |
| Small Cities | 59,211 | 10.3% |
| Baton Rouge, LA | 8,544 | 1.5% |
| Chattanooga, TN | 5,775 | 1.0% |
| Columbia, SC | 6,279 | 1.1% |
| Dayton, OH | 5,101 | 0.9% |
| Huntsville, AL | 5,773 | 1.0% |
| Mobile, AL | 5,465 | 1.0% |
| Richmond, VA | 7,056 | 1.2% |
| San Bernardino, CA | 4,724 | 0.8% |
| Shreveport, LA | 5,312 | 0.9% |
| Winston Salem, NC | 5,182 | 0.9% |
| Total | 573,633 | 100.0% |

Table OFT-03: Percent Recovered Crime Guns Traced to Purchaser for U.S. States and Territories, 2017-2021

| Recovery State or Territory | Traced to Purchaser | Total Trace Requests | % Traced to Purchaser |
|--------------------------------|------------------------|-------------------------|--------------------------|
| AE | 2 | 2 | 100.0% |
| AK | 4,305 | 5,412 | 79.5% |
| AL | 31,461 | 37,855 | 83.1% |
| AM | 1 | 3 | 33.3% |
| AR | 11,006 | 13,458 | 81.8% |
| AZ | 39,771 | 49,292 | 80.7% |
| CA | 143,466 | 231,784 | 61.9% |
| CO | 24,908 | 31,145 | 80.0% |
| CT | 4,930 | 7,416 | 66.5% |
| DC | 7,700 | 11,045 | 69.7% |
| DE | 5,212 | 6,626 | 78.7% |
| FL | 110,072 | 134,601 | 81.8% |
| GA | 74,065 | 88,069 | 84.1% |
| GU | 88 | 168 | 52.4% |
| HI | 718 | 1,194 | 60.1% |
| IA | 9,922 | 12,688 | 78.2% |
| ID | 5,297 | 6,872 | 77.1% |
| IL | 67,648 | 90,014 | 75.2% |
| IN | 37,168 | 45,535 | 81.6% |
| KS | 14,522 | 18,024 | 80.6% |
| KY | 25,064 | 32,844 | 76.3% |
| LA | 46,426 | 56,601 | 82.0% |
| MA | 9,322 | 13,733 | 67.9% |
| MD | 32,903 | 48,600 | 67.7% |
| ME | 2,023 | 2,728 | 74.2% |
| MI | 35,443 | 43,599 | 81.3% |
| MN | 16,258 | 20,728 | 78.4% |
| MO | 36,796 | 44,793 | 82.1% |
| MP | 3 | 7 | 42.9% |
| MS | 18,668 | 22,522 | 82.9% |
| MT | 3,698 | 5,063 | 73.0% |
| NC | 72,559 | 90,225 | 80.4% |
| ND | 2,842 | 3,554 | 80.0% |
| NE | 7,672 | 9,991 | 76.8% |
| NH | 2,003 | 2,629 | 76.2% |
| NJ | 14,080 | 21,453 | 65.6% |
| NM | 12,480 | 15,923 | 78.4% |
| NV | 24,170 | 30,160 | 80.1% |
| NY | 28,645 | 43,298 | 66.2% |
| OH | 66,021 | 79,035 | 83.5% |
| OK | 13,638 | 18,210 | 74.9% |
| OR | 19,501 | 26,046 | 74.9% |
| PA | 48,087 | 64,782 | 74.2% |
| PR | 3,485 | 4,796 | 72.7% |
| RI | 1,875 | 2,570 | 73.0% |
| SC | 35,843 | 42,532 | 84.3% |
| SD | 2,485 | 3,340 | 74.4% |
| TN | 49,988 | 64,598 | 77.4% |
| TX | 147,443 | 177,786 | 82.9% |
| UT | 10,433 | 13,257 | 78.7% |
| VA | 46,118 | 56,797 | 81.2% |
| VI | 466 | 745 | 62.6% |
| VT | 867 | 1,256 | 69.0% |
| WA | 20,885 | 27,715 | 75.4% |
| WI | 23,842 | 28,122 | 84.8% |
| WV | 7,264 | 9,509 | 76.4% |
| WY | 1,233 | 1,665 | 74.1% |
| Unknown | 70 | 162 | 43.2% |

Table OFT-04: Percent Recovered Crime Guns Traced to Purchaser for Selected U.S. Cities, 2017-2021

| Recovery City | Traced to Purchaser | Total Traces | % Traced to Purchaser |
|----------------------|----------------------------|---------------------|------------------------------|
| Mega Cities | 175,425 | 230,334 | 76.2% |
| Chicago, IL | 37,680 | 50,312 | 74.9% |
| Dallas, TX | 16,722 | 19,756 | 84.6% |
| Houston, TX | 38,839 | 45,812 | 84.8% |
| Los Angeles, CA | 19,649 | 30,798 | 63.8% |
| New York, NY | 12,910 | 19,013 | 67.9% |
| Philadelphia, PA | 16,626 | 23,460 | 70.9% |
| Phoenix, AZ | 13,294 | 15,799 | 84.1% |
| San Antonio, TX | 14,868 | 17,392 | 85.5% |
| San Diego, CA | 3,301 | 5,702 | 57.9% |
| San Jose, CA | 1,536 | 2,290 | 67.1% |
| Large Cities | 145,384 | 180,598 | 80.5% |
| Baltimore, MD | 8,057 | 13,336 | 60.4% |
| Charlotte, NC | 11,882 | 14,357 | 82.8% |
| Columbus, OH | 12,147 | 14,651 | 82.9% |
| Detroit, MI | 21,881 | 26,065 | 83.9% |
| Indianapolis, IN | 16,589 | 20,242 | 82.0% |
| Jacksonville, FL | 11,735 | 13,619 | 86.2% |
| Las Vegas, NV | 18,867 | 23,389 | 80.7% |
| Louisville, KY | 11,785 | 15,331 | 76.9% |
| Memphis, TN | 19,369 | 24,796 | 78.1% |
| Milwaukee, WI | 13,072 | 14,812 | 88.3% |
| Medium Cities | 86,777 | 103,490 | 83.9% |
| Atlanta, GA | 13,035 | 15,333 | 85.0% |
| Cincinnati, OH | 8,484 | 9,982 | 85.0% |
| Cleveland, OH | 7,851 | 9,642 | 81.4% |
| Miami, FL | 7,133 | 8,760 | 81.4% |
| New Orleans, LA | 7,497 | 9,020 | 83.1% |
| Orlando, FL | 9,789 | 11,177 | 87.6% |
| Saint Louis, MO | 12,289 | 14,672 | 83.8% |
| Tampa, FL | 8,595 | 10,376 | 82.8% |
| Tulsa, OK | 6,570 | 7,707 | 85.2% |
| Wichita, KS | 5,534 | 6,821 | 81.1% |
| Small Cities | 48,658 | 59,211 | 82.2% |
| Baton Rouge, LA | 7,339 | 8,544 | 85.9% |
| Chattanooga, TN | 4,434 | 5,775 | 76.8% |
| Columbia, SC | 5,489 | 6,279 | 87.4% |
| Dayton, OH | 4,089 | 5,101 | 80.2% |
| Huntsville, AL | 4,929 | 5,773 | 85.4% |
| Mobile, AL | 4,757 | 5,465 | 87.0% |
| Richmond, VA | 5,764 | 7,056 | 81.7% |
| San Bernardino, CA | 3,299 | 4,724 | 69.8% |
| Shreveport, LA | 4,550 | 5,312 | 85.7% |
| Winston Salem, NC | 4,008 | 5,182 | 77.3% |

APPENDIX CCG – CHARACTERISTICS OF CRIME GUNS

Table CCG-03: Percentage of Major Firearm Types Recovered and Traced for U.S. States and Territories, 2017-2021

| Recovery State / Territory | # Pistols | % Pistols | # Revolvers | % Revolvers | # Rifles | % Rifles | # Shotguns | % Shotguns | # Other | % Other | Total Traces |
|----------------------------------|-----------|--------------|----------------|----------------|----------|-------------|---------------|---------------|---------|------------|-----------------|
| AE | 2 | 100.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 2 |
| AK | 3,147 | 58.1% | 624 | 11.5% | 1,069 | 19.8% | 484 | 8.9% | 88 | 1.6% | 5,412 |
| AL | 26,997 | 71.3% | 4,239 | 11.2% | 3,895 | 10.3% | 2,216 | 5.9% | 508 | 1.3% | 37,855 |
| AM | 0 | 0.0% | 1 | 33.3% | 1 | 33.3% | 1 | 33.3% | 0 | 0.0% | 3 |
| AR | 9,414 | 70.0% | 1,390 | 10.3% | 1,658 | 12.3% | 806 | 6.0% | 190 | 1.4% | 13,458 |
| AZ | 33,462 | 67.9% | 4,015 | 8.1% | 7,212 | 14.6% | 3,055 | 6.2% | 1,548 | 3.1% | 49,292 |
| CA | 135,640 | 58.5% | 30,732 | 13.3% | 39,897 | 17.2% | 20,251 | 8.7% | 5,264 | 2.3% | 231,784 |
| CO | 20,392 | 65.5% | 3,454 | 11.1% | 4,467 | 14.3% | 2,415 | 7.8% | 417 | 1.4% | 31,145 |
| CT | 4,694 | 63.3% | 1,113 | 15.0% | 893 | 12.0% | 550 | 7.4% | 166 | 2.2% | 7,416 |
| DC | 8,918 | 80.7% | 1,025 | 9.3% | 519 | 4.7% | 319 | 2.9% | 264 | 2.4% | 11,045 |
| DE | 4,442 | 67.0% | 732 | 11.0% | 716 | 10.8% | 657 | 9.9% | 79 | 1.2% | 6,626 |
| FL | 95,903 | 71.2% | 15,225 | 11.3% | 13,676 | 10.2% | 7,284 | 5.4% | 2,513 | 1.9% | 134,601 |
| GA | 66,162 | 75.1% | 8,712 | 9.9% | 8,037 | 9.1% | 4,244 | 4.8% | 914 | 1.1% | 88,069 |
| GU | 70 | 41.7% | 24 | 14.3% | 44 | 26.2% | 23 | 13.7% | 7 | 4.2% | 168 |
| HI | 468 | 39.2% | 129 | 10.8% | 378 | 31.7% | 134 | 11.2% | 85 | 7.1% | 1,194 |
| IA | 7,752 | 61.1% | 1,277 | 10.1% | 2,017 | 15.9% | 1,496 | 11.8% | 146 | 1.2% | 12,688 |
| ID | 3,878 | 56.4% | 894 | 13.0% | 1,341 | 19.5% | 636 | 9.3% | 123 | 1.8% | 6,872 |
| IL | 67,405 | 74.9% | 10,281 | 11.4% | 6,251 | 6.9% | 4,396 | 4.9% | 1,681 | 1.9% | 90,014 |
| IN | 32,908 | 72.3% | 4,593 | 10.1% | 4,436 | 9.7% | 2,871 | 6.3% | 727 | 1.6% | 45,535 |
| KS | 12,728 | 70.6% | 1,660 | 9.2% | 2,105 | 11.7% | 1,227 | 6.8% | 304 | 1.7% | 18,024 |
| KY | 21,918 | 66.7% | 3,667 | 11.2% | 4,209 | 12.8% | 2,173 | 6.6% | 877 | 2.7% | 32,844 |
| LA | 39,817 | 70.3% | 6,134 | 10.8% | 6,577 | 11.6% | 3,542 | 6.3% | 531 | 0.9% | 56,601 |
| MA | 9,515 | 69.3% | 1,807 | 13.2% | 1,412 | 10.3% | 822 | 6.0% | 177 | 1.3% | 13,733 |
| MD | 24,984 | 51.4% | 6,058 | 12.5% | 9,725 | 20.0% | 6,876 | 14.1% | 957 | 2.0% | 48,600 |
| ME | 1,415 | 51.9% | 278 | 10.2% | 630 | 23.1% | 346 | 12.7% | 59 | 2.2% | 2,728 |
| MI | 32,022 | 73.4% | 3,822 | 8.8% | 4,519 | 10.4% | 2,467 | 5.7% | 769 | 1.8% | 43,599 |
| MN | 13,177 | 63.6% | 1,941 | 9.4% | 3,111 | 15.0% | 2,262 | 10.9% | 237 | 1.1% | 20,728 |
| MO | 33,979 | 75.9% | 3,630 | 8.1% | 4,122 | 9.2% | 2,103 | 4.7% | 959 | 2.1% | 44,793 |
| MP | 0 | 0.0% | 1 | 14.3% | 5 | 71.4% | 1 | 14.3% | 0 | 0.0% | 7 |
| MS | 15,664 | 69.5% | 2,429 | 10.8% | 2,770 | 12.3% | 1,421 | 6.3% | 238 | 1.1% | 22,522 |
| MT | 2,185 | 43.2% | 551 | 10.9% | 1,658 | 32.7% | 544 | 10.7% | 125 | 2.5% | 5,063 |
| NC | 59,489 | 65.9% | 10,309 | 11.4% | 11,718 | 13.0% | 7,598 | 8.4% | 1,111 | 1.2% | 90,225 |
| ND | 1,889 | 53.2% | 371 | 10.4% | 795 | 22.4% | 450 | 12.7% | 49 | 1.4% | 3,554 |
| NE | 5,699 | 57.0% | 1,035 | 10.4% | 1,814 | 18.2% | 1,235 | 12.4% | 208 | 2.1% | 9,991 |
| NH | 1,501 | 57.1% | 255 | 9.7% | 477 | 18.1% | 276 | 10.5% | 120 | 4.6% | 2,629 |
| NJ | 13,873 | 64.7% | 3,766 | 17.6% | 2,169 | 10.1% | 1,409 | 6.6% | 236 | 1.1% | 21,453 |
| NM | 10,152 | 63.8% | 1,729 | 10.9% | 2,398 | 15.1% | 1,245 | 7.8% | 399 | 2.5% | 15,923 |
| NV | 21,477 | 71.2% | 3,043 | 10.1% | 3,138 | 10.4% | 2,070 | 6.9% | 432 | 1.4% | 30,160 |
| NY | 26,965 | 62.3% | 7,447 | 17.2% | 4,896 | 11.3% | 3,181 | 7.3% | 809 | 1.9% | 43,298 |
| OH | 60,298 | 76.3% | 7,753 | 9.8% | 6,236 | 7.9% | 3,838 | 4.9% | 910 | 1.1% | 79,035 |
| OK | 11,642 | 63.9% | 1,409 | 7.7% | 2,340 | 12.9% | 1,160 | 6.4% | 1,659 | 9.1% | 18,210 |
| OR | 13,938 | 53.5% | 3,294 | 12.6% | 5,919 | 22.7% | 2,524 | 9.7% | 371 | 1.4% | 26,046 |
| PA | 42,614 | 65.8% | 8,188 | 12.6% | 8,254 | 12.7% | 4,725 | 7.3% | 1,001 | 1.6% | 64,782 |
| PR | 3,875 | 80.8% | 276 | 5.8% | 497 | 10.4% | 48 | 1.0% | 100 | 2.1% | 4,796 |
| RI | 1,709 | 66.5% | 343 | 13.3% | 303 | 11.8% | 180 | 7.0% | 35 | 1.4% | 2,570 |
| SC | 30,879 | 72.6% | 4,759 | 11.2% | 3,935 | 9.3% | 2,572 | 6.1% | 387 | 0.9% | 42,532 |
| SD | 1,716 | 51.4% | 331 | 9.9% | 857 | 25.7% | 376 | 11.3% | 60 | 1.8% | 3,340 |
| TN | 46,563 | 72.1% | 7,182 | 11.1% | 6,236 | 9.7% | 3,480 | 5.4% | 1,137 | 1.8% | 64,598 |
| TX | 129,384 | 72.8% | 15,709 | 8.8% | 19,506 | 11.0% | 10,594 | 6.0% | 2,593 | 1.5% | 177,786 |
| UT | 8,414 | 63.5% | 1,205 | 9.1% | 2,191 | 16.5% | 1,092 | 8.2% | 355 | 2.7% | 13,257 |
| VA | 40,886 | 72.0% | 5,620 | 9.9% | 6,131 | 10.8% | 3,577 | 6.3% | 583 | 1.0% | 56,797 |
| VI | 609 | 81.7% | 65 | 8.7% | 43 | 5.8% | 16 | 2.1% | 12 | 1.6% | 745 |
| VT | 562 | 44.7% | 132 | 10.5% | 346 | 27.5% | 181 | 14.4% | 35 | 2.8% | 1,256 |
| WA | 16,319 | 58.9% | 3,326 | 12.0% | 4,874 | 17.6% | 2,694 | 9.7% | 502 | 1.8% | 27,715 |
| WI | 21,098 | 75.0% | 2,229 | 7.9% | 2,867 | 10.2% | 1,673 | 5.9% | 255 | 0.9% | 28,122 |
| WV | 5,260 | 55.3% | 1,165 | 12.3% | 1,798 | 18.9% | 1,027 | 10.8% | 259 | 2.7% | 9,509 |
| WY | 817 | 49.1% | 198 | 11.9% | 426 | 25.6% | 170 | 10.2% | 54 | 3.2% | 1,665 |
| Unknown | 118 | 72.8% | 13 | 8.0% | 18 | 11.1% | 11 | 6.8% | 2 | 1.2% | 162 |
| Total | 1,306,804 | 68.0% | 211,590 | 11.0% | 237,532 | 12.4% | 133,024 | 6.9% | 33,627 | 1.7% | 1,922,577 |

Table CCG-04: Percentage of Major Firearm Types Recovered and Traced for Selected U.S. Cities, 2017-2021

| Recovery City | # Pistols | % Pistols | # Revolvers | % Revolvers | # Rifles | % Rifles | # Shotguns | % Shotguns | # Other | % Other | Total Traces |
|----------------------|----------------|--------------|----------------|----------------|---------------|-------------|---------------|---------------|--------------|-------------|-----------------|
| Mega Cities | 174,731 | 75.9% | 25,165 | 10.9% | 16,853 | 7.3% | 10,098 | 4.4% | 3,487 | 1.5% | 230,334 |
| Chicago, IL | 39,824 | 79.2% | 5,523 | 11.0% | 2,243 | 4.5% | 1,704 | 3.4% | 1,018 | 2.0% | 50,312 |
| Dallas, TX | 15,394 | 77.9% | 1,740 | 8.8% | 1,497 | 7.6% | 940 | 4.8% | 185 | 0.9% | 19,756 |
| Houston, TX | 37,067 | 80.9% | 3,502 | 7.6% | 3,099 | 6.8% | 1,852 | 4.0% | 292 | 0.6% | 45,812 |
| Los Angeles, CA | 21,248 | 69.0% | 4,677 | 15.2% | 2,887 | 9.4% | 1,582 | 5.1% | 404 | 1.3% | 30,798 |
| New York, NY | 13,387 | 70.4% | 3,548 | 18.7% | 1,060 | 5.6% | 669 | 3.5% | 349 | 1.8% | 19,013 |
| Philadelphia, PA | 18,060 | 77.0% | 2,893 | 12.3% | 1,273 | 5.4% | 913 | 3.9% | 321 | 1.4% | 23,460 |
| Phoenix, AZ | 12,044 | 76.2% | 730 | 4.6% | 1,778 | 11.3% | 757 | 4.8% | 490 | 3.1% | 15,799 |
| San Antonio, TX | 12,828 | 73.8% | 1,451 | 8.3% | 1,876 | 10.8% | 1,071 | 6.2% | 166 | 1.0% | 17,392 |
| San Diego, CA | 3,417 | 59.9% | 813 | 14.3% | 873 | 15.3% | 445 | 7.8% | 154 | 2.7% | 5,702 |
| San Jose, CA | 1,462 | 63.8% | 288 | 12.6% | 267 | 11.7% | 165 | 7.2% | 108 | 4.7% | 2,290 |
| Large Cities | 135,489 | 75.0% | 18,547 | 10.3% | 15,222 | 8.4% | 9,465 | 5.2% | 1,875 | 1.0% | 180,598 |
| Baltimore, MD | 7,943 | 59.6% | 2,353 | 17.6% | 1,535 | 11.5% | 1,311 | 9.8% | 194 | 1.5% | 13,336 |
| Charlotte, NC | 10,794 | 75.2% | 1,482 | 10.3% | 1,208 | 8.4% | 754 | 5.3% | 119 | 0.8% | 14,357 |
| Columbus, OH | 11,285 | 77.0% | 1,545 | 10.5% | 972 | 6.6% | 726 | 5.0% | 123 | 0.8% | 14,651 |
| Detroit, MI | 20,535 | 78.8% | 2,181 | 8.4% | 2,033 | 7.8% | 1,128 | 4.3% | 188 | 0.7% | 26,065 |
| Indianapolis, IN | 15,007 | 74.1% | 2,070 | 10.2% | 1,732 | 8.6% | 1,234 | 6.1% | 199 | 1.0% | 20,242 |
| Jacksonville, FL | 10,287 | 75.5% | 1,545 | 11.3% | 1,097 | 8.1% | 564 | 4.1% | 126 | 0.9% | 13,619 |
| Las Vegas, NV | 17,083 | 73.0% | 2,168 | 9.3% | 2,243 | 9.6% | 1,614 | 6.9% | 281 | 1.2% | 23,389 |
| Louisville, KY | 11,236 | 73.3% | 1,703 | 11.1% | 1,354 | 8.8% | 651 | 4.2% | 387 | 2.5% | 15,331 |
| Memphis, TN | 19,161 | 77.3% | 2,489 | 10.0% | 2,022 | 8.2% | 952 | 3.8% | 172 | 0.7% | 24,796 |
| Milwaukee, WI | 12,158 | 82.1% | 1,011 | 6.8% | 1,026 | 6.9% | 531 | 3.6% | 86 | 0.6% | 14,812 |
| Medium Cities | 83,079 | 80.3% | 8,827 | 8.5% | 7,263 | 7.0% | 3,506 | 3.4% | 815 | 0.8% | 103,490 |
| Atlanta, GA | 13,087 | 85.4% | 1,137 | 7.4% | 698 | 4.6% | 287 | 1.9% | 124 | 0.8% | 15,333 |
| Cincinnati, OH | 8,068 | 80.8% | 931 | 9.3% | 646 | 6.5% | 268 | 2.7% | 69 | 0.7% | 9,982 |
| Cleveland, OH | 8,104 | 84.0% | 809 | 8.4% | 441 | 4.6% | 231 | 2.4% | 57 | 0.6% | 9,642 |
| Miami, FL | 7,070 | 80.7% | 614 | 7.0% | 756 | 8.6% | 256 | 2.9% | 64 | 0.7% | 8,760 |
| New Orleans, LA | 7,485 | 83.0% | 780 | 8.6% | 506 | 5.6% | 212 | 2.4% | 37 | 0.4% | 9,020 |
| Orlando, FL | 8,878 | 79.4% | 996 | 8.9% | 822 | 7.4% | 385 | 3.4% | 96 | 0.9% | 11,177 |
| Saint Louis, MO | 11,991 | 81.7% | 1,137 | 7.7% | 965 | 6.6% | 457 | 3.1% | 122 | 0.8% | 14,672 |
| Tampa, FL | 7,512 | 72.4% | 1,190 | 11.5% | 976 | 9.4% | 619 | 6.0% | 79 | 0.8% | 10,376 |
| Tulsa, OK | 5,951 | 77.2% | 525 | 6.8% | 806 | 10.5% | 351 | 4.6% | 74 | 1.0% | 7,707 |
| Wichita, KS | 4,933 | 72.3% | 708 | 10.4% | 647 | 9.5% | 440 | 6.5% | 93 | 1.4% | 6,821 |
| Small Cities | 44,506 | 75.2% | 6,226 | 10.5% | 5,033 | 8.5% | 2,748 | 4.6% | 698 | 1.2% | 59,211 |
| Baton Rouge, LA | 6,522 | 76.3% | 900 | 10.5% | 742 | 8.7% | 315 | 3.7% | 65 | 0.8% | 8,544 |
| Chattanooga, TN | 4,312 | 74.7% | 596 | 10.3% | 415 | 7.2% | 239 | 4.1% | 213 | 3.7% | 5,775 |
| Columbia, SC | 5,128 | 81.7% | 519 | 8.3% | 368 | 5.9% | 228 | 3.6% | 36 | 0.6% | 6,279 |
| Dayton, OH | 3,922 | 76.9% | 523 | 10.3% | 358 | 7.0% | 259 | 5.1% | 39 | 0.8% | 5,101 |
| Huntsville, AL | 4,488 | 77.7% | 618 | 10.7% | 397 | 6.9% | 219 | 3.8% | 51 | 0.9% | 5,773 |
| Mobile, AL | 4,161 | 76.1% | 610 | 11.2% | 355 | 6.5% | 221 | 4.0% | 118 | 2.2% | 5,465 |
| Richmond, VA | 5,639 | 79.9% | 657 | 9.3% | 472 | 6.7% | 244 | 3.5% | 44 | 0.6% | 7,056 |
| San Bernardino, CA | 3,027 | 64.1% | 568 | 12.0% | 687 | 14.5% | 402 | 8.5% | 40 | 0.8% | 4,724 |
| Shreveport, LA | 3,824 | 72.0% | 561 | 10.6% | 657 | 12.4% | 228 | 4.3% | 42 | 0.8% | 5,312 |
| Winston Salem, NC | 3,483 | 67.2% | 674 | 13.0% | 582 | 11.2% | 393 | 7.6% | 50 | 1.0% | 5,182 |

APPENDIX IFT – INDICATORS OF FIREARMS TRAFFICKING

Table IFT-01: Median TTC for U.S. States and Territories, 2017-2021

| Recovery State / Territory | Total Traced to Purchaser with TTC Calculated | Median Time-To- Crime (Years) |
|----------------------------------|---|----------------------------------|
| AE | 2 | 8.4 |
| AK | 4,288 | 4.3 |
| AL | 31,396 | 2.3 |
| AM | 1 | 19.4 |
| AR | 10,971 | 2.6 |
| AZ | 39,665 | 2.1 |
| CA | 143,025 | 4.6 |
| CO | 24,863 | 3.0 |
| CT | 4,915 | 5.9 |
| DC | 7,673 | 3.6 |
| DE | 5,199 | 2.6 |
| FL | 109,787 | 3.3 |
| GA | 73,884 | 2.3 |
| GU | 86 | 10.5 |
| HI | 712 | 7.5 |
| IA | 9,892 | 3.2 |
| ID | 5,283 | 3.8 |
| IL | 67,499 | 3.0 |
| IN | 37,081 | 2.5 |
| KS | 14,476 | 3.0 |
| KY | 24,993 | 2.6 |
| LA | 46,319 | 2.9 |
| MA | 9,274 | 4.4 |
| MD | 32,789 | 5.0 |
| ME | 2,018 | 3.5 |
| MI | 35,366 | 2.0 |
| MN | 16,191 | 3.4 |
| MO | 36,711 | 2.2 |
| MP | 3 | 31.7 |
| MS | 18,624 | 2.2 |
| MT | 3,683 | 4.2 |
| NC | 72,364 | 2.8 |
| ND | 2,835 | 3.5 |
| NE | 7,652 | 3.5 |
| NH | 1,996 | 3.2 |
| NJ | 14,030 | 5.3 |
| NM | 12,441 | 2.6 |
| NV | 24,109 | 2.4 |
| NY | 28,552 | 5.7 |
| OH | 65,872 | 2.5 |
| OK | 13,600 | 3.2 |
| OR | 19,443 | 4.0 |
| PA | 47,977 | 3.2 |
| PR | 3,470 | 4.6 |
| RI | 1,871 | 3.7 |
| SC | 35,761 | 2.3 |
| SD | 2,480 | 3.1 |
| TN | 49,896 | 2.7 |
| TX | 147,125 | 2.5 |
| UT | 10,411 | 3.7 |
| VA | 46,016 | 1.9 |
| VI | 464 | 4.6 |
| VT | 866 | 4.2 |
| WA | 20,801 | 4.3 |

| | | |
|---------|--------|-----|
| WI | 23,798 | 2.4 |
| WV | 7,247 | 3.4 |
| WY | 1,230 | 4.1 |
| Unknown | 3 | 6.3 |

Table IFT-02: Median TTC for Selected U.S. Cities, 2017-2021

| Recovery City | Traced to Purchaser with TTC Calculated | Median Time to Crime (Years) |
|----------------------|--|---|
| Mega Cities | 175,003 | 2.9 |
| Chicago, IL | 37,592 | 2.8 |
| Dallas, TX | 16,682 | 2.4 |
| Houston, TX | 38,764 | 2.3 |
| Los Angeles, CA | 19,593 | 4.2 |
| New York, NY | 12,865 | 6.3 |
| Philadelphia, PA | 16,588 | 2.3 |
| Phoenix, AZ | 13,260 | 1.8 |
| San Antonio, TX | 14,842 | 2.4 |
| San Diego, CA | 3,293 | 4.2 |
| San Jose, CA | 1,524 | 4.6 |
| Large Cities | 145,078 | 2.4 |
| Baltimore, MD | 8,041 | 5.3 |
| Charlotte, NC | 11,865 | 2.5 |
| Columbus, OH | 12,116 | 2.4 |
| Detroit, MI | 21,839 | 1.6 |
| Indianapolis, IN | 16,541 | 2.5 |
| Jacksonville, FL | 11,716 | 3.4 |
| Las Vegas, NV | 18,823 | 2.4 |
| Louisville, KY | 11,752 | 2.4 |
| Memphis, TN | 19,332 | 1.9 |
| Milwaukee, WI | 13,053 | 2.2 |
| Medium Cities | 86,582 | 2.5 |
| Atlanta, GA | 13,003 | 2.1 |
| Cincinnati, OH | 8,470 | 2.7 |
| Cleveland, OH | 7,839 | 2.2 |
| Miami, FL | 7,111 | 2.5 |
| New Orleans, LA | 7,482 | 2.9 |
| Orlando, FL | 9,768 | 2.9 |
| Saint Louis, MO | 12,265 | 1.9 |
| Tampa, FL | 8,584 | 3.2 |
| Tulsa, OK | 6,550 | 3.1 |
| Wichita, KS | 5,510 | 3.1 |
| Small Cities | 48,529 | 2.4 |
| Baton Rouge, LA | 7,313 | 2.5 |
| Chattanooga, TN | 4,428 | 3.1 |
| Columbia, SC | 5,477 | 1.7 |
| Dayton, OH | 4,076 | 2.8 |
| Huntsville, AL | 4,917 | 2.2 |
| Mobile, AL | 4,745 | 2.2 |
| Richmond, VA | 5,754 | 1.5 |
| San Bernardino, CA | 3,286 | 4.2 |
| Shreveport, LA | 4,537 | 2.0 |
| Winston Salem, NC | 3,996 | 3.0 |

Table IFT-03: Purchaser and Possessor Relationships for Recovered Crime Guns in the 50 U.S. States and Territories, 2017 – 2021

| Recovery State / Territory | Purchaser and Possessor are Different | | Purchaser and Possessor are Same | | Purchaser Known, Possessor Unknown | | Total traces |
|----------------------------|---------------------------------------|--------------|----------------------------------|--------------|------------------------------------|--------------|------------------|
| | Number | Percent | Number | Percent | Number | Percent | |
| AE | 0 | 0.0% | 1 | 50.0% | 1 | 50.0% | 2 |
| AK | 2,808 | 65.2% | 386 | 9.0% | 1,111 | 25.8% | 4,305 |
| AL | 19,967 | 63.5% | 3,170 | 10.1% | 8,321 | 26.5% | 31,458 |
| AM | 1 | 100.0% | 0 | 0.0% | 0 | 0.0% | 1 |
| AR | 7,722 | 70.2% | 1,116 | 10.1% | 2,168 | 19.7% | 11,006 |
| AZ | 21,689 | 54.5% | 5,564 | 14.0% | 12,513 | 31.5% | 39,766 |
| CA | 86,505 | 60.3% | 21,410 | 14.9% | 35,521 | 24.8% | 143,436 |
| CO | 13,282 | 53.3% | 3,339 | 13.4% | 8,285 | 33.3% | 24,906 |
| CT | 3,157 | 64.0% | 680 | 13.8% | 1,092 | 22.2% | 4,929 |
| DC | 4,964 | 64.5% | 400 | 5.2% | 2,334 | 30.3% | 7,698 |
| DE | 3,327 | 63.9% | 1,081 | 20.7% | 802 | 15.4% | 5,210 |
| FL | 56,965 | 51.8% | 14,117 | 12.8% | 38,978 | 35.4% | 110,060 |
| GA | 41,287 | 55.7% | 8,348 | 11.3% | 24,427 | 33.0% | 74,062 |
| GU | 74 | 84.1% | 8 | 9.1% | 6 | 6.8% | 88 |
| HI | 480 | 66.9% | 36 | 5.0% | 202 | 28.1% | 718 |
| IA | 5,879 | 59.3% | 1,285 | 13.0% | 2,758 | 27.8% | 9,922 |
| ID | 3,455 | 65.3% | 807 | 15.2% | 1,033 | 19.5% | 5,295 |
| IL | 44,301 | 65.5% | 7,121 | 10.5% | 16,221 | 24.0% | 67,643 |
| IN | 21,229 | 57.1% | 3,807 | 10.2% | 12,128 | 32.6% | 37,164 |
| KS | 9,684 | 66.7% | 1,279 | 8.8% | 3,558 | 24.5% | 14,521 |
| KY | 17,520 | 69.9% | 2,734 | 10.9% | 4,810 | 19.2% | 25,064 |
| LA | 29,843 | 64.3% | 4,548 | 9.8% | 12,032 | 25.9% | 46,423 |
| MA | 4,811 | 51.7% | 775 | 8.3% | 3,727 | 40.0% | 9,313 |
| MD | 19,607 | 59.6% | 6,365 | 19.3% | 6,926 | 21.1% | 32,898 |
| ME | 1,243 | 61.5% | 311 | 15.4% | 468 | 23.1% | 2,022 |
| MI | 21,009 | 59.3% | 7,422 | 20.9% | 7,010 | 19.8% | 35,441 |
| MN | 8,755 | 53.9% | 1,878 | 11.6% | 5,622 | 34.6% | 16,255 |
| MO | 22,067 | 60.0% | 4,257 | 11.6% | 10,466 | 28.4% | 36,790 |
| MP | 1 | 33.3% | 0 | 0.0% | 2 | 66.7% | 3 |
| MS | 11,711 | 62.7% | 1,693 | 9.1% | 5,263 | 28.2% | 18,667 |
| MT | 2,266 | 61.3% | 297 | 8.0% | 1,135 | 30.7% | 3,698 |
| NC | 44,235 | 61.0% | 8,424 | 11.6% | 19,894 | 27.4% | 72,553 |
| ND | 1,647 | 58.0% | 435 | 15.3% | 760 | 26.7% | 2,842 |
| NE | 4,559 | 59.4% | 1,395 | 18.2% | 1,716 | 22.4% | 7,670 |
| NH | 1,273 | 63.7% | 328 | 16.4% | 398 | 19.9% | 1,999 |
| NJ | 8,883 | 63.1% | 1,145 | 8.1% | 4,052 | 28.8% | 14,080 |
| NM | 7,985 | 64.0% | 1,402 | 11.2% | 3,089 | 24.8% | 12,476 |
| NV | 12,241 | 50.6% | 3,459 | 14.3% | 8,468 | 35.0% | 24,168 |
| NY | 19,510 | 68.1% | 1,887 | 6.6% | 7,246 | 25.3% | 28,643 |
| OH | 40,883 | 61.9% | 8,290 | 12.6% | 16,844 | 25.5% | 66,017 |
| OK | 9,485 | 69.5% | 680 | 5.0% | 3,473 | 25.5% | 13,638 |
| OR | 11,903 | 61.0% | 3,120 | 16.0% | 4,475 | 23.0% | 19,498 |
| PA | 28,863 | 60.0% | 6,665 | 13.9% | 12,556 | 26.1% | 48,084 |
| PR | 2,218 | 63.6% | 87 | 2.5% | 1,180 | 33.9% | 3,485 |
| RI | 1,235 | 65.9% | 350 | 18.7% | 290 | 15.5% | 1,875 |
| SC | 20,185 | 56.3% | 3,141 | 8.8% | 12,512 | 34.9% | 35,838 |
| SD | 1,297 | 52.2% | 416 | 16.7% | 772 | 31.1% | 2,485 |
| TN | 27,815 | 55.6% | 4,078 | 8.2% | 18,093 | 36.2% | 49,986 |
| TX | 70,392 | 47.7% | 15,000 | 10.2% | 62,042 | 42.1% | 147,434 |
| UT | 6,269 | 60.1% | 1,414 | 13.6% | 2,749 | 26.4% | 10,432 |
| VA | 27,492 | 59.6% | 7,476 | 16.2% | 11,149 | 24.2% | 46,117 |
| VI | 242 | 51.9% | 7 | 1.5% | 217 | 46.6% | 466 |
| VT | 582 | 67.2% | 128 | 14.8% | 156 | 18.0% | 866 |
| WA | 11,365 | 54.4% | 2,708 | 13.0% | 6,807 | 32.6% | 20,880 |
| WI | 14,097 | 59.1% | 3,849 | 16.1% | 5,893 | 24.7% | 23,839 |
| WV | 5,062 | 69.7% | 535 | 7.4% | 1,667 | 22.9% | 7,264 |
| WY | 772 | 62.6% | 95 | 7.7% | 366 | 29.7% | 1,233 |
| Unknown | 21 | 30.0% | 0 | 0.0% | 49 | 70.0% | 70 |
| Total | 866,120 | 58.4% | 180,749 | 12.2% | 435,833 | 29.4% | 1,482,702 |

Table IFT-04: Purchaser and Possessor Relationships for Recovered Crime Guns in selected U.S. Cities, 2017 – 2021

| Recovery City | Purchaser and Possessor are Different | | Purchaser and Possessor are Same | | Purchaser Known, Possessor Unknown | | Trace Count |
|----------------------|---------------------------------------|--------------|----------------------------------|--------------|------------------------------------|--------------|----------------|
| | Number | Percent | Number | Percent | Number | Percent | |
| Mega Cities | 92,996 | 53.0% | 13,530 | 7.7% | 68,883 | 39.3% | 175,409 |
| Chicago, IL | 25,276 | 67.1% | 2,498 | 6.6% | 9,905 | 26.3% | 37,679 |
| Dallas, TX | 10,492 | 62.7% | 1,722 | 10.3% | 4,507 | 27.0% | 16,721 |
| Houston, TX | 7,005 | 18.0% | 1,987 | 5.1% | 29,845 | 76.8% | 38,837 |
| Los Angeles, CA | 13,515 | 68.8% | 2,435 | 12.4% | 3,697 | 18.8% | 19,647 |
| New York, NY | 9,293 | 72.0% | 405 | 3.1% | 3,211 | 24.9% | 12,909 |
| Philadelphia, PA | 9,799 | 58.9% | 1,076 | 6.5% | 5,750 | 34.6% | 16,625 |
| Phoenix, AZ | 6,051 | 45.5% | 1,040 | 7.8% | 6,201 | 46.7% | 13,292 |
| San Antonio, TX | 8,446 | 56.8% | 1,315 | 8.8% | 5,106 | 34.3% | 14,867 |
| San Diego, CA | 2,032 | 61.7% | 843 | 25.6% | 421 | 12.8% | 3,296 |
| San Jose, CA | 1,087 | 70.8% | 209 | 13.6% | 240 | 15.6% | 1,536 |
| Large Cities | 86,260 | 59.3% | 18,786 | 12.9% | 40,326 | 27.7% | 143,372 |
| Baltimore, MD | 4,706 | 58.4% | 420 | 5.2% | 2,929 | 36.4% | 8,055 |
| Charlotte, NC | 7,290 | 61.4% | 1,279 | 10.8% | 3,312 | 27.9% | 11,881 |
| Columbus, OH | 7,730 | 63.6% | 1,321 | 10.9% | 3,096 | 25.5% | 12,147 |
| Detroit, MI | 13,351 | 61.0% | 5,314 | 24.3% | 3,215 | 14.7% | 21,880 |
| Indianapolis, IN | 9,407 | 56.7% | 1,570 | 9.5% | 5,611 | 33.8% | 16,588 |
| Jacksonville, FL | 7,146 | 60.9% | 1,689 | 14.4% | 2,898 | 24.7% | 11,733 |
| Las Vegas, NV | 9,137 | 48.4% | 2,471 | 13.1% | 7,258 | 38.5% | 18,866 |
| Louisville, KY | 8,465 | 71.8% | 1,148 | 9.7% | 2,172 | 18.4% | 11,785 |
| Memphis, TN | 11,093 | 57.3% | 1,789 | 9.2% | 6,486 | 33.5% | 19,368 |
| Milwaukee, WI | 7,935 | 60.7% | 1,785 | 13.7% | 3,349 | 25.6% | 13,069 |
| Medium Cities | 52,275 | 60.2% | 8,508 | 9.8% | 25,987 | 29.9% | 86,770 |
| Atlanta, GA | 8,105 | 62.2% | 1,430 | 11.0% | 3,498 | 26.8% | 13,033 |
| Cincinnati, OH | 6,248 | 73.7% | 956 | 11.3% | 1,277 | 15.1% | 8,481 |
| Cleveland, OH | 4,326 | 55.1% | 709 | 9.0% | 2,816 | 35.9% | 7,851 |
| Miami, FL | 4,012 | 56.2% | 1,071 | 15.0% | 2,050 | 28.7% | 7,133 |
| New Orleans, LA | 4,407 | 58.8% | 643 | 8.6% | 2,447 | 32.6% | 7,497 |
| Orlando, FL | 4,880 | 49.9% | 1,130 | 11.5% | 3,779 | 38.6% | 9,789 |
| Saint Louis, MO | 7,119 | 57.9% | 1,209 | 9.8% | 3,960 | 32.2% | 12,288 |
| Tampa, FL | 4,159 | 48.4% | 856 | 10.0% | 3,579 | 41.6% | 8,594 |
| Tulsa, OK | 4,629 | 70.5% | 45 | 0.7% | 1,896 | 28.9% | 6,570 |
| Wichita, KS | 4,390 | 79.3% | 459 | 8.3% | 685 | 12.4% | 5,534 |
| Small Cities | 25,315 | 52.0% | 4,143 | 8.5% | 19,199 | 39.5% | 48,657 |
| Baton Rouge, LA | 4,401 | 60.0% | 589 | 8.0% | 2,349 | 32.0% | 7,339 |
| Chattanooga, TN | 1,281 | 28.9% | 161 | 3.6% | 2,992 | 67.5% | 4,434 |
| Columbia, SC | 3,184 | 58.0% | 581 | 10.6% | 1,724 | 31.4% | 5,489 |
| Dayton, OH | 2,718 | 66.5% | 352 | 8.6% | 1,019 | 24.9% | 4,089 |
| Huntsville, AL | 2,419 | 49.1% | 375 | 7.6% | 2,134 | 43.3% | 4,928 |
| Mobile, AL | 3,167 | 66.6% | 648 | 13.6% | 942 | 19.8% | 4,757 |
| Richmond, VA | 2,365 | 41.0% | 529 | 9.2% | 2,870 | 49.8% | 5,764 |
| San Bernardino, CA | 2,499 | 75.8% | 391 | 11.9% | 409 | 12.4% | 3,299 |
| Shreveport, LA | 3,116 | 68.5% | 509 | 11.2% | 925 | 20.3% | 4,550 |
| Winston Salem, NC | 165 | 4.1% | 8 | 0.2% | 3,835 | 95.7% | 4,008 |

APPENDIX GP – GEOGRAPHIC PATTERNS

Table GP-03: Percentages of Interstate and Intrastate Sourced Recovered Crime Guns for U.S. States and Territories, 2017-2021

| Recovery State / Territory | Interstate | | Intrastate | | Total Traces |
|-------------------------------|------------|---------|------------|---------|--------------|
| | Number | Percent | Number | Percent | |
| AE | 2 | 100.0% | 0 | 0.0% | 2 |
| AK | 752 | 17.5% | 3,553 | 82.5% | 4,305 |
| AL | 5,427 | 17.3% | 26,021 | 82.7% | 31,448 |
| AM | 1 | 100.0% | 0 | 0.0% | 1 |
| AR | 2,475 | 22.5% | 8,525 | 77.5% | 11,000 |
| AZ | 6,984 | 17.6% | 32,771 | 82.4% | 39,755 |
| CA | 59,624 | 41.6% | 83,778 | 58.4% | 143,402 |
| CO | 7,368 | 29.6% | 17,526 | 70.4% | 24,894 |
| CT | 2,483 | 50.8% | 2,407 | 49.2% | 4,890 |
| DC | 7,387 | 96.1% | 300 | 3.9% | 7,687 |
| DE | 1,728 | 33.2% | 3,481 | 66.8% | 5,209 |
| FL | 22,754 | 20.7% | 87,218 | 79.3% | 109,972 |
| GA | 14,877 | 20.1% | 59,121 | 79.9% | 73,998 |
| GU | 26 | 29.5% | 62 | 70.5% | 88 |
| HI | 388 | 54.1% | 329 | 45.9% | 717 |
| IA | 2,708 | 27.3% | 7,212 | 72.7% | 9,920 |
| ID | 1,759 | 33.2% | 3,534 | 66.8% | 5,293 |
| IL | 34,616 | 51.2% | 32,981 | 48.8% | 67,597 |
| IN | 6,361 | 17.1% | 30,786 | 82.9% | 37,147 |
| KS | 4,430 | 30.5% | 10,080 | 69.5% | 14,510 |
| KY | 5,555 | 22.4% | 19,214 | 77.6% | 24,769 |
| LA | 9,237 | 19.9% | 37,163 | 80.1% | 46,400 |
| MA | 6,245 | 67.1% | 3,067 | 32.9% | 9,312 |
| MD | 17,559 | 53.4% | 15,303 | 46.6% | 32,862 |
| ME | 410 | 20.3% | 1,611 | 79.7% | 2,021 |
| MI | 7,647 | 21.6% | 27,780 | 78.4% | 35,427 |
| MN | 4,658 | 28.7% | 11,590 | 71.3% | 16,248 |
| MO | 7,677 | 20.9% | 29,087 | 79.1% | 36,764 |
| MP | 3 | 100.0% | 0 | 0.0% | 3 |
| MS | 4,091 | 21.9% | 14,568 | 78.1% | 18,659 |
| MT | 1,086 | 29.4% | 2,610 | 70.6% | 3,696 |
| NC | 18,326 | 25.3% | 54,204 | 74.7% | 72,530 |
| ND | 1,002 | 35.3% | 1,837 | 64.7% | 2,839 |
| NE | 2,651 | 34.6% | 5,010 | 65.4% | 7,661 |
| NH | 482 | 24.1% | 1,521 | 75.9% | 2,003 |
| NJ | 11,499 | 81.8% | 2,567 | 18.2% | 14,066 |
| NM | 2,734 | 21.9% | 9,743 | 78.1% | 12,477 |
| NV | 7,365 | 30.5% | 16,797 | 69.5% | 24,162 |
| NY | 22,806 | 79.7% | 5,802 | 20.3% | 28,608 |
| OH | 10,955 | 16.6% | 54,932 | 83.4% | 65,887 |
| OK | 2,922 | 21.4% | 10,708 | 78.6% | 13,630 |
| OR | 4,994 | 25.6% | 14,502 | 74.4% | 19,496 |
| PA | 10,319 | 21.5% | 37,709 | 78.5% | 48,028 |
| PR | 2,591 | 74.5% | 885 | 25.5% | 3,476 |
| RI | 824 | 44.0% | 1,049 | 56.0% | 1,873 |
| SC | 7,872 | 22.0% | 27,886 | 78.0% | 35,758 |
| SD | 861 | 34.7% | 1,623 | 65.3% | 2,484 |
| TN | 15,060 | 30.2% | 34,859 | 69.8% | 49,919 |
| TX | 21,343 | 14.5% | 125,420 | 85.5% | 146,763 |
| UT | 2,323 | 22.3% | 8,104 | 77.7% | 10,427 |
| VA | 7,739 | 16.8% | 38,349 | 83.2% | 46,088 |
| VI | 366 | 78.5% | 100 | 21.5% | 466 |
| VT | 236 | 27.3% | 630 | 72.7% | 866 |
| WA | 5,594 | 26.8% | 15,253 | 73.2% | 20,847 |
| WI | 3,733 | 15.7% | 20,096 | 84.3% | 23,829 |
| WV | 1,826 | 25.1% | 5,435 | 74.9% | 7,261 |
| WY | 530 | 43.0% | 702 | 57.0% | 1,232 |

| | | | | | |
|--------------|----------------|--------------|------------------|--------------|------------------|
| Unknown | 3 | 100.0% | 0 | 0.0% | 3 |
| Total | 413,274 | 27.9% | 1,067,401 | 72.1% | 1,480,675 |

Table GP-04: Percentages of Interstate and Intrastate Sourced Recovered Crime Guns for selected U.S. Cities, 2017-2021

| Recovery City | Interstate | | Intrastate | | Total Traces |
|----------------------|---------------|--------------|----------------|--------------|----------------|
| | Number | Percent | Number | Percent | |
| Mega Cities | 60,614 | 34.6% | 114,704 | 65.4% | 175,318 |
| Chicago, IL | 21,158 | 56.2% | 16,499 | 43.8% | 37,657 |
| Dallas, TX | 2,544 | 15.2% | 14,171 | 84.8% | 16,715 |
| Houston, TX | 4,837 | 12.5% | 33,986 | 87.5% | 38,823 |
| Los Angeles, CA | 10,045 | 51.1% | 9,594 | 48.9% | 19,639 |
| New York, NY | 11,949 | 92.7% | 942 | 7.3% | 12,891 |
| Philadelphia, PA | 4,386 | 26.4% | 12,226 | 73.6% | 16,612 |
| Phoenix, AZ | 1,873 | 14.1% | 11,416 | 85.9% | 13,289 |
| San Antonio, TX | 1,664 | 11.2% | 13,192 | 88.8% | 14,856 |
| San Diego, CA | 1,459 | 44.2% | 1,841 | 55.8% | 3,300 |
| San Jose, CA | 699 | 45.5% | 837 | 54.5% | 1,536 |
| Large Cities | 35,318 | 24.4% | 109,691 | 75.6% | 145,009 |
| Baltimore, MD | 4,898 | 60.9% | 3,140 | 39.1% | 8,038 |
| Charlotte, NC | 4,015 | 33.8% | 7,864 | 66.2% | 11,879 |
| Columbus, OH | 1,707 | 14.1% | 10,417 | 85.9% | 12,124 |
| Detroit, MI | 4,683 | 21.4% | 17,191 | 78.6% | 21,874 |
| Indianapolis, IN | 2,070 | 12.5% | 14,509 | 87.5% | 16,579 |
| Jacksonville, FL | 2,330 | 19.9% | 9,401 | 80.1% | 11,731 |
| Las Vegas, NV | 5,735 | 30.4% | 13,127 | 69.6% | 18,862 |
| Louisville, KY | 2,312 | 20.1% | 9,219 | 79.9% | 11,531 |
| Memphis, TN | 5,920 | 30.6% | 13,407 | 69.4% | 19,327 |
| Milwaukee, WI | 1,648 | 12.6% | 11,416 | 87.4% | 13,064 |
| Medium Cities | 16,616 | 19.2% | 70,060 | 80.8% | 86,676 |
| Atlanta, GA | 2,907 | 22.3% | 10,123 | 77.7% | 13,030 |
| Cincinnati, OH | 2,256 | 26.6% | 6,226 | 73.4% | 8,482 |
| Cleveland, OH | 880 | 11.2% | 6,951 | 88.8% | 7,831 |
| Miami, FL | 1,009 | 14.3% | 6,069 | 85.7% | 7,078 |
| New Orleans, OH | 1,963 | 26.2% | 5,529 | 73.8% | 7,492 |
| Orlando, FL | 1,592 | 16.3% | 8,196 | 83.7% | 9,788 |
| Saint Louis, MO | 1,864 | 15.2% | 10,418 | 84.8% | 12,282 |
| Tampa, FL | 1,727 | 20.1% | 6,867 | 79.9% | 8,594 |
| Tulsa, OK | 1,288 | 19.6% | 5,278 | 80.4% | 6,566 |
| Wichita, KS | 1,130 | 20.4% | 4,403 | 79.6% | 5,533 |
| Small Cities | 9,710 | 20.0% | 38,853 | 80.0% | 48,563 |
| Baton Rouge, LA | 984 | 13.4% | 6,353 | 86.6% | 7,337 |
| Chattanooga, TN | 1,653 | 37.3% | 2,774 | 62.7% | 4,427 |
| Columbia, SC | 914 | 16.9% | 4,502 | 83.1% | 5,416 |
| Dayton, OH | 655 | 16.0% | 3,431 | 84.0% | 4,086 |
| Huntsville, AL | 840 | 17.0% | 4,087 | 83.0% | 4,927 |
| Mobile, AL | 829 | 17.4% | 3,926 | 82.6% | 4,755 |
| Richmond, VA | 570 | 9.9% | 5,194 | 90.1% | 5,764 |
| San Bernardino, CA | 1,484 | 45.0% | 1,812 | 55.0% | 3,296 |
| Shreveport, LA | 785 | 17.3% | 3,762 | 82.7% | 4,547 |
| Winston Salem, NC | 996 | 24.9% | 3,012 | 75.1% | 4,008 |

ENDNOTES

¹ Trace count excludes duplicate traces, gun buy backs, and firearms turned into law enforcement. This number includes only those firearms with a recovery country location identified as the United States, with a recovery date between 1/1/2017 and 12/31/2021, and entered into the tracing system between 1/1/2017 and 9/6/2022. Traces without a recovery date are excluded.

² Purchaser identified includes all completion codes that trace to a purchaser as well as when the role played is identified as purchaser (1,482,861). When limited to only the purchaser identified completion codes, the number of crime guns traced to purchaser is 1,482,553.

³ “Suspected Privately Made Firearm” is a designation used by ATF for an unserialized firearm that has been recovered in a criminal investigation, submitted to ATF for tracing, and determined to likely have been privately made. An unserialized firearm cannot be traced by ATF. However, ATF and the NTC conduct additional research using descriptive information provided by the requestor to determine if the unserialized firearm is a PMF. When this additional research indicates that the unserialized firearm is privately made, ATF identifies that firearm as a “Suspected PMF” for purposes of monitoring use of PMFs as crime guns and for dissemination as investigative leads and intelligence to LEAs.

⁴ Firearms recovered following an FFL theft are at times not traced because the source of the firearms is already known to the recovering LEA. This accounts for the difference between the number of firearms recovered (17,048) versus the number of firearms traced (11,093) that were associated with an FFL theft.

⁵ Firearms recovered following a theft or loss from an Interstate shipment are at times not traced because the source of the firearms is already known to the recovering LEA. This accounts for the difference between the number of firearms recovered (3,072) versus the number of firearms traced (2,169) that were associated with a theft or loss from an Interstate shipment.

⁶ <https://www.census.gov/data/tables/2020/demo/popest/2020-demographic-analysis-tables.html> (accessed September 20, 2022).

⁷ There were 16 crime guns traced to a purchaser identified as non-binary.

⁸ <https://www.census.gov/data/tables/2020/demo/popest/2020-demographic-analysis-tables.html> (accessed September 20, 2022).

⁹ Effective June 25, 2022, the Bipartisan Safer Communities Act, Public Law 117-159, amended the GCA’s definition of “engaged in the business” with respect to retail firearm dealers (Type 1 FFLs). Specifically, Section 12002 of the Act removed the phrase “principal objective of livelihood and profit” from the definition of a dealer in firearms in section 921(a)(11)(A) of the GCA and replaced it with the phrase “predominately to earn a profit.” As revised, Section 921(a)(11)(A) defines dealers in firearms as: “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”

¹⁰ <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download> (accessed October 2, 2022).

¹¹ <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download> (accessed October 2, 2022).

¹² HS Produkt XD series and Hellcat pistols are imported by Springfield Armory.

¹³ <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download>

¹⁴ The median is the middle number in a sorted, ascending or descending list of numbers and can be more descriptive of that data set than the average due to the presence of outliers (extreme values that skew the distribution). It is the point above and below which half (50%) the observed data falls, and so represents the midpoint of the data. The median year was calculated by taking the number of days and dividing by 365.25 and rounding up.

¹⁵ <https://www.atf.gov/firearms/docs/report/national-firearms-commerce-and-trafficking-assessment-firearms-commerce-volume/download>

¹⁶ Distances are calculated using precise street addresses of FFL, purchaser, possessor, or recovery locations were geocoded to XY coordinates. The distance measurement is straight line between the points.

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- ¹⁷ For e.g., Bureau of Alcohol, Tobacco and Firearms. 2002. *Crime Gun Trace Analysis (2000): National Report*. Washington, DC: Bureau of Alcohol, Tobacco and Firearms; Anthony A. Braga, Philip J. Cook, David M. Kennedy, and Mark H. Moore. 2002. "The Illegal Supply of Firearms." *Crime and Justice: A Review of Research*, 29: 319 – 352; Glenn L. Pierce, Anthony A. Braga, Raymond R. Hyatt, and Christopher S. Koper. 2004. "The Characteristics and Dynamics of Illegal Firearms Markets: Implications for a Supply-Side Enforcement Strategy." *Justice Quarterly*, 21 (2): 391 – 422; Philip J. Cook, Richard J. Harris, Jens Ludwig, and Harold A. Pollack. 2015. "Some Sources of Crime Guns in Chicago: Dirty Dealers, Straw Purchasers, and Traffickers," *Journal of Criminal Law and Criminology*, 104 (4): 717–759.
- ¹⁸ Philip J. Cook. 2018. "Gun Markets," *Annual Review of Criminology*, 1: 359–377.
- ¹⁹ Philip J. Cook, Harold A. Pollack, and Kailey White. 2019. "The Last Link: From Gun Acquisition to Criminal Use," *Journal of Urban Health*, 96 (5): 784–791.
- ²⁰ Philip J. Cook, Jens Ludwig, Sudhir Venkatesh, and Anthony A. Braga. 2007. "Underground Gun Markets." *The Economic Journal*, 117 (11): 558 – 588.
- ²¹ Bureau of Alcohol, Tobacco and Firearms. 2000. *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. Washington, DC: Bureau of Alcohol, Tobacco and Firearms.; Anthony A. Braga, Garen J. Wintemute, Glenn L. Pierce, Philip J. Cook, and Greg Ridgeway. 2012. "Interpreting the Empirical Evidence on Illegal Gun Market Dynamics." *Journal of Urban Health*, 89 (5): 779 – 793; Anthony A. Braga and Glenn L. Pierce. 2005. "Disrupting Illegal Firearms Markets in Boston: The Effects of Operation Ceasefire on the Supply of New Handguns to Criminals." *Criminology & Public Policy*, 4 (4): 717 – 748.
- ²² David M. Hureau and Anthony A. Braga. 2018. "The Trade in Tools: The Market for Illicit Guns in High-Risk Networks." *Criminology*, 56 (3): 510 – 545; Anthony A. Braga, Rod K. Brunson, Philip J. Cook, Brandon S. Turchan, and Brian Wade. 2021. "Underground Gun Markets and the Flow of Illegal Guns into the Bronx and Brooklyn: A Mixed Methods Analysis." *Journal of Urban Health*, 98 (5): 596 – 608.
- ²³ See also, Philip J. Cook and Anthony A. Braga. 2001. "Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets." *Arizona Law Review*, 43 (2): 277 – 309; Brian Knight. 2013. "State Gun Policy and Cross-State Externalities: Evidence from Crime Gun Tracing," *American Economic Journal: Economic Policy*, 5 (4): 200–229.
- ²⁴ See also Anthony A. Braga, Lisa M. Barao, Garen J. Wintemute, Steven Valle, and Jaimie Valente. 2022. "Privately Manufactured Firearms, Newly Purchased Firearms, and the Rise of Urban Gun Violence." *Preventive Medicine*, <https://doi.org/10.1016/j.ypmed.2022.107231> (in press).
- ²⁵ AE is the abbreviation for Armed Forces Europe
- ²⁶ AM is the abbreviation for American Samoa. Abbreviation AS can also be used.
- ²⁷ GU is the abbreviation for Guam
- ²⁸ MP is the abbreviation for the Northern Mariana Islands
- ²⁹ Unknown includes all recovered crime guns in which the recovery country was indicated to be "US"; however, the State was either blank or entered incorrectly by the entering law enforcement agency.

1 ROB BONTA
Attorney General of California
2 MARK R. BECKINGTON
Supervising Deputy Attorney General
3 ROBERT L. MEYERHOFF, SBN 298196
GABRIELLE D. BOUTIN, SBN 267308
4 S. CLINTON WOODS, SBN 246054
CHARLES J. SAROSY, SBN 302439
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
6 Telephone: (213) 269-6356
Fax: (916) 731-2119
7 E-mail: Charles.Sarosy@doj.ca.gov
Attorneys for Rob Bonta, in his official capacity as
8 Attorney General of the State of California

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11
12

13 **LANCE BOLAND, ET AL.,**
14 Plaintiffs,
15
16 **v.**
17 **ROB BONTA, IN HIS OFFICIAL**
CAPACITY AS ATTORNEY GENERAL OF
18 **THE STATE OF CALIFORNIA, ET AL.,**
19 Defendants.
20

Case No. 8:22-cv-01421-CJC-ADS

**DECLARATION OF SALVADOR
GONZALEZ IN SUPPORT OF
DEFENDANT'S FIRST CLOSING
BRIEF FOLLOWING
EVIDENTIARY HEARING ON
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Courtroom: 9B
Judge: Hon. Cormac J. Carney
Trial Date: None set
Action Filed: August 1, 2022

1 I, Salvador Gonzalez, declare under penalty of perjury that:

2 1. I am over the age of 18 years and competent to make this declaration,
3 which is based on my personal knowledge.

4 2. I am a Special Agent Supervisor for the California Department of Justice
5 (“CA DOJ”), Bureau of Firearms (“BOF”).

6 3. I submitted a declaration in support of Defendant’s Opposition to
7 Plaintiffs’ Motion for a Preliminary Injunction, to which was attached my
8 curriculum vitae. ECF No. 30-2. I also testified as an expert on the Roster of
9 Certified Handguns (the “Roster”) and its requirements during the January 23, 2023
10 evidentiary hearing on Plaintiffs’ Motion. Prelim. Inj. Hr’g Day 1 Tr. (Jan. 23,
11 2023), ECF No. 54 (“PI Day 1 Tr.”), at 156-253.

12 4. At the evidentiary hearing, I testified there were 32 semiautomatic pistols
13 currently on the Roster with a chamber load indicator (“CLI”) and magazine
14 disconnect mechanism (“MDM”). PI Day 1 Tr. 179.

15 5. These 32 semiautomatic pistols are manufactured by four companies:
16 Kahr Arms, Sig Sauer, FMK Firearms, and Smith & Wesson. All four companies
17 added at least one of these semiautomatic pistols to the Roster before the
18 microstamping requirement took effect on May 17, 2013.

19 6. Of the 32 semiautomatic pistols with a CLI and MDM currently on the
20 Roster, 17 of these pistols were added to the Roster before May 17, 2013. Of those
21 17 pistols, 15 of them were added to the Roster after passing the drop safety and
22 firing tests in a certified laboratory pursuant to Penal Code sections 31910, 32010,
23 and 32015. The remaining two were added to the Roster as a “similar” by FMK
24 Firearms pursuant to Penal Code section 32030.

25 7. Of the 32 semiautomatic pistols with a CLI and MDM currently on the
26 Roster, the remaining 15 of these pistols were added to the Roster after May 17,
27 2013. All 15 were added to the Roster as a “similar” by Smith & Wesson pursuant
28 to Penal Code section 32030. They were added to the Roster in 2019 and 2022.

1 8. Before May 17, 2013, Sturm, Ruger, & Co. added to the Roster 15
2 semiautomatic pistols with a CLI and MDM. Of those 15 pistols, 11 of them were
3 added to the Roster after passing the drop safety and firing tests in a certified
4 laboratory pursuant to Penal Code sections 31910, 32010, and 32015, while the
5 remaining four were added as a “similar” pursuant to Penal Code section 32030.
6 However, none of these 15 pistols are currently on the Roster because Sturm,
7 Ruger, & Co. failed to pay the annual fee required under Penal Code section 32015
8 to keep these pistols on the Roster.

9 9. Before May 17, 2013, in addition to the pistols described in paragraphs 6
10 and 7, Sig Sauer and FMK Firearms also each added to the Roster one
11 semiautomatic pistol with a CLI and MDM after passing the drop safety and firing
12 tests in a certified laboratory pursuant to Penal Code sections 31910, 32010, and
13 32015. However, these pistols are not currently on the Roster because Sig Sauer
14 and FMK Firearms failed to pay the annual fee required under Penal Code section
15 32015 to keep these pistols on the Roster.

16 10. After May 17, 2013, Sig Sauer added to the Roster another
17 semiautomatic pistol with a CLI and MDM as a “similar” pursuant to Penal Code
18 section 32030. However, this pistol is not currently on the Roster because Sig
19 Sauer failed to pay the annual fee required under Penal Code section 32015 to keep
20 the pistol on the Roster.

21
22 //

23
24 //

11. The below chart summarizes what is explained in paragraphs 5 through 10:

| | Added to the Roster before May 17, 2013 | Added to the Roster after May 17, 2013 | Currently on the Roster |
|---|---|--|----------------------------|
| Tested semiautomatic pistols with CLI & MDM | 28 | 0 | 15 |
| Similar semiautomatic pistols with CLI & MDM | 6 | 16 | 17 |

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 24, 2023, in SACRAMENTO, California.


SALVADOR GONZALEZ

1 ROB BONTA
Attorney General of California
2 MARK R. BECKINGTON
Supervising Deputy Attorney General
3 ROBERT L. MEYERHOFF, SBN 298196
GABRIELLE D. BOUTIN, SBN 267308
4 S. CLINTON WOODS, SBN 246054
CHARLES J. SAROSY, SBN 302439
5 Deputy Attorneys General
1300 I Street, Suite 125
6 P.O. Box 944255
Sacramento, CA 94244-2550
7 Telephone: (916) 210-6053
Fax: (916) 324-8835
8 E-mail: Clint.Woods@doj.ca.gov
Attorneys for Rob Bonta, in his official capacity as
9 *Attorney General of the State of California*

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12 IN THE UNITED STATES DISTRICT COURT
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15 **LANCE BOLAND et al.,**

16 Plaintiffs,

17 v.
18

19 **ROB BONTA, IN HIS OFFICIAL**
20 **CAPACITY AS ATTORNEY GENERAL OF**
THE STATE OF CALIFORNIA, ET AL.,

21 Defendants
22

Case No. 8:22-cv-01421-CJC-ADS

**DECLARATION OF SAUL
CORNELL IN SUPPORT OF
DEFENDANT'S FIRST CLOSING
BRIEF FOLLOWING
EVIDENTIARY HEARING ON
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Courtroom: 9 B
Judge: Hon. Cormac J. Carney
Trial Date: None set
Action Filed: August 1, 2022

23
24 I, Saul Cornell, declare that the following is true and correct:

25 1. I have been asked by the Office of the Attorney General for the State
26 of California to provide an expert opinion on the history of firearms regulation in
27 the Anglo-American legal tradition, with a particular focus on how the Founding
28

1 era understood the right to bear arms, as well as the understanding of the right to
2 bear arms held at the time of the ratification of the Fourteenth Amendment to the
3 United States Constitution. In *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*,
4 the U.S. Supreme Court underscored that text, history, and tradition are the
5 foundation of modern Second Amendment jurisprudence. This modality of
6 constitutional analysis requires that courts analyze history and evaluate the
7 connections between modern gun laws and earlier approaches to firearms regulation
8 in the American past. My report explores these issues in some detail. Finally, I
9 have been asked to evaluate the statute at issue in this case, particularly regarding
10 its connection to the tradition of firearms regulation in American legal history.

11 2. This declaration is based on my own personal knowledge and
12 experience, and if I am called to testify as a witness, I could and would testify
13 competently to the truth of the matters discussed in this declaration.

14 **BACKGROUND AND QUALIFICATIONS**

15 3. I am the Paul and Diane Guenther Chair in American History at
16 Fordham University. The Guenther Chair is one of three endowed chairs in the
17 history department at Fordham and the only one in American history. In addition to
18 teaching constitutional history at Fordham University to undergraduates and
19 graduate students, I teach constitutional law at Fordham Law School. I have been a
20 Senior Visiting research scholar on the faculty of Yale Law School, the University
21 of Connecticut Law School, and Benjamin Cardozo Law School. I have given
22 invited lectures, presented papers at faculty workshops, and participated in
23 conferences on the topic of the Second Amendment and the history of gun
24 regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA
25 Law School, the University of Pennsylvania Law School, Columbia Law School,
26
27
28

1 Duke Law School, Pembroke College Oxford, Robinson College, Cambridge,
2 Leiden University, and McGill University.¹

3 4. My writings on the Second Amendment and gun regulation have been
4 widely cited by state and federal courts, including the majority and dissenting
5 opinions in *Bruen*.² My scholarship on this topic has appeared in leading law
6 reviews and top peer-reviewed legal history journals. I authored the chapter on the
7 right to bear arms in *The Oxford Handbook of the U.S. Constitution* and co-
8 authored the chapter in *The Cambridge History of Law in America* on the Founding
9 era and the Marshall Court, the period that includes the adoption of the Constitution
10 and the Second Amendment.³ Thus, my expertise not only includes the history of
11 gun regulation and the right to keep and bear arms, but also extends to American
12 legal and constitutional history broadly defined. I have provided expert witness
13 testimony in *Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, No.
14 14-cv-02850 (D. Colo.); *Chambers, v. City of Boulder*, No. 2018 CV 30581 (Colo.
15 D. Ct., Boulder Cty.), *Zeleny v. Newsom*, No. 14-cv-02850 (N.D. Cal.), and *Miller v.*
16 *Smith*, No. 2018-cv-3085 (C.D. Ill.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG (S.D.
17 Cal.); *Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.); *Worth v. Harrington*, No. 21-
18 cv-1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.);
19 *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal.); *Rupp v. Bonta*, No.
20 8:17-cv-00746-JLS-JDE (C.D. Cal.); and *Nat'l Assoc. for Gun Rights, et al., v.*
21 *Campbell*, No. 1:22-cv-11431-FDS (D. Mass.).

22
23
24 ¹ For a full *curriculum vitae* listing relevant invited and scholarly
presentations, see Defendant's Exhibit 23, already entered into evidence.

25 ² *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

26 ³ Saul Cornell, *The Right to Bear Arms*, in THE OXFORD HANDBOOK OF THE
27 U.S. CONSTITUTION 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber
eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the*
28 *Early Federal System*, in 1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 518–544
(Christopher Tomlins & Michael Grossberg eds., 2008).

RETENTION AND COMPENSATION

5. I am being compensated for services performed in the above-entitled case at an hourly rate of \$500 for reviewing materials, participating in meetings, and preparing reports; \$750 per hour for depositions and court appearances; and an additional \$100 per hour for travel time. My compensation is not contingent on the results of my analysis or the substance of any testimony.

BASIS FOR OPINION AND MATERIALS CONSIDERED

6. The opinion I provide in this report is based on my review of the amended complaint filed in this lawsuit, my review of the local ordinances at issue in this lawsuit, my education, expertise, and research in the field of legal history. The opinions contained herein are made pursuant to a reasonable degree of professional certainty.

SUMMARY OF OPINIONS

7. Understanding text, history, and tradition require a sophisticated grasp of historical context. One must canvass the relevant primary sources, secondary literature, and jurisprudence to arrive at an understanding of the scope of permissible regulation consistent with the Second Amendment's original understanding.

8. It is impossible to understand the meaning and scope of Second Amendment protections without understanding the way Americans in the Founding era approached legal questions and rights claims. In contrast to most modern lawyers, the members of the First Congress who wrote the words of the Second Amendment and the American people who enacted the text into law were well schooled in English common law ideas. Not every feature of English common law survived the American Revolution, but there were important continuities between English law and the common law in America.⁴ Each of the new states, either by

⁴ William B. Stoebuck, *Reception of English Common Law in the American*

1 statute or judicial decision, adopted multiple aspects of the common law, focusing
 2 primarily on those features of English law that had been in effect in the English
 3 colonies for generations.⁵ No legal principle was more important to the common
 4 law than the concept of the peace.⁶ As one early American justice of the peace
 5 manual noted: “the term peace, denotes the condition of the body politic in which
 6 no person suffers, or has just cause to fear any injury.”⁷ Blackstone, a leading
 7 source of early American views about English law, opined that the common law
 8 “hath ever had a special care and regard for the conservation of the peace; for peace
 9 is the very end and foundation of civil society.”⁸

10 9. In *Bruen*, Justice Kavanaugh reiterated *Heller*’s invocation of
 11 Blackstone’s authority as a guide to how early Americans understood their
 12 inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous
 13 terms that there was a “well established historical tradition of prohibiting the
 14 carrying of dangerous and unusual weapons.”⁹ The dominant understanding of

15 *Colonies*, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776,
 16 DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, *Law for*
 17 *the Empire: The Common Law in Colonial America and the Problem of Legal*
Diversity, 89 CHI.-KENT L. REV. 937 (2014).

18 ⁵ 9 STATUTES AT LARGE OF PENNSYLVANIA 29-30 (Mitchell & Flanders eds.
 19 1903); FRANCOIS XAVIER MARTIN, A COLLECTION OF STATUTES OF THE
 20 PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA 60–61
 (Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

21 ⁶ LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND*
 22 *THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH*
 (University of North Carolina Press, 2009).

23 ⁷ JOSEPH BACKUS, *THE JUSTICE OF THE PEACE* 23 (1816).

24 ⁸ 1 WILLIAM BLACKSTONE, *COMMENTARIES* *349.

25 ⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008), and n. 26.
 26 Blackstone and Hawkins, two of the most influential English legal writers consulted
 27 by the Founding generation, described these types of limits in slightly different
 28 terms. The two different formulations related to weapons described as dangerous
 and unusual in one case and sometimes as dangerous or unusual in the other
 instance, see Saul Cornell, *The Right to Carry Firearms Outside of the Home:*
Separating Historical Myths from Historical Realities, 39 FORDHAM URB. L.J.

1 the Second Amendment and its state constitutional analogues at the time of their
 2 adoption in the Founding period forged an indissoluble link between the right to
 3 keep and bear arms with the goal of preserving the peace.¹⁰

4 10. “Constitutional rights,” Justice Scalia wrote in *Heller*, “are enshrined
 5 with the scope they were thought to have when the people adopted them.”¹¹
 6 Included in this right was the most basic right of all: the right of the people to
 7 regulate their own internal police. Although modern lawyers and jurists are
 8 accustomed to thinking of state police power, the Founding generation viewed this
 9 concept as a right, not a power.¹² The first state constitutions clearly articulated
 10 such a right — including it alongside more familiar rights such as the right to bear
 11 arms.¹³ Pennsylvania’s Constitution framed this estimable right succinctly: “That

12 _____
 13 1695134 (2012). It is also possible that the phrase was an example of an archaic
 14 grammatical and rhetorical form hendiadys; see Samuel Bray, ‘*Necessary AND*
 15 *Proper*’ and ‘*Cruel AND Unusual*’: *Hendiadys in the Constitution*, 102 VIRGINIA L.
 16 REV. 687 (2016).

17 ¹⁰ On Founding-era conceptions of liberty, see JOHN J. ZUBLY, THE LAW OF
 18 LIBERTY (1775). The modern terminology to describe this concept is “ordered
 19 liberty.” See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent
 20 elaboration of the concept, see generally JAMES E. FLEMING & LINDA C. MCCLAIN,
 21 ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES (Harvard University
 22 Press, 2013). On Justice Cardozo and the ideal of ordered liberty, see *Palko v.*
 23 *Connecticut*, 302 U.S. 319, 325 (1937); John T. Noonan, Jr., *Ordered Liberty:*
 24 *Cardozo and the Constitution*, 1 CARDOZO L. REV. 257 (1979); Jud Campbell,
 25 *Judicial Review, and the Enumeration of Rights*, 15 GEO. J.L. & PUB. POL’Y 569
 26 (2017).

27 ¹¹ *Heller*, 554 U.S. at 634–35; William J. Novak, *Common Regulation: Legal*
 28 *Origins of State Power in America*, 45 HASTINGS L.J. 1061, 1081–83 (1994);
 Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the*
Constitution, 20 J. POL’Y HIST. 47 (2008).

¹² On the transformation of the Founding era’s ideas about a “police right”
 into the more familiar concept of “police power,” See generally Aaron T. Knapp,
The Judicialization of Police, 2 CRITICAL ANALYSIS OF L. 64 (2015); see also
 MARKUS DIRK DUBBER, THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS
 OF AMERICAN GOVERNMENT (2005); Christopher Tomlins, *Necessities of State:*
Police, Sovereignty, and the Constitution, 20 J. OF POL’Y HIST. 47 (2008).

¹³ PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV

1 the people of this State have the sole, exclusive and inherent right of governing and
 2 regulating the internal police of the same.” Thus, if Justice Scalia’s rule applies to
 3 the scope of the right to bear arms, it must also apply to the scope of the right of the
 4 people to regulate their internal police, a point that Chief Justice Roberts and
 5 Justice Kavanaugh have each asserted in their interpretations of *Heller* and
 6 subsequent jurisprudence. The history of gun regulation in the decades after the
 7 right to bear arms was codified in both the first state constitutions and the federal
 8 bill of rights underscores this important point.

9 11. In the years following the adoption of the Second Amendment and its
 10 state analogues, firearm regulation increased. Indeed, the individual states
 11 exercised their police powers to address longstanding issues and novel problems
 12 created by firearms in American society. Over the eighteenth and nineteenth
 13 century, American regulation increased with the advancement of firearm
 14 technology, from the manufacturing, storage, and sale of gunpowder, to regulating
 15 where firearms and other dangerous weapons cannot be carried.

16 **I. THE HISTORICAL INQUIRY REQUIRED BY *BRUEN*, *MCDONALD*, AND**
 17 ***HELLER***

18 12. The United States Supreme Court’s decisions in *Heller*, *McDonald*,¹⁴
 19 and *Bruen* have directed courts to look to text, history, and tradition when
 20 evaluating the scope of permissible firearms regulation under the Second
 21 Amendment. In another case involving historical determinations, Justice Thomas,
 22 the author of the majority opinion in *Bruen*, has noted that judges must avoid
 23 approaching history, text, and tradition with an “ahistorical literalism.”¹⁵ Legal

24 _____
 25 (1776); N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and VT. DECLARATION OF
 RIGHTS, art. V (1777).

26 ¹⁴ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

27 ¹⁵ *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019)
 28 (Thomas, J.) (criticizing “ahistorical literalism”).

1 texts must not be read in a decontextualized fashion detached from the web of
2 historical meaning that made them comprehensible to Americans living in the past.
3 Similarly, a mechanistic strategy of digital searching for historical gun laws would
4 be incapable of answering the historical inquiries required under *Bruen*. Instead,
5 understanding the public meaning of constitutional texts requires a solid grasp of
6 the relevant historical contexts—how firearms technology has changed, how
7 consumer demand has waxed and waned, and how the people, acting through their
8 representatives, respond to societal ills created by those changes.¹⁶

9 13. Moreover, as *Bruen* makes clear, history neither imposes “a regulatory
10 straightjacket nor a regulatory blank check.”¹⁷ The Court acknowledged that when
11 novel problems created by firearms are issue the analysis must reflect this fact:
12 “other cases implicating unprecedented societal concerns or dramatic technological
13 changes may require a more nuanced approach.” *Bruen* differentiates between
14 cases in which contested regulations are responses to long standing problems and
15 situations in which modern regulations address novel problems with no clear
16 historical analogues from the Founding era or the era of the Fourteenth
17 Amendment. Finally, as *Bruen* makes clear a more “nuanced” approach is required
18 to understand the nature of the problems early gun laws sought to remediate and the
19 potential burden they posed for the exercise of self-defense.

20 14. In the years between *Heller* and *Bruen*, historical scholarship has
21 expanded our understanding of the history of arms regulation in the Anglo-
22 American legal tradition, but much more work needs to be done to fill out this
23 picture.¹⁸ Indeed, such research is still ongoing: new materials continue to emerge;

24 _____
25 ¹⁶ See Jonathan Gienapp, *Historicism and Holism: Failures of Originalist*
Translation, 84 FORDHAM L. REV. 935 (2015).

26 ¹⁷ *Bruen*, 142 S. Ct. 2111.

27 ¹⁸ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of*
28 *Second Amendment Law & Policy*, 80 L. & CONTEMP. PROBS. 1 (2017).

1 and since *Bruen* was decided, additional evidence about the history of regulation
 2 has surfaced and new scholarship interpreting it has appeared in leading law
 3 reviews and other scholarly venues.¹⁹

4 15. As Justice Scalia noted in *Heller*, and Justice Thomas reiterated in
 5 *Bruen*, the original Second Amendment was a result of interest balancing
 6 undertaken by the people themselves in framing the federal Constitution and the
 7 Bill of Rights. *Bruen*, 142 S. Ct. at 2131; *Heller*, 554 U.S. at 635. Although “free-
 8 standing balancing” by judges is precluded by *Heller*, the plain meaning of the text
 9 recognizes a role for regulation explicitly and further asserts that actions inimical to
 10 a free state fall outside of the scope of the right instantiated in the text.²⁰ Thus,
 11 from its outset, the Second Amendment recognizes both the right to keep and bear
 12 arms and the right of the people to regulate arms to promote the goals of preserving
 13 a free state. Although rights and regulation are often cast as antithetical in the
 14 modern gun debate, the Founding generation saw the two goals as complimentary.

15 16. Comparing the language of the Constitution’s first two amendments
 16 and their different structures and word choice makes this point crystal clear. The
 17 First Amendment prohibits “abridging” the rights it protects. In standard American
 18 English in the Founding era, to “abridge” meant to “reduce.” Thus, the First
 19 Amendment prohibits a diminishment of the rights it protects. The Second
 20 Amendment’s language employs a very different term, requiring that the right to
 21 bear arms not be “infringed.”²¹ In Founding-era American English, the word

22 ¹⁹ *Symposium — The 2nd Amendment at the Supreme Court: “700 Years Of*
 23 *History” and the Modern Effects of Guns in Public*, 55 U.C. DAVIS L. REV. 2495
 24 (2022); *NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE*
 25 *OF GUNS IN AMERICAN LAW AND SOCIETY* (Joseph Blocher, Jacob D. Charles &
 Darrell A.H. Miller eds., forthcoming 2023).

26 ²⁰ *Heller* at 635.

27 ²¹ The distinction emerges clearly in a discussion of natural law and the law
 28 of nations in an influential treatise on international law much esteemed by the
 Founding generation: “Princes who infringe the law of nations, commit as great a

“infringement” meant to “violate” or “destroy.” In short, when read with the Founding era’s interpretive assumptions and legal definitions in mind, the two Amendments set up radically different frameworks for evaluating the rights they enshrined in constitutional text. Members of the Founding generation would have understood that the legislature could regulate the *conduct* protected by the Second Amendment and comparable state arms bearing provisions as long as such regulations did not destroy the underlying *right*. An exclusive focus on rights and a disparagement of regulation is thus antithetical to the plain meaning of the text of the Second Amendment.

17. John Burn, author of an influential eighteenth-century legal dictionary, illustrated the concept of infringement in the context of his discussion of violations of rights protected by the common law. Liberty, according to Burns, was not identical to that “wild and savage liberty” of the state of nature. True liberty, by contrast, only existed when individuals created civil society and enacted laws and regulations that promoted *ordered* liberty. Regulation was the indispensable correlate of rights in Founding era constitutionalism.²²

18. Similarly, Nathan Bailey’s *Dictionarium Britannicum* (1730) defined “abridge” as to “shorten,” while “infringe” was defined as to “break a law.”²³ And his 1763 *New Universal Dictionary* repeats the definition of “abridge” as “shorten” and “infringe” as “to break a law, custom, or privilege.”²⁴ Samuel Johnson’s

crime as private people, who violate the law of nature,” J.J. BURLAMAQUI, *THE PRINCIPLES OF NATURAL LAW* (Thomas Nugent trans., 1753) at 201. This book was among those included in the list of important texts Congress needed to procure, see Report on Books for Congress, [23 January] 1783,” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Madison/01-06-02-0031>.

²² *Liberty*, A NEW LAW DICTIONARY (1792) See also, Jud Campbell, *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW & CONTEMP. PROBS. 31, 32–33 (2020)

²³ *Abridge*, *DICTIONARIUM BRITANNICUM* (1730).

²⁴ *Abridge*, *NEW UNIVERSAL DICTIONARY* (1763).

1 *Dictionary of the English Language* (1755) defines “infringe” as “to violate; to
 2 break laws or contracts” or “to destroy; to hinder.”²⁵ Johnson’s definition of
 3 “abridge” was “to shorten” and “to diminish” or “to deprive of.”²⁶ And Noah
 4 Webster’s *An American Dictionary of the English Language* (1828) largely repeats
 5 Johnson’s definitions of “infringe” and “abridge.”²⁷ Although today the two terms
 6 are conflated by some, the meanings of abridge and infringe were and remain
 7 distinct. The Founding generation was far more nuanced in distinguishing between
 8 the differences between these two terms.

9 19. For the framers, ratifiers, and other relevant legal actors in the
 10 Founding era, robust regulation was not understood to be an “infringement” of the
 11 right to bear arms, but rather the necessary foundation for the proper exercise of
 12 that right as required by the concept of ordered liberty.²⁸ As one patriotic
 13 revolutionary era orator observed, almost a decade after the adoption of the
 14 Constitution: “True liberty consists, not in having *no government*, not in a
 15 *destitution of all law*, but in our having an equal voice in the formation and
 16 execution of the laws, according as they effect [*sic*] our persons and property.”²⁹

17 ²⁵ *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

18 ²⁶ *Abridge*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

19 ²⁷ *Abridge, Infringe*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
 20 (1828).

21 ²⁸ Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of*
 22 *Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). *See generally*
 23 GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY,*
 24 *EXCLUSION, AND THE FALL OF THE FOUNDERS’ CONSTITUTION, 1780s–1830s*, at 2;
 25 Victoria Kahn, *Early Modern Rights Talk*, 13 YALE J.L. & HUMAN. 391 (2001)
 26 (discussing how the early modern language of rights incorporated aspects of natural
 27 rights and other philosophical traditions); Joseph Postell, *Regulation During the*
 28 *American Founding: Achieving Liberalism and Republicanism*, 5 AM. POL.
 THOUGHT 80 (2016) (examining the importance of regulation to Founding political
 and constitutional thought).

²⁹ Joseph Russell, *An Oration; Pronounced in Princeton, Massachusetts, on*
the Anniversary of American Independence, July 4, 1799, at 7 (July 4, 1799), (text
 available in the Evans Early American Imprint Collection) (emphasis in original).

1 By allowing individuals to participate in politics and enact laws aimed at promoting
2 the health, safety, and well-being of the people, liberty flourished.³⁰

3 20. The key insight derived from taking the Founding era conception of
4 rights seriously and applying the original understanding of the Founding era's
5 conception of liberty is the recognition that regulation and liberty are both hard
6 wired into the Amendment's text. The inclusion of rights guarantees in
7 constitutional texts was not meant to place them beyond the scope of legislative
8 control. "The point of retaining natural rights," originalist scholar Jud Campbell
9 reminds us "was not to make certain aspects of natural liberty immune from
10 governmental regulation. Rather, retained natural rights were aspects of natural
11 liberty that could be restricted only with just cause and only with consent of the
12 body politic."³¹ Rather than limit rights, regulation was the essential means of
13 preserving rights, including self-defense.³² In fact, without robust regulation of
14

15 ³⁰ See generally QUENTIN SKINNER, LIBERTY BEFORE LIBERALISM (1998)
16 (examining neo-Roman theories of free citizens and how it impacted the
17 development of political theory in England); THE NATURE OF RIGHTS AT THE
18 AMERICAN FOUNDING AND BEYOND (Barry Alan Shain ed., 2007) (discussing how
the Founding generation approached rights, including the republican model of
protecting rights by representation).

19 ³¹ Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L.
20 REV. 517, 527 (2019) (emphasis in original). See generally Saul Cornell, *Half*
21 *Cocked: The Persistence of Anachronism and Presentism in the Academic Debate*
22 *Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206
(2016) (noting that the Second Amendment was not understood in terms of the
simple dichotomies that have shaped modern debate over the right to bear arms).

23 ³² See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15
24 GEO. J.L. & PUB. POL'Y 569, 576–77 (2017). Campbell's work is paradigm-
25 shifting, and demonstrates that Justice Scalia's unsubstantiated claim in *Heller* that
26 the inclusion of the Second Amendment in the Bill of Rights placed certain forms
27 of regulation out of bounds is totally anachronistic. This claim has no foundation in
28 Founding-era constitutional thought, but reflects the contentious modern debate
between Justice Black and Justice Frankfurter over judicial balancing, on Scalia's
debt to this modern debate, see generally SAUL CORNELL, THE POLICE POWER AND
THE AUTHORITY TO REGULATE FIREARMS IN EARLY AMERICA 1–2 (2021),
https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf

1 arms, it would have been impossible to implement the Second Amendment and its
 2 state analogues. Mustering the militia required keeping track of who had weapons
 3 and included the authority to inspect those weapons and fine individuals who failed
 4 to store them safely and keep them in good working order.³³ The individual states
 5 also imposed loyalty oaths, disarming those who refused to take such oaths. No
 6 state imposed a similar oath as pre-requisite to the exercise of First Amendment-
 7 type liberties. Thus, some forms of prior restraint, impermissible in the case of
 8 expressive freedoms protected by the First Amendment or comparable state
 9 provisions, were understood by the Founding generation to be perfectly consistent
 10 with the constitutional right to keep and bear arms.³⁴

11 21. In keeping with the clear public meaning of the Second Amendment's
 12 text and comparable state provisions, early American governments enacted laws to
 13 preserve the rights of law-abiding citizens to keep and bear arms and promote the
 14 equally vital goals of promoting public safety. The proper metric for deciding if
 15 such laws were constitutional was and remains the same today: whether a
 16 regulation infringes on the core right protected by the Second Amendment.³⁵

17 **II. FROM MUSKETS TO PISTOLS: CHANGE AND CONTINUITY IN EARLY** 18 **AMERICAN FIREARMS REGULATION**

19 22. Guns have been regulated from the dawn of American history.³⁶ At the
 20 time *Heller* was decided, there was little scholarship on the history of gun

21 [\[https://perma.cc/J6QD-4YXG\]](https://perma.cc/J6QD-4YXG) and Joseph Blocher, *Response: Rights as Trumps of*
 22 *What?*, 132 HARV. L. REV. 120, 123 (2019).

23 ³³ H. RICHARD UVILLER & WILLIAM G. MERKEL, *THE MILITIA AND THE*
 24 *RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT* 150 (2002).

25 ³⁴ Saul Cornell, *Commonplace or Anachronism: The Standard Model, the*
 26 *Second Amendment, and the Problem of History in Contemporary Constitutional*
 27 *Theory* 16 *CONSTITUTIONAL COMMENTARY* 988 (1999).

28 ³⁵ Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early*
American Origins of Gun Control, 73 *FORDHAM L. REV.* 487 (2004).

³⁶ Robert J. Spitzer, *Gun Law History in the United States and Second*

1 regulation and a paucity of quality scholarship on early American gun culture.³⁷
 2 Fortunately, a burgeoning body of scholarship has illuminated both topics,
 3 deepening scholarly understanding of the relevant contexts needed to implement
 4 *Bruen's* framework.³⁸

5 23. The common law that Americans inherited from England always
 6 acknowledged that the right of self-defense was not unlimited but existed within a
 7 well-delineated jurisprudential framework. The entire body of the common law
 8 was designed to preserve the peace and the right of self-defense existed within this
 9 larger framework.³⁹ Statutory law, both in England and America functioned to
 10 further secure the peace and public safety. Given these indisputable facts, the
 11 Supreme Court correctly noted, the right to keep and bear arms was never
 12 understood to prevent government from enacting a broad range of regulations to
 13 promote the peace and maintain public safety.⁴⁰ To deny such an authority would
 14 be to convert the Constitution into a suicide pact and not a charter of government.
 15 In keeping with this principle, the Second Amendment and its state analogues were
 16 understood to enhance the concept of ordered liberty, not undermine it.⁴¹

17 24. *Bruen's* methodology requires judges to distinguish between the
 18 relevant history necessary to understand early American constitutional texts and a
 19 series of myths about guns and regulation that were created by later generations to
 20

21 *Amendment Rights*, 80 L. & CONTEMP. PROBS. 55 (2017).

22 ³⁷ *Id.*

23 ³⁸ Ruben & Miller, *supra* note 18, at 1.

24 ³⁹ Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 L. & CONTEMP. PROBS. 11 (2017).

25 ⁴⁰ *McDonald*, 561 U.S. at 785 (noting “[s]tate and local experimentation
 26 with reasonable firearms regulations will continue under the Second
 Amendment”).

27 ⁴¹ See generally Saul Cornell, *The Long Arc Of Arms Regulation In Public: From Surety To Permitting*, 1328-1928, 55 U.C. DAVIS L. REV. 2547 (2022)
 28

1 sell novels, movies, and guns themselves.⁴² Unfortunately, many of these myths
2 continue to cloud legal discussions of American gun policy and Second
3 Amendment jurisprudence.⁴³

4 25. Although it is hard for many modern Americans to grasp, there was no
5 comparable societal ill to the modern gun violence problem for Americans to solve
6 in the era of the Second Amendment. A combination of factors, including the
7 nature of firearms technology and the realities of living life in small, face-to-face,
8 and mostly homogenous rural communities that typified many parts of early
9 America, militated against the development of such a problem. In contrast to
10 modern America, homicide was not the problem that government firearm policy
11 needed to address at the time of the Second Amendment.⁴⁴

12 26. The surviving data from New England is particularly rich and has
13 allowed scholars to formulate a much better understanding of the dynamics of early
14 American gun policy and relate it to early American gun culture.⁴⁵ Levels of gun
15 violence among those of white European ancestry in the era of the Second
16 Amendment were relatively low compared to modern America. These low levels of
17 violence among persons of European ancestry contrasted with the high levels of
18

19 ⁴² PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF*
20 *AMERICAN GUN CULTURE* (2016).

21 ⁴³ RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN*
22 *TWENTIETH-CENTURY AMERICA* (1993); JOAN BURBICK, *GUN SHOW NATION: GUN*
23 *CULTURE AND AMERICAN DEMOCRACY* (2006).

24 ⁴⁴ RANDOLPH ROTH, *AMERICAN HOMICIDE* 56, 315 (2009).

25 ⁴⁵ It is important to recognize that there were profound regional differences in
26 early America. *See* JACK P. GREENE, *PURSUIITS OF HAPPINESS: THE SOCIAL*
27 *DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF*
28 *AMERICAN CULTURE* (1988). These differences also had important consequences
for the evolution of American law. *See generally* David Thomas Konig,
Regionalism in Early American Law, in 1 *THE CAMBRIDGE HISTORY OF LAW IN*
AMERICA 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

1 violence involving the tribal populations of the region. The data presented in
2 Figure 1 is based on the pioneering research of Ohio State historian Randolph Roth.
3 It captures one of the essential facts necessary to understand what fears motivated
4 American gun policy in the era of the Second Amendment. The pressing problem
5 Americans faced at the time of the Second Amendment was that citizens were
6 reluctant to purchase military style weapons which were relatively expensive and
7 had little utility in a rural society. Americans were far better armed than their
8 British ancestors, but the guns most Americans owned and desired were those most
9 useful for life in an agrarian society: fowling pieces and light hunting muskets.⁴⁶
10 Killing pests and hunting birds were the main concern of farmers, and their choice
11 of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols
12 were of limited utility for anyone outside of a small elite group of wealthy,
13 powerful, and influential men who needed these weapons if they were forced to
14 face an opponent on the field of honor in a duel, as the tragic fate of Alexander
15 Hamilton so vividly illustrates.⁴⁷

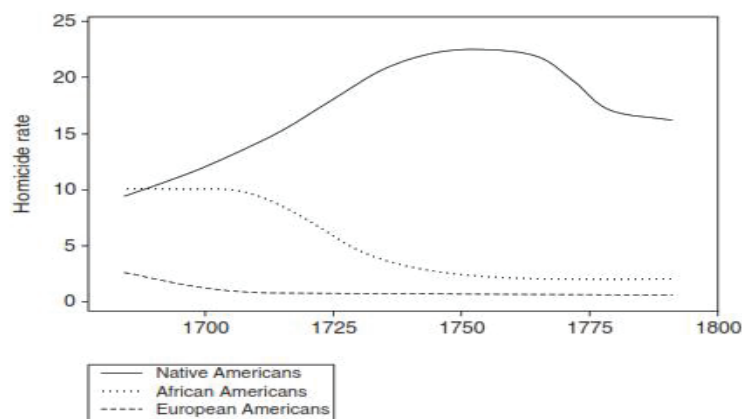
16 27. Limits in Founding-era firearms technology also militated against the
17 use of guns as effective tools of interpersonal violence in this period. Eighteenth-
18 century muzzle-loading weapons, especially muskets, took too long to load and
19 were therefore seldom used to commit crimes. Nor was keeping guns loaded a
20 viable option because the black powder used in these weapons was not only
21 corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles
22 and muskets hung over the mantle place in early American homes was not primarily
23 a function of aesthetics or the potent symbolism of the hearth, as many today

24 ⁴⁶ Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and*
25 *Eighteenth Century England and America*, in *A RIGHT TO BEAR ARMS?: THE*
26 *CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND*
AMENDMENT (Jennifer Tucker et al. eds., 2019).

27 ⁴⁷ Joanne B. Freeman, *AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW*
28 *REPUBLIC* (2001).

1 assume. As historian Roth notes: “black powder’s hygroscopic, it absorbs water, it
 2 corrodes your barrel, you can’t keep it loaded. Why do they always show the gun
 3 over the fireplace? Because that’s the warmest, driest place in the house.”⁴⁸
 4 Similar problems also limited the utility of muzzle-loading pistols as practical tools
 5 for self-defense or criminal offenses. Indeed, at the time of the Second
 6 Amendment, over 90% of the weapons owned by Americans were long guns, not
 7 pistols.⁴⁹

8 **Figure 1**



17 **Figure 2.3** Unrelated-adult homicide rates in New England by race, 1677–
 18 1797 (per 100,000 persons per year).

19

20 28. As Roth’s data makes clear, there was not a serious homicide problem
 21 looming over debates about the Second Amendment. Nor were guns the primary
 22 weapon of choice for those with evil intent during this period.⁵⁰ The skill and time
 23 required to load and fire flintlock muzzle loading black powder weapons meant that

24

25 ⁴⁸ Randolph Roth, Transcript: *Why is the United States the Most Homicidal in*
 26 *the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013),
<https://nij.ojp.gov/media/video/24061#transcript--0>.

27 ⁴⁹ Sweeney, *supra* note 46.

28 ⁵⁰ HAAG, *supra* note 42.

1 these types of firearms were less likely to be used in crimes of passion. The
2 preference for storing them unloaded also meant they posed fewer dangers to
3 children from accidental discharge.

4 29. In short, the Founding generation did not confront a gun violence
5 problem similar in nature or scope to the ills that plague modern America. Rather,
6 they faced a different, but no less serious problem: American reluctance to purchase
7 the type of weapons needed to effectively arm their militias. Despite repeated
8 efforts to exhort and legislate to promote this goal, many states were failing to
9 adequately equip the militia with suitable firearms that could withstand the rigors of
10 the type of close-quarters hand-to-hand combat required by military tactics. A gun
11 had to be able to receive a bayonet and serve as a bludgeon if necessary. The light-
12 weight guns favored by the overwhelmingly rural population of early America were
13 well designed to put food on the table and rid fields of vermin, but were not well
14 suited to eighteenth-century ground wars. When the U.S. government surveyed the
15 state of the militia's preparedness shortly after Jefferson took office in 1800, the
16 problem had not been solved. Although Massachusetts boasted above 80% of its
17 militia armed with military quality weapons, many of the southern states lagged far
18 behind, with Virginia and North Carolina hovering at about less than half the militia
19 properly armed.⁵¹

20 30. As a result, the government took an active role in encouraging the
21 manufacturing of arms and had a vested interest in determining what types of
22 weapons would be produced.⁵² The American firearms industry in its infancy was
23 thus largely dependent on government contracts and subsidies.

24
25 ⁵¹ Sweeney, *supra* note 46.

26 ⁵² Lindsay Schakenbach Regele, *A Different Constitutionality for Gun*
27 *Regulation*, 46 HASTINGS CONST. L.Q. 523, 524 (2019); Andrew J. B. Fagal,
28 *American Arms Manufacturing and the Onset of the War of 1812*, 87 NEW ENG. Q.
526, 526 (2014).

1 31. One important form of government regulation of the firearms industry,
2 a practice that began in the era of the Second Amendment and persisted throughout
3 the nineteenth century included inspection of weapons and Government-imposed
4 safety standards on the firearms industry. Indeed, without such interventions it is
5 likely that the industry would never have survived. The danger posed by defective
6 arms, or poorly manufactured ones could be catastrophic. A burst barrel of a
7 musket or fowling piece could turn a firearm into a pipe bomb, maiming or killing
8 an unfortunate user.

9 32. In 1805 Massachusetts enacted a law requiring all guns to be inspected
10 before they could be sold in the Commonwealth.⁵³ As stated in the law's preamble,
11 the law's purpose was to prevent harm to residents from the sale of unsafe firearms.
12 The law required the appointment of inspectors, up to two per county, who would
13 "prove," i.e. test and inspect, all musket barrels and pistol barrels. The law detailed
14 the manner in which these inspections were to be conducted, which included testing
15 the firearm to ensure it would not fail and that it could carry a shot over a certain
16 distance. If the firearm passed inspection, then the inspector would stamp it with
17 the inspector's initials and the year onto the barrel so that the stamp could not be
18 erased or disfigured. Only firearms that passed inspection and were stamped could
19 be sold, and the sale of firearms without a stamp was subject to a fine. The
20 standards that all muskets and pistols had to meet to pass inspection were updated
21 in 1814.⁵⁴

22 ⁵³ 1804 Mass. Acts. 111, ch. 81, "An Act to Provide for the Proof of Fire
23 Arms Manufactured Within this Commonwealth."

24 ⁵⁴ 1814 Mass. Acts 464, An Act In Addition To An Act, Entitled "An Act To
25 Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth,"
26 ch. 192, § 1 ("All musket barrels and pistol barrels, manufactured within this
27 Commonwealth, shall, before the same shall be sold, and before the same shall be
28 stocked, be proved by the person appointed according to the provisions of an act . .
.. ."); § 2 ("That if any person or persons, from and after the passing of this act,
shall manufacture, within this Commonwealth, any musket or pistol, or shall sell
and deliver, or shall knowingly purchase any musket or pistol, without having the

1 33. Maine imposed a similar requirement on firearms in 1821, and
2 continued the practice through the end of the century.⁵⁵ Similar to the
3 Massachusetts proving law, the Maine law required the governor to appoint
4 inspectors of firearms who would then ensure that firearms met certain safety
5 standards and stamped prior to their sale. The Maine and Massachusetts laws
6 persisted throughout the nineteenth century.⁵⁶

7 34. The federal armory in Springfield, Massachusetts began producing
8 muskets in 1794. The presence of the armory served as a spur to innovation among
9 local gun smiths. In fact, this confluence of factors helped Western Massachusetts
10 become the leading small arms producer in America on the eve of the War of 1812.
11 The Springfield armory, a federal entity, was governed by federal law (not
12 Massachusetts law) but it nonetheless extensively scrutinized and inspected all arms
13 made at its facilities and any arms produced by local gunsmiths under government
14 contract. This quality of these weapons, literally being stamped with government
15 approval, made these guns particularly valuable in the civilian arms market when
16 government surplus guns were sold to consumers.⁵⁷ Federal weapons not made in
17 Massachusetts were also stamped to discourage theft. In 1776, George Washington
18 ordered all Continental Army firearms stamped with an insignia: “U.S.XIII.”
19 Government marked weapons in this fashion to make it easier to identify cases
20 where arms were being illegally sold in a secondary market to private individuals.⁵⁸

21 _____
22 barrels first proved according to the provisions of the first section of this act,
23 marked and stamped according the provisions of the first section of the act.”)

24 ⁵⁵ “An Act to Provide for the Proof of Fire Arms,” 2 Laws State of Maine
25 (1821) at 685-6.

26 ⁵⁶ 1 The General Statutes of the Commonwealth of Massachusetts: Enacted
27 December 28, 1859, to Take Effect June 1, 1860 (2d ed., William A. Richardson &
28 George P. Sanger, eds.) 255 (1873).

⁵⁷ Lindsay Schakenbach Regele, MANUFACTURING ADVANTAGE:
WAR, THE STATE, AND THE ORIGINS OF AMERICAN INDUSTRY, 1776–
1848 (2019) at 63-65.

⁵⁸ E. Wayne Carp’s TO STARVE THE ARMY AT PLEASURE:

1 In 1780, George Washington also ordered that the Continental Army ensure all gun
2 barrels were sufficiently proved to avoid buying poor quality guns.⁵⁹

3 35. Stamping and marking firearms to help government keep track of
4 weapons and enforce manufacturing standards were practices well known to the
5 Founding generation. These types of policies were understood at the time of the
6 Second Amendment and its various state analogs to be perfectly consistent with the
7 right to keep and bear arms.

8 36. The market for firearms in early America shared very few features
9 with the contemporary world of firearms commerce. Today's Americans have a
10 myriad of choices of the type and style of weapon when they wish to acquire a
11 firearm. Gun shows, gun supermarkets, and internet sales are a few of the many
12 ways Americans acquire firearms today. Although estimates vary, it is likely that
13 there are now more guns than people in contemporary America.

14 37. Early America firearms production in the era of the Second
15 Amendment, in contrast, was dominated by artisan production. Local gun smiths,
16 not big box stores such as Walmart, were responsible for selling most firearms.
17 Most sellers and buyers of firearms in early America were members of the same
18 community. Moreover, given the nature of eighteenth-century firearms technology
19 gun owners needed to maintain an on-going relationship with their local gun smith
20 to keep their guns in good working order. The informal ties of kin and community
21 that defined the close-knit communities of early American meant that individuals
22

23
24 CONTINENTAL ARMY ADMINISTRATION AND AMERICAN POLITICAL
CULTURE, 1775-1783 (1984) at 66-67.

25 ⁵⁹ Letter from George Washington to Henry Knox (Nov. 30, 1780), in *The*
26 *Writings of George Washington from the Original Manuscript Sources 1745-1799*
(John C. Fitzpatrick, ed.) ("I think it will be best for you to give orders to the
27 Officer superintending the Laboratory to have the Barrels sufficiently proved before
they are delivered to Mr. Buel, as I suspect that they are most of them of the trash
28 kind which Mr. ... Lee charges Mr. Deane[']s Agent with purchasing.")

1 were effectively vetted and monitored by their neighbors in ways that share little
2 with the largely anonymous world of modern firearms commerce.⁶⁰

3 38. The calculus of individual self-defense changed dramatically in the
4 decades following the adoption of the Second Amendment.⁶¹ The early decades of
5 the nineteenth century witnessed a revolution in the production and marketing of
6 guns.⁶² The same technological changes and economic forces that made wooden
7 clocks and other consumer goods such as Currier and Ives prints common items in
8 many homes also transformed American gun culture.⁶³ These same changes also
9 made handguns and a gruesome assortment of deadly knives, including the dreaded
10 Bowie knife, more common. The culmination of this gradual evolution in both
11 firearms and ammunition technology was the development of Samuel Colt's pistols
12 around the time of the Mexican-American War.⁶⁴ Economic transformation was
13 accompanied by a host of profound social changes that gave rise to America's first
14 gun violence crisis. As cheaper, more dependable, and easily concealable handguns
15 proliferated in large numbers, Americans, particularly southerners, began sporting
16 them with alarming regularity. The change in behavior was most noticeable in the
17 case of handguns.⁶⁵

18
19
20 ⁶⁰ Scott Paul Gordon, *The Ambitions of William Henry*, 136
21 PENNSYLVANIA MAGAZINE OF HISTORY AND BIOGRAPHY 253 (2012).
22 Pennsylvania was one of the main regions of early American gunsmithing, M.L.
23 Brown, FIREARMS IN COLONIAL AMERICA: THE IMPACT ON HISTORY
24 AND TECHNOLOGY, 1492-1792 (1980).

25 ⁶¹ Cornell, *supra* note 3, at 745.

26 ⁶² Lindsay Schakenbach Regele, *Industrial Manifest Destiny: American*
27 *Firearms Manufacturing and Antebellum Expansion*, 93 BUS. HIST. REV. 57 (2018).

28 ⁶³ Sean Wilentz, *Society, Politics, and the Market Revolution*, in THE NEW
AMERICAN HISTORY (Eric Foner ed., 1990).

⁶⁴ WILLIAM N. HOSLEY, COLT: THE MAKING OF AN AMERICAN LEGEND (1st
ed. 1996).

⁶⁵ Cornell, *supra* note 3, at 716.

39. The response of states to the emergence of new firearms that threatened the peace was more regulation. When faced with changes in technology and consumer behavior, as well as novel threats to public safety, the individual states enacted laws to address these problems. In every instance apart from a few outlier cases in the Slave South, courts upheld such limits on the unfettered exercise a right to keep and bear arms. The primary limit identified by courts in evaluating such laws was the threshold question about infringement: whether the law negated the ability to act in self-defense.⁶⁶ In keeping with the clear imperative hard-wired into the Second Amendment, states singled out weapons that posed a particular danger for regulation or prohibition. Responding in this fashion was entirely consistent with Founding-era conceptions of ordered liberty and the Second Amendment.

III. THE POLICE POWER AND FIREARMS REGULATION

40. The 1776 Pennsylvania Constitution, the first revolutionary constitution to assert a right to bear arms, preceded the assertion of this right by affirming a more basic rights claim: “That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.”⁶⁷ The phrase “internal police” had already become common, particularly in laws establishing towns and defining the scope of their legislative authority.⁶⁸ By

⁶⁶ On southern gun rights exceptionalism, see Eric M. Ruben & Saul Cornell, *Firearms Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 YALE L.J. F. 121, 128 (2015).

⁶⁷ PA. CONST. OF 1776, Ch. I, art iii.

⁶⁸ For other examples of constitutional language similar to Pennsylvania’s provision, N.C. CONST. OF 1776, DECLARATION OF RIGHTS, art. II; VT. CONST. OF 1777, DECLARATION OF RIGHTS, art. IV. For other examples of this usage, see An Act Incorporating the residents residing within limits therein mentioned, in 2 NEW YORK LAWS 158 (1785) (establishing the town of Hudson, NY); An Act to incorporate the Town of Marietta, in LAWS PASSED IN THE TERRITORY NORTHWEST OF THE RIVER OHIO 29 (1791). For later examples, see 1 STATUTES OF THE STATE OF NEW JERSEY 561 (rev. ed. 1847); 1 SUPPLEMENTS TO THE REVISED STATUTES. LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, PASSED SUBSEQUENTLY TO THE

1 the early nineteenth century, the term “police” was a fixture in American law.⁶⁹
 2 Thus, an 1832 American encyclopedia confidently asserted that police, “in the
 3 common acceptance of the word, in the U. States and England, is applied to the
 4 municipal rules, institutions and officers provided for maintaining order, cleanliness
 5 &c.”⁷⁰ The Founding era’s conception of a basic police right located in legislatures
 6 was transmuted during the Marshall Court’s era into the judicial doctrine of the
 7 police power and would become a fixture in American law.

8 41. The power to regulate firearms and gunpowder has always been
 9 central to the police power and historically was shared among states, local
 10 municipalities, and the federal government when it was legislating conduct on
 11 federal land and in buildings.⁷¹ The adoption of the Constitution and the Bill of
 12 Rights did not deprive states of their police powers. Indeed, if it had, the
 13 Constitution would not have been ratified and there would be no Second
 14 Amendment today. Ratification was only possible because Federalists offered
 15 Anti-Federalists strong assurances that nothing about the new government
 16 threatened the traditional scope of the individual state’s police power authority,
 17 including the authority to regulate guns and gun powder.⁷²

18 42. Federalists and Anti-Federalists bitterly disagreed over many legal
 19 issues, but this one point of accord was incontrovertible. Brutus, a leading Anti-
 20 Federalist, emphatically declared that “[I]t ought to be left to the state governments

21 _____
 22 REVISED STATUTES: 1836 TO 1849, INCLUSIVE 413 (Theron Metcalf & Luther S.
 Cushing, eds. 1849).

23 ⁶⁹ ERNST FREUND, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL
 24 RIGHTS 2, n.2 (1904).

25 ⁷⁰ 10 ENCYCLOPEDIA AMERICANA 214 new edition (Francis Lieber ed.).

26 ⁷¹ Harry N. Scheiber, *State Police Power*, in 4 ENCYCLOPEDIA OF THE
 AMERICAN CONSTITUTION 1744 (Leonard W. Levy et al. eds., 1986).

27 ⁷² Saul Cornell, THE OTHER FOUNDERS: ANTIFEDERALISM AND THE
 28 DISSENTING TRADITION IN AMERICA, 1788-1828 (1999).

1 to provide for the protection and defence [sic] of the citizen against the hand of
 2 private violence, and the wrongs done or attempted by individuals to each other
 3”⁷³ Federalist Tench Coxe concurred, asserting that: “[t]he states will regulate
 4 and administer the criminal law, exclusively of Congress.” States, he assured the
 5 American people during ratification, would continue to legislate on all matters
 6 related to the police power “such as unlicensed public houses, nuisances, and many
 7 other things of the like nature.”⁷⁴ State police power authority was at its pinnacle in
 8 matters relating to guns or gun powder.⁷⁵

9 43. Every aspect of the manufacture, sale, and storage of gun powder was
 10 regulated due to the substance’s dangerous potential to detonate if exposed to fire or
 11 heat. Firearms were also subject to a wide range of regulations, including laws
 12 pertaining to the manufacture, sale, and storage of weapons.⁷⁶

13 44. Thus, Massachusetts enacted a law that prohibited storing a loaded
 14 weapon in a home, a firearms safety law that recognized that the unintended
 15 discharge of firearms posed a serious threat to life and limb.⁷⁷ New York City even
 16 granted broad power to the government to search for gun powder and transfer
 17 powder to the public magazine for safe storage:

18 it shall and may be lawful for the mayor or recorder, or any two
 19 Alderman of the said city, upon application made by any inhabitant or
 20 inhabitants of the said city, and upon his or their making oath of

21 ⁷³ Brutus, *Essays of Brutus VII*, reprinted in 2 THE COMPLETE
 22 ANTIFEDERALIST 358, 400–05 (Herbert J. Storing ed., 1981).

23 ⁷⁴ Tench Coxe, A Freeman, *Pa. Gazette*, Jan. 23, 1788, reprinted in FRIENDS
 24 OF THE CONSTITUTION: WRITINGS OF THE “OTHER” FEDERALISTS 82 (Colleen A.
 25 Sheehan & Gary L. McDowell eds., 1998).

26 ⁷⁵ CORNELL, *supra* note 34.

27 ⁷⁶ Cornell and DeDino, *supra* note 35; public carry by contrast was limited
 28 by common law and criminal statutes, see, Cornell, *supra* note 39.

⁷⁷ Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to
 the Several Acts Already Made for the Prudent Storage of Gun Powder within the
 Town of Boston, § 2.

1 reasonable cause of suspicion (of the sufficiency of which the said
2 mavor or recorder, or Aldermen, is and are to be the iudge or iudges)
3 to issue his or their warrant or warrants, under his or their hand and
4 seal, or hands and seals for searching for such gun powder, in the day
5 time, in any building or place whatsoever.⁷⁸

6 45. New Hampshire further enacted a law in 1825 penalizing the sale or
7 offer to sell “by retail any gunpowder in any highway, or in any street, lane, or
8 alley, or on any wharf, or on parade or common.”⁷⁹

9 46. Other examples of state laws delegating authority to local governments
10 to regulate the sale of gunpowder for public safety include but are not limited to:

- 11 a. 1845 Iowa Laws 119, An Act to Incorporate and Establish the City
12 of Dubuque, chap 123, § 12 (delegating authority to cities “to
13 regulate by ordinance the keeping and sale of gunpowder within the
14 city”);
- 15 b. An Act Incorporating the Cities of Hartford, New Haven, New
16 London, Norwich and Middletown, 1836 Conn. Acts 105 (Reg.
17 Sess.), chap. 1, § 20 (delegating authority to “prohibit[] and
18 regulat[e] the bringing in, and conveying out” of gunpowder);
- 19 c. An Act to Reduce the Law Incorporating the City of Madison, and
20 the Several Acts Amendatory thereto Into One Act, and to Amend
21 the Same, 1847 Ind. Acts 93, chap 61, § 8, pt. 4 (delegating
22 authority “[t]o regulate and license, or provide by ordinance for
23 regulating and licensing . . . the keepers of gunpowder”).⁸⁰

24 ⁷⁸ An Act to Prevent the Storing of Gun Powder, within in Certain Parts of
25 New York City, 2 LAWS OF THE STATE OF NEW-YORK, COMPRISING THE
26 CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION,
27 FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE at 191-2 (Thomas
28 Greenleaf, ed., 1792).

⁷⁹ 1825 N.H. Laws 74, ch. 61, § 5.

⁸⁰ See also Survey of Relevant Historical Analogues at Exhibit 31, filed

1 47. The purpose of these gunpowder regulations was to promote public
2 safety. Early American governments recognized the danger posed by gun powder
3 and regulated every aspect of its production, sale, and storage. Early American
4 governments also regulated shooting galleries for similar reasons.⁸¹

5 48. There were also “proving” laws that required the inspection of
6 gunpowder. In 1809, Massachusetts established requirements for the quality and
7 composition of gunpowder; authorized the appointment of provers to inspect
8 gunpowder before it was placed in any public magazine; required provers to place
9 gunpowder that passed inspection in casks marked with the inspector’s initials;
10 authorized inspectors to mark as “condemned” gunpowder that failed inspection;
11 and forbade the sale of gunpowder that was marked condemned or that had not yet
12 passed inspection.⁸² Four other states, including Rhode Island, New Jersey, New
13 Hampshire, and Pennsylvania, adopted similar gunpowder inspection laws in the
14 late eighteenth and early nineteenth centuries.⁸³

15 _____
16 concurrently with this declaration.

17 ⁸¹ John C. White, Digest of the Laws and Ordinances of the Parish of East
18 Feliciana, Adopted by the Police Jury of the Parish Page 80 (1848); Ordinances and
19 Joint Resolutions of the City of San Francisco; Together with a List of the Officers
20 of the City and County, and Rules and Orders of the Common Council Page 220
21 (1854); Chas. Ben. Darwin, Ordinances of the City of Burlington, with Head Notes
22 and an Analytic Index Page 149-150 (1856) ; Rhode Island: 1851 R.I. Pub. Laws 9,
23 An Act In Amendment Of An Act Entitled An Act Relating To Theatrical
24 Exhibitions And Places Of Amusement, §§ 1-2; Samuel Ames, The Revised
25 Statutes of the State of Rhode Island and Providence Plantations: To Which are
26 Prefixed, The Constitutions of the United States and of the State Page 204-
27 205(1857); William H. Bridges, Digest of the Charters and Ordinances of the City
28 of Memphis, Together with the Acts of the Legislature Relating to the City, with an
Appendix Page 148-149 (1863); Henry Jefferson Leovy, The Laws and General
Ordinances of the City of New Orleans, Together with the Acts of the Legislature,
Decisions of the Supreme Court. And Constitutional Provisions Relating to the City
Government. Revised and Digested, Pursuant to an Order of the Common Council.
New Edition Page 257 (1870); Exh. 31.

⁸² 1808 Mass. Acts 444, ch. 52, An Act Providing for the Appointment of
Inspectors, and Regulating the Manufactory of Gun-Powder.

⁸³ 1776 R.I. Pub. Laws 25 (Oct. Sess.); 1776-77 N.J. Laws 6-7, ch. 6; 1820
N.H. Laws 274, ch. 25; 1794 Pa. Laws 764, ch. 337; Exh. 31.

1 49. The application of the police power to firearms and ammunition was
 2 singled out as the quintessential example of state police power by Chief Justice
 3 John Marshall in his 1827 discussion of laws regulating gun powder in *Brown v.*
 4 *Maryland*.⁸⁴ This was so even though gunpowder was essential to the operation of
 5 firearms at that time and gun powder regulations necessarily affected the ability of
 6 gun owners to use firearms for self-defense, even inside the home.

7 50. A slow process of judicializing this concept of police, transforming the
 8 Founding era's idea of a "police right" into a judicially enforceable concept of the
 9 "police power" occurred beginning with the Marshall Court and continuing with the
 10 Taney Court.⁸⁵

11 51. Nor was Chief Justice John Marshall unique in highlighting the
 12 centrality of this idea to American law.⁸⁶ The ubiquity of the police power
 13 framework for evaluating the constitutionality of legislation regarding firearms
 14 reflected the centrality of this approach to nearly every question of municipal
 15 legislation touching health or public safety in early America.⁸⁷ Massachusetts

16 ⁸⁴ 25 U.S. (12 Wheat.) 419, 442-43 (1827) ("The power to direct the removal
 17 of gunpowder is a branch of the police power").

18 ⁸⁵ Eras of Supreme Court history are typically defined by the tenure of the
 19 Chief Justice. The Marshall Court Period covered the years 1801-1835. For a brief
 20 overview, see "The Marshall Court, 1801-1835", SUPREME COURT HISTORICAL
 21 SOCIETY (last visited Oct. 5, 2022), [https://supremecourthistory.org/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/](https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/). The Taney Court period covered the years 1836-1864. See "The
 22 Taney Court, 1836-1864", SUPREME COURT HISTORICAL SOCIETY (last visited Oct.
 23 5, 2022), [https://supremecourthistory.org/history-of-the-court-history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/](https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/).

24 ⁸⁶ In the extensive notes he added as editor of the 12th edition of James Kent's
 25 classic *Commentaries on American Law*, Oliver Wendell Holmes, Jr., wrote that
 26 regulation of firearms was the *locus classicus* of the police power. See 2 JAMES
 27 KENT COMMENTARIES ON AMERICAN LAW (340) 464 n.2 (Oliver Wendell Holmes,
 28 Jr., ed. 12 ed. 1873).

⁸⁷ FREUND, *supra* note 69, at 2, n.2 (1904). WILLIAM J. NOVAK, THE PEOPLE'S
 WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA (1996);
 Christopher Tomlins, *To Improve the State and Condition of Man: The Power to*

1 Judge Lemuel Shaw, one of the most celebrated state jurists of the pre-Civil War era
 2 elaborated this point in his influential 1851 opinion in *Commonwealth v. Alger*, a
 3 decision that became a foundational text for lawyers, judges, and legislators looking
 4 for guidance on the meaning and scope of the police power. Shaw described the
 5 police power in the following manner:

6 [T]he power vested in the legislature by the constitution, to make,
 7 ordain and establish all manner of wholesome and reasonable laws,
 8 statutes and ordinances, either with penalties or without, not
 9 repugnant to the constitution, as they shall judge to be for the good
 10 and welfare of the commonwealth, and of the subjects of the same.
 11 It is much easier to perceive and realize the existence and sources
 12 of this power, than to mark its boundaries, or prescribe limits to its
 exercise. There are many cases in which such a power is exercised
 by all well-ordered governments, and where its fitness is so
 obvious, that all well regulated minds will regard it as reasonable.
 Such are the laws to prohibit the use of warehouses for the storage
 of gunpowder.⁸⁸

13 52. In short, there was unanimous agreement among leading antebellum
 14 jurists, at both the federal and state level, that the regulation of arms and gun
 15 powder was at the core of the police power enjoyed by legislatures. Indeed, the
 16 scope of government power to regulate, prohibit, and inspect gunpowder has been
 17 among the most far reaching of any exercise of the police power throughout
 18 American history.⁸⁹ A Maine law enacted in 1821 authorized town officials to enter
 19 any building in town to search for gun powder:

20 Be it further enacted, That it shall, and may be lawful for any one or
 21 more of the selectmen of any town to enter any building, or other
 22 place, in such town, to search for gun powder, which they may have

23 *Police and the History of American Governance*, 53 BUFF. L. REV. 1215 (2005);
 24 DUBBER, *supra* note 12; GARY GERSTLE, LIBERTY AND COERCION: THE PARADOX OF
 AMERICAN GOVERNMENT, FROM THE FOUNDING TO THE PRESENT (Princeton Univ.
 Press, 2015).

25 ⁸⁸ *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53 (1851). For another good
 26 discussion of how state jurisprudence treated the concept, see *Thorpe v. Rutland*, 27
 Vt. 140, 149 (1855).

27 ⁸⁹ CORNELL, THE POLICE POWER, *supra* note 32.
 28

1 reason to suppose to be concealed or kept, contrary to the rules and
2 regulations which shall be established in such town, according to the
3 provisions of this Act, first having obtained a search warrant therefore
according to law.⁹⁰

4 53. No jurisdiction enumerated the full contours of the police power they
5 possessed in a single text or in a single statute or ordinance. Rather, it was well
6 understood that the exercise of this power would need to adapt to changing
7 circumstances and new challenges as they emerged. This conception of law was
8 familiar to most early American lawyers and judges who had been schooled in
9 common law modes of thinking and analysis.⁹¹ Throughout the long sweep of
10 Anglo-American legal history, government applications of the police power were
11 marked by flexibility, allowing local communities to adapt to changing
12 circumstances and craft appropriate legislation to deal with the shifting challenges
13 they faced.⁹² This vision of the police power was articulated forcefully by the
14 Supreme Court in the License Cases when Justice McClean wrote this about the
15 scope of state police power:

16 It is not susceptible of an exact limitation, but must be exercised under
17 the changing exigencies of society. In the progress of population, of
18 wealth, and of civilization, new and vicious indulgences spring up, which
19 require restraints that can only be imposed by new legislative power.
When this power shall be exerted, how far it shall be carried, and where it
shall cease, must mainly depend upon the evil to be remedied.⁹³

20 54. One of the most important early American gun-related cases discussed
21 in *Heller*, *State v. Reid*, offers an excellent illustration of the way police power
22 jurisprudence was used by antebellum judges to adjudicate claims about gun rights

23 ⁹⁰ 1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the
24 Safe Keeping of Gun Powder, chap. 25, § 5.

25 ⁹¹ KUNAL M. PARKER, COMMON LAW HISTORY, AND DEMOCRACY IN
AMERICA, 190-1900: LEGAL THOUGHT BEFORE MODERNISM (2013).

26 ⁹² William J. Novak, *A State of Legislatures*, 40 POLITY 340 (2008).

27 ⁹³ *License Cases* (*Thurlow v. Massachusetts*; *Fletcher v. Rhode Island*; *Peirce*
28 *v. New Hampshire*), 5 How. (46 U.S.) 504, 592 (1847).

1 and the right of the people to regulate.⁹⁴ The case is a classic example of
2 antebellum police power jurisprudence. The Supreme Court of Alabama evaluated
3 the statute by focusing on the scope of state police power authority over guns. “The
4 terms in which this provision is phrased,” the court noted, “leave with the
5 Legislature the authority to adopt such regulations of police, as may be dictated by
6 the safety of the people and the advancement of public morals.”⁹⁵ In the court’s
7 view, the regulation of arms was at the very core of state police power.⁹⁶ The
8 judicial determination was straightforward: was the challenged law a legitimate
9 exercise of the police power or not?

10 **IV. RECONSTRUCTION AND THE EXPANSION OF STATE POLICE POWER TO**
11 **REGULATE FIREARMS (1863-1877)**

12
13 55. Founding-era constitutions treated the right of the people to regulate
14 their internal police separately from the equally important right of the people to
15 bear arms. These two rights were separate in the Founding era but were mutually
16 reinforcing: both rights were exercised in a manner that furthered the goal of
17 ordered liberty. Reconstruction-era constitutions adopted a new textual formulation
18 of the connection between these two formerly distinct rights, fusing the two
19 together as one single constitutional principle. This change reflected two profound
20 transformations in American politics and law between 1776 and 1868. First, the
21 judicial concept of police power gradually usurped the older notion of a police right
22 grounded in the idea of popular sovereignty. As a result, state constitutions no

23
24 ⁹⁴ See *State v. Reid*, 1 Ala. 612, 612 (1840).

25 ⁹⁵ *Id.* at 616.

26 ⁹⁶ Apart from rare outlier decisions, such as *Bliss v. Commonwealth*, 12 Ky.
27 (2 Litt.) 90, 92 (1822) courts employed a police power framework to adjudicate
28 claims about the scope of state power to regulate arms. For a useful discussion of
Bliss in terms of the police power, see FREUND, *supra* note 69, at 91.

1 longer included positive affirmations of a police right. Secondly, the constitutional
 2 “mischief to be remedied” had changed as well.⁹⁷ Constitution writers in the era of
 3 the American Revolution feared powerful standing armies and sought to entrench
 4 civilian control of the military. By contrast, constitution writers in the era of the
 5 Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart
 6 Kings using their standing army to oppress American colonists. In place of these
 7 ancient fears, a new apprehension stalked Americans: the proliferation of especially
 8 dangerous weapons and the societal harms they caused.⁹⁸

9 56. The new language state constitutions employed to describe the right to
 10 bear arms enacted during Reconstruction responded to these changed circumstances
 11 by adopting a new formulation of the venerable right codified in 1776, linking the
 12 right to bear arms inextricably with the states broad police power to regulate
 13 conduct to promote health and public safety.⁹⁹ For example, the 1868 Texas
 14 Constitution included new language that underscored the indissoluble connection
 15 that Anglo-American law had long recognized between the right to keep and bear
 16 arms and regulation of guns. “Every person shall have the right to keep and bear
 17 arms, in the lawful defence of himself or the government, under such regulations as

18 ⁹⁷ The mischief rule was first advanced in *Heydon’s Case*, (1584) 76 Eng.
 19 Rep. 637 (KB) — the legal principle that the meaning of a legal text was shaped by
 20 an understanding of the state of the common law prior to its enactment and the
 21 mischief that the common law had failed to address and legislation had intended to
 22 remedy — continued to shape Anglo-American views of statutory construction, and
 23 legal interpretation more generally, well into the nineteenth century. For
 24 Blackstone’s articulation of the rule, see 1 BLACKSTONE, *supra* note 8, at *61. The
 25 relevance of common law modes of statutory construction to interpreting
 26 antebellum law, including the mischief rule, is clearly articulated in 1 ZEPHANIAH
 27 SWIFT, A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT 11 (New Haven, S.
 28 Converse 1822). For a modern scholarly discussion of the rule, see Samuel L.
 Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 970 (2021).

⁹⁸ See *McDonald*, 561 U.S. at 767–68.

⁹⁹ Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 U.C. DAVIS L. REV. 65 (2022).

1 the Legislature may prescribe.”¹⁰⁰ Texas was not an outlier in this regard. Sixteen
 2 state constitutions adopted during this period employed similarly expansive
 3 language.¹⁰¹ Millions of Americans living in the newly organized western states
 4 and newly reconstructed states of the former confederacy adopted constitutional
 5 provisions that reflected this new formulation of the right to bear arms. Thus,
 6 millions of Americans were living under constitutional regimes that acknowledged
 7 that the individual states’ police power authority over firearms was at its apogee
 8 when regulating guns.¹⁰²

9 57. This expansion of regulation was entirely consistent with the
 10 Fourteenth Amendment’s emphasis on the protection of rights and the need to
 11 regulate conduct that threatened the hard-won freedoms of recently free people of
 12 the South and their Republican allies. The goals of Reconstruction were therefore
 13 intimately tied to the passage and enforcement of racially neutral gun regulations.¹⁰³

14 58. Reconstruction ushered in profound changes in American law, but it
 15 did not fundamentally alter the antebellum legal view that a states’ police powers
 16 were rooted in the people’s right to make laws to protect the peace and promote
 17 public safety. Nor did Reconstruction challenge the notion that these powers were
 18 at their zenith when dealing with guns and gun powder. In fact, the Republicans
 19 who wrote the Fourteenth Amendment were among the most ardent champions of

20 ¹⁰⁰ TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional
 21 provision enacted after the Civil War, *see* IDAHO CONST. OF 1889, art. I, § 11 (“The
 22 people have the right to bear arms for their security and defense; but the legislature
 23 shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6
 (“[T]he people have the right to bear arms for their security and defense, but the
 legislature may regulate the exercise of this right by law.”).

24 ¹⁰¹ Cornell, *supra* note 99, at 75–76.

25 ¹⁰² *Id.*

26 ¹⁰³ ERIC FONER, THE SECOND FOUNDING: HOW THE CIVIL WAR AND
 27 RECONSTRUCTION REMADE THE CONSTITUTION (2019); Brennan Gardner Rivas,
 28 *Enforcement of Public Carry Restrictions: Texas as a Case Study*, 55 U.C. DAVIS L.
 REV. 2603 (2022).

1 an expansive view of state police power. As heirs to the antebellum Whig vision of
2 a well-regulated society, Reconstruction-era Republicans used government power
3 aggressively to protect the rights of recently freed slaves and promote their vision
4 of ordered liberty.¹⁰⁴

5 59. Indeed, the passage of the Fourteenth Amendment was premised on the
6 notion that the individual states would not lose their police power authority to the
7 federal government. The author of Section One of the Fourteenth Amendment,
8 John Bingham, reassured voters that the states would continue to bear the primary
9 responsibility for “local administration and personal security.”¹⁰⁵ As long as state
10 and local laws were racially neutral and favored no person over any other, the
11 people themselves, acting through their representatives, were free to enact
12 reasonable measures necessary to promote public safety and further the common
13 good.¹⁰⁶

14 60. It would be difficult to understate the impact of this new paradigm for
15 gun regulation on post-Civil War legislation. Across the nation legislatures took
16 advantage of the new formulation of the right to bear arms included in state
17 constitutions and enacted a staggering range of new laws to regulate arms. Indeed,
18 the number of laws enacted skyrocketed, increasing by over four hundred percent
19

20 ¹⁰⁴ Robert J. Kaczorowski, *Congress’s Power to Enforce Fourteenth*
21 *Amendment Rights: Lessons from Federal Remedies the Framers Enacted*, 42
22 *HARV. J. ON LEGIS.* 187 (2005); Christopher Tomlins, *To Improve the State and*
23 *Condition of Man: The Power to Police and the History of American Governance*
53 *BUFFALO L. REV.* 1215 (2005/2006).

24 ¹⁰⁵ John Bingham, *Speech*, CINCINNATI DAILY GAZETTE (Sept. 2, 1867), as
25 quoted in Saul Cornell and Justin Florence, *The Right to Bear Arms in the Era of*
the *Fourteenth Amendment: Gun Rights or Gun Regulation*, 50 *SANTA CLARA L.*
26 *REV.* 1043, 1058 (2010).

27 ¹⁰⁶ For a discussion of how the courts wrestled with the meaning of the
28 Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM*
POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1998).

1 from antebellum levels.¹⁰⁷ Not only did the number of laws increase, but the
2 number of states and localities passing such laws also expanded.¹⁰⁸

3 61. Henry Campbell Black, the author of *Black's Law Dictionary*,
4 described the police power as “inalienable” and echoed the view of a long line of
5 jurists who noted that the scope of the power was not easily defined and the
6 determination of its limits was best left to courts on a case-by-case basis.¹⁰⁹ Indeed,
7 even the most ardent critics of the police power, such as conservative legal scholar
8 Christopher G. Tiedeman, acknowledged that “police power of the State extends to
9 the protection of the lives, limbs, health, comfort and quiet of all persons, and the
10 protection of all property within the State.”¹¹⁰

11 62. In keeping with the larger goals of Reconstruction, Republicans sought
12 to protect the rights of African Americans to bear arms but were equally insistent on
13 enacting strong racially neutral regulations aimed at public safety. Violence
14 directed against African Americans, particularly the campaign of terror orchestrated
15 by white supremacist para-military groups prompted Republican dominated
16 legislatures in the Reconstruction South to pass a range of racially neutral gun
17 regulations.¹¹¹ The racially neutral gun laws enacted by Republicans were in part a
18 reaction to the discriminatory black codes passed by neo-confederate legislatures
19 earlier in Reconstruction. The Black Codes violated the Second Amendment, but

20 ¹⁰⁷ See Spitzer, *supra* note 36, at 59–61 tbl. 1.

21 ¹⁰⁸ *Id.*

22 ¹⁰⁹ HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344
23 (2d ed., 1897).

24 ¹¹⁰ CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE
25 POLICE POWER IN THE UNITED STATES 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27
Vt. 140, 149–50 (1854)).

26 ¹¹¹ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in*
27 *Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas,
28 *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in*
Texas, 1836–1900, 121 SOUTHWESTERN QUARTERLY 284 (2020).

1 the wave of firearms legislation passed by Republican controlled state legislatures
2 in the South were consciously crafted to honor the Second Amendment and protect
3 individuals from gun violence.¹¹²

4 63. The laws enacted during Reconstruction underscore the fact that robust
5 regulation of firearms during Reconstruction was not a novel application of the
6 police power, but an expansion and continuation of antebellum practices. Moreover,
7 these efforts illustrated a point beyond dispute: the flexibility inherent in police
8 power regulations of guns. American states had regulated arms since the dawn of
9 the republic and Reconstruction simply renewed America's commitment to the idea
10 of well-regulated liberty.

11 64. Another important change relevant to understanding firearms
12 regulation in the Reconstruction era derives from changes in firearms technology,
13 specifically the profoundly increased lethality of weapons manufactured at that
14 time. By the ratification of the Fourteenth Amendment, firearms became more
15 deadly, lighter, easier to use, more accurate, and required far less training to be
16 effective than did the muskets of the eighteenth century. Although comparisons of
17 weapons from different eras is inherently subjective, one effort to compile a
18 comparative lethality index for military weapons is instructive. Military historian
19 and defense analyst Trevor DuPuy's theoretical lethality index captures the
20 exponential growth in the lethality of battlefield firearms between the era of the
21 Second Amendment and the Fourteenth and beyond. Of course, the lethality index,
22 an intellectual construct developed to compare weapons on the battlefield offers an
23 imperfect gauge for the increased lethality of modern weapons in a civilian context.
24 The improvements associated with weapons in the Civil War era were significant,

25 ¹¹² See Darrell A. H. Miller, *Peruta, The Home-Bound Second Amendment,*
26 *and Fractal Originalism*, 127 HARV. L. REV. 238, 241 (2014); see also Robert J.
27 Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights:*
28 *Lessons from Federal Remedies the Framers Enacted*, 42 HARV. J. ON LEGIS. 187,
205 (2005) (discussing Republican use of federal power to further their aims,
including to enforce the Fourteenth Amendment).

Dupuy's Theoretical Lethality Index⁷⁴

| Weapon | TLI |
|---|-------|
| Sword, pike, etc. | 23 |
| Longbow | 36 |
| 17th c. musket | 19 |
| 18th c. flintlock | 43 |
| Early 19th c. rifle | 36 |
| Mid-19th c. rifle/conoidal bullet | 102 |
| Late 19th c. breech-loading rifle | 153 |
| Springfield Model 1903 rifle (magazine) | 495 |
| World War I machine gun | 3,463 |
| World War II machine gun | 4,973 |

but they pale in comparison to the carnage that that modern semi-automatic weapons can inflict in densely populated areas and sensitive places. Nevertheless, Dupuy's innovative and useful scale, designed for battlefield comparisons invariably understates the increase in the level of destruction today's weapons can inflict upon a civilian population.¹¹³ The expansion of gun laws after the Civil War, in part, reflects the improvements in firearms lethality and their wider availability to the civilian population. The ease of use of these weapons compared to earlier firearms also increased their popularity. The rise of easily concealed weapons, especially pocket pistols, contributed to rising urban crime and violence. The expansion of arms in the post-Civil War era made these and other arms more readily available for use in crimes of violence so states and localities enacted laws to regulate the baneful consequences of arms proliferation.¹¹⁴

V. *BRUEN*'S FRAMEWORK AND THE SCOPE OF PERMISSIBLE REGULATION

65. The power to regulate and in some cases prohibit dangerous or unusual weapons has always been central to the police power authority of states and localities.¹¹⁵

¹¹³ Darrell Miller and Jennifer Tucker, *Common Use Lineage, and Lethality* 55 U.C DAVIS. L. REV 2495, 2509 (2022).

¹¹⁴ Cornell, *supra* note 99.

¹¹⁵ Spitzer, *supra* note 36.

1 66. Political scientist Robert Spitzer’s overview of the history of firearms
2 regulation underscores a basic point about American law: “The lesson of gun
3 regulation history here is that new technologies bred new laws when circumstances
4 warranted.”¹¹⁶ States and localities have regulated arms and ammunition since the
5 earliest days of the American Republic. The statutes at issue in this case are
6 analogous to a long-established tradition of firearms regulation in America,
7 beginning in the colonial period and stretching across time to the present. This
8 venerable tradition of using police power authority to craft specific laws to meet
9 shifting challenges has continued to the present day.¹¹⁷ The adaptability of state and
10 local police power provided the flexibility governments needed to deal with the
11 problems created by changes in firearms technology and gun culture.

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27 ¹¹⁶ *Id.*

28 ¹¹⁷ GERSTLE, *supra* note 87.

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

Executed on February 23 2023 at Palo Alto, California.

Saul Cornell

Saul Cornell

DEFENDANT'S EXHIBIT 31

ER-0253

***Boland, Lance, et al. v. Robert Bonta, et al.*, No. 8:22-cv-01421-CJC-ADS
Survey of Relevant Historical Analogues (Pre-Founding – 1899)**

| Year of Enactment | Jurisdiction | Citation | Description of Regulation | Subject of Regulation |
|--------------------------------------|--------------|---|---|-----------------------|
| Founding Era to the Civil War | | | | |
| 1757-68 | Maryland | <i>Md. Acts 53, An Act Prohibiting All Trade With The Indians, For The Time Therin Mentioned, § 3¹</i> | That it shall not be lawful for any person or persons within this Province, to sell or give to any Indian Woman or Child, any gunpowder, shot, or lead, whatsoever, nor to any Indian Man within this province, more than the quantity of one pound of gunpowder and six pounds of shot or lead, at any one time, and not those, or lesser quantities of powder or lead oftener than once in Six months, under the Penalty of Five Pounds Current Money for every pound of gunpowder. | Gunpowder |

¹ Laws such as this which were based on race, nationality, or enslaved status were enacted before ratification of the Thirteenth and Fourteenth Amendments, are morally repugnant, and would obviously be unconstitutional today. They are provided only as evidence of a regulatory tradition that the courts have already recognized. The Attorney General in no way condones laws that target certain groups on the basis of race, gender, nationality, or other protected characteristic, but these laws are part of the history of the Second Amendment and may be relevant to determining the traditions that define its scope, even if they are inconsistent with other constitutional guarantees. *See New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2150-2151 (2022) (citing *Dred Scott v. Sandford*, 19 How. 393 (1857) (enslaved party)). Reference to a particular historical analogue does not endorse the analogue’s *application* in the past. Rather, it can confirm the *existence* of the doctrine and corresponding limitation on the Second Amendment right. *See* William Baude & Stephen E. Sachs, *Originalism & the Law of the Past*, 37 L. & Hist. Rev. 809, 813 (2019) (“Present law typically gives force to past *doctrine*, not to that doctrine’s role in past society.”); *see also* Adam Winkler, *Racist Gun Laws and the Second Amendment*, 135 Harv. L. Rev. F. 537, 539 (2022) (“Yet there will arise situations in which even a racially discriminatory gun law of the past might provide *some* basis for recognizing that lawmakers have a degree of regulatory authority over guns.”)

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|--------------------------|---------------------|--|--|------------------------------|
| 1775 | New Hampshire | <i>8 Documents and Records Relating to the State of New Hampshire During the Period of the American Revolution from 1776-1783 at 15-16 (Nathaniel Bouton ed. 1874), Jan. 12, 1775.</i> | Requiring each firearm sold in the colony to possess certain specifications and pass inspection involving the safe firing of the gun | Firearm proving |
| 1775 | Maryland | <i>Resolution of the Maryland Council of Safety, August 19, 1775</i> | Approving purchase of muskets with detailed manufacturing specifications and requiring that they be proved before purchase | Firearm proving |
| 1775 | Pennsylvania | <i>Resolution of the Pennsylvania Committee on Safety, Oct. 27, 1775, Col. Rec. Penn. 10:383</i> | Requiring that all muskets be “proved” prior to purchase | Firearm proving |
| 1776 | New Jersey | <i>“Act for the Inspection of Gunpowder”, 1776-1777, N.J. Laws 6, ch. 6</i> | Required the inspection of gunpowder prior to sale, and appointed state inspectors to “mark” lots that passed inspection. | Gunpowder |
| 1776 | Rhode Island | <i>“An Act for the Inspection of Gunpowder Manufactured Within This State” 1776 R.I. Public Laws 25 (Oct. Session)</i> | Requiring that before gunpowder could be sold it needed to pass inspection or adhere to certain safety standards | Gunpowder |
| 1776 | Continental Army | <i>E. Wayne Carp’s To Starve The Army At Pleasure: Continental Army Administration And American Political Culture, 1775-1783 (1984) at 66-67</i> | George Washington ordered all Continental Army firearms stamped with an insignia: “U.S.XIII.” in order to make it easier to identify cases where arms were being | Firearm proving |

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| | | | illegally sold in a secondary market to private individuals | |
| 1780 | Continental Army | <i>Letter from George Washington to Henry Knox (Nov. 30, 1780), in The Writings of George Washington from the Original Manuscript Sources 1745-1799 (John C. Fitzpatrick, ed.)</i> | “I think it will be best for you to give orders to the Officer superintending the Laboratory to have the Barrels sufficiently proved before they are delivered to Mr. Buel, as I suspect that they are most of them of the trash kind which Mr. ... Lee charges Mr. Deane[']s Agent with purchasing.” | Firearm proving |
| 1794 | Pennsylvania | <i>Pa. Laws 764, An Act Providing For The Inspection Of Gunpowder chap. 337</i> | Whereas gun-powder imported from abroad, and manufactured within this state, have frequently been found to vary much in its strength, and sometimes of inferior qualities, and its defects not discovered until brought into actual use : and whereas the modes herefore rules to prove the force thereof have been found uncertain and variable; and whereas Joseph Leacock, of the city of Philadelphia, hath invented an engine, called a pendulum powder proof, with a graduated arch and catch pall, by which it is conceived that the force of gunpowder | Gunpowder |

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| | | | may be proved by experiment, and the article reduced to certain and uniform standards of strength, whereby the manufacture may be advanced towards ultimate perfection, and the purchaser and consumer protected against fraud and imposition. | |
| 1805 | Massachusetts | <i>1804 Mass. Acts. III, ch. 81, An Act to Provide for the Proof of Fire Arms Manufactured Within this Commonwealth.</i> | To prevent harm to residents from the sale of unsafe firearms. The law required the appointment of inspectors, up to two per county, who would “prove,” i.e. test and inspect, all musket barrels and pistol barrels. The law detailed the manner in which these inspections were to be conducted, which included testing the firearm to ensure it would not fail and that it could carry a shot over a certain distance. If the firearm passed inspection, then the inspector would stamp it with the inspector’s initials and the year onto the barrel so that the stamp could not be erased or disfigured. | Firearm proving |
| 1811 | New Hampshire | <i>N.H. Laws 74, An Act To Regulate The Keeping And Selling,</i> | That if any person or persons shall sell or offer for sale by retail | Gunpowder |

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|-------------------|---------------|--|---|-----------------------|
| | | <i>And Transporting Of Gunpowder, chap. 61, § 5</i> | any gunpowder in any highway, or in any street, lane, or alley, or on any wharf, or on parade or common, such person so offending shall forfeit and pay for each and every offense a sum not more than five dollars nor less than one dollar, to be recovered and applied as aforesaid. | |
| 1811 | New Jersey | <i>N.J. Laws 300, An Act To Regulate Gun Powder Manufactories And Magazines Within This State</i> | No person or persons whatsoever shall be permitted within this state to erect or establish or cause to be erected or established any manufactory which shall be actually employed in manufacturing gun powder either by himself or any other person, either on his own land or another, within the distance of a quarter of a mile from any dwelling house, barn or out house, without the consent under hand and seal of all and every the owner or owners of such dwelling house. | Gunpowder |
| 1814 | Massachusetts | <i>1814 Mass. Acts 464, An Act In Addition To An Act, Entitled “An Act To Provide For The Proof Of Fire Arms, Manufactured Within This</i> | § 1 (“All musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the | Firearm proving |

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|-------------------|---------------|---|---|-----------------------|
| | | <i>Commonwealth,” ch. 192,</i> | same shall be stocked, be proved by the person appointed according to the provisions of an act”); § 2 (“That if any person of persons, from and after the passing of this act, shall manufacture, within this Commonwealth, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the barrels first proved according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act.”) | |
| 1820 | New Hampshire | <i>N.H. Laws 274, An Act To Provide For The Appointment Of Inspectors And Regulating The Manufacture Of Gunpowder, chap XXV, §§ 1-9</i> | The Governor is hereby authorized to appoint an inspector of gunpowder for every public powder magazine, and at every manufactory of gunpowder in this state § 2. And be it further enacted that from and after the first day of July next, all gunpowder which shall be manufactured within this estate shall be composed of the following proportions and quality of materials. . . § 3. It shall be the duty of each of said inspectors | Gunpowder |

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| Year of Enactment | Jurisdiction | Citation | Description of Regulation | Subject of Regulation |
|-------------------|--------------|----------|--|-----------------------|
| | | | to inspect examine and prove all gunpowder which after the first day of July shall not be deposited at any public powder magazine, or manufactory of this state. . . § 4: No gunpowder within this state shall be considered to be of proof unless one ounce thereof, placed in a chamber of a four inch howitzer and elevated so as to form an angle of forty five degrees with the horizon, will, upon being fired throw a twelve pound shot seventy five yards at the lease. § 5: When ever any of said inspectors shall discover any gunpowder, deposited at any public powder magazine, or any other place within this state, which is not well manufactured or which is composed of impure materials . . . the inspector in such case, shall mark each cask containing such impure ill manufactured or deficient gunpowder. § 6. If any person shall knowingly sell any condemned gunpowder . . . every such person, so offending , shall forfeit and pay not less | |

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|-------------------|--------------|---|--|-----------------------|
| | | | than two hundred dollars nor more than five hundred dollars. . . § 7. Each inspector . . . be shown to the faithful and impartial discharge of the duties of his office, and each inspector one cent for each pound gunpowder, by him examined inspected and proved § 8. That if any manufacturer of gunpowder meant to be sold inspected . . . shall forfeit . . . not less than two dollars . . . § That if any person with within this state . . shall knowingly . . . shall forfeit not less than 5 dollars nor more than 500 dollars. | |
| 1821 | Maine | 1821 Laws of the State of Maine 685-86, vol. 2, § 3, An Act to Provide for the Proof of Fire Arms. | Required the governor to appoint inspectors of firearms who would then ensure that firearms met certain safety standards and stamped prior to their sale. | Firearm Proving |
| 1836 | Connecticut | Acts 105 (Reg. Sess.) An Act Incorporating The Cities of Hartford, New Haven, New London, Norwich and Middletown, chap. 1, § 20 | Relative to prohibiting and regulating the bringing in, and conveying out, or storing of gunpowder in said cities. | Gunpowder |
| 1845 | Iowa | <i>Iowa Laws 119, An Act to Incorporate and Establish the City of</i> | They shall have power from time to time to make and publish all such laws and | Gunpowder |

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|-------------------|---------------|---|--|-----------------------|
| | | <i>Dubuque, chap 123, § 12</i> | ordinances as to them shall seem necessary to provide for the safety, preserve health, promote the prosperity and improve the morals, order, comfort and convenience of said city, and the inhabitants thereof, to impose fines, forfeitures and penalties on all persons offending against the laws and ordinances of said city, and provide for the prosecution, recovery and collection thereof, and shall have power to regulate by ordinance the keeping and sale of gunpowder within the city. | |
| 1847 | Indiana | <i>Ind. Acts 93, An Act To Reduce the Law Incorporating the City of Madison, and the Several Acts Amendatory thereto Into One Act, And To Amend the Same, chap 61, § 8, pt. 4</i> | To regulate and license, or provide by ordinance for regulating and licensing for the keepers of gunpowder and other explosive compounds. | Gunpowder |
| 1849 | Ohio | <i>Ohio Laws 408, An Act To Incorporate The Town Of Ripley In The County Of Brown, § 4</i> | That the said town council of Ripley shall have power to ordain and establish laws and ordinances . . . to regulate the sale of gunpowder therein. | Gunpowder |
| 1859 | Massachusetts | 1 The General Statutes of the Commonwealth of Massachusetts: Enacted December 28, | Renewing and updating firearm proving and gunpowder safety inspection laws | Firearm proving |

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| | | 1859, to Take Effect June 1, 1860 (2d ed., William A. Richardson & George P. Sanger, eds.) 255 (1873) | | |
| 1865 | Vermont | <i>Vt. Acts & Resolves 213, An Act To Amend An Act Entitled “An Act To Incorporate The Village Of Rutland,.” Approved November 15, 1847, § 10</i> | ...and said fire wardens may inspect the manner of manufacturing and keeping gun-powder, lime, ashes, matches, lights, fire-works of all kinds, and other combustibles, . . . and said fire-wardens may , if they deem the same to be dangerous, order the persons manufacturing and keeping such gun powder . . . in what manner to manufacture and keep the same. | Gunpowder |
| 1867-68 | Tennessee | <i>Tenn. Pub. Acts 26, An Act To Amend The Charter Of The City Of Memphis, And For Other Purposes, pt. 20</i> | To provide for the prevention and extinguishment of fires . . . to regulate and prevent carrying on manufactures dangerous in causing or producing fire . . . | Gunpowder |
| Reconstruction Era and Post-14th Amendment to 1899 | | | | |
| Year of Enactment | Jurisdiction | Citation | Description of Regulation | Subject of Regulation |
| 1866 | New Jersey | <i>1886 N.J. Laws 358, An Act To Regulate The Manufacture And Storage Of Gun Powder, Dynamite And Other Explosive, § 1</i> | No person or persons or corporations shall after the passage of this act, be permitted within this state to erect, have or maintain, or cause to | Gunpowder |

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|-------------------|--------------|---|--|-----------------------|
| | | | be erected, had or maintained any establishment, storehouse or building in which in which shall be manufactured, stored or kept any gun powder, blasting powder, dualin, dynamite, forcite, giant powder, nitro-glycerine, or any powder or materials of which nitro-glycerine is an essential ingredient or forms a component part, or any other explosive within the distance of one thousand feet from any public road... | |
| 1869 | Nebraska | <i>Neb. Laws 53, An Act To Incorporate Cities Of The First Class In The State Of Nebraska, § 47</i> | The City Council shall have power to license all . . . vendors of gunpowder | Gunpowder |
| 1871 | Maine | The Revised Statutes of the State of Maine, Passed January 25, 1871 326 (1871) | Renewing and updating firearm proving and gunpowder safety inspection laws | Firearm proving |
| 1874 | Kentucky | <i>Ky. Acts 327, An Act to Revise and Amend the Charter of the City of Newport, § 6</i> | To prohibit the manufacture of gunpowder or other explosive, dangerous or noxious compounds or substances in said city, and to regulate their sale and storage by license. | Gunpowder |

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|--------------------------|---------------------|---|---|------------------------------|
| 1883 | California | <i>Cal. Stat. 156, § 153</i> | The Municipal Council shall provide by ordinance for the payment into a “Fireman’s Charitable Fun” of such city, or city and county, of all moneys received for licenses for the storage, manufacture, or sale of gunpowder, blasting powder, gun cotton, fireworks, nitro-glycerine, dualine, or any explosive oils or compounds, or as a municipal tax upon the same; slao all fines collected in the police court for violations of fire ordinances. | Gunpowder |
| 1885 | Rhode Island | <i>R.I. Pub. Laws 6, An Act In Amendment Of And in Addition To Chapter 242 Of The Public Statutes, Entitles “Of Offenses Against Private Property.” § 1</i> | Every person who shall knowingly deliver or cause to be delivered to any person or carrier any box, can or other package of nitro-glycerine, gunpowder, naptha or other equally explosive material, not marked with a plain and legible label describing its contents, or who shall remove or cause to be removed any such label or mark shall be fined not more than ten thousand dollars or imprisoned not more than five years. | Gunpowder |

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|--------------------------|---------------------|---|--|------------------------------|
| 1889 | Ohio | <i>Ohio Laws 164, An Act To Amend Section 2669 Of The Revised Statutes, As Amended April 22, 1885, § 2669</i> | The council of the city or village may provide by ordinance for licensing all exhibitors of shows or performances of any kind, not prohibited by law, hawkers, peddlers, auctioneers of horses and other animals on the highways or public grounds of the corporation, vendors of gun powder and other explosives, taverns and houses of public entertainment, and hucksters in the public streets or markets, and in granting such license, may extract and receive such sum of money as it may think reasonable... | Gunpowder |
| 1890 | Oklahoma | <i>Okla. Sess. Laws 447, Crime and Punishment, § 24</i> | Every person guilty of making or keeping gunpowder or saltpeter within any city or village, in any quantity of manner such as is prohibited by law or by ordinance of said city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter. | Gunpowder |

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|--------------------------|---------------------|--|--|------------------------------|
| 1890 | Oklahoma | <i>Okla. Sess. Laws 474, Crime and Punishment, § 4</i> | Every person who makes or keeps gunpowder or saltpeter within any city or village, and every person who carries gunpowder through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or village, is guilty of a misdemeanor. | Gunpowder |
| 1891 | New Hampshire | <i>N.H. Laws 332, Safe-keeping Of Gunpowder And Other Explosives, § 7</i> | If any person shall carry from town to town, or from place to place, any gunpowder for the purpose of peddling or selling it by retail in quantities less than twenty-five pounds, or shall sell, or offer to sell by retail, any gunpowder in any highway or street, or on any wharf, parade, or common, or if any person shall sell or deal out any gunpowder in the night time, between sunset and sunrise, he shall forfeit for each offense a sum not more than five dollars. | Gunpowder |
| 1895 | Nebraska | <i>Neb. Laws 233, Statutes Relating To The government Of The City Of Lincoln, § 17</i> | No person shall keep, sell, or give away any gunpowder or guncotton in any quantity without permission in writing signed by the Chief of | Gunpowder |

***Boland, Lance, et al. v. Robert Bonta, et al.*, No. 8:22-cv-01421-CJC-ADS
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|-------------------|--------------|--|--|-----------------------|
| | | | Fire Department and City Clerk, and sealed with the corporate seal, under a penalty of twenty-five dollars for every offense: Provided, any person may keep for his own defense a quantity of gunpowder or guncotton not exceeding one pound. | |
| 1899 | Tennessee | <i>Tenn. Pub. Acts 327, An Act To Repeal The Charter Of The Town Of Waverly, In Humphreys county, And to Incorporate Said Town And Define Its Rights, Powers, etc., § 10</i> | To regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires, and to prevent and suppress the sale of firearms, fireworks, Roman candles, crackers, sky rockets, etc., and toy pistols. | Gunpowder |

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**
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13 **LANCE BOLAND; MARIO**
14 **SANTELLAN; RENO MAY; JEROME**
15 **SCHAMMEL; and CALIFORNIA**
16 **RIFLE & PISTOL ASSOCIATION,**
17 **INCORPORATED,**

18 **Plaintiffs,**

19 **v.**

20 **ROBERT BONTA, in his official**
21 **capacity as Attorney General of the**
22 **State of California, and DOES 1–10,**

23 **Defendants.**
24

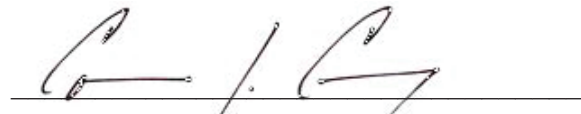
Case No.: SACV 22-01421-CJC (ADSx)

**ORDER REGARDING CLOSING
BRIEFING FOLLOWING
EVIDENTIARY HEARING ON
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

25 On January 23 and 24, 2023, the Court held an evidentiary hearing on Plaintiffs'
26 motion for a preliminary injunction. At the conclusion of the hearing, the Court
27 discussed with the parties the submission of closing briefing regarding the motion.
28 Accordingly, it is hereby **ORDERED** that the parties file briefs no longer than **twenty**

1 **(20) pages** in length by **February 24, 2023**. It is further **ORDERED** that the parties
2 submit response briefs no longer than **ten (10) pages** in length by **March 10, 2023**.
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5 DATED: January 24, 2023
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8 CORMAC J. CARNEY
9 UNITED STATES DISTRICT JUDGE
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