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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 B&L PRODUCTIONS, INC., et al.,
19 Plaintiffs,
20 v.
21 GAVIN NEWSOM, et al.,
22 Defendants.

Case No.: 8:22-cv-01518 JWH (JDEx)

**DECLARATION OF ANNA M.
BARVIR IN SUPPORT OF
PLAINTIFFS’ MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT**

Hearing Date: February 27, 2026
Hearing Time: 9:00 AM
Courtroom: 9D
Judge: Hon. John W. Holcomb

Action Filed: August 12, 2022

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DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, declare as follows:

1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I am licensed to practice law before the United States District Court for the Central District of California. I am also admitted to practice before the courts of the state of California, the Eastern, Southern, and Northern Districts of California, the D.C., First, Fourth, Ninth, and Tenth Circuit Courts of Appeals, and the Supreme Court of the United States. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. Following the issuance of the Ninth Circuit’s opinion resolving Defendants’ interlocutory appeal, Plaintiffs’ counsel promptly evaluated the decision and its implications for the pleadings in this case. They also took time to “analyz[e] the ruling’s implications and consult[] with gun show vendors to assess whether and how they might continue operating within the constraints imposed by the challenged statute, as informed by the panel’s decision.” Pls.’ Status Report (July 16, 2025), ECF No. 71.

3. Plaintiffs also became aware that, in September 2024 (after the Ninth Circuit issued its decision but before the Supreme Court had ruled on Plaintiffs’ petition for certiorari), the State Defendants had adopted and publicized an expanded interpretation of the challenged statutes to prohibit firearm and ammunition raffles and auctions on state-owned property.

4. On October 9, 2025, in preparation for a status conference then scheduled for October 31, 2025, I met and conferred with Mr. Donald Kilmer, my co-counsel, and Mr. Charles Sarosy, counsel of record for the State Defendants, to discuss ways this case could be resolved without further litigation and, if further litigation was necessary, whether the Parties could agree to stipulate to the filing of a Second Amended Complaint (“SAC”) pending the State Defendants’ review of the

1 draft complaint or if Plaintiffs would need to file a motion for leave to amend. It.
2 Status Report at 2 (Oct. 17, 2025), ECF No. 73.

3 5. In November 2025, counsel for Plaintiffs began to engage with counsel
4 for the State Defendants regarding whether and how gun shows could be conducted
5 on state-owned properties in line with the Ninth Circuit’s decision and interpretation
6 of the challenged statutes. On November 10, 2025, I sent Defendants an email and
7 letter outlining a business model consistent with Plaintiffs’ understanding of the
8 Ninth Circuit’s guidance and offered to engage in ADR should the State Defendants
9 find good basis to negotiate Plaintiffs’ proposal. I also reiterated that, should the
10 State Defendants find no room to negotiate the terms of the proposal, Plaintiffs
11 would seek leave to file an SAC, either by way of stipulation or noticed motion.

12 6. Based on the Ninth Circuit’s opinion and these post-appeal
13 developments, Plaintiffs prepared a draft SAC to clarify their allegations and to
14 address factual developments that occurred after the filing of the First Amended
15 Complaint. On or about November 17, 2025, I emailed Mr. Sarosy and formally
16 requested consent for leave to amend pursuant to Rule 15. I provided a courtesy
17 copy of the draft SAC for the State Defendants’ consideration.

18 7. On or about December 23, 2025, counsel for Defendants responded via
19 email, declining to agree to the proposed business plan or to stipulate to the filing of
20 the proposed SAC.

21 8. As to the proposed SAC, Mr. Sarosy stated his clients’ position that the
22 proposed pleading continued to assert challenges “that were foreclosed by the Ninth
23 Circuit’s decision in this case.” Plaintiffs take this to mean that the State Defendants
24 believe that amendment would be futile. The State Defendants did not, at the time,
25 suggest that amendment was in bad faith or would result in undue prejudice to the
26 State Defendants.

27 9. Plaintiffs disagree that amendment would be futile because the SAC
28 presents new factual allegations that could not have been considered by the Ninth

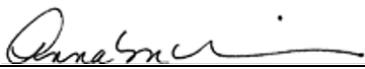
1 Circuit and expressly incorporates the Ninth Circuit’s analysis. Further, even if
2 certain claims or allegations might be considered to be in tension with the Ninth
3 Circuit’s decision on the State Defendants’ preliminary injunction appeal, Plaintiffs’
4 position is that they must retain those claims and allegations in order to preserve
5 their arguments for future appeal(s).

6 10. On January 9, 2026, at the most recent hearing in this case, the Parties
7 and the Court discussed Plaintiffs’ anticipated motion for leave to amend at length.
8 The Parties agreed that their efforts to stipulate to the filing of the SAC had been
9 exhausted and that a motion would be necessary.

10 11. Plaintiffs seek leave to amend in good faith and not for any dilatory
11 purpose. Plaintiffs have acted diligently in seeking amendment following the
12 conclusion of the appeal and before the commencement of discovery.

13 12. As required by the Standing Order of this Court, a redline copy of the
14 proposed SAC, reflecting all the changes Plaintiffs seek to make to the pleading, is
15 being filed simultaneously herewith as **Exhibit A**.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct. Executed within the United States on January 16,
18 2026.

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21 Anna M. Barvir
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EXHIBIT A

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10 Association, Incorporated, Gerald Clark, Eric Johnson, Chad Littrell, ~~Jan Steven~~
11 ~~Merson~~, Asian Pacific American Gun Owner Association, Second Amendment Law
12 Center, Inc., Rocky Mountain Elk Foundation, California Bowman Hunters/State
13 Archery Association

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19 Email: Don@DKLawOffice.com

20 Attorney for Plaintiff Second Amendment Foundation

21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA

23 B&L PRODUCTIONS, INC., d/b/a
24 CROSSROADS OF THE WEST;
25 GERALD CLARK; ERIC JOHNSON;
26 CHAD LITRELL; ~~JAN STEVEN~~
27 ~~MERSON~~; CALIFORNIA RIFLE &
28 PISTOL ASSOCIATION,
INCORPORATED; ASIAN PACIFIC
AMERICAN GUN OWNERS
ASSOCIATION; SECOND
AMENDMENT LAW CENTER, INC.;
~~and~~ SECOND AMENDMENT
FOUNDATION; ROCKY MOUNTAIN
ELK FOUNDATION; and
CALIFORNIA BOWMAN
HUNTERS/STATE ARCHERY
ASSOCIATION;

Plaintiffs,

v.

GAVIN NEWSOM, in his official
capacity as Governor of the State of
California; ROB BONTA, in his official
capacity as Attorney General of the
State of California; KAREN ROSS, in
her official capacity as Secretary of
California Department of Food &
Agriculture and in his personal capacity;

CASE NO: 8:22-cv-01518 JWH (JDEx)

~~SECOND~~**FIRST** AMENDED
COMPLAINT FOR DECLARATORY
& INJUNCTIVE RELIEF

- (1) VIOLATION OF 42 U.S.C. § 1983 [FREE SPEECH - POLITICAL];
 - (2) VIOLATION OF 42 U.S.C. § 1983 [FREE SPEECH-MIXED POLITICAL/COMMERCIAL];
 - (3) VIOLATION OF 42 U.S.C. § 1983 [FREE SPEECH-COMMERCIAL];
 - (4) VIOLATION OF 42 U.S.C. § 1983 [PRIOR RESTRAINT ON SPEECH];
 - (5) VIOLATION OF 42 U.S.C. § 1983 [RIGHT TO ASSEMBLY];
 - (6) VIOLATION OF 42 U.S.C. § 1983 [EQUAL PROTECTION];
 - (7) VIOLATION OF 42 U.S.C. § 1983 [SECOND AMENDMENT].
- DEMAND FOR JURY TRIAL**

1 TODD SPITZER, in his official capacity
2 as District Attorney of Orange County;
3 32nd DISTRICT AGRICULTURAL
4 ASSOCIATION; DOES 1-10;

Defendants.

**NOTICE OF
UNCONSTITUTIONALITY OF
STATE STATUTE**

~~NOTICE OF RELATED CASE~~

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INTRODUCTION

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2 1. Plaintiff B & L PRODUCTIONS, INC., d/b/a CROSSROADS OF
3 THE WEST (“Plaintiff Crossroads”) has operated popular, safe, heavily regulated,
4 legal, and family-friendly gun shows for more than 50 years, and as a business in
5 California for over 30 years, including at the Orange County Fair & Event Center
6 (“the Fairgrounds”).

7 2. Plaintiff Crossroads produces gun shows throughout the West (in
8 California, Utah, Arizona, and Nevada) at venues like the Fairgrounds where like-
9 minded individuals gather to engage in commerce related to, and necessary for, the
10 lawful and regulated exercise of Second Amendment rights for themselves, their
11 exhibitors, their patrons, their customers, and the general public. This safe and
12 regulated marketplace promotes public safety, even for people who do not attend
13 gun shows ~~because~~ because such highly regulated venues on public land it will tend
14 to reduce the unregulated transfer of firearms within the communities where they
15 do business ~~Orange County~~. Furthermore, in those venues that still permit
16 consummated sales pursuant to federal and state law, by providing a convenient
17 forum for Californians to exercise their right to acquire firearms locally, gun shows
18 at venues like the Fairgrounds will have the tendency to discourage the sale and
19 importation of firearms from other states with less strict gun laws than California.

20 3. Alas, the State of California acting through legislators and a governor
21 openly hostile to Second Amendment activities, including commerce in firearms,
22 ammunition, and firearm parts, has exercised its power as landowners to exclude
23 such commerce from state-owned and state-operated venues like the Fairgrounds.
24 The first iteration of this case before this District Court resulted in a preliminary
25 injunction issued in favor of the Plaintiffs. *B & L Prods., Inc., v. Newsom*, 700 F.
26 Supp. 3d 894 (C.D. Cal. 2023). Siding with the Defendants, the Ninth Circuit
27 issued an opinion vacating that injunction. *B&L Prods., Inc. v. Newsom*, 104 F.4th
28 108 (9th Cir. 2024). The Supreme Court denied certiorari on April 28, 2025.

1 4. Because the Ninth Circuit’s decision vacating the preliminary
2 injunction on commercial speech grounds, left intact existing law protecting the
3 right to advertise and make offers for sale of firearms, ammunition, and parts at gun
4 shows—as long as the sale is not consummated on state-owned land—Plaintiffs
5 now seek to test the boundaries of this new paradigm. This Second Amended
6 Complaint seeks to clarify whether an off-site acceptance (i.e., contracts
7 consummated via internet sales) and/or whether an option contract (that does not
8 transfer title of any goods, but only locks in a buyer’s right to consummate a
9 contract at a later date) remain protected commercial speech. Plaintiffs believe that
10 this modification to their business plan for conducting gun shows will preserve the
11 status quo of a uniquely American cultural event that has taken place in public, at
12 public venues, for the benefit of the public, for generations.

13 5. In addition to the wholly new commercial speech procedural changes
14 to Plaintiffs’ gun show business model on state-owned land, new facts that have not
15 been litigated have emerged since the Ninth Circuit’s opinion. Defendants now
16 claim to have the power to ban charitable fundraising auctions and raffles of
17 firearms, ammunition, and firearm parts that are conducted by some of the Plaintiffs
18 in support of their efforts to raise money to continue their Second Amendment
19 advocacy.¹

20 2.6. Furthermore, the Ninth Circuit has introduced a new (or emerging)
21 term of art into Second Amendment jurisprudence—“meaningful constraint.” *Id.* at
22 118-19. Plaintiffs contend that this term, while subject to judicial determination at
23 the preliminary injunction stage, becomes a question of fact before a final judgment
24 can be entered and therefore falls within the purview of a question that must be
25 resolved by a jury when the amount in controversy exceeds twenty dollars. U.S.

26 _____
27 ¹ This development constitutes new facts related to the original complaint,
28 yet arising after currently operative complaint was filed. Fed. R. Civ. P. 15(c)(1)(B)
& 15(d).

1 Const., amend. VII.²⁻³

2 3.7. Plaintiffs Gerald Clark, Eric Johnson, Chad Littrell, ~~Jan Steven~~
3 ~~Merson~~, California Rifle & Pistol Association, Incorporated, Second Amendment
4 Law Center, Inc., Asian Pacific American Gun Owners Association, and Second
5 Amendment Foundation, Inc., attend and participate in Plaintiff Crossroads’ gun
6 show events at the Fairgrounds and elsewhere throughout California to engage in
7 First Amendment activities that are both necessary and essential to the open, robust,
8 and lawful exercise of their Second Amendment rights. Plaintiffs CRPA and SAF
9 also have ves members who attend gun shows who wish to advertise and make offers
10 to sell and sell ammunition, firearms, and “firearm precursor parts.”

11 4.8. At the gun show, Plaintiffs associate with like-minded people,
12 participate in public discussions, attend informational forums, distribute and collect
13

14 ² The “meaningful constraint” test emerged from a line of cases that
15 culminated in an en banc decision in this circuit. *Teixeira v. Cnty. of Alameda*, 873
16 F.3d 670 (9th Cir. 2017)(en banc), was published five years before *Bruen*. See also
17 *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016); *Jackson v. City & Cnty. of San*
18 *Francisco*, 746 F.3d 953 (9th Cir. 2014); *United States v. Chovan*, 735 F.3d 1127
19 (9th Cir. 2013). However, this line of cases relied on the two-step approach to
20 Second Amendment claims the Supreme Court abrogated in *Bruen*, but apparently
21 because the Supreme Court has not expressly overruled any of these decisions, the
22 Ninth Circuit continues to rely on a “meaningful constraint” test without providing
23 any meaningful parameters of what a “meaningful constraint” is.

24 Furthermore, the Ninth Circuit panel in this matter appeared to sidestep
25 whether this “meaningful constraint” test is to be applied as part of an Article III
26 standing analysis, or as part of a substantive Second Amendment claim. Regardless
27 of where/when the test applies, and since the Supreme Court has definitively
28 rejected “judicial” balancing for adjudicating Second Amendment claims (*Heller*,
at 634-35, see also *Bruen*, at 22-23), that necessarily leaves the factual (and
somewhat subjective) determination of what a “meaningful constraint” is to a jury;
but only (Plaintiffs contend) after the parties have exhausted their right to have any
disputed facts determined by a jury when the amount in controversy exceeds
\$20.00.

³ Even though Plaintiffs concede they are bound by the law of the case
doctrine in this matter, Plaintiffs maintain that the Ninth Circuit’s insistence on
forcing Second Amendment claims to be subjected to a “meaningful constraint” test
is contrary to Supreme Court precedent. They are not alone in this assessment. The
United States recently filed an amicus brief arguing similarly and has been granted
argument time in a case under en banc review by the Ninth Circuit. Amicus Brief of
the United States in Support of Appellees-Plaintiffs at 6-7, *Rhode v. Bonta*, No. 24-
542 (9th Cir. Jan. 5, 2026), ECF No. 98.1; Order Granting Request to Participate in
Oral Argument, No. 24-542 (9th Cir. Jan. 13, 2026), ECF No. 107.

1 information, provide training, make offers for sale, make offers to buy, and engage
2 in legal and political discussions related to the Second Amendment, which are all
3 forms of speech protected by the First Amendment. Discussions include, but are not
4 limited to, firearms and ammunition, firearm technology, firearm safety, and
5 firearm law and politics. Participants also exchange information about where to
6 hunt and where to practice shooting, where and from whom to receive training,
7 gunsmithing, gun repair, gun art, and many other topics that arise from the right to
8 acquire, own, possess, enjoy, and celebrate arms as a quintessentially American
9 artifact with constitutional significance.

10 5.9. Defendants are government actors who are responsible for the
11 adoption and enforcement of Senate Bill 264 (Min), codified at California Penal
12 Code section 27575,⁴ which prohibits the sale of firearms, ammunition, and
13 “firearm precursor parts” at the Fairgrounds, and Senate Bill 915 (Min), codified at
14 California Penal Code section 27573,⁵ which prohibits the sale of firearms,
15 ammunition, and “firearm precursor parts” on *all* state-owned property. Their ~~with~~
16 the intention, motive, and purpose and effect of is to shuttering ban gun show
17 events altogether by depriving them of any economic viability by meaningfully
18 constraining commerce in Second Amendment artifacts. 7

19 6.10. Through their enforcement of SB 264 and SB 915, the government
20 Defendants have engaged in and will continue to engage in action that violates
21 Plaintiffs’ constitutional rights to free speech, assembly, and equal protection, as
22 well as their Second Amendment right to engage in pre-contract commerce, and
23 commercial speech, relating to buy, sell, and acquire firearms and ammunition at a
24 gun show. The Defendants’ ~~is~~ actions also constitute an unconstitutional prior
25 restraint.

26 _____
27 ⁴ Plaintiffs refer to the challenged law, California Penal Code section 27575, as
SB 264 throughout this complaint and refer to the entire codified law.

28 ⁵ Plaintiffs refer to the challenged law, California Penal Code section 27573, as
SB 915 throughout this complaint and refer to the entire codified law.

1 7.11. This action seeks declaratory and injunctive relief against Defendants
2 for violating the United States Constitution. It also seeks damages for lost profits,
3 lost opportunities, and diminished marketing value, and reimbursement for
4 reasonable attorney’s fees, costs, and other expenses in bringing this action.

5 **JURISDICTION AND VENUE**

6 8.12. The Court has original jurisdiction of this civil action under 28 U.S.C.
7 § 1331 because the action arises under the Constitution and laws of the United
8 States, thus raising federal questions. The Court also has jurisdiction under 28
9 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the
10 deprivation, under color of the laws, statutes, ordinances, regulations, customs and
11 usages of the State of California and political subdivisions thereof, of rights,
12 privileges or immunities secured by the United States Constitution and by Acts of
13 Congress

14 9.13. Plaintiffs’ claims for declaratory and injunctive relief are authorized by
15 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys’ fees is
16 authorized by 42 U.S.C. § 1988.

17 14. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because
18 the 32nd District Agricultural Association is located within this district and a
19 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred
20 in this district.

21 **JURY DEMAND ALLEGATIONS**

22 10.15. Those Plaintiffs engaged in commerce (as set forth herein) and pre-
23 contract protected commercial speech contend that they will suffer damages in
24 excess of twenty dollars (\$20.00) based upon the allegations below, and they are
25 thus entitled to have a jury make all factual determinations, including but not
26 limited to, whether the state action challenged herein constitutes a “meaningful
27 constraint” on their business practices and their liberties associated with the
28 constitutional claims made herein.

PARTIES

[Plaintiffs]

1
2
3 16. Plaintiff B&L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE
4 WEST, is a for-profit event promoter operating in several western states.
5 Crossroads is in the business of promoting and organizing trade shows throughout
6 the state of California and other western states, including their long-running gun
7 show events held at the Orange County Fair & Event Center (“the Fairgrounds”)
8 operated under the d/b/a Crossroads of the West (“Plaintiff Crossroads”). Before
9 the adoption and enforcement of SB 264 and SB 915, Plaintiff Crossroads was the
10 largest vendor of gun show events in California and at the Fairgrounds. Typically,
11 thousands of people attend Plaintiff Crossroads’ gun shows on each of the
12 weekends they are held. Crossroads provides the space for these like-minded people
13 to assemble. They have successfully produced and operated multiple safe, legal,
14 and family-friendly gun show events in California and at the Fairgrounds every
15 year for over 30 years.

16 17. Subsequent to the Ninth Circuit’s opinion, Plaintiff CROSSROADS
17 invested time and money into exploring and drafting new rules (i.e., forbidding
18 consummated sales [communication of an acceptance] for firearms, ammunition,
19 and gun parts) for the gun shows it hosts at state-owned venues covered by SB 264
20 and SB 915. Plaintiff submitted those proposed changes to its business plan for
21 running its gun shows on state-owned land to the Defendants for approval in order
22 to resolve this matter without further litigation. Furthermore, Plaintiff
23 CROSSROADS is ready and willing to formalize these new rules to gain admission
24 to state-owned venues like the Orange County Fair & Event Center. The
25 Defendants rejected those proposed regulations claiming the proposed business
26 practices would remain unlawful under the Ninth Circuit’s current interpretation of
27 the law.

28 18. But for Defendants’ current interpretation ~~adoption~~ and enforcement of

1 SB 264 and SB 915, which prevents prospective purchasers from communicating
2 acceptance offsite (e.g., via online orders or option contracts), Plaintiff
3 CROSSROADS would immediately resume producing and promoting gun show
4 events at the Fairgrounds and at other state-owned fairgrounds throughout
5 California.

6 19. Plaintiffs CROSSROADS has incurred and will continue to incur more
7 than \$20.00 in damages based on Defendants' wrongful and unconstitutional
8 conduct.

9
10 20. Plaintiff GERALD CLARK is a resident of Santa Ana, California, and
11 he is an NRA certified instructor. Before the implementation of SB 264 and SB
12 915, he regularly attended Plaintiff Crossroads' gun show events at the Fairgrounds
13 to purchase firearms, ammunition, parts for firearms already owned, and materials
14 to help him with his training and as a gun owner to be more proficient. He has
15 taught gun safety and training courses for 12 years, and he has taught those courses
16 at the Crossroads gun show at the Fairgrounds as a Chief Range Safety Officer and
17 Certified Trainer. During the training courses, he talks to others about their rights,
18 the importance of membership in the CRPA, and the Second Amendment.

19 21. The Ninth Circuit's current interpretation of SB 264 and SB 915 still
20 allows for the consummation of contracts for the otherwise lawful sale of firearms,
21 ammunition, and "firearm precursor parts" (i.e., communication of the acceptance)
22 as long as that consummation takes place off of the state-owned property. Though
23 this interpretation of SB 264 and SB 915 is still burdensome, Plaintiff CLARK
24 wishes to continue attending gun shows at the Fairgrounds, and he is willing to
25 comply with the promoter's new rules. But since Defendants' current interpretation
26 and enforcement of SB 264 and SB 915 would prevent prospective purchasers from
27 communicating an acceptance even offsite (e.g., via online orders or option
28 contracts), Plaintiff CLARK'S right to engage in otherwise lawful "pre-contract"

1 commerce in Second Amendment artifacts and the commercial speech associated
2 with such transactions—short of a consummated contract in a public forum—is
3 being “meaningfully constrained” in violation of the First and Second
4 Amendments.

5 ~~22. SB 264 and SB 915 directly burden his right to engage in otherwise~~
6 ~~lawful commercial speech in a public forum and restricts his ability to purchase~~
7 ~~ammunition, firearms, and parts for lawful purposes. And because the~~
8 ~~ban~~ Furthermore, because SB 264 and SB 915 is were intended to make gun shows
9 less profitable, more costly to administer, and risky for property staff to approve
10 (imposing criminal sanctions against property staff), these laws have, in fact,
11 effectively banned gun shows altogether. Therefore, these laws also restricts
12 Plaintiff CLARK’S right to engage in the unique types of political, educational, and
13 non-gun purchase commercial speech that takes place at the gun show.

14 ~~11.23.~~ But for Defendants’ current interpretation adoption and enforcement of
15 SB 264 and SB 915, Plaintiff CLARK ~~lark~~ would continue attending and
16 participating in the Crossroads gun show events at the Fairgrounds.

17 24. Plaintiff ERIC JOHNSON is a resident of Whittier, California, and he
18 is a Certified Trainer, Range Safety Expert, retired coach, and Chief Range Safety
19 Officer. Before the implementation of SB 264 and SB 915, he regularly attended
20 Plaintiff Crossroads’ gun show events at the Fairgrounds to purchase firearms,
21 ammunition reloading supplies, ammunition, parts for the firearms he owns,
22 materials for caring for his firearms, and much more. Plaintiff ~~Johnson~~ JOHNSON
23 also attended the Crossroads gun show at the Fairgrounds to engage in expressive
24 activities with like-minded people, including discussions related to firearms,
25 ammunition, and firearm accessories, the shooting sports, politics, and the Second
26 Amendment. He regularly sets up and works Plaintiff CRPA’s vendor booths at gun
27 shows at the Fairgrounds.

28 25. Though the Ninth Circuit’s current interpretation of SB 264 and SB

1 915 is still burdensome, Plaintiff JOHNSON wishes to continue attending gun
2 shows at the Fairgrounds, and he is willing to comply with the promoter’s new
3 rules. But since Defendants’ current interpretation and enforcement of SB 264 and
4 SB 915 would prevent prospective purchasers from communicating an acceptance
5 even offsite (e.g., via online orders or option contracts), Plaintiff JOHNSON’S right
6 to engage in otherwise lawful “pre-contract” commerce in Second Amendment
7 artifacts and the commercial speech associated with such transactions—short of a
8 consummated contract in a public forum—is being “meaningfully constrained” in
9 violation of the First and Second Amendments.

10 ~~12.26. SB 264 and SB 915 directly burden his right to engage in otherwise~~
11 ~~lawful commercial speech in a public forum and restricts his ability to purchase~~
12 ~~ammunition. And because the ban is intended to make gun shows less profitable~~
13 ~~and has in fact effectively banned them altogether, it also restricts~~ Furthermore,
14 ~~because SB 264 and SB 915 were intended to make gun shows less profitable, more~~
15 ~~costly to administer, and risky for property staff to approve (imposing criminal~~
16 ~~sanctions against property staff), these laws have in fact, in fact, effectively banned~~
17 ~~gun shows altogether. Therefore, these laws also restrict his~~ Plaintiff JOHNSON’S
18 right to engage in the unique types of political, educational, and non-gun purchase
19 commercial speech that takes place at the gun show.

20 ~~13.27.~~ But for Defendants’ current interpretation and enforcement of SB 264
21 and SB 915, Plaintiff JOHNSON would continue attending and participating in the
22 Crossroads gun show events at the Fairgrounds.

23 28. Plaintiff CHAD LITTRELL is a resident of La Habra, California, and
24 owns Vytamenc 22 Tactical. Before the implementation of SB 264 and SB 915, his
25 company was a regular vendor at Plaintiff Crossroads’ gun show events at the
26 Fairgrounds. At these events, he would lawfully sell “uppers,” precursor parts, and
27 AR-15 rifles and discuss issues regarding firearms, ammunition, and gun safety
28 with customers of the gun show. Plaintiff LITTRELL~~ittrell~~ also attended the

1 Crossroads gun show at the Fairgrounds to engage in expressive activities with like-
2 minded people, including discussions related to firearms, ammunition, and firearm
3 accessories, the shooting sports, politics, and the Second Amendment. Because of
4 the essential shutting down of gun shows at the Fairgrounds, Plaintiff LITTRELL
5 had to close his business.

6 29. Though the Ninth Circuit’s current interpretation of SB 264 and SB
7 915 is still burdensome, Plaintiff LITTRELL wishes to continue attending gun
8 shows at the Fairgrounds, and he is willing to comply with the promoter’s new
9 rules. But since Defendants’ current interpretation and enforcement of SB 264 and
10 SB 915 would prevent prospective purchasers from communicating an acceptance
11 even offsite (e.g., via online orders or option contracts), Plaintiff LITTRELL’S
12 right to engage in otherwise lawful “pre-contract” commerce in Second
13 Amendment artifacts and the commercial speech associated with such transaction—
14 short of a consummated contract in a public forum—is being “meaningfully
15 constrained” in violation of the First and Second Amendments.

16 30. ~~SB 264 and SB 915 directly burden his right to engage in otherwise~~
17 ~~lawful commercial speech in a public forum and restricts his ability to purchase~~
18 ~~ammunition. And because the ban is intended to make gun shows less profitable~~
19 ~~and has in fact effectively banned them altogether, it also restricts~~ Furthermore,
20 because SB 264 and SB 915 were intended to make gun shows less profitable, more
21 costly to administer, and risky for property staff to approve (imposing criminal
22 sanctions against property staff), these laws have, in fact, effectively banned gun
23 shows altogether. Therefore, these laws also restrict ~~his~~ Plaintiff LITTRELL’S right
24 to engage in the unique types of political, educational, and non-gun purchase
25 commercial speech that takes place at the gun show.

26 31. Plaintiff LITTRELL has incurred and will incur more than \$20.00 in
27 damages caused by the Defendants’ wrongful and unconstitutional conduct.

28 32. But for Defendants’ current interpretation and enforcement of SB 264

1 and SB 915, Plaintiff LITRELL would continue attending and participating in the
2 Crossroads gun show events at the Fairgrounds.

3 14.— Plaintiff JAN STEVEN MERSON is a resident of Fullerton,
4 California, and he owns Merson’s Machining Tool Making and Gunsmithing.
5 Before the implementation of SB 264 and SB 915, his company (then known as
6 Merson’s Custom Tooling & Gunsmith) was a regular vendor at Plaintiff
7 Crossroads’ gun show events at the Fairgrounds. At these events, he would lawfully
8 sell “firearm precursor parts” which are legal products in California and are not
9 considered firearms by legal definition. Plaintiff Merson also attended the
10 Crossroads gun show at the Fairgrounds to engage in expressive activities with like-
11 minded people, including discussions related to firearms, ammunition, and firearm
12 accessories, the shooting sports, politics, and the Second Amendment. SB 264 and
13 SB 915 directly burden his right to engage in otherwise lawful commercial speech
14 in a public forum and restricts his ability to sell and purchase ammunition, firearms,
15 and parts for lawful purposes. And because the ban is intended to make gun shows
16 less profitable and has in fact effectively banned them altogether, it also restricts his
17 right to engage in the unique types of political, educational, and commercial speech
18 that takes place at the gun show. But for Defendants’ adoption and enforcement of
19 SB 264 and SB 915, Plaintiff Merson would continue attending and participating in
20 the Crossroads gun show events at the Fairgrounds

21 33. Plaintiff ASIAN PACIFIC AMERICAN GUN OWNERS
22 ASSOCIATION (“APAGOA”) is a nonprofit organization incorporated under the
23 laws of Texas and registered with the California Secretary of State to do business in
24 the state of California. APAGOA is a community of gun owners with an Asian
25 Pacific American (“APA”) heritage. Its core focus is to promote safe and
26 responsible gun ownership within the APA community by providing educational
27 materials and other resources to its members and other interested parties. APAGOA
28 advocates for firearm safety, education, and community-building initiatives. And it

1 strives to educate and empower the APA gun owner community so they can use
2 their firearms safely and responsibly.

3 34. Furthermore, because SB 264 and SB 915 were intended to make gun
4 shows less profitable, more costly to administer, and risky for property staff to
5 approve (imposing criminal sanctions against property staff), these laws have, in
6 fact, effectively banned gun shows altogether. Therefore, these laws also restrict
7 APAGOA’s right to engage in the unique types of political, educational, and non-
8 gun purchase commercial speech that takes place at the gun show.

9 35. APAGOA has incurred and will incur lost opportunity costs for
10 membership and fundraising that exceeds \$20.00.

11 ~~15.36.~~ APAGOA brings this action on behalf of its approximately 270
12 members and supporters who reside in California and, but for the current
13 interpretation and implementation of SB 264 and SB 915, would attend and
14 participate in the Crossroads gun show events at the Fairgrounds.

15 37. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION,
16 INCORPORATED (“CRPA”) is a nonprofit membership organization incorporated
17 under the laws of California, with headquarters in Fullerton, California. Among its
18 other activities, CRPA works to preserve and expand constitutional and statutory
19 rights of gun ownership, including the right to self-defense and the right to keep
20 and bear arms. CRPA accomplishes this through its educational offerings,
21 publications, member engagement events, and legislative advocacy and initiatives.

22 ~~16.~~—CRPA has individual members and business affiliates that who attend
23 gun shows. Before the implementation of SB 264 and SB 915, CRPA and many of
24 its members were regular vendors at Plaintiff Crossroads’ gun show events at the
25 Fairgrounds, where they engaged the public in discussions about the organization
26 and its purposes, the shooting sports, firearms and firearm safety, and the Second
27 Amendment and other political issues. CRPA and its members also attended gun
28 shows at the Fairgrounds to sell organization memberships, advertise its events,

1 distribute its publications, and sell its merchandise, some of which includes
2 expressly pro-gun messaging. ~~Members of CRPA would attend to advertise events,~~
3 ~~distribute publications, sell merchandise, ammunition, and firearms, some of which~~
4 ~~includes expressly pro-gun messaging.~~ CRPA has also hosted political rallies,
5 educational seminars, and range safety officer training at gun shows throughout the
6 state, including those at the Fairgrounds. CRPA members and other gun enthusiasts
7 attended these political rallies. CRPA has tens of thousands of members and
8 supporters, many of whom attended the Crossroads gun shows at the Fairgrounds to
9 engage in expressive activities with like-minded people, including discussions
10 related to firearms, ammunition, and firearm accessories, the shooting sports,
11 politics, and the Second Amendment.

12 38.

13 39. Though the Ninth Circuit’s current interpretation of SB 264 and SB
14 915 is still burdensome, Plaintiff CRPA’s members and supporters wish to continue
15 attending gun shows at the Fairgrounds and other state-owned venues and are
16 willing to comply with the promoter’s new rules. But since Defendants’ current
17 interpretation and enforcement of SB 264 and SB 915 would prevent prospective
18 purchasers from communicating an acceptance even offsite (e.g., via online orders
19 or option contracts), the rights of CRPA’s members and supporters to engage in
20 otherwise lawful “pre-contract” commerce in Second Amendment artifacts and the
21 commercial speech associated with such transaction—short of a consummated
22 contract in a public forum—is being “meaningfully constrained” in violation of the
23 First and Second Amendments.

24 40. SB 264 and SB 915 directly burden the right of CRPA, its officers,
25 employees, volunteers, members, and supporters, to engage in otherwise lawful
26 commercial speech in a public forum and to buy and sell firearms, ammunition, and
27 parts for lawful purposes. And because the ban on sales of firearms, ammunition,
28 and parts is intended to make gun shows less profitable and has in fact effectively

1 ~~banned them altogether, it~~ Furthermore, because SB 264 and SB 915 were intended
2 to make gun shows less profitable, more costly to administer, and risky for property
3 staff to approve (imposing criminal sanctions against property staff), these laws
4 have in fact effectively banned gun shows altogether. Therefore, these laws also
5 restricts CRPA’s right to engage in the unique types of political, educational, and
6 non-gun purchase commercial speech that takes place at the gun show.

7 41. Finally, in support of its nonprofit purpose, CRPA hosts fundraising
8 events and activities, including gun raffles and auctions, throughout California.
9 These events sometimes take place at state-owned venues. These fundraising
10 activities might occur at larger gun show events, but CRPA and its chapters also
11 host their own events including such fundraising efforts.

12 42. CRPA has incurred and will incur lost opportunity costs for
13 membership and fundraising that exceeds \$20.00.

14
15 43. CRPA brings this action on behalf of its members and supporters who
16 reside in California and, but for the current interpretation and implementation of SB
17 264 and SB 915, CRPA members would attend and participate in the Crossroads
18 gun show events at the Fairgrounds.

19 44. Plaintiff SECOND AMENDMENT LAW CENTER, INC. (“2ALC”),
20 is a nonprofit organization, incorporated under the laws of Nevada with
21 headquarters in Henderson, Nevada, and registered with the California Secretary of
22 State to do business in the state of California. 2ALC works to advance Second
23 Amendment jurisprudence across the country while educating the public,
24 participating in scholarly research, and providing thought-provoking writings and
25 content to help advance the Second Amendment. 2ALC works to support and
26 protect Second Amendment rights across the country, and they distribute materials
27 at gun shows in California to inform the public about their work.

28 45. Because ~~the ban on sales of firearms and ammunition at the~~

1 Fairgrounds is SB 264 and SB 915 were intended to make gun shows less
2 profitable, more costly to administer, and risky for property staff to approve
3 (imposing criminal sanctions against property staff), these laws have, in fact,
4 effectively banned gun shows altogether. Therefore, these laws also restrict the
5 rights of 2ALC to share education and training materials with gun owners and those
6 who~~that~~ attend gun show events. In this lawsuit, 2ALC represents its interests as a
7 gun show attendee and purveyor of educational materials.

8 46. 2ALC has incurred and will incur lost opportunity costs for
9 fundraising that exceed \$20.00.

10 ~~18.47.~~ In this lawsuit, 2ALC represents its interests as a gun show attendee
11 and purveyor of educational materials. But for Defendants' current interpretation
12 and enforcement of SB 264 and SB 915, Plaintiff 2ALC would continue attending
13 and participating in the Crossroads gun show events at the Fairgrounds and other
14 state-owned properties in California.

15 48. Plaintiff SECOND AMENDMENT FOUNDATION, INC. ("SAF") is
16 a non-profit membership organization. It is incorporated under the laws of the state
17 of Washington and was founded in 1974. SAF has over 700,000 members and
18 supporters nationwide, including thousands of members in California. The purposes
19 of SAF include education, research, publishing, and litigation. It is critical to the
20 success of SAF that its promotional material, publications, and messages about the
21 "right to keep and bear arms" reach demographic groups that are saturated with gun
22 owners, gun buyers, and people of the "gun culture." Gun Shows like the one
23 threatened by the Defendants' actions interfere with this effort. SAF is dedicated to
24 promoting a better understanding about our constitutional heritage to privately own
25 and possess firearms through educational and legal action programs designed to
26 better inform the public about gun control issues. SAF has been a pioneer in
27 innovative defense of the right to keep and bear arms, through its publications and
28 public education programs like the Gun Rights Policy Conference. Those

1 publications and other SAF materials and information are offered at gun show
2 events. Second Amendment Foundation also expends significant sums of money
3 sponsoring public interest litigation to defend its own interests to disseminate
4 information to like-minded individuals, in an individualized setting like a gun
5 show, but SAF also seeks to defend the interests of its member in lawsuits like this
6 present effort.

7 49. Though the Ninth Circuit’s current interpretation of SB 264 and SB
8 915 is still burdensome, Plaintiff SAF’s members and supporters wish to continue
9 attending gun shows at the Fairgrounds, and they are willing to comply with the
10 promoter’s new rules. But since Defendants’ current interpretation and enforcement
11 of SB 264 and SB 915 would prevent prospective purchasers from communicating
12 an acceptance even offsite (e.g., via online orders or option contracts), Plaintiff
13 SAF’s members and supporters’ right to engage in otherwise lawful “pre-contract”
14 commerce in Second Amendment artifacts and the commercial speech associated
15 with such transaction—short of a consummated contract in a public forum—is
16 being “meaningfully constrained” in violation of the First and Second
17 Amendments.

18 50. Furthermore, because SB 264 and SB 915 were intended to make gun
19 shows less profitable, more costly to administer, and risky for property staff to
20 approve (imposing criminal sanctions against property staff), these laws have in
21 fact effectively banned gun shows altogether. Therefore, these laws also restrict
22 SAF’s right to engage in the unique types of political, educational, and non-gun
23 purchase commercial speech that takes place at the gun show.

24 51. SAF has incurred and will incur lost opportunity costs for membership
25 and fundraising that exceeds \$20.00.

26 52. SAF brings this action on behalf of its members and supporters who
27 reside in California and, but for the current interpretation and implementation of SB
28 264 and SB 915, SAF members would attend and participate in the Crossroads gun

1 show events at the Fairgrounds.

2 53. Plaintiff THE ROCKY MOUNTAIN ELK FOUNDATION (“RMEF”)
3 is a nonprofit public benefit corporation incorporated in Montana with its
4 headquarters and principal offices and place of business in Missoula, Montana.
5 RMEF is registered with the California Secretary of State to do business in the state
6 of California and has registered with the California Attorney General’s office as a
7 charity and fundraiser. RMEF’s mission is to ensure the future of elk, other
8 wildlife, their habitat, and our hunting heritage. RMEF has approximately 8,800
9 members as well as approximately 21 active chapters in the state of California.
10 RMEF’s members include hunters, guides, outfitters, wildlife enthusiasts, and
11 conservationists. Many of these members have acquired firearms and through
12 RMEF opportunity drawings and auctions, with many of these having taken place
13 on California state-owned property.

14 54. RMEF relies on its members and fundraising events, including Big
15 Game Banquets, to help raise funds for its mission. In California, between 3,900
16 and 4,300 people attended RMEF Big Game Banquets or other events annually in
17 2023, 2024 and 2025. The ability to provide opportunity drawings and auctions of
18 firearms at RMEF events is an important part of RMEF’s fundraising efforts, with
19 firearms historically being a significant driver of opportunity drawing and auction
20 revenue for RMEF.

21 55. In many parts of California, state-owned property provides the best
22 venue to hold Plaintiffs RMEF’s fundraising events, such as its Big Game
23 Banquets. Over the past several years, RMEF has hosted between 22 and 32
24 fundraising events annually in California, with at least 10-11 of these typically held
25 on state-owned property. Over 50% of RMEF’s fundraising events are expected to
26 be impacted by Defendants’ ban on firearm raffles, auctions, and possibly drawings
27 on state-owned property.

28 56. Plaintiff RMEF has used its funds raised in California and elsewhere to

1 support its mission in California and throughout the United States. Since 1988,
2 RMEF and its partners have completed over 700 conservation and hunting heritage
3 outreach projects in California with a combined value of more than \$91.9 million.
4 These projects conserved or enhanced over 211,000 acres of habitat and opened or
5 improved access to thousands of acres of public land.

6 57. Plaintiff RMEF frequently partners with federal agencies, states, and
7 private landowners to fund and implement conservation projects, such as prescribed
8 burns, forest thinning, planting native vegetation, and installing wildlife-friendly
9 fencing. In addition, RMEF works with private landowners and federal, state, and
10 local agencies to conserve habitat through conservation easements and fee
11 purchases. In California, since 1988, RMEF has spent over \$4 million on habitat
12 stewardship which helped enhance over 130,000 acres, RMEF spent over \$2.5
13 million on wildlife management including 185 projects, RMEF spent over \$840
14 thousand on hunting heritage including 291 projects, and RMEF has completed 29
15 land conservation and access projects valued at over \$64 million which conserved
16 over 79,000 acres and opened or improved access to over 45,000 acres of public
17 land.

18 58. But for Defendants' current interpretation and enforcement of SB 264
19 and SB 915, Plaintiff RMEF would continue to hold firearm auctions and drawings
20 on state-owned properties throughout California.

21 59. Plaintiff CALIFORNIA BOWMAN HUNTERS/STATE ARCHERY
22 ASSOCIATION ("CBH/SAA") is a nonprofit organization established in 1964. Its
23 purpose is to promote and defend the causes of both target and hunter archers
24 throughout the state of California. The CBH/SAA provides those who choose to
25 hunt and shoot archery with news and information on the many issues facing
26 hunting and archery today. CBH/SAA promotes the organization of clubs by
27 providing guidance and structure for tournaments, challenges to legislation, and an
28 introduction to archery hunting laws as they constantly change in California. State

1 archery championships and outreach programs are key to the organization’s goals,
2 as is defending against harmful legislative attacks on the sport of archery.

3 60. Plaintiff CBH/SAA’s activities require funding from memberships,
4 donations, and fundraising. The ability to offer raffles and auctions of firearms and
5 other equipment used by bow hunters is an important part of CBH/SAA’s
6 fundraising efforts. In many rural areas where many of CBH/SAA’s members
7 reside, state-owned properties can provide some of the best venues for fundraising
8 events. If California prohibits CBH/SAA from holding firearm auctions and raffles
9 as fundraising events in the future, it has the potential to substantially limit the
10 lawful fundraising that the organization can participate in for its core programs.

11 61. But for Defendants’ current interpretation and enforcement of SB 264
12 and SB 915, Plaintiff CBH/SAA would continue to hold firearm raffles and
13 auctions on state-owned properties throughout California.

14 **[Defendants]**

15 ~~19.~~62. Defendant GAVIN NEWSOM is the Governor of the State of
16 California. As Governor, he is vested with “the supreme executive power” of the
17 state and “shall see that the law is faithfully executed.” Cal. Const. art. 5, §1.
18 Defendant Newsom has more than an incidental relationship with the interpretation
19 and enforcement of SB 264 and SB 915. In fact, in the past, Defendant Newsom has
20 pressured fairgrounds boards in California to ban safe and lawful gun show events
21 on those properties. And, because he alone is vested with the authority to appoint
22 and terminate fair board members, Defendant Newsom has a unique ability to
23 coerce fair boards responsible for managing state fairgrounds to *not* enter contracts
24 with gun show promoters for use of these public venues—even if those events
25 otherwise comply with the law. Defendant Newsom is sued in his official capacity.

26 ~~20.~~63. Defendant ROB BONTA is the Attorney General of the State of
27 California. He is the “chief law officer” of the state and has the duty to ‘see that the
28 laws of the State are uniformly and adequately enforced.’ Cal. Const. art. 5, § 1.

1 Additionally, Defendant Bonta has “direct supervision over every district attorney”
2 within the State. *Id.* If, at any point a district attorney of the State fails to enforce
3 adequately “any law of the State,” Defendant Bonta must “prosecute any violations
4 of the law.” *Id.* Finally, Defendant Bonta, as Attorney General of the State of
5 California, “shall assist any district attorney in the discharge” of duties when
6 “required by the public interest or directed by the Governor. . . .” *Id.* He is thus
7 responsible for the interpretation and enforcement of SB 264 and SB 915 and for
8 prosecuting violations of these laws. Defendant Bonta is sued in his official
9 capacity.

10 21.64. Defendant TODD SPITZER is the District Attorney responsible for
11 enforcing the law within the county of Orange. Under the California Government
12 Code, the district attorney must prosecute “all actions for the recovery” of fines and
13 penalties. Cal. Gov’t Code § 26521. He is thus responsible for the interpretation and
14 enforcement of SB 264 and SB 915 and for prosecuting violations of these laws.
15 Defendant Spitzer is sued in his official capacity.

16 22.65. Defendant KAREN ROSS is the Secretary of the California
17 Department of Food & Agriculture—the entity responsible for the policy oversight
18 of the network of California fair venues, which includes the Orange County Fair &
19 Event Center. Through the Department, Defendant Ross issues guidance for
20 governance and contracting to all agricultural districts throughout California
21 (including Defendant District) and requires reporting from the districts on
22 operational issues. Because of her direct supervision of all fair boards responsible
23 for managing state fairgrounds, Defendant Ross has the ability to direct fair boards
24 to *not* enter contracts with gun show promoters for use of these public venues—even
25 if those events otherwise comply with the law. The Department maintains an office
26 of legal counsel for any actions brought against Agricultural Association Districts
27 in the state. Defendant Ross is sued in her official capacity.

28 23.66. Defendant 32nd DISTRICT AGRICULTURAL ASSOCIATION

1 (“District”) is a Governor-appointed Board of Directors that manages the state-
2 owned Orange County Fair & Event Center public venue. The District is governed
3 by a nine-member board, each member serving a four-year term. The District Board
4 of Directors appoints a CEO charged with the daily operations of the facilities but
5 maintains control over activities not delegated to the CEO, including contracting
6 with those seeking to host events, including gun shows, at the Fairgrounds. It is
7 responsible for ensuring that all state laws governing gun shows at the Fairgrounds,
8 including SB 264 and SB 915, are faithfully enforced. Defendant District refused to
9 consider contracts for the gun show by refusing to place the question of contract
10 approval on monthly meeting agendas when considering other similar contracts.

11 24.67. The true names and capacities of Defendants named as DOES 1
12 through 10, inclusive, are individual, corporate, associate or otherwise, and are
13 unknown to Plaintiffs. They are, however, believed to be responsible in some way
14 for Plaintiffs’ loss and damages. Each Doe Defendant is, and at all times mentioned
15 here was, a partner, agent, principal, co-conspirator, or are otherwise vicariously or
16 directly responsible for the acts or omissions of the other defendants or themselves.
17 They are each sued individually and are joined as party defendants. Plaintiffs thus
18 sue each Doe Defendant under rules 15 and 21 of the Federal Rules of Civil
19 Procedure. Plaintiffs are informed and believe~~d~~ that the Doe Defendants are all
20 California residents. Plaintiffs will amend this complaint to show such true names
21 and capacities of Doe Defendants when they have been ascertained.

22 **FACTUAL ALLEGATIONS**

23 **[The First Amendment Rights to Free Speech, Association, & Assembly]**

24 68. The First Amendment provides, in part, that “Congress shall make no
25 law . . . abridging the freedom of speech,” U.S. Const. amend. I. It is incorporated
26 and made applicable to the states by the Fourteenth Amendment to the United
27 States Constitution and by 42 U.S.C. § 1983.

28 25.69. Both direct and indirect burdens on First Amendment activities are

1 entitled to heightened review by the Court. *Braunfeld v. Brown*, 366 U.S. 599
2 (1961).

3 26.70. Political and ideological speech—including speech concerning
4 “politics, nationalism, religion, or other matters of opinion”—has long been
5 considered the core of the First Amendment. *W. Va. State Bd. of Educ. v. Barnette*,
6 319 U.S. 624, 642 (1943).

7 27.71. Public property made available for lease by community groups to
8 engage in expressive activity must thus be available without regard to the viewpoint
9 sought to be expressed *Cinevision Corp. v. City of Burbank*, 745 F.2d 560 (9th Cir.
10 1984). Such venues cannot be opened to some and closed to others, suppressing
11 protected expression, absent a compelling government interest. *Id.* at 571.

12 28.72. The First Amendment does not tolerate the suppression of speech
13 based on what some may label an unpopular viewpoint of the speaker. *John J.*
14 *Hurley and S. Boston Allied War Vets. Council v. Irish-Am. Gay, Lesbian &*
15 *Bisexual Group of Boston*, 515 U.S. 557 (1995). Indeed, “above all else, the First
16 Amendment means that the government has no power to restrict expression because
17 of its message, its ideas, its subject matter, or its content.” *Mosley*, 408 U.S. at 95
18 (emphasis added); see also *Ashcroft*, 535 U.S. at 573.

19 29.73. A content-based restriction that implicates political or ideological
20 speech must generally survive “strict scrutiny,” where the government must show
21 that the law is narrowly tailored to achieve a compelling government interest. See
22 *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); see also *Lorillard Tobacco Co. v.*
23 *Reilly*, 533 U.S. 525 (2001) (holding that tobacco marketing restrictions – even
24 those purposed to protecting minors -- must be the narrowest means of achieving an
25 asserted state interest); *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786 (2011)
26 (overturing California law banning sale or rental of “violent video games” to
27 minors); see also *Tracy Rifle & Pistol LLC v. Harris*, 339 F. Supp. 3d 1007, 1018
28 (E.D. Cal. 2018) (holding that a California law prohibiting the display of a

1 handgun, an imitation handgun, or a placard advertising the sale of a handgun in a
2 manner that is visible from the outside of a gun dealer’s premises is
3 unconstitutional).

4 30.74. Even purely commercial speech—speech that “does no more than
5 propose a commercial transaction” or relates solely to the economic interests of the
6 speaker and audience—receives First Amendment protection if it is not misleading
7 and concerns a lawful activity. *Cent. Hudson Gas & Elec. Corp. v. Public Serv.*
8 *Comm’n*, 447 U.S. 557 (1980).

9 75. “An offer to sell firearms or ammunition” is constitutionally protected
10 commercial speech. *Nordyke v. Santa Clara*, 110 F.3d 707, 710 (9th Cir. 2009).

11 Under current Ninth Circuit law, an acceptance as part of contract formation for the
12 purchase of firearms, ammunition, and “firearm precursor” parts is not protected
13 commercial speech in connection with firearm sales on state-owned land. *B & L*
14 *Prods., Inc.*, 104 F.4th 108.

15 76. Formation of a contract for internet sales (i.e., offer, acceptance,
16 consideration) is deemed to occur at the vendor’s permanent place of business. For
17 vendors of firearms, ammunition, and firearm parts, existing law makes the
18 physical address of the licensed dealer (not the address of the licensed gun show)
19 the place of contract formation and sale. Speech associated with internet sales are
20 protected commercial speech.

21 77. Internet sales, where goods are displayed and offered for sale at gun
22 shows held on state-owned properties, would comply with the “ban on gun sales on
23 state-owned property” set forth in SB 264 and SB 915 because the acceptance and
24 consideration for such contract formation occur at the vendors’ permanent place of
25 business and not at the state-owned property.

26 78. Option contracts, in which the optionee accepts an offer to enter into a
27 contract in a manner, or at a place and time, set forth in the option contract—do not
28 convey title or any other rights to the underlying property to the optionee. Speech

1 associated with option contracts are protected commercial speech.

2 31.79. Completing federal and state regulatory paperwork associated with the
3 sale of firearms, ammunition, and gun parts does not convey title to the underlying
4 property and forms no part of contract formation.

5 32.80. Government restrictions on protected commercial speech are
6 constitutional *only* if they directly advance a substantial government interest and are
7 not broader than necessary to serve that interest. *Cent. Hudson*, 447 U.S. 557.⁶

8 33.81. The First Amendment protects not only the right of free speech, but
9 also “the right of the people peaceably to assemble.” U.S. Const., amend. I. The
10 right to assemble often merges with the right to free expression. For “[e]ffective
11 advocacy of both public and private points of view, particularly controversial ones,
12 is undeniably enhanced by group association.” *NAACP v. Patterson*, 357 U.S. 449,
13 462 (1958). “Governmental action which may have the effect of curtailing the
14 freedom to associate is subject to the *closest* scrutiny.” *Id.* at 461-62.

15 **[The Second Amendment Right to Keep and Bear Arms Under the Law]⁷**

16 34.82. The Second Amendment to the United States Constitution declares that
17 “the right of the people to keep and bear arms shall not be infringed.” U.S. Const.

18 _____
19 ⁶ Though this is currently the controlling test for so-called “commercial
20 speech,” modern case law is trending toward extending *full* First Amendment
21 protection to all speech, including “commercial speech.” *See Sorrell v. IMS Health,*
22 *Inc.*, 564 U.S. 552 (moving toward providing commercial speech the same level of
23 heightened protection long accorded to political speech); *see also 44 Liquormart,*
Inc. v. Rhode Island, 517 U.S. 484, 523 (1996) (Thomas, J., concurring in part and
24 concurring in judgment) (“I do not see a philosophical or historical basis for
25 asserting that ‘commercial’ speech is of ‘lower value’ than ‘noncommercial’
26 speech. Indeed, some historical materials suggest to the contrary.”).

27 Furthermore, *Bruen*’s command that courts conduct an historical/categorical
28 analysis when evaluating the constitutionality of laws that impact Second
Amendment rights (the right to buy, sell, and acquire at a gun show at issue here)
means that the Defendants bear a heavy burden to produce relevant (non-racist)
laws (circa. 1868) that forbid offers to buy and sell firearms on public property.

⁷ Plaintiffs concede that the Ninth Circuit’s “meaningful constraint” test has
made their Second Amendment claims more difficult to prove to a jury if necessary.
However, the Supreme Court’s denial of certiorari is not a ruling on the merits of
what Plaintiffs—in good faith—believe is an erroneous test. Plaintiffs maintain this
claim to preserve it in the event they have another opportunity to petition for
rehearing en banc or petition for certiorari to the Supreme Court.

1 amend. II.

2 ~~35.83.~~ The Second Amendment protects a fundamental, individual right that
3 applies against both the federal government and the states. *District of Columbia v.*
4 *Heller*, 554 U.S. 570, 592 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750
5 (2010).

6 ~~36.84.~~ The Supreme Court recently confirmed that Second Amendment
7 questions are to be analyzed in light of “text, history, tradition.” “When the Second
8 Amendment’s plain text covers an individual’s conduct, the Constitution
9 presumptively protects that conduct. The government must then justify its
10 regulation by demonstrating that it is consistent with the Nation’s historical
11 tradition of firearm regulation.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, --U.S.--,
12 142 S. Ct. 2111, 2126 (2022) (citing *Heller*, 554 U.S. at 634).

13 ~~37.85.~~ The Second Amendment protects the right to possess and use arms that
14 are “typically possessed by law-abiding citizens for lawful purposes.” *See, e.g.,*
15 *Heller*, 554 U.S. at 624-25; *See also Caetano v. Massachusetts*, 577 U.S. 411, 136
16 S. Ct. 1027, 1027-28 (2016). That protection “extends, prima facie, to all
17 instruments that constitute bearable arms, even those that were not in existence at
18 the time of the founding.” *Heller*, 544 U.S. at 582. It also includes the ammunition
19 necessary to use firearms for their core lawful purposes. *See Jackson v. City &*
20 *Cnty. of San Francisco*, 746 F.3d at 967-68 (recognizing that “without bullets, the
21 right to bear arms would be meaningless.”).

22 ~~86.~~ Finally, the Second Amendment protects the corresponding right to
23 obtain protected firearms and ammunition. *See id.* at 967 (“[T]he right to possess
24 firearms for protection implies a corresponding right’ to obtain bullets necessary to
25 use them.”); *see also Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)
26 (holding that the right to possess firearms implies a corresponding right to access
27 firing ranges to train to be proficient with such firearms).

28 ~~38.87.~~ The Second Amendment thus protects sales of firearms, ammunition,

1 and firearm parts through internet sales and/or option contracts, and banning the
2 formation of otherwise lawful internet sales contracts and/or option contracts
3 imposes a “meaningful constraint” on Plaintiffs’ Second Amendment rights.
4 Indeed, SB 264 and SB 915, as currently interpreted and enforced, now impose a
5 burden and a “meaningful constraint” on the Second Amendment rights of the
6 individual Plaintiffs and the members of the associational Plaintiffs, by continuing
7 to forbid gun shows on state-owned land, even though Plaintiffs are ready, willing,
8 and able to consummate commercial sales offsite and away from the state-owned
9 properties through the use of option contracts and internet sales.

10 **[The Fourteenth Amendment Right to Equal Protection Under the Law]**

11 39.88. The Fourteenth Amendment to the United States Constitution,
12 enforceable under 42 U.S.C. § 1983, provides that no state shall deny to any person
13 within its jurisdiction the equal protection of the laws.

14 40.89. Singling out speakers because of the content of their speech also
15 violates their fundamental rights under the Equal Protection Clause. U.S. Const.
16 amend. XIV.

17 90. If unequal treatment occurs in the context of exercising a fundamental
18 right, or the government is motivated by animus toward a disfavored group, courts
19 apply heightened scrutiny. *See Loving v. Virginia*, 388 U.S. 1, 11 (1967); *see also*
20 *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Romer v. Evans*,
21 517 U.S. 620 (1996). Indeed, “[b]ecause the right to engage in political expression
22 is fundamental to our constitutional system, statutory classifications impinging
23 upon that right must be narrowly tailored to serve a compelling governmental
24 interest.” *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 666 (1990), *rev’d*
25 *on other grounds*, *Citizens United v. Fed. Elec. Comm’n*, 558 U.S. 310, 130 S. Ct. 876
26 (2010).

27 91. The Supreme Court has also recognized that plaintiffs must be allowed
28 to plead and prove “equal protection claims brought by a ‘class of one,’ where the

1 plaintiff alleges that she has been intentionally treated differently from others
2 similarly situated and that there is no rational basis for the difference in treatment.”
3 *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). See also *Sioux City Bridge Co. v.*
4 *Dakota Cnty.*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. Comm’n of*
5 *Webster Cnty.*, 488 U.S. 336 (1989).

6 92. The Supreme Court has further explained that “ ‘the purpose of the
7 equal protection clause of the Fourteenth Amendment is to secure every person
8 within the State’s jurisdiction against intentional and arbitrary discrimination,
9 whether occasioned by express terms of a statute or by its improper execution
10 through duly constituted agents.’ ” *Willowbrook*, 528 U.S. at 564 (quoting *Sioux*
11 *City Bridge Co.*, 260 U.S. at 445).

12 41.93. Plaintiffs allege, as a wholly separate theory, that aside from
13 differential treatment predicated on exercising their substantive rights under the
14 First and Second Amendments, the Defendants are engaged in an “irrational and
15 wholly arbitrary” demand that gun shows and firearm-related fundraising activities
16 be excluded from state-owned venues, motivated by the ill will of the California
17 legislature and Governor Newsom.

18 [Regulation of Gun Show Events in California]

19 42.94. The state of California has the most rigorous regulatory regime for
20 commerce in firearms and ammunition in the United States. That regulatory regime
21 applies to the operation of gun show events throughout California. The laws related
22 to the acquisition and sale of firearms are arguably stricter at gun shows than at
23 brick-and-mortar stores or internet sales.

24 43.95. Only state-approved, licensed gun show producers may operate gun
25 shows in California.

26 44.96. All gun show producers, including Plaintiff Crossroads, must have an
27 individual (the “promoter”) who holds a valid Certificate of Eligibility issued by the
28 California Department of Justice.

1 45.97. Gun show producers must also, among other things:

- 2 a. Certify that they are familiar with all California laws regarding
3 gun shows, Cal. Penal Code § 27200;
4 b. Possess a minimum of \$1,000,000 liability insurance, *id.*;
5 c. Provide an annual list of shows or events to be held to the
6 California Department of Justice, *id.*; and
7 d. Notify the California Department of Justice no later than 30
8 days prior to the gun show or event of any changes to the above,
9 *id.*
10 e. Make available to law enforcement a complete and accurate list
11 of all vendors that will participate in the show to sell, lease, or
12 transfer firearms. Cal. Penal Code § 27205.

13 46.98. Gun show producers must submit an annual event and security plan
14 and schedule to the California Department of Justice and any local law enforcement
15 agency. The plan must include:

- 16 a. Type of show or event;
17 b. Estimated number of vendors offering for sale or display
18 firearms;
19 c. Estimated number of attendees;
20 d. Number of entrances and exits at the event;
21 e. Location, dates, and times of the event;
22 f. Contact person and telephone number for both promoter and
23 facility;
24 g. Number of sworn peace officers employed by the producer or
25 facility who will be present at the event;
26 h. Number of non-sworn security personnel employed by the
27 producer or the facility who will be present at the event; and
28 i. Promoters must inform all prospective vendors of all California

1 laws regarding gun shows.

2 Cal. Penal Code §§ 27210, 27215.

3 ~~47.99.~~ Gun show producers must also provide a list of all prospective vendors
4 and designated firearm transfer agents who are licensed firearm dealers to the
5 California Department of Justice no later than seven days before the event so that
6 the Department of Justice may determine whether each vendor possesses a valid
7 license and is thus eligible to participate in the event. Cal. Penal Code § 27220.

8 ~~48.100.~~ If a vendor is not approved by the California Department of
9 Justice or fails to comply with all applicable California laws, they cannot participate
10 in the gun show event. Cal. Penal Code § 27220.

11 ~~49.101.~~ If a gun show producer fails to inform all prospective vendors of
12 California’s state laws or fails to submit a list of all prospective vendors to the
13 California Department of Justice, the event cannot commence. Cal. Penal Code §
14 27230.

15 ~~50.102.~~ Gun show producers must have written contracts with each
16 vendor selling firearms at the event. Cal. Penal Code § 27235.

17 ~~51.103.~~ Gun show producers must post signs in a readily visible location
18 at each public entrance to the event that includes all of the following notices:

- 19 • “This gun show follows all federal, state, and local firearms and
20 weapons laws, without exception.”
- 21 • “Any firearm carried onto the premises by any member of the public
22 will be checked, cleared of any ammunition, and secured in a manner
23 that prevents it from being operated, and an identification tag or sticker
24 will be attached to the firearm before the person is allowed admittance
25 to the show.”
- 26 • “No member of the public under the age of 18 years shall be admitted
27 to the show unless accompanied by a parent, grandparent, or legal
28 guardian.”

- 1 • “All firearm transfers between private parties at the show shall be
- 2 conducted through a licensed dealer in accordance with applicable
- 3 state and federal laws.”
- 4 • “Persons possessing firearms in this facility must have in their
- 5 immediate possession government-issued photo identification and
- 6 display it upon the request to any security officer or any peace officer,
- 7 as defined in Section 830.”

8 Cal. Penal Code § 27240(a).

9 ~~52.104.~~ Gun show producers must also post signs in a readily visible
10 location at each entrance to the parking lot stating: “The transfer of firearms on the
11 parking lot of this facility is a crime.” Cal. Penal Code § 27240(b).

12 ~~53.105.~~ A willful failure of a producer to comply with any of
13 California’s applicable laws is a misdemeanor punishable with a fine of up to
14 \$2,000 dollars and would render the producer ineligible for a gun show producer
15 license for up to one year, which could cost a producer hundreds of thousands of
16 dollars in lost revenue for a willful infraction. Cal. Penal Code § 272459(c).

17 ~~54.106.~~ Except in very limited exceptions applicable only to law
18 enforcement, actual firearm transfers are already prohibited from taking place at
19 any gun show in California.⁸ The firearm sale can be started through an on-site
20 licensed “transfer dealer,” but it cannot be completed on site. Instead, purchasers
21 must pick up their purchase at a licensed firearm retailer at a different licensed
22 location—but only after a 10-day waiting period and background check. There is no
23 “Gun Show Loophole” at gun shows operated in accordance with California Law.

24
25 ⁸ Cal. Penal Code § 27310 (requiring all firearm transfers at gun shows to
26 comply with state and federal law); *id.* § 26805 (prohibiting the sale and transfer of
27 a firearm by a licensed dealer at any location other than the dealer’s premises as
28 listed on their license but allowing dealer to prepare documents at a gun show in
preparation for completion of the sale at the dealer’s premises); *id.* § 27545
(requiring all firearm transactions to be processed through a licensed dealer when
neither party is a licensed firearm dealer).

1 ~~55.107.~~ The Gun Show Act of 2000, California Penal Code sections
2 27200-27245, places even more restrictions on the operation of a gun show in
3 California by requiring that:

- 4 a. Vendors do not display, possess, or offer for sale any firearms,
5 knives, or weapons for which possession or sale is prohibited;
- 6 b. Vendors acknowledge that they are responsible for knowing and
7 complying with all applicable federal, state, and local laws
8 dealing with the possession and transfer of firearms;
- 9 c. Vendors will not engage in activities that incite or encourage
10 hate crimes;
- 11 d. Vendors will process all transfers of firearms through licensed
12 firearms dealers as required by state law;
- 13 e. Vendors will verify that all firearms in their possession will be
14 unloaded and that the firearms will be secured in a manner that
15 prevents them from being operated except for brief periods,
16 when the mechanical condition of the firearm is being
17 demonstrated to prospective buyer;
- 18 f. Vendors provide all required information under Penal Code §
19 27320;
- 20 g. Vendors will not display or possess black powder or offer it for
21 sale;
- 22 h. Ammunition only be displayed in closed original factory boxes
23 or other closed containers, with the only exception for showing
24 the ammunition to a prospective buyer. On July 1, 2019,
25 additional state-law restrictions on the sale of ammunition will
26 become effective and gun shows must comply;
- 27 i. No member of the public under 18 years old may enter a gun
28 show unless accompanied by a parent or legal guardian;

1 j. No person other than security personnel or law enforcement
2 possess both a firearm and ammunition for that firearm at the
3 same time, with the exception of vendors who are selling both.
4 ~~56.108.~~ Plaintiff Crossroads diligently operates all of its gun shows in
5 accordance with state law, and it takes immediate remedial measures if
6 irregularities are discovered.

7 ~~57.109.~~ Vendors at Crossroads gun shows are some of the same licensed
8 vendors that have brick and mortar stores in the community or who operate legally
9 over the internet and are registered with the state and federal governments as lawful
10 businesses, including the holding of licenses to sell firearms, ammunition, and
11 firearm parts.

12 110. Vendors at Crossroads gun shows still seek to make offers for sale and
13 display their wares, which the Ninth Circuit opinion conceded was lawful. The only
14 difference now is that they intend to direct their customers to internet sales portals
15 or make use of option contracts for the legal products they are authorized to only
16 offer for sale at gun shows. Such convoluted transactions still offer value to their
17 customers because it allows them to better interact with customers in a more
18 meaningful and intimate way even at the somewhat diminished version of gun
19 shows still permitted under SB 264 and SB 915, as interpreted by the Ninth
20 Circuit.⁹

21 111. To comply with SB 264 and SB 915, as interpreted by the Ninth
22 Circuit, Plaintiffs Crossroads has proposed new rules for its shows that take place in
23 California at state-owned venues. Their new business model would forbid the
24

25 ⁹ What is at issue now, is the Defendants' specious contentions that they are not
26 evicting the gun culture (with its obvious First Amendment activities and
27 implications) from state land. If they are truly only banning consummated sales—
28 which, under Plaintiffs' proposed new business model, will comply with that
policy—then they should consent to that new business model, and this case can be
resolved. dismissed.

1 formation, by acceptance, of any contracts for the sale of firearms, ammunition, and
2 “firearm precursor parts.” That new business model will suggest to patrons and
3 vendors that formal acceptance must take place off the premises of the state-owned
4 property, through the use of internet sales portals and/or option contracts.

5 112. While SB 264 and SB 915 are burdensome as currently interpreted to
6 require that the consummation of contracts for sale (i.e., communication of
7 acceptance) of firearms, ammunition, and precursor parts take place away from
8 state-owned properties, including the Fairgrounds, Plaintiff Crossroads and its
9 vendors still wish to continue participating in gun shows on state-owned properties
10 under the new rules proposed by Crossroads. Even with all of the state and federal
11 regulations that promoters and vendors must abide, through the adoption and
12 enforcement of SB 264 and SB 915, Defendants now seek to wholly prohibit
13 constitutionally protected, highly regulated, and otherwise perfectly legal activity.

14 58.113. Defendants, however, have rejected Crossroads’ proposed new
15 operating rules requiring acceptance to be communicated offsite via online orders
16 and/or option contracts, leaving Plaintiffs unable to host gun shows involving the
17 display, advertising, and offers for sale of firearms, ammunition, and “firearm
18 precursor parts” with acceptance and delivery to take place offsite.

19 **[The Gun Show Cultural Experience]**

20 59.114. Gun shows are a modern bazaar—a convention of like-minded
21 individuals who meet in this unique public forum that has been set aside by state
22 and local governments for all manner of commerce. This convention-like setting is
23 of incalculable benefit to the gun-buying consumer and promotes public safety.

24 60.115. Gun shows, in general, and the Crossroads show at the
25 Fairgrounds, in particular, are a celebration of America’s “gun culture” that is a
26 natural and essential outgrowth of the constitutional rights that flow from the
27 Second Amendment to the United States Constitution.

28 61.116. Gun shows, in general, and the Crossroads show at the

1 Fairgrounds, in particular, are a First Amendment forum where literature and
2 information are shared, speakers provide valuable lectures, classes are conducted,
3 political forums are held where gun rights discussions take place, and candidates for
4 political office can meet to discuss political issues, the government, and the
5 constitution with constituents who are part of the California gun culture.

6 ~~62~~.117. Thousands of people attend gun shows on the weekends they are
7 held at the Fairgrounds. Many attend as new gun owners seeking information and
8 instruction. With over 1 million new gun owners in California in the past year, gun
9 shows offer the opportunity for these new gun owners to learn about firearms,
10 safety, and speak to expert firearm enthusiasts.

11 ~~63~~.118. Gun shows place a huge emphasis on safety as citizens come
12 together. Gun shows are designed to offer a communal atmosphere of like-minded
13 people that one does not find in a store where people are running in to pick up one
14 or two items. Gun shows are designed so that people will congregate, take their
15 time, engage each other and the vendors, and learn in a way that they do not
16 otherwise engage.

17 ~~64~~.119. Gun shows also happen to include the exchange of products and
18 ideas, knowledge, services, education, entertainment, and recreation related to the
19 lawful uses of firearms. Those lawful uses include (but are not limited to): firearm
20 safety training; defense of self and others; defense community, state, and nation;
21 hunting; target shooting; gunsmithing; admiration of guns as art; appreciation of
22 guns as technological artifacts; and the study of guns as historical objects.

23 ~~65~~.120. Gun shows, in general, and the Crossroads show at the
24 Fairgrounds, in particular, are cultural marketplaces for those members of the “gun
25 culture” who attend to celebrate their constitutional rights and to pass their beliefs
26 in patriotism and the rights of the individual on to the next generation. It is a place
27 where parents take their children and grandparents take their grandchildren to share
28 with them, among other things, a love of historic firearms, stories of American war

1 heroes, and their love of hunting.

2 ~~66.121.~~ Gun shows, in general, and the Crossroads show at the
3 Fairgrounds, in particular, are places where parents can learn to protect their
4 families and their homes, and how to stay in compliance with California’s ever-
5 changing gun laws.

6 ~~67.122.~~ Gun shows, in general, and the Crossroads show at the
7 Fairgrounds, in particular, are places where people can discuss the positions of
8 political candidates and whether those values line up with their own beliefs in
9 protecting the Second Amendment.

10 ~~68.123.~~ Gun shows, in general, and the Crossroads show at the
11 Fairgrounds, in particular, are held and promoted, and considerable investment is
12 made, precisely to promote and “normalize” the “gun culture” and the
13 constitutional principles that gun show participants hold dear.

14 ~~69.124.~~ This forum is vitally important especially in California where
15 government actors at all levels of government (federal, state, and local) are openly
16 hostile to the cultural values of the Second Amendment and where supporters of
17 those cultural values are not considered “mainstream.”

18 ~~70.125.~~ Participating in “gun culture” is an important reason people
19 attend Crossroads gun shows as vendors, exhibitors, customers, and guests (even if
20 particular vendors or attendees are not in the firearm business or in the market to
21 buy a gun at a particular event).

22 ~~71.126.~~ While less than 40% of vendors at Crossroads’ events offer
23 firearms or ammunition for sale (the remaining vendors offer accessories,
24 collectibles, home goods, lifestyle products, educational information, food, and
25 other refreshments), the principle draw of gun shows is the availability of firearms,
26 ammunition, and firearm parts and accessories for sale, as well as the ability to
27 handle and inspect firearms while in the presence of knowledgeable vendors.

28 ~~72.127.~~ Indeed, many people attend gun shows to learn about the

1 technology and use of various firearms and ammunition when they are considering
2 whether to buy or sell a firearm and to exchange knowledge with experienced
3 dealers and firearm enthusiasts that they cannot get anywhere else. *Teixeira v.*
4 *County of Alameda, No. 13-17132 (9th Cir. 2017).⁴⁰*

5 ~~73.128.~~ Without the ability to engage in the now limited forms of
6 commerce in buy and sell firearms, ammunition, and parts at gun shows at the
7 Fairgrounds, the events will no longer be able to draw many of its vendors and
8 attendees, making the events unprofitable and economically infeasible. When
9 events are no longer profitable, producers and vendors cannot afford to attend and
10 host the shows or maintain the speech components of gun show.

11 129. The ~~complete~~ economic infeasibility of gun shows is a “feature” of SB
12 264 and SB 915, not a “bug.” Indeed, Defendants wish to end this celebration of
13 “gun culture” and Second Amendment rights because they do not understand the
14 culture or the people. To that end, Defendants have attempted, through SB 264 and
15 SB 915’s bans on sales of firearms, ammunition, and “firearm precursor parts” at
16 the Fairgrounds, to permanently deprive Plaintiffs of their right to engage in
17 constitutionally protected conduct at the Fairgrounds.

18 ~~74.130.~~ The loss of the cultural experience that takes place at gun shows
19 as part of the commercial experience of considering the purchase of a firearm
20 (whether through an internet sale or option contract) is a meaningful burden, and
21 therefore, by extension, is a meaningful constraint on the potential gun buyers’ First
22 and Second Amendment rights.

23 **[The Orange County Fair & Event Center]**

24 ~~75.131.~~ The Fairgrounds is owned by the state of California and
25 managed by the Board of Directors of Defendant District, which must regularly

26 _____
27 ⁴⁰~~The *Teixeira* court did not answer whether the Second Amendment includes a~~
28 ~~right to purchase a firearm. Plaintiffs allege, in good faith, that the right to keep and~~
~~bear arms necessarily includes the rights to purchase and sell them. Indeed, those~~
~~rights are a necessary predicate to the exercise of the Second Amendment.~~

1 report its activities to the California Department of Food & Agriculture.

2 ~~76.132.~~ Among other things, Defendant District is charged with
3 maintaining the Fairgrounds and ensuring that it is used for public purposes.

4 ~~77.133.~~ Defendant Ross, as the Secretary of the California Department
5 of Food & Agriculture, oversees the operation of the various agricultural districts in
6 the state, including Defendant District.

7 ~~78.134.~~ The California Department of Food & Agriculture, under
8 Secretary Ross, provides policies and guidance for the operation of all agricultural
9 districts in the state, including the use of facilities as directed by Department policy.

10 ~~79.135.~~ The California Department of Food & Agriculture maintains a
11 *C DFA Contracts Manual for Agricultural Districts* (“Manual”). Section 6.25 of the
12 Manual states that “[w]hether or not a fair rents out their facilities for gun shows is
13 a policy decision to be made by the fair board and their community.” That said,
14 Defendant Ross has used her position to influence fair boards’ decisions about
15 renting their facilities for gun show events.

16 ~~80.136.~~ Similarly, Defendant Ross, as Secretary of the California
17 Department of Food & Agriculture, prohibits the individual fair boards from taking
18 any position on legislation that would effect the ability of fair boards to make
19 decisions about the use of their facilities for gun shows, including her co-
20 defendants’ interpretation of SB 264 and SB 915 which restrict their ability to
21 contract to hold events where firearms, ammunition, or precursor parts are sold.

22 ~~81.137.~~ The Fairgrounds is a state-owned property maintained and
23 opened for use by the public. By virtue of being opened by the state for use by the
24 public, it is a “public forum,” from which the government may not generally
25 exclude expressive activity. *Cinevision*, 745 F.2d at 569 (quoting *Perry Educ. Ass’n*
26 *v. Perry Local Educators’ Assn*, 460 U.S. 37, 45-46 (1983)).

27 ~~82.138.~~ The Fairgrounds is used by many different groups and is a major
28 event venue for large gatherings of people to engage in expressive activities,

1 including concerts, festivals, and industry shows. Indeed, “OC Fair & Event Center
2 is a 150-acre event venue that hosts over 150 events and attracts approximately 4.3
3 million visitors annually. [Its] versatile multi-use property can be transformed to fit
4 a variety of events from small private events to large-scale trade shows and
5 festivals.” OC Fair & Event Center, Event Space Sales, [https://ocfair.com/venue-](https://ocfair.com/venue-rentals/venue-options/rental-property-brochure/)
6 [rentals/venue-options/rental-property-brochure/](https://ocfair.com/venue-rentals/venue-options/rental-property-brochure/) (last visited Aug. 4, 2022) (attached
7 as Exhibit 1).

8 ~~83.139.~~ 83.139. The Fairgrounds actively promotes the use of the property by
9 the public through contracting for available space at the Fairgrounds. *Id.*; *see also*
10 OC Fair & Event Center, Venue Rentals, <https://ocfair.com/venue-rentals/> (last
11 visited Aug. 4, 2022).

12 ~~84.140.~~ 84.140. The Fairgrounds’ Board of Directors Governing Manual states
13 that Defendant District’s purpose is “(1) to hold fairs, expositions and exhibitions in
14 Orange County to exhibit the industries and industrial enterprises, resources, and
15 products of every kind or nature of the state, with a view toward improving,
16 exploiting, encouraging, and stimulating them; and (2) to construct, maintain, and
17 operate recreational and cultural facilities of general public interest in Orange
18 County.

19 ~~85.141.~~ 85.141. Defendant District has adopted a mission statement to effectuate
20 these purposes, which is the celebration of Orange County’s communities, interests,
21 agriculture and heritage.” 32nd District Agricultural District, *Board of Directors*
22 *Governing Manual*, Introduction at 1, available at [https://s3.us-west-](https://s3.us-west-1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-Combo-All.pdf)
23 [1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-](https://s3.us-west-1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-Combo-All.pdf)
24 [Combo-All.pdf](https://s3.us-west-1.amazonaws.com/ocfair.com/wp-content/uploads/2021/02/02141413/Policy-Combo-All.pdf) (last visited Aug. 4, 2022).

25 ~~86.— The Fairgrounds has held non-gun show events in which criminal activity~~
26 ~~has taken place. These criminal incidents are no more likely to happen at a gun~~
27 ~~show than at other types of events, but the Defendants have not banned these~~
28 ~~promoters or their events.~~

1 **[Contracting for Use of the Fairgrounds]**

2 **87.142.** Defendant District has a process, as do most of the state’s
3 fairgrounds, for securing returning contractors who would like to secure specific
4 dates into future years before the contracts can be drafted and executed.

5 **88.143.** Each year, returning and regular contractors, including Plaintiff
6 Crossroads, submit preferred dates for the next calendar year, so Defendant District
7 can confirm availability and so that Plaintiff Crossroads can begin to reserve
8 vendors and materials for the show weekends.

9 **89.144.** Due to the size and extensive planning that goes into producing
10 gun show events, Defendant District has—for decades—provided and held
11 preferred dates for Plaintiff Crossroads, a long-time contractor, until the contracts
12 can fully be executed.

13 **90.145.** Defendant District’s “hold” system essentially operates as a
14 right of first refusal to the benefit of returning contractors. For example, if another
15 contractor wanted the same preferred dates as Plaintiff Crossroads, Defendant
16 District would not allow another vendor to come in and take those dates from
17 Plaintiff Crossroads, even **ifthough** there is no official contract in place yet.

18 **91.146.** The “hold” system also provides Defendant District with the
19 security of knowing its venue is booked with experienced and knowledgeable
20 repeat contractors that have a demonstrated record of running safe and profitable
21 events at the Fairgrounds.

22 **92.147.** The “hold” system also permits the promoter to spend
23 advertising dollars to promote its events, but when governments announce plans to
24 ban gun shows at particular venues, vendors and patrons rationally make plans to
25 attend gun show events at other venues or seek other states to conduct their
26 commerce.

27 **93.148.** Defendant District also considers the “hold” dates and shows
28 during budget discussions, which are typically held in the year before the contracts

1 are commenced.

2 94.149. Upon information and belief, Plaintiffs allege that the “hold”
3 system is widely used by similar state fair board venues and is standard industry
4 practice.

5 150. Plaintiff Crossroads, after doing business in this customary manner for
6 more than 30 years, had no reason to doubt that Defendant District would continue
7 to honor such a relationship with Plaintiff Crossroads.

8 **[Ban on Gun Shows at Other Fairgrounds & Resulting Litigation]**

9 95.151. Despite the long history that Plaintiff Crossroads has had in
10 California, operating safe and legal events, the political environment has become
11 hostile toward gun show events and (more generally) toward the “gun culture” in
12 recent years.

13 96.152. Indeed, gun-show-banning activists are at work throughout the
14 state and the country to ban *all* gun shows *everywhere*, not because they are
15 “dangerous for the community,” but because they do not subscribe to the same
16 values as gun show promoters, vendors, and participants.

17 97.153. With increasing regularity, the same activists are making
18 appearances on Zoom board meetings held by fair boards across the state, and
19 during each appearance, they make the same claims in order to shut down lawful
20 gun shows.

21 98.154. These activists rely on unfounded fears about the security of gun
22 show events, false claims that gun shows are inherently dangerous because they
23 normalize the “gun culture,” and peddle in false stereotypes about the people that
24 attend gun shows. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432
25 (1985) (striking an ordinance requiring a special permit for a group home for the
26 intellectually disabled and citing direct evidence of negative attitudes toward
27 persons with disabilities expressed by community members and recorded in the
28 legislative history).

1 ~~99.155.~~ In 2017, gun-show-banning activists using the same tactics
2 described above began pressuring the 22nd District Agricultural Association (“22nd
3 DAA”), which manages the Del Mar Fairgrounds in San Diego, to prohibit gun
4 show events at the Del Mar Fairgrounds. In response, the 22nd DAA began a series
5 of meetings and comment periods to determine whether it would continue to
6 contract with Plaintiff Crossroads or other gun show producers for the use of the
7 Del Mar Fairgrounds to host gun show events.

8 ~~100.156.~~ The 22nd DAA also engaged in communications with other
9 government agencies and with Crossroads to determine whether gun shows at the
10 Fairgrounds were operated in full compliance with state and federal law, and if the
11 events pose any real danger to the community.

12 ~~101.157.~~ On April 23, 2018, Defendant Newsom sent a letter to the 22nd
13 DAA, urging the Board to ban gun shows at the Fairgrounds, citing his concerns
14 that “[p]ermitting the sale of firearms and ammunition on state-owned property
15 only perpetuates America’s gun culture.” Letter from Governor Gavin Newsom to
16 Board Members of 22nd District Agricultural Association (April 23, 2018)
17 (attached as Exhibit 2).

18 ~~102.158.~~ On September 10, 2018, Assemblymember Todd Gloria (D) sent
19 a letter to the 22nd DAA, stating his “firm belief that the State of California should
20 in no way help to facilitate the sale of firearms.” He also expressed his support for
21 the 22nd DAA “willingness to consider options for limiting or eliminating these
22 gun shows” and vowed to “act by way of legislation should the 22nd DAA Board
23 be unable to take meaningful action.” Letter from Assemblymember Todd Gloria to
24 Board Members of 22nd District Agricultural Association (Sept. 10, 2018)
25 (attached as Exhibit 3).

26 ~~103.159.~~ At a public hearing on September 11, 2018, a fair board ad hoc
27 “Contracts Committee” recommended that the 22nd DAA “not consider any
28 contracts with the producers of gun shows beyond December 31st, 2018, until such

1 time as the [22nd DAA] has put into place a more thorough policy regarding the
2 conduct of gun shows.”

3 ~~104.160.~~ In testimony before the 22nd DAA at the September 11, 2018
4 hearing, Patrick Kerins, who was then the Public Safety Director for the 22nd
5 DAA, reported on the laws that apply to gun shows in California, as well as
6 Plaintiff Crossroads history of events at the Fairgrounds.

7 ~~105.161.~~ During his comments at the September 11, 2018 hearing, Mr.
8 Kerins referenced a memorandum that he prepared for the 22nd DAA’s Board of
9 Directors in 2016. In that memorandum, he reported that:

10 As Chief of Security for the 22nd DAA, I routinely inspect the
11 gun show and on a regular basis communicate with the San Diego
12 Sheriff’s Department re: compliance with all the applicable laws
13 and regulations and the Security Plan required by the California
14 Department of Justice Firearms Division. I recently spoke to
15 Detective Jaime Rodriguez of the Sheriff’s North Coastal Station
16 who supervises the four Deputies assigned to the gun show security
17 detail and Detective Stacey Smith who is assigned to the Sheriff’s
18 Licensing Division. Both Detectives said the Crossroads of the West
19 Gun Show is in complete compliance with all the local, State and
20 Federal laws that govern gun shows and that there have not been
21 any violations of law. Both Detectives had high praise for the show
22 promoters and the 22 DAA staff.

23 Memorandum of Patrick Kerins, Public Safety Director, 22nd District Agricultural
24 Association, to Board of Directors, 22nd District Agricultural Association, at 17
25 (2016) (attached as Exhibit 4).

26 ~~106.162.~~ Mr. Kerins’ 2016 memorandum continued:

27 In my considered opinion, as Chief of Security for the 22 DAA for
28 the last 17 years, the CROSSROADS OF THE WEST GUN
SHOWS (5 per year) are in compliance with all the local, state and
federal regulatory statutes and have operated without any violations
of those laws Under the laws of the State of California you must
comply with all the laws of purchasing, selling and/or transferring
of firearms at a gun show as you would at licensed gun dealer’s
store Due to the strict California gun show regulations there are no
so called loop holes that you so often hear about in the media.

Ex. 4 at 17.

~~107.163.~~ Ultimately, the lengthy process of meetings, public comment,

1 and communications with stakeholders resulted in **no finding** that allowing the
2 (already heavily regulated) gun show events to continue at the Del Mar Fairgrounds
3 posed a definite or unique risk to public safety. Indeed, the 22nd DAA presented *no*
4 evidence of any safety concerns within the community that could be linked to the
5 over-30-year-old gun show at the Del Mar Fairgrounds.

6 ~~108.164.~~ Nonetheless, relying on contrived possibilities of unknown
7 dangers and unfounded claims that prohibiting gun shows might prevent suicide
8 and violent crime because the “gun culture” would be censored, the 22nd DAA
9 voted to impose a one-year moratorium on gun show events at the Del Mar
10 Fairgrounds.

11 ~~109.165.~~ Plaintiffs Crossroads, CRPA, SAF, and others sued the 22nd
12 DAA, Defendant Ross, and others in federal court to enjoin the enforcement of the
13 moratorium, alleging violations of various constitutional rights, including the rights
14 to free speech, assembly, and equal protection. *See B&L Prods. v. 22nd Dist. Agric.*
15 *Ass’n*, 394 F. Supp. 3d 1226 (S.D. Cal. 2019) (“*B&L P*”) (attached as Exhibit 5).

16 ~~110.166.~~ Denying the 22nd DAA’s motion to dismiss and granting
17 plaintiffs a preliminary injunction—*sua sponte*—on the ground that plaintiffs were
18 exceedingly likely to succeed on the merits of their *constitutional* claims, the court
19 in *B&L Productions* temporarily enjoined the enforcement of the 22nd DAA’s gun
20 show moratorium and ordered the 22nd DAA to contract with Crossroads as it
21 would any other similar event promoter at the Fairgrounds. *Id.*

22 ~~111.167.~~ Shortly thereafter, the *B&L Productions* plaintiffs negotiated a
23 settlement with the 22nd DAA, represented by attorneys for the California
24 Department of Justice, permanently terminating the gun show moratorium,
25 reinstating Crossroads’ right to promote gun show events at the Fairgrounds, and
26 permanently barring the 22nd DAA from unilaterally halting B&L’s gun show
27 events at the Del mar Fairgrounds.

28 **[California’s Assembly Bill 893 (Gloria)]**

1 ~~112.168.~~ Making good on previous threats, and fully aware of the court’s
2 decision in *B&L I*, Assemblymember Gloria introduced Assembly Bill 893 (“AB
3 893”) on or about February 20, 2019. Assem. Bill 893, 2019-2020 Reg. Sess. (Cal.
4 2019) (attached as Exhibit 6).

5 ~~113.169.~~ AB 893, which added section 4158 to the California Food &
6 Agricultural Code, bars any “officer, employee, operator, lessee, or licensee of the
7 [District]” from “contract[ing] for, authoriz[ing], or allow[ing] the sale of any
8 firearm or ammunition on the property or in the buildings that comprise the Del
9 Mar Fairgrounds.” Violation of the law is a misdemeanor. *Id.*

10 ~~114.170.~~ AB 893 does not bar the possession of firearms or ammunition
11 on the property or in the buildings that comprise the Del Mar Fairgrounds. *Id.*

12 ~~115.171.~~ The text of AB 893 expressly identifies the ongoing presence at
13 the Del Mar Fairgrounds of “marketplaces popularly known as ‘gun shows,’ at
14 which firearms and ammunition and other items are sold to the public
15 approximately five times a year.” *Id.*

16 ~~116.172.~~ AB 893 also clearly recognizes that “[p]romoters maintain
17 relationships with a core group of vendors, some selling guns and some selling
18 other merchandise, who travel as the schedule dictates from city to city and state to
19 state and in the West, for example, many of the same vendors can be seen at
20 Crossroads of the West Gun Shows from San Francisco, California, to Tucson,
21 Arizona.” *Id.*

22 ~~117.173.~~ AB 893 failed to identify, however, any real public safety or
23 security concern *specifically* related to the existence of gun show events at the
24 Fairgrounds.

25 ~~118.174.~~ To be sure, AB 893 claims, without support, that “[g]un shows
26 bring grave danger to a community” and that “dangerous incidents” have taken
27 place at guns shows at the Fairgrounds, including “an official vendor accused of
28 trafficking illegal firearms, sales of firearms to individuals registered in the

1 Department of Justice Bureau of Firearms Armed Prohibited Persons System, and
2 illegal importation of large-capacity magazines.” But AB 893 makes no effort to
3 show that these incidents are any more likely to occur at gun shows in California,
4 which are regulated at least as heavily as retailers operating out of brick-and-mortar
5 stores.

6 ~~119.175.~~ Instead, AB 893’s legislative history reveals only general
7 concerns about gun violence occurring all over the country and legislators’ beliefs
8 that the state should not profit from sales of firearms and ammunition. *See* Matthew
9 Fleming, Assem. Comm. Pub. Safety, Bill Analysis Re: AB 893 (Gloria), 2019-
10 2020 Reg. Sess., at 3 (Cal. 2019) (attached as Exhibit 7).

11 ~~120.176.~~ Indeed, AB 893 opens with a list of tragedies, including the
12 horrific mass murders that took place at Columbine High School, Sandy Hook
13 Elementary School, and Marjory Stoneman Douglas High School—none of which
14 were carried out with firearms traced to gun show events at the Fairgrounds. Ex. 6.

15 ~~121.177.~~ What’s more, a March 26, 2019, analysis of AB 893 presented
16 to the Assembly Committee on Public Safety quoted claims by Assemblymember
17 Gloria, the bill’s sponsor, that “[t]here is an ever-apparent link between the gun
18 violence we see virtually every week and the number of guns in our communities.”
19 These statements, however, made no attempt to link gun violence to gun shows,
20 generally, or to gun shows at the Fairgrounds, specifically. Ex. 7 at 2.

21 ~~122.178.~~ The Public Safety Committee’s March 26, 2019, analysis also
22 quoted Gloria as lamenting that “the State of California should not be profiting or
23 benefitting from the sale of firearms.” He continued, “[f]undamentally, I believe it
24 is wrong for the state of California to profit or to benefit from the sale of firearms
25 and ammunition.” Ex. 7 at 2.

26 ~~123.179.~~ The Public Safety Committee’s March 26, 2019, analysis also
27 cited a decade-old report from the Violence Prevention Research Program (VPRP)
28 at the UC Davis School of Medicine, identifying gun shows as a source of illegally

1 trafficked firearms. Ex. 7 at 3.

2 ~~124.180.~~ But neither the VPRP report nor AB 893’s legislative history
3 links any illegally trafficked firearm or gun used in crime to gun shows at the Del
4 Mar Fairgrounds (or even to gun shows in California). *See* Garen Wintemute, MD,
5 *Inside Gun Shows: What Goes on When Everybody Thinks Nobody’s Watching*, ch.
6 1 (2009) (attached as Exhibit 8). This is unsurprising because, as the study states,
7 “[m]uch of the concern about gun shows as a source of crime guns focuses on
8 private party gun sales, *since no background checks are conducted and no records*
9 *are kept.*” *Id.* at 32. But such concerns are simply irrelevant in California where
10 private party transfers—even those initiated at gun shows—must be processed by a
11 licensed firearm dealer and are subject to background checks, 10-day waiting
12 periods, and registration under state law.

13 ~~125.181.~~ The VPRP report cited by the Public Safety Committee’s
14 analysis of AB 893 also attempts to implicate licensed firearm retailers operating at
15 gun shows as sources of crime guns in America, claiming that “30% of dealers with
16 gun show sales, but 22% of all dealers, had previously had a crime gun traced to
17 them.” But it expressly recognizes that “in California, where both gun shows
18 themselves and gun commerce generally are regulated, *sales at gun shows are not a*
19 *risk factor among licensed retailers for disproportionate sales of crime guns.*” Ex. 8
20 at 33 (emphasis added).

21 ~~126.182.~~ The Public Safety Committee’s March 26, 2019, analysis also
22 cited a report from the Government Accountability Office, claiming that a GAO
23 report “regarding gun trafficking to Mexico confirmed that many traffickers buy
24 guns at gun shows.” Ex. 7 at 3. But again, neither the BATFE report nor AB 893’s
25 legislative history links any illegally trafficked firearm to gun shows at the Del Mar
26 Fairgrounds (or even to gun shows in California). *See* U.S. Gov’t Accountability
27 Off., GAO-16-223, *Firearms Trafficking: U.S. Efforts to Combat Firearms*
28 *Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain*

1 (2016) (attached as Exhibit 9). To be sure, the GAO report identifies U.S.
2 Southwest border states, including Texas (41%), California (19%), and Arizona
3 (15%), as the largest sources of firearms illegally trafficked into Mexico from the
4 United States. Ex. 9 at 14. But it does not trace these illegally trafficked guns to
5 licensed dealers, generally, or to those operating at gun shows, specifically. Rather,
6 it says only that “there were about 10,134 licensed dealers and pawnbrokers in the
7 four Southwest border states, many of them along the border,” and that “these
8 licensed dealers and pawnbrokers can operate in locations such as gun shops, pawn
9 shops, their own homes, or gun shows.” *Id.*

10 ~~127.183.~~ The Public Safety Committee’s March 26, 2019, analysis did
11 concede that “less than one percent of inmates incarcerated in state prisons for gun
12 crimes acquired their firearms at a gun show”—though it transparently tries to
13 diminish that fact by citing only a website of the National Rifle Association as the
14 source of the statistic, instead of the U.S. Department of Justice, Bureau of Justice
15 Statistics reports from which the NRA drew it. Ex. 7 at 2-3 (citing NRA-ILA,
16 *Background Checks|NICS*, [https://www.nraila.org/get-the-facts/background-checks-](https://www.nraila.org/get-the-facts/background-checks-nics)
17 [nics](https://www.nraila.org/get-the-facts/background-checks-nics) (last visited Sept. 29, 2021)); *but see* Caroline Wolf Harlow, Ph.D., Bureau of
18 Justice Statistics, *Firearm Use by Offenders* (Nov. 2001) attached as Exhibit 10.

19 ~~128.184.~~ While the Public Safety Committee’s March 26, 2019, analysis
20 also concedes that “violent criminals do not appear to regularly purchase their guns
21 directly from gun shows,” the analysis immediately shifts to “criticism” (from the
22 partisan Center for American Progress) that gun shows are somehow “the critical
23 moment in the chain of custody for many guns, the point at which they move from
24 the somewhat-regulated legal market to the shadowy, no-questions-asked illegal
25 market.” Ex. 7 at 3 (citing Arkadi Gerney, Center for American Progress, *The Gun*
26 *Debate 1 Year After Newtown: Assessing Six Key Claims About Gun Background*
27 *Checks* (Dec. 2013), available at [https://www.americanprogress.org/issues/guns-](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/)
28 [crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/) (last visited

1 Sept. 29, 2021). Neither the Center for American Progress editorial nor AB 893’s
2 bill analysis show how, in California where sales at gun shows are regulated *at*
3 *least* as heavily as sales at brick-and-mortar retailers, guns originating at gun shows
4 are any more likely to enter the “shadowy, no-questions-asked illegal market” than
5 those sold at gun stores.

6 **[California’s Senate Bill 264 (Min)]**

7 ~~129.185.~~ Not to be outdone and following the encouragement from both
8 Defendant Newsom and Assemblymember Gloria, Senator Dave Min sought early
9 on to rid the state of gun shows on all state fairground properties. Indeed, Senator
10 Min promised “in my first 100 days in office, I promise to author legislation for a
11 *ban* on these gun shows at the OC Fair and Events Center once and for all.”
12 Anthony Pignataro, *SD-37 Candidate Min: Ban Gun Shows from OC Fair & Event*
13 *Center*, OC Weekly (Aug. 6, 2019), [https://www.ocweekly.com/sd-37-candidate-](https://www.ocweekly.com/sd-37-candidate-min-ban-gun-shows-from-oc-fair-event-center/)
14 [min-ban-gun-shows-from-oc-fair-event-center/](https://www.ocweekly.com/sd-37-candidate-min-ban-gun-shows-from-oc-fair-event-center/) (emphasis added). And he called on
15 the “governing board of the OC Fair to *end its contract* with Crossroads of the West
16 and other gun show marketers.” *Id.*

17 ~~130.186.~~ In response, Board Member Ashleigh Aitken, advocating for the
18 known safety of the Fairgrounds, noted that “[t]he gun show loophole does not exist
19 in California. No citizen can purchase a firearm at the gun show and walk off
20 property with it. The purchases are subject to the same background checks and
21 waiting periods as any other store purchase.” Aitken went on to note that
22 “California’s legal gun shows are not a priority as our state has the strictest gun
23 laws in the country.” Anthony Pignataro, *OC Fair Board Member Responds to*
24 *Min’s Gun Show Ban Idea* (Aug. 7, 2019), available at
25 [https://www.ocweekly.com/oc-fair-board-member-responds-to-mins-gun-show-](https://www.ocweekly.com/oc-fair-board-member-responds-to-mins-gun-show-ban-idea/)
26 [ban-idea/](https://www.ocweekly.com/oc-fair-board-member-responds-to-mins-gun-show-ban-idea/).

27 ~~131.187.~~ Nevertheless, Senator Min introduced Senate Bill 264 (“SB
28 264”) on January 27, 2021. Sen. B. 264, 2019-2020Reg. Sess. (Cal. 2020) (attached

1 as Exhibit 11). SB 264, which added section 27575 to the California Penal Code,
2 bars any “officer, employee, operator, lessee, or licensee of the [District]” from
3 “contract[ing] for, authoriz[ing], or allow[ing] the sale of any firearm, firearm
4 precursor part, or ammunition on the property or in the buildings that comprise the
5 OC Fair and Events Center.” Violation of the law is a misdemeanor. *Id.*

6 ~~132.188.~~ SB 264 does not bar the possession of firearms, ammunition, or
7 “firearm precursor” parts on the property or in the buildings that comprise the
8 ~~Orange County~~ Fairgrounds. Ex. 10. And it provides exceptions for (1) gun
9 buyback events held by law enforcement, (2) the sale of a firearm by a public
10 administrator, public conservator, or public guardian in the course of their duties,
11 (3) the sale of a firearm, firearm precursor part, or ammunition on state property
12 that occurs pursuant to a contract that was entered into before January 1, 2022, and
13 (4) the purchase of ammunition on state property by a law enforcement agency in
14 the course of its regular duties. *Id.*

15 ~~133.189.~~ Like AB 893, SB 264 clearly recognizes that “[p]romoters
16 maintain relationships with a core group of vendors, some selling guns and some
17 selling other merchandise, who travel as the schedule dictates from city to city and
18 state to state and in the West, for example, many of the same vendors can be seen at
19 Crossroads of the West Gun Shows from San Francisco, California, to Tucson,
20 Arizona.” *Id.*

21 ~~134.190.~~ SB 264 failed to identify, however, any real public safety or
22 security concern specifically related to the existence of gun show events at the
23 Fairgrounds. Indeed, without citing specific safety concerns related to the *Orange*
24 *County* ~~Fairgrounds~~ Fair & Event Center, the authors of SB 264 literally copied and
25 pasted the same vague “security concerns” related to the *Del Mar* Fairgrounds from
26 the language of AB 893 to label the Orange County events a threat to the local
27 community. *Id.*

28 ~~135.191.~~ To be sure, SB 264 claims that “[g]un shows bring grave danger

1 to a community” and that “dangerous incidents” have taken place at guns shows at
2 the Fairgrounds, including “*an official vendor accused of trafficking illegal*
3 *firearms, sales of firearms to individuals registered in the Department of Justice*
4 *Bureau of Firearms Armed Prohibited Persons System, and illegal importation of*
5 *large-capacity magazines.*” *Id.* But SB 264 makes no effort to show that these
6 incidents are any more likely to occur at the Orange County gun show or gun shows
7 in California in general, which are regulated at least as heavily as retailers operating
8 out of brick-and-mortar stores. What’s more, these incidents are identical to the
9 crimes alleged to have taken place at the Del Mar Fairgrounds—an odd coincidence
10 to be sure.

11 ~~136.192.~~ Instead, SB 264’s legislative history reveals only general
12 concerns about gun violence occurring all over the country, unrelated to California
13 gun shows, and legislators’ beliefs that the state should not profit from sales of
14 firearms and ammunition.

15 ~~137.193.~~ Indeed, SB 264 opens with a list of tragedies, including the
16 horrific mass murders that took place at Columbine High School, Sandy Hook
17 Elementary School, and Marjory Stoneman Douglas High School—none of which
18 were carried out with firearms traced to gun show events at the Fairgrounds. *Id.*

19 ~~138.194.~~ The Senate Committee on Public Safety’s March 15, 2021,
20 analysis cited a report from the Government Accountability Office, claiming that a
21 GAO report “regarding gun trafficking to Mexico confirmed that many traffickers
22 buy guns at gun shows.” Sen. Comm. Pub. Safety, Bill Analysis Re: SB 264 (Min),
23 2019-2020 Reg. Sess., at 4 (Cal. 2021) (attached as Exhibit 12). But again, neither
24 the BATFE report nor SB 264’s legislative history links any illegally trafficked
25 firearm to gun shows at the Fairgrounds (or even to gun shows in California). *See*
26 Ex. 9.

27 ~~139.195.~~ In comments to the Senate Public Safety Committee on March
28 16, 2021, Senator Min claimed that “SB 264 will ensure that the state is not

1 profiting from the sale of firearms and ammunition on state property or facilitating
2 gun shows that would undermine California’s strong firearm regulations.” Sen.
3 Pub. Safety Committee Hrg., Mar. 16, 2021, at 3:20:18, *available at*
4 [https://www.senate.ca.gov/media-archive/default?title=Public+Safety&startdate=](https://www.senate.ca.gov/media-archive/default?title=Public+Safety&startdate=03%2F16%2F2021&enddate=03%2F17%2F2021)
5 [03%2F16%2F2021&enddate=03%2F17%2F2021](https://www.senate.ca.gov/media-archive/default?title=Public+Safety&startdate=03%2F16%2F2021&enddate=03%2F17%2F2021) (last accessed Aug. 4, 2022).

6 140.196. In his remarks to the Senate Public Safety Committee, Senator
7 Min claimed that the carnival-like atmosphere of gun shows lends itself to “lots of
8 gun sales in the parking lot or by Venmo where the gun is delivered later.” No data
9 was presented to support these claims even when asked by Senator Bogh. Senator
10 Min ultimately conceded that he does not know how many firearms from gun
11 shows actually move into the stream of illegal commerce. *Id.* at 4:05:36. He went
12 on to state that even if there have zero unlawful acts at guns shows, “there is a
13 principal that taxpayers should not be utilized, and taxpayer venues should not be
14 utilized to promulgate the distribution of more guns in our communities.” *Id.* at
15 4:09:40.

16 141.197. Senator Min’s closing remarks to the Senate Public Safety
17 Committee recognized that SB 264 is “symbolic” and makes a statement that the
18 state does not want to give an endorsement of “our taxpayer venues being used to
19 sell more guns in our communities. *Id.* at 4:12:59.

20 142.198. Similarly, in his remarks to the Assembly Committee on Public
21 Safety on July 13, 2021, Senator Min said that ending gun shows and banning the
22 sale of firearms, ammunition, and precursor parts at state-owned properties is a
23 value statement that the state of California must make. *See* Assem. Pub. Safety
24 Committee Hrg., Mar. 16, 2021, at 4:01:22, *available at*
25 [https://www.assembly.ca.gov/media/assembly-public-safety-committee-](https://www.assembly.ca.gov/media/assembly-public-safety-committee-20210713/video)
26 [20210713/video](https://www.assembly.ca.gov/media/assembly-public-safety-committee-20210713/video) (last accessed Aug. 4, 2022). “Value statements” are made about
27 likes and dislikes, not about issues of public safety. Min’s candid remarks about the
28 intention of SB 264 clearly illustrate a commitment to end gun shows not for safety

1 reasons, but to restrict the lawful speech and activities of a culture that he does not
2 understand and does not support.

3 **[California’s Senate Bill 915 (Min)]**

4 ~~143.199.~~ Having failed in 2021 to make good on his campaign promise
5 to pass legislation that would ban gun shows from all state property, an undeterred
6 Senator Min introduced Senate Bill 915 (“SB 915”) on February 2, 2022. Sen. B.
7 915, 2021-2022 Reg. Sess. (Cal. 2022) (attached as Exhibit 15).

8 ~~144.200.~~ SB 915, which added section 27573 to the California Penal
9 Code, bars any “state officer or employee, or operator, lessee, or licensee of any
10 state property” from “contract[ing] for, authoriz[ing], or allow[ing] the sale of any
11 firearm, firearm precursor part, or ammunition on state property or in the buildings
12 that sit on state property or property otherwise owned, leased, occupied, or operated
13 by the state.” *Id.*

14 ~~145.201.~~ Just like SB 264, Min’s SB 915 does not bar the possession of
15 firearms, ammunition, or “firearm precursor parts” on state property or in the
16 buildings that sit on that property. *Id.* And it provides exceptions for (1) gun
17 buyback events held by law enforcement, (2) the sale of a firearm by a public
18 administrator, public conservator, or public guardian in the course of their duties,
19 (3) the sale of a firearm, firearm precursor part, or ammunition on state property
20 that occurs pursuant to a contract that was entered into before January 1, 2023, (4)
21 the purchase of ammunition on state property by a law enforcement agency in the
22 course of its regular duties, and (5) sale or purchase of a firearm pursuant to
23 subdivision (b) or (c) of Section 10334 of the Public Contract Code. *Id.*

24 ~~146.202.~~ SB 915 ~~takes effect~~took on January 1, 2023, but officials ~~have~~
25 ~~already~~ stopped entering into contracts with gun show promoters, like Plaintiff
26 Crossroads, for events in 2022 and beyond. And while there is an exemption
27 allowing events to take place if contracts for those events were entered into before
28 January 1, 2023, ~~it has not been the practice of state~~many state venues ~~refused~~ to

1 grant ~~these~~ contracts for gun show events in anticipation of the law’s effective date.

2 ~~147.203.~~ The bill’s purpose was—and its actual effect is—to banish gun
3 shows from state-owned properties—~~properties~~ that are otherwise open to the
4 public for gathering and expressive activities—throughout California. Indeed,
5 Senator Min, the author of SB 915, has made very clear that banning the events was
6 the bill’s intent: “Last year we laid the foundation for this moment with a ban on
7 gun shows at the Orange County Fairgrounds. Today, I am proud to announce that
8 California will become the first nation to enact a total ban statewide.” Press
9 Release, *California Becomes the First State to Ban Gun Shows on State Property,*
10 *Builds on Orange County Fairgrounds Ban* (July 21, 2022), available at
11 [https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds)
12 [property-builds-orange-county-fairgrounds](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds) (last accessed Nov. 7, 2022).

13 ~~148.204.~~ Notably, SB 915 identifies no real public safety concern related
14 to the existence of gun show events at any of the state venues in California. To the
15 contrary, when giving testimony about SB 915, Senator Min only noted issues with
16 criminal activity from outside of California.

17 ~~149.205.~~ Instead, SB 915’s legislative history reveals only general
18 concerns about gun violence occurring all over the country, unrelated to California
19 gun shows, and legislators’ beliefs that the state should not profit from sales of
20 firearms and ammunition.

21 ~~150.206.~~ In describing the need for the bill, the legislative history of SB
22 915 cites little more than a 1999 BATFE report that identified “gun shows as a
23 ‘major trafficking channel’” and found “that gun shows were the second largest
24 source of illegally trafficked firearms.” *See* Sen. Comm. Pub. Safety, Bill Analysis
25 Re: SB 915 (Min), 2021-2022 Reg. Sess., at 3 (Cal. 2022) (attached as Exhibit 16).
26 Setting aside the fact that the report is nearly a quarter-of-a-century old, the
27 legislature made no effort to link such concerns to gun shows in California, where
28 state law governs sales at gun shows at least as strictly as it governs sales at “brick-

1 and-mortar” stores. Nor did it make any effort to show that gun shows remain “the
2 second largest source of illegally trafficked firearms” 23 years after the BATFE
3 report published its findings.

4 **[The Impact of SB 264 and SB 915 on the Orange County Gun Show]**

5 207. Gun shows have historically always included sales of firearms and
6 ammunition. Indeed, both federal regulations and California law have specific
7 statutory and regulatory regimes for gun sales at gun shows. And although SB 264
8 and SB 915 were passed to indirectly ban gun shows on state-owned properties by
9 banning consummated sales, the Ninth Circuit’s opinion interpreting those statutes
10 has left open a narrow band of commercial activity associated with firearms,
11 ammunition, and “firearm precursor parts” that does not culminate in a
12 consummated “sale” on state-owned land. Plaintiffs are ready and willing to
13 continue holding gun shows without consummated sales of firearms, ammunition,
14 and “firearm precursor parts” at the Fairgrounds and other state-owned venues.
15 Indeed, ten-day waiting periods for firearms have always been an obstacle that
16 vendors and buyers have had to put up with in California’s obsessive-compulsive
17 drive to over-regulate the Second Amendment.

18 151.208. But at a bare minimum, ~~T~~the ability to show guns and make
19 offers to sell ~~sale of~~ firearms, ~~and~~ ammunition, and gun parts is still an essential
20 function of gun shows, and it is ~~one of the main~~ still the primary reasons people
21 attend these events; if gun shows are not economically viable because they have
22 been stripped of an essential function, they will cease to exist.

23 152.209. SB 264 and SB 915 thus have the same practical effect as Del
24 Mar’s unconstitutional gun show moratorium which was enjoined by a federal
25 court—that is, by permanently banning ~~all the~~ commercial activity (including
26 internet sales and option contracts) ~~sale~~ relating to ~~of~~ firearms, ammunition, and
27 firearm parts at the Fairgrounds ~~and other state-owned venues~~, it has the effect of
28 banning gun shows at ~~the Fairgrounds~~ those venues. See *B&L Prods., Inc. v. 22nd*

1 *Dist. Agric. Ass'n*, 394 F. Supp. 3d 1226 (S.D. Cal 2019).

2 ~~153.210.~~ The Legislature was well-aware when it passed SB 264 and SB
3 915 that a “gunless” gun show would not survive financially. Indeed, the intended
4 purpose of SB 264 and SB 915 was to end gun shows at the Fairgrounds as noted
5 by bill sponsor Senator Min in numerous committee testimonies and public
6 comments.

7 211. The July 12, 2021, Assembly Committee on Public Safety’s bill
8 analysis references other similar legislative attempts to ban gun shows on state
9 agricultural land. Assem. Comm. Pub. Safety, Bill Analysis Re: SB 264 (Min),
10 2021-2022 Reg. Sess., at 3 (Cal. 2021) (attached as Exhibit 13). The analysis notes
11 that:

12 AB 893 (Gloria) Chapter 731, Statutes of 2019, added a section to
13 the Food and Agricultural Code that prohibits the sale of firearms
14 and ammunition at the Del Mar Fairgrounds, effectively terminating
15 the possibility for future gun shows at the Del Mar Fairgrounds. AB
16 893 was signed into law by Governor Newsom. This bill would
17 expand the provisions of AB 893 by including all state property
18 within the prohibition on the sale or transfer of firearms and
19 ammunition.¹¹

20 ~~154.212.~~ Senator Min knew that the intended and practical effect of SB
21 264 (and later SB 915) was to end gun shows. His official Senate press release
22 notes that “[i]f signed into law, SB 264 would effectively put a stop to most gun
23 shows on county fairgrounds. Press Release, *Senator Dave Min’s Gun Violence*
24 *Prevention Bill Advances from Assembly Public Safety Committee* (July 13, 2021),
25 available at [https://sd37.senate.ca.gov/news/senator-dave-mins-gun-violence-](https://sd37.senate.ca.gov/news/senator-dave-mins-gun-violence-prevention-bill-advances-assembly-public-safety-committee)
26 [prevention-bill-advances-assembly-public-safety-committee](https://sd37.senate.ca.gov/news/senator-dave-mins-gun-violence-prevention-bill-advances-assembly-public-safety-committee) (last accessed Aug. 4,
27 2022).

28 ~~155.213.~~ On July 21, 2022, Senator Min reiterated the intent of his gun

¹¹ SB 264 was initially introduced as a bill to end sales of firearms, ammunition, and “firearm precursor parts” on *all* state-owned property. But Min failed to garner enough support for such a ban and agreed to limit the scope of SB 264 to the OC Fair & Event Center.

1 show bills: “Last year we laid the foundation for this moment with a ban on gun
2 shows at the Orange County Fairgrounds. Today I am proud to announce that
3 California will become the first in the nation to enact a total ban statewide.” Press
4 Release, *Senator Dave Min’s California Becomes the First State To Ban Gun*
5 *Shows on State Property, Builds on Orange County Fairgrounds Ban* (July 21,
6 2022), available at [https://sd37.senate.ca.gov/news/california-becomes-first-state-](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds)
7 [ban-gun-shows-state-property-builds-orange-county-fairgrounds](https://sd37.senate.ca.gov/news/california-becomes-first-state-ban-gun-shows-state-property-builds-orange-county-fairgrounds) (last accessed
8 Nov. 7, 2022).

9 ~~156.214.~~ And further evidencing the Legislature’s intended effect of SB
10 264 and SB 915, Senator Min wrote to Defendant District, warning members not to
11 stand in the way of his bill that would ban sales of firearms, ammunition, and
12 “firearm precursor” parts at the Fairgrounds. Letter from Senator Dave Min to
13 Board Members of 32nd District Agricultural Association (on or about September
14 13, 2021) (attached as Exhibit 14).

15 ~~157.215.~~ In his letter dated on or about September 13, 2021, letter, Min
16 addressed the District’s concerns that its venue was being unfairly and exclusively
17 targeted, responding that SB 264 was no different from earlier attempts to ban gun
18 shows at a single fairground:

19 While Item 6A expresses a concern that SB 264 “exclusively targets
20 the 32nd DAA,” such action to ban gun shows at a single fairground
21 site has recent precedent. In 2019, Gov. Newsom signed Assembly
22 Bill 893 (Gloria) into law, ending the sale of firearms and
ammunition at the Del Mar Fairgrounds, operated by the 22nd
District Agricultural Association.

23 *Id.* (emphasis added).

24 ~~158.216.~~ In that same letter, Senator Min also threatened the District’s
25 board members with individual liability lawsuits should they move to approve
26 contracts for the gun shows even before Governor Newsom had signed SB 264 into
27 law. *Id.*

28 ~~159.217.~~ Nonetheless, Plaintiff Crossroads ~~has~~ repeatedly reached out to

1 Defendant District to request dates for events at the Fairground in 2021, 2022, and
2 beyond. But Defendant District refused to place the contracts for gun shows on the
3 agenda for October, November, or December 2021, stating instead that they would
4 revisit the issue again in January 2022 after SB 264 ~~would go~~went into effect.

5 ~~160.218.~~ Defendant District's refusal to enter into contracts with Plaintiff
6 Crossroads before the implementation of AB 264 and SB 915 may have satisfied
7 Senator Min's threats towards individual board members, but in doing so, the
8 District failed in ~~its~~their duty to bring profitable and family-friendly events to the
9 Fairgrounds and caused great losses to Plaintiffs.

10 ~~161.219.~~ Plaintiff Crossroads was unable to secure dates and enter into
11 new contracts for events at the Fairgrounds in 2022 and beyond due to the
12 Defendants' intentional act of adopting and enforcing SB 264 and SB 915 and
13 refusing to consider their contracts in the same way they would any other member
14 of the public seeking to rent the Fairgrounds venue.

15 ~~162.220.~~ Indeed, in compliance with SB 264 and SB 915, Defendant
16 District cannot and will not enter into contracts for gun shows at the Fairgrounds if
17 firearms, ammunition, or "firearm precursor parts" will be sold during the shows.

18 ~~163.221.~~ Even though Plaintiff Crossroads ~~has~~ offered to attempt to hold
19 events without sales of firearms, ammunition, or "firearm precursor parts" to
20 preserve its longstanding relationship with the District, mitigate damages, and
21 continue planning and promoting its family-friendly events until its claims can be
22 heardfully litigated, Defendant District dragged its feet and refused to provide dates
23 for events for 2022 and beyond. Plaintiffs ~~are~~were also unable to enter into new
24 contracts for shows at other state venues before the implementation of SB 915
25 because those venues also refusedd to provide dates before January 1, 2023.

26 ~~164. Because of the time and resources needed to plan and implement its~~
27 ~~gun show events, Plaintiff Crossroads must plan its shows about one year in~~
28 ~~advance, but Defendant District has not allowed Plaintiff Crossroads to secure dates~~

1 ~~in 2023 either.~~

2 ~~165. What's more, Defendant District seems to have stripped Plaintiff~~
3 ~~Crossroads of its effective right of first refusal under the District's "hold" system~~
4 ~~described above. Indeed, it failed to give Crossroads first (or any) choice of its~~
5 ~~dates in 2021 or 2022.~~

6 ~~166.222.~~ Defendants' adoption and enforcement of SB 264 and SB 915,
7 which have the intended and practical effect of banning gun shows at the
8 Fairgrounds and other state fairgrounds, ~~has~~ have caused and will continue to cause
9 Plaintiff Crossroads significant economic damages, including loss of event revenue,
10 breakdown of relationships and agreements with long-time event vendors and
11 companies used as suppliers for gun show events, relinquishment of future show
12 dates, and loss of business reputation and goodwill that has been built by Plaintiff
13 Crossroads for more than 30 years.

14 ~~167.223.~~ Plaintiff Crossroads has already lost substantial revenue for gun
15 show events at the Fairgrounds ~~in~~ since December 2021 ~~and all of 2022~~ because
16 Defendant District ~~will~~ would not finalize event dates,¹² citing SB 264 as the
17 reason. ~~along with the threats from Senator Min for personal liability should they~~
18 ~~act. If shows do not return to the Fairgrounds in 2022, Plaintiff Crossroads will lose~~
19 ~~all revenue for gun show events at the Fairgrounds in 2022 and possibly 2023~~
20 ~~because of the amount of time it takes to plan large scale events like the gun shows.~~

21 ~~168.224.~~ Even if Plaintiff Crossroads could have secured dates, planned,
22 promoted, and hosted gun shows ~~in 2022 or 2023~~ since December 2021, SB 264 and
23 SB 915 stand in the way of Crossroads generating the profits the events typically
24 generate because the ban on firearm and ammunition sales will significantly impact
25

26 ¹² Plaintiff Crossroads was able to schedule two shows at the Fairgrounds in
27 October 2024 after this Court issued a preliminary injunction enjoining the
28 enforcement of the challenged statutes and ordering Defendant 32nd DAA to make
available dates for gun show events. Except for those two events, Plaintiff
Crossroads has been unable to host a gun show at the Fairgrounds since 2021.

1 paid event attendance and the types and numbers of paid vendors who will do
2 business with Crossroads at the Orange County gun show.

3 ~~169.225.~~ Plaintiff Crossroads has and will continue to suffer loss of
4 business goodwill resulting from Defendants’ adoption and enforcement of SB 264
5 and SB 915 under the (unsupported) pretense that gun shows, generally, and
6 Crossroads’ shows, in particular, threaten public safety. The message this sends to
7 other venues, attendees, and vendors that do business with Crossroads will no doubt
8 affect Crossroads for years.

9 ~~170.226.~~ Defendants’ adoption and enforcement of SB 264 and SB 915,
10 which have the intended and practical effect of banning gun shows at the
11 Fairgrounds and other state fairgrounds, prohibits Plaintiffs and all those similarly
12 situated from making use of a state-owned “public assembly facility” to host gun
13 show events, a lawful business activity, in violation of Plaintiffs’ rights to engage in
14 free speech and peaceful assembly, and their right to equal protection under the law.

15 ~~171.227.~~ Specifically, Defendants’ conduct complained of here strips
16 Plaintiffs Clark, Johnson, ~~and~~ Littrell, ~~and Merson~~, as well as the organizational
17 plaintiffs, CRPA, APAGOA, 2ALC, and SAF, of a vital opportunity to assemble
18 and engage in pure speech about, among other things, the rights and responsibilities
19 of gun owners, the Second Amendment, patriotism, and political activism with like-
20 minded individuals.

21 ~~172.228.~~ Defendants’ conduct complained of here also strips Plaintiff
22 Crossroads of the right to promote gun show events, acting as a “clearinghouse” for
23 both political speech and commercial speech.

24 ~~173.229.~~ Defendants’ conduct complained of here also strips Plaintiffs
25 Littrell, ~~and Merson~~, of a vital opportunity to assemble and engage in lawful
26 commercial speech, including the offer ~~and acceptance~~ of sales of firearms,
27 ammunition, and related accessories.

28 ~~174.230.~~ Furthermore, even if the Court grants injunctive relief, Plaintiff

1 Crossroads will have incurred damages in having to devote extraordinary
2 advertising dollars to inform the public that gun shows will continue to be held and
3 have not been banned at the Fairgrounds.

4 ~~175.231.~~ The economic and non-economic harms and injuries to Plaintiffs
5 are of a continuing nature; they continue to compound everyday SB 264 and SB
6 915 remain the law.

7 ~~176.~~ [Gun Raffles & Auctions on State Property]

8
9 232. Nonprofit organizations are expressly authorized by state law to
10 conduct both gun raffles and gun auctions to raise funds. Cal. Penal Code § 27900.
11 Accordingly, many nonprofits, including Plaintiffs CRPA, RMEF, and CBH/SAA,
12 have conducted and/or wish to continue conducting legal raffles and/or auctions of
13 firearms and/or ammunition on state-owned properties as part of their fundraising
14 efforts.

15 233. On October 14, 2024, after the Ninth Circuit issued its decision in this
16 case, Brandi Lynn Gragg, Senior Counsel for the California Department of Food &
17 Agriculture, sent an email informing organizations that host raffles or auctions as
18 part of their fundraising efforts that they could no longer conduct raffles or auctions
19 of firearms, ammunition, or firearm precursory parts on state-property.

20 234. Ms. Gragg's email read, in relevant part:

21 Under Penal Code 27573(a), effective September 25, 2024, the sale
22 of firearms, firearm precursor parts, and ammunition on state
23 property is prohibited. As a result, the Department of Justice has
24 clarified that raffles or auctions involving these items are also not
permitted on state property, including fairgrounds where many
fundraising activities occur.

25 235. Defendant Bonta, as the California Attorney General, is
26 responsible for the Department of Justice's current interpretation and
27 enforcement of Penal Code 27573(a), which bars firearm and ammunition
28 raffles and auctions.

1 236. In California, a “raffle” is generally not considered a “sale.” Instead, it
2 is a form of gambling, which is regulated by specific laws distinct from the laws
3 governing the sale of property. Defendants’ enforcement of SB 915 (codified at
4 Penal Code section 27573) to ban raffles of firearms, ammunition, and “firearm
5 precursor parts” at all state-owned properties is thus unlawful.

6 237. To the extent SB 915 does authorize a ban on raffles of guns,
7 ammunition, and “firearm precursor parts” on state properties, it prohibits truthful
8 commercial speech, burdens pure speech by restricting fundraising activities
9 necessary for nonprofits, including Plaintiffs CRPA, RMEF, and CBH/SAA, to
10 operate, and meaningfully restricts Second Amendment conduct.

11 238. As for charitable gun auctions, they too are not “sales.” Penal Code
12 section 27900, subsection (c) explains that after the auction or raffle, the firearm
13 must be delivered back to the licensed dealer, who later conducts the “sale” or
14 “other transfer,” contingent upon successful completion of the background check,
15 ten-day waiting period, and all other requirements.

16 239. It is also common for nonprofits to pay a licensed dealer consideration
17 to reserve guns for auction in advance of their events. The dealer then holds those
18 firearms, and the organization conducts an auction. The winning bidder donates the
19 bid amount to the organization and, in return for that donation, may finalize the
20 transfer of the gun with the licensed dealer. In this way, no “sale” takes place at the
21 event. Rather, the non-profit pays consideration to reserve a gun before the event,
22 money is donated to the non-profit at or after the event, and the transfer of the gun
23 takes place at the dealer’s place of business at least ten days later. Defendants’
24 enforcement of SB 915 (codified at Penal Code section 27573) to ban auctions of
25 firearms, ammunition, and “firearm precursor parts” at all state-owned properties is
26 thus unlawful.

27 177-240. To the extent SB 915 does prohibit auctions of guns, ammunition,
28 and “firearm precursor parts,” it prohibits truthful commercial speech, burdens pure

1 speech by restricting fundraising activities necessary for nonprofits, including
2 Plaintiffs CRPA RMEF, and CBH/SAA, to operate, and meaningfully restricts
3 Second Amendment conduct.

4 **FIRST CAUSE OF ACTION**
5 **Violation of Right to Free Speech Under U.S. Const., amend. I**
6 **42 U.S.C. § 1983**

(By Plaintiffs Clark, Johnson, Littrell, ~~Merson~~, CRPA, APAGOA, 2ALC, SAF,
7 RMEF, and CBH/SAA Against All Defendants)

8 178.241. Plaintiffs incorporate by reference paragraphs 1 through 178.240
of this Complaint as though fully set forth herein in their entirety.

9 179.242. The state of California owns the Fairgrounds and other public
10 venues throughout the state, a public venue. It is that are regularly -rented to the
11 public, including community-based organizations and businesses, for its use and
12 enjoyment, including for concerts, festivals, and industry shows.

13 180.243. Plaintiffs Clark, Johnson, Littrell, ~~Merson~~, CRPA, APAGOA,
14 2ALC, and SAF have attended in the past and wish to again attend Crossroads gun
15 shows at the Fairgrounds so they may exchange ideas, information, and knowledge,
16 as well discuss political issues and the importance of protecting and defending the
17 Second Amendment.

18 244. Plaintiffs Clark, Johnson, Littrell, ~~Merson~~, CRPA, APAGOA, 2ALC,
19 and SAF have a right under the First Amendment to use the Fairgrounds and other
20 state-owned public venues for their expressive activity on the same basis as other
21 members of the public without regard to the viewpoints they seek to express.

22 245. Plaintiffs CRPA, RMEF, and CBH/SSA have held in the past, and
23 wish to again hold in the future, raffles, auctions, and/or drawings for firearms
24 and/or ammunition at state-owned venues open to the public in order to raise funds
25 for their nonprofit purposes.

26 181.246. Plaintiffs CRPA, RMF, and CBH/SSA have a right under the
27 First Amendment to use state-owned public venues for their expressive activity,
28 including nonprofit, mission-driven fundraising, on the same basis as other

1 members of the public without regard to the viewpoints they seek to express.

2 ~~182.247.~~ Defendants Newsom, Bonta, and Spitzer, acting under color of
3 state law, are the state and local actors responsible for interpreting and enforcing
4 SB 264 and SB 915, which deprive Plaintiffs of free speech rights secured by the
5 First Amendment of the United States Constitution in violation of 42 U.S.C. §
6 1983.

7 ~~183.248.~~ Defendants Ross and District interpret, implement, and enforce
8 state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915,
9 which deprive Plaintiffs of free speech rights secured by the First Amendment of
10 the United States Constitution in violation of 42 U.S.C. § 1983.

11 ~~184. Defendants' enforcement of SB 264 and SB 915, which prohibit the~~
12 ~~sale of firearms, ammunition, and "firearm precursor parts" at the Fairgrounds with~~
13 ~~the purpose, intention, and effect of banning gun show events at the Fairgrounds~~
14 ~~and all other state-owned properties, is an impermissible content-based restriction~~
15 ~~of speech. Such enforcement constitutes a direct violation of the free speech rights~~
16 ~~of Plaintiffs Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC, and SAF.~~

17 ~~185. Defendants have no compelling (or even legitimate) governmental~~
18 ~~interest in banning the otherwise lawful (and constitutionally protected) sale of~~
19 ~~lawful firearms, ammunition, and "firearm precursor parts" at the Fairgrounds and~~
20 ~~all other state-owned properties, or in banning gun show events and the unique~~
21 ~~expression and exchange of ideas related to promoting and preserving the "gun~~
22 ~~culture" that takes place at those events. Any purported interest in "public safety" is~~
23 ~~betrayed by the fact that SB 264 and SB 915 do not ban the possession of firearms,~~
24 ~~ammunition, or firearms precursor parts on Fairgrounds property and state law~~
25 ~~already governs sales at gun shows at least as strictly as it governs sales at "brick-~~
26 ~~and-mortar" stores.~~

27 ~~186. Further, SB 264 and SB 915 are neither narrowly tailored to nor the~~
28 ~~least restrictive means of achieving the state's dubious interests. Indeed, by~~

~~intentionally and effectively banning gun shows at the Fairgrounds and all other state-owned properties, it sweeps up all forms of speech and expressive conduct that occurs at such events and banishes it from a public venue.~~

~~187. Similarly, SB 264 and SB 915 are unconstitutionally overbroad because, in an effort to restrict the commercial sale of firearms, ammunition, and firearm precursor parts, the laws effectively and intentionally ban gun shows events altogether, seriously and deliberately burdening a vast amount of speech that does not constitute commercial speech and is fully protected by the First Amendment.~~

~~188.249.~~ As a direct and proximate result of Defendants’ conduct, Plaintiffs Clark, Johnson, Littrell, ~~Merson~~, CRPA, APAGOA, 2ALC, and SAF have suffered irreparable harm, including the violation of their constitutional right to free speech, entitling them to declaratory and injunctive relief. Absent intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

SECOND CAUSE OF ACTION
Violation of Right to Free Speech Under U.S. Const., amend. I
Mixed Political - Commercial
42 U.S.C. § 1983
(By Plaintiff Crossroads Against All Defendants)

~~189.250.~~ Plaintiffs incorporate by reference paragraphs 1 through ~~189.249~~ of this Complaint as though fully set forth herein in their entirety.

~~190.251.~~ The state of California owns the Fairgrounds and other public venues throughout the state that are regularly, a public venue. It is rented to the public, including community-based organizations and businesses, for its use and enjoyment, including for concerts, festivals, and industry shows.

~~191.252.~~ Plaintiff Crossroads seeks to engage in protected speech at the Fairgrounds, a noted “public assembly facility,” and other state-owned, public venues through the promotion and production of events for lawful expressive activity, including events that bring together like-minded individuals to engage in pure political and educational speech, as well as commercial speech of vendor and

1 individual participants to communicate offer and acceptance for the sale of legal
2 goods and services.

3 192.253. Event promoters, though they generally promote events for
4 profit, “still enjoy the protections of the First Amendment.” *Id.* at 567. For “[t]he
5 role of a promoter in ensuring access to the public is at least as critical as the role of
6 a bookseller or theater owner and . . . is in a far better position than a concert goer
7 or individual performers to vindicate First Amendment rights and ensure public
8 access.” *Id.* at 568. The conduct they engage in is protected expression.

9 193.254. Plaintiff Crossroads has a right under the First Amendment to
10 use the Fairgrounds for its expressive activity on the same basis as other members
11 of the public without regard to the content or viewpoint it seeks to express and
12 promote.

13 194.255. Defendants Newsom, Bonta, and Spitzer, acting under color of
14 state law, are the state and local actors responsible for interpreting and enforcing
15 SB 264 and SB 915, which deprive Plaintiffs of free speech rights secured by the
16 First Amendment of the United States Constitution in violation of 42 U.S.C. §
17 1983.

18 195.256. Defendants Ross and District interpret, implement, and enforce
19 state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915,
20 which deprive Plaintiffs of free speech rights secured by the First Amendment of
21 the United States Constitution in violation of 42 U.S.C. § 1983.

22 196.257. Due to the passage of SB 264 and SB 915, Defendant District
23 has not and will not enter into new contracts with Plaintiff Crossroads to hold gun
24 show events at the Fairgrounds, even though Plaintiff Crossroads has safely and
25 legally held such events at the Fairgrounds for decades.

26 197.258. Defendants’ enforcement of SB 264 and SB 915, which
27 prohibits commercial activities associated with ~~the sale of~~ firearms, ammunition,
28 and “firearm precursor parts” at the Fairgrounds with the purpose, intention, and

1 effect of banning gun show events at the Fairgrounds and all other state-owned
2 properties, is an impermissible content-based restriction of speech. Such
3 enforcement constitutes both a direct and indirect violations of the free speech
4 rights of Plaintiff Crossroads.

5 ~~198.— Defendants have no compelling (or even legitimate) governmental
6 interest in banning the otherwise lawful (and constitutionally protected) sale of
7 lawful firearms, ammunition, and “firearm precursor parts” at the Fairgrounds and
8 all other state-owned properties, or in banning gun show events and the unique
9 expression and exchange of ideas related to promoting and preserving the “gun
10 culture” that takes place at those events. Any purported interest in “public safety” is
11 betrayed by the fact that SB 264 and SB 915 do not ban the possession of firearms,
12 ammunition, or firearms precursor parts on Fairgrounds property and state law
13 already governs sales at gun shows at least as strictly as it governs sales at “brick-
14 and mortar” stores.~~

15 ~~199.— Further, SB 264 and SB 915 are neither narrowly tailored to nor the
16 least restrictive means of achieving the state’s dubious interests. Indeed, by
17 intentionally and effectively banning gun shows at the Fairgrounds and all other
18 state-owned properties, it sweeps up all forms of speech and expressive conduct
19 that occurs at such events and banishes it from a public venue.~~

20 ~~200.— Similarly, SB 264 and SB 915 are unconstitutionally overbroad
21 because, in an effort to restrict the commercial sale of firearms, ammunition, and
22 “firearm precursor parts,” the law effectively and intentionally bans gun shows
23 events altogether, seriously and deliberately burdening a vast amount of speech that
24 does not constitute commercial speech and is fully protected by the First
25 Amendment.~~

26 ~~201.— As a direct and proximate result of Defendants’ conduct, Plaintiff
27 Crossroads has suffered irreparable harm, including the violation of its
28 constitutional right to free speech, entitling Crossroads to declaratory and injunctive~~

1 relief. Absent intervention by this Court, through declaratory and injunctive relief,
2 Plaintiffs will continue to suffer this irreparable harm.

3 ~~202.259.~~

4 **THIRD CAUSE OF ACTION**
5 **Violation of Right to Commercial Speech Under U.S. Const., amend. I**
6 **42 U.S.C. § 1983**

7 (By Plaintiffs Littrell, ~~Merson,~~ and CRPA, RMEF, and CBH/SSA Against All
8 Defendants)

9 ~~203.260.~~ Plaintiffs incorporate by reference paragraphs 1 through ~~202.259~~
10 of this Complaint as though fully set forth herein in their entirety.

11 ~~204.261.~~ The state of California owns the Fairgrounds and other public
12 venues throughout the state that are regularly, a public venue. It is rented to the
13 public, including community-based organizations and businesses, for its use and
14 enjoyment, including for concerts, festivals, and industry shows.

15 ~~205.262.~~ Plaintiffs Littrell, ~~Merson,~~ and CRPA have attended in the past,
16 or represent members who have attended in the past, and wish to again attend
17 Crossroads gun shows at the Fairgrounds and other public venues throughout the
18 state to engage in lawful commercial speech with individual attendees.

19 ~~263.~~ Plaintiffs Littrell, ~~Merson,~~ and CRPA members have a right under the
20 First Amendment to use the Fairgrounds for expressive activity to engage in
21 commercial speech on the same basis as other members of the public without regard
22 to the viewpoints they seek to express and promote.

23 ~~264.~~ Plaintiffs CRPA, RMEF, and CBH/SSA have held in the past, and
24 wish to again hold in the future, raffles, auctions, and/or drawings for firearms
25 and/or ammunition at state-owned venues open to the public in order to raise funds
26 for their nonprofit purposes.

27 ~~206.265.~~ Plaintiffs CRPA, RMEF, and CBH/SSA have a right under the
28 First Amendment to use state-owned public venues to engage in commercial,
including nonprofit, mission-driven fundraising, on the same basis as other

1 members of the public without regard to the viewpoints they seek to express.

2 ~~207.266.~~ Defendants Newsom, Bonta, and Spitzer, acting under color of
3 state law, are the state and local actors responsible for interpreting and enforcing
4 SB 264 and SB 915, which deprive Plaintiffs of free speech rights secured by the
5 First Amendment of the United States Constitution in violation of 42 U.S.C. §
6 1983.

7 ~~208.267.~~ Defendants Ross and District interpret, implement, and enforce
8 state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915,
9 which deprive Plaintiffs of free speech rights secured by the First Amendment of
10 the United States Constitution in violation of 42 U.S.C. § 1983.

11 ~~209.268.~~ Defendants' interpretation and enforcement of SB 264 and SB
12 915, which prohibits the sale of commercial speech short of an actual acceptance
13 related to firearms, ammunition, and "firearm precursor parts" at the Fairgrounds
14 with the purpose, intention, and effect of banning gun show events at the
15 Fairgrounds and all other state-owned properties, is an impermissible content-based
16 restriction of speech. Such enforcement constitutes a direct violation of the First
17 Amendment commercial speech rights of the Plaintiffs.

18 ~~210.— Further, by directly barring the rights of vendors, like Plaintiffs~~
19 ~~Littrell, Merson, and CRPA members, to sell firearms, ammunition, and "firearm~~
20 ~~precursor parts" (which necessarily involves commercial speech), SB 264 and SB~~
21 ~~915 defies existing case law in the Ninth Circuit protecting the commercial speech~~
22 ~~associated with firearm sales on public property. See Nordyke v. Santa Clara Cty.,~~
23 ~~110 F. 3d 707 (9th Cir. 1997).~~

24 ~~211.— Defendants have no substantial (or even legitimate) governmental~~
25 ~~interest in banning the otherwise lawful (and constitutionally protected) sale of~~
26 ~~lawful firearms, ammunition, and firearm precursor parts at the Fairgrounds and all~~
27 ~~other state-owned properties, or in banning gun show events and the unique~~
28 ~~expression and exchange of ideas related to promoting and preserving the "gun~~

~~1 culture” that takes place at those events. Any purported interest in “public safety” is
2 betrayed by the fact that SB 264 and SB 915 do not ban the possession of firearms,
3 ammunition, or firearms precursor parts on Fairgrounds property and state law
4 already governs sales at gun shows at least as strictly as it governs sales at “brick-
5 and mortar” stores.~~

~~6 212. Even if there were a substantial governmental interest in restricting
7 gun shows and the commercial speech that occurs at such events, it would not be
8 directly served by a ban on sales of firearms, ammunition, and “firearm precursor
9 parts” at the Fairgrounds and all other state-owned properties.~~

~~10 213. Even if there were a substantial governmental interest in restricting
11 gun shows and the commercial speech that occurs at such events, flatly banning
12 commercial speech about firearms, ammunition, and “firearm precursor parts” at
13 the Fairgrounds and all other state-owned properties is more extensive than
14 necessary to serve any such interest. See Nordyke, 110 F.3d 707 (holding that a ban
15 on the sale of firearms on county-owned land was overbroad as abridging
16 commercial speech associated with the sale of lawful products).~~

~~17 214.269. As a direct and proximate result of Defendants’ conduct,
18 Plaintiffs Littrell, Merson, and CRPA have suffered irreparable harm, including the
19 violation of their constitutional right to free speech, entitling them to declaratory
20 and injunctive relief. Absent intervention by this Court, through declaratory and
21 injunctive relief, Plaintiffs will continue to suffer this irreparable harm.~~

FOURTH CAUSE OF ACTION
Prior Restraint on Right to Free Speech Under U.S. Const., amend. I
42 U.S.C. § 1983
(By All Plaintiffs Against All Defendants)

~~22~~
~~23~~
~~24~~
~~25 215.270. Plaintiffs incorporate by reference paragraphs 1 through 214.269~~
~~26 of this Complaint as though fully set forth herein in their entirety.~~

~~27 216.271. The First Amendment affords special protection against policies~~
~~28 or orders that impose a previous or prior restraint on speech. “[P]rior restraints on~~

1 speech and publication are the most serious and least tolerable infringement on First
2 Amendment Rights.” *Ass’n for L.A. Deputy Sheriffs*, 239 Cal. App. 4th at 811
3 (citing *Neb. Press Ass’n*, 427 U.S. at 559. A prior restraint is particularly egregious
4 when it falls upon the communication of news, commentary, current events,
5 political speech, and association. *N.Y. Times Co.*, 403 U.S. at 715.

6 ~~217.272.~~ Prior restraint also involves the “unbridled discretion doctrine”
7 where a policy, or lack thereof, allows for a single person or body to act at their sole
8 discretion, without regard for any constitutional rights possessed by the person
9 upon which the action is taken, and where there is no remedy for challenging the
10 discretion of the decision makers. *Lakewood*, 486 U.S. at 757.

11 ~~218.273.~~ The Defendants are the state and local actors responsible for
12 interpreting and enforcing SB 264 and SB 915, which are content-based restrictions
13 of speech that will have a chilling effect on Plaintiffs’ First Amendment rights, thus
14 acting de facto prior restraints on Plaintiffs’ rights (including a refusal to place
15 contract approval on board agendas or to offer available dates to begin the process
16 of renting the venue).

17 ~~219.274.~~ Under SB 264 and SB 915, Defendant District has unfettered
18 discretion to determine what constitutes a “sale” under the law and is thereby
19 prohibited at the Fairgrounds. ~~For instance, some fair boards or their employees~~
20 ~~may determine that a gun raffle does not constitute a sale and allow fundraising~~
21 ~~events with such raffles to take place on the property, while others might determine~~
22 ~~that it does constitute a sale and thus ban such events from the property.~~

23 ~~220.275.~~ Defendants’ policies and practices complained of here impose
24 an unconstitutional prior restraint because they vest the District with unbridled
25 discretion to permit or refuse protected expression by members of the public,
26 including Plaintiffs.

27 ~~221.276.~~ Defendants’ policies and practices complained of here give
28 unbridled discretion to local agricultural district boards, board members, and their

1 employees to decide what forms of expression members of the public may engage
2 in on at the Fairgrounds and to ban any other expression at the whim of those
3 boards and board members in violation of the First Amendment.

4 ~~222.277.~~ As a direct and proximate result of Defendants' conduct,
5 Plaintiffs have suffered and will continue to suffer irreparable harm, including the
6 violation of their constitutional right to freedom of expression, entitling them to
7 declaratory and injunctive relief and nominal damages.

8
9 **FIFTH CAUSE OF ACTION**
10 **Violation of Right to Assembly and Association Under U.S. Const., amend. I**
11 **42 U.S.C. § 1983**
12 (By All Plaintiffs Against All Defendants)

13 ~~223.278.~~ Plaintiffs incorporate by reference paragraphs 1 through ~~222.277~~
14 of this Complaint as though fully set forth herein in their entirety.

15 ~~224.279.~~ The state of California owns the Fairgrounds and other public
16 venues throughout the state that are regularly, a public venue. It is rented to the
17 public, including community-based organizations and businesses, for its use and
18 enjoyment, including for concerts, festivals, and industry shows.

19 ~~225.280.~~ Plaintiffs have promoted and/or attended in the past and wish to
20 again promote and/or attend Crossroads gun shows at the Fairgrounds and other
21 state-owned, public venues so they may assemble and associate with one another to
22 engage in lawful commerce, fellowship, and expressive activities, including
23 political and educational speech regarding the lawful ownership, possession, and
24 use of firearms and related products.

25 ~~226.281.~~ Plaintiffs have a right under the First Amendment to use the
26 Fairgrounds and other state-owned public venues to assemble and associate on the
27 same basis as other members of the public without regard to the content or
28 viewpoint it seeks to express and promote.

~~227.282.~~ Defendants Newsom, Bonta, and Spitzer, acting under color of
state law, are the state and local actors responsible for interpreting and enforcing

1 SB 264 and SB 915, which deprive Plaintiffs of free speech rights secured by the
2 First Amendment of the United States Constitution in violation of 42 U.S.C. §
3 1983.

4 ~~228.283.~~ Defendants Ross and District interpret, implement, and enforce
5 state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915,
6 which deprive Plaintiffs of free speech rights secured by the First Amendment of
7 the United States Constitution in violation of 42 U.S.C. § 1983.

8 ~~229.284.~~ Defendants' interpretation and enforcement of SB 264 and SB
9 915, which prohibit internet sales and option contracts related to the sale of
10 firearms, ammunition, and "firearm precursor parts" at the Fairgrounds with the
11 purpose, intention, and effect of banning gun show events at the Fairgrounds and all
12 other state-owned properties, violates Plaintiffs' rights to assembly and association
13 by denying them the right to use the Fairgrounds and all other state-owned
14 properties otherwise open to the public for expressive uses, "public assembly
15 facilities," to assemble and engage in political and other types of expression—a
16 right Defendants extend to other members of the public so long as they are not
17 meeting for the purposes of holding a gun show event.

18 ~~230.— Defendants have no compelling (or even legitimate) governmental~~
19 ~~interest in banning the otherwise lawful (and constitutionally protected) sale of~~
20 ~~lawful firearms, ammunition, and "firearm precursor parts" at the Fairgrounds and~~
21 ~~all other state-owned properties, or in banning gun show events and, by extension,~~
22 ~~the rights of Plaintiffs to assemble and associate at the Fairgrounds and other state-~~
23 ~~owned properties otherwise open to the public. Any purported interest in "public~~
24 ~~safety" is betrayed by the fact that SB 264 and SB 915 do not ban the possession of~~
25 ~~firearms, ammunition, or firearms precursor parts on Fairgrounds property and state~~
26 ~~law already governs sales at gun shows at least as strictly as it governs sales at~~
27 ~~"brick-and-mortar" stores.~~

28 ~~231.— Even if SB 264 and SB 915 served some sufficient government~~

1 ~~purpose, they are neither narrowly tailored nor the least restrictive means to serve~~
2 ~~that end.~~

3 285. As a direct and proximate result of Defendants’ conduct, all Plaintiffs
4 have suffered irreparable harm, including the violation of their constitutional right
5 to free association and assembly, entitling them to declaratory and injunctive relief.
6 Absent intervention by this Court, through declaratory and injunctive relief,
7 Plaintiffs will continue to suffer this irreparable harm.

8
9
10 **SIXTH CAUSE OF ACTION**
11 **Violation of the Right to Equal Protection Under U.S. Const., amend. XIV**
12 **42 U.S.C. § 1983**
13 (By All Plaintiffs Against All Defendants)

14 ~~232-286.~~ Plaintiffs incorporate by reference paragraphs 1 through ~~232~~
15 285 of this Complaint as if fully set forth herein in their entirety.

16 ~~233-287.~~ Defendants, acting under color of state law, are enforcing SB
17 264 and SB 915, which deprive Plaintiffs of the right to equal protection under the
18 law secured by the Fourteenth Amendment of the United States Constitution in
19 violation of 42 U.S.C. § 1983.

20 ~~234-288.~~ On their face and as applied, SB 264 and SB 915 are
21 unconstitutional abridgements of Plaintiffs’ right to equal protection under the law
22 guaranteed by the Fourteenth Amendment because they are viewpoint-
23 discriminatory and/or animus-based restrictions on Plaintiffs’ protected speech that
24 serve no compelling governmental interest.

25 ~~235-289.~~ On their face and as evidenced by the legislative history of both
26 AB 264 and SB 915, it is clear that the laws’ purpose and intention are to make a
27 “symbolic” gesture and a “value statement” about ~~the~~ otherwise lawful commercial
28 activity relating to sale of firearms and related products and of the proliferation of
the “gun culture” in California and elsewhere.

1 ~~236.— Defendants have no compelling (or even legitimate) governmental~~
2 ~~interest in banning Plaintiffs’ speech. Indeed, any purported interest in “public~~
3 ~~safety” is betrayed by the fact that SB 264 and SB 915 do not ban the possession of~~
4 ~~firearms, ammunition, or firearms precursor parts on Fairgrounds property and state~~
5 ~~law already governs sales at gun shows at least as strictly as it governs sales at~~
6 ~~“brick and mortar” stores.~~

7 ~~237.— Defendants’ refusal to allow Plaintiffs equal use of the public facilities~~
8 ~~while continuing to allow contracts for the use of these facilities with other~~
9 ~~similarly situated legal and legitimate businesses is a violation of Plaintiffs’ right to~~
10 ~~equal protection under the law because it is based on a “bare desire to harm a~~
11 ~~politically unpopular group.” Moreno, 413 U.S. at 534.~~

12 ~~238.— Further, SB 264 and SB 915 are not narrowly tailored to achieving the~~
13 ~~state’s dubious interests.~~

14 ~~239.290. ___~~ As a direct and proximate result of Defendants’ conduct, all
15 Plaintiffs have suffered irreparable harm, including the violation of their
16 constitutional right to equal protection under the law, entitling them to declaratory
17 and injunctive relief. Absent intervention by this Court, through declaratory and
18 injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

19 ~~///~~

20 ~~///~~

21 ~~///~~

22 **SEVENTH CAUSE OF ACTION¹³**

23 **Violation of Right to Keep and Bear Arms Under U.S. Const., amend. II**

24 **42 U.S.C. § 1983**

25 (By All Plaintiffs Against All Defendants)

26 _____
27 ¹³ Notwithstanding the Ninth Circuit’s “meaningful constraint” test set forth
28 in its opinion, Plaintiffs—in good faith—seek to preserve this issue in the event
they have another opportunity to seek review with the Supreme Court and to have
this factual controversy determined by a jury.

1 232. Plaintiffs incorporate by reference paragraphs 1 through ~~232-231~~ of this
2 Complaint as if fully set forth herein in their entirety.

3 ~~233.~~ Plaintiffs Clark, Johnson, Littrell, ~~Merson~~, Crossroads, and members
4 and supporters of Plaintiffs CRPA, 2ALC, APAGOA, and SAF, have sold or
5 bought firearms, ammunition, and/or “firearm precursor parts” at gun show events
6 at the Fairgrounds in the past and, but for ~~the Defendants’~~ adoption, interpretation,
7 and ~~and~~ enforcement of SB 264 and SB 915, they would do so again.

8 233.

9 234. Plaintiffs CRPA, RMEF, and CBH/SSA have held raffles, auctions,
10 and/or drawings for firearms and/or ammunition at state-owned venues in order to
11 raise funds for their nonprofit purposes in the past and, but for the adoption and
12 enforcement of SB 264 and SB 915, they would do so again.

13 235. Plaintiffs contend that they have a right, under the Second
14 Amendment, to buy, sell, and otherwise lawfully transact in ~~and sell~~ firearms and
15 the ammunition and parts necessary for the effective operation of those firearms.

16 236. Though the Ninth Circuit’s current interpretation of SB 264 and SB
17 915 compelling formal consummation of contract for sale away from state-owned
18 properties constitutes a burden on buyers and sellers, Plaintiffs Clark, Johnson,
19 Littrell, Crossroads, and members and supporters of Plaintiffs CRPA, 2ALC,
20 APAGOA, and SAF wish to continue attending gun shows at the Fairgrounds and
21 other state-owned venues and would be willing to comply with the promoter’s new
22 rules.

23 ☐
24 _____ Defendants Newsom, Bonta, and Spitzer, acting under color of state
25 law, are ~~the~~ government actors responsible for interpreting, enforcing, and
26 prosecuting violations of SB 264 and SB 915, which deprive Plaintiffs of their right
27
28

1 to obtain access-firearms and ammunition secured by the Second Amendment of the
2 United States Constitution in violation of 42 U.S.C. § 1983.

3 ~~234.237.~~

4 ~~235.238.~~ Defendants District and Ross interpret, implement, and enforce
5 state laws and policies in regard to the Fairgrounds, including SB 264 and SB 915,
6 which deprive Plaintiffs of their right to access firearms, ammunition, and firearm
7 parts secured by the Second Amendment of the United States Constitution in
8 violation of 42 U.S.C. § 1983.

9 ~~236. Defendants’ enforcement of SB 264 and SB 915, which prohibit the~~
10 ~~sale of firearms, ammunition, and “firearm precursor parts” at the Fairgrounds and~~
11 ~~all other state-owned venues with the purpose, intention, and effect of banning gun~~
12 ~~show events at the Fairgrounds and all state-owned fairgrounds, violates Plaintiffs’~~
13 ~~Second Amendment right to buy and sell firearms and the ammunition and parts~~
14 ~~necessary to the effective operation of those firearms.~~

15 ~~237. Defendants cannot satisfy their burden to justify their ban on the sale~~
16 ~~of firearms and ammunition at the Fairgrounds under the history- and tradition-~~
17 ~~based test applied in *Heller* and recently confirmed in *Bruen*.~~

18 ~~238.239.~~ As a direct and proximate result of Defendants’ conduct, all
19 Plaintiffs have suffered irreparable harm, including the violation of their
20 constitutional right to buy, sell, and otherwise transact in ~~and sell~~ firearms and
21 ammunition, entitling them to declaratory and injunctive relief. Without
22 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will
23 continue to suffer this irreparable harm.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for:

- 26 1. A declaration that SB 264, codified at California Penal Code section
27 27575, violates the free speech rights of Plaintiffs Clark, Johnson, Littrell, Merson,
28 CRPA, APAGOA, 2ALC, and SAF, RMEF, and CBH/SSA under the First

1 Amendment to the United States Constitution, on its face and as applied;

2 2. A declaration that SB 915, codified at California Penal Code section
3 27573, violates the free speech rights of Plaintiffs Clark, Johnson, Littrell, ~~Merson,~~
4 CRPA, APAGOA, 2ALC, ~~and~~ SAF, RMEF, and CBH/SSA under the First
5 Amendment to the United States Constitution, on its face and as applied;

6 3. A declaration that SB 264, codified at California Penal Code section
7 27575, violates the free speech rights of Plaintiff Crossroads under the First
8 Amendment to the United States Constitution, on its face and as applied;

9 4. A declaration that SB 915, codified at California Penal Code section
10 27573, violates the free speech rights of Plaintiff Crossroads under the First
11 Amendment to the United States Constitution, on its face and as applied;

12 5. A declaration that SB 264, codified at California Penal Code section
13 27575, violates the commercial speech rights of Plaintiffs Littrell, ~~Merson, and~~
14 CRPA, RMEF, and CBH/SSA under the First Amendment to the United States
15 Constitution, on its face and as applied;

16 6. A declaration that SB 915, codified at California Penal Code section
17 27573, violates the commercial speech rights of Plaintiffs Littrell, ~~Merson, and~~
18 CRPA, RMEF, and CBH/SSA under the First Amendment to the United States
19 Constitution, on its face and as applied;

20 7. A declaration that SB 264, codified at California Penal Code section
21 27575, violates the free speech rights of all Plaintiffs under the First Amendment to
22 the United States Constitution because it imposes a prior restraint on their speech;

23 8. A declaration that SB 915, codified at California Penal Code section
24 27573, violates the free speech rights of all Plaintiffs under the First Amendment to
25 the United States Constitution because it imposes a prior restraint on their speech;

26 9. A declaration that SB 264, codified at California Penal Code section
27 27575, violates Plaintiffs' rights of assembly and association under the First
28 Amendment to the United States Constitution, on its face and as applied;

1 10. A declaration that SB 915, codified at California Penal Code section
2 27573, violates Plaintiffs’ rights of assembly and association under the First
3 Amendment to the United States Constitution, on its face and as applied;

4 11. A declaration that SB 264, codified at California Penal Code section
5 27575, violates the rights of all Plaintiffs to equal protection under the law per the
6 Fourteenth Amendment to the United States Constitution, on its face and as
7 applied;

8 12. A declaration that SB 915, codified at California Penal Code section
9 27573, violates the rights of all Plaintiffs to equal protection under the law per the
10 Fourteenth Amendment to the United States Constitution, on its face and as
11 applied;

12 13. A declaration that SB 264, codified at California Penal Code section
13 27575, violates the rights of all Plaintiffs to keep and bear arms under the Second
14 Amendment to the United States Constitution, on its face and as applied;

15 14. A declaration that SB 915, codified at California Penal Code section
16 27573, violates the rights of all Plaintiffs to keep and bear arms under the Second
17 Amendment to the United States Constitution, on its face and as applied;

18 15. A ~~preliminary and~~ permanent injunction enjoining Defendants, their
19 employees, agents, successors in office, and all District Attorneys, County Counsel,
20 and City Attorneys holding office in the state of California, as well as their
21 successors in office, from enforcing SB 264, codified at California Penal Code
22 section 27575;

23 16. A ~~preliminary and~~ permanent injunction enjoining Defendants, their
24 employees, agents, successors in office, and all District Attorneys, County Counsel,
25 and City Attorneys holding office in the state of California, as well as their
26 successors in office, from enforcing SB 915, codified at California Penal Code
27 section 27573;

28 17. An order for damages, including nominal damages, according to proof;

1 18. An award of costs and expenses, including attorney’s fees, pursuant to
2 42 U.S.C. § 1988 or other appropriate state or federal law; and

3 19. Any such other relief the Court deems just and equitable.

4
5 Dated: ~~November 11,~~
6 ~~2022~~January 16, 2026

MICHEL & ASSOCIATES, P.C.

7 *s/ Anna M. Barvir*
8 Anna M. Barvir
9 Counsel for Plaintiffs B&L Productions, Inc.,
10 California Rifle & Pistol Association,
11 Incorporated, Gerald Clark, Eric Johnson, Chad
12 Littrell, ~~Jan Steven Merson~~, Asian Pacific
13 American Gun Owner Association, Second
14 Amendment Law Center, Inc., Rocky
15 Mountain Elk Foundation, California Bowman
16 Hunters/State Archery Association

12 Dated: ~~November 11,~~
13 ~~2022~~January 16, 2026

LAW OFFICES OF DONALD KILMER, APC

14 *s/ Donald Kilmer*
15 Donald Kilmer
16 Counsel for Plaintiff Second Amendment
17 Foundation
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EXHIBIT 1



COSTA MESA, CA

EVENT SPACE SALES



OCFAIR.COM

OVERVIEW

OC Fair & Event Center is a 150-acre event venue that hosts over 150 events and attracts approximately 4.3 million visitors annually. Our versatile multi-use property can be transformed to fit a variety of events from small private events to large-scale trade shows and festivals. Our full-service capabilities cover concessions, security, audio/visual, on-site camping and more.

In addition to great year-round weather in sunny Southern California, we are also conveniently located nearby numerous lodging options, restaurants, shopping, major freeways (55 and 405) and John Wayne Airport.

AT A GLANCE

150 acres

157,000 sq. ft. unique event space

24+ indoor and outdoor options

Conventions, expos and trade shows
 Corporate events and fundraisers
 Private events
 Seasonal events
 Concerts and festivals

Weddings
 National touring events
 Meetings
 Pop-up events
 Holiday parties



Contact sales@ocfair.com or (714) 708-1834 for inquiries or to schedule a tour. **OC Fair & Event Center is a GBAC STAR facility.**

AREA MAP



PROPERTY MAP



EVENT SPACE

OVERVIEW

EXHIBIT HALLS

West Main Mall

- Costa Mesa Building
- Santa Ana Pavilion
- Huntington Beach Building

East Main Mall

- Anaheim Building
- OC Promenade
- Los Alamitos Building

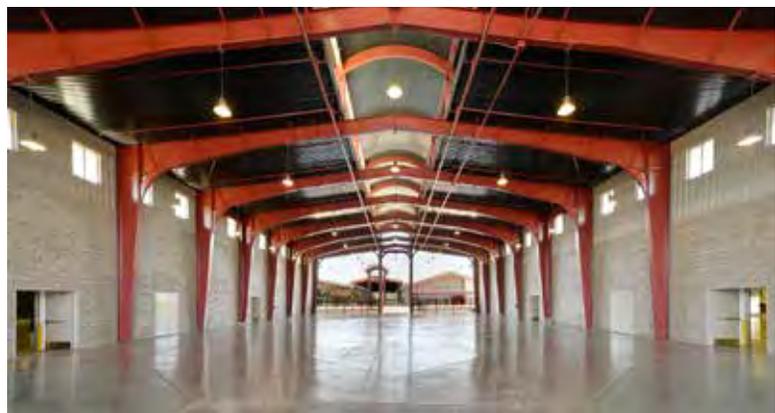
The Hangar

INDOOR SPACES

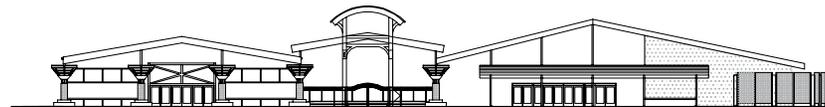
- Baja Blues Bar & Restaurant
- Millennium Barn
- Plaza Pacifica Lobby

OUTDOOR SPACES

- Action Sports Arena
- Campground
- Country Meadows
- Crafters Village
- Festival Fields (Asphalt)
- Festival Fields (Grass)
- Heroes Hall Courtyard
- Main Mall
- Pacific Amphitheatre
- Parking Lots B-I
- Park Plaza
- Plaza Pacifica



WEST MAIN MALL



HUNTINGTON BEACH
19,572 Square Feet
Climate-Controlled Exhibit Hall

SANTA ANA PAVILION
16,325 Square Feet
Outdoor Covered Space

COSTA MESA
34,025 Square Feet
Climate-Controlled Exhibit Hall

FLOOR:

COSTA MESA
120' x 300' Hi-Gloss Concrete

SANTA ANA PAVILION
55' x 305' Concrete

HUNTINGTON BEACH
87' x 240' Hi-Gloss Concrete

COURTYARD
Finished Concrete

ROLL-UP ENTRY DOOR:

COSTA MESA - 14' 6" x 14'

ROLLING GATE WIDTH:
SANTA ANA PAVILION - 15' 6"

ROLL-UP ENTRY DOOR:
HUNTINGTON BEACH - 17' 6" x 15' 6"

BOOTH SPACES (10' X 10'):

COSTA MESA
SANTA ANA PAVILION
HUNTINGTON BEACH
THE COURTYARD

Options available, inquire for details.

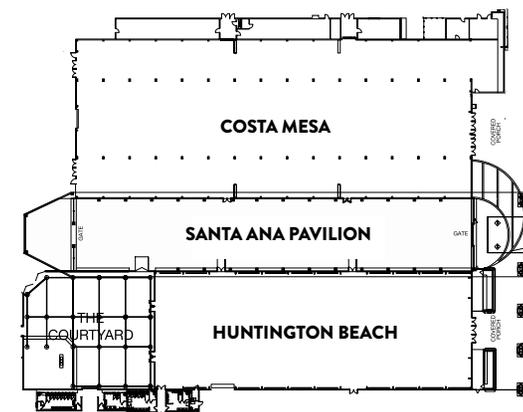
ASSEMBLY*:

COSTA MESA
Standing Space: 6,805
Seated Space: 4,860

SANTA ANA PAVILION
Standing Space: 3,265
Seated Space: 2,332

HUNTINGTON BEACH
Standing Space: 3,914
Seated Space: 2,796

*Pending Fire Marshal approval.



CEILING HEIGHT:

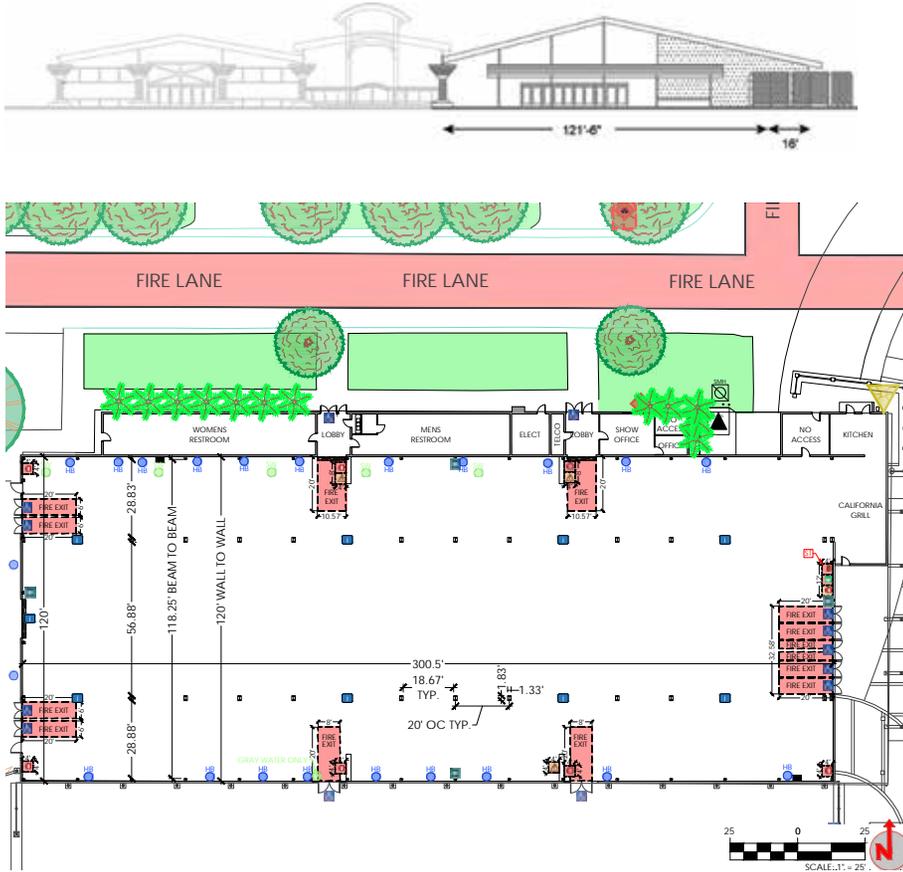
COSTA MESA - 16' 3" to 30' 10"
SANTA ANA PAVILION - 22' 4" to 25' 9"
HUNTINGTON BEACH - 15' to 17' 5"
THE COURTYARD - 19' x 10'

TRADESHOW / BANQUET CAPACITY*:

COSTA MESA - 2,268
SANTA ANA PAVILION - 1,088
HUNTINGTON BEACH - 1,304
THE COURTYARD - 00
TOTAL - 4,660

*Pending Fire Marshal approval.

COSTA MESA BUILDING

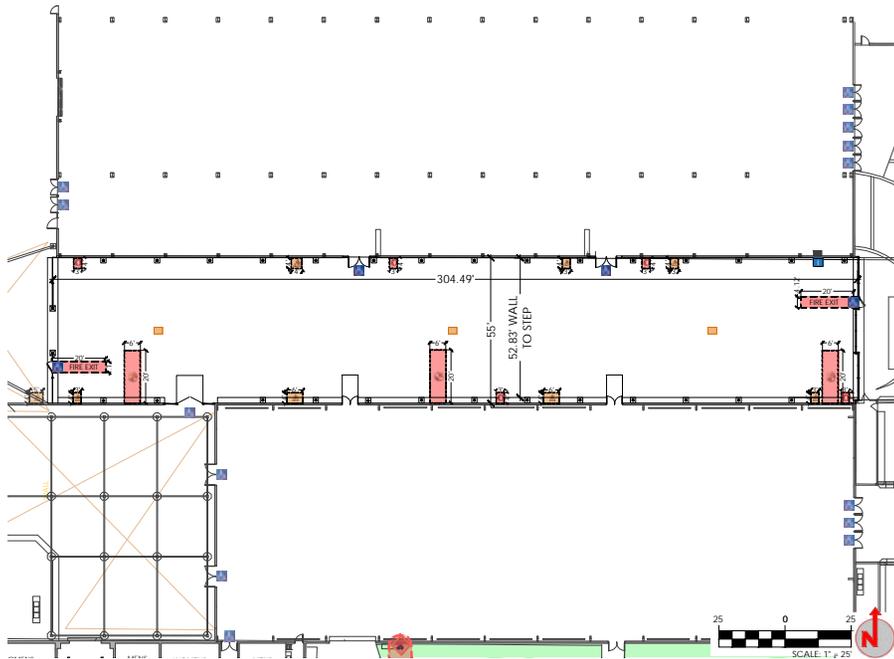
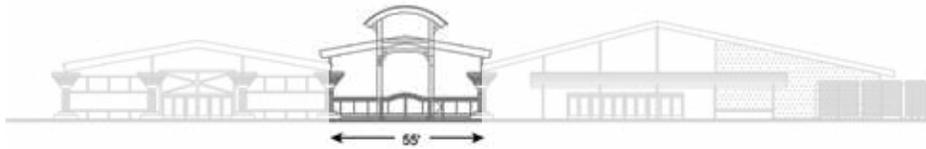


34,025 Square Feet

- | | |
|---|--|
| Floor: 120' x 300' Hi-Gloss Concrete | Tradeshow / Banquet Capacity: 2,268 |
| Ceiling Height: 16' 3" to 30' 10" | Assembly |
| Rolling Entry Door: 14' 6" x 14' | Standing Space: 6,805 |
| Climate Control: Y | Seated Space: 4,860 |
| Covered: Y | |



SANTA ANA PAVILION



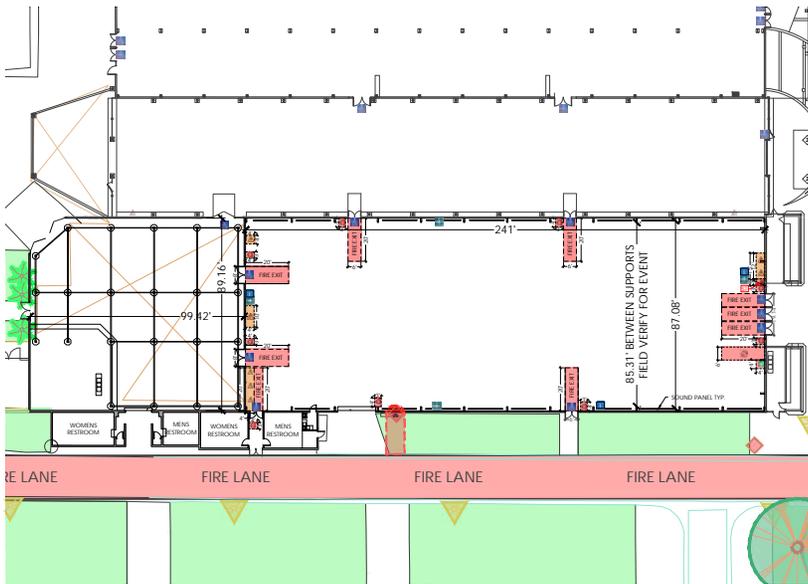
16,325 Square Feet

Floor: 55' x 305' Concrete
Ceiling Height: 22' 4" to 25' 9"
Rolling Gate Width: 15' 6"
Climate Control: N
Covered: Y

Tradeshow / Banquet Capacity: 1,088
Assembly
Standing Space: 3,265
Seated Space: 2,332



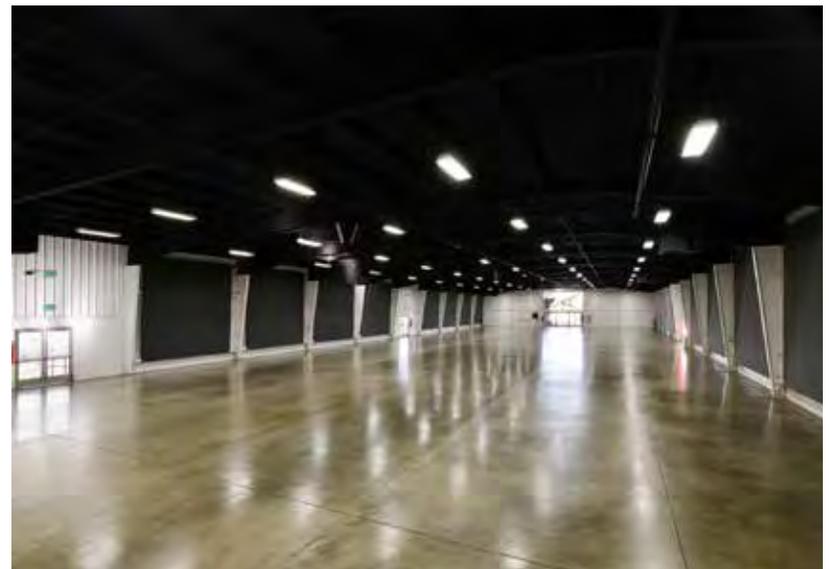
HUNTINGTON BEACH BUILDING



19,572 Square Feet

Floor: 87' x 240' Hi-Gloss Concrete
Ceiling Height: 15' to 17' 5"
Rolling Entry Door: 17' 6" x 15' 6"
Climate Control: Y
Covered: Y

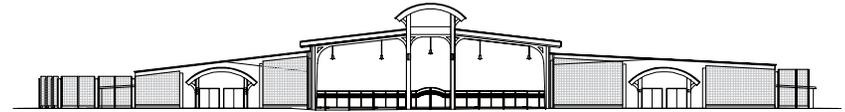
Tradeshow / Banquet Capacity: 1,304
Assembly
 Standing Space: 3,914
 Seated Space: 2,796



OVERVIEW



EAST MAIN MALL



ANAHEIM
12,636 Square Feet
Climate-Controlled Exhibit Hall

OC PROMENADE
18,035 Square Feet
Outdoor Covered Space

LOS ALAMITOS
16,640 Square Feet
Climate-Controlled Exhibit Hall

TOTAL: 50,660 Square Feet

FLOOR:

ANAHEIM
70' x 201' Hi-Gloss Concrete

OC PROMENADE
94' x 199.5' Concrete

LOS ALAMITOS
86.5' x 200.9' Hi-Gloss Concrete

ROLL-UP ENTRY DOOR:
ANAHEIM - 12' X 14'

ROLLING GATE WIDTH:
OC PROMENADE - 16' 6"

ROLL-UP ENTRY DOOR:
LOS ALAMITOS - 12' x 14'

BOOTH SPACES (10' X 10'):
ANAHEIM
OC PROMENADE
LOS ALAMITOS

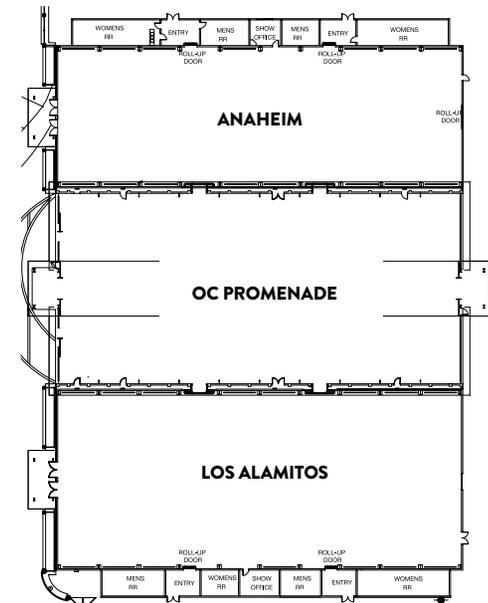
Options available, inquire for details.

ASSEMBLY*:

ANAHEIM
Standing Space: 2,527
Seated Space: 1,805

OC PROMENADE
Standing Space: 3,607
Seated Space: 2,576

LOS ALAMITOS
Standing Space: 3,292
Seated Space: 2,351



CEILING HEIGHT:

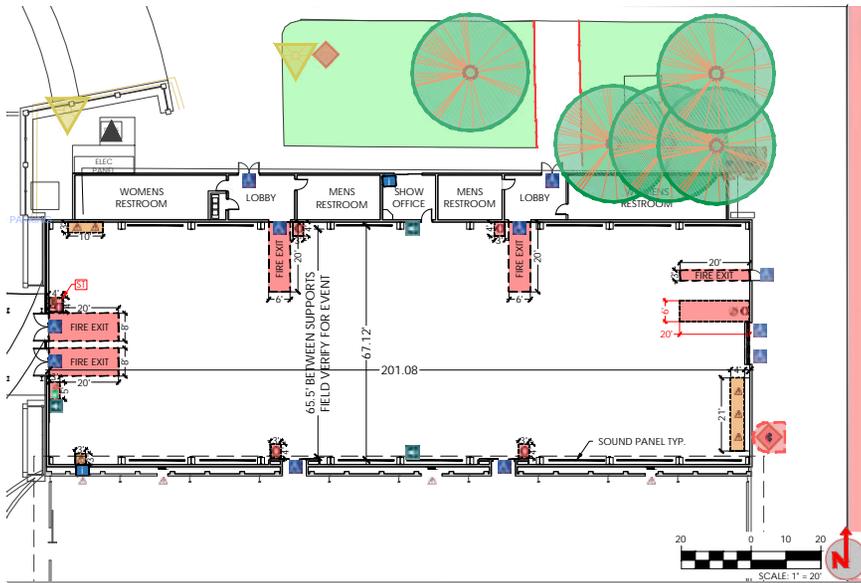
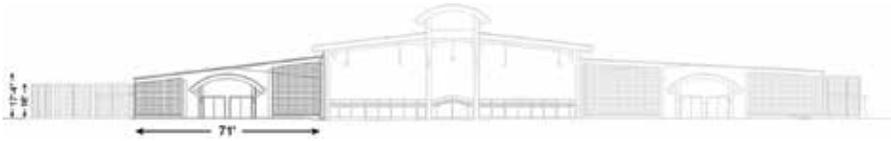
ANAHEIM - 16' to 17' 4"
OC PROMENADE - 24' - 30'
LOS ALAMITOS - 14' 10" to 17' 3"

TRADESHOW / BANQUET CAPACITY*:

ANAHEIM - 842
OC PROMENADE - 1,202
LOS ALAMITOS - 1,097
TOTAL - 3,141

*Pending Fire Marshal approval.

ANAHEIM BUILDING



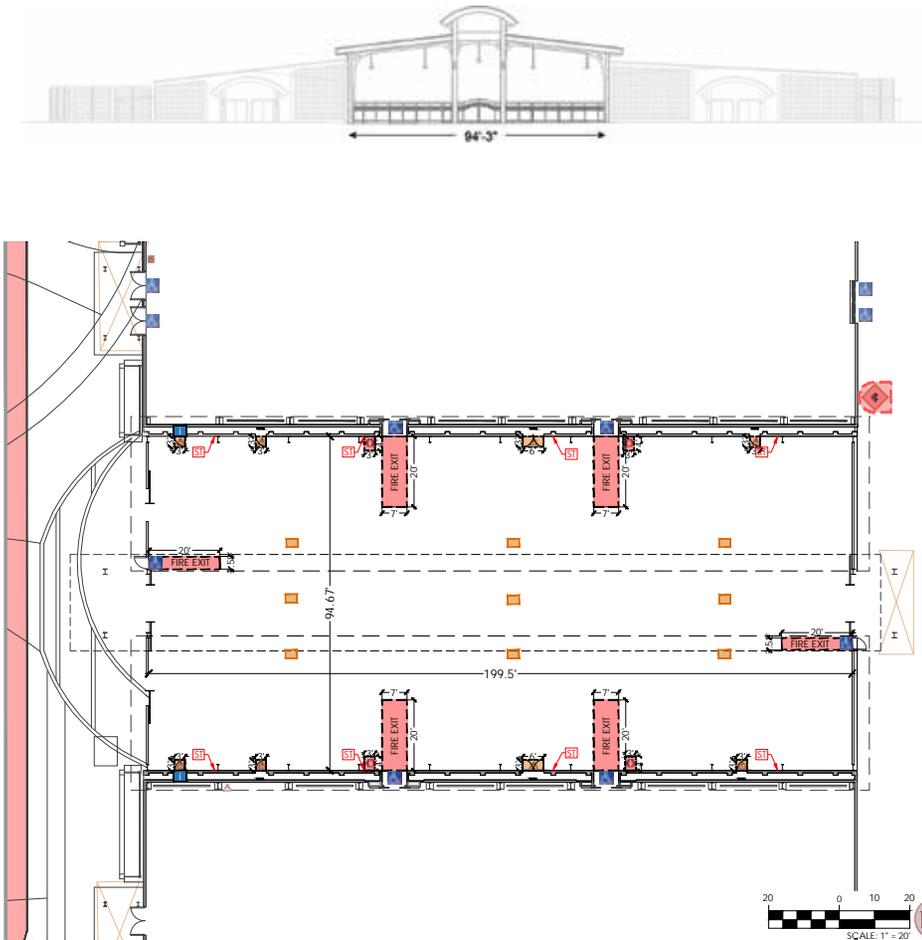
12,636 Square Feet

Floor: 70' x 201' Hi-Gloss Concrete
Ceiling Height: 16' to 17' 4"
Roll-Up Entry Door: 12' x 14'
Climate Control: Y
Covered: Y

Tradeshow / Banquet Capacity: 842
Assembly
 Standing Space: 2,527
 Seated Space: 1,805



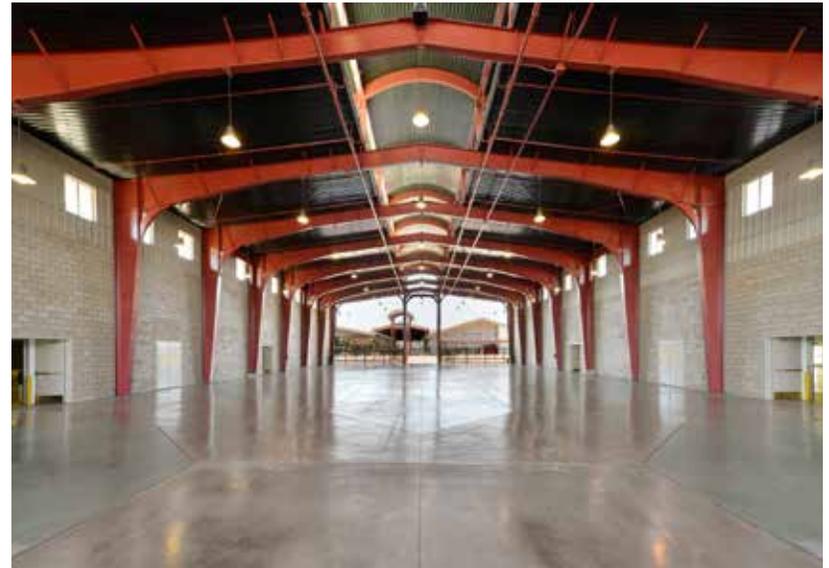
OC PROMENADE



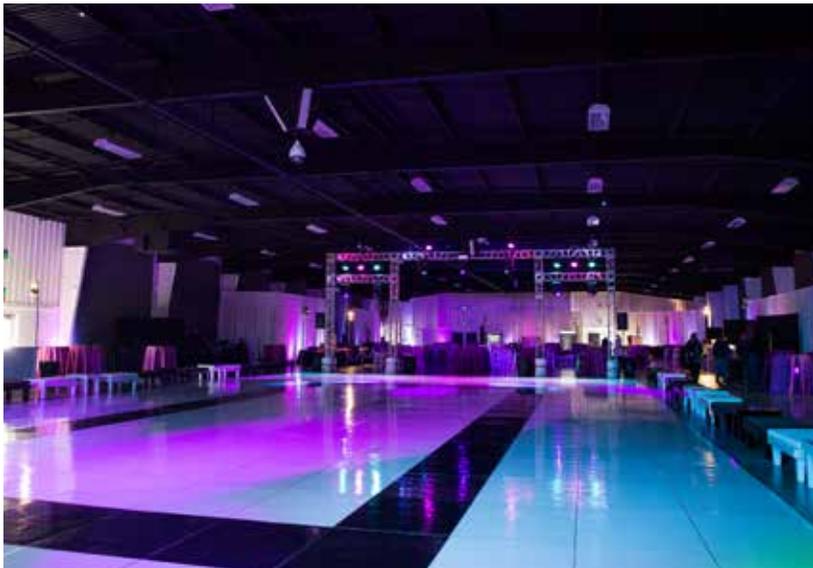
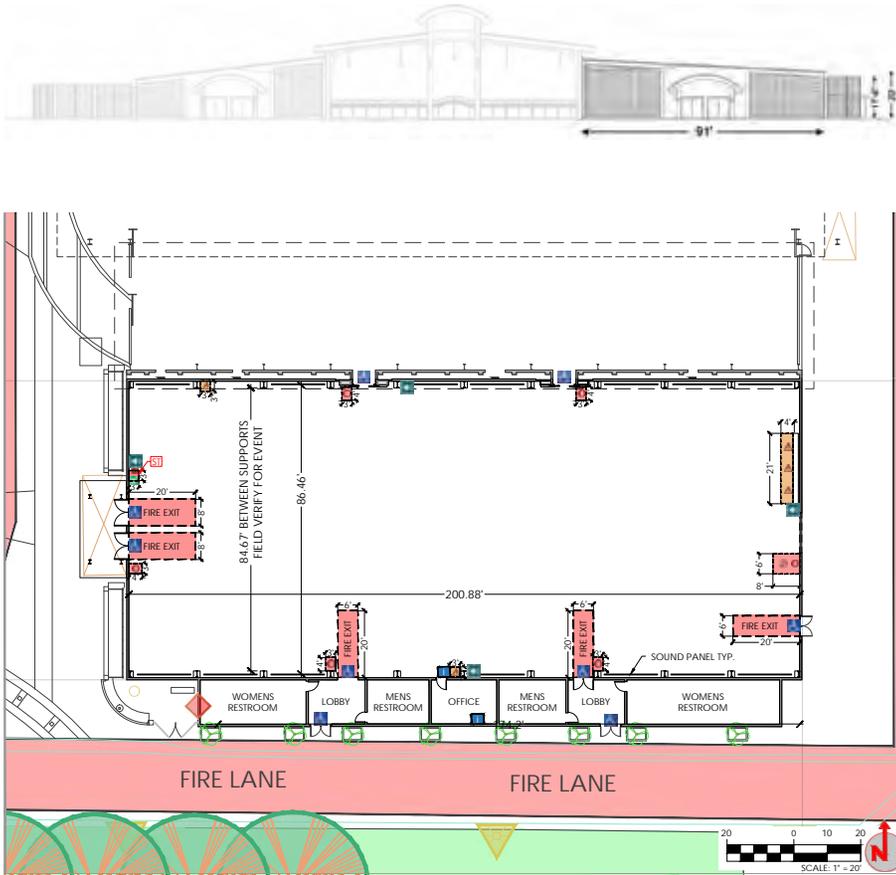
18,035 Square Feet

Floor: 94' x 199.5' Concrete
Ceiling Height: 24' - 30'
Rolling Gate: 16' x 6"
Climate Control: N
Climate Control: Y

Tradeshow / Banquet Capacity: 1,202
Assembly
 Standing Space: 3,607
 Seated Space: 2,576



LOS ALAMITOS BUILDING

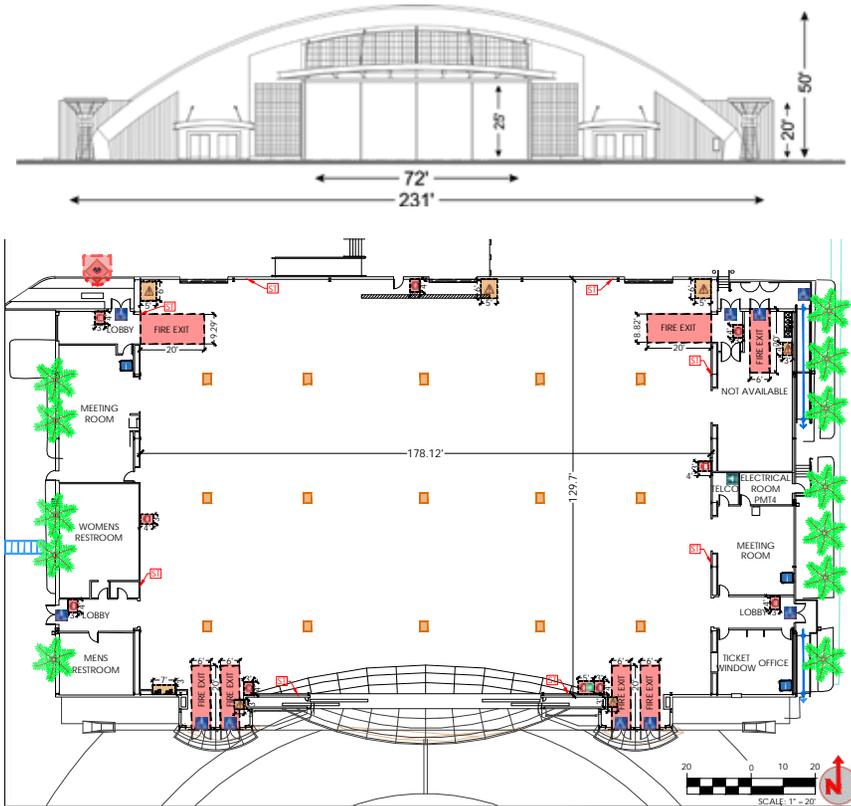


16,640 Square Feet

Floor: 86.5' x 200.9' Hi-Gloss Concrete
Ceiling Height: 14' 10" to 17' 3"
Roll-Up Entry Door: 12' x 14"
Climate Control: Y
Covered: Y

Banquet Table/Chairs: 1,097
Assembly
Standing Space: 3,292
Seated Space: 2,351

THE HANGAR



22,245 Square Feet

Floor: 129' x 178' Hi-Gloss Concrete

Ceiling Height: 15' to 43'

Rolling Entry Door: 72'

Climate Control: Y

Covered: Y

Tradeshow / Banquet Capacity: 1,483

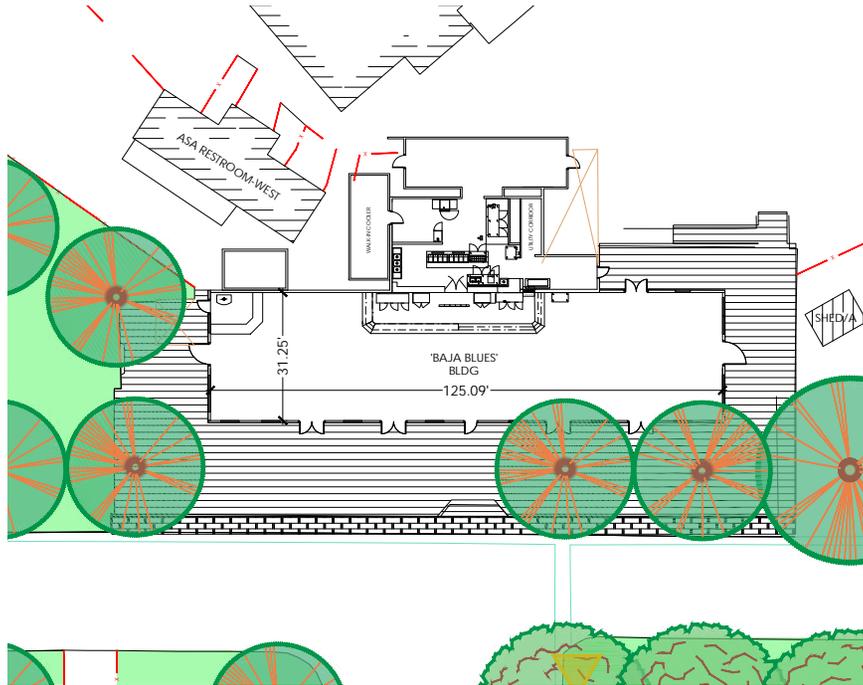
Assembly

Standing Space: 4,449

Seated Space: 3,177



BAJA BLUES BAR & RESTAURANT



9,200 Square Feet

3,900 Square Feet (Interior) 5,300 Square Feet (Exterior)

Climate Control: Y

Assembly: 240

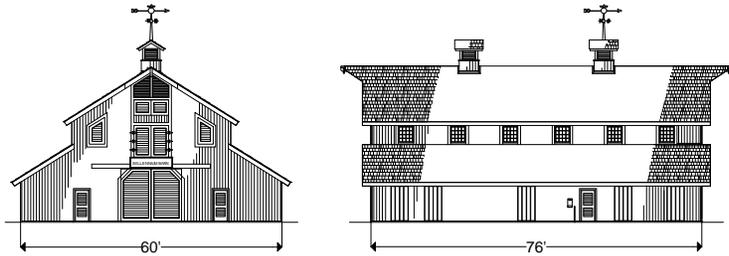
Covered: Y

Capacity (Interior): 120

Capacity (Exterior): 120



MILLENNIUM BARN



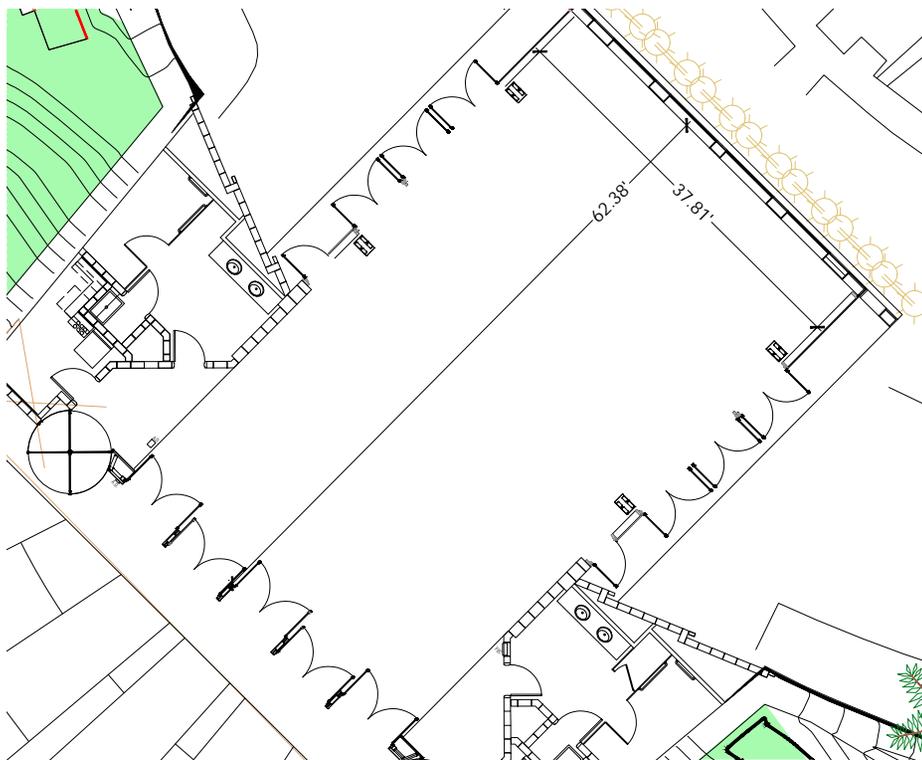
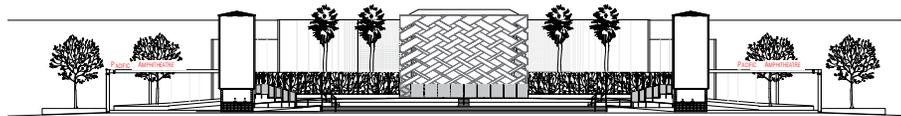
4,413 Square Feet

Climate Control: N

Covered: Y



PLAZA PACIFICA LOBBY



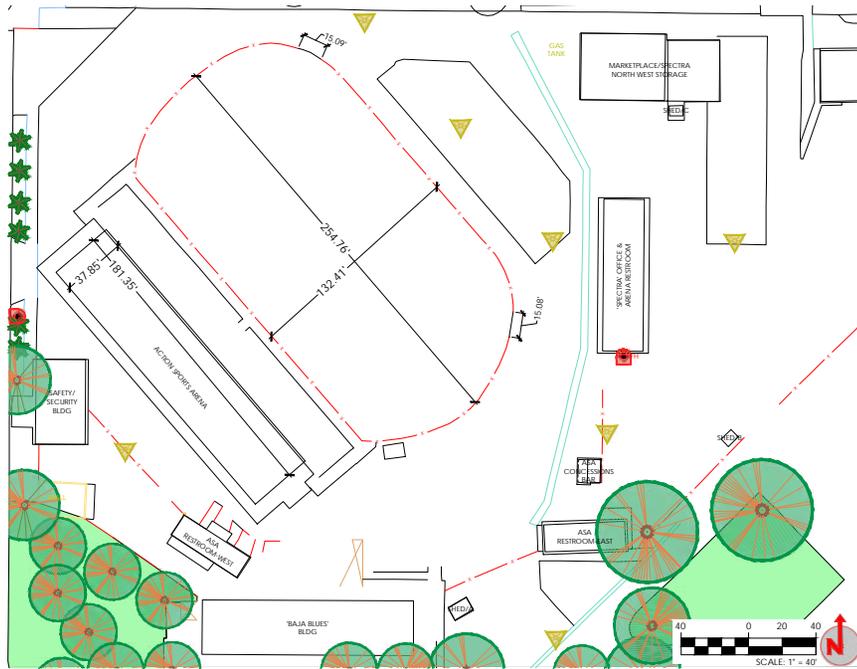
2,400 Square Feet

Climate Control: N

Covered: Y



ACTION SPORTS ARENA



48,023 Square Feet

Building Dimensions:

East to West 37.85'
 North to South 181.35'
 Total sq. ft. 6,978

Seats: 1,888

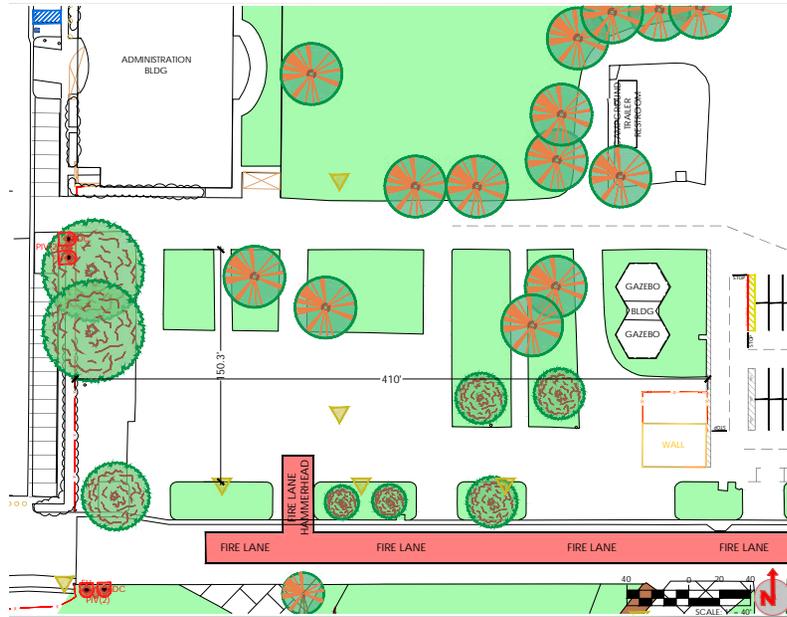
ADA Seats: 164

Track Dimensions:

East to West 132.41'
 North to South 254.76'
 Total sq. ft. 30,960



CAMPGROUND



62,349 Square Feet

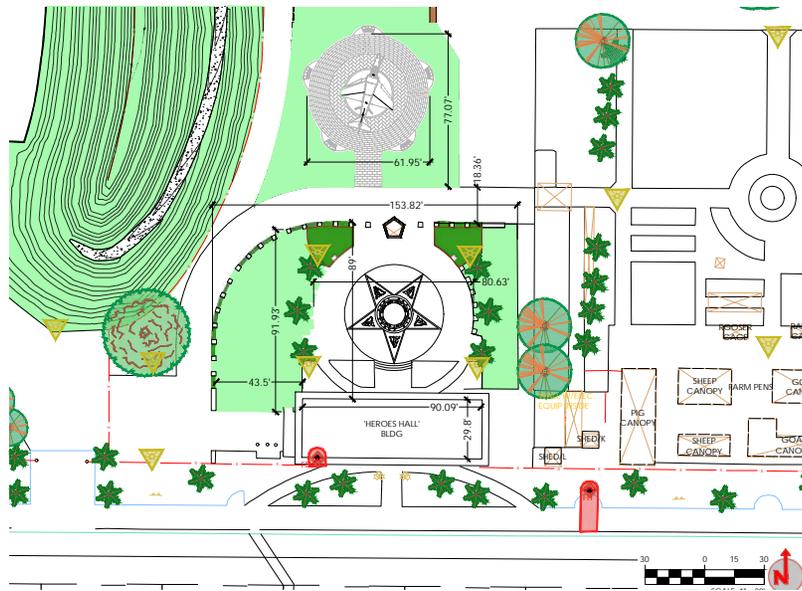
Lot Dimensions:

East to West 410'

North to South 150.3'



HEROES HALL COURTYARD



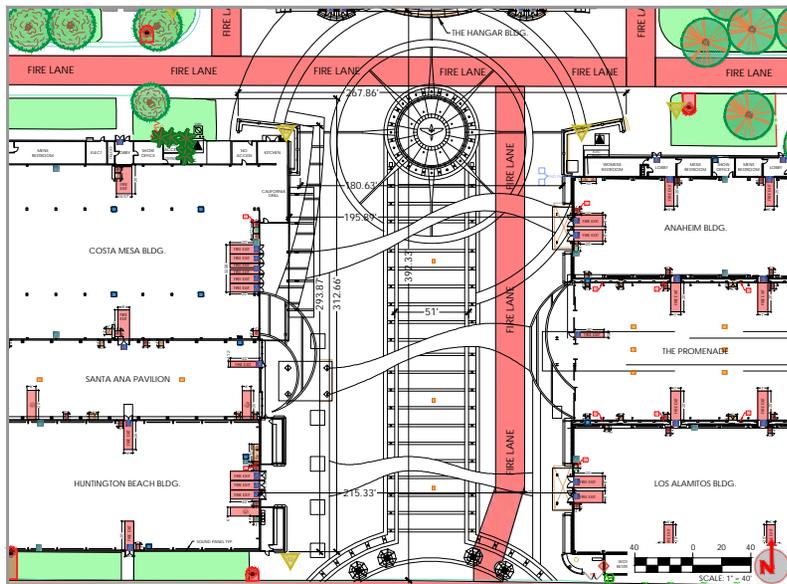
5,506 Square Feet

Building Dimensions:

East to West 90.09'
North to South 29.8'



MAIN MALL



77,813 Square Feet

Lot Dimensions:

East to West 215.33'
North to South 392.33'



PACIFIC AMPHITHEATRE



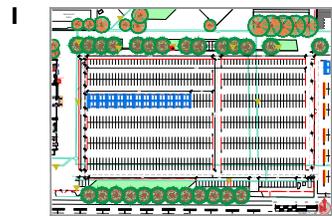
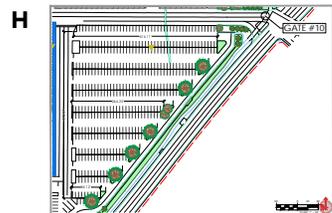
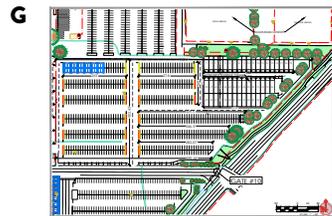
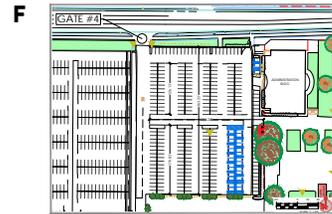
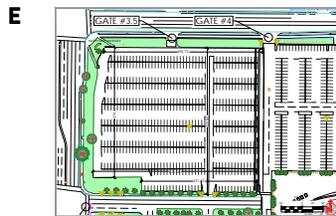
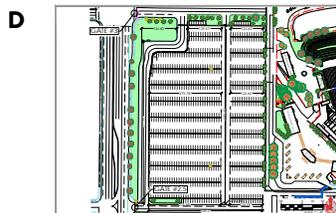
150,091 Square Feet

Seats: 8,233

ADA Seats: 127



PARKING LOTS



Lot B 417,088 sq. ft.

Lot C 398,554 sq. ft.

Lot D 337,192 sq. ft.

Lot E 188,680 sq. ft.

Lot F 98,377 sq. ft.

Lot G 332,708 sq. ft.

Lot H 153,124 sq. ft.

Lot I 276,235 sq. ft.

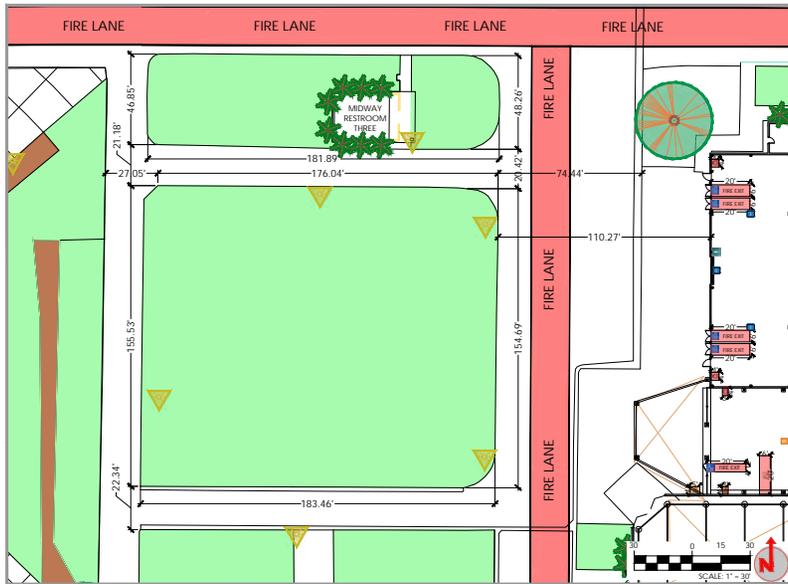


Lot I



Lot C

PARK PLAZA



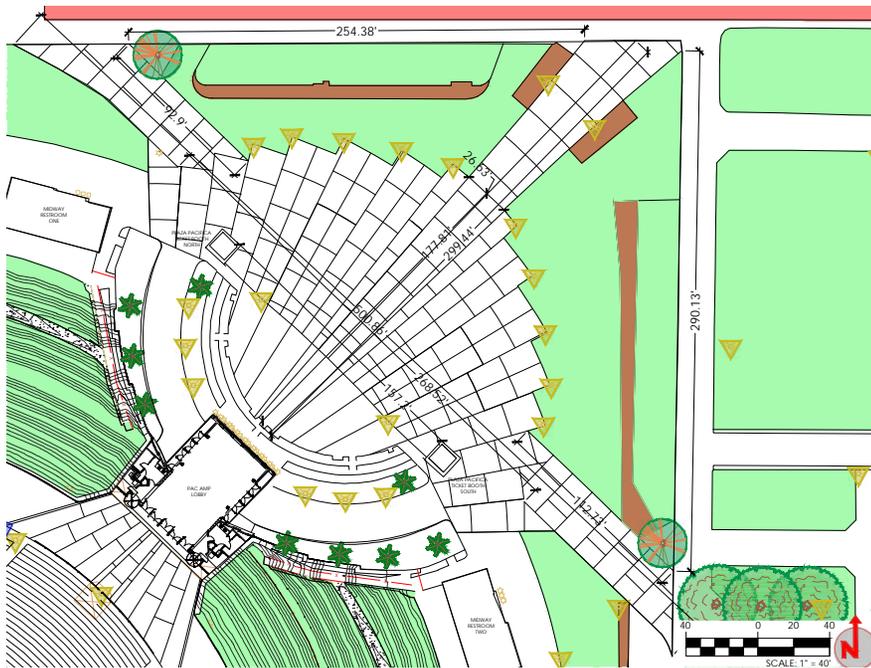
28,307 Square Feet

Lot Dimensions:

East to West 176.04'

North to South 155.53'

PLAZA PACIFICA



81,247 Square Feet

Lot Dimensions:

N.W. to S.E. 500.86'

S.W. to N.E. 299.44'





88 Fair Drive
Costa Mesa, CA 92626

sales@ocfair.com

ocfair.com

EXHIBIT 2



GAVIN NEWSOM
LIEUTENANT GOVERNOR

ATTN: Board of Directors
22nd District Agricultural Association
2260 Jimmy Durante Blvd.
Del Mar, CA 92014

RE: Gun shows on the Del Mar Fairgrounds

April 23, 2018

Dear Members of the Board,

I write to urge that the Board of Directors ban gun shows at the Del Mar Fairgrounds, a public-owned land, and invite the Board of Directors to discuss the issue at its next hearing and facilitate a productive conversation with public input.

In the wake of recent mass shootings, the public has demonstrated outpouring support for gun reform. Permitting the sale of firearms and ammunition on state-owned property only perpetuates America's gun culture at a time when 73% of Californians support gun reform measures and 73% of Californians cite concern about the threat of mass shootings in our schools, according to a recent poll conducted by the Public Policy Institute of California.

There is widespread support for this ban within immediate communities; the neighboring cities of the Del Mar Fairgrounds—Del Mar, Solana Beach, and Encinitas—have adopted resolutions supporting the ban of gun shows at the Fairgrounds. As Mayor of San Francisco, I pressed to end gun shows in neighboring Daly City because the impact of gun violence isn't hindered by municipal boundaries.

The public is demanding action from government, evident in the significant participation in recent protests and walkouts. It is imperative that we answer their call to action and make meaningful strides toward ending gun violence. If California continues to permit the sale of firearms and ammunition on state-owned property, we are sending a signal that we value the sale of firearms above the lives of Americans.

Sincerely,

A handwritten signature in black ink, appearing to read "Gavin Newsom", with a long horizontal line extending to the right.

Gavin Newsom
Lieutenant Governor of California



EXHIBIT 3

STATE CAPITOL
P.O. BOX 912849
SACRAMENTO, CA 94249-0078
(916) 319-2078
FAX (916) 319-2178

DISTRICT OFFICE
1350 FRONT STREET, SUITE 6054
SAN DIEGO, CA 92101
(619) 645-3090
FAX (619) 645-3004

E-MAIL

Assemblymember.Gloria@assembly.ca.gov

Assembly
California Legislature



TODD GLORIA
MAJORITY WHIP

ASSEMBLYMEMBER, SEVENTY-EIGHTH DISTRICT

COMMITTEES
AGING AND LONG-TERM CARE
GOVERNMENTAL ORGANIZATION
HOUSING AND COMMUNITY
DEVELOPMENT
VETERANS AFFAIRS
WATER, PARKS, AND WILDLIFE

September 10, 2018

22nd District Agricultural Association
Attn: Board of Directors
2260 Jimmy Durante Blvd.
Del Mar, CA 92014

Dear Members of the Board,

As the Assemblymember representing the 78th District, which includes the Del Mar Fairgrounds, I am writing in support of the Contracts Committee recommendation that no new contracts with producers of gun shows be approved. As stated in my letter of March 12, 2018, it is my firm belief that the State of California should in no way help to facilitate the sale of firearms.

I applaud the 22nd District Agricultural Association (22nd DAA)'s willingness to consider options for limiting or eliminating these gun shows, and believe that this recommendation reflects the desires of the surrounding community. It is my firm belief that the Board itself should carry out this directive, however, I am prepared to act by way of legislation should the 22nd DAA Board be unable to take meaningful action. I have prepared language for introduction in the next legislative session should that become necessary.

With the continued prevalence of gun violence in our nation, it is impossible to ignore the link to the number of guns in our communities. That is why I believe it is imperative to remove the State, to the extent possible, from complicity in these tragedies by restricting gun shows at the Del Mar Fairgrounds.

I appreciate the Board's time and consideration of this matter.

Sincerely,


TODD GLORIA
Assemblymember, 78th District

CC: Tim Fennell, Del Mar Fairgrounds CEO/General Manager

EXHIBIT 4

To: Board of Directors
22nd District Agricultural Association

From: Patrick J. Kerins, Public Safety Director
22nd District Agricultural Association

Via: Mr. Timothy Fennell, General Manager
22nd District Agricultural Association

206

Subject: Laws and Regulations pertaining to California Gun Shows

In preparation for your Board meeting on November 15, 2016 reference the letter from Mr. Wayne Derntz relative to the Crossroads of the West Gun Show, I am providing you the following historical information relative to the Crossroads of the West Gun Show and the California rules, regulations and laws that govern gun shows. As you will note in the report, I communicated with law enforcement to see if any of the information had to be up-dated but according to the San Diego Sheriff's Department that regulates the gun show I was advised that all the applicable rules, regulations and laws are as applicable today as they were in 1999.

With that said, in 1999, then Director Louis Wolfsheimer requested that a staff report be prepared to answer two questions he had regarding the gun show held at the Fairgrounds.

Mr. Wolfsheimer's major concerns were:

- can a patron attending a gun show on District property purchase a firearm without any checks or waiting periods that are required by law when guns are purchased from retail dealers off fairground property?
- secondly, does the District have in place proper internal oversight and mechanisms requiring the promoter and the vendors to comply with all applicable laws that regulate the sale and transfer of firearms?

In order to address Director Wolfsheimer's concerns as to whether firearms being sold or transfer on District property are in compliance with applicable federal, state and local laws, I contacted the Commander of the Encinitas Sheriff's station who has primary law enforcement jurisdiction pertaining to any such matters on District property. I was subsequently directed to the San Diego County Sheriff's Department Licensing Division. The San Diego County Sheriff's Department has regulatory jurisdiction in licensing and enforcement of gun shows. At the time, I was directed to Detective Tom Morton who was a licensing specialist who had considerable expertise in the area of statutory regulations and compliance for gun shows.

After reviewing Director Wolfsheimer's letter at my request, Detective Morton made an unsolicited statement that the Crossroads of the West Gun Show is one of the best gun

shows for compliance with all state and federal regulatory statutes that apply to the sale and transfer of firearms. Detective Morton said, in his opinion, The Crossroads of the West Gun Show was more a sports show. He based that on the fact that the show appears to have just as many vendors selling hunting equipment, clothes and accessories as firearms. In fact, he said the promoter should call it the "CROSSROADS OF THE WEST SPORTS SHOW" instead of gun show.

Detective Morton said that any firearm sold or transferred at the Crossroads of the West Gun Show must meet the same requirements as if the firearm was purchased from an off-site licensed vendor. All sales and transfers are subject to compliance with Penal Code sections 12071 and 12072 that regulate Gun Shows. In essence, those particular statutes requires the purchaser and seller to:

- produce valid identification and a firearms safety certificate
- prepare a CA. Dept. of Justice dealer record of sale
- prepare a Bureau of Alcohol, Tobacco and Firearms form 4473 (federal record of sale form)
- wait the required ten day waiting period for both the state and federal authorities to do a background check to determine if the person is qualified to own a firearm. This applies to any transaction whether from a vendor or via private parties.

The only exception to the above requirements is for firearms made prior to 1898 and are classified as antiques.

As for the promoter of the Crossroads of the West Gun Show, Mr. Bob Templeton, Detective Morton said he was in full compliance with the requirements set-forth in Penal Code section 12071 which regulate gun shows. Those requirements are:

- that he possess a Certificate of Eligibility issued by the California Department of Justice. This certificate is issued after a thorough background check is completed on the applicant.
- that he produce a list of all vendors that sell firearms (35 of the 265 gun show vendors) 72 hours prior to the event. Detective Morton and the California Department of Justice validates that they are all licensed vendors.

As for actual vendors, Detective Morton said that all vendors that participate in the gun show are in compliance with all the state and federal regulations. They all possess the following documents:

- Federal Firearms License issued by the Bureau of Alcohol, Tobacco and Firearms.
- Certificate of Eligibility issued by the California Department of Justice.
- sellers permit issued by the State Board of Equalization.
- California Firearms Dealer (CFD) number issued by the California Department of Justice. This certificate validates that the vendor is a fully licensed California gun dealer. Participating in a gun show is an extension of the dealer's retail business. In

essence, selling and transfer of a firearm must meet the same legal requirements as if the firearm was purchased at a licensed retail shop.

- any firearm purchased must be retained by the dealer for ten days before being transferred to the purchaser. This allows the state and federal government to do a thorough background check. In the case of private party transactions, a licensed vendor must facilitate the transaction and retain possession of the firearm for the ten days. A fee is charge to the purchaser to off-set any administrative overhead incurred by the vendor.

In order to ensure compliance with the aforementioned regulatory statutes and in accordance with section 12071.1(8) (i) Gun Show Security plan, Detective Morton, in cooperation and support with District Security, conducts both an overt and covert inspection of all our gun shows. Each gun show is policed by four uniformed San Diego County Deputy Sheriffs and a team of undercover Detectives from the Sheriff's Licensing and Explosive Ordnance Unit. Their mission is to:

- observe firearm transactions and compliance with all appropriate state and federal statutes.
- monitor private party transactions
- look for any illegal weapons
- monitor the crowd for any parole violators or any other person prohibited from owning a firearm

It should also be noted that Agents from the California Department of Justice and the Bureau of Alcohol, Tobacco and Firearms do site inspections as well.

Detective Morton, at the time, stated that the Crossroads of the West Gun Show was in full compliance with local, state and federal regulatory statutes. In his tenure of monitoring the Gun Show nominal violations had been recorded. In addition to Detective Morton's assessment of the Crossroads of the West Gun Show, the Criminal Justice Information Services Division of the State Attorney General's Office also stated that the Crossroads of the West Gun Show was in full compliance with all applicable laws of the state and federal government. Detective Morton said that most of the publicity in reference to gun show loopholes was associated with states that do not have regulatory statutes pertaining to the possession, sale and transfer of weapons at gun shows.

Detective Morton also addressed the issue of firearms that meet the definition of an assault weapon. Detective Morton said that the California Assault Weapons Control Act includes a list of semiautomatic firearms which are identified "assault weapons". Accordingly, those firearms which are specified in Penal Code section 12276 are assault weapons and are illegal to possess, sell or transfer by any means. Fully automatic weapons are illegal and CANNOT be obtained at gun shows.

As to the recent passage of Proposition 63, the sales of ammunition at the gun show will have to meet all the legal requirements of the State ballot measure. In regards to the sale of ammunition, purchasers will be required to obtain a permit from the California

Department of Justice. In reference to firearm safety, prior to purchasing and taking possession of a firearm, the purchaser must take a firearms safety course and upon successfully passing the test will be issued a Firearms Safety Certificate which is required to purchase a firearm.

As Chief of Security for the 22nd DAA, I routinely inspect the gun show and on a regular basis communicate with the San Diego Sheriff's Department re: compliance with all the applicable laws and regulations and the Security Plan required by the California Department of Justice Firearms Division. I recently spoke to Detective Jaime Rodriguez of the Sheriff's North Coastal Station who supervises the four Deputies assigned to the gun show security detail and Detective Stacey Smith who is assigned to the Sheriff's Licensing Division. Both Detectives said the Crossroads of the West Gun Show is in complete compliance with all the local, State and Federal laws that govern gun shows and that there have not been any violations of law. Both Detectives had high praise for the show promoters and the 22nd DAA staff.

In addition, the District is in full compliance with the Division of Fairs and Expositions rules and regulations that mandates that all District Agricultural Associations include specific language and terms into all contracts for shows and events where participants display, possess or sell firearms or other weapons.

The CROSSROADS OF THE WEST GUN SHOW has been affiliated with the District for approximately 30 years. Robert R. Templeton is the president of the show and produces fifty two (52) gun shows each year in California, Arizona, Utah, Colorado and Nevada. He is a chartered member of the National Association of Arms Shows, an organization of gun show producers whose rules include the strictest compliance with the law and safety requirements of any gun shows in America. Approximately thirteen (5%) percent of the 265 vendors that participate in the Crossroads of the West Gun show sell firearms. Currently, his daughter-in-law, Tracey Olcott, manages the event and is the holder of the required Certificate of Eligibility issued by the California Department of Justice.

In my considered opinion, as Chief of Security for the 22nd DAA for the last 17 years, the CROSSROADS OF THE WEST GUN SHOWS (5 per year) are in compliance with all the local, state and federal regulatory statutes and have operated without any violations of those laws. Under the laws of the State of California you must comply with all the laws of purchasing, selling and/or transferring of firearms at a gun show as you would at licensed gun dealer's store. Due to the strict California gun show regulations there are no so called loop holes that you so often hear about in the media.

It should be further noted, that in 2016 California voters passed Proposition 63, which will comprehensively regulate ammunition sales in California. Per Proposition 63, beginning January 1, 2018 the following rules and laws governing the sale ammunition in the State of California will take effect:

- Beginning January 1, 2018, individuals who sell more than 500 rounds of ammunition in any month will be required to obtain an annual state issued license and will be required to conduct ammunition sales at specified business location or gun shows.
- State of California Department of Justice will issue ammunition vendor licenses to individuals who provide specified documentation, including a certificate of eligibility verifying that they passed a background check. Those dealers already licensed as firearm dealers are precluded.
- Dealers will be required to report loss or theft of ammunition from their inventory.
- Ammunition sales will have to be conducted by or processed through a licensed vendors.
- Beginning July 1, 2019, licensed ammunition vendors will be required to record, maintain and report to DOJ records of ammunition sales in a manner similar to dealer's records of sales for firearms purchases.
- Beginning July 1, 2019, licensed ammunition vendors will be prohibited from selling or transferring ammunition until first conducting a background check to verify that the person receiving the ammunition is legally eligible.
- Ammunition cannot be sold to anyone under the age of 18. Handgun ammunition can only be sold to those 21 years of age or older.
- All ammunition at Gun Shows must be displayed in closed containers. In addition, no person at a Gun Show in California, other than Security personnel or sworn peace officers, can possess at the same time both a firearm and ammunition that is designed to be fired in the firearm.

Patrick J. Kerins, Public Safety Director
22nd District Agricultural Association

EXHIBIT 5

A Neutral
As of: August 5, 2022 5:10 PM Z

B & L Prods. v. 22nd Dist. Agric. Ass'n

United States District Court for the Southern District of California

June 25, 2019, Decided; June 25, 2019, Filed

Case No.: 3:19-CV-134-CAB-NLS

Reporter

394 F. Supp. 3d 1226 *; 2019 U.S. Dist. LEXIS 106334 **; 2019 WL 2602546

B & L PRODUCTIONS, INC. d/b/a
CROSSROADS OF THE WEST et al.,
Plaintiffs, v. 22ND DISTRICT
AGRICULTURAL ASSOCIATION et al.,
Defendants.

Associates, P. C., Long Beach, CA.

For [Second Amendment](#) Foundation, Plaintiff:
Carl D. Michel, LEAD ATTORNEY, Michel &
Associates PC, Long Beach, CA; Donald
Edward Kilmer, Jr., LEAD ATTORNEY, Law
Offices of Donald Kilmer, A Professional
Corporation, San Jose, CA.

Subsequent History: Motion denied by [B & L Prods. v. 22nd Dist. Agric. Ass'n, 2020 U.S. Dist. LEXIS 73950 \(S.D. Cal., Apr. 27, 2020\)](#)

For 22nd District Agricultural Association,
Defendant: Peiyin Patty Li, LEAD ATTORNEY,
California Department of Justice, Office of the
Attorney General, San Francisco, CA.

Core Terms

Moratorium, gun show, discovery,
Fairgrounds, content-based, regulation, gun,
summary judgment, public safety, rights,
motion to dismiss, restrictions, content-neutral,
viewpoint, strict scrutiny, quotation, marks,
governmental interest, public forum,
allegations, firearm, preliminary injunction,
irreparable, satisfies, immunity, subject to strict
scrutiny, compelling state interest, summary
judgment motion, constitutional right, narrowly
tailored

Judges: Hon. Cathy Ann Bencivengo, United
States District Judge.

Opinion by: Cathy Ann Bencivengo

Opinion

**[*1233] MEMORANDUM OPINION RE JUNE
18, 2019 ORDER**

Counsel: **[**1]** For B & L Productions, Inc.,
doing business as Crossroads of the West,
Barry Bardack, Ronald J. Diaz, Sr., John
Dupree, Christopher Irick, Lawrence Walsh,
Maximum Wholesale, Inc., doing business as
Ammo Bros., California Rifle & Pistol
Association, Incorporated, South Bay Rod and
Gun Club, Inc., Plaintiffs: Carl D. Michel, Sean
Brady, LEAD ATTORNEYS, Tiffany D.
Cheuvront, Michel & Associates PC, Long
Beach, CA; Anna M. Barvir, Michel &

[*1234] At a hearing on June 17, 2019, and in
an order dated June 18, 2019, the Court
granted in part and denied in part a motion to
dismiss filed by Defendants, denied Plaintiffs'
request for entry of summary judgment, and
issued a preliminary **[**2]** injunction against
Defendant 22nd District Agricultural District
(the "District"). The purpose of this opinion is to
provide the reasoning for the Court's order.

I. Background

Plaintiff B&L Productions, Inc. d/b/a Crossroads of the West ("Crossroads") operates gun show events in California, including at the Del Mar Fairgrounds (the "Fairgrounds"). [Doc. No. 1 at ¶ 1.] Plaintiffs California Rifle & Pistol Association, Inc. ("CRPA"); South Bay Rod and Gun Club, Inc. ("SBRGC"); [Second Amendment](#) Foundation, Inc. ("SAF"); Barry Bardack; Ronald J. Diaz, Sr.; John Dupree; Christopher Irick; Lawrence Michael Walsh; and Maximum Wholesale, Inc. d/b/a Ammo Bros ("MW"), attend and participate in the Crossroads gun show at the Fairgrounds. [*Id.* at ¶ 7.] The Complaint describes gun shows as:

a modern bazaar—a convention of like-minded individuals who meet in this unique public forum that has been set aside by state local governments for all manner of commerce. Gun shows just happen to include the exchange of products and ideas, knowledge, services, education, entertainment, and recreation, related to the lawful uses of firearms. Those lawful uses include (but are not limited to):

- a. Firearm safety training;
- b. Self-defense; **[**3]**
- c. Defense of others;
- d. Defense of community;
- e. Defense of state;
- f. Defense of nation;
- g. Hunting;
- h. Target shooting;
- i. Gunsmithing;
- j. Admiration of guns as art;
- k. Appreciation of guns as technological artifacts; and
- l. Study of guns as historical objects.

[*Id.* at ¶ 47.] The complaint further alleges that:

Gun shows in general, and the Del Mar show in particular, are a celebration of America's "gun culture" that is a natural

and essential outgrowth of the constitutional rights that flow from the [Second Amendment to the United States Constitution](#). Participating in that culture is one of the primary reasons people attend Crossroads gun shows as vendors, exhibitors, customers, and guests (even if particular vendors/attendees are not in the firearm business or in the market to buy a gun at a particular event.)

[*Id.* at ¶ 49.]

According to the complaint, individuals attending and participating in these gun shows engage in commercial activities [*id.* at ¶ 3], but "[a]ctual firearm transfers are prohibited from taking place at any gun show in California absent very limited exceptions applicable only to law enforcement" [*id.* at ¶ 43]. "Only a small percentage (usually less than 40%) of the vendors actually offer firearms or ammunition for sale. The **[**4]** remaining vendors offer accessories, collectibles, home goods, lifestyle **[*1235]** products, food and other refreshments." [*Id.* at ¶ 48.]

In addition, according to the complaint, these gun show events include activities and discussions related to: "firearms, firearm technology, firearm safety, gun-politics, and gun-law (both pending legislation and proper compliance with existing law.) Other topics include: where to shoot, where and from whom to receive training, gun-lore, gun-repair, gunsmithing, gun-art, and many other topics, that arise from the right to acquire, own, possess, enjoy, and celebrate arms as a quintessentially American artifact with Constitutional significance." [*Id.* at ¶ 3.] The complaint also alleges that at gun shows, "literature and information are shared, speakers provide valuable live lectures, classes are conducted, political forums are held where gun rights discussions take place, and candidates for political office can meet to

discuss political issues, the government, and the Constitution with constituents who are part of the California gun culture." [*Id.* at ¶ 52.]

The Fairgrounds is owned by the state of California and managed by the board of directors of Defendant 22nd [**5] District Agricultural Association (the "District"). [*Id.* at ¶¶ 23, 58, 112.] According to the complaint, the Fairgrounds "is used by many different public groups and is a major event venue for large gatherings of people to engage in expressive activities, including concerts, festivals, and industry shows." [*Id.* at ¶ 63.] The Fairgrounds' website allegedly describes its mission as "[t]o manage and promote a world-class, multi-use, *public assembly facility* with an emphasis on agriculture, education, entertainment, and recreation in a fiscally sound and environmentally conscientious manner *for the benefit of all.*" [*Id.* at ¶ 66 (*emphasis* originally in complaint); Doc. No. 1-2 at 2-33; Doc. No. 14-5 at 206.]¹

Defendant Karen Ross is the Secretary of the California Department of Food & Agriculture (the "CDFA"), the entity responsible for policy oversight of the Fairgrounds. [Doc. No. 1 at ¶ 24.] According to the complaint, she oversees the operation of the District, and authorized the other Defendants "to interpret, enforce, and implement [the CDFAs] policies for the operation and management of the [Fairgrounds]." [*Id.* at ¶¶ 59, 113.]

Defendants Steve Shewmaker and Richard Valdez [**6] are president and vice-president of the District Board of Directors, respectively. [*Id.* at ¶¶ 25, 26.] Shewmaker and Valdez were also the members of an "ad hoc committee responsible for developing the plan, in closed session, to effectively ban gun shows from the [Fairgrounds]." [*Id.*; see also ¶ 84] At a public

hearing on September 11, 2018, this committee:

recommended that the District not consider any contracts with the producers of gun shows beyond December 31, 2018 until such time as the District has put into place a more thorough policy regarding the conduct of gun shows that:

- a. Considers the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property[;]
- b. Aligns gun show contract language with recent changes to state and federal law[;]
- c. Details enhanced security plan for the conduct of future shows[;]
- d. Proposes a safety plan[;]
- e. Considers the age appropriateness of the event[;]

[*1236] f. Grants rights for the [District] to perform an audit to ensure full compliance with [California Penal Code Sections 171b](#) and 12071.1 and 12071.4.

[*Id.* at ¶ 88.] The District then "voted (8-to-1) to impose a one-year moratorium (for the year 2019) on gun show [**7] events at the Venue while they study potential safety concerns." [*Id.* at ¶ 94.] According to the complaint, there was "no finding that allowing the (already heavily regulated) gun show events to continue at the [Fairgrounds] posed a definite or unique risk to public safety." [*Id.* at ¶ 92.] The complaint also alleges that the Fairgrounds "has held other non-gun-show events in which criminal activity has taken place—including theft and a shooting. These criminal incidents are no more likely to happen at a gun show event [than at] the non-gun-show event. The District has taken no actions to ban or impose a moratorium on these promoters or events." [*Id.*

¹ See <http://www.delmarfairgrounds.com/index.php?fuseaction=about.home> also

at ¶ 67.]

II. Procedural History

On January 21, 2019, Plaintiffs filed the complaint in this action. The complaint asserts several claims for violation of the right to free speech under the [First Amendment to the Constitution](#) by various combinations of Plaintiffs, as well as claims by all Plaintiffs for violation of the right to assembly and association under the [First Amendment](#), violation of the right to equal protection under the [Fourteenth Amendment to the Constitution](#), and conspiracy to violate civil rights under [42 U.S.C. § 1985](#). The complaint prays for declaratory relief that Defendants' actions in enacting the moratorium on gun shows violated **[**8]** Plaintiffs' [First Amendment](#) Rights, injunctive relief compelling Defendants to allow Crossroads to hold gun shows at the Fairgrounds in 2019, compensatory damages, and punitive damages.

On March 27, 2019, Defendants moved to dismiss the complaint in its entirety. In their opposition to the motion, Plaintiffs asked the Court to convert the motion to dismiss into cross-motions for summary judgment. Upon review of the briefing, and because in a [First Amendment](#) case, "plaintiffs have a special interest in obtaining a prompt adjudication of their rights," [Sorrell v. IMS Health Inc., 564 U.S. 552, 563, 131 S. Ct. 2653, 180 L. Ed. 2d 544 \(2011\)](#), the Court was inclined to adopt Plaintiffs' proposal. The Court then ordered further briefing to give Defendants the opportunity to fully oppose summary judgment in favor of Plaintiffs. After that supplemental briefing was complete, the Court held a hearing on June 17, 2019. As memorialized by a written order the following day, at that hearing the Court informed the parties that it was granting in part and denying in part Defendants' motion to dismiss, denying without

prejudice Plaintiffs' motion for summary judgment based on Defendants' claim that they need discovery to adequately oppose the motion, and set a discovery schedule and briefing schedule for motions for **[**9]** summary judgment. The Court also granted a preliminary injunction to Plaintiffs that enjoined Defendants from enforcing the moratorium on gun shows adopted at the September 11, 2018 meeting (the "Moratorium"). This opinion provides the Court's reasoning for the rulings it issued at the June 17, 2019 hearing and memorialized in the June 18, 2019 order.

III. Defendants' Motion to Dismiss

Although one might think otherwise based on the quantity of outside evidence submitted by Defendants with their motion to dismiss, "evidence outside the pleadings . . . cannot normally be considered in deciding a 12(b)(6) motion." [Cervantes v. City of San Diego, 5 F.3d 1273, 1274 \(9th Cir. 1993\)](#) (quoting **[*1237]** [Farr v. United States, 990 F.2d 451, 454 \(9th Cir. 1993\)](#)).² "The question presented

² Defendants ask for judicial notice of various policies, manuals, reports, meeting minutes and transcripts from the District, on the grounds that they are public records. [Doc. 12-2.] "Judicial notice under [Rule 201](#) permits a court to notice an adjudicative fact if it is 'not subject to reasonable dispute.'" [Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 999 \(9th Cir. 2018\)](#) (quoting [Fed. R. Evid. 201\(b\)](#)). Although "a court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment, . . . [it] cannot take judicial notice of disputed facts contained in such public records." *Id.* (internal citation and quotation marks omitted). Here, it is not clear from the request for judicial notice which facts from these documents Defendants are asking the Court to notice because the request asks the Court only to take notice of the documents themselves. The accuracy of the documents may not reasonably be questioned, "but accuracy is only part of the inquiry under [Rule 201\(b\)](#)." *Id.* "Just because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth." *Id.* Regardless, even after considering the documents attached to Defendants' request, the Court finds that the complaint states a claim against the District.

. . . is not whether the plaintiff will ultimately prevail, but whether the plaintiff has alleged sufficient factual grounds to support a plausible claim to relief, thereby entitling the plaintiff to offer evidence in support of its claim." Mazal Grp., LLC v. Espana, No. 217CV05856RSWLKS, 2017 U.S. Dist. LEXIS 200108, 2017 WL 6001721, at *2 (C.D. Cal. Dec. 4, 2017).

Thus, when considering a motion to dismiss the Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). To survive the motion, the "complaint must contain sufficient [****10**] factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). On the other hand, the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). Nor is the Court "required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

Accordingly, the need not address the merits of Defendants' request for judicial notice.

A. Claims Against the District

In the motion to dismiss, Defendants argue that the free speech claims should be dismissed because the Moratorium does not regulate speech or expressive conduct, is viewpoint and content-neutral, and survives either rational basis review or intermediate scrutiny. As discussed in detail below, the Court disagrees with Defendants and finds that the Moratorium is a content-based restriction of speech on its face. As a result, [****11**] the Court is satisfied that the complaint states plausible claims against the District for violation of Plaintiffs' First Amendment rights and for violation of Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment. [***1238**] It is for this reason that the Court denied the motion to dismiss with respect to the District.³

³ Defendants make a host of objections to evidence submitted by Plaintiffs with their opposition to the motion to dismiss and request for summary judgment. [Doc. No. 15-1.] Because the language of the Moratorium and allegations in the complaint were sufficient for this ruling, the Court did not need to consider any of this evidence to determine that the complaint states a claim against the District and to deny the motion to dismiss as to the District. Nor was this evidence material to the Court's decision to deny Plaintiffs' motion for summary judgment based on Defendants' claimed need for discovery. Regardless, Defendants' formulaic objections to the relevance of Plaintiffs' evidence are generally inappropriate in the context of a motion for summary judgment. Instead of objecting to the relevance of the evidence, Defendants would be better served by arguing that the facts are not material. See Burch v. Regents of Univ. of California, 433 F.Supp. 2d 1110, 1119 (E.D. Cal. 2006). As to objections as to the foundation for the evidence, many of the objections are targeted to the exact sort of evidence Defendants submitted in their request for judicial notice. Defendants even object to Plaintiff's submission of some of the exact same documents it included with its motion as also being irrelevant. Compare Exhibit D to Defendants' Request for Judicial Notice [Doc. No. 12-3 at 30] with Exhibit 18 to the Barvir Declaration [Doc. No. 14-6 at 304]. It is unclear what Defendants intend to accomplish with such objections, considering that Defendants believe the evidence is admissible and relevant in some form. Ultimately, the District bears the burden of proof that the gun show moratorium satisfies the requisite level of scrutiny, see United

B. Qualified Immunity as to Shewmaker and Valdez

The motion to dismiss also argues that Defendants Shewmaker and Valdez are entitled to qualified immunity. "Qualified immunity shields government actors from civil liability under [42 U.S.C. § 1983](#) if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" [Castro v. Cty. of Los Angeles](#), [833 F.3d 1060, 1066 \(9th Cir. 2016\)](#) (en banc) (quoting [Harlow v. Fitzgerald](#), [457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#)). It "protects 'all but the plainly incompetent or those who knowingly violate the law,'" [Mueller v. Aufer](#), [576 F.3d 979, 992 \(9th Cir. 2009\)](#) (quoting [Malley v. Briggs](#), [475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 \(1986\)](#)), and it assumes that government actors "do not knowingly violate the law," [Gasho v. United States](#), [39 F.3d 1420, 1438 \(9th Cir. 1994\)](#). Because "[i]t is 'an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial.'" [Mueller](#), [576 F.3d at 992](#) (emphasis in original) (quoting [Mitchell v. Forsyth](#), [472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 \(1985\)](#)). To that end, the Supreme Court has "repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in **[**12]** litigation." [Hunter v. Bryant](#), [502 U.S. 224, 227, 112 S. Ct. 534, 116 L. Ed. 2d 589 \(1991\)](#).

To determine whether Shewmaker and Valdez are immune from suit, the court must "evaluate

[States v. Playboy Entmt. Grp., Inc.](#), [529 U.S. 803, 816, 120 S. Ct. 1878, 146 L. Ed. 2d 865 \(2000\)](#), and it is the District's complete lack of evidence, rather than Plaintiffs' evidence, that causes the Court to conclude that Plaintiffs have a likelihood of success on the merits and otherwise satisfy the requirements for a preliminary injunction. Accordingly, Defendants' objections to Plaintiffs' evidence [Doc. No. 15-1] are **OVERRULED**.

two independent questions: (1) whether [their] conduct violated a constitutional right, and (2) whether that right was clearly established at the time of the incident." [Castro](#), [833 F.3d at 1066](#). "[A] right is clearly established when the 'contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" [Id.](#) [at 1067](#) (quoting **[*1239]** [Serrano v. Francis](#), [345 F.3d 1071, 1077 \(9th Cir. 2003\)](#)). "This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." [Mueller](#), [576 F.3d at 994](#) (internal quotation marks and citation omitted). "[T]he clearly established law must be 'particularized' to the facts of the case." [White v. Pauly](#), [137 S.Ct. 548, 552, 196 L. Ed. 2d 463 \(2017\)](#) (citing [Anderson v. Creighton](#), [483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 \(1987\)](#)). "The standard is an objective one that leaves 'ample room for mistaken judgments.'" [Mueller](#), [576 F.3d at 992](#) (quoting [Malley](#), [475 U.S. at 343](#)).

Here, the Court need not resolve whether Plaintiffs' Shewmaker and Valdez violated Plaintiffs' constitutional rights, because even assuming they did, those rights were not clearly established. Plaintiffs' constitutional rights "would be 'clearly established' if 'controlling authority or a robust consensus of cases of persuasive authority' had previously held that" it is a violation **[**13]** of the [First Amendment](#) right to free speech or [Fourteenth Amendment](#) right to equal protection to propose or vote for a rule banning gun shows from a public fairground. [Hines v. Youseff](#), [914 F.3d 1218, 1229-30 \(9th Cir. 2019\)](#) (quoting [Dist. of Columbia v. Wesby](#), [U.S. , 138 S.Ct. 577, 589-90, 199 L.Ed.2d 453 \(2018\)](#)). Plaintiffs point to no such precedent, and the Court has not located any on its own. The absence of such authority means that the rights in question here were not clearly established when Shewmaker and Valdez took actions related to the Moratorium. Accordingly,

they are entitled to qualified immunity.

C. Sovereign Immunity as to Ross

The motion to dismiss argues that the claims against Ross should be dismissed because she has sovereign immunity under the [Eleventh Amendment to the Constitution](#). The [Eleventh Amendment](#) states:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

It "enacts a sovereign immunity from suit." [Idaho v. Coeur d'Alene Tribe of Idaho](#), 521 U.S. 261, 267, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997). The Supreme Court has "extended a State's protection from suit to suits brought by the State's own citizens . . . [and] suits invoking the federal-question jurisdiction of Article III courts may also be barred by the Amendment." [Id. at 268](#). Thus, "[Eleventh Amendment](#) immunity represents a real limitation on a federal [****14**] court's federal-question jurisdiction." [Id. at 270](#). Sovereign immunity is an affirmative defense, and therefore, "[l]ike any other such defense . . . must be proved by the party that asserts it and would benefit from its acceptance." [ITSI TV Prods., Inc. v. Agric. Associations](#), 3 F.3d 1289, 1291 (9th Cir. 1993).

"Naming state officials as defendants rather than the state itself will not avoid the [eleventh amendment](#) when the state is the real party in interest. The state is the real party in interest when the judgment would tap the state's treasury or restrain or compel government action." [Almond Hill Sch. v. U.S. Dep't of Agric.](#), 768 F.2d 1030, 1033 (9th Cir. 1985). Under the exception created by [Ex Parte Young](#), 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed.

[714 \(1908\)](#), however, "individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil [****1240**] or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action." [Ex parte Young](#), 209 U.S. at 155-56. Pursuant to this exception, "the [eleventh amendment](#) does not bar an injunctive action against a state official that is based on a theory that the officer acted unconstitutionally." [Almond Hill Sch.](#), 768 F.2d at 1034. This exception does not allow suit against officers of the state simply "to enjoin the enforcement of an act alleged to [****15**] be unconstitutional" unless the officer has "some connection with the enforcement of the act." [Ex parte Young](#), 209 U.S. at 157. Otherwise, the suit "is merely making [the officer] a party as a representative of the state, and thereby attempting to make the state a party." *Id.*

Ross does not have a connection with the enforcement of the Moratorium.⁴ The only allegations about Ross in the complaint are that she delegated operation and management of the Fairgrounds to the District and left it within the District's discretion to have gun

⁴ Plaintiffs argue in their opposition that Ross does not have sovereign immunity regardless of *Ex Parte Young* because "when Ross acts as supervisor of and delegates authority to the local District, she is not acting in her capacity as a state actor." [Doc. No. 14 at 24.] Yet, on the previous page of their brief, Plaintiffs state that they are suing Ross "in her official capacity as a state actor only." [*Id.* at 23.] Moreover, the complaint itself identifies Ross as "Secretary of the California Department of Food & Agriculture—the entity responsible for the policy oversight of the network of California fair venues" [Doc. No. 1 at ¶ 24], indicating that she is a party simply because of her title and not because of any specific actions she took with respect to the Moratorium. By suing her in her official capacity as a state actor, the suit can stand only if an exception to sovereign immunity applies. [Almond Hill Sch.](#), 768 F.2d at 1033.

show events at the Fairgrounds. [See, e.g., Doc. No. 1 at ¶ 127.] There are no allegations that Ross was tasked with enforcing the Moratorium by preventing gun shows at the Fairgrounds. Instead, Ross' alleged wrongdoing amounts to supervision over the District, Shewmaker, and Valdez, who are alleged to have been responsible for the Moratorium. This "general supervisory power over the persons responsible for enforcing" the Moratorium does not subject Ross to suit. Los Angeles Cty. Bar Ass'n v. Eu, 979 F.2d 697, 704 (9th Cir. 1992). Accordingly, Ross is entitled to sovereign immunity.

IV. Plaintiffs' Motion for Summary Judgment and Defendants' Rule 56(d) Declaration

Under Federal Rule of Civil Procedure 56, the court shall grant summary judgment "if the movant shows that there is no genuine **[**16]** dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). To avoid summary judgment, disputes must be both 1) material, meaning concerning facts that are relevant and necessary and that might affect the outcome of the action under governing law, and 2) genuine, meaning the evidence must be such that a reasonable judge or jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). When ruling on a summary judgment motion, the court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). "Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." **[*1241]** T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

In opposition to summary judgment here, however, the District's primary argument is that it is entitled to discovery needed to oppose the motion. Federal Rule of Civil Procedure 56(d)⁵ "provides that if a party opposing summary judgment demonstrates a need for further discovery in order to obtain facts essential to justify the party's opposition, the trial court may deny the motion for summary judgment or continue the hearing to allow for such discovery." Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998). In making a Rule 56(d) motion, "a party opposing summary judgment 'must make clear what information is sought and **[**17]** how it would preclude summary judgment.'" *Id.* (quoting Garrett v. City and County of San Francisco, 818 F.2d 1515, 1518 (9th Cir. 1987)). "The facts sought must be 'essential' to the party's opposition to summary judgment . . . and it must be 'likely' that those facts will be discovered during further discovery." Sec. & Exch. Comm'n v. Stein, 906 F.3d 823, 833 (9th Cir. 2018). "In other words, there must be a 'basis or factual support for [the] assertions that further discovery would lead to the facts and testimony' described in an affidavit submitted pursuant to Rule 56(d)." Haines v. Home Depot U.S.A., Inc., No. 1:10-CV-01763-SKO, 2012 U.S. Dist. LEXIS 8087, 2012 WL 217767, at *2 (E.D. Cal. Jan. 24, 2012) (quoting Margolis, 140 F.3d at 854)). Evidence that is "the object of mere speculation . . . is insufficient to satisfy the rule." Stein, 906 F.3d at 833 (citing Ohno v. Yasuma, 723 F.3d 984, 1013 n.29 (9th Cir. 2013)).

Although this rule "facially gives judges the discretion to disallow discovery when the non-

⁵ Federal Rule of Civil Procedure 56(d) states: "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order."

moving party cannot yet submit evidence supporting its opposition, the Supreme Court has restated the rule as requiring, rather than merely permitting, discovery "where the nonmoving party has not had the opportunity to discover information that is essential to its opposition." Metabolife Int'l, Inc. v. Wornick, 264 F.3d 832, 846 (9th Cir. 2001) (quoting Anderson, 477 U.S. at 250 n.5). Thus, when "a summary judgment motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any [Rule 56(d)] **[**18]** motion fairly freely." Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation, 323 F.3d 767, 773 (9th Cir. 2003).

This right to discovery does not fit well with litigation like this one involving prior restraints on speech. Content-based restrictions on speech, of which the District's moratorium on gun shows is one, "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015). In other words, as discussed in the next section, the Moratorium is subject to strict scrutiny. This finding is compelled by the language of the Moratorium itself. No discovery is needed from either side to arrive at this conclusion, and no additional discovery would result in a different standard of scrutiny being applied by the Court. See id. at 2228 ("A law that is content based on its face is subject to strict scrutiny regardless of the government's **[*1242]** benign motive, content-neutral justification, or lack of 'animus toward the ideas contained'"). Thus, the only question on which discovery could be useful is whether the Moratorium satisfies strict scrutiny.

The District, however, has never taken the

position that the Moratorium satisfies strict scrutiny. To the contrary, the District's position is that the Moratorium **[**19]** does not regulate speech at all and that it is subject only to rational basis review. [Doc. No. 12-1 at 20-22.] In the alternative, the District argues that the Moratorium satisfies intermediate scrutiny. It was only when faced with summary judgment in favor of Plaintiffs that the District asserts that it needs discovery to satisfy its burden. Yet, considering that the District has never argued that the Moratorium satisfies strict scrutiny, the discovery it now purports to need necessarily is based merely on speculation that the District will uncover evidence supporting a finding that the Moratorium satisfies strict scrutiny. The Court is not persuaded that the government can enact a facially content-based speech restriction based on a misguided belief that the regulation would have to satisfy only rational basis review, and then when told strict scrutiny applies, be allowed to delay summary judgment in favor of the party whose speech has been restricted in the hopes of finding support for the new position that the restriction satisfies strict scrutiny. Surely, the District's right to discovery to justify a facially content-based speech restriction does not take precedence over the **[**20]** First Amendment rights of Plaintiffs that would be restricted while such discovery takes place.

Moreover, the Court is not convinced that any of the discovery sought by the District will help it overcome summary judgment in favor of Plaintiffs. First, the District contends it needs discovery on whether the Moratorium regulates non-commercial speech that is inextricably intertwined with commercial speech. Yet, if both commercial and noncommercial speech occur at gun shows, the Moratorium restricts both commercial and noncommercial speech. If these types of speech at gun shows are inextricably intertwined, strict scrutiny applies to them both.

Cf. Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc., 487 U.S. 781, 795-96, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988) (holding that strict scrutiny applies where the commercial and non-commercial "component parts of a single speech are inextricably intertwined"). On the other hand, even if the non-commercial and commercial speech at gun shows are not inextricably intertwined, the Moratorium remains subject to strict scrutiny based on its restriction of non-commercial speech. Either way, the discovery the District contends it needs will not result in an easing of the District's burden.

Next, the District claims it needs discovery on whether the Moratorium "targets gun culture." **[**21]** Yet, even if the Moratorium does not target gun culture, it is still subject to strict scrutiny. See Reed, 135 S.Ct. at 2230 (noting that although "discrimination among viewpoints—or the regulation of speech based on the specific motivating ideology or the opinion or perspective of the speaker—is a more blatant and egregious form of content discrimination . . . the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.") (internal quotation marks and citations omitted). Thus, it is unclear how such discovery would preclude summary judgment here.

Finally, the District contends that it requires discovery on "how the [Moratorium] serves the compelling government interest **[*1243]** of protecting public safety." [Doc. No. 20 at 20.] Yet, despite its arguments to the contrary, an amorphous concern for "public safety" is not the public interest that the District stated was the interest served by the Moratorium. Instead, the interest purportedly served by the Moratorium, based on the language of the Moratorium itself, is the District's ability to "put into place a more thorough policy regarding

the conduct of gun shows." **[**22]** In other words, the District does not seek discovery to support its stated interest for the Moratorium; it seeks discovery in the hopes of supporting a new state interest. This speculative discovery does not satisfy Rule 56(d). Stein, 906 F.3d at 833.

Notwithstanding the foregoing, there is a middle ground here that would protect both any entitlement to discovery that the District may have before ruling on summary judgment, as well as Plaintiffs' constitutional rights—a preliminary injunction. As discussed below, Plaintiffs satisfy the requirements for a preliminary injunction on enforcement of the Moratorium. Accordingly, although the Court is skeptical that any of the discovery sought by the District would preclude summary judgment for Plaintiffs, Plaintiffs' motion for summary judgment is denied without prejudice based on Rule 56(d). The June 18, 2019 order provides a briefing schedule for a renewed motion for summary judgment by Plaintiffs (and the District if desired) after the discovery period.

V. Preliminary Injunction

Although Plaintiffs did not expressly move for a preliminary injunction, the briefing demonstrates that such an injunction is warranted while the District pursues the discovery it contends it needs to oppose **[**23]** summary judgment. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). Each of these four requirements is satisfied here.

A. Likelihood of Success Against the District

1. First Amendment Claims

"The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws that abridge the freedom of speech." Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S.Ct. 2361, 2371, 201 L. Ed. 2d 835 (2018). Under the First Amendment, "a government, including a municipal government vested with state authority, 'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" Reed, 135 S.Ct. at 2226 (quoting Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972)); see also Texas v. Johnson, 491 U.S. 397, 414, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."). "Content-based regulations 'target speech based on its communicative content.'" Nat'l Inst. of Family & Life Advocates, 138 S.Ct. at 2371 (quoting Reed, 135 S.Ct. at 2226). "[T]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." Reed, 135 S.Ct. at 2230.

Content-based **[**24]** regulations "are presumptively unconstitutional and may be **[*1244]** justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed, 135 S.Ct. at 2226; see also R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 382, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) ("Content-based regulations are presumptively invalid."). "It is rare that a regulation restricting speech

because of its content will ever be permissible." Playboy Entm't Grp., Inc., 529 U.S. at 818; see also Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 230, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987) ("Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.")) (quoting Regan v. Time, Inc., 468 U.S. 641, 648-649, 104 S. Ct. 3262, 82 L. Ed. 2d 487 (1984)). On the other hand, "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). "A content-neutral regulation will be sustained under the First Amendment if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." Turner Broad. Sys., Inc. v. F.C.C., 520 U.S. 180, 189, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997). Accordingly, the Court first must decide whether the Moratorium is content neutral because resolution of that question determines the appropriate level of scrutiny. See McCullen v. Coakley, 573 U.S. 464, 478, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014) ("The content-neutrality prong of the Ward test is logically antecedent to the narrow-tailoring **[**25]** prong, because it determines the appropriate level of scrutiny.").

a. Is the Moratorium Content-Based or Content-Neutral?

"Although it is common to place the burden upon the Government to justify impingements on First Amendment interests, it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies." Clark

v. Community for Creative Non-Violence, 468 U.S. 288, 293 n.5, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984). Here, there is little question that speech and conduct protected by the First Amendment occurs at Crossroads' gun shows. Moreover, the speech in question is not merely commercial speech, as Defendants attempt to frame it in their motion. Rather, the types of speech alleged to occur at gun shows includes pure speech that warrants full First Amendment protection.

Further, the Moratorium is a restriction on speech based on the "communicative content" of that speech, Reed, 135 S.Ct. at 2226, with the communicative content being guns, gun rights, and gun-related issues. By its plain terms, the Moratorium applies only to gun shows. Put differently, on its face, the Moratorium accords preferential treatment to shows featuring speech on all issues aside from these gun-related subjects. The Moratorium "thus slips from the neutrality of time, place, and circumstance [**26] into a concern about content. This is never permitted." Mosley, 408 U.S. at 99 (internal quotation marks and citation omitted). Notwithstanding this seemingly obvious conclusion, Defendants argue that "the fact that the [Moratorium] applies only to gun shows, and not all other types of events, does not transform it into a content-based regulation; otherwise, any legislative or regulatory action taken with respect to a particular type of activity or subject matter would be deemed to be content-based and subject to [*1245] strict scrutiny." [Doc. No. 12-1 at 25.] Defendants' reliance on McCullen v. Coakley, 573 U.S. 464, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014), for this argument is misplaced.

In McCullen, the regulation in question was a Massachusetts statute making "it a crime to knowingly stand on a 'public way or sidewalk' within 35 feet of an entrance to any place,

other than a hospital, where abortions are performed." McCullen, 573 U.S. at 469. In holding that the statute was content-neutral, the Supreme Court noted that the statute "does not draw content-based distinctions on its face," and stated that the statute "would be content based if it required 'enforcement authorities 'to examine the content of the message that is conveyed to determine whether' a violation has occurred." Id. at 479 (quoting FCC v. League of Women Voters of Cal., 468 U.S. 364, 383, 104 S. Ct. 3106, 82 L. Ed. 2d 278 (1984)). Here, in contrast, [**27] the content of a show or event, i.e., whether it is a gun show or is not a gun show, is determinative of whether it is eligible to hold an event at the Fairgrounds in 2019. Thus, whereas the buffer zone in McCullen may have had the "'inevitable effect' of restricting abortion-related speech more than speech on other subjects," id. at 480 (emphasis added), the Moratorium here has the *intended* effect of restricting gun-related speech more than speech on other subjects.

Defendants conflate the government interests purportedly served by the Moratorium with the determination of whether the Moratorium is content-based or content-neutral. A court, however, must consider "whether a law is content neutral on its face *before* turning to the law's justification or purpose." Reed, 135 S.Ct. at 2228 (emphasis in original). Ignoring Reed, Defendants argue that because, according to Defendants, the Moratorium is focused on public safety issues, it "'serves purposes unrelated to the content of expression,' and so should be 'deemed neutral.'" [Doc. No. 12-1 at 26 (quoting McCullen, 573 U.S. at 480).]

Defendants' justifications for the Moratorium may be relevant to the determination of whether it satisfies the requisite level of scrutiny, but they do not render [**28] a content-based law content neutral. Reed, 135 S.Ct. at 2228 ("[A]n innocuous justification

cannot transform a facially content-based law into one that is content-neutral."). In *McCullen*, because the statute was facially neutral, the Court needed to go beyond the face of the statute to determine whether its purposes were intended to be content-based. See *Reed*, 135 S.Ct. at 2228 ("Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny."). Here, on the other hand, the Moratorium is content-based on its face, the content being gun shows, which include speech related to guns and gun issues. "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." *Id.* at 2228. Defendants' proffered content-neutral justification does not render the Moratorium, a facially content-based policy, content-neutral.

Indeed, because the speech at gun shows is likely to be predominantly, **[**29]** if not exclusively, favorable to guns and gun rights, "[i]n its practical operation," the Moratorium "goes even beyond mere content discrimination, to actual viewpoint discrimination." *R.A.V.*, 505 U.S. at 391. "A regulation engages in viewpoint **[*1246]** discrimination when it regulates speech based on the specific motivating ideology or perspective of the speaker." *Interpipe Contracting, Inc. v. Becerra*, 898 F.3d 879, 899 (9th Cir. 2018) (internal quotation marks and citation omitted). "The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed." *R.A.V.*, 505 U.S. at 386. "Discrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828, 115 S. Ct. 2510,

132 L. Ed. 2d 700 (1995). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the *First Amendment* is all the more blatant." *Id.* at 829. "Viewpoint discrimination is the most noxious form of speech suppression." *R.A.V.*, 505 U.S. at 386. Here, it is difficult to conceive of the Moratorium on gun shows as anything other than a restriction of speech with a *pro-gun* or *pro-second amendment* viewpoint. Normally, this conclusion is all but dispositive. *Sorrell*, 564 U.S. at 571 ("In the ordinary case it is all but dispositive to conclude that a law is content-based and, in practice, viewpoint-discriminatory.").

In this context, whether the Fairgrounds is a **[**30]** public forum, as Plaintiffs argue, or a "limited public forum" or nonpublic forum, as Defendants argue, has no impact on the result here. The Supreme Court has "identified three types of fora: the traditional public forum, the public forum created by government designation, and the nonpublic forum." *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 802, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985). Regardless of the type of forum, however, "the fundamental principle that underlies [the Court's] concern about 'content-based' speech regulations [is] that 'government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.'" *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48-49, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986) (quoting *Mosley*, 408 U.S. at 95-96). "Although a speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum, or if he is not a member of the class of speakers for whose special benefit the forum was created, the government violates the *First Amendment* when it denies access to a speaker solely to suppress the point of view

he espouses on an otherwise includible subject." Cornelius, 473 U.S. at 806 (internal citations omitted); see also Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez, 561 U.S. 661, 679, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010) (holding that any restrictions based on the limited or nonpublic nature of the forum are subject to a "key caveat: Any access [****31**] barrier must be reasonable and viewpoint neutral.").

"The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place." Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983); see also Cinevision Corp. v. City of Burbank, 745 F.2d 560, 571 (9th Cir. 1984) ("Although the City was not required to open the Starlight Bowl and is not required to leave it open indefinitely, it cannot, absent a compelling governmental interest, open the forum to some and close it to others solely in order to suppress the content of protected expression."). "Once a forum is [***1247**] opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." Mosley, 408 U.S. at 96 (internal footnote omitted). "Reasonable time, place and manner regulations are permissible, [but] a content-based prohibition must be narrowly drawn to effectuate a compelling state interest." Perry Educ. Ass'n, 460 U.S. at 46. Here, having opened up the Fairgrounds to shows of all types that are put on by all members of the public, the District cannot restrict use of the Fairgrounds based on the content, [****32**] let alone viewpoint, expressed by the show and its participants. See Martinez, 561 U.S. at 685 ("Once it has

opened a limited public forum, . . . the State must respect the lawful boundaries it has itself set.") (internal quotation marks and brackets omitted).

In sum, "[i]t is well established that '[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to a public discussion of an entire topic." Reed, 135 S.Ct. at 2230 (quoting Consol. Edison Co. v. Pub. Serv. Comm'n of New York, 447 U.S. 530, 537, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980)); cf. Rosenberger, 515 U.S. at 831 ("If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint."). At a minimum, based on the allegations in the complaint, the Moratorium is a "content-based" regulation of speech. Because the Moratorium regulates speech based on its content, it is subject to strict scrutiny, meaning "it must be narrowly tailored to promote a compelling Government interest." Playboy Entm't Grp., Inc., 529 U.S. at 813. Further, because the District is a political body, its decision on the Moratorium "must be scrutinized most carefully—if [****33**] only because such a body is at all times, by its very nature, the object of political pressures." Cinevision Corp., 745 F.2d at 575.

b. Compelling State Interest

Having determined that the Moratorium is a content-based restriction of speech, it is presumptively unconstitutional. Reed, 135 S.Ct. at 2226; R.A.V., 505 U.S. at 382. Content based restrictions are rarely upheld. "When the Government restricts speech, the

Government bears the burden of proving the constitutionality of its actions." McCutcheon v. Fed. Election Comm'n, 572 U.S. 185, 210, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014) (quoting Playboy Entm't Grp., Inc., 529 U.S. at 816). Thus, the District bears the burden of proving that the Moratorium is narrowly tailored to promote a compelling government interest.

In its briefs (and again at the hearing), the District relies vague claims that the Moratorium is based on an interest in "public safety." Both the language of the Moratorium itself and the District's briefs, however, are largely silent as what members of the public are endangered by gun shows or the speech therein. Nor does the District point to any evidence that attendees of gun shows at the Fairgrounds have suffered injuries in the past or are in greater danger than attendees of other events at the Fairgrounds.⁶ Indeed, at the [*1248] hearing, counsel for the District could not answer why, after years of gun shows at the Fairgrounds, the [**34] District decided to enact the Moratorium when it did. The District's "[m]ere speculation of harm does not constitute a compelling state interest." Consol. Edison Co. of New York, 447 U.S. at 543. A general fear that people attending gun shows will violate state and local laws about gun possession or even commit acts of gun violence in the community upon leaving the show cannot justify the Moratorium. See Cinevision Corp., 745 F.2d at 572 ("[A] general fear that state or local narcotics or other laws will be broken by people attending the concerts cannot justify a content-based restriction on expression."); see also Sorrell, 564 U.S. at 577 ("Those who seek to censor or burden free expression often assert that disfavored speech has adverse effects. But the

fear that people would make bad decisions if given truthful information cannot justify content-based burdens on speech.") (internal quotation marks and citation omitted); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 773, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976) (holding that a State may not "completely suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients"); Bay Area Peace Navy v. United States, 914 F.2d 1224, 1228 (9th Cir. 1990) ("[The government] is not free to foreclose expressive activity in public areas on mere speculation about danger.").

Although "[t]here is no doubt that [**35] the City has a substantial interest in safeguarding its citizens against violence," Edwards v. City of Coeur d'Alene, 262 F.3d 856, 863 (9th Cir. 2001), "even the most legitimate goal may not be advanced in a constitutionally impermissible manner," Carey v. Brown, 447 U.S. 455, 464-65, 100 S. Ct. 2286, 65 L. Ed. 2d 263 (1980). "[M]erely invoking interests . . . is insufficient. The government must also show that the proposed communicative activity endangers those interests." Kuba v. 1-A Agric. Ass'n, 387 F.3d 850, 859 (9th Cir. 2004) (citation omitted). Thus, "the First Amendment demands that municipalities provide tangible evidence that speech-restrictive regulations are necessary to advance the proffered interest in public safety." Edwards, 262 F.3d at 863 (internal quotation marks and citation omitted). That the District enacted the Moratorium without any evidence of actual public safety concerns caused by the speech that takes place at gun shows (as opposed to general gun violence in the community) makes it exceedingly likely that the District will not be able to satisfy its burden of demonstrating the existence of a compelling state interest for the Moratorium.

⁶ Plaintiffs, on the other hand, submitted records from the San Diego County Sheriff's office indicating that recent gun shows at the Fairgrounds did not result in any major safety incidents. [Doc. No. 14-2 at 13-46.]

c. *Narrowly Tailored*

Regardless, even if the Moratorium serves a compelling governmental interest in "public safety", the Moratorium is not narrowly tailored to serve that interest. "To meet the requirement of narrow tailoring, **[**36]** the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495. Indeed, the complete ban on gun shows effected by the Moratorium would not even survive lesser scrutiny because it unquestionably burdens substantially more **[*1249]** speech than necessary to accomplish the District's alleged goal of ensuring public safety. Cf. *id.* at 496-97 (applying lesser scrutiny applicable to content neutral speech restrictions to statute creating buffer zones around abortion clinics and holding that it was not narrowly tailored to the government's claimed interests, one of which was public safety); *Turner Broad. Sys., Inc.*, 520 U.S. at 213-14 ("Under intermediate scrutiny, the Government may employ the means of its choosing so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and does not burden substantially more speech than is necessary to further that interest.") (internal quotation marks and ellipses omitted). In reality, the District appears to have taken "the path of least resistance," because of a belief that the gun-related speech that takes place **[**37]** at gun shows "is associated with particular problems," namely gun violence in the community. See *McCullen*, 573 U.S. at 485. Such a path is not narrowly tailored to the District's stated interest in public safety and therefore does not survive scrutiny.

Accordingly, for the foregoing reasons, Plaintiffs have a likelihood of success on their

First Amendment free speech claims.

2. Equal Protection Claim Against the District

Because the Moratorium treats some events (and therefore event promoters, vendors, and attendees) differently from others, it implicates the Equal Protection Clause of the Fourteenth Amendment as well. *Mosley*, 408 U.S. at 94-95 ("Because Chicago treats some picketing differently from others, we analyze this ordinance in terms of the Equal Protection Clause of the Fourteenth Amendment."); see also *Dariano v. Morgan Hill Unif. Sch. Dist.*, 767 F.3d 764, 779-780 (9th Cir. 2014) ("Government action that suppresses protected speech in a discriminatory manner may violate both the First Amendment and the Equal Protection Clause.") The analysis of this claim is "essentially the same" as under the First Amendment. *Dariano*, 767 F.3d at 780.

"The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives." *Mosley*, 408 U.S. at 101. "When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully **[**38]** scrutinized." *Carey*, 447 U.S. at 461-62. "Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Mosley*, 408 U.S. at 96.

As with the First Amendment, "under the Equal Protection Clause, . . . [o]nce a forum is

opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." *Id. at 96* (internal footnote omitted). Thus, the District may not maintain that gun shows pose a safety risk unless those shows are clearly more dangerous than the shows and events the District permits at the Fairgrounds. *Id. at 100* ("[U]nder the Equal Protection Clause, Chicago may not maintain that other picketing [*1250] disrupts the school unless that picketing is clearly more disruptive than the picketing Chicago already permits."). As discussed above, the District, who has the burden of proof, offers no evidence that gun shows pose a greater safety risk to the public than any other shows at the Fairgrounds. General statements about gun violence or dislike [**39] of gun culture do not justify the unequal treatment resulting from the Moratorium. "(I)n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Id. at 101* (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)). Accordingly, Plaintiffs also have a likelihood of success on their claims under the Equal Protection Clause of the Fourteenth Amendment.

B. Irreparable Harm

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); see also *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights unquestionably constitutes

irreparable injury.") (internal quotation marks omitted). "Under the law of this circuit, a party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim." *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005) (internal brackets and citation omitted). Here, the harm suffered by Plaintiffs is the violation of their First Amendment rights. By demonstrating a likelihood of success on the merits of their First Amendment claims, Plaintiffs have demonstrated that irreparable harm will result from the continued restriction of their protected speech.

C. Balance of Equities

Balanced against the irreparable injury [**40] faced by Plaintiffs as a result of the continued enforcement of the Moratorium is the District's interest in evaluating the feasibility of gun shows at the Fairgrounds and in determining whether gun shows impact public safety. Considering the complete lack of evidence of any public safety concerns resulting from gun shows at the Fairgrounds (or at least any greater concerns than those resulting from any show at the Fairgrounds), the scales tilt decidedly in favor of Plaintiffs. The District is fully able to revise its policies and procedures for gun shows while gun shows continue to occur at the Fairgrounds. Indeed, the District even allowed a gun show to occur in 2018 after it passed the Moratorium banning gun shows in 2019.

D. Public Interest

For similar reasons, the public interest favors Plaintiffs' exercise of their First Amendment rights. The Ninth Circuit has "consistently recognized the significant public interest in

upholding First Amendment principles." Doe v. Harris, 772 F.3d 563, 583 (9th Cir. 2014). Neither the District's speculative general interest in "public safety" nor its specific interest in re-evaluating its gun show policies and procedures outweigh the public interest in ensuring that First Amendment free speech rights are upheld.

VI. Conclusion

For the foregoing **[**41]** reasons, Plaintiffs claims against the individual defendants are dismissed, the motion to dismiss claims against the District is denied, and the District is enjoined from enforcing the Moratorium, **[*1251]** as stated in the Court's June 18, 2019 order.

Dated: June 25, 2019

/s/ Cathy Ann Bencivengo

Hon. Cathy Ann Bencivengo

United States District Judge

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EXHIBIT 6



AB-893 22nd District Agricultural Association: firearm and ammunition sales at the Del Mar Fairground:

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Assembly Bill No. 893

CHAPTER 731

An act to add Section 4158 to the Food and Agricultural Code, relating to agricultural districts.

[Approved by Governor October 11, 2019. Filed with Secretary of State October 11, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 893, Gloria. 22nd District Agricultural Association: firearm and ammunition sales at the Del Mar Fairgrounds.

Existing law generally regulates the transfer of firearms and divides the state into agricultural districts. The 22nd District Agricultural Association is comprised of the County of San Diego and includes the Cities of Del Mar and San Diego. A violation of the statutes governing agricultural districts is generally a misdemeanor.

This bill would, on and after January 1, 2021, prohibit the sale of firearms and ammunition at the Del Mar Fairgrounds property located in the 22nd District Agricultural Association, as specified, and would thereby make a violation of that prohibition a misdemeanor. The bill would exclude from its provisions a gun buyback event held by a law enforcement agency.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The property known as the Del Mar Fairgrounds (DMFG) is owned by the State of California and managed by the Board of Directors of the 22nd District Agricultural Association (22nd DAA). The 22nd DAA has leased a portion of the DMFG to entities that sponsor marketplaces popularly known as "gun shows," at which firearms and ammunition and other items are sold to the public approximately five times a year.

(b) The United States has experienced many gun-related tragedies with increasing severity and frequency in the last 30 years, including mass murders at Columbine High School, Sandy Hook Elementary School, and Marjory Stoneman Douglas High School, and an increasing rate of suicide by gun among all levels of society.

(c) The Cities of Del Mar, Solana Beach, and Encinitas have adopted resolutions requesting that the DMFG Board discontinue leasing any portion of its property for use as a gun show. A committee appointed by the Board of Directors of the 22nd DAA to study gun shows conducted research, including inspection tours of the Del Mar Gun Show by members of the committee as well as by several other members of the DMFG Board.

(d) On September 11, 2018, the DMFG Board, by a vote of eight in favor and one against, adopted a recommendation to consider the feasibility of conducting gun shows for only educational and safety training purposes and to prohibit the possession of guns and ammunition on state property.

(e) Gun shows bring grave danger to a community, and the following dangerous incidents, among others, have occurred at gun shows, including, but not limited to, an official vendor accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Armed Prohibited Persons System, and illegal importation of large-capacity magazines.

(f) Each of the foregoing arrests was based on gun show enforcement efforts under the Armed Prohibited Persons System, and the department announced in late 2018 that these gun show enforcement efforts had been discontinued and, between the years 2013 and 2017, the San Diego County Sheriff recorded 14 crimes at the Crossroads of the West Gun Shows at the DMFG.

(g) Promoters maintain relationships with a core group of vendors, some selling guns and some selling other merchandise, who travel as the schedule dictates from city to city and state to state and in the West, for example, many of the same vendors can be seen at Crossroads of the West Gun Shows from San Francisco, California, to Tucson, Arizona.

SEC. 2. Section 4158 is added to the Food and Agricultural Code, to read:

4158. (a) Notwithstanding any other law, an officer, employee, operator, lessee, or licensee of the 22nd District Agricultural Association, as defined in Section 3873, shall not contract for, authorize, or allow the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego, the City of Del Mar, the City of San Diego, or any successor or additional property owned, leased, or otherwise occupied or operated by the district.

(b) For purposes of this section:

(1) The definition of "firearm" means the term as included in Section 12001 of the Penal Code.

(2) The term "ammunition" includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.

(c) This section does not apply to a gun buyback event held by a law enforcement agency.

(d) This section shall become operative on January 1, 2021.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXHIBIT 7

Date of Hearing: March 26, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 893 (Gloria) – As Introduced February 20, 2019

SUMMARY: Prohibits, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar and thereby creates a misdemeanor offense for a violation of that prohibition. Specifically, **this bill:**

- 1) Prohibits any officer, employee, operator, or lessee of the 22nd District Agricultural Association, as defined, from authorizing, or allowing the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar or any successor or additional property owned, leased, or otherwise occupied or operated by the district.
- 2) Provides that the term “ammunition” includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.
- 3) Provides that the prohibition on firearms and ammunitions sales at the Del Mar Fairgrounds does not apply to gun buy-back events held by a law enforcement agency.
- 4) States that this section will become operative on January 1, 2021.

EXISTING LAW:

- 1) Divides the state in agricultural districts and designates District 22 as San Diego County. (Food and Agr., §§ 3851, 3873.)
- 2) Allows for the establishment of District Agricultural Associations within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest. (Food & Agr. Code, § 3951.)
- 3) Provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)
- 4) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

- 5) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)
- 6) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)
- 7) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)
- 8) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)
- 9) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)
- 10) Specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is an ever apparent link between the gun violence we see virtually every week and the number of guns in our communities. Additionally, the State of California should not be profiting or benefitting from the sale of firearms. This bill demonstrates that we value people over guns and public safety above all

"Fundamentally, I believe it is wrong for the State of California to profit or to benefit from the sale of firearms and ammunition. I acknowledge that gun ownership is a Constitutional right in the United States, and I know that there are plenty of responsible gun owners out there. However, the fact remains that widespread accessibility to these deadly weapons produces a public safety threat that we must address."
- 2) **Gun Shows:** A "gun show" is a trade show for firearms. At gun shows, individuals may buy, sell, and trade firearms and firearms-related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *Gun Shows: Brady Checks and Crime Gun Traces*, January 1999, available at: <https://www.atf.gov/file/57506/download>, [as of March 18, 2019].)

According to the NRA's Institute for Legislative Action (NRA-ILA), less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.

(NRA-ILA, <https://www.nra-ila.org/get-the-facts/background-checks-nics>.) However, according to a report published by UC Davis, gun shows have been identified as a source for illegally trafficked firearms. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 20, 2019].) Though violent criminals do not appear to regularly purchase their guns directly from gun shows, gun shows have received criticism as being “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.” (Gerney, *The Gun Debate 1 Year After Newtown*, Center for American Progress, December 13, 2013, available at: <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>, [as of March 18, 2019].)

A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. (<https://www.gao.gov/assets/680/674570.pdf>, [as of March 15].) 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 15].)

- 3) Gun Show Regulations in California:** In 1999, California enacted the nation’s broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor’s employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer’s willful failure to comply with the specified requirements.

In California, gun transactions at gun shows are treated no differently than any other private party transaction. This means that such transfers must be completed through a licensed California dealer. Such a transfer requires a background check and is subject to the mandatory ten day waiting period prior to delivering the firearm to the purchaser.

California’s strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., “In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries,” *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

4) **Current State of Gun Shows at the Del Mar Fairgrounds:** According to a Fairgrounds press release, last year the 22nd District Agricultural Association's Board of Directors voted 8 to 1 to not consider any contracts with producers of gun shows beyond Dec. 31, 2018, until it has adopted a more thorough policy regarding the conduct of gun shows. (Available at: http://www.delmarfairgrounds.com/index.php?fuseaction=about.press_details&newsid=1396 [as of March 20, 2019].) The policy is to be presented to the Board no later than December, 2019 and would:

- Consider the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property,
- Align gun show contract language with recent changes in state and federal law
- Detail an enhanced security plan for the conduct of future shows
- Propose a safety plan
- Consider the age appropriateness of such an event
- Grant rights for the DAA to perform an audit to ensure full compliance with California Penal Code Sections 171b and 12071.1 and 12071.4. These audit rights may be delegated at the discretion of the 22nd DAA. (*Id.*)

According to local reporting, the operator of the Del Mar Fairgrounds gun show has filed a lawsuit challenging the Board of Directors' decision on the grounds that it violates the U.S. Constitution's First Amendment guarantee to free expression. (Williams, *Lawsuit to hang up Del Mar Fairgrounds gun show policy recommendations*, Del Mar Times, March 15, 2019, available at: <https://www.delmartimes.net/news/sd-cm-nc-gun-show-20190315-htmlstory.html>, [as of March 20, 2019].)

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds.

5) **Veto Messages on Previous Attempts to Ban Gun Shows in Agricultural Districts:**

There have been several legislative attempts to regulate gun shows in Agricultural District 1A in San Mateo and San Francisco Counties at a location commonly known as the "Cow Palace." The Cow Palace is substantially similar to the Del Mar Fairgrounds inasmuch as it is a state-owned property located within the jurisdiction of a county. SB 221 (Wiener), of 2018, SB 475 (Leno) of 2013, SB 585 (Leno) of 2009, and others, all attempted to either ban gun shows at the Cow Palace altogether, or require prior approval from the county Board Supervisors prior to entering into a contract for holding a gun show there. All three attempts were vetoed by the Governor.

In regards to SB 221, Governor Brown stated: "This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow

Palace. This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger. The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.”

SB 475 was also vetoed by Governor Brown with the following message: “This bill requires the District Agricultural Association 1-A (Cow Palace) to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. I encourage all District Agricultural Associations to work with their local communities when determining their operations and events. This bill, however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.”

SB 585 was vetoed by Governor Schwarzenegger, who stated: “This bill would prohibit the sale of firearms and ammunition at the Cow Palace. This bill would set a confusing precedent at the state level by statutorily prohibiting one District Agricultural Association (DAA) from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, this bill would result in decreased state and local tax revenues by restricting events at the Cow Palace.”

- 6) **Argument in Support:** According to the *NeverAgainCA*: “NeverAgainCA organized large, peaceful protests at every gun show at the Del Mar Fairgrounds. attended and spoke at every meeting of the 22nd District Agricultural Association Board, and joined students protesting gun violence and gun shows at many area schools. NeverAgainCA presented resolutions calling for the elimination of the gun shows at the Del Mar Fairgrounds to the City Councils of the adjacent cities of Del Mar, Solana Beach and Encinitas; these resolutions were adopted and are part of the record of this hearing. Candidate and now Congressman Mike Levin addressed several of our rallies against the gun shows. At the request of NeverAGainCA, then Lt. Governor, now Governor, Gavin Newsom, called on the Fair Board to end gun shows and put an end to valuing the sale of firearms above the value of lives.

“NeverAgainCA is proud to support AB 893. The residents of the 78th AD and adjacent districts, and their elected representatives, have demonstrated the broad public support for ending gun shows at the Del Mar Fair Grounds on a permanent basis.”

- 7) **Argument in Opposition:** According to the *California Rifle and Pistol Association, Inc.*: “Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows (Refer Exhibit #2 attached). Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

...

“Gun shows are very much a family event. Many of them have training and education, guest speakers, lifestyle vendors, safety training, and more. Ever hear of a shooting spree at a gun

show? No, because people that attend gun shows are the law-abiding citizens that attend for the educational value and to stay up on new products that are available. It is no different than any other trade show that occurs in other industries across the state. Criminals would never subject themselves to this much scrutiny and regulation in the hopes of getting their hands on a firearm. These types of false and scare-tactic narratives have no place in modern discourse.”

- 8) **Related Legislation:** SB 281 (Wiener), among other things, would prohibit the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County.
- 9) **Prior Legislation:**
 - a) SB 221 (Wiener) of the 2017-18 Legislative Session, would have prohibited the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County. SB 221 was vetoed by Governor Brown.
 - b) SB 475 (Leno), of the 2013-14 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 475 was vetoed by Governor Brown.
 - c) SB 585 (Leno), of the 2009-10 Legislative Session, would have prohibited events at which any firearm or ammunition is sold at the Cow Palace, as specified. SB 585 was vetoed by Governor Schwarzenegger.
 - d) AB 2948 (Leno), of the 2007-08 Legislative Session, would have prohibited the sale of firearms or ammunition at the Cow Palace. AB 2948 failed passage on the Senate Floor.
 - e) SB 1733 (Speier), of the 2003-04 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 1733 failed passage on the Assembly Floor.
 - f) AB 295 (Corbett), Chapter 247, Statutes of 1999, established the Gun Show Enforcement and Security Act of 2000, which includes a number of requirements for producers that promote gun shows.
 - g) AB 1107 (Ortiz), of the 1997-98 Legislative Session, would have authorized any city, county or agricultural association to prohibit gun sales at gun shows or events. AB 1107 failed in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Student Activists
City of Del Mar
City of Encinitas

City of Solana Beach
NeverAgainCA

Oppose

B & L Productions, d.b.a. Crossroads of the West Gun Shows
California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute For Legislative Action
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters
Western Fairs Association

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

EXHIBIT 8

Inside Gun Shows

What Goes on
When Everybody Thinks
Nobody's Watching

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Copies may be downloaded at no charge:
<http://www.ucdmc.ucdavis.edu/vprp>.

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I acknowledge with gratitude the contributions of Jeri Bonavia of the Wisconsin Anti-Violence Effort. She put gun shows on my radar and is an ace straw-purchase spotter. Thanks also to Barbara Claire and Vanessa McHenry of the Violence Prevention Research Program for their highly competent technical assistance.

This report and the work on which it is based could not have been completed without the support, made manifest in many ways, of my colleagues in the Department of Emergency Medicine. Thanks to all.

The project would never have been undertaken but for the uncompromising support given by the University of California to the principle that the pursuit of knowledge is a great privilege and therefore an obligation, come what may. Stan Glantz once wrote that this behavior is what makes the University of California a great public institution. He was right.

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Introduction

Gun shows are surrounded by controversy. On the one hand, they are important economic, social and cultural events with clear benefits for those who attend. On the other, they provide the most visible manifestation of a largely unregulated form of commerce in guns and, partly for that reason, are an important source of guns used in criminal violence.

The intent of this report is to document the broad range of what actually takes place at gun shows, with an emphasis on activities that appear to pose problems for the public's health and safety. Its purpose is not to inflame, but to inform. The report embodies its author's belief that objective evidence is beneficial to clear thought and sound action on important public matters.

Inside Gun Shows reflects observations made at 78 gun shows in 19 states, most of them during 2005-2008. Structured data on a subset of these shows were published previously.¹ During a period of exploratory work focused on developing methods for data collection, it became evident that descriptive anecdotes and quantitative evidence would never be adequate to the task. A camera was added.

It was important here, as often in field research, to avoid a Hawthorne effect: change in what is being observed introduced by the process of observation itself. For that reason conversation was kept to a minimum; no attempts were made to induce the behaviors that are depicted; criminal activity, when observed, was not reported; the camera was kept hidden.

It was also important to minimize any risk to individual persons, even though the behaviors being documented were occurring at events that were open to the public. No audio recordings were made, except of the author's own notes. Faces in the photographs have been obscured. The project was approved by the university's Institutional Review Board.

Readers should be aware that the author has worked collaboratively for many years with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the California Department of Justice. The Violence Prevention Research Program receives support from the National Institute of Justice for research on gun tracing data and from the California Department of Justice for work on firearm-related domestic violence. Material concerning those agencies appears in this report.

Reading the Report

The following comments on the report's organization may be helpful. Chapter 1 reviews existing research and other evidence on the structure of gun commerce generally, the sources of guns used in crime, and the place of gun shows in that broader context. Chapter 2 takes up the ordinary details of gun show operations and presents a photographic overview of a day at a gun show. Chapters 3 through 6 are largely photo-essays. Chapter 3 takes up undocumented and illegal gun commerce; its core is a series of photo-narratives of private party gun sales and of what appear to be illegal "straw" purchases of guns. Chapter 4 focuses on the weaponry and related merchandise available at gun shows. Chapters 5 and 6 deal briefly with cultural, political, and social aspects of these events, again emphasizing aspects that appear problematic. Chapter 7 assesses these observations and makes recommendations for intervention.

The following terminology is used. Gun sellers who have federal firearms licenses are referred to as *licensed retailers*, whether they are gun dealers or pawnbrokers. Private parties without federal firearms licenses who sell guns are of two types: *unlicensed vendors*, who rent table space and display their guns from a fixed location, and *individual attendees*, who may be at the show primarily as customers but have also brought guns to sell. The occasional attendee who is both an active seller and buyer of guns is a *gun trader*. Sales by unlicensed vendors and individual attendees are collectively referred to as *private party gun sales*.

For simplicity's sake, the term *assault weapon* will be used to describe semiautomatic, civilian versions of selective fire or fully automatic military firearms.

A Final Note

This report will be most useful if it is treated as an introduction to a complex and important subject. Readers are encouraged to take a weekend—even better, take several—and see for themselves.

References

1. Wintemute GJ. Gun shows across a multistate American gun market: observational evidence of the effects of regulatory policies. *Injury Prevention*. 2007;13:150-156.

Gun Shows in Context

1

The United States and Gun Violence

Americans owned between 220 and 280 million guns in 2004, including at least 86 million handguns.¹ Millions of guns are added to that total each year. Just ten years earlier, America's gun stockpile was estimated to hold 192 million weapons.² As of 2004, some 38% of households and 26% of all adults had at least one gun; 41% of gun-owning households, and 48% of individual gun owners, had four guns or more.¹

More than 360,000 violent crimes involving guns, including an estimated 11,512 homicides, were committed in the United States in 2007.^{3,4} After dropping steadily through much of the 1990s,⁵ rates of gun-related and other violent crimes have changed little in recent years and have risen rapidly in some areas.^{6,7} Preliminary data for 2008⁸ and early 2009⁹ suggest a downward trend, which would be very good news, but rates of gun-related violence remain unacceptably high.

American Exceptionalism

America's rates of gun ownership are unique. We account



Assault rifles for sale, Dayton, Ohio.

Inside Gun Shows

for less than 5% of the world's population but 35% to 50% of all firearms in civilian hands.¹⁰ Not surprisingly, death rates from gun violence are far higher in the United States than in other high-income countries.^{11, 12}

But America is not a uniquely violent society. As Franklin Zimring and Gordon Hawkins demonstrated some years ago,¹³ our rates of violent crime do not exceed those of other high-income countries—though they are above average. It is our rate of death from violent crime that is unique, and this high mortality rate results from our unique propensity to use firearms to commit violent crimes.

Mexico and Canada pose very different images when it comes to violent crime. [They] have one thing in common when it comes to armed violence—the underground gun market in the United States, which is a major source of supply to criminals and gangs in both nations...The USA represents a low-cost supplier of guns both because of lax regulations and of the great number of guns already circulating in private hands.

—Researchers Philip Cook, Wendy Cukier, and Keith Krause.¹⁵

There is “no reason why [Mexican] drug cartels would go through the difficulty of acquiring a gun somewhere else in the world and transporting it to Mexico when it is so easy for them to do so from the United States.

—U.S. and Mexican government and law enforcement officials interviewed by the Government Accountability Office for its study of cross-border gun trafficking.¹⁷

Exporting Crime Guns

Sadly, American firearms now also figure prominently in crimes committed elsewhere. Most crime guns that are recovered by law enforcement agencies in major Canadian cities, and for which a point of origin can be established, are imported illegally from the United States.^{14, 15} The problem has become particularly acute in Mexico, where drug-related gun violence has become so prevalent that the United States Joint Forces Command has warned of a possible “rapid and sudden collapse” with “serious implications for [US] homeland security.”¹⁶ By April 2008, Mexican drug trafficking organizations had established a presence in at least 46 U.S. states.¹⁷ Of crime guns recovered in Mexico since 2006 for which the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has established a chain of ownership, more than 90% come across the border from the United States, and nearly 70% are American-made.^{17, 18}

Gun Shows and Gun Violence: An Introductory Case

At lunchtime on April 20, 1999, high schoolers Eric Harris and Dylan Klebold shot and killed 12 fellow students and a teacher at Columbine High School in Littleton, Colorado, and wounded 23 others. After exchanging fire with the police, they shot themselves.

All four guns used in the massacre were purchased at local gun shows, but none of them by Harris and Klebold.¹⁹ Three guns—two Savage shotguns and a Hi-Point 9mm carbine—were bought for them by an 18-year-old friend, Robyn Anderson, at a Tanner Gun Show near Denver the previous December.

Anderson bought the guns from private parties rather than from licensed gun retailers. “While we were walking around [the show],” she would later testify, “Eric and Dylan kept asking sellers if they were private or licensed. They wanted to buy their guns from someone who was private—and not licensed—because there would be no paperwork or background check.”²⁰ Anderson stressed that “[a]ll I had to do was show my driver’s license to prove I was 18. I would not have bought a gun for Eric and Dylan if I had had to give any personal information or submit to any kind of check at all.”²¹

Just the day before, in fact, Harris and Klebold had tried to buy guns themselves at the show. The boys were 17 years old at the time. No one who would sell to them, but they were told that they could buy the guns if they brought someone with them who was at least 18 years old. Anderson believed it should have been obvious that she was buying the guns for Harris and Klebold; though she was making the payment, “they were handling the guns and asking the questions.”²²

The fourth gun, a semiautomatic TEC-DC9 assault pistol, was bought at a Tanner Gun Show in August 1998 by Mark Manes—again from a private party, not a licensed retailer—and sold to Harris and Klebold the following January.¹⁹ Because the TEC-DC9 is a handgun, Manes was charged with providing a firearm to a minor (Harris and Klebold were still 17 when they bought the gun).

Anderson’s rifle and shotgun purchases broke no federal or state laws, and she was not charged with any crime. J. D. Tanner, promoter of the shows, had this to say about her gun purchases: “All I can say is apparently it was all done legally. That makes me have a good feeling.”²³

The first Tanner Gun Show held after the massacre took place the weekend of June 5 and 6; Tanner had canceled a show scheduled for the weekend after the shootings. On June 6, Corey Tucker, age 18, and David Winkler, age 17, used \$600 in cash provided by the Colorado Coalition Against Gun Violence to buy a TEC-9 pistol similar to the gun used by Harris and Klebold. They believed they were buying from a private party—there was apparently no evidence to the contrary—and their intent was to demonstrate how easily this could be done. “He didn’t ask me my name or my age,” Tucker said at a news conference the following week, and there was no identification check.²⁴ But the seller had been interviewed at the show on June 5 by *Denver*

*While we were walking around, Eric and Dylan kept asking sellers if they were private or licensed. They wanted to buy their guns from someone who was private—and not licensed—because there would be no paperwork or background check.*²⁰

*All I had to do was show my driver’s license to prove I was 18. I would not have bought a gun for Eric and Dylan if I had had to give any personal information or submit to any kind of check at all.*²¹

—Robyn Anderson, on buying three of the guns used in the Columbine High School shootings.

All I can say is apparently it was all done legally. That makes me have a good feeling.

*—J. D. Tanner of Tanner Gun Shows.*²³

Post reporter David Olinger, who was writing a story on the resumption of the Tanner shows. He was Terry Kern, a licensed gun retailer and gun store owner. When Olinger contacted him following Tucker and Winkler’s news conference, Kern confirmed that he had sold the gun. But when told that his failure to document the sale or perform any identification check had become public knowledge, “Kern changed his account. The sale ‘didn’t have anything to do with me,’ he said.”²⁴

The sale was investigated by the Bureau of Alcohol, Tobacco and Firearms (ATF) and determined to have been illegal. Kern surrendered his firearms license.²⁵

Promoter J. D. Tanner himself sells guns at Tanner Gun Shows as an unlicensed vendor. A year after the massacre in Littleton, the prospective buyer of a handgun asked him, “You have to do a background check on this?” “No,” he replied, “there’s no law says I have to.”²⁶

A Paradox

The events surrounding the Columbine massacre exemplify many of the difficult problems posed by gun shows. Prohibited persons are able to acquire guns by using others as their agents. Guns can be sold anonymously, without background checks or records. Sellers, including licensed retailers, can be corrupt.

There is solid evidence that gun shows are an important source of crime guns, which we will review later in the chapter. The best of that evidence comes from ATF investigations of illegal gun trafficking—the organized procurement of guns for criminal use.²⁷⁻²⁹

But two highly-regarded surveys conducted under the auspices of the U.S. Bureau of Justice Statistics have found that less than 2% of felons incarcerated for crimes involving guns acquired those guns themselves at gun shows.^{30, 31} This poses a seeming paradox: How can gun shows be an important source of crime guns if criminals get their guns elsewhere? To clarify this, we need to take a step back and examine American gun commerce generally and the role gun shows play in that larger enterprise.

America's Two Systems of Gun Commerce

Modern gun commerce operates under the terms of the oft-amended Gun Control Act of 1968 (GCA), which is enforced by ATF. Congress drew on its authority to regulate interstate commerce in drafting GCA as it had with GCA's predecessor, the Federal Firearms Act of 1938.³² Those "engaged in the business" of selling guns, as the law terms it, were required to obtain federal licenses and to buy and sell guns following specified procedures. Private parties who sold guns infrequently and not in the course of business were exempted, however. As a result, the United States has two very different systems of gun commerce that operate in parallel. At gun shows, they can operate literally side by side.

In 1995, Philip Cook and colleagues published a study that has done much to shape and clarify our understanding of how gun commerce operates.³³ By convention, the two systems mentioned above are referred to as the *primary market* and the *secondary market* for guns. The primary market comprises all transfers of guns by federally licensed firearms retailers such as gun dealers and pawnbrokers. These transfers may be of new or used guns.

The secondary market consists of transfers involving unlicensed sellers, such as the unlicensed vendors and individual attendees at gun shows.^{33,34} This secondary gun market is much larger than is commonly thought. According to the Police Foundation's National Survey of Private Ownership of Firearms, it accounted for approximately 40% of all gun acquisitions in the mid-1990s.^{2,33} Thirty years earlier, at the time Congress was debating the Gun Control Act, at least 25% of all gun acquisitions occurred through the private party transfers that were exempted from the terms of the Act.³⁵

As with other commodities, there is a *legal market* and an *illegal market* for guns. The movement of guns from the legal to the illegal market is the illegal market's chief source of supply. Gun trafficking is the intentional diversion of guns from the legal to the illegal market.

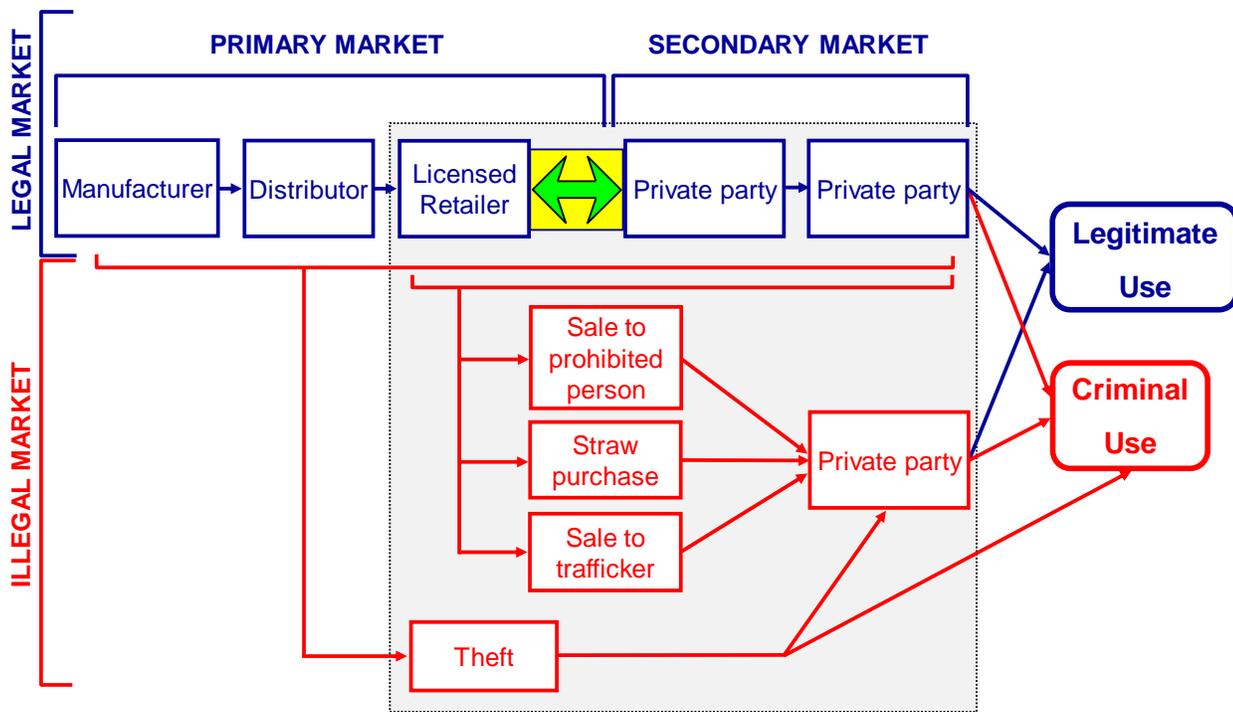
Finally, in considering how guns become available for use in crime, it is useful to consider *point sources* and *diffuse sources* of those guns.³⁴ Point sources are the venues linked to many known crime guns, usually licensed retailers. Diffuse sources are the many small-volume transactions between individuals that are

Inside Gun Shows

dispersed in time and place, such as transfers of single guns between acquaintances or fellow gang members. Point sources provide the most readily identifiable targets for prevention activity, but diffuse sources, taken together, are the leading proximate source of crime guns.

An overview of America’s gun markets is in Figure 1-1.

Figure 1-1. An overview of gun commerce in the United States. Activities within the shaded area occur at gun shows.



Gun manufacturers typically sell their products to distributors, who in turn sell them to federally licensed retailers such as gun dealers or pawnbrokers. Sales by manufacturers, distributors, and retailers make up the primary gun market. After its first sale by a licensed retailer to a private party, a gun may experience many subsequent sales or other changes of possession between private parties (through trades, for example). These transactions make up the secondary gun market. A private party may also sell his gun to a licensed retailer; most retailers sell both new and used guns. Guns enter the illegal market predominantly through sales to prohibited persons, straw purchasing and other trafficking operations, and theft. As with the legal market, guns in the illegal market may undergo many subsequent transfers of ownership. The shaded area of the figure identifies transactions that occur at gun shows.

Modified from Wintemute GJ. Where guns come from: the gun industry and gun commerce. *The Future of Children* 2002;12 (2):55-71.

Regulating Gun Sellers

Federal Policy

In order to sell a gun to you, whether at a gun show or elsewhere, a federally licensed retailer such as a gun dealer or pawnbroker must see your identification. He must have you complete a lengthy Firearms Transaction Record on which you certify, under penalty of perjury, that you are buying the gun for yourself and that you are not prohibited from owning it. He must submit your identifying information to the National Instant Criminal Background Check System (NICS), administered by the Federal Bureau of Investigation.

Staff at NICS perform a background check on you, comparing your information to the records in a centralized archive of criminal histories and other databases to verify your eligibility to purchase firearms. In over 90% of cases this background check is completed within minutes,³⁶ but if important information is missing you may have to wait up to three business days to get your gun. (In 17 states, the background check can be waived for holders of permits to carry concealed weapons.)

The retailer must keep a permanent record of your purchase. If you buy more than one handgun from him within five business days, the retailer must file a special report with ATF. (This requirement does not apply to purchases of rifles or shotguns.)

These procedural safeguards are intended to ensure that you are who you say you are, that you and not someone else will be the actual owner of the gun, and that you are not prohibited from owning it. They also establish a paper trail that will help law enforcement authorities link the gun to you if it is used in a crime later.

But a private party, such as an unlicensed vendor or individual attendee at a gun show, can sell you that same gun—or as many guns as you want—and none of these federal safeguards will be in place. Private party gun sellers are not required to ask for your identification. They *cannot* initiate a background check, except in Delaware, Nevada, and Oregon, where they may do so voluntarily. There are no forms for you to fill out, and no records need be kept.

Again, the provisions of the Gun Control Act regulating gun sales apply only to those who are engaged in the business of



Attendee with several guns for sale, Houston, Texas.

Inside Gun Shows

selling guns. As originally enacted, GCA established that standard but did not define it. ATF considered the sale of five or more firearms annually to signify engagement in the business,³⁴ and federal courts upheld convictions for selling guns without a license in cases involving as few as six firearms.³⁷

Any clear understanding of what “engaged in the business” might mean was abolished by the 1986 Firearm Owners Protection Act (FOPA). The new law ambiguously defined a person as “engaged in the business” who “devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.”³⁸ Muddying the waters further, FOPA defined “with the principal objective of livelihood and profit” to mean “that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.”³⁸ It specifically excluded from its definition of engagement in the business 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.”^{28, 38}

The practical result was to make it much more difficult to set an upper limit to the frequency of buying and selling guns that did not require a license and compliance with the procedural safeguards described above. Today, private parties sometimes sell large numbers of new and used firearms while claiming hobbyist status and exemption from the requirements imposed on licensed retailers.²⁸ ATF put it this way in an important study of gun shows in 1999: “Unfortunately, the effect of the 1986 amendments has often been to frustrate the prosecution of unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.”³⁷

State Policy

In 33 states, statutes regulating gun sales do not go beyond the ambiguous standards set by Congress. But 17 states regulate at least some sales by unlicensed private parties (Table 1-1). Some require that these transactions be routed through a licensed retailer; such transactions are subject to the same procedural safeguards that apply to the licensed retailer’s own sales.

There is no limit to the amount of guns that a private collector can have. Some have 10, some have 1,000. If I go to a gun show and state that this is my private collection, I am not required by law to ask you for identification, ask you to fill out any paperwork, or conduct a background check. It is simply cash and carry.

—Tom Mangan, Special Agent, ATF, Phoenix, Arizona.³⁹

Unfortunately, the effect of the 1986 amendments has often been to frustrate the prosecution of unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.

—ATF gun show study, 1999.³⁷

Other states require that purchasers obtain a permit or undergo a background check through a law enforcement agency.⁴⁰ Of these 17 states, six regulate all private party gun sales and nine more regulate all private party sales of handguns. Two states, Colorado and Oregon, regulate all private party sales at gun shows only.

Table 1-1. State regulation of private party gun sales*

State	Handgun Sales		Long Gun Sales	
	All Sales	Gun Shows Only	All Sales	Gun Shows Only
California	●		●	
Colorado		●		●
Connecticut	●			●
Hawaii	●		●	
Illinois	●		●	
Iowa	●			
Maryland	●			
Massachusetts	●		●	
Michigan	●			
Missouri	●			
Nebraska	●			
New Jersey	●		●	
New York	●			●
North Carolina	●			
Oregon		●		●
Pennsylvania	●			
Rhode Island	●		●	

* In the remaining 33 states, private party gun sales are not regulated.

From *Survey of state procedures related to firearm sales, 2005*. Washington, DC: Bureau of Justice Statistics; 2006. NCJ 214645. See Table 6.

Regulating Gun Buyers

Federal Policy

Federal statutes prohibit several categories of persons from purchasing or otherwise acquiring firearms, whether from a licensed retailer or a private party, and from possessing firearms at any time.⁴⁰ (See Table 1-2.) Most of the prohibitions arise from criminal convictions. These were expanded to include convictions for misdemeanor crimes of domestic violence in 1996. Convictions for other violent and firearm-related misdemeanors, such as battery and brandishing a firearm, do not prohibit firearm ownership under federal law. A federal prohibition is permanent unless it arises from a domestic violence restraining order, in which case it exists only as long as the restraining order remains in effect.

Persons less than 21 years of age may not purchase handguns from licensed retailers, but persons ages 18 to 20 may purchase handguns from private parties. Those less than 18 years of age cannot purchase long guns (rifles and shotguns).⁴⁰

Table 1-2. Categories of persons who are generally prohibited from purchasing or possessing firearms under federal law

A person is prohibited who:	
•	Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year
•	Is a fugitive from justice
•	Is an unlawful user of or addicted to any controlled substance
•	Has been adjudicated as a mental defective or has been committed to any mental institution
•	Who, being an alien, is illegally or unlawfully in the United States or has been admitted to the United States under a nonimmigrant visa
•	Who has been discharged from the Armed Forces under dishonorable conditions
•	Who, having been a citizen of the United States, has renounced his citizenship
•	Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person
•	Has been convicted in any court of a misdemeanor crime of domestic violence

From *United States Code*, Title 18, Section 922(d).

Federal law also makes it a felony to purchase a firearm from a licensed retailer for another person while representing oneself to be the intended owner of that firearm. Such transactions are known as surrogate or “straw” purchases. Although illegal, such purchases are common and are an important source of guns for prohibited persons. Straw purchases will be discussed in more detail later in the chapter and in Chapter 3.

State Policy

Many states have broadened the federal criteria for prohibiting the purchase and possession of firearms. Details for each state are available in the regularly-updated *Survey of State Procedures Related to Firearm Sales*, compiled by the Justice Department’s Bureau of Justice Statistics and available at <http://www.ojp.usdoj.gov/bjs/>. In California, for example, persons convicted of most violent misdemeanors are prohibited from possessing firearms for 10 years following their convictions.

California, Maryland, Virginia, and New Jersey also prohibit individuals from purchasing more than one handgun in any 30-day period. Because California has a centralized record of handgun purchases, this prohibition applies statewide, not just to multiple purchases from an individual retailer. Private party sales are exempted, however.

Screening and Denial

Since March 1, 1994, the Brady Handgun Violence Prevention Act has required background checks on persons purchasing firearms from federally licensed firearm retailers. Federal and state agencies have conducted 97,080,000 Brady Act background checks as of December 2008. The checks have resulted in 1,778,000 denials, for a denial rate of 1.8%.⁴¹

In 2008 alone, 9,901,000 background checks were conducted, 147,000 of which led to denials (a denial rate of 1.5%). A large majority of these denials resulted from the fact that the prospective purchasers had been convicted of, or were under indictment for, serious crimes. (See Table 1-3.)

Prior to the Brady Act, in 32 states no background check was required to verify purchasers’ statements that they were not prohibited persons. The 18 other states had enacted background check requirements of their own, sometimes many years earlier.⁴²

Okay, I want it, but I just bought a gun June 2. I’ll have to wait.

—An attendee making a deposit on a Walther pistol on June 6, in Orange County, California. Because of the state’s prohibition on the purchase of more than one handgun within 30 days, he will not be able to purchase the gun until July.

Vendor: It’s my understanding that if you’ve got a conviction, you can’t buy guns forever.

Attendee: That’s right. You don’t ever want to hit the old lady, ‘cause then you’re through.

—Advice given to a man shopping for parts for an AR rifle, Las Vegas, Nevada.

When the Brady Act first took effect, states where no background checks had previously been required found that as many as 9.4% of persons who sought to purchase firearms from licensed retailers, and who had just certified under penalty of perjury that they were eligible to own guns, were in fact prohibited from owning them.⁴³

Table 1-3. Reasons for denial of firearm transfer application in 2008

Reason for Denial	Agency Type	
	Federal (%)	State (%)
Felony indictment/conviction	55.9	45.7
State law prohibition	6.8	10.5
Domestic violence		
Misdemeanor conviction	7.3	9.9
Restraining order	4.1	4.0
Fugitive	13.4	8.6
Illegal alien	1.4	0.5
Mental illness or disability	1.1	3.7
Drug user/addict	9.5	3.1
Other	0.6	13.9
Total	100	100

From *Background checks for firearm transfers, 2008—statistical tables*. Washington, DC: Bureau of Justice Statistics, 2008. NCJ 227471. See Table 4. Results for local agencies are omitted.

Does Denial Work?

The goal of screening and denial programs is to prevent gun-related violence by preventing persons thought to be at high risk of committing such violence from acquiring guns. There are no systematic data on the intermediate question: How often do people who are denied the purchase of a gun from a licensed retailer go on to acquire a gun from some other source? There are, however, several studies that collectively describe the effect of these programs on violent crime.

It appears that denial of gun purchase significantly lowers the risk of committing violent and gun-related crimes among the persons who are directly affected. The best example of this effect

comes from California, which in 1991 expanded its criteria for a prohibition on gun ownership to include prior convictions for almost all violent misdemeanors. Over three years of follow-up, there was a 23% drop in crimes involving guns or violence among those whose gun purchases were denied in the year after the new policy took effect, as compared to a group of violent misdemeanants who legally purchased handguns under the previous policy.⁴⁴ For persons ages 21 to 24, among whom absolute rates of violent criminal activity were highest, the decrease was 27%. There was no difference for crimes involving neither guns nor violence. This specificity of effect supports the inference that the observed results were produced by the change in policy rather than some other factor.

Similarly, denial based on a felony conviction appears to result in a decrease in risk for crimes involving guns or violence of 20% to 25%.⁴⁵ This is a sizeable effect. Its importance is reinforced by a new research finding concerning risk for new criminal activity among persons who have previously been arrested for serious crimes.⁴⁶ As much as 20 years may need to pass before their risk of re-arrest falls enough to approximate the risk of first arrest among persons their age who have no prior arrest record. Policies intended to reduce that elevated risk for new criminal activity appear to be well-advised.

However, the federal screening and denial program put in place by the Brady Act may have had little effect on population-wide rates of gun-related violent crime. Careful researchers studying rates of gun homicide determined that while a decrease occurred in states where Brady led to the institution of screening and denial for the first time, that decrease also occurred in states where similar programs had been in place all along.⁴² They found no effect on rates of gun homicide that could be attributed to the Brady Act itself.

Several explanations have been proposed for these seemingly contradictory findings. One is that the federal criteria for prohibiting an individual from purchasing a gun are quite narrow. Most violent misdemeanors are not prohibiting offenses, for example. As a result, many high-risk persons are still able to purchase guns, and the number of persons denied may be too small for any beneficial effect on them as individuals to be reflected in overall crime rates.⁴⁷

Another, probably more important, is that the Brady Act's mandate applies only to gun sales by federally licensed retailers.

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The secondary market's private party gun sales—accounting, again, for perhaps 40% of all gun transfers every year—are unaffected. A new evaluation of state-level regulations on gun sales provides evidence in support of this possibility. Gun trafficking, which facilitates firearm-related violent crime, appears to be significantly reduced in states that regulate private party sales of handguns.⁴⁸

Summing Up: Why Private Party Gun Sales Matter

Of course, if I don't ask, nobody knows.

— A seller contemplating the sale of a handgun to a possibly prohibited party, Reno, Nevada.

Three and a half out the door. I'm not a dealer so just pay cash for it and you're outta here.

— An unlicensed vendor selling a Ruger revolver, tagged at \$425, Waukesha, Wisconsin.

Private party gun sales are quick and convenient. Even a completely law-abiding gun purchaser might appreciate the absence of paperwork that characterizes private party sales. And their anonymity will attract those who put privacy at a premium.

But the same attributes of private party sales that make them convenient for legal gun buyers make them the principal option for a felon, fugitive, domestic violence offender, or other prohibited person. The key is that while it is always illegal for a prohibited person to buy a gun, it is only illegal to sell a gun to a prohibited person if the seller knows or has “reasonable cause to believe” that he is doing so.⁴⁹ Again, a private party seller *cannot* initiate a background check. He is under no obligation to inquire directly. The matter is easily finessed. As one gun seller said while contemplating a possibly illegal handgun sale, “Of course, if I don't ask, nobody knows.”

Where Crime Guns Come From

Licensed Retailers: The Primary Gun Market

In the early 1990s, the United States had more licensed gun retailers than gas stations.⁵⁰ More rigorous licensing and oversight policies led to a large decrease in licensed retailers by 2001.^{5, 34, 51} The sellers of one-third of crime guns traced in 1994 were out of business by 1998.⁵²

Licensed retailers remain an important source of crime guns, however.^{27, 28, 53-55} Of persons incarcerated during the 1990s for serious crimes involving guns, 12% to 19% of those in state prisons³¹ and 19% of those in federal prisons³⁰ purchased their guns personally from a retail store or pawnshop.

Others employ surrogate or “straw” purchasers to buy guns from licensed retailers on their behalf. In a typical straw

purchase, the actual buyer determines which gun is to be bought and provides the funds. The straw purchaser, acting as the buyer's agent, makes the purchase by falsely representing himself (or, frequently, herself) to be the actual buyer of the gun. The details can vary. For example, the actual buyer may make the selection at the time of purchase and transfer the funds to the straw purchaser in full view of the retailer. Alternatively, the straw purchaser may operate with a shopping list of desirable guns or communicate with the actual buyer by cell phone (sometimes sending pictures of the guns in question).⁵⁶ Straw purchasers may be compensated with cash, drugs, or other currency.

Criminal gang members may be particularly likely to use straw purchasers, even if they themselves are not prohibited persons, for the simple reason that it is unsafe for them to travel outside their territories to a licensed retailer's place of business.⁵⁷ Gun traffickers, needing to mask their gun purchases, may employ whole networks of straw purchasers. Straw purchases have emerged as a leading source of supply for Mexican drug trafficking organizations.

Consider, for example, the case of John Philip Hernandez of Houston.^{58, 59} Between June 2006 and June 2007, Hernandez spent nearly \$25,000 to buy 23 firearms, including 5.7mm FN Herstal Five-seveN "cop killer" pistols and 15 AR rifles, from Houston-area retailers. The guns were smuggled into Mexico, where several have since been used in homicides and other violent crimes—as soon as two months after Hernandez purchased them. Hernandez recruited others to buy guns for him; they purchased another approximately 80 guns. The larger operation of which Hernandez and his confederates were just one segment is believed to have shipped well over 300 guns across the border. Most of the 22 members of that operation remain at large.

When all this began, Hernandez was 24 years old. In April 2009, he was sentenced to 97 months in prison by a judge who held that the maximum term recommended by the U.S. Sentencing Guidelines was not a sufficient deterrent to others.

Straw purchasers are often the intimate partners of actual buyers. Women make up about 10% of gun owners overall,^{1, 2} but 18% of straw purchasers working with gun trafficking operations were the girlfriends or spouses of the traffickers.²⁷

A straw purchase is a felony under federal law for both the actual buyer and the straw purchaser—and for the retailer, if he

If she's buying the gun, she's got to act like she's buying the gun. Come on up here.

—A licensed retailer in Las Vegas, Nevada, to two young men who are negotiating the purchase of a handgun and have just indicated that one of two women standing well behind them will be the purchaser. All four leave immediately.

sells the gun despite knowledge or reasonable cause for belief that a straw purchase is in progress. There is clear evidence from criminal investigations that straw purchases are nonetheless an important source of crime guns.^{27, 55} In a 1993 survey, 32% of student-age correctional inmates and, perhaps even more surprisingly, 18% of inner city high school students had asked someone to purchase a gun for them from a retail outlet.^{60, 61} More recently, 53% of licensed retailers telephoned by a sham prospective purchaser indicated that they would sell a handgun to that person because his or her intimate partner “needs it.”⁶²

The question arises: Why risk a straw purchase from a licensed retailer when private party gun sales offer a convenient and anonymous, if still illegal, alternative? The answer may be in part that licensed retailers have larger inventories than private party sellers do⁶³ and in particular are more likely to stock new assault rifles and similar weapons sought after by criminal users. Buying a new gun also avoids the risk of being linked through the gun to prior crimes in which it was used. This proposition would be unconvincing if the risk of apprehension during a straw purchase were high, but it is not.⁶³



**PRIVATE SALES
SEE KEVIN.**

—Multiple signs at this licensed retailer specializing in custom-assembled AR and AK rifles. The signs were seen at a show in Reno, Nevada, but not at subsequent shows in Las Vegas, Nevada; Phoenix, Arizona; or San Francisco, California. The photograph was taken in San Francisco.

Tracing Crime Guns

An individual licensed retailer’s importance as a source of crime guns is estimated by determining the number of recovered crime guns sold by that retailer. Linking crime guns to their points of sale is accomplished by a procedure called gun tracing, which ordinarily reconstructs the chain of ownership of a gun from its manufacturer to its first retail purchaser. Gun traces are conducted by ATF in response to requests from law enforcement agencies all over the world, and annual reports on traced guns for each state in the U.S. are provided by ATF at its web site: http://www.atf.gov/firearms/trace_data/index.htm. In 2005, ATF received more than 260,000 requests for gun traces.⁶⁴

Some retailers sell more crime guns than others do. In 1998, of 83,272 licensed retailers nationwide, just 1,020 (1.2%) accounted for 57.4% of all traced guns.⁶⁵ At that time, many licensed retailers sold few guns or none at all, however. In a later California study of 421 retailers who sold at least 100 handguns a year, just 10 retailers (2.4%) accounted for 29.2% of all handguns sold by the entire group that were traced after use in a violent or firearm-related crime.⁶⁶

The National Rifle Association has suggested that the number of traced guns linked to an individual retailer reflects only that retailer's sales volume.⁶⁷ This is not the case. Some licensed retailers are linked to crime guns not just frequently, but *disproportionately*: more frequently than would be expected from the overall number of guns they sell. In the California study cited above, the 11.2% of retailers who had disproportionate sales of crime guns accounted for 46.1% of handguns linked to violent or firearm-related crimes.⁶⁶

Perhaps of greatest concern, some licensed retailers are corrupt. Such retailers are the immediate source of nearly half of all guns that are trafficked—diverted intentionally into illegal gun commerce.²⁷ They account for two-thirds of trafficked guns coming from gun shows.²⁸

Private Parties: The Secondary Gun Market

Far and away, the leading proximate source of crime guns is the secondary gun market. More than 85% of the recovered crime guns traced by ATF are in the possession of someone other than their first retail purchaser when the crime is committed; the percentage is even higher for guns recovered from juveniles and youth.⁶⁸⁻⁷⁰ These guns have gone through at least one private party gun sale (or some other type of private party transfer of possession, such as a trade). Correspondingly, the great majority of persons who have committed violent crimes with guns report that they acquired their guns through a private party transaction.³¹ (See Table 1-4.)

At least two of the reasons for this are clear. As discussed, private party gun sales offer anonymity and are available to those who would be prohibited from buying from licensed retailers. Accessibility is also important. Licensed retailers can be few and far between, at least in some large cities. There are an estimated 57 million adult gun owners in the United States,¹ any one of whom can become a private party gun seller.

The lack of documentation for private party gun sales creates missing links in the chain connecting the first retail purchaser and the criminal from whom the gun has been recovered. Finding those missing links can be impossible, or at best very expensive. In states that require records to be kept for all gun sales, however, investigators seek to identify the most recent purchaser of a crime gun, not just the first.⁷⁰ This is of real practical value; it can

Gun shows, flea markets, hotel rooms, just about anywhere. He's not asking for any identification, he's not asking to have somebody have a record check being done, so he'll sell to anybody for a price.

— ATF agent Thomas Stankiewicz describing Kurt Radovich, accused of gun trafficking in Pennsylvania in 2008. More than 500 guns and thousands of rounds of ammunition were taken from Radovich's home at the time of his arrest.⁷¹

I don't fill out any paperwork or anything.

—An unlicensed vendor in San Antonio, Texas, buying a Smith & Wesson .357 revolver for \$350 from an attendee at the show. The vendor has about 60 guns for sale, including at least 5 AK rifles.

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convert a crime gun whose first retail purchase was in another state several years earlier into a gun sold just weeks before the crime, just miles from the crime scene. (Examples are in Table 1-5.) The same information can be critically important in identifying gun trafficking networks and in linking one crime to another.

Table 1-4. Sources of guns used in crime by state prison inmates

Source	Percentage	
	1997	1991
Purchased or traded from retail outlet	13.9	20.8
Retail store, pawnshop	12.1	18.9
Flea market, gun show	1.7	1.9
Family or friend	39.6	33.8
Purchased or traded	12.8	13.5
Rented or borrowed	18.5	10.1
Other	8.3	10.2
Street, illegal source	39.2	40.8
Theft, burglary	9.9	10.5
Drug dealer, off street	20.8	22.5
Fence, black market	8.4	7.8
Other	7.4	4.6

From Harlow CW. *Firearm use by offenders*. Washington, DC: Bureau of Justice Statistics; 2001. NCJ 189369. See Table 8.

Table 1-5. Results of standard ATF traces and traces incorporating additional California sales records for handguns recovered from young people in California and traced in 1999

Gun	Date of Recovery by Law Enforcement	ATF Sale Date	ATF Time from Sale to Recovery	California Sale Date	California Time from Sale to Recovery
GLC 23, .40	03/06/99	Unknown	Unknown	06/08/96	2.7 y
				05/22/98	288 d
				06/13/98	266 d
SW 910, 9mm	02/01/99	02/28/96	2.9 y	02/28/96	2.9 y
				09/20/98	135 d
SW Sigma, 9mm	09/28/99	04/28/95	4.4 y	03/19/97	2.5 y
				06/25/99	95 d
GLC 19, 9mm	12/22/98	04/21/98	245 d	12/01/98	22 d
CLT .25	02/17/99	Unknown	Unknown	12/19/98	62 d

Summary of example cases:

In case 1, a Glock Model 23, .40 caliber semiautomatic pistol was recovered on March 6, 1999 in Los Angeles. The standard trace identified the retailer who first sold the gun, but the date of purchase and time from sale to recovery were unknown. California sales records identified three transactions, two of which occurred less than a year before the gun's recovery.

In Case 2, a Smith and Wesson Model 910, 9mm semiautomatic pistol was recovered February 1, 1999. Both the standard trace and the sales records identified a first sale in February, 1996, but the sales records included a subsequent transfer just over four months prior to the gun's recovery.

(Y denotes years; d denotes days.)

From Wintemute GJ. The life cycle of crime guns: a description based on guns recovered from young people in California. *Annals of Emergency Medicine* 2004;43:733-742.

Gun Shows and Gun Commerce

Since the adoption of the Firearm Owner's Protection Act in 1986, federal law has permitted licensed retailers to sell guns of any type at gun shows in their home states. They can sell long guns at shows elsewhere.³⁴ Prior to 1984, retailers could sell only at the premises listed on their license; from 1984 to 1986, they were allowed to conduct business at gun shows under a new ATF

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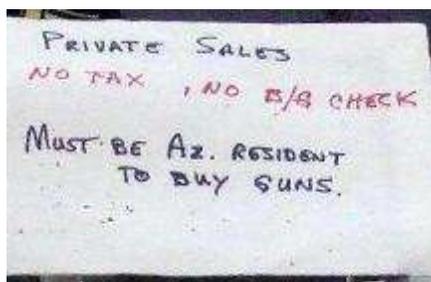
regulation.⁷² By creating an ambiguous definition of the term “engaged in the business,” FOPA also expanded opportunities for private parties to buy and sell guns regularly while claiming to be indulging a hobby.

Although systematic data are lacking, the result appears to have been a rapid increase in both the number and size of gun shows during the 1980s and 1990s. An informal survey in 1996 by the Violence Policy Center yielded the following impressions, among others.⁷² From a regional ATF official: “Several out of my eight supervisors said we definitely had an increase of more than 50 percent in the last 10 years.” From David Cook, show organizer for the North Texas Gun Club, a promoter of large gun shows in Dallas: “They’ve become more popular. I remember the days when there was a show only once every three months. Now you can go to one just about every weekend.”

Today, gun shows continue to play a unique role in gun commerce, stemming from the fact that dozens to hundreds of gun sellers—licensed retailers, unlicensed vendors, and individual attendees—are present and competing with one another for business. Licensed retailers rent table space from the shows’ promoters and display their inventory from a fixed location, but unlicensed vendors do this as well. ATF, based on interviews with promoters, estimates that 25% to 50% of all gun sellers at gun shows who rent table space are unlicensed vendors.³⁷ A separate study, based on observations at gun shows, raises this estimate to 70%.⁶³ (The reasons for the discrepancy will be discussed later.)

The same absence of regulation that characterizes private party gun sales generally is also true of sales by unlicensed vendors at gun shows. Some advertise their unregulated status; at one show, an unlicensed vendor posted this sign: “No background checks required; we only need to know where you live and how old you are.”³⁷ It is of great concern that some unlicensed vendors are likely to be “corrupt licensed gun dealers who were squeezed out of the primary market by recent...ATF efforts to make it more difficult to obtain and renew a federal firearms license.”²⁸

Individual attendees who have brought guns to sell probably outnumber licensed retailers and unlicensed vendors put together. Some are active traders, both buying and selling guns.



Signs posted by unlicensed vendors, Tucson and Phoenix, Arizona.

Economies of Scale

Major gun shows can usefully be considered the big-box retailers of gun commerce. Some individual licensed retailers at these shows are as large and well-staffed as a good-sized gun store. When dozens or hundreds of gun sellers are together in the same place along with thousands of potential customers, collective effects become important. Competition allows for multiple business strategies to be successful. Larger retailers can stock a wide range of products and maximize their sales volume at the expense of profit per item sold; small vendors may specialize to achieve excellence in a niche market. As a result, these gun shows offer their customers a breadth and depth of weaponry to choose from that can be found nowhere else, at prices that are as low as the market will bear.

This effect may not be particularly important for conventional handguns and long guns—the core of the inventory of a typical gun dealer or pawnshop. On the other hand, a customer might need to visit several retailers scattered across a metropolitan area in order to inspect a single .50 BMG rifle or one of the new semiautomatic pistols based on AR or AK rifle designs (more on these in Chapter 4). At a large gun show, however, he is likely to find at least half a dozen licensed retailers with several of these weapons to sell. Simply by walking back and forth between them he can comparison shop and negotiate a low selling price. Not uncommonly, he can buy them anonymously from an unlicensed vendor or another attendee.

The sheer quantity of weapons for sale at any one time, whether arrayed on tables or carried by attendees, can be eye-opening. A reasonable working estimate of the number of guns per seller renting table space is 25. (In a prior study, the median number of guns per seller was 22 in California and 26 in other states.⁶³) At the low end are unlicensed vendors who have just one or two guns on display and are mostly selling something else. At the other extreme, Shoot Straight Sports (see Chapter 2) had an estimated 1,354 guns laid out at a show in Orlando, Florida; some of these were atop stacks of boxes holding additional guns.

At a show with 200 gun vendors, then, an attendee walking the aisles might have about 5,000 guns on display to choose from at any one time. This does not include guns still in their boxes or carried by other attendees.

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See that guy over there? He's at every show. And he sells some of the same guns I do, only he charges more. Now why do you think some people are willing to pay more at his table than mine? Because he doesn't have to run them through a background check.

—Licensed retailer Merlin Scales at a 2008 gun show in Norfolk, Virginia, describing a nearby unlicensed seller.⁷³

Seller: I'm not really supposed to sell handguns to...non-Vermont residents.

Buyer: I was just hoping I'd be able to find somebody up here and let money do the talking, you know?

Seller: Well, you know the old Italian saying: make me an offer I can't refuse. You know what I mean? Then we can do something illegal.

Buyer: I'm willing to do \$2,500 cash.

Seller: Twenty-five hundred cash, that's tempting. I was figuring around the same thing. You got that kind of money?

Buyer: I'll go do what I gotta do.

—Conversation between an unlicensed vendor and a reporter, posing as a gun buyer, at a gun show in Vermont in 2008 or late 2007. The reporter is from Massachusetts. It is illegal for the vendor to sell a handgun to a buyer from another state.⁷⁴

Gun Shows and Crime Guns

Much of the concern about gun shows as a source of crime guns focuses on private party gun sales, since no background checks are conducted and no records are kept.^{28, 37, 63} ATF emphasizes that “[u]nder current law, large numbers of firearms at these public markets are sold anonymously... there is virtually no way to trace them.” As a result, “too often the shows provide a ready supply of firearms to prohibited persons, gangs, violent criminals, and illegal firearms traffickers.”³⁷ A 2009 Government Accountability Office report identified both the lack of background checks and the lack of records for private party gun purchases, including specifically those at gun shows, as “key challenges” to efforts to interdict gun trafficking across the border to criminal organizations in Mexico.¹⁷

Licensed retailers have not been silent. “Many Federal firearms licensees,” ATF notes, “have complained to ATF about the conduct of non-licensees at gun shows.”³⁷ At ATF briefings for licensed retailers attended by the author, licensees have reported flagrantly illegal activity by unlicensed vendors and private party sellers.

Perhaps the most vocal of these licensed retailers was the late Bill Bridgewater, head of the National Association of Stocking Gun Dealers. In 1993 he wrote to the House Judiciary Committee’s Subcommittee on Crime and Criminal Justice:

The BATF has established rules and regulations for these things they call “gun shows.” The opportunity for the black marketers is that the BATF doesn’t enforce those regulations and there isn’t anyone else to do so. Consequently, there are literally hundreds of “gun shows” scattered around the country where you may rent tables, display your wares, sell what you please to whomever you please and once again the sale that is made with no records, no questions and no papers, earns the highest sales price... There are wide open “gun shows” the length and breadth of the United States, wherein anyone may do as he chooses, including buy firearms for children.⁷²

But licensed retailers themselves are implicated; there is

evidence that among gun dealers, at least, those who sell at gun shows are more likely to have crime guns traced to them than are those who do not. ATF's 1998 Operation Snapshot, which compiled data on random samples of 382 gun dealers and 370 pawnbrokers, found that 30% of dealers with gun show sales, but 22% of all dealers, had previously had a crime gun traced to them. For pawnbrokers the difference was in the opposite direction; 36% of those with sales at gun shows, but 44% overall, had prior gun traces.⁷⁵ And in California, where both gun shows themselves and gun commerce generally are regulated, sales at gun shows are not a risk factor among licensed retailers for disproportionate sales of crime guns.⁶⁶

The best available data on gun shows as a source of crime guns come from ATF investigations of illegal gun trafficking.²⁷⁻²⁹ Example cases are given in Table 1-6.

In 2000, ATF published a detailed study of 1,530 such investigations initiated from July 1996 through December 1998, of which 212 (13.9%) involved gun shows and flea markets.²⁷ These cases accounted for 25,862 guns—30.7% of all the guns in the study.²⁷ Half the cases involved 40 guns or more. Nearly half (46%) involved felons either buying or selling guns at the shows. In more than a third, one or more of the involved guns were known to have been used in subsequent crimes, including homicide, assault, robbery, and drug offenses.³⁷

A follow-up study of 314 gun show investigations found that individual cases involved as many as 10,000 guns.²⁸ Trafficking at gun shows accounted for 9.9% of all firearms in cases linked to juveniles and youth.⁵⁴

ATF trafficking investigations also suggest that corrupt licensed retailers may preferentially do business at gun shows, as oversight is less stringent.^{27, 28} Nearly 20% of investigations concerning gun shows involved FFLs selling firearms without conducting background checks or retaining records.³⁷

Gun Show Exports

Gun shows are now frequently identified as the source of guns exported to Mexico,^{17, 58, 76} Canada,⁷⁷ and elsewhere. A lack of information, most importantly the absence of records for private party sales, has made it impossible to quantify the extent of the problem.¹⁷ Sales by licensed retailers and by private parties are both involved.

I use my discretion. Most people who come to the shows, you see them a lot. You know who's "right" and who's "wrong." I don't have to, but I ask everybody to see their driver's license, and if they're not "right," they usually move on at that point.

—Unlicensed vendor Jim Caton at a 2008 gun show in Norfolk, Virginia.⁷³

Inside Gun Shows

Table 1-6. Examples of gun trafficking cases involving gun shows

Year	Case Description
1993	A licensed retailer in Tennessee “purchased more than 7,000 firearms, altered the serial numbers, and resold them to two unlicensed [vendors] who...sold the firearms at gun shows and flea markets.” The licensed retailer was sentenced to 15 months in prison and the unlicensed vendors to 21 and 25 months, respectively. ³⁷
1995	A convicted felon in Michigan “used a false police identification to buy handguns at gun shows and resold them for profit.” The guns included 16 new, inexpensive, 9mm and .380 semiautomatic pistols. The subject was sentenced to 27 months in prison. ³⁷
1996	An unlicensed vendor who was a convicted felon operated a network of straw purchasers and had trafficked more than 1,000 guns, some acquired at gun shows. He “offered to sell agents an unlimited number of firearms, including fully automatic weapons and silencers.” One gun “was recovered from the scene of a shootout in which two Mexican military officials were killed by drug traffickers.” Another was recovered from the apartment of a Mexican drug czar. The trafficker was eventually sentenced to 78 months in prison; two licensed retailers who collaborated with him received probation. ²⁷
2004	Dorian Bennett Carr, Jr., and Alvin Eugene Edwards were indicted for operating a straw purchasing ring that acquired approximately 240 new semiautomatic pistols from licensed retailers at Oklahoma gun shows and gun stores in six months. The guns were trafficked to Baltimore. Seven alleged straw purchasers were also indicted. ⁸¹
2006	“Operation Flea Collar” began as an investigation of two traffickers who purchased firearms from a licensed retailer in Alabama and sold them at gun shows and flea markets there. The investigation grew to involve thousands of firearms recovered from at least 12 states; gangs routinely sent buyers to Alabama to purchase the guns in bulk. Twelve guns were linked to homicides. Eighteen persons were arrested and convicted, and 556 firearms, including a Streetsweeper shotgun, were seized. ^{82, 83}
2006	Between 1994 and 2001, unlicensed vendor Richard Clausen bought and resold 300-400 firearms at gun shows and swap meets in Arizona. Clausen bought the guns from licensed retailers; the guns were sometimes resold, without background checks or records, within days. Clausen was sentenced to 27 months in prison. The judge said this of Clausen’s conduct: “It was like spreading poison in the public water supply.” ⁸⁴

They send over a scout on Saturday to see if there’s anything they want. Then they show up on Sunday with a big wad of money and somebody who’s got a clean record, who’s legal to buy.

—A seller of trigger activators— devices that increase the rate of fire of semi-automatic guns—on how Mexican gangs acquire guns at gun shows, Tucson, Arizona.⁷⁶

When somebody walks in and says, “I need eight of these,” it becomes apparent what’s happening.

—A licensed retailer in Tucson, Arizona. As reported by the New York Times, “[o]n May 18, 2008, a man bought two military-style rifles from him at a gun show on the Arizona State Fairgrounds. Two days later, the man showed up at the dealer’s home with a friend and bought eight more rifles for more than \$5,000 cash. Despite the dealer’s help [to law enforcement], members of the ring managed to smuggle at least 112 weapons, bought at a half dozen locations, into Mexico before they were arrested in February [2009].”⁸⁸

Table 1-6, continued.

Year	Case Description
2006	Mark Andrew Nelson of Ohio pleaded guilty to operating a straw purchasing ring that acquired guns from licensed retailers for him to sell at area gun shows and directly to prohibited persons. The straw purchasers, who also pleaded guilty, were members of his family: Phaedra Ann Nelson, his wife (173 guns); Ricky Frank Nelson, his brother (83 guns); and James Robert Crook, his father-in-law (71 guns). Licensed retailer Robert L. Cook pleaded guilty of selling a firearm to a prohibited person. ⁸⁵
2008	In October, 2005, Antrinna Collins purchased 3 semi-automatic pistols and 3 AK-47 rifles at the Cuyahoga County gun show in Ohio. One of the pistols was used by a convicted felon in a shooting 27 days later. On at least 3 occasions, guns she purchased were found in the possession of convicted felons. She was sentenced to 4 years in prison. ⁸⁶
2008	During 2006-2007, Ernesto Olvera-Garza directed a trafficking network in San Antonio, Texas, that specialized in “high-powered, high-capacity handguns and assault rifles” ⁸⁷ acquired at gun shows and elsewhere. At least 9 straw purchasers were involved. ⁸⁸ A woman who straw purchased a gun for him at a San Antonio gun show testified that, when she delivered the gun to him in the parking lot, he showed her 10 more guns that other straw purchasers had bought. ⁸⁹ Garza’s operation smuggled at least 50 guns into Mexico, one of which was used in a gunfight that killed two Mexican soldiers. He was sentenced to 12 years in prison. ⁹⁰
2008	During 2007-2008, Jonatan Lopez-Gutierrez and John Avelar operated a straw-purchasing ring in El Paso, Texas, that bought more than 90 firearms from licensed retailers at gun shows and elsewhere. The guns were smuggled into Mexico. Twenty-four guns were seized, including .50-caliber and .308-caliber sniper rifles and AR-15 rifles. The men were sentenced to 48 and 37 months in prison, respectively. ⁹¹
2009	Marvin Acevedo, a 35-year-old Guatemalan linked to a narcotics cartel in that country, was sentenced to four years in prison in February. He had purchased “more than ten” FN Five-seveN pistols and several thousand rounds of ammunition at gun shows and gun stores in North Texas and elsewhere. ⁹²

I have had people that failed background checks, and yet they are carrying guns out of here that they bought from someone else.

—Licensed retailer Bruce A. Schluderman, at a gun show in Pharr, Texas.⁵⁸

Referring to the widely-reported increase in gun trafficking from this country to Mexico, ATF's Assistant Director for Field Operations, William Hoover, emphasized the importance of "a readily accessible source of firearms and ammunition originating in mostly the secondary market such as gun shows, flea markets and private sales."⁷⁸ Canada's Criminal Intelligence Service, in its 2005 annual report on organized crime, referred to unregulated gun shows in the United States as a "serious threat."⁷⁹ And in 2003, the Congressional Research Service suggested that gun shows may be an attractive source of firearms for foreign terrorists.⁸⁰

Federal and State Policy on Gun Shows

Federal Policy

There is no federal regulation of gun shows *per se*. Existing law sets the terms for legal gun sales by licensed retailers and private parties, whether at a gun show or elsewhere. ATF regulations define gun shows and specify that the business procedures licensed retailers are required to follow at their usual premises apply at gun shows as well. Figure 1-2 reproduces an ATF circular outlining "activities permitted at bona fide gun shows."

State Policy

Eight states regulate gun shows, but the nature and scope of those regulations vary widely.^{40, 93} California "requires a show organizer to obtain a Certificate of Eligibility from the Department of Justice, provide local law enforcement with a list of the show's sellers, and exclude minors unless they are accompanied at all times by a parent or guardian."⁴⁰ Details for each state are in Table 1-7.

Table 1-7. Summary of state statutes regulating gun shows

State	Key Provisions of Statutes
California	Promoters must obtain a certificate of eligibility; provide a list of licensed retailers who will be attending, and of all vendors if requested; provide an approved security plan; and maintain liability insurance. Vendors must execute written contracts, certify that they will not display prohibited items and will process all gun sales through licensed retailers, and provide a list of all employees in attendance. All firearms brought by attendees must be tagged with the possessor’s name, signature, and identifying information. Persons under 18 years of age are not admitted unless accompanied by a parent or legal guardian. (Other requirements have been omitted; see CA Penal Code Sections 12070-12071.4.)
Colorado	Records must be kept of all firearm transfers at gun shows, including private party transfers, by licensed retailers. (A licensed retailer must initiate a background check for a private party transfer at a gun show.)
Connecticut	Promoters must provide 30 days’ advance notice of gun shows to law enforcement. (The Department of Public Safety must conduct a background check for a private party transfer at a gun show, which is requested by the seller.)
Illinois	Records must be kept of all firearm transfers at gun shows by gun sellers, including private party sellers, for 10 years. The record must include the buyer’s Firearm Owner Identification Card number. (The Department of State Police must conduct a background check for a private party transfer at a gun show, which is requested by the seller.)
Maryland	Private party sellers of handguns and assault weapons at gun shows must obtain a temporary transfer permit for each show they attend, but only if they sell “from a table or fixed display.” The permit requires a background check, and an individual may only be issued five permits per year.
New York	Promoters must post signs and provide written notification to vendors that all firearm sales require background checks initiated by licensed retailers and must identify a retailer who will initiate checks for private party sales. The retailer must retain records of sales at gun shows for 10 years.
Oregon	Promoters must post signs stating the requirement for a background check prior to the sale of any firearm at a gun show and must provide forms for requesting background checks. Records must be kept of all firearm transfers at gun shows by gun sellers, including private party sellers, for 5 years. (The Department of State Police must conduct a background check for a private party transfer at a gun show, which is requested by the seller.)
Virginia	Promoters must provide 30 days’ advance notice of gun shows to law enforcement and provide a list of all vendors within five days following the show. There is an exemption for “shows held in any town with a population of not less than 1,995 and not more than 2,010, according to the 1990 United States census.”

Adapted in part from *Regulating guns in America: an evaluation and comparative analysis of federal, state and selected local gun laws*. San Francisco, CA: Legal Community Against Violence, 2008.

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Figure 1-2 ATF circular outlining procedures to be followed at gun shows

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Important Notice to Dealers and Other Participants at this Gun Show



This **NOTICE** applies to activities permitted at bona fide gun shows, as defined in Title 27 of the Code of Federal Regulations, Section 478.100. Federal firearms licensees ("FFLs" or "Dealers") may only sell firearms at gun shows within the State in which their licensed premises is located.

DEALERS LICENSED IN THIS STATE

- **MUST** display license.
- **MUST** comply with all recordkeeping requirements of ATF regulations concerning acquisitions and dispositions of firearms, including the recording of the place of sale.
- **MAY** dispose of handguns to residents of this State only, provided that the purchaser is at least 21 years of age and all provisions of the Brady law are met.
- **MAY** dispose of long guns to residents of any State, provided that the purchaser is at least 18 years of age, the laws of both States are complied with, and all provisions of the Brady law are met.
- **MAY** dispose of firearms to any FFL.
- **MAY** acquire firearms from any FFL licensed in the State and from any non-licensed individual.
- **MAY** take orders of any firearm from a non-licensee and ship the same to a licensee in the purchaser's State of residence from whom the purchaser can then take possession after the provisions of the Brady law are met.

DEALERS NOT LICENSED IN THIS STATE

- **MUST** display license.
- **MUST** comply with all ATF recordkeeping requirements concerning the acquisition of firearms.
- **MAY** acquire firearms from any FFL licensed in this State and from any non-licensed individual.
- **MAY** make a sale and deliver curio or relic firearms to any other FFL licensed in any State as long as the laws of both States are complied.
- **MAY** ship curio or relic firearms from this show to any other FFL.
- **MAY** display and take orders.

NON-LICENSED RESIDENTS OF THIS STATE

- **MAY** acquire long guns or handguns from FFLs licensed in this State, provided all provisions of the Brady law are met.
- **MAY** dispose of personal firearms to any FFL.
- **MAY** acquire from and dispose of personal firearms to non-licensed residents of the State. However, non-licensed individuals may not be engaged in the business of dealing in firearms without a Federal firearms license.
- **CANNOT** acquire from or dispose of firearms to non-licensed residents of any other State.
- **CANNOT** ship in interstate commerce, except to themselves or an FFL, a firearm that has otherwise been lawfully acquired; must, when shipping to themselves, declare the firearm to the commercial or contract carrier.

NON-LICENSED RESIDENTS FROM ANOTHER STATE

- **MAY** dispose of firearms to any FFL.
- **MAY** acquire long guns only from FFLs licensed in the State, provided the laws of both States are complied with and all provisions of the Brady law are met.
- **MAY** order firearms from any FFL and have them shipped from the show to an FFL in their State of residence by a commercial or contract carrier in accordance with State and Federal law.
- **CANNOT** acquire handguns.
- **CANNOT** acquire from or dispose of firearms to non-licensed individuals.

Law Enforcement at Gun Shows

ATF has had no proactive program of gun show enforcement.⁹⁴ Instead, its investigations traditionally have been reactive, originating in information developed from complaints or, more recently, patterns developed in gun tracing data or reports of multiple handgun sales. For example, of the 314 ATF trafficking investigations involving gun shows in the late 1990s, over 40% began with complaints or tips from informants (including 9% from FFLs or show promoters), and another 23% arose from analysis of trace and multiple sales records. Only 14% arose from “prior ATF attention to gun shows.”²⁸

From 2004 to 2006, gun show operations accounted for 3.2% of all trafficking investigations initiated by ATF and affected 3.3% of the gun shows estimated by the Department of Justice to have occurred during those years.⁹⁴ During those years ATF conducted 202 investigative operations at 195 gun shows, resulting in 121 arrests (with at least 83 convictions) and the seizure of 5,345 firearms.⁹⁴ Of the 202 operations, 156 (77%) focused on specific individuals who were suspected of gun trafficking; only 46 (23%) addressed “general illegal activity related to firearms trafficking occurring at gun shows.”⁹⁴ Examples of operations directed at firearms trafficking generally at gun shows are in Table 1-8. These have been covert operations, conducted in some cases without the knowledge of the shows’ promoters. ATF’s operations at a series of gun shows in Richmond will be discussed in Chapter 7.

Gun show operations are also part of ATF’s recently established Project Gunrunner, intended to disrupt the flow of guns from the United States into Mexico for use by drug trafficking organizations. The project’s gun show component targets “widespread international trafficking by individuals and gangs that cross the U.S. border carrying drugs and then return to Mexico carrying guns that they obtained through straw purchases at gun shows in the southwestern states.”⁹⁴ No separate data have been published on Gunrunner’s impact on gun shows. Altogether, from its onset in 2004 through mid-February of 2009, Gunrunner “has referred for prosecution 795 cases involving 1,658 defendants; those cases include 382 firearms trafficking cases involving 1,035 defendants and an estimated 12,835 guns.”¹⁸

The limitations on ATF’s enforcement activities stem in

*Alcohol, Tobacco, Firearms
should be a convenience store,
not a government agency.*

*—T-shirt worn by an attendee,
Phoenix, Arizona.*

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large part from a lack of resources. For a sense of how serious a problem the under-resourcing of ATF has been, consider the border states of the Southwest. ATF estimated in 2008 that there were 6,647 licensed retailers in the area, while their workforce comprised just 100 special agents and 35 industry operations investigators. Nationwide, ATF at that time employed only about 2,500 investigators and 750 special agents.⁷⁸ When asked by a reporter in 2007 about the possibility of routine patrols at gun shows, William Newell, the head of ATF’s office in Phoenix, responded simply, “We don’t have enough agents to do that.”⁹⁵

Table 1-8. Examples of ATF enforcement operations at gun shows targeting general firearms trafficking, by ATF field division

Year	Field Division	Description of Operation
2006	Columbus, OH	Investigations were conducted at 3 gun shows in Cleveland based on intelligence that “many of the guns recovered in high-crime areas of the city had been purchased at local gun shows” and that others were trafficked to other states and to Canada. The operations resulted in the seizure of 5 guns, 1 indictment, and 2 pending indictments.
2005-2006	Houston, TX	Operations were undertaken at 2 shows in Pharr, a suburb of McAllen on the border with Mexico. Four Mexican nationals were arrested. Three had purchased 14 firearms and 3,000 rounds of ammunition; the fourth had coordinated the straw purchases of 10 “high-priced” firearms.
2004-2006	New Orleans, LA	Gun shows in Kenner, a suburb of New Orleans, were identified through a review of tracing records as “a source used by local gang members and other criminals” for guns acquired through straw purchases or private party transfers. Operations resulted in 12 arrests, 6 convictions, and the seizure of 4 guns.
2004-2006	Phoenix, AZ	Gun shows in the Southwest “attracted large numbers of gang members from Mexico and California” who “bought large quantities of assault weapons.” Operations at 8 shows in Phoenix, Yuma, and Tucson, AZ, and in Albuquerque, NM resulted in 13 arrests, 3 convictions, and the seizure of 193 guns.
2004-2005	San Francisco, CA	Gun shows in Reno are “a gateway for illegal firearms trafficking into California.” In undercover operations at 6 shows, ATF agents identified illegal sales to out-of-state residents, illegal off-paper sales, and cases of dealing in firearms without a license. The operations resulted in 14 arrests and 11 convictions; 1000 firearms were purchased or seized.

Adapted from *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ investigative operations at gun shows*. Washington, DC: Office of the Inspector General, US Department of Justice; 2007. The report was published not long after the operations were conducted. Outcomes for criminal cases arising from the investigations were not always available, and additional filings were expected.

Public Education

ATF occasionally sets up educational displays at gun shows; staff answer questions and distribute materials covering gun laws and purchase procedures. In collaboration with ATF, the National Shooting Sports Foundation administers a public education program, “Don’t Lie for the Other Guy,” intended to prevent straw purchases.⁹⁶ Begun in 2000, the program is now operational in approximately 15 states or metropolitan areas selected by ATF. Don’t Lie is not specific to gun shows; it offers training and display materials to all licensed retailers in the targeted areas. The materials stress the fine (up to \$250,000) and long prison term (up to ten years) that await a convicted straw purchaser.

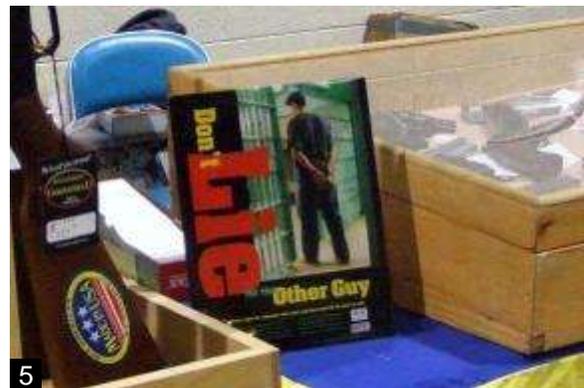
These educational efforts, like ATF’s operations generally, receive a mixed reception at gun shows (see pages 42-43).

Other Federal Efforts

United States Immigration and Customs Enforcement (ICE), now the primary investigative agency of the Department of Homeland Security, has targeted cross-border gun trafficking generally since 2005, if not earlier. Fifteen multi-agency Border Enforcement Security Task Forces have seized more than 2,000 weapons and made high-profile arrests of traffickers.⁹⁷ An apparently separate partnership with other agencies and the government of Mexico, Operation Armas Cruzadas, has recovered more than 1,400 firearms and 120,000 rounds of ammunition. No results specific to operations at gun shows are available.

A June 2009 review by the Government Accountability Office of efforts to combat gun trafficking into Mexico criticized both ATF and ICE for a failure to “consistently and effectively coordinate their efforts,” which “has resulted in some instances of duplicate initiatives and confusion during operations.”¹⁷ By the end of the month, the agencies had signed an agreement intended to clarify their areas of responsibility and facilitate collaborative work.⁹⁸

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ATF and Its “Don’t Lie” Campaign

ATF rents table space at gun shows (1-3). This is not common, and it is a lonely job. The emphasis is on their “Don’t Lie” campaign to deter straw purchases. Some licensed retailers display Don’t Lie materials prominently; purchasers cannot help but see them. (In the straw purchase on pages 148-149, four piles of cash were counted out on a Don’t Lie counter mat.) Some view ATF’s work with hostility. Manifestations include displaying Firearms Transaction Records beside a Nazi flag (10) and throwing Don’t Lie postcards on the ground (11,12). The photographs were taken in Orlando, FL (1,3,10); Atlanta, GA (2); Dayton, OH (4); Reno, NV (5); Dallas, TX (6); Richmond, VA (7,9); and Phoenix, AZ (8,11,12).



State-Level Enforcement

WARNING. Undercover law enforcement officers are actively working at this show. Do not under any circumstances allow yourself to sell a firearm without conducting the sale through a licensed dealer.

—Sign posted at a licensed retailer acting as a transfer station for private party gun sales, Orange County, California.

The California Department of Justice has conducted systematic law enforcement operations at gun shows at least since 2001. Its Gun Show Enforcement Program (GSEP), which is supported by allocations from the state’s general funds, was mandated by the legislature as part of a larger effort to regulate gun shows. Teams of experienced special agents, working undercover, are at “every single major gun show” in the state—and most of the smaller shows as well—according to agency officials interviewed for this report. Individual operations are sometimes collaborative efforts involving local law enforcement, agencies from other states (particularly Arizona and Nevada), and ATF. A continuing series of joint operations involving gun shows in Reno, for example, was initiated at the request of chiefs of police in the San Francisco Bay Area after it became clear that the shows were important sources of guns used in crimes in Bay Area cities. As measured by gun recoveries, investigative operations generally have been “very lucrative” and have “put a dent” in gun trafficking. Individual cases have involved dozens of guns.

GSEP agents work closely with promoters, both as enforcers of the law and as educators. Promoters “assume we’re always there and know we’re not an absentee landlord,” said agency officials. The program makes active use of the materials that gun show promoters must provide in advance of each event: a security plan and a list of all those who are renting table space to sell guns, among others. The administrative requirements of the law have teeth; a promoter who does not meet them faces the loss of his license.

The program appears to have undergone an important transition. After some initial resistance, many promoters and individual retailers have become quite supportive. With them, at least, program operations have entered what might be considered a maintenance phase. Agency officials report “a sizeable amount” of self-policing and stress the importance of ethical promoters and retailers as sources of leads on criminal activity.

Some Additional Data and Preliminary Inferences

As the discussion to this point hopefully establishes, the role that gun shows play in gun commerce and gun violence cannot be described simply. As the Columbine massacre and many

gun trafficking cases demonstrate, gun shows may be particularly important as an indirect source of crime guns—they supply guns to intermediaries who in turn supply active criminals. This point has been most clearly made by Anthony Braga and David Kennedy, two leading experts in the field:

Assessing any problem presented by gun shows is a difficult analytic task. While an important question is *whether prohibited persons personally buy firearms at gun shows*, which might be answered by surveys, an equally important one is *whether gun shows are sources of firearms that are trafficked to prohibited persons by straw purchasers, street dealers, and the like*. However, this question cannot be answered by surveys.²⁸
[Italics in original.]

At the same time, the available evidence suggests the following interim conclusions, which are worth considering as additional evidence accumulates.

The proportion of all gun sales nationwide that occurs at gun shows is relatively small.

The best published information we have on where guns come from is in the Police Foundation's 1996 National Survey on Private Ownership of Firearms (NSPOF). In that survey, gun owners were asked a series of questions about the most recent gun they had acquired, including where they had acquired it. Four percent of the guns had been acquired at gun shows; the survey did not ask these gun buyers if they had made their purchases from licensed retailers or private parties.² Unpublished data from a second nationwide survey¹ yield a similar result; of 566 gun owners, 9% acquired their most recent guns at a gun show.

Such estimates do not come from surveys alone. California's records of handgun sales identify transactions occurring at gun shows. For the 10 years 1998 through 2007, the archive contains records for more than 1.8 million transactions. Of these, 2.7% were recorded as occurring at gun shows. This figure would include both direct sales by licensed retailers and private party sales that were processed by licensed retailers, as required by state law.

Survey results can be imprecise, particularly for infrequent events as appears to be the case here. Clearly, a gun most recently purchased by a survey respondent at a location other than a gun show may have passed through a gun show earlier in its lifetime. And it is entirely possible that some gun show sales in the California records were not identified as such. That said, all the available estimates support the general statement that gun shows account for a relatively small proportion of overall gun commerce.

Most sales at gun shows involve licensed retailers.

ATF estimates that 50% to 75% of gun sellers who rent table space at gun shows are licensed retailers.³⁷ Our prior study⁶³ yielded an estimate of only 30%, but this was based on observational data and almost certainly an underestimate. Many licensed retailers at gun shows do not identify themselves as such—at least not until consummating a gun sale—though they are required to do so. The largest and most active vendors at gun shows are almost always licensed retailers.

Given that licensed retailers probably make up a majority of vendors who rent table space, and that they account for essentially all the largest and most active vendors, it is likely that they account for most sales at gun shows. Even allowing for sales by individual attendees who have not rented table space, it is reasonable to estimate that perhaps two-thirds of gun sales are made by licensed retailers. There are, unfortunately, no published data on this point.

Private party sales at gun shows account for a relatively small percentage of gun sales in the United States.

Taken together, three estimates—that 40% of all gun sales are private party transactions, that 4% to 9% of all gun sales occur at gun shows, and that two thirds of gun show sales are made by licensed retailers—allow for the rough approximations in Table 1-9 of the importance of private party gun sales at gun shows to gun commerce generally. If the 4% estimate is used, then of 1,000 hypothetical gun sales overall, 13 would be private party sales occurring at gun shows. These 13 guns account for 3.3% of private party gun sales and 1.3% of gun sales overall. Using the

9% estimate, 30 of every 1,000 hypothetical gun sales would be private party sales at gun shows. These 30 guns account for 7.5% of private party gun sales and 3% of gun sales overall.

Table 1-9. Allocation of 1,000 hypothetical gun sales between licensed retailers and private party gun sellers, and between gun shows and other venues

a. Assuming that 4% of all gun sales occur at gun shows

Venue	Private Party	Licensed Retailer	Total
Gun Show	13	27	40
Other	387	573	960
Total	400	600	1,000

b. Assuming that 9% of all gun sales occur at gun shows

Venue	Private Party	Licensed Retailer	Total
Gun Show	30	60	90
Other	370	540	910
Total	400	600	1,000

Licensed retailers are probably the primary source of crime guns acquired at gun shows.

The one peer-reviewed study of gun shows as sources of crime guns, discussed previously, developed data from 314 ATF investigations of gun trafficking at gun shows.²⁸ Nearly 55,000 guns were involved. While an unlicensed seller was the main subject in most of the investigations (54.1%), two thirds of the trafficked guns were linked to investigations in which the main suspect was (or had been) a licensed retailer. These retailer cases involved an average of 452 guns apiece and 33,445 guns in total; those centered on unlicensed sellers involved an average of 112 guns each and 15,551 guns altogether. Licensed retailers are able to buy guns in large quantities, and an increase in the number of guns linked to trafficking investigations when licensed retailers are involved is not unique to gun shows.²⁷

These data are not the whole story, however. First, trafficking operations that do not involve licensed retailers might be less likely to be brought to ATF’s attention and trigger an investigation, precisely because they are smaller than operations in

which retailers participate. This could lead an assessment based just on trafficking investigations to underestimate the importance of private-party trafficking.

Complicating this is the fact that ATF, because of limitations in the data it is allowed to collect, is not able to provide an estimate other than from those trafficking investigations of the number of trafficked guns that are obtained at gun shows, whether from licensed retailers or private parties.¹⁷ Records of trafficking investigations cannot possibly capture all the guns acquired at gun shows with criminal intent—recall that ATF enforcement operations affect a very small percentage of gun shows. This means that the best available evidence we have on the role of gun shows as a source of crime guns probably underestimates their importance.

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EXHIBIT 9



Report to Congressional Requesters

January 2016

FIREARMS TRAFFICKING

U.S. Efforts to Combat
Firearms Trafficking to
Mexico Have
Improved, but Some
Collaboration
Challenges Remain

GAO Highlights

Highlights of [GAO-16-223](#), a report to congressional requesters

Why GAO Did This Study

Violent crimes committed by drug trafficking organizations in Mexico often involve firearms, and a 2009 GAO report found that many of these firearms originated in the United States. ATF and ICE have sought to stem firearms trafficking from the United States to Mexico.

GAO was asked to undertake a follow-up review to its 2009 report ([GAO-09-709](#)) addressing these issues. This report examines, among other things, (1) the origin of firearms seized in Mexico that have been traced by ATF, (2) the extent to which collaboration among U.S. agencies combating firearms trafficking has improved, and (3) the extent to which the *National Southwest Border Counternarcotics Strategy* measures progress by U.S. agencies to stem firearms trafficking to Mexico. To address these objectives, GAO analyzed program information and firearms tracing data from 2009 to 2014, and met with U.S. and Mexican officials on both sides of the border.

What GAO Recommends

GAO recommends that the Secretary of Homeland Security and the Attorney General of the United States take steps to formally monitor implementation of the 2009 MOU between ATF and ICE. GAO also recommends that ONDCP establish comprehensive indicators that more accurately reflect progress made in efforts to stem arms trafficking to Mexico. The Departments of Homeland Security and Justice, and ONDCP agreed with GAO's recommendations.

View [GAO-16-223](#). For more information, contact Jessica Farb at (202) 512-6991 or farbj@gao.gov.

January 2016

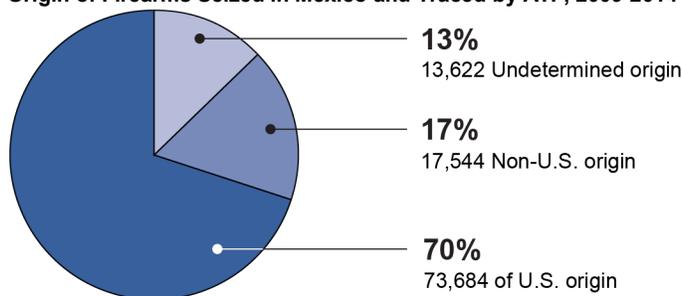
FIREARMS TRAFFICKING

U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain

What GAO Found

According to data from the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 73,684 firearms (about 70 percent) seized in Mexico and traced from 2009 to 2014 originated in the United States. ATF data also show that these firearms were most often purchased in Southwest border states and that about half of them were long guns (rifles and shotguns). According to Mexican government officials, high caliber rifles are the preferred weapon used by drug trafficking organizations. According to ATF data, most were purchased legally in gun shops and at gun shows in the United States, and then trafficked illegally to Mexico. U.S. and Mexican law enforcement officials also noted a new complicating factor in efforts to fight firearms trafficking is that weapons parts are being transported to Mexico to be later assembled into finished firearms, an activity that is much harder to track.

Origin of Firearms Seized in Mexico and Traced by ATF, 2009-2014



Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives. | [GAO-16-223](#)
Note: These figures reflect firearms seized by Mexican authorities and traced by ATF, not all firearms seized in Mexico.

In 2009, GAO reported duplicative initiatives, and jurisdictional conflicts between ATF and the Department of Homeland Security's Immigration and Customs Enforcement (ICE). That year, in response to GAO's recommendations on these problems, ATF and ICE updated an interagency memorandum of understanding (MOU) to improve collaboration. ATF and ICE have taken several steps since then to improve coordination on efforts to combat firearms trafficking, such as joint training exercises and conferences to ensure that agents are aware of the MOU and its jurisdictional parameters and collaboration requirements. However, GAO found that ATF and ICE do not regularly monitor the implementation of the MOU. In the absence of a mechanism to monitor MOU implementation and ensure that appropriate coordination is taking place between the two agencies, GAO found that gaps in information sharing and misunderstandings related to their roles and responsibilities persist.

The indicator used to track U.S. agencies' efforts to stem firearms trafficking to Mexico in the Office of National Drug Control Policy's (ONDCP) *National Southwest Border Counternarcotics Strategy*, by itself, does not adequately measure progress. ONDCP tracks progress based on the number of arms seized in Mexico and traced to the United States; however, this number does not reflect the total volume of firearms trafficked from the United States, and it does not take into account other key supporting agency actions and activities as measures.

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CBP	Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
DTO	drug trafficking organization
FTE	full-time equivalent
ICE	Immigration and Customs Enforcement
INL	Bureau of International Narcotics and Law Enforcement Affairs
MOU	memorandum of understanding
NTC	National Tracing Center
ONDCP	Office of National Drug Control Policy
State	Department of State
<i>Strategy</i>	the <i>National Southwest Border Counternarcotics Strategy</i>

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

January 11, 2016

The Honorable Eliot L. Engel
Ranking Member
Committee on Foreign Affairs
House of Representatives

The Honorable Jeff Duncan
Chairman
Subcommittee on the Western Hemisphere
Committee on Foreign Affairs
House of Representatives

Violence perpetrated by Mexican drug trafficking organizations (DTO) continues to raise security concerns on both sides of the U.S.-Mexico border. Mexican authorities consider firearms trafficking to be a major factor in these organizations' capacity to resist government efforts to combat organized crime. Similarly, U.S. law enforcement agencies have acknowledged the role firearms smuggling across the Southwest border plays in fueling violent criminal activity in Mexico. As we reported in 2009, trace data¹ on firearms seized from criminals in Mexico confirm that tens of thousands of weapons seized in Mexico came from the U.S. side of the border.² Over the past decade, U.S. and Mexican administrations have recognized that addressing firearms trafficking requires bilateral attention, and they have pledged to collaborate in their efforts to combat it.

You requested that we update our 2009 report and review U.S. efforts to stem the flow of firearms trafficking into Mexico. In this report, we examine (1) the origin of firearms seized in Mexico that have been traced by the Department of Justice's (DOJ) Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); (2) the extent to which collaboration among U.S. agencies combating firearms trafficking has improved; (3) the

¹Firearms tracing is the systematic tracking of the movement of a firearm recovered by law enforcement officials from its first sale by the manufacturer or importer through the distribution chain (wholesaler/retailer) to identify the first retail purchaser.

²GAO, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges*, [GAO-09-709](#) (Washington, D.C.: June 18, 2009).

status of coordination between U.S. agencies and their Mexican counterparts combating firearms trafficking; and (4) the extent to which the *National Southwest Border Counternarcotics Strategy (Strategy)* measures progress by U.S. agencies to stem firearms trafficking to Mexico.

To identify the number, source, and types of firearms trafficked to Mexico that have been seized and traced, we relied primarily on ATF's trace data compiled by that agency's National Tracing Center Firearms Tracing System through eTrace.³ We also reviewed the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) data on seizures of southbound firearms and cases involving firearms trafficking to Mexico. To address collaboration among U.S. agencies, we reviewed and analyzed documentation and reports on collaborative activities among those agencies responsible for combating firearms. To obtain a better understanding of the scope and progress of various U.S. agencies' activities related to firearms trafficking, we met with officials from ATF, ICE, DHS's Customs and Border Protection (CBP), and the Department of State (State). To examine the status of cooperation between U.S. agencies and their Mexican counterparts, we met with U.S. and Mexican officials to discuss their cooperative activities. To discuss cooperation by U.S. and Mexican law enforcement officials to stem the flow of firearms smuggling across the border, we met with U.S. and Mexican officials at two major Southwest border locations—San Diego/Tijuana and El Paso/Juarez. We traveled to Mexico City and Guadalajara, Mexico, to meet with U.S. embassy and consulate officials responsible for implementing programs to combat firearms trafficking and Mexican government officials responsible for related activities. We also met with the Office of National Drug Control Policy (ONDCP) to discuss the Weapons Chapter of the *Strategy*.⁴ We assessed the reliability of data provided by various U.S. agencies by interviewing agency officials knowledgeable about the data and reviewing related supporting documentation about the data and the systems that produced them. We determined that data were sufficiently reliable for the purpose of this

³ATF has a paperless firearm trace submission system (eTrace) that is accessible through the Internet, through which authorized users can submit, retrieve, query, and store firearms trace information, as applicable.

⁴The *National Southwest Border Counternarcotics Strategy* is issued on a biennial basis by ONDCP consistent with requirements in the Office of National Drug Control Policy Reauthorization Act of 2006, Pub. L. No. 109-469, § 1110, Dec. 29, 2006.

report. Appendix I contains additional details about our scope and methodology.

We conducted this performance audit from December 2014 to January 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

U.S.-Mexico Collaboration to Stem Firearms Trafficking

For almost a decade, the government of Mexico has sought to combat the growing power of criminal groups that initially emerged as DTOs in the 1980s and 1990s. This struggle became a national priority in 2006 when then-President Felipe Calderón mobilized the Mexican military and law enforcement agencies to disrupt DTO operations and target their leadership structures. As the Congressional Research Service reported, while these efforts have continued, under current President Enrique Peña Nieto, who was elected in 2012, there has been a shift in emphasis toward reducing criminal violence that threatens the security of civilians and the business sector.⁵ According to a RAND Corporation report, besides trafficking billions of dollars' worth of narcotics into the United States annually, Mexican DTOs' criminal activity now extends to other areas, including human trafficking, kidnapping, money laundering, extortion, bribery, racketeering, and weapons trafficking.⁶

According to the *Strategy* DTOs require a constant supply of firearms and ammunition to assert control over the territory where they operate, eliminate rival criminals, enforce illicit business dealings, and resist government operations. The *Strategy* indicates that firearms that criminal

⁵Congressional Research Service, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond* (Washington, D.C.: April 2014).

⁶RAND Corporation, *Mexico Is Not Colombia: Alternative Historical Analogies for Responding to the Challenge of Violent Drug-Trafficking Organizations* (Santa Monica, Calif.: 2014).

organizations acquire from the United States are primarily transported overland into Mexico using the same routes and methods employed when smuggling bulk cash south and drugs north across the U.S.-Mexico border. The *Strategy* also notes that within the United States, DTOs or their agents typically rely on “straw purchasers.” According to ATF, a “straw purchase” occurs when a person who is a convicted felon (or otherwise prohibited by federal law from purchasing a firearm) or who wishes to remain anonymous, uses a third party, the straw purchaser, to execute the paperwork necessary to purchase a firearm from a federally licensed firearms dealer. The straw purchaser is a person who, but for making false statements on the license application, would otherwise be eligible under federal law to purchase a firearm and is therefore able to pass the mandatory background check conducted by the federal firearms licensee.⁷ Although straw purchasers may legally purchase firearms for their own possession and use, when they purchase firearms on behalf of criminals or others, they violate federal law by making a false statement to a federal firearms licensee on the required forms.⁸ Firearm trafficking organizations also frequently obtain firearms from unlicensed private sellers in secondary markets, particularly at gun shows and flea markets or through classified ads or private-party Internet postings, according to ATF officials.

The surge in criminal activity by DTOs along the U.S.-Mexico border has generated concern among policymakers that this violence is spilling over into the United States. Since 2009, according to the *National Drug Threat Assessment*—which is produced by the U.S. Department of Justice’s National Drug Intelligence Center, Mexican-based DTOs have been known to operate in more than a thousand cities in the United States.

⁷U.S. federal law requires that a person file for and obtain a license from the U.S. Attorney General before engaging “in the business of importing, manufacturing, or dealing in firearms or importing or manufacturing ammunition” (18 U.S.C. § 923(a)). ATF lists nine separate types of federal firearms licensees on its website: (1) dealers in firearms other than destructive devices, (2) pawnbrokers in firearms other than destructive devices, (3) collectors of curios and relics, (4) manufacturers of ammunition for firearms, (5) manufacturers of firearms other than destructive devices, (6) importers of firearms other than destructive devices, (7) dealers in destructive devices, (8) manufacturers of destructive devices, and (9) importers of destructive devices.

⁸A straw purchase violates 18 U.S.C. § 922(a)(6), which prohibits purchasers from knowingly making false oral or written statements or furnishing false identification intended to deceive licensed importers, manufacturers, or dealers as to the lawfulness of the sale. Straw purchasers are subject to fines or imprisonment up to 5 years under 18 U.S.C. § 924(a)(1)(A).

While the extent of violence seen in Mexico has not been reported in the United States, law enforcement officials in two border cities we visited told us that murders and other criminal activity on the U.S. side are often linked to Mexican DTO activities.

The governments of the United States and Mexico have committed to work together to stem the activities of these criminal organizations, including illicit arms trafficking. From fiscal year 2008 to fiscal year 2015, Congress appropriated about \$2.5 billion in assistance for Mexico that has been provided through the Mérida Initiative, including approximately \$194 million provided in the Consolidated and Further Continuing Appropriations Act, 2015. For fiscal year 2016, the administration's budget request for the Mérida Initiative is \$119 million, from various accounts.⁹ The Mérida Initiative is a bilateral security partnership between the United States and Mexico to fight organized crime and build the capacity of Mexico's justice sector and law enforcement institutions to uphold the rule of law. Among the many activities supported under the Mérida Initiative, some assistance is provided to help combat firearms trafficking, such as providing canines trained to detect weapons and ammunition, and non-intrusive inspection equipment to detect the flow of illicit goods, including firearms.

Principal U.S. Agencies Involved in Combating Firearms Trafficking

DOJ's ATF and DHS's ICE are the two primary agencies combating illicit sales and trafficking of firearms across the Southwest border. ATF combats firearms trafficking within the United States and from the United States to other countries as part of its mission under the Gun Control Act (see table 1).¹⁰ ATF is responsible for investigating criminal and regulatory violations of federal firearms laws, among other responsibilities. In carrying out its responsibilities, ATF licenses and regulates federal firearms licensees to ensure that they comply with applicable laws and regulations. ATF also traces U.S. and foreign manufactured firearms for international, federal, state, and local law enforcement agencies to link a firearm recovered in a criminal

⁹Mérida Initiative assistance is allocated from various appropriations accounts, including International Narcotics Control and Law Enforcement; Economic Support Fund; Foreign Military Financing; International Military Education and Training; Nonproliferation, Antiterrorism, Demining, and Related Programs; Global Health and Child Survival; and Development Assistance.

¹⁰18 U.S.C. § 921 et seq.

investigation to its first retail purchaser. This information can be used to help link a suspect in the criminal investigation to a firearm or identify potential traffickers. ATF is the only entity within the U.S. government with the capacity to trace firearms seized in crimes in Mexico. The agency has conducted investigations to identify and prosecute individuals involved in firearms trafficking schemes and has provided training to Mexican law enforcement officials on firearms identification and tracing techniques, among other efforts.

Table 1: Key Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Efforts and Resources to Stem Firearms Trafficking to Mexico

Key activities	Estimated funding expenditures (fiscal years 2009-2014)	Personnel (fiscal year 2014)
<ul style="list-style-type: none"> Internationally, ATF works with other U.S. agencies to investigate criminal and regulatory violations of federal firearms laws. ATF has primary jurisdiction over firearms and ammunition imports and works with the Departments of Homeland Security and State on illicit firearms exports. ATF also provides training for foreign counterparts on a variety of firearms topics, such as weapons identification, and collaborates on tracing firearms seized abroad. Domestically, ATF identifies, investigates, and arrests individuals and organizations that illegally supply firearms to prohibited individuals. ATF deters the diversion of firearms from lawful commerce into the illegal market with enforcement strategies and technology. 	<ul style="list-style-type: none"> \$55.1 million (\$14.8 million for operations within Mexico, and over \$40 million for certain domestic operations and operations along the U.S.-Mexico border) 	<ul style="list-style-type: none"> A total of 423 agents, 157 industry operations investigators, and 88 task force officers. One agent, 4 intelligence research specialists, and 2 investigative analysts assigned to the El Paso Intelligence Center. 4 agents assigned and 1 industry operations investigator to the U.S. Embassy and 6 special agents in Monterrey, Tijuana, and Ciudad Juarez.

Source: GAO analysis of ATF information. | GAO-16-223

Note: The figures in this table represent what ATF spends on various activities to stem firearms trafficking in Mexico and throughout the Southwest region. According to ATF, this includes funding for border field division offices in Dallas, Houston, Los Angeles, and Phoenix; support for the El Paso Intelligence Center; and staff in Mexico. However, these figures do not fully reflect costs for the agency's domestic efforts to investigate Mexico-related cases.

ICE enforces U.S. export laws, and ICE agents and other staff address a range of issues, including combating the illicit smuggling of money, people, drugs, and firearms (see table 2). As the primary federal law enforcement agency responsible for investigating international smuggling operations and enforcing U.S. export laws, ICE's Homeland Security Investigations division targets the illegal movement of U.S.-origin firearms, ammunition, and explosive weapons with the goal of preventing the procurement of these items by DTOs and other transnational criminal organizations. ICE's investigative strategy includes the identification and

prosecution of criminal networks and individuals responsible for the acquisition and movement of firearms from the United States.

Table 2: Key Immigration and Customs Enforcement (ICE) Efforts and Resources to Stem Firearms Trafficking to Mexico

Key activities	Estimated funding expenditures (fiscal years 2009-2014)	Personnel (fiscal year 2014)
ICE, under certain legal authorities (specifically, the Arms Export Control Act and International Traffic in Arms Regulation), contributes to the U.S. effort to stem firearms trafficking to Mexico by enforcing U.S. export laws through some of its programs, including its Counter Proliferation Investigations Program and Border Enforcement Security Teams.	\$94.8 million (expended for counter-firearms trafficking efforts related to Mexico)	ICE reports its personnel contributions in terms of full-time equivalent (FTE) hours. Thus, for efforts to counter firearms and ammunition trafficking ICE reports that in fiscal year 2014 it expended 102,906 Mexico-related hours with 61 FTEs.

Source: GAO analysis of ICE information. | GAO-16-223

Other U.S. agencies that contribute to the effort to stem firearms trafficking to Mexico include:

- **CBP.** DHS's CBP is charged with managing, securing, and controlling the nation's borders for both people and cargo entering and leaving the United States. CBP's outbound mission is to facilitate the movement of legitimate cargo, while interdicting the illegal export of weapons and other contraband out of the United States.
- **State.** State's Bureau of International Narcotics and Law Enforcement Affairs (INL) advises the President, Secretary of State, and government agencies on policies and programs to combat international narcotics and crime. INL programs support State's strategic goals to reduce the entry of illegal drugs into the United States and to minimize the impact of international crime on the United States and its citizens. INL oversees funding provided to build the capacity of Mexico to fight organized crime under the Mérida Initiative, including funds to support efforts to combat firearms trafficking.
- **ONDCP.** ONDCP is a White House component whose principal purpose is to establish policies, priorities, and objectives for the nation's drug control program. It produces a number of publications, including the *Strategy*—first issued in 2007. The *Strategy* is intended to serve as an overarching guide for combating criminal activity along the U.S.-Mexico border; since 2009 it has included a Weapons Chapter in recognition of the threat posed by the smuggling of firearms across the Southwest border. Given ATF's and ICE's roles in combating firearms trafficking, these agencies share responsibility for preparing the information presented in the Weapons Chapter of the

Strategy. While ONDCP tracks progress by U.S. agencies in meeting these objectives, it is not directly involved in planning or implementing their activities.

Most Firearms Seized in Mexico That Are Traced by ATF Come from the United States, and Most Are Purchased in Southwest Border States

Most Firearms Recovered in Mexico That Are Traced by ATF Come from the United States

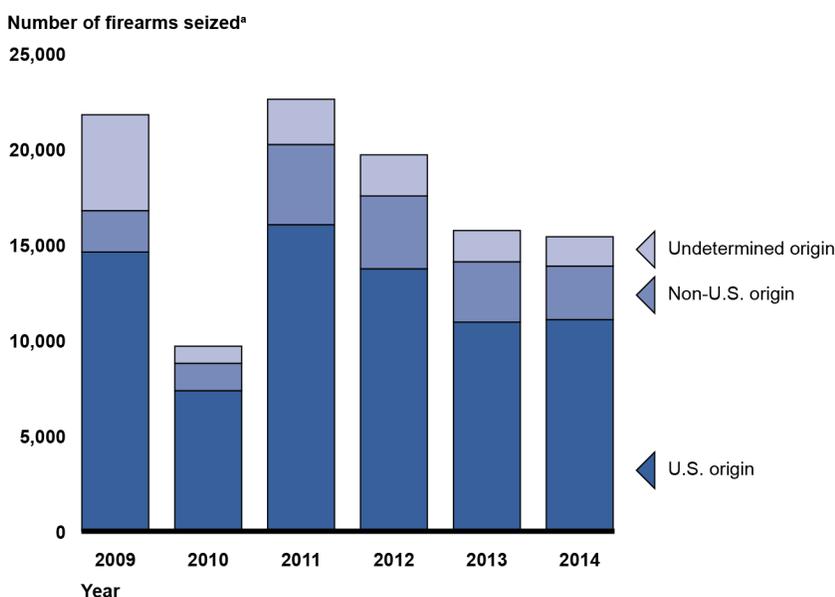
Data from ATF on firearms seized in Mexico and traced from calendar year 2009 to 2014 indicate that the majority originated in the United States. Because of the illicit nature of the trafficking, the exact number of firearms trafficked from the United States into Mexico is unknown. Similarly, ATF officials noted that since firearms seized in Mexico are not always submitted for tracing the same year they were seized, or are not submitted at all, it is not possible to develop data to track trends on firearms seized. However, ATF uses the number of firearms seized and traced as an indicator to estimate extent of illicit firearms trafficking. While the government of Mexico collects data on the number of firearms its law enforcement entities seize each year, our analysis and findings refer exclusively to the universe of firearms seized in Mexico that were submitted for tracing using eTrace.¹¹

According to ATF data, of the 104,850 firearms seized by Mexican authorities and submitted for tracing from 2009 to 2014, there were 73,684, or 70 percent, found to have originated in the United States. About 17 percent of the total, 17,544 firearms, were traced to a country

¹¹According to data provided by the government of Mexico, Mexican authorities seized 158,560 firearms from 2009 to 2014. However, we were unable to independently verify the reliability of these data. Therefore, we did not compare figures provided by Mexican authorities to ATF tracing data.

other than the United States.¹² ATF could not determine the origin of 13,622 (13 percent) of these firearms because of incomplete information.¹³ See figure 1.

Figure 1: Numbers of Firearms Seized in Mexico and Submitted for Tracing, by U.S. and Non-U.S. Origin, 2009 to 2014



Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives data. | GAO-16-223

Note: U.S. origin includes firearms manufactured in the United States or legally imported into the United States. Non-U.S. origin refers to those firearms for which the trace request indicated a non-U.S. (foreign) manufacturer and for which there is no evidence that they were ever imported to the

¹²According to ATF data, from 2009 to 2014, after the United States the top five countries of origin of firearms seized in Mexico and traced were Spain (3,786), China (3,027), Italy (2,186), Germany (1,522), and Romania (1,287).

¹³In 2009, GAO reported data provided by ATF indicating that 87 percent of firearms seized in Mexico and traced from 2004 to 2008 originated in the United States (see [GAO-09-709](#)). ATF explained that data provided to GAO for the years 2004 to 2008 for that report are not comparable to the data provided for this report because the agency has established different parameters for analysis and reporting of the data for the period 2009 to 2014. Current ATF standards entail more extensive review of Mexican data submitted in the eTrace system for completeness and accuracy. Additionally, more recent data on traces are reported on a calendar year rather than a fiscal year basis.

United States. Undetermined origin refers to those firearms for which the trace information was unclear as to the manufacturer, country of origin, importer, or a combination of these.

⁸Firearms may have been seized in prior years but submitted for tracing from 2009 to 2014.

From 2009 to 2011, numbers of firearms seized by Mexican authorities and submitted for tracing fluctuated significantly, followed by a steady decline after 2011. According to ATF officials, shifts in the number of guns seized and traced do not necessarily reflect fluctuations in the volume of firearms trafficked from the United States to Mexico from one year to the next. ATF staff explained that there are several factors that have influenced the year-to-year variance in the number of firearms traced since 2009. For example, they explained that the high number of firearms traced in 2009 reflects a single submission by the Mexican military to ATF for tracing of a backlog of thousands of firearms.¹⁴ Conversely, ATF officials noted there was a lower number of firearms submitted for tracing in 2010 because that is the year eTrace in Spanish was initially deployed in Mexico, and Mexican law enforcement officials at the local, state, and federal level had to be trained on using the system. In 2011, a much higher number of firearms were traced as Mexican officials became proficient in using the system. Finally, U.S. and Mexican officials suggest the decline since 2011 may reflect a period of adjustment in cooperation under the Peña Nieto administration. This included the centralization of access to eTrace in Mexico's Attorney General's Office and retraction of eTrace accounts from federal, state, and local law enforcement, which resulted in fewer Mexican law enforcement officials able to trace firearms using the system.

Long Guns Account for about Half of All Firearms Seized in Mexico and Traced

According to Mexican law enforcement officials we interviewed, DTOs prefer high caliber weapons with greater firepower, including high caliber rifles or long guns, and military grade equipment. Officials explained that the firearms of choice for drug traffickers are high caliber assault rifles, such as AK type and AR 15 type, which are available for purchase in the United States and which can be converted to fully automatic fire (i.e., converted into machine guns). Officials also noted that in recent years they have seen DTOs acquire military equipment, such as .50 caliber

¹⁴According to Mexican officials, Mexican law requires that all firearms seized in Mexico must be stored by the Mexican military (Secretaría de Defensa Nacional—SEDENA). Before the deployment of eTrace in Spanish in 2010, the Mexican military had accumulated a sizable collection of seized firearms that were subsequently submitted for tracing using ATF's eTrace system.

machine guns, rocket launchers, and grenade launchers. However, they said that unlike firearms typically used by DTOs, which often can be traced back to the United States, this type of equipment is known to often be trafficked into Mexico from leftover Central American military stockpiles from past conflicts. See figure 2 for examples of long and short guns (also referred to as handguns).

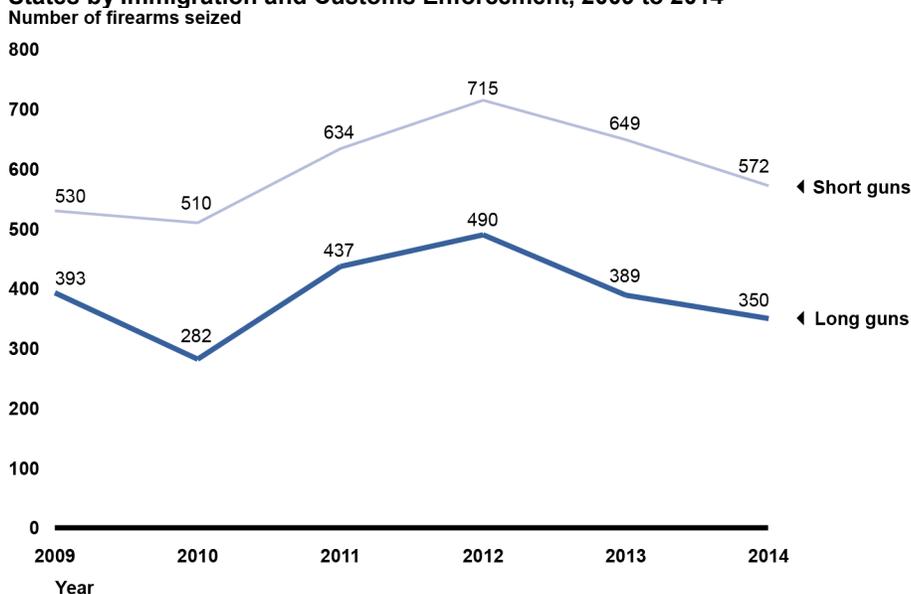
Figure 2: Examples of Long and Short Guns



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-223

According to data provided by ICE, the agency seized 5,951 firearms that were destined for Mexico in the last 6 years.¹⁵ Of firearms seized by ICE from 2009 to 2014, 2,341, or 39 percent, were long guns—including rifles and shotguns. During the same period, ICE seized 3,610 short guns—including revolvers and pistols (see fig. 3).

Figure 3: Number and Type of Firearms Destined to Mexico Seized in the United States by Immigration and Customs Enforcement, 2009 to 2014



Source: GAO analysis of Immigration and Customs Enforcement data. | GAO-16-223

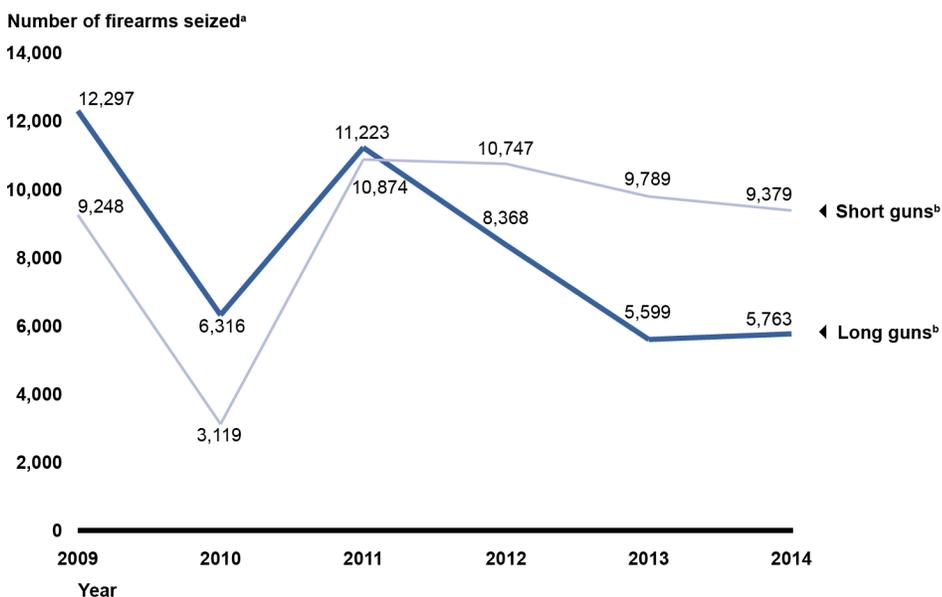
Note: Pistols and revolvers are considered short guns. Rifles and shotguns are considered long guns.

According to data provided by ATF, almost half of all firearms seized in Mexico and traced in the last 5 years were long guns. From 2009 through 2014, 49,566 long guns—rifles and shotguns—were seized and traced. During that same period, 53,156 short guns—including revolvers and pistols—were seized and traced. The data also show a substantial decline in the number of long guns traced since 2011 (see fig. 4). Mexican law enforcement officials said that in the last 2 years they often

¹⁵According to ICE, this number includes seizures made that were enabled or assisted by other DHS components.

seized more handguns than rifles, but stated that the use of high caliber rifles by cartels is still widespread.

Figure 4: Number and Type of Firearms Seized in Mexico and Submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives for Tracing, 2009 to 2014



Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives data. | GAO-16-223

^aFirearms may have been seized in prior years but submitted for tracing from 2009 to 2014.

^bPistols and revolvers are considered short guns. Rifles and shotguns are considered long guns.

According to ATF officials, steps the bureau has taken to combat firearms trafficking to Mexico have made it more difficult for firearms traffickers to acquire long guns. Specifically, they noted implementation of Demand Letter 3, which requires licensed dealers and pawnbrokers in Arizona, California, New Mexico, and Texas to report multiple sales of certain rifles.¹⁶ According to ATF, information from multiple sales reports on long guns allows the bureau to identify indicators of suspicious or high-volume purchasing by individuals, repetitive purchasing, and purchases by

¹⁶Pursuant to 18 U.S.C. § 923(g)(5), ATF issued *Demand Letter 3* to licensed dealers and pawnbrokers in Arizona, California, New Mexico, and Texas, requiring them to submit information to ATF concerning sales or other dispositions to an unlicensed purchaser, within 5 business days, of two or more rifles that have semiautomatic action, a caliber greater than .22, and the ability to accept a detachable magazine.

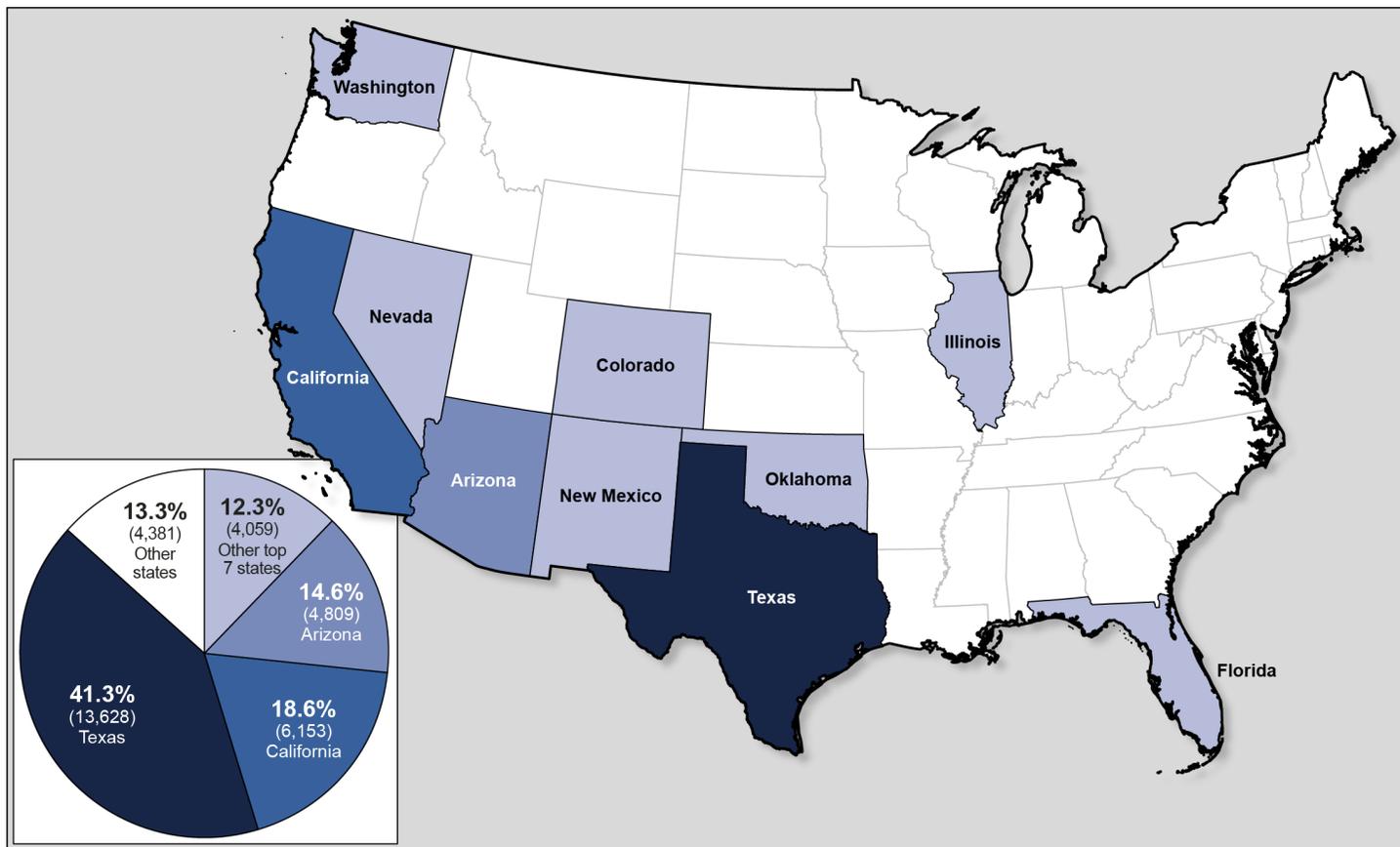
associates, as well as geographical trends for such sales. ATF officials reported that this information has helped them identify firearms traffickers and others involved in a timelier manner, which on several occasions has led to arrests and seizures of firearms intended for trafficking to Mexico. From 2011 to 2014, 490 long guns that had been recorded as part of multiple sales transactions under Demand Letter 3 were seized in crime scenes—259 in the United States, 209 in Mexico, and 22 in undetermined locations.

Most Firearms Seized in Mexico and Traced to the United States Were Purchased in Southwest Border States

Most of the firearms seized in Mexico that were traced and found to be of U.S. origin from 2009 to 2014 came from U.S. Southwest border states. While guns seized in Mexico of U.S. origin were traced to all of the 50 states, most came from Texas, California, and Arizona. As shown in figure 5, of all firearms seized in Mexico that were traced and identified to be of U.S. origin, about 41 percent came from Texas, 19 percent from California, and 15 percent from Arizona. According to ATF, in fiscal year 2014, there were about 10,134 licensed dealers and pawnbrokers in the four Southwest border states, many of them along the border. This represents about 16 percent of the approximately 63,311 licensed dealers and pawnbrokers nationwide. These licensed dealers and pawnbrokers can operate in locations such as gun shops, pawn shops, their own homes, or gun shows.¹⁷

¹⁷See discussion of gun shows in [GAO-09-709](#).

Figure 5: Top Source States for Firearms Seized in Mexico of U.S. Origin and Numbers Seized, 2009-2014



Sources: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives data; Map Resources (map). | GAO-16-223

Note: Percentages in the pie chart do not add up 100 because of rounding. Actual number of firearms purchased in selected states represented in parenthesis.

According to ATF officials, most firearms seized in Mexico and traced back to the United States are purchased in the United States then transferred illegally to Mexico. ATF has been able to determine the original retail purchaser for about 45 percent of firearms seized in Mexico and traced to the United States from 2009 to 2014. However, ATF was unable to determine a purchaser for 53 percent,¹⁸ because of factors such

¹⁸According to ATF, the other 3 percent of firearms were traced to a purchaser in a foreign country. Percentages do not add up to 100 because of rounding.

as incomplete identifying data on trace request forms, altered serial numbers, no response from the federal firearm licensee to ATF's request for trace information,¹⁹ or incomplete or never received out-of-business licensee records.²⁰

Trafficking in Firearms Parts May Facilitate DTOs' Acquisition of Firearms and Complicates Authorities' Efforts to Prevent Trafficking

ATF and Mexican government officials told us that a new complicating factor in their efforts to fight firearms trafficking is the use of weapons parts transported to Mexico to be later assembled into finished firearms. According to documents provided by ATF, firearm parts include unfinished receivers barrels, triggers and hammers, buttstocks, pistol grips, pins, bolts, springs, and other items. Figure 6 shows some of these firearms parts. None of these firearm parts are classified as firearms under the Gun Control Act.²¹ In general, U.S. federal laws and regulations requiring manufacturers and importers of firearms to identify firearms with a serial number do not apply to parts, unless otherwise specified by law.²² Federal firearms licensees and other retailers are not required to report on the acquisition and disposition of firearm parts as they must for firearms. Furthermore, any individual in the United States may legally acquire and possess certain firearm parts that are not otherwise proscribed by law, including persons prohibited from possessing firearms and ammunition, such as convicted felons.

¹⁹Generally, 18 U.S.C. § 923 (g)(7) requires federal firearms licensees to respond immediately to, and in no event later than 24 hours after, the receipt of a request by the Attorney General for information contained in the records required to be kept.

²⁰In accordance with 18 U.S.C. § 923(g)(4), upon discontinuance of business by federal firearms licensees, records shall be delivered within 30 days after the business discontinuance to ATF.

²¹Under the Gun Control Act, the term firearm means (1) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (2) the frame or receiver of any such weapon; (3) any firearm muffler or firearm silencer; or (4) any destructive device. The definition of firearm does not include antique firearms. 18 U.S.C. § 922(a)(3).

²²Under the National Firearms Act, firearms include machine gun parts that are designed and intended solely and exclusively for use in converting a weapon into a machine gun and any combination of parts from which a machine gun can be assembled. See 26 U.S.C. § 5812(a); 5845(b). Additionally, the National Firearms Act defines firearms to include silencers, which are subject to the requirement for manufacturers to identify them with serial numbers. See 26 U.S.C. § 5845(a); 5842(a).

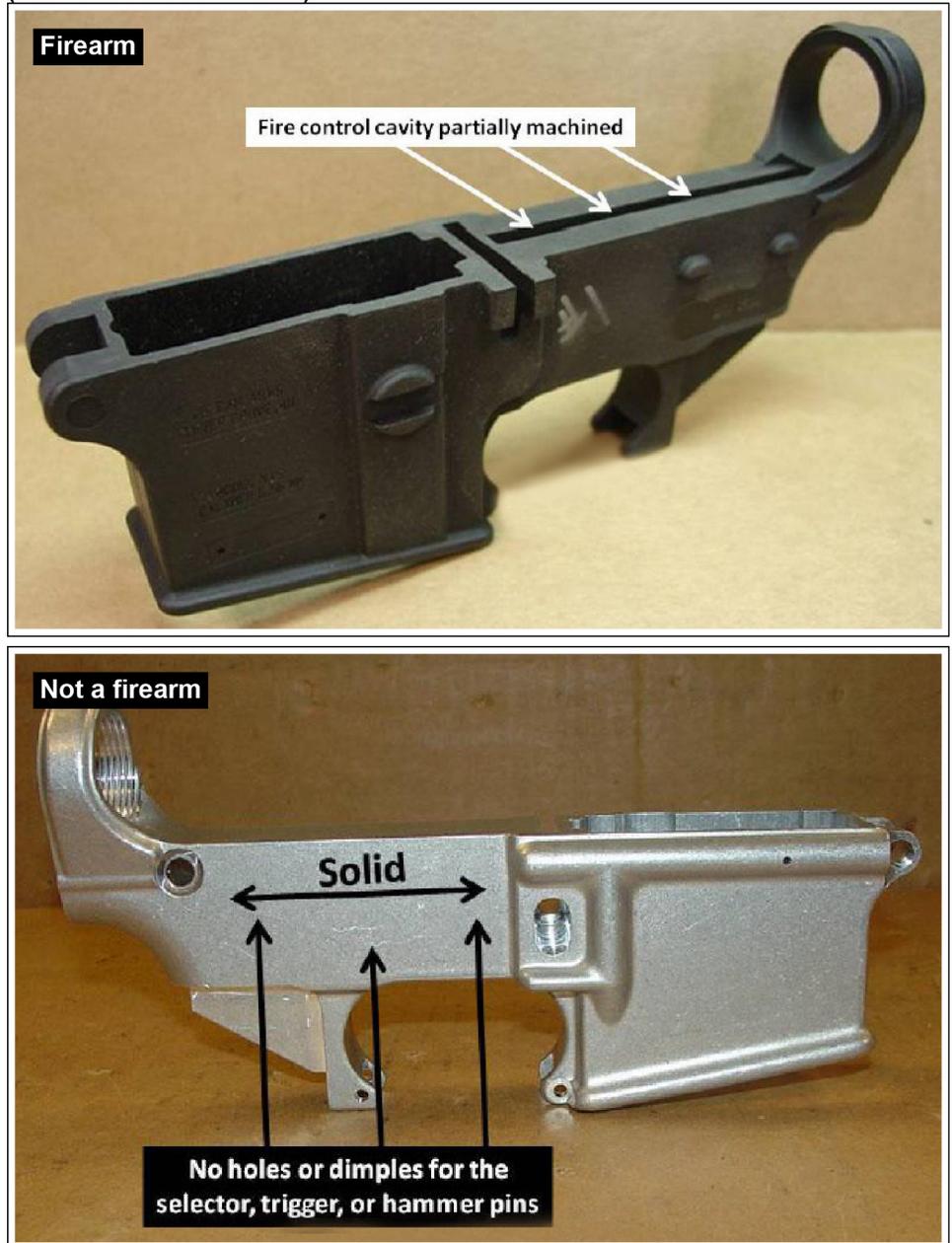
Figure 6: Basic Firearm Components from Firearms Parts Kits

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-223

Firearms may be assembled by using parts kits that include all of the components of a fully operable firearm minus the firearm receiver or frame, which may be obtained separately. ATF officials explained that in order to circumvent marking requirements on transactions involving firearms and thus avoid tracing, criminals will sometimes use unfinished receivers, such as “castings” or “flats,” rather than fully functional receivers. A frame or receiver by itself is classified as a firearm by definition under the Gun Control Act. The receiver is the part of the firearm that houses the operating parts, typically the bolt or bolt carrier group, the magazine well, and the trigger group. A casting is essentially a piece of metal fabricated with the exterior features and contours of the firearm receiver for which it is intended to substitute, but that without further machining will not function as a firearm. Castings and flats are commonly referred to as 80 percent receivers in marketing materials and advertisements promoting their sale. The “80 percent” label is intended to convey that the product has been cast or fabricated with most of the

features of a finished, functional firearm receiver, but it will require further machining to function as a firearm (see fig. 7).

Figure 7: Comparison between a Receiver (Considered a Firearm) and a Casting (Not Considered a Firearm)



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-223

A receiver flat is a piece of metal that has the same dimensions as a receiver, but that has not been shaped into a firearm configuration. In this form, it cannot accept any component parts, but with the proper equipment it can be readily bent into shape and molded into a receiver (see fig. 8).

Figure 8: A Flat with All of the Required Holes Drilled but That Has Not Been Bent into Shape



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-16-223

According to documents provided by ATF, since kits, castings, and flats are not classified as firearms, transfers of those items are not regulated under the Gun Control Act or National Firearms Act. Although ICE officials noted they are subject to export control laws, they have no serial numbers and generally no markings; thus, firearms assembled with them are untraceable.²³ In addition, receivers and firearms parts are small and when transported separately may not be easily identified as items intended for the production of firearms. They are also easy to conceal, making it more challenging for customs authorities to detect illicit shipments of such parts.

²³The Arms Export Control Act, as implemented through the International Traffic in Arms Regulations, regulates the export of defense articles classified on the United States Munitions List. Components, parts, accessories and attachments for certain firearms and receivers are included as items on the U.S. Munitions List and are considered defense articles that are subject to export control laws. See 22 C.F.R. § 121.1 & 120.45.

According to ATF officials, there are no reliable data on the extent of firearm parts trafficking from the United States into Mexico. They noted, however, that recent seizures of firearms parts, firearms made with unmarked parts, and equipment used to assemble or manufacture firearms in Mexico suggest an emerging reliance by criminal organizations on this source of weapons. For example, law enforcement officials in Mexico described to us two high-profile cases in 2014 involving illicit firearm parts assembly of this type. One was in Guadalajara, where Jalisco state police seized hundreds of unfinished receivers and pieces of sophisticated equipment being used to complete high caliber rifles. The second was in Tijuana, where Baja California state police seized 25 rifles in the process of assembly with firearm parts from the United States.²⁴

ATF and ICE Have Taken Steps to Improve Collaboration, but Lack of Monitoring May Contribute to Coordination Challenges

ATF and ICE Have Taken Steps to Improve Collaboration, but Some Challenges Remain

ATF and ICE have taken several steps to improve coordination on efforts to combat firearms trafficking that we previously identified.²⁵ In 2009, we reported instances of dysfunctional operations, duplicative initiatives, and jurisdictional conflicts between ATF and ICE.²⁶ In response to our recommendations on how to address these challenges, ATF and ICE updated and signed an interagency collaboration memorandum of understanding (MOU) in June 2009. In their revised MOU, the agencies

²⁴Mexican authorities indicated that they could not share more specific information on these cases because they are part of ongoing federal investigations.

²⁵[GAO-09-709](#).

²⁶[GAO-09-709](#).

committed to a shared goal of keeping the public safe by using the tools given to both agencies and which are vital to the effective control of domestic and international trafficking of firearms, ammunition, explosives, weapons, and munitions. Specifically, the MOU set forth roles and requirements for each agency with respect to (1) intelligence and information sharing, (2) general investigative guidelines, (3) specific investigative guidelines, (4) sources of information, and (5) conflict resolution. This effort to improve coordination and optimize use of the agencies' expertise provided the basis to address the issues that had hampered interagency collaboration prior to the MOU's implementation.

ICE and ATF officials said that after the MOU was signed, they held joint training exercises and conferences to ensure that agents had knowledge of the MOU and its jurisdictional parameters and collaboration requirements. Officials from each agency in headquarters, Mexico, and border locations we visited indicated that personnel working on firearms trafficking to Mexico were generally aware of the MOU's key provisions and collaborated on this basis. Agency officials also highlighted a more recent joint interagency conference in September 2014, which sought to provide participants with a common understanding of collaborative efforts and respective areas of jurisdiction. Additionally, senior agency headquarters officials asserted that there is extensive cooperation between ATF and ICE, at the headquarters and field office levels. ATF and ICE officials in border field offices we visited confirmed that they were familiar with the MOU and that it provides them guidance on interagency collaboration. Similarly, ATF and ICE officials in Mexico stated that since they are co-located physically, they have a greater opportunity to work together closely on firearms trafficking-related cases, and an ICE official said that they rely on the MOU to help define their respective roles.

Nevertheless, we identified persistent challenges in information sharing and some disagreement on the agencies' respective roles in investigations. For example, ATF and ICE disagree on the extent to which trace data on firearms seized in Mexico collected through eTrace should be shared to support ICE firearms trafficking investigations. According to an ICE assistant deputy director, these firearms trace data from Mexico are currently only shared on a limited basis with ICE. Several ICE officials expressed an interest in obtaining access to these data and indicated that this access would enhance their ability to identify methodologies used by firearms traffickers and trends in criminal activity along the Southwest border. ICE officials responsible for investigations said that trace data should be shared in accordance to the MOU, which states "ATF shall report to the appropriate ICE field office in a timely manner any

intelligence received relating to the illegal exportation, attempted exportation, or planned exportation of any item on the United States Munitions List...” However, the MOU does not address how general trafficking information, such as that submitted through eTrace by a third law enforcement agency, may be shared.

ATF officials asserted that their agency shares trace data on firearms seized in Mexico with ICE according to established agency policies, which currently only allow ATF to provide non-case-specific information to other agencies in aggregate form. With respect to the results of individual trace requests, ATF officials explained that they are provided only to the law enforcement agency that submits the trace information; generally, this information is not shared with third parties, including other law enforcement agencies. ATF would have to obtain authorization from the third-party law enforcement agency that submitted the trace information to share it with ICE. Thus, ATF cannot automatically share information with ICE on firearm traces submitted by Mexican law enforcement agencies without their authorization. ATF staff said these policies are set forth in the agreements ATF signs with each law enforcement agency for the use of eTrace. Officials from ATF and ICE said there are joint efforts under way to find a mechanism to share this information.

Additionally, the 2009 MOU sets forth investigative guidelines to define the roles and responsibilities of ATF and ICE pursuant to their respective statutory authorities. For example, the MOU states that “the regulation and inspection of the firearms industry is within the sole purview of ATF” and that “all investigative activities at the port of entry, borders and their functional equivalents must be coordinated through ICE.” Notwithstanding these guidelines, we found some confusion among some agency officials about the appropriate roles of their counterparts in conducting investigations. For example, a senior ICE official responsible for investigations questioned the involvement of ATF in firearms trafficking investigations to Mexico, because, according to the official, ATF’s jurisdiction focuses on combating domestic firearms violations. ICE officials also expressed concerns that the involvement of ATF’s international desk with Mexican agencies may create confusion among Mexican government authorities over the roles that ICE and ATF play in addressing firearms trafficking cases. However, an ICE assistant deputy director explained that pursuant to the Arms Export Control Act, ICE has primary jurisdiction over violations related to the international trafficking of firearms, but many such trafficking investigations begin with domestic criminal activities for which ATF has jurisdiction. Therefore, he stressed that it is essential that the two agencies collaborate to leverage ICE’s

international and ATF's domestic legal authorities. He added that ATF's international operations also provide much-needed capacity building regarding forensics and e-Trace activities in Mexico. However, ICE and ATF must work to ensure that confusion is not created among Mexican agencies regarding the responsibilities for the investigation of international firearms trafficking by U.S. authorities.

ATF officials agree that their agency's efforts to combat firearms trafficking are concentrated in the United States, and that they recognize the role of ICE in addressing transnational weapons trafficking. However, some ATF officials said that it is incorrect to suggest that ICE has exclusive jurisdiction with respect to illicit cross-border firearms trafficking to Mexico. According to these officials, most investigations involving the smuggling of firearms from the United States to Mexico implicate ATF jurisdiction, because they typically involve the illegal acquisition of firearms inside the United States. ATF's jurisdiction extends to unlawful acquisition of firearms by prohibited persons, straw purchasing, and other unlawful transfers of firearms. ATF officials added that the bureau's statutory responsibility for tracing firearms includes the deployment of eTrace to Mexican and other foreign law enforcement entities, and noted that eTrace entries from Mexico can result in the opening of firearm trafficking investigations focused on criminal activity in the United States. ATF officials also acknowledge that because of the nature of firearms trafficking to Mexico, many investigations involve overlapping jurisdiction with respect to cross-border offenses squarely within ICE's jurisdiction. They also noted the critical role ATF plays in providing training and capacity building on firearms and explosives identification and tracing for Mexican law enforcement. During our fieldwork, Mexican law enforcement agencies confirmed the benefits they derived from ATF capacity-building efforts, and they said they regarded ATF as their lead U.S. counterpart in investigating firearms trafficking. Thus, although ATF has established productive cooperative relations with Mexican agencies, there may also be some confusion in Mexico over ATF's and ICE's roles in combating firearms trafficking, as expressed by some ICE officials.

ATF and ICE Do Not Consistently Monitor Implementation of the 2009 MOU, Resulting in Continued Coordination Challenges

In prior work, we have identified several interagency mechanisms that can be used to improve collaboration among agencies working on a shared mission, such as information sharing, agency roles and responsibilities, and oversight and monitoring.²⁷ We have also reported that written interagency agreements, such as MOUs, are most effective when they are regularly updated and monitored. We observed that when implementation of such agreements is not regularly monitored, there is sporadic and limited collaboration among agencies. We also have found that agencies that create a means to monitor, evaluate, and report the results of collaborative efforts can better identify areas for improvement.

Immediately after the MOU was updated in 2009, the agencies committed to undertake efforts to ensure that its provisions would be implemented accordingly. For example, at that time, ICE informed GAO that headquarters had a process to obtain information from ICE field offices every 60 days to identify coordination issues with ATF that could not be resolved at the field level within the framework of the MOU. In such situations, ICE headquarters would then work with the appropriate ATF component to resolve the issue. ICE officials explained these initial monitoring efforts were designed to ensure that the updated MOU was being effectively followed as it introduced several provisions or guidelines on how ATF and ICE should collaborate on firearms trafficking. However, according to ICE officials, this process was only in place during the initial implementation period of the MOU, and the effort was not sustained.

Currently, officials from both agencies acknowledged that there is no specific mechanism in place to monitor implementation of the MOU. However, each agency's officials referred to different efforts that they said provide an opportunity to monitor interagency collaboration under the MOU. For example, a deputy assistant director for ICE stated that coordination between ICE and ATF on firearms trafficking cases occurs at the Export Enforcement Coordination Center as well as at the field level. ICE's Export Enforcement Coordination Center is intended to serve as the primary forum within the federal government for executive departments

²⁷Other key features identified include policy development; program implementation; and building organizational capacity, such as staffing and training. For additional information, see GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012), and *Export Promotion: Trade Agencies Should Enhance Collaboration with State and Local Partners*, [GAO-14-393](#) (Washington, D.C.: May 21, 2014).

and agencies to coordinate their export control enforcement efforts. The Center seeks to maximize information sharing, consistent with national security and applicable laws. Thus, it is likely that coordination challenges between ICE and ATF on firearms trafficking could potentially be detected at the Center. However, given the Center's broader responsibility to enhance export control enforcement efforts with multiple agencies, it is not directly intended to monitor implementation of the MOU. Moreover, coordination challenges related to the MOU persist even though the Center has been in place for 5 years, indicating that this may not be an effective means to monitor the MOU's implementation.

Senior ATF officials said that although there is no formal arrangement to regularly monitor implementation of the MOU, they consider joint interagency training to be an effective approach to ensure that officials from both agencies are familiar with the provisions of the MOU and are working together effectively. However, only two such training exercises have taken place—one in 2014 and another in September 2015. The training is intended to acquaint officials from both agencies with how the agencies coordinate firearms trafficking efforts, and as part of the training, the MOU provisions are discussed, but these training exercises do not constitute a mechanism for consistent monitoring of implementation of the MOU. By not sustaining a monitoring process for the MOU, the agencies have no assurance that its provisions are being implemented effectively, and challenges we identified are continuing to persist without a process for resolution.

U.S.-Mexico Collaboration on Firearms Trafficking Was Scaled Back after 2012, but While Challenges Continue, Bilateral Efforts Have Recently Been Gaining Momentum

Bilateral Firearms Trafficking Efforts Slowed Following Mexican Moves to Consolidate Law Enforcement Collaboration

Mexican and U.S. officials described how upon coming to power in December 2012, the current administration of Mexican President Enrique Peña Nieto undertook a reevaluation of U.S.-Mexico law enforcement collaboration, including efforts to combat firearms trafficking.²⁸ According to some officials, the government of Mexico took steps to consolidate law enforcement cooperative activities under an approach termed *Ventanilla Única*—which translates to Single Window. Under *Ventanilla Única*, Mexico's Interior Ministry has become the primary entity through which Mérida Initiative training and equipment are coordinated, including capacity-building activities related to firearms trafficking. The government of Mexico also established a single point of contact within Mexico's Office of the Attorney General to approve joint investigations with U.S. counterparts. Additionally, Mexican officials explained that Mexican law categorizes firearms trafficking as a federal crime and permits only federal authorities to work on such cases. This has led to some notable changes in the way U.S. and Mexican authorities work together on firearms trafficking efforts.

One of these changes stemmed from the decision to centralize access to ATF's eTrace in the Mexican Attorney General's Office. Consistent with our prior recommendations, in 2010, ATF reached an agreement for deployment of eTrace in Spanish in Mexico, with Mexican authorities. According to ATF, this was a significant investment for which ATF provided training to numerous officials from various Mexican federal, state, and local law enforcement agencies on the use of eTrace, while assigning accounts to allow them to access the system. However, by 2013 the Mexican government retracted access to many of these accounts, effectively limiting eTrace in Mexico to certain authorized officials in the office of Mexico's Attorney General. Mexican officials explained that the decision to consolidate access at the Attorney General's office was intended to provide the government of Mexico with more effective control over the information associated with eTrace, and to support a central repository of evidence related to federal crimes such as trafficking of firearms. However, U.S. officials and some Mexican authorities said that limiting access to eTrace to a single governmental entity has restricted opportunities for bilateral collaboration. Some U.S.

²⁸U.S. law enforcement agencies conduct their work in Mexico in cooperation with Government of Mexico counterparts under the Treaty of Cooperation Between the United States of America and the United Mexican States for Mutual Legal Assistance. U.S.-Mexico, S. Treaty Doc. No. 100-13 (1988).

officials based in Mexico similarly noted that limiting access to eTrace diminished tracing of total firearms seized by Mexican authorities.

Another significant change following the reassessment of bilateral collaboration, which began in 2012, was the suspension of periodic meetings of a working group known as *GC Armas*, which brought together U.S. and Mexican officials from various agencies involved in combating firearms trafficking. According to ATF officials, prior to 2013, *GC Armas* held periodic meetings annually with the participation of approximately 70 to 100 officials from both governments. These officials shared useful information on firearms trafficking trends, trace data, investigations, collaboration questions, and many other issues. ATF officials said that oftentimes very productive cooperative efforts on firearms trafficking began informally at *GC Armas* meetings and were subsequently formalized. Mexican officials similarly characterized *GC Armas* meetings as contributing in a fundamental manner to reaching significant agreement between law enforcement in both countries on how to combat firearms trafficking. They noted one such bilateral effort that resulted in a comprehensive assessment of firearms and explosives trafficking with recommendations for each country on sharing information and cooperating on cross-border investigations. Officials from both countries explained that while bilateral coordination did not cease after the suspension of *GC Armas* meetings, overall collaboration slowed down with fewer opportunities to promote bilateral firearms trafficking initiatives.

Corruption and Frequent Turnover Continue to Hamper Bilateral Collaboration on Firearms Trafficking

U.S. and Mexican authorities acknowledge the challenges to law enforcement efforts posed by continuing corruption among some Mexican officials. As we discussed in our 2009 report, concerns about corruption within Mexican government agencies often limit U.S. officials' ability to develop a full partnership with their Mexican counterparts. Officials we met with from ATF, ICE, CBP, and State continued to express such concerns regarding corruption in Mexico. Some Mexico-based ICE officials, for example, stated that they are conscious that their U.S.-based colleagues will not always share with them all of the information they have on firearms trafficking investigations because of concerns about corruption. That is, ICE officials in the United States and along the U.S.-Mexican border are concerned about sharing information with ICE officials based in Mexico, fearing that the information may unintentionally reach corrupt Mexican authorities and compromise their investigations. According to ICE officials, concerns they had about corruption in Mexico were exacerbated early in the Peña Nieto administration when a vetted

unit of Mexican law enforcement officials that they trusted and that ICE had trained and worked with for several years was disbanded.

U.S. officials also highlighted the problems frequent turnover in Mexican law enforcement pose for bilateral efforts to combat criminal activities, including firearms trafficking. Some U.S. officials explained that recurring personnel changes aggravate the issue of corruption. In a country such as Mexico, where there is an underlying concern about government corruption, frequent turnover complicates efforts to develop trust with counterpart officials. Other U.S. officials noted that there are no civil service protections in Mexico, so there can be a virtually complete change in the staff of a government agency when a new administration comes into office, or even when the head of an agency is reassigned. As a result, all of the people who received specialized training, such as firearms recognition, can be removed suddenly leaving no institutional memory, which complicates planning future collaboration and program implementation. Similarly, ATF officials commented that oftentimes Mexican law enforcement personnel in key positions for whom they provided firearms training were subsequently replaced. While turnover has been a recurring challenge for U.S. agencies working in Mexico, various U.S. officials said that it appears to have been particularly frequent in the past few years. For example, the spokesperson for one U.S. agency in Mexico noted that in the past 5 years the division responsible for implementing professional development at a key Mexican law enforcement entity has been replaced seven times.

Over the Past Year, Bilateral Collaboration on Firearms Trafficking Efforts Has Gained Momentum

While both U.S. and Mexican officials collaborating on firearms trafficking said that bilateral efforts had been scaled back after the Peña Nieto administration came into power, these officials noted that over the past year collaborative activities have been bolstered and are gaining momentum. For example, around the time of our fieldwork in Mexico, CBP was working with Mexican authorities to deploy specially trained canine units able to detect firearms and explosives around the country. Similarly, ATF was providing training on firearms identification for Mexican Customs. A Mexican Customs spokesman stressed the importance of such training in helping front-line customs officers recognize and safely secure not just firearms but also ammunition, firearms' components, and explosives that criminals try to smuggle across the border. He explained that this training has been critical in allowing officers at the border to perform their mission.

Mexican Attorney General officials also noted their increasing level of cooperation with U.S. authorities on firearms trafficking. They highlighted ATF training on the use of eTrace and the resumption of *GC Armas* meetings in 2015. ICE officials also told us that they have recently reestablished the vetted unit in Mexico, which improves trusted working relationships with Mexican counterparts. Finally, in addition to renewing existing collaborative efforts with Mexican law enforcement counterparts, ATF has also sought to reach out to other Mexican government entities. For example, this year ATF has been collaborating with the Mexican Navy on training for firearms and explosives detection, identification, and seizure. Mexican Navy officers expressed gratitude for this training, noting that they are increasingly confronting real-world situations that require this type of knowledge.

The Current Weapons Chapter Indicator in the *National Southwest Border Counternarcotics Strategy* Does Not Adequately Measure the Progress of U.S. Agencies in Stemming Firearms Trafficking to Mexico

The indicator used in the *Strategy* to track progress by U.S. agencies to stem firearms trafficking to Mexico does not adequately measure implementation of the strategic objective. The *Strategy* includes strategic objectives and indicators for each of its nine issue chapters to ensure effective implementation. The strategic objective for the Weapons Chapter is to “stem the flow of illegal weapons across the Southwest border into Mexico.” ONDCP’s indicator for this chapter is the “number of firearms trafficking/smuggling seizures with a nexus to Mexico.” The *Strategy* does not further define the indicator, but ONDCP staff explained that it refers to the number of firearms seized in Mexico that are traced by ATF.

While ONDCP’s *Strategy* asserts that it is critical to have indicators that enable tracking the implementation of objectives, this indicator for the Weapons Chapter does not effectively track the status of efforts to stem the flow of illegal weapons across the Southwest border. As previously noted in this report, ATF officials readily acknowledge that shifts in the number of guns seized and traced do not necessarily reflect fluctuations in the volume of firearms trafficked from the United States to Mexico in any particular year. There are many factors that could account for the number of firearms traced in a given year beside the number of firearms smuggled from the United States. Moreover, as discussed above, for various reasons the number of firearms seized in Mexico and traced back to the United States shifted significantly year to year after 2009 and then declined steadily since 2011. Thus, while the number of firearms seized and traced by ATF is useful to provide an overall indication of firearms of U.S. origin found in Mexico, by itself it is not an adequate measure of progress agencies are making to stem the flow of firearms trafficked from

the United States into Mexico. Additionally, ONDCP has not reported progress made on the strategic objective in the Weapons Chapter in 2011 or 2013. ONDCP staff said they anticipate that the 2015 *Strategy* will include a section to report on the outcomes of the last 2 years, and they plan to report on this indicator.

Beside the strategic objective and indicator, the Weapons Chapter of the *Strategy* also includes five supporting actions, along with associated activities to achieve those actions; see table 3. According to an ONDCP spokesman, while the number of firearms seized in Mexico and traced by ATF may be an indicator of the flow of firearms across the border, these five supporting actions and their associated activities should also be considered to get a full picture of the agencies' progress in combating arms trafficking. ONDCP officials said that they monitor progress in combating arms trafficking by obtaining periodic information from ATF and ICE on their implementation of these and other activities.

Table 3: Supporting Actions and Activities in the Weapons Chapter of Office of National Drug Control Policy's (ONDCP) 2013 National Southwest Border Counternarcotics Strategy

Supporting actions	Activities
Improve criminal intelligence and information sharing related to illegal weapons trafficking	<ul style="list-style-type: none"> Facilitate U.S. government interagency criminal intelligence sharing Enhance programs at El Paso Intelligence Center targeting illegal weapons smuggling/trafficking Continue to employ programs to rapidly share weapons seizure information among U.S. law enforcement agencies
Increase the interdiction of illegal weapons shipments to Mexico	<ul style="list-style-type: none"> Expand intelligence-driven interdiction of illicit weapons shipments destined for Mexico through multiagency investigative efforts
Enhance cooperation with international partners in weapons smuggling/trafficking investigations	<ul style="list-style-type: none"> Engage in international training on border security, postblast investigations, firearms identification, and detection of concealment traps used for smuggling/trafficking of firearms in vehicles Complete and enhance the deployment of Spanish eTrace capabilities among appropriate Mexican law enforcement agencies Continue to monitor the end use of firearms legally exported from the United States to Mexico through the Department of State's Blue Lantern Program Maintain Drug Enforcement Administration; Federal Bureau of Investigation; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and Immigration and Customs Enforcement liaison officers in Mexico Modernize, expand, and network ballistics imaging technology with Mexican law enforcement agencies
Strengthen domestic coordination on weapons smuggling/trafficking investigations	<ul style="list-style-type: none"> Improve support to state and local law enforcement efforts targeting illegal weapons trafficking Increase ATF staffing levels in the Southwest border region Expand the use of the Border Enforcement Security Teams to disrupt cross-border weapons trafficking networks Continue applying standard proviso on export licenses requiring the provision of serial numbers for firearms exported to Mexico Improve U.S. government outreach to and coordination with federal firearms licensees
Increase successful federal prosecutions for illegal weapons trafficking	<ul style="list-style-type: none"> Assign Organized Crime and Gang Section prosecutors to the Southwest border Target gun trafficking gangs

Source: GAO analysis of ONDCP's 2013 *National Southwest Border Counternarcotics Strategy*. | GAO-16-233

Our review of the Weapons Chapter in the 2011 and 2013 *Strategies* determined that, generally, accomplishments under each supporting action were discussed. For example, in the 2011 *Strategy*, one supporting action called for ATF to increase staffing at the El Paso Intelligence Center Firearms and Explosives Trafficking Intelligence Unit through the incorporation of partner agencies. In 2013, the *Strategy* included an update that the unit had incorporated a CBP analyst dedicated to weapons-related intelligence. Similarly, in 2011, the agencies said they

had plans under way to train over 200 Mexican law enforcement personnel in how to correctly use eTrace. The 2013 *Strategy* noted that 350 Mexican law enforcement personnel had received training on using eTrace. Nevertheless, the supporting actions described in the *Strategy* are not consistently linked to indicators or regularly measured. Currently, the narrative related to these supporting actions typically covers ongoing efforts by the agencies to address these actions, but it does not include a measure of overall progress. By including these supporting actions and activities in the Weapons Chapter as measures, ONDCP could better assess the agencies' efforts in combating firearms trafficking because this would provide a more comprehensive assessment.

Conclusions

Although ATF and ICE have pledged, through the 2009 MOU, to collaborate effectively to combat firearms trafficking, these agencies have not set up a mechanism to monitor implementation of the MOU that would allow them to identify and address information sharing and collaboration challenges. Consequently, gaps in information sharing and some disagreement about agency roles in the broader effort to combat firearms trafficking have emerged that weaken the effectiveness of the MOU.

It is unclear to what extent ONDCP's *Strategy* has advanced U.S. government efforts to combat firearms trafficking, since the indicator used to track progress, by itself, is not sufficient to measure progress made by U.S. agencies in stemming arms trafficking to Mexico. Other actions that agencies take to stem the flow of firearms from the United States into Mexico may be worth considering as additional measures of progress, such as the number of interdictions of firearms destined for Mexico, the number of investigations leading to indictments for firearms trafficking related to Mexico, and the number of convictions of firearms traffickers with a nexus to Mexico. By including these types of measures in a comprehensive indicator or set of indicators, ONDCP will be better positioned to monitor progress on stemming firearms trafficking across the Southwest border.

Recommendations for Executive Action

We recommend that the Attorney General of the United States and the Secretary of Homeland Security convene cognizant officials from ATF and ICE to institute a mechanism to regularly monitor the implementation of the MOU and inform agency management of actions that may be needed to enhance collaboration and ensure effective information sharing.

To ensure effective implementation of the strategic objective of the Weapons Chapter of the *Strategy*, we recommend that the ONDCP Director establish a more comprehensive indicator, or set of indicators, that more accurately reflects progress made by ATF and ICE in meeting the strategic objective.

Agency Comments

We provided a draft of this report for review and comment to the Departments of Homeland Security, Justice, and State; and the Office of National Drug Control Policy.

DHS agreed with our recommendation regarding monitoring implementation of the MOU and provided written comments in response to the draft, reproduced in appendix II. In comments on the draft report provided via e-mail by a designated ATF Audit Liaison Officer, DOJ also agreed with this recommendation, noting that ATF officials will work with counterparts at DHS to create a mutually acceptable method to further enhance implementation of the MOU. State did not provide comments on the draft report.

In e-mail comments provided by a designated General Counsel official, ONDCP concurred with our recommendation to establish a more comprehensive set of indicators for the Weapons Chapter of the *Strategy*. Accordingly, ONDCP indicated that it would work with ICE and ATF to develop additional indicators to evaluate their progress. The indicators developed through this collaborative process will be used in future iterations of the *Strategy* beginning with the next report in 2017.

ICE and ATF also provided technical comments which we incorporated throughout the report where appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security; the Attorney General of the United States; the Director of the Office of National Drug Control Policy; the Secretary of State; and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6991 or farbj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Jessica Farb". The signature is written in a cursive, flowing style.

Jessica Farb
Acting Director, International Affairs and Trade

Appendix I: Scope and Methodology

To identify data available on the origin of firearms trafficked to Mexico that were seized and traced, we relied primarily on the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) data compiled by its National Tracing Center (NTC). The data provided by NTC were obtained from ATF's Firearms Tracing System, most of which is developed through eTrace submissions. We discussed with cognizant NTC officials the methodology used to collect these data and reviewed supporting agency documentation. Based on these discussions, we determined that NTC data were sufficiently reliable to permit an analysis of where the firearms seized in Mexico that were submitted for tracing had been manufactured and whether they had been imported into the United States before arriving in Mexico. For those firearms that were traced to a retail dealer in the United States before being trafficked to Mexico, NTC data also contained information on the states where they had originated. NTC trace data also contained information allowing identification of the types of firearms that were most commonly seized in Mexico and subsequently traced. We corroborated this information in discussions with U.S. and Mexican law enforcement officials.

Since firearms seized in Mexico are not always submitted for tracing within the same year as they were seized, it was not possible for us to develop data to track trends on the types of firearms seized year to year. Similarly, we were unable to obtain quantitative data from U.S. or Mexican government sources on the users of illicit firearms in Mexico. However, there was consensus among U.S. and Mexican law enforcement officials that most illicit firearms seized in Mexico had been in the possession of organized criminal organizations linked to the drug trade. The involvement of criminal organizations with ties to drug trafficking in the trafficking of illicit firearms into Mexico was confirmed by law enforcement intelligence sources. We learned about the use of firearms parts for the assembly of firearms in Mexico through our interviews with cognizant U.S. and Mexican government and law enforcement officials and through review of ATF-provided documents.

To learn more about U.S. government efforts to combat illicit sales of firearms in the United States and to stem the flow of these firearms across the Southwest border into Mexico, we interviewed cognizant officials from the Department of Justice's (DOJ) ATF, the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), and the Department of State (State) regarding their relevant efforts. We obtained data from ATF and ICE on funding for their respective efforts to address firearms trafficking to Mexico, and data from ICE on seizures of southbound firearms. To

Appendix I: Scope and Methodology

assess the reliability of the data, we discussed sources and the methodology use to develop the data with agency officials. We determined that the information provided to us was sufficiently reliable to describe agencies' efforts to combat firearms trafficking. We also conducted fieldwork at U.S.-Mexico border crossings at El Paso, Texas, and San Diego, California. In these locations, we interviewed ATF, CBP, and ICE officials responsible for overseeing and implementing efforts to stem the flow of illicit firearms trafficking to Mexico and related law enforcement initiatives.

We reviewed and analyzed DOJ and DHS documents relevant to U.S. government efforts and collaboration to address arms trafficking to Mexico, including funding data provided to us by ATF and ICE, the 2009 memorandum of understanding (MOU) between ICE and ATF, data from ICE on seizures of firearms destined for Mexico, data from ATF and ICE on efforts to investigate and prosecute cases involving arms trafficking to Mexico, and agency reports and assessments related to the issue. We also reviewed relevant prior GAO reports, Congressional Research Service reports and memorandums, and reports from DOJ's Office of Inspector General related to ATF's efforts to enforce federal firearms laws. We reviewed provisions of federal firearms laws relevant to U.S. government efforts to address firearms trafficking to Mexico, including the Gun Control Act of 1968, the National Firearms Act of 1934, and the Arms Export Control Act of 1976. We did not independently review any Mexican laws for this report.

To determine how well agencies collaborated with Mexican authorities to combat illicit firearms trafficking, we conducted fieldwork in Mexico City, Guadalajara, and border locations in Ciudad Juarez and Tijuana, Mexico. In Mexico, we met with ATF, CBP, ICE, and State officials working on law enforcement issues at the U.S. embassy. We interviewed Mexican government officials engaged in efforts to combat firearms trafficking from the Attorney General's Office (Procuraduría General de la República), the Federal Police (Policía Federal); the Ministry of Public Safety (Secretaría de Seguridad Pública); the Ministry of Defense (Secretaría de la Defensa Nacional); the Mexican National Intelligence Agency (Centro de Investigación y Seguridad Nacional, or CISEN); the Mexican Navy (Secretaría de Marina or Armada de Mexico); Customs (Servicio de Administración Tributaria); the Forensic Science Institute of Jalisco (Instituto Jalisciense de Ciencias Forenses); Attorney General Regional Offices, Federal Police, and State Police in Tijuana and Ciudad Juarez; and the State Attorney General in Guadalajara. Because our fieldwork was limited to selected locations along the Southwest border and in the

Appendix I: Scope and Methodology

interior of Mexico, our observations in these locations are illustrative but are not generalizable and may not be representative of all efforts to address the issue.

To assess the extent to which the *National Southwest Border Counternarcotics Strategy (Strategy)* outlines U.S. goals and progress made in efforts to stem firearms trafficking to Mexico, we reviewed the 2011 and 2013 versions of the *Strategy's* Weapons Chapter and the 2010 implementation guide. We also met with Office of National Drug Control Policy officials responsible for the implementation and monitoring the *Strategy*, as well as with ATF and ICE officials responsible for writing the Weapons Chapter and overseeing implementation and reporting on activities described within their respective agencies.

Appendix II: Comments from the Department of Homeland Security



December 9, 2015

Jessica Farb
Acting Director, International Affairs & Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-16-223, "FIREARMS TRAFFICKING: U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, but Some Collaboration Challenges Remain"

Dear Ms. Farb:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department welcomes GAO's positive recognition that the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) efforts to combat firearms trafficking to Mexico. As the primary federal law enforcement agency responsible for investigating international smuggling operations and enforcing U.S. export laws, HSI is committed to combating illegal firearms, ammunition and explosives smuggling activities that fuel violence both domestically and abroad. HSI fulfills this commitment by relying on its extensive legal authorities and unique expertise in conducting illegal export and contraband smuggling investigations.

HSI firearms, ammunition, and explosives smuggling investigations have resulted in unprecedented bi-lateral interdictions, investigations and information-sharing activities that identify, disrupt, and dismantle transnational criminal networks operating within the United States, Mexico, Canada, Central America, the Caribbean, and around the World.

HSI and its law enforcement partners target the illegal movement of U.S. origin firearms, ammunition, and explosive weapons with the ultimate goal of preventing the procurement of these items by drug cartels, terrorists, human rights violators, foreign adversaries, and other transnational criminal organizations and individuals that utilize these weapons to facilitate criminal activity and commit acts of violence. HSI's investigative strategy includes the identification and prosecution of criminal networks and individuals

**Appendix II: Comments from the Department
of Homeland Security**

responsible for the acquisition and movement of firearms and other dangerous weapons from the United States, as well as the seizure and forfeiture of money and valuable property derived from or used to facilitate this criminal activity.

The draft report contained one recommendation to DHS with which the Department concurs. Specifically, GAO recommended that the U.S. Attorney General and the Secretary of Homeland Security:

Recommendation 1: Convene cognizant officials from ATF [Bureau of Alcohol, Tobacco, Firearms and Explosives] and ICE to institute a mechanism to regularly monitor the implementation of the MOU [Memorandum of Understanding] and inform agency management of actions that may be needed to enhance collaboration and ensure effective information sharing.

Response: Concur. ICE and ATF will coordinate on efforts to institute an oversight mechanism to regularly monitor the implementation of the MOU between the two agencies. ICE HSI has already begun preliminary discussions with counterparts in ATF to create such a mechanism. The goal is to better inform agency management of actions that may be needed to enhance collaboration and ensure effective information sharing, as appropriate. Estimated Completion Date: December 31, 2016.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Jessica Farb, (202) 202-512-6991 or farbj@gao.gov

Staff Acknowledgments

In addition to the contact named above, Charles Johnson (Director), Juan Gobel (Assistant Director), Francisco Enriquez (Analyst-in-Charge), Danny Baez, and Julia Jebo-Grant made key contributions to this report. Ashley Alley, Karen Deans, Justin Fisher, and Oziel Trevino provided additional assistance.

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EXHIBIT 10



Bureau of Justice Statistics Special Report

November 2001, NCJ 189369

Survey of Inmates in State and Federal Correctional Facilities

Firearm Use by Offenders

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BJS Statistician

Approximately 203,300 prisoners serving a sentence in a State or Federal prison in 1997 were armed when they committed the crime for which they were serving time. An estimated 18% of State prison inmates and 15% of Federal inmates reported using, carrying, or possessing a firearm during the crime for which they were sentenced. In 1991, 16% of State inmates and 12% of Federal inmates said they were armed at the time of their offense.

Among all inmates in 1997, 9% of those in State prisons and 2% of those in Federal prisons said they fired a gun while committing their current offense. Of violent offenders, 18% of State inmates and 9% of Federal inmates discharged a firearm. Less than 2% of inmates serving time for a drug, property, or public-order offense fired a gun during the crime that resulted in their prison sentence.

Among prisoners who carried a firearm during the offense for which they were serving time in 1997, 14% had bought or traded for the gun from a store, pawnshop, flea market, or gun show. The 1997 percentage who had acquired their firearm at a retail outlet represented a significant drop from 21% in 1991. The percentage of inmates receiving their gun from family or friends rose from 34% in 1991 to 40% in 1997.

Highlights

Type of firearm	Percent of prison inmates	
	State	Federal
Total	18.4%	14.8%
Handgun	15.3	12.8
Rifle	1.3	1.3
Shotgun	2.4	2.0

Characteristic of inmates who carried firearms	Percent of prison inmates possessing a firearm	
	State	Federal
Offense		
Violent	30.2%	35.4%
Property	3.1	2.9
Drug	8.1	8.7
Public-order	19.1	27.3

Gender	Percent of State inmates possessing a firearm	
	1997	1991
Male	19.1%	15.5%
Female	7.3	6.2
Age		
24 or younger	29.4%	19.1%
25-34	16.5	15.5
35 or older	14.8	13.6

Criminal history	Percent of State inmates possessing a firearm	
	1997	1991
First-time offender	22.3%	9.5%
Recidivist	17.2	18.4

Source of gun	Percent of State inmates possessing a firearm	
	1997	1991
Total	100.0%	100.0%
Purchased from –		
Retail store	13.9	20.8
Pawnshop	8.3	14.7
Flea market	3.8	4.2
Gun show	1.0	1.3
Friends or family	0.7	0.6
Street/illegal source	39.6	33.8
	39.2	40.8

Use of firearm	Percent of prison inmates possessing a firearm	
	State	Federal
Total	100.0%	100.0%
Fired	49.1	12.8
Killed/injured victim	22.8	5.0
Other	26.3	7.8
Brandished to –	73.2	46.2
Scare someone	48.6	29.3
Defend self	41.1	24.9

- During the offense that brought them to prison, 15% of State inmates and 13% of Federal inmates carried a handgun; about 2% had a military-style semiautomatic gun or machine gun.

- Among inmates in prison for homicide, a sexual assault, robbery, assault or other violent crime, 30% of State offenders and 35% of Federal offenders carried a firearm when committing the crime. Almost a fourth of State inmates and almost a third of Federal inmates serving a sentence for a violent crime had carried a handgun during the offense.

- 29% of State inmates under age 25 at the time of the survey were carrying a gun when they committed their current offense compared to 15% of those 35 or older.

- In 1997 among State inmates possessing a gun, fewer than 2% bought their firearm at a flea market or gun show, about 12% from a retail store or pawnshop, and 80% from family, friends, a street buy, or an illegal source.

- On average, State inmates possessing a firearm received sentences of 18 years, while those without a weapon had an average sentence of 12 years.

- Among prisoners carrying a firearm during their crime, 40% of State inmates and 56% of Federal inmates received a sentence enhancement because of the firearm.

Data for this report are based primarily on personal interviews with large nationally representative samples of State and Federal prison inmates. In the 1997 and 1991 Surveys of Inmates in State and Federal Correctional Facilities, inmates were questioned about any firearms they may have used when committing a crime and asked to specify the type of weapon, its source, and its use in committing crimes. In addition, inmates were queried about the types of both current and past offenses for which they were sentenced, including any weapons offenses.

Almost a fifth of prison inmates carried a gun during their crime

An estimated 18% of State prison inmates and 15% of Federal inmates reported that they used, carried, or possessed a firearm when they committed the crime for which they were serving a sentence to prison (table 1).¹

When asked if they had ever been armed while committing a crime, about a quarter of State prison inmates and a fifth of Federal inmates reported that they had carried a gun while committing at least one crime.

Almost half of both State and Federal inmates said that they had owned or possessed a firearm at some time in their lives. Equivalent measures for lifetime gun ownership among adults in the general population are difficult to find. Personal or telephone interviews and polls provide estimates for persons in the general population owning a firearm at the time of the survey. An estimated 25% to 29% of the adult population reported currently owning a firearm when surveyed.² According to public opinion polls, members of 4 in every 10 U.S. households have access to a gun.

Less than 2% of inmates reported carrying a fully automatic or military-style semiautomatic firearm

Fewer than 1 in 50 State and Federal inmates used, carried, or possessed a

military-style semiautomatic gun or a fully automatic gun during their current offense (table 2). These guns, as used in the questions and definitions for the personal interviews with prison inmates, include the following:

- *military-style semiautomatic pistol* — similar to a conventional semiautomatic pistol except that the magazine or clip is visible³
- *military-style semiautomatic rifle* — a semiautomatic rifle with military features such as a pistol grip, folding stock, flash suppressor, or bayonet mount
- *military-style semiautomatic shotgun* — a semiautomatic shotgun with military features such as a pistol grip, folding stock, flash suppressor, or bayonet mount
- *machine gun* — a fully automatic gun which, if the trigger is held down, will fire rapidly and continuously.

³The survey interview included in the operational definition of a military-style semiautomatic pistol the phrase "can hold more than 19 bullets."

Some examples of these firearms are the UZI, TEC-9, and MAC10 for handguns; the AR-15 and AK-47 for rifles; and the "Street Sweeper" for shotguns. Possession of these models meeting criteria specified in Federal statutes can be unlawful.

To be understood by inmate respondents who were asked about their gun use, the questions and definitions in the survey reflect terminology commonly used by prisoners to describe types of weapons. If questioned by respondents, interviewers read to them the definitions included on pages 14 and 15 of this report. Of necessity, this language is similar in concept but may differ in wording from technical descriptions in Federal statutes pertaining to firearms.

The Violent Crime Control and Law Enforcement Act of 1994 made it unlawful, with certain exceptions, to manufacture, transfer, or possess military-style semiautomatic weapons,

Table 1. Possession of firearms by State and Federal prison inmates, by type of firearm, 1997

Type of firearm	Percent of prison inmates —					
	Armed during current offense		Ever armed while committing offense		Ever used or possessed firearm	
	State	Federal	State	Federal	State	Federal
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Firearm	18.4%	14.8%	25.1%	20.0%	46.9%	48.9%
Handgun	15.3	12.8	21.3	17.2	36.0	38.6
Rifle	1.3	1.3	2.0	1.9	12.4	14.6
Shotgun	2.4	2.0	3.5	3.0	13.7	15.6
Other	0.5	0.6	1.1	0.9	2.7	2.3
No firearm	81.6%	85.2%	74.9%	80.0%	53.1%	51.1%

Note: Detail do not add to total because inmates may have had more than one firearm.

Table 2. Possession of firearms by State and Federal prison inmates, by whether the firearm was single shot, conventional semiautomatic, or military-style semiautomatic or fully automatic, 1997

Specific type of firearm	Percent of prison inmates —					
	Armed during current offense		Ever armed while committing offense		Ever used or possessed firearm	
	State	Federal	State	Federal	State	Federal
Single shot	9.9%	7.3%	14.2%	10.6%	31.0%	31.4%
Conventional semiautomatic	7.9	7.7	10.9	9.8	22.6	26.0
Military-style semiautomatic or fully automatic	1.5	1.7	2.5	2.3	5.6	5.6

Note: Columns do not add to total percent with firearms because inmates may have possessed more than one firearm. See text above and pages 14 and 15 for definitions.

¹For definitions of firearms, see *Methodology* on pages 14 and 15.

²Phillip J. Cook and Jens Ludwig, *Guns in America: Summary Report*, Washington, DC, Police Foundation, 1996, table 2.3.

if not lawfully possessed on September 13, 1994.⁵

Of inmates who carried a firearm during their offense, 8 in 10 had a handgun

Inmates reported that a handgun was their preferred firearm; of those carrying a firearm, 83% of State inmates and 87% of Federal inmates said that they carried a handgun during the offense for which they were serving their longest sentence. About 8% of State inmates who had carried a firearm during the commission of their crime reported having a military-style semiautomatic (7%) or fully automatic (2%) firearm, with some carrying both.

Type of firearm	Percent of prison inmates carrying a firearm during current offense	
	State	Federal
Handgun	83.2%	86.7%
Rifle	7.3	8.9
Shotgun	13.1	13.7
Single shot	53.9%	49.2%
Conventional semiautomatic	43.2	51.8
Military-style semiautomatic	6.8	9.3
Fully automatic	2.4	3.8
Number of inmates	190,383	12,936

Note: Inmates could report carrying more than one type of firearm. For definitions of weapon categories, see pages 2, 14, and 15.

Firearm use during crimes increased from 1991 to 1997

Over the 6 years between surveys of inmates, 1991-97, possession of a firearm during a crime increased from 16% to 18% of State inmates and from 12% to 15% of Federal inmates (table 3). Because of the growth in the prison population, the estimated number of inmates carrying a firearm increased dramatically — from 114,100 in 1991 to 190,400 in 1997 in State prisons and from 6,300 in 1991 to 12,900 in 1997 in Federal prisons. These estimates were based on inmates who reported carrying a firearm during the offense for which they received their longest sentence.

⁵See P.L. 103-22 and *Commerce in Firearms in the United States*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, February 2000, page C-5.

Table 3. Possession of firearms, by type of offense, by State and Federal prison inmates, 1997 and 1991

Current offense	Prison inmates			
	1997		1991	
	Number	Percent who possessed a firearm during current offense	Number	Percent who possessed a firearm during current offense
State				
All inmates	1,037,241	18.4%	700,050	16.3%
Violent offense	483,713	30.2	323,653	29.1
Property offense	227,726	3.1	171,749	3.2
Drug offense	213,974	8.1	148,743	4.1
Public-order offense	99,396	19.1	47,001	16.1
Federal				
All inmates	87,466	14.8%	53,348	11.8%
Violent offense	12,604	35.4	9,113	38.0
Property offense	5,811	2.9	7,011	2.1
Drug offense	54,561	8.7	30,788	3.9
Public-order offense	12,708	27.3	4,964	28.5

Table 4. Firearm possession during current offense, by type of offense, for State and Federal prison inmates, 1997

Current offense	Prison inmates			
	State		Federal	
	Number	Percent who possessed a firearm during current offense	Number	Percent who possessed a firearm during current offense
Violent offense	483,713	30.2%	12,604	35.4%
Homicide	135,493	42.9	1,273	39.3
Sexual assault	87,687	2.9	679	0.0
Robbery	145,318	34.5	8,554	40.3
Assault	95,756	31.2	1,108	26.0
Other violent	19,459	27.1	989	22.4
Property offense	227,726	3.1%	5,811	2.9%
Burglary	111,198	4.0	279	10.1
Other property	116,528	2.3	5,531	2.5
Drug offense	213,974	8.1%	54,561	8.7%
Possession	91,511	7.8	9,959	7.0
Trafficking	116,578	8.6	39,769	9.1
Other drug	5,885	3.1	4,834	8.7
Public-order offense	99,396	19.1%	12,708	27.3%
Weapons	25,257	64.9	5,905	51.9
Other public-order	74,139	3.5	6,803	5.9

8% of drug offenders and 3% of property offenders armed while committing their crimes

Fewer than 1 in 10 offenders serving a sentence for selling or carrying illegal drugs and 1 in 30 inmates in prison for a property crime — burglary, larceny, fraud, or destruction of property — had a firearm with them while committing their current offense (table 4).

Inmates who had been sentenced for violent crimes used firearms more often than other prisoners. They were more likely than property, drug, or

public-order offenders to have used or possessed a gun during their crime. An estimated 30% of violent offenders in State prisons and 35% in Federal prisons had a firearm at the time of the offense.

Offenders sentenced for homicide or for robbery reported the most extensive use of firearms. Among inmates sentenced for homicide, about 43% in State prisons and 39% in Federal prisons said they were carrying a firearm when they committed the offense. About 35% serving time for robbery in State prisons and 40% in Federal prison had a gun.

Table 5. Possession of a firearm during current offense, by selected characteristics for State and Federal prison inmates, 1997

Selected characteristic	Prison inmates			
	State		Federal	
	Number	Percent who possessed a firearm during current offense	Number	Percent who possessed a firearm during current offense
Gender				
Male	972,572	19.1%	81,102	15.5%
Female	64,669	7.3	6,364	6.2
Race/Hispanic origin				
White	346,188	14.8%	25,977	16.7%
Black	482,302	21.1	33,100	17.7
Hispanic	176,089	17.6	24,040	8.1
Other	32,662	19.3	4,349	17.9
Age				
20 or younger	61,663	35.5%	935	23.0%
21-24	143,533	26.8	6,865	18.6
25-34	396,166	16.5	31,970	15.5
35-44	305,765	13.3	26,636	12.8
45-54	100,133	17.4	14,393	15.3
55 or older	29,980	21.7	6,667	13.0
Educational attainment				
Some high school or less	445,479	16.8%	25,642	13.9%
GED	260,743	23.6	17,150	19.2
High school diploma	190,805	16.7	21,292	14.5
Some college	110,122	16.5	15,233	15.1
College graduate	27,649	12.1	7,963	8.3
Citizenship				
United States	983,876	18.5%	71,307	16.9%
Latin America	47,257	14.5	14,638	5.7
Other	4,609	22.0	1,376	2.4
Military service				
Served	129,913	16.4%	12,746	17.2%
Did not serve	907,142	18.6	74,676	14.4

Male inmates and young inmates carried firearms

Male State and Federal offenders were more likely than their female counterparts to have carried a firearm when committing their offense. About 19% of men in State prison and 16% in Federal prison reported using or possessing a firearm when committing their most serious offense, compared to 7% of women in State prison and 6% in Federal prison (table 5).

An estimated 21% of black non-Hispanic inmates in State prison, 18% of Hispanics, and 15% of white non-Hispanics said they had a gun with them while committing their most serious offense. About 18% of black and white inmates in Federal facilities and 8% of Hispanics had carried a firearm.

Young State inmates were more likely than older inmates to use firearms. About 29% of inmates under the age of 25 at the time of the survey were carrying a gun when they committed their current offense, compared to 15% of those 35 or older. Among Federal inmates, about 19% under age 25 and 14% age 35 or older said they had a gun with them.

Weapon offenses and offenders

Weapon offenses include unlawful distribution, sale, manufacture, alteration, transport, possession, or use of a deadly or dangerous weapon or accessory. In 1998 an estimated 195,000 persons were arrested by State or local law enforcement or referred to a U.S. attorney for prosecution for a weapon offense — counting only the most important offense and no secondary offenses. Over 35,000 persons were convicted of a weapon offense. About 49,000 persons were in a local jail or State or Federal prison for a weapon offense in 1998. An additional 100,000 were serving a sentence in the community on probation, parole, or supervised release.

An estimated 12% of State prison inmates and 19% of Federal inmates were either currently serving a sentence for a weapon offense or had been sentenced for a weapon offense in the past.

Weapons as the most serious offense or charge in the criminal justice system, 1998

	Number	Percent of total
State/local jurisdictions		
Arrested	190,600	1.3%
Defendants at initial filing	--	2.8
Convicted of a felony	31,904	3.4
In local jails	13,630	2.3
In State prisons	26,730	2.4
On probation/parole	100,440	2.3
Federal jurisdiction		
Received by U.S. attorneys as suspects	4,907	4.3%
Prosecuted	3,347	5.1
Convicted	3,413	5.6
In Federal prison	8,742	8.0
On probation/supervised release/parole	4,038	4.4

Note: The weapon offense is the offenders' most serious offense. Statistics on persons in Federal jurisdiction are for fiscal year 1998. --Not available.

Sources: Data on weapon offenders come from the FBI's *Crime in the United States, 1998*, table 29; from BJS' *Compendium of Federal Justice Statistics, 1998*; from BJS' Survey of Inmates in Local Jails, 1996, and Survey of Inmates in State and Federal Correctional Facilities, 1997, and from the following BJS reports available through <www.ojp.usdoj.gov/pubalp2.htm>: *Felony Defendants in Large Urban Counties, 1998*; *Felony Sentences in the United States, 1998*; *Prisoners in 1999*; and the press release for probation and parole surveys 2000.

Current and past sentences for a weapon offense, for State and Federal prison inmates, 1997

Any current or past offense	Percent of prison inmates	
	State	Federal
Total	100.0%	100.0%
Current or past weapon offense	12.2%	18.6%
Current and past weapon offenses	1.3	2.2
Current weapon/past other offenses	4.1	8.5
Current weapon/no past offenses	1.1	2.7
Current other/past weapon offenses	5.8	5.1
Other current and/or past offenses	87.8%	81.4%

Table 6. State and Federal prison inmates possessing a firearm during their most serious offense, by characteristics of their family and background, 1997

Inmates' family of origin and other background characteristics	Prison inmates			
	State		Federal	
	Number	Percent who possessed a firearm during current offense	Number	Percent who possessed a firearm during current offense
Lived with growing up				
Both parents	455,313	16.3%	47,279	13.2%
Single parent	438,741	19.7	30,146	16.2
Other	137,253	20.7	9,452	18.8
Parent ever incarcerated	188,166	22.7%	9,843	18.0%
Parent never incarcerated	833,005	17.4	76,382	14.5
Parent received welfare	374,340	20.8%	20,328	20.0%
Parent did not receive welfare	634,795	17.0	65,146	13.2
Inmate lived in public housing	186,847	21.1%	11,807	17.9%
Inmate did not live in public housing	835,540	17.8	74,656	14.5
Parent abused alcohol or drugs	327,404	18.5%	18,041	17.6%
Alcohol	241,521	16.6	14,541	17.8
Drugs	18,618	27.5	735	17.7
Both	66,986	22.9	2,752	17.0
Parent did not abuse alcohol or drugs	698,716	18.3	68,424	14.1
Peers engaged in illegal activity while growing up	780,234	19.6%	49,941	19.0%
Used drugs	688,497	19.7	42,764	18.5
Damaged/stole/sold property*	616,874	21.1	33,793	22.6
Drug trafficking	395,042	24.3	20,731	22.4
Robbery	203,745	30.4	8,400	32.5
Peers did not engage in any illegal activity	249,739	14.6	36,718	9.3

*Includes vandalism, shoplifting, stealing motor vehicles or parts, selling stolen property, and breaking and entering.

inmates living in some other arrangement while growing up (table 6).

A higher percentage of State inmates with a parent who had served a sentence to incarceration carried a gun (23%) than those whose parents had never been in prison or jail (17%). For Federal inmates, 18% of inmates who had incarcerated parents and 15% of those who did not carried a firearm.

Inmates who lived in families receiving welfare or living in publicly-subsidized housing while growing up were more likely than those who did not live under these types of government programs to be carrying a weapon. About 1 in 5 inmates whose family received welfare or who lived in publicly financed housing carried a firearm. About 1 in 6 State inmates and 1 in 7 Federal inmates whose parents were not receiving welfare benefits or living in publicly-financed housing had a gun.

A quarter of State inmates who said they had a parent who had abused drugs reported that they were carrying a gun while committing their current offense. In contrast, less than a fifth of those whose parents did not abuse substances had a firearm.

Background characteristics account for relatively small differences in firearm use

When inmates were interviewed for the 1997 Surveys, they were asked about their family background and experiences they had when growing up. Characteristics about which the inmates reported include parental upbringing, parental incarceration, welfare assistance to their family,

parental use of alcohol and drugs, and peer participation in criminal behavior.

Inmates who grew up living with both parents were less likely to be using or carrying a firearm than those who grew up primarily living with one parent, grandparents, other relatives, friends, or a foster family. An estimated 16% of State inmates and 13% of Federal inmates living with both parents had a gun with them, compared to 20% of State inmates and 17% of Federal

About 20% of State and Federal inmates whose friends while growing up used or traded drugs, stole, destroyed or damaged property, broke or entered private property, or robbed someone reported that they had a firearm with them when they committed their controlling offense. An estimated 15% of State inmates and 9% of Federal inmates who did not have friends involved in illegal activities

Inmates who had ever been shot at

As one measure of violence in inmates' lives, inmates were asked if they had ever been shot at. This

experience could have been at any time in their lives, including when they were committing the crime for which

	State prison inmates		Federal prison inmates	
	Number	Percent carrying a firearm	Number	Percent carrying a firearm
Ever shot at with a gun	516,194	24.6%	30,064	24.0%
Wounded	213,429	26.7	12,933	24.4
Shot at but not wounded	302,765	23.1	17,131	23.6
Never shot at	514,676	12.1	56,679	10.1

they were in prison. About half of State prisoners reported that in the past they had been shot at by someone, and more than a fifth had actually been wounded by gunfire. A quarter of State and Federal inmates who had been shot at were carrying a firearm during their current offense, compared to a tenth of those who had never been shot at.

used or possessed a firearm during their current offense.

Violent recidivists were as likely as first time violent offenders to have carried a gun

Recidivism does not appear to be related to whether inmates were carrying guns when the type of current offense is taken into account. Violent offenders who had served a prior sentence and first time violent offenders were about equally likely to be carrying a firearm when committing their current offense — about 30% of violent offenders in State prisons carried a firearm (table 7). About a third of violent Federal offenders, whether recidivist or first time, carried a firearm.

Less than 10% of both first time and repeat State offenders serving time for property, drug, and public-order offenses carried a gun. Drug offenders who were recidivists were more likely to be carrying a firearm than first-time drug offenders (9% versus 6% of State inmates and 11% versus 5% of Federal inmates).

Inmates who had served prior sentences as a juvenile were more likely to have had a gun than those who did not have a juvenile record. For State offenders 22% who had a juvenile record and 13% with only an adult record had a firearm while committing their current offense; for Federal offenders 27% with a juvenile record and 14% with only an adult record possessed a firearm.

Inmates' retail purchase of firearms fell between 1991 and 1997

In 1997, 14% of State inmates who had used or possessed a firearm during their current offense bought or traded for it from a retail store, pawnshop, flea market, or gun show (table 8). Nearly 40% of State inmates carrying a firearm obtained the weapon from family or friends. About 3 in 10 received the weapon from drug dealers, off the street, or through the black market. Another 1 in 10 obtained their gun during a robbery, burglary, or other type of theft.

From 1991 to 1997 the percent of State inmates with guns who acquired them at a retail outlet fell from 21% to 14%. At the same time the percentage reporting that they used firearms furnished by family or friends increased from 34% to 40%. Between the two surveys the Brady Handgun Violence Prevention Act of 1993 was enacted. The act requires background checks for persons purchasing firearms from federally licensed firearm dealers. Changes in how inmates obtained firearms, when the two surveys are compared, may or may not reflect the requirements in the Brady Act. Inmates may have procured their firearm or entered prison before the Brady Act became effective in 1994.

Table 7. Possession of firearm during current offense, by criminal history, prior sentences, and criminal justice status at arrest, for State and Federal prison inmates, 1997

Criminal justice characteristic	Prison inmates			
	Number	State	Number	Federal
		Percent who possessed a firearm during current offense		Percent who possessed a firearm during current offense
Criminal history				
No previous sentence	247,287	22.3%	33,731	9.5%
Current offense				
Violent	155,195	31.1	3,952	31.8
Drug	44,744	5.8	20,425	4.8
Other	47,347	9.1	9,354	10.2
Recidivists	783,178	17.2	52,619	18.4
Current offense				
Violent	360,564	28.4	9,866	38.4
Drug	177,922	9.0	32,706	11.2
Other	244,692	6.5	10,047	22.3
Prior sentences				
Juvenile only	66,742	34.4%	2,835	25.8%
Adult only	404,646	12.7	34,294	13.5
Both juvenile and adult	309,002	19.4	15,897	27.3
Criminal justice status at arrest				
New court commitment	543,238	21.8%	63,320	13.7%
On status	489,320	14.6	23,628	17.8
Probation	229,952	15.0	11,644	14.0
Parole	252,355	14.1	11,736	21.3
Escape	7,013	17.9	248	32.9

Table 8. Source of firearms possessed during the current offense of State prison inmates, 1997 and 1991

Source of firearms	Percent of State prison inmates who possessed a firearm during current offense	
	1997	1991
Total	100.0%	100.0%
Purchased or traded from retail outlet	13.9%	20.8%
Retail store	8.3	14.7
Pawnshop	3.8	4.2
Flea market	1.0	1.3
Gun show	0.7	0.6
Family or friend	39.6%	33.8%
Purchased or traded	12.8	13.5
Rented or borrowed	18.5	10.1
Other	8.3	10.2
Street/illegal source	39.2%	40.8%
Theft or burglary	9.9	10.5
Drug dealer/off street	20.8	22.5
Fence/black market	8.4	7.8
Other	7.4%	4.6%

Victims of violent offenders possessing firearms

About 30% of State inmates and 35% of Federal inmates sentenced for a violent offense — homicide, sexual assault, robbery, or assault — used or possessed a firearm when committing their current offense. A quarter of violent State prisoners and almost a third of Federal prisoners carried a handgun. Fewer than 1 in 10, however, carried a long gun — a rifle or shotgun — or a military-style semiautomatic or fully automatic weapon.

Inmates serving time for violent crimes were more likely to use a firearm when their victims were male rather than female, 18 or older rather than under age 18, and strangers, known by sight, or known casually rather than persons the inmates knew well.

- About 40% of violent State offenders who victimized a male had a gun compared to 17% of offenders when the victim was female.

- 39% of violent State inmates with a black victim and 33% of those with a Hispanic victim used a firearm, significantly more than the 25% with a white victim.

Possession of a firearm, by type of firearm, for State and Federal prison inmates sentenced for a violent offense, 1997

Type of firearm	Percent of prison inmates who possessed a firearm during current violent offense	
	State	Federal
Total	100%	100%
Any firearm	30.2%	35.4%
Handgun	24.7	30.4
Rifle	2.0	2.4
Shotgun	4.1	3.6
Other	0.7	1.2
Type of firearm		
Single shot	17.0%	18.0%
Conventional semiautomatic	12.1	16.3
Military-style semi-automatic or fully automatic	2.1	4.0

- Less than 10% of those who victimized persons 17 or younger, compared to over 33% of those who victimized persons 18 or older, possessed a firearm.

- Over a third of violent offenders used guns when their victims were strangers and casual acquaintances, compared to a fifth who used guns against persons they knew.

- 27% of offenders who victimized a current or former spouse, boyfriend, or girlfriend were armed while committing the crime. About 8% used guns against other relatives, including children, siblings, and other family members.

Characteristics of victims of violent crime, by whether the State prison inmate possessed a firearm, 1997

Characteristics of victim	Percent of violent State prison inmates who possessed a firearm during current offense
Gender	
Male	39.8%
Female	16.8
Race/Hispanic origin	
White	25.4%
Black	38.6
Hispanic	32.8
Other	29.1
Age	
17 or younger	8.2%
18-24	40.9
25-34	37.0
35 or older	33.8
Relationship to offender	
Stranger	35.6%
Known by sight or casually	36.2
Well known	20.6
Intimate*	27.0
Other relative	8.2
Friend	26.3
Other	23.9

*Includes spouse, ex-spouse, boyfriend, girlfriend, ex-boyfriend, and ex-girlfriend.

Recidivists less likely than first timers to buy their gun from a retail establishment

Although existence of a prior record did not change inmates' likelihood of having carried a gun while committing

their current crime, it did influence where they acquired their gun. Recidivists were less likely than those who were first time offenders to have purchased their gun from a retail store, pawnshop, flea market, or gun show. About a tenth of recidivists and a fifth

of first timers purchased their gun from a retail establishment (table 9).

A larger percentage of recidivists than first time offenders obtained their weapon through illegal activities or from the street or a black market source — 42% of recidivists and 31% of first timers.

Table 9. Source of firearms possessed during current offense, by criminal history, for State prison inmates, 1997 and 1991

Source of firearms	Percent of State prison inmates possessing a firearm who were —			
	First timers		Recidivists	
	1997	1991	1997	1991
Total	100.0%	100.0%	100.0%	100.0%
Purchased or traded from a retail outlet	20.1%	32.9%	11.4%	16.8%
Retail store	14.2	25.5	6.0	11.0
Pawnshop	4.2	5.4	3.7	3.9
Flea market	0.9	1.0	1.1	1.4
Gun show	0.8	1.0	0.7	0.4
Family or friend	40.5%	36.1%	39.2%	33.1%
Purchased or traded	11.0	11.5	13.5	14.0
Rented or borrowed	20.0	12.9	17.9	9.3
Other	9.5	11.6	7.8	9.9
Street/illegal source	30.9%	26.7%	42.4%	45.7%
Theft or burglary	7.6	4.7	10.9	12.4
Drug dealer/off street	15.7	14.7	22.8	25.2
Fence/black market	7.6	7.3	8.8	8.1
Other	8.5%	4.4%	6.9%	4.3%
Number of prison inmates	51,152	22,444	127,664	70,728

Recidivists with firearms were as likely as first time offenders to obtain their gun from a family member or friends in 1997— about 40% acquired their guns from either family or friends.

The percentage of inmates who purchased or traded from a retail outlet, such as a store or pawnshop, fell during this period for both those with prior sentences and those without them. For repeat offenders, purchasing from retail fell from 17% to 11%, and for first time offenders from 33% to 20%.

For recidivists the percentage of inmates with firearms who obtained them from family or friends rose from 1991 to 1997 — for recidivists from 33% in 1991 to 39% in 1997 and for first timers from 36% in 1991 to 41% in 1997.

Victim, police, and inmate reports of gun use during violent crime

The FBI reports that over two-thirds of homicide victims were killed with a firearm. About 4 in 10 inmates serving a sentence for murder or

manslaughter in State and Federal correctional facilities said that they had used a gun in committing the crime.

About 23% of robbery victims and 28% of aggravated assault victims told the National Crime Victimization Survey that the offender used a gun.

Possession of firearms during violent crime, as reported by victims, police, and prison inmates, 1997

Violent crime	Percent of victimizations in the National Crime Victimization Survey	Percent of offenses in the FBI's Supplemental Homicide Reports/Uniform Crime Reports	Percent of offenders possessing a firearm during a violent crime	
			Survey of Inmates in State Correctional Facilities	Survey of Inmates in Federal Correctional Facilities
Homicide		67.8%	42.9%	39.3%
Sexual assault	2.4%		2.9	0.0
Robbery	23.0	39.7	34.5	40.5
Aggravated assault	28.4	20.0	31.2	26.0

Table 10. Source of firearms possessed during current offense, by whether the firearm was single shot, conventional semiautomatic, or military-style semiautomatic or fully automatic, for State prison inmates, 1997

Source of firearms	Percent of State prison inmates who possessed a firearm		
	Military-style semiautomatic or fully automatic	Conventional semiautomatic	Single shot
Total	100.0%	100.0%	100.0%
Purchased or traded from a retail outlet	19.3%	16.5%	12.2%
Retail store	10.6	9.2	7.5
Pawnshop	6.7	4.7	3.4
Flea market	0.0	1.2	0.9
Gun show	1.9	1.4	0.4
Family or friend	25.2%	35.6%	43.8%
Purchased or traded	11.1	13.0	12.7
Rented or borrowed	10.6	15.7	21.5
Other	3.5	6.9	9.5
Street/illegal sources	48.5%	42.1%	36.4%
Theft or burglary	9.8	8.0	11.4
Drug dealer/off street	23.4	23.6	18.4
Fence/black market	15.4	10.6	6.7
Other	7.0%	5.8%	7.6%
Number of prison inmates	14,896	79,031	96,531

Note: See note on table 2 and definitions on page 14.

1 in 5 military-style semiautomatic or fully automatic guns bought from retail store

About a fifth of inmates with a military-style semiautomatic or fully automatic weapon bought it retail — at a store, flea market, or gun show (table 10). About a sixth of inmates with a conventional semiautomatic weapon and an eighth with a single-shot gun also had made a retail purchase.

While family and friends provided a quarter of military-style semiautomatic or fully automatic firearms, they gave inmates over a third of the conventional semiautomatic weapons and just under half of the single-shot guns.

Almost half of inmates possessing military-style semiautomatic or fully automatic weapons, about two-fifths of those with conventional semiautomatic firearms, and over a third of offenders having single-shot guns had got their firearm in a theft or burglary, or from a drug dealer, fence, or black market.

Young offenders less likely than older ones to have bought a firearm from a retail source

Young offenders were less likely than older inmates to have bought their gun from a retail outlet (table 11). About 7% of inmates 24 or younger and 22% of those 35 or older obtained their gun from a retail outlet.

About half of inmates who were 24 or younger, compared to less than a third of those 35 or older, acquired their gun through illegal activities, a drug dealer, or a black market.

Among those possessing a firearm during their current offense, an estimated 17% of women and 14% of men purchased their guns from a retail establishment. About 3 in 10 women offenders and 4 in 10 male inmates acquired their firearms from a theft, burglary, drug dealer, fence, or black market. Family and friends provided guns to about 46% of female inmates with firearms and 39% of male inmates.

Table 11. Source of firearms possessed during current offense, by gender and age, for State prison inmates, 1997

Source of firearms	Percent of State prison inmates who possessed a firearm during their current offense, by gender and age				
	Male	Female	24 or younger	25-34	35 or older
Total	100.0%	100.0%	100.0%	100.0%	100.0%
Purchased or traded from a retail outlet	13.8%	16.5%	6.6%	12.7%	21.9%
Retail store	8.3	10.6	2.6	7.0	15.0
Pawnshop	3.8	5.5	2.9	4.0	4.5
Flea market	1.0	0.4	0.1	0.9	1.9
Gun show	0.8	0.0	0.9	0.8	0.4
Family or friend	39.4%	46.4%	40.1%	38.9%	39.8%
Purchased or traded	12.9	5.9	13.0	12.1	13.3
Rented or borrowed	18.3	28.4	20.3	18.8	16.6
Other	8.2	12.1	6.8	8.1	9.9
Street/illegal sources	39.4%	30.5%	46.8%	41.2%	29.9%
Theft or burglary	9.9	13.1	10.0	9.8	10.1
Drug dealer/off street	21.0	13.0	27.8	22.9	12.1
Fence/black market	8.5	4.3	9.0	8.6	7.8
Other	7.4%	6.6%	6.5%	7.1%	8.5%
Number of prison inmates	174,488	4,421	57,194	60,818	60,897

Federal law may have disqualified over 8 in 10 inmates from buying a firearm

The Gun Control Act of 1968, as amended, and other Federal statutes list conditions which disqualify an individual from possessing a firearm or purchasing it from a licensed dealer. Some of these conditions include a prior felony conviction or indictment, current illegal drug use or addiction, dishonorable discharge from the Armed Forces, or being a fugitive from justice, a mental incompetent, or a nonresident alien. The Brady Act,

effective in 1994, mandated that federally licensed firearm dealers obtain background checks of potential purchasers, based on the conditions of eligibility.

A slightly lower percentage of State prisoners who had a gun, compared to those who did not, reported having a characteristic which may have disqualified them, as defined by Federal law. About 84% of State inmates who had possessed a gun and 88% who did not have a gun may have met at least one of the conditions, as measured in the inmate survey (table 12).

Among State inmates, those with and without guns answered differently on only two conditions. About 50% of those with a firearm and 56% without had a prior sentence to incarceration; about 37% with a gun and 49% without were on probation or parole. On other factors, about the same percentages reported meeting a condition that could have made them ineligible to purchase a firearm. Almost 6 in 10 said they had used illegal drugs before their controlling offense, about 1 in 10 had stayed in a mental health facility overnight, and 1 in 20 was a noncitizen.

Table 12. Selected characteristics that may make a gun purchase illegal under Federal law, by possession of firearm during current offense, for State and Federal prison inmates, 1997

Selected characteristic	Percent of inmates during current offense			
	State inmates		Federal inmates	
	Possessed firearm	Did not possess firearm	Possessed firearm	Did not possess firearm
Total meeting at least one condition which may have made inmates ineligible to purchase a firearm	84.1%	87.7%	83.1%	77.7%
Prior incarceration for serious offense	49.8	55.9	55.1	36.9
On probation or parole when arrested	37.0	48.9	32.0	26.0
On escape when arrested	0.7	0.7	0.6	0.2
Illegal drug use in month before or at time of offense	58.8	56.3	56.0	43.0
Ever treated overnight in mental health facility	10.7	10.7	6.7	4.2
Not a U.S. citizen	5.2	6.0	7.8	22.6
Dishonorable discharge from U.S. military	0.3	0.3	0.7	0.2

Higher percentages of Federal inmates with guns than without them reported meeting at least one of the conditions of the Federal laws. About 83% with a firearm and 78% without one may have been disqualified from purchasing a gun. Higher percentages of inmates using guns compared to those without a gun had a prior incarceration (55% versus 37%), were on probation or parole when arrested (32% versus 26%), or had used illegal drugs shortly before committing their current offense (56% versus 43%).

9% of all State prison inmates and 2% of all Federal inmates shot a gun while committing their current offense

In total, about 1 in 10 State inmates and 1 in 50 Federal inmates fired their gun while committing their current offense (table 13). Among inmates serving a sentence for a single violent crime incident, 18% of State inmates and 9% of Federal inmates said they fired the gun they were carrying.

Table 13. Extent of weapon use during current offense, for State and Federal prison inmates, 1997

Firearm use	Percent of prison inmates					
	All inmates		Violent offenders		Other offenders	
	State	Federal	State	Federal	State	Federal
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Used firearm	20.4%	8.9%	38.5%	35.1%	4.3	3.5
Discharged	8.9	2.0	17.7	8.5	1.1	0.6
Did not discharge	11.5	6.9	20.7	26.6	3.2	2.9
Possessed but did not use	3.6	8.2	3.0	7.2	4.1	8.4
Possessed other weapon	1.0	0.5	1.4	2.7	0.6	0.1
Did not possess weapon	75.0	82.4	57.2	55.0	91.0	88.0
Number	993,305	71,325	468,757	12,249	515,532	58,266

Note: Table excludes prison inmates serving a sentence for multiple incidents.

Table 14. Extent of firearm use during current offense for State and Federal prison inmates possessing a firearm, 1997

Firearm use	Percent of prison inmates possessing a firearm	
	State	Federal
Total	100.0%	100.0%
Used firearm	80.2%	48.6%
Discharged	49.1	12.8
Killed victim	14.6	3.0
Injured victim	15.4	3.5
Neither killed nor injured	26.3	7.8
Brandished/displayed	73.2	46.2
To scare someone	48.6	29.3
To defend self	41.1	24.9
To "get away"	18.9	11.6
Did not actively use firearm	19.8%	51.4%
Number	178,646	11,250

Note: Percents of subtotals do not add to totals because inmates may have used a firearm in more than one way. Table excludes prison inmates serving a sentence for multiple incidents.

About 1% of inmates serving a sentence for a single property, drug, or public-order incident discharged a gun.

Fewer than 1 in 20 State inmates and 1 in 10 Federal inmates, regardless of type of offense, said they possessed a firearm but did not use it. Another 2% reported they had another weapon, including a knife, scissors, ax, rock, club or other sharp or blunt object.

Table 15. Extent of firearm use during current offense, for State prison inmates possessing a firearm, 1997

Firearm use	Percent of State prison inmates possessing a firearm		
	Military-style semiautomatic or fully automatic	Conventional semiautomatic	Single-shot
Total	100.0%	100.0%	100.0%
Used firearm	74.6%	78.9%	80.8%
Discharged	42.9	46.3	50.6
Killed victim	11.2	13.5	15.7
Injured victim	14.2	15.1	15.3
Neither killed nor injured	23.4	24.0	27.3
Brandished/displayed	70.5	72.1	73.2
To scare someone	45.3	48.0	49.6
To defend self	39.7	42.4	39.9
To "get away"	20.4	18.5	18.7
Did not actively use firearm	25.4%	21.1%	19.2%
Number	14,280	76,010	96,810

Note: Percents of subtotals do not add to totals because inmates may have used a firearm in more than one way. Table excludes prison inmates serving a sentence for multiple incidents. See pages 2, 14, and 15 for definitions of firearms.

About half of inmates carrying a gun during their offense fired it and half of those injured or killed someone

If inmates carried a firearm, they tended to use it. Among inmates possessing a firearm and committing only one incident, four-fifths of State inmates and half of Federal inmates either fired the weapon or brandished or displayed it while committing the crime (table 14).

An estimated 23% of State inmates and 5% of Federal inmates with a gun either killed or injured their victim. Another 26% of State inmates and 8% of Federal inmates with a gun discharged the gun but did not injure or kill anyone with it.

Besides firing their weapon, inmates used their guns for other purposes. About half of State inmates said they used it to scare someone, about two-fifths to defend themselves, and a fifth to "get away."

About 81% of State inmates with a single-shot gun, 79% with a conventional semiautomatic, and 75% with a military-style semiautomatic weapon or a fully automatic weapon either fired or brandished it (table 15). About 51% with a single-shot gun, 46% with a conventional semiautomatic firearm, and 43% with a military-style semiautomatic weapon or a fully automatic weapon discharged their firearm. About a fifth either injured or killed their victim, regardless of the type of firearm.

About a quarter of inmates carrying military-style semiautomatic weapon or a fully automatic weapon and a fifth of those with a conventional semiautomatic or single-shot weapon did not actively use the gun in any way, discharging it or displaying it to scare someone, defend oneself, or "get away."

Table 16. Sentence length and time to be served, by possession of a firearm and type of offense, for State prison inmates, 1997

Current offense	Sentence length in months				Time expected to be served			
	Possessed firearm		Did not possess firearm		Possessed firearm		Did not possess firearm	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Total	220 mo	180 mo	150 mo	96 mo	126 mo	91 mo	83 mo	52 mo
Violent offense	252	240	216	180	147	115	126	87
Homicide	330	480	352	600	196	172	209	182
Sexual assault	444	480	232	180	212	206	131	97
Robbery	232	180	192	120	125	94	102	72
Assault	177	120	133	96	101	75	83	59
Property offense	177	120	123	72	87	72	64	44
Drug offense	143	108	107	60	60	48	49	36
Public-order offense	98	60	78	48	55	40	46	28

Possession of a firearm during an offense increased sentences and expected time served of inmates

On average, inmates possessing a firearm had longer sentences and expected to serve a longer time than those who had not used or possessed a firearm while committing their offense. Sentences for State inmates with firearms had an average of about 18 years, while those for inmates without a firearm were about 12 years (table 16). Those who had carried a firearm expected to serve about 10 years on their sentence, and those without a firearm, 7 years.

Violent offenders with firearms had on average a sentence of over 20 years and those without firearms, about 18

years. Violent offenders who had carried a gun also expected to serve 12 years on average and those who did not carry them, 10 years.

Significantly higher percentages of inmates who possessed firearms, compared to those who did not, received a sentence enhancement, generally for possessing a firearm. About 40% of State inmates who carried a firearm during their current offense and 6% who were not carrying a firearm were given an enhancement to their sentence because of a firearm offense (table 17). About 56% of Federal inmates who carried a firearm and 14% who did not carry one received a weapons offense enhancement.

Methodology

The U.S. Census Bureau conducted the 1997 Survey of Inmates in State Correctional Facilities (SISCF) for the Bureau of Justice Statistics (BJS) and the 1997 Survey of Inmates in Federal Correctional Facilities (SIFCF) for BJS and the Bureau of Prisons. From June through October, 1997, inmates were interviewed about their current offense and sentences, criminal histories, family and personal backgrounds, gun possession and use, prior drug and alcohol use and treatment, educational programs, and other services provided while in prison. Similar surveys of State prison inmates were conducted in 1974, 1979, 1986, and 1991. Federal inmates were surveyed for the first time in 1991.

Table 17. Sentence enhancements, by possession of a firearm during current offense, for State and Federal prison inmates, 1997

Enhancements to sentence	Percent of inmates during current offense			
	State inmates		Federal inmates	
	Possessed firearm	Did not possess firearm	Possessed firearm	Did not possess firearm
Total	100.0%	100.0%	100.0%	100.0%
No enhancement	49.6%	70.3%	31.1%	57.7%
Any enhancement	50.4%	29.7%	68.9%	42.3%
Firearm offense	39.9	5.5	55.7	13.7
2nd or 3rd strike	16.4	20.0	26.0	18.5
Type of drug offense*	7.0	9.8	23.3	25.7

*Type of drug offense includes type of drug, quantity of drug, or activity involved with the drug offense.

Sample design

The samples for the SISCF and SIFCF were taken from a universe of 1,409 State prisons and 127 Federal prisons enumerated in the 1995 Census of State and Federal Adult Correctional Facilities or opened between completion of the census and June 30, 1996. The sample design for both surveys was a stratified two-stage selection; first, selecting prisons, and second, selecting inmates in those prisons.

In the first stage correctional facilities were separated into two sampling frames: one for prisons with male inmates and one for prisons with female inmates. Prisons holding both genders were included on both lists.

In the sampling of State facilities, the 13 largest male prisons and 17 largest female prisons were selected with certainty. The remaining 1,265 male facilities and 261 female facilities were stratified into 14 strata defined by census region (Northeast except New York, New York, Midwest, South except Texas, Texas, West except California, and California). Within each stratum facilities were ordered by facility type (confinement and community-based), security level (maximum, medium, minimum, and none), and size of population. A systematic sample of prisons was then selected within strata with probabilities proportionate to the size of each prison.

For the sample of Federal prisons, one male prison and two female prisons were selected with certainty. The remaining 112 male facilities were classified into 5 strata defined by security level (administrative, high, medium, low, and minimum). The 20 remaining female facilities were stratified into 2 strata by security level (minimum and not minimum). Within security level, facilities were ordered by size of population and then selected with probability proportionate to size.

For the State survey 280 prisons were selected, 220 male facilities and 60 female facilities. Of the 280 facilities 3 refused to allow interviewing and 2 closed before the survey could be conducted. Overall, 32 male facilities and 8 female facilities were selected for the Federal survey, and all participated.

In the second stage, inmates were selected for interviewing. For State facilities interviewers selected the sample systematically using a random start and a total number of interviews based on the gender of the inmates and the size of the facility. For Federal facilities, a sample of inmates was selected for each facility from the Bureau of Prisons central list, using a random start and predetermined sampling interval.

All selected drug offenders were then subsampled so that only a third were eligible for interview. As a result, approximately 1 in every 75 men and 1 in 17 women were selected for the State survey, and 1 in every 13 men and 1 in every 3 women were selected for the Federal survey.

A total of 14,285 interviews were completed for the State survey and 4,041 for the Federal survey, for overall response rates of 92.5% in the State survey and 90.2% in the Federal survey.

The interviews, about an hour in length, used computer-assisted personal interviewing (CAPI). With CAPI, computers provide questions for the interviewer, including follow-up questions tailored to preceding answers. Before the interview, inmates were told verbally and in writing that participation was voluntary and that all information provided would be held in confidence. Participants were assured that the survey was solely for statistical purposes and that no individual who participated could be identified through use of survey results.

Estimates of prisoner counts

Based on the completed interviews, estimates for the entire population were developed using weighting factors derived from the original probability of selection in the sample. These factors were adjusted for variable rates of nonresponse across strata and inmates' characteristics and offenses. The sample for the State survey was adjusted to midyear custody counts for June 30, 1997, from data obtained in the National Prisoner Statistics series (NPS-1A). The sample from the Federal facilities was weighted to the total known sentenced custody population at midyear 1997.

Excluded from the estimate of Federal inmates were unsentenced inmates and those prisoners under Federal jurisdiction but housed in State and private contract facilities. Those prisoners who were under State jurisdiction, yet held in local jails or private facilities, were excluded from the estimated number of State prisoners. As a result, the estimated prisoner counts do not match those in other BJS data series. The estimated prisoner counts vary according to the particular data items analyzed. Estimates are based on the number of prisoners who provided information on selected items.

Accuracy of the estimates

The accuracy of the estimates presented in this report depends on two types of error: sampling and nonsampling. Sampling error is the variation that may occur by chance because a sample rather than a complete enumeration of the population was conducted. Nonsampling error can be attributed to many sources, such as nonresponses, differences in the interpretation of questions among inmates, recall difficulties, and processing errors. In any survey the full extent of the nonsampling error is never known. The sampling error, as measured by an estimated standard error, varies by the size of the estimate and the size of the base population.

Estimates of the standard errors have been calculated for the 1997 surveys. (See appendix tables 1 and 2.) For example, the 95-percent confidence interval around the percentage of State inmates who carried a firearm during current offense is approximately 18.4% plus or minus 1.96 times 0.42% (or 17.6% to 19.2%).

These standard errors may also be used to test the significance of the difference between two sample statistics by pooling the standard errors of the two sample estimates. For example, the standard error of the difference between violent or drug offenders carrying firearms when committing their current offense would be 1.0% (or the square root of the sum of the squared standard errors for each group). The 95%-confidence interval around the difference would be 1.96 times 1.0% or 1.9%. Since the difference, 22.1% (30.2% - 8.1%) is greater than 1.9%, the difference would be considered statistically significant.

The same procedure can be used to test the significance of the difference between estimates from the two surveys. For example, the standard error of the difference between Federal and State prison inmates carrying a firearm would be 0.9%. The 95-percent confidence interval around the difference would be 1.96 times .9% (or 1.7%). Since the difference of 3.6% (18.4% minus 14.8%) is greater than 1.6%, the difference would be considered statistically significant.

All comparisons discussed in this report were statistically significant at the 95-percent confidence level.

Definitions

The survey questionnaire used the following definitions in language and terms familiar to the respondents. Interviewers read the definitions to the inmates when needed.

Handguns include both pistols and revolvers. They are firearms held and fired with one hand and include the following:

— *Revolver* is a handgun with a revolving cylinder with several cartridge chambers. The chambers are successively lined up with the barrel and then discharged. (Classified as *single shot* for analysis.)

— *Derringer* is a short-barreled, single shot pocket pistol. A pistol has a chamber integral with the barrel. (Classified as *single shot* for analysis.)

— *A conventional semiautomatic pistol* uses a shell which is ejected and the next round of ammunition is loaded automatically from a magazine or clip internal to the pistol grip or handle. The trigger must be pulled for each shot.⁵ (Classified as *conventional semiautomatic* for analysis.)

— *Military-style semiautomatic pistol* is similar to a conventional semiautomatic pistol except that the magazine or clip is visible.⁵ Primary examples are the UZI, TEC-9, and MAC-10.

⁵The survey interview included in the operational definition of a conventional semiautomatic pistol "can hold a maximum of 19 bullets" and of a military-style semiautomatic pistol "can hold more than 19 bullets."

Appendix table 1. Standard errors for type of firearm during current offense, for State and Federal prison inmates, 1997

Type of firearm	Standard error for estimated percent armed during current offense	
	State	Federal
Any firearm	0.42%	0.75%
Handgun	0.39	0.70
Rifle	0.12	0.24
Shotgun	0.17	0.29
Single shot	0.33	0.55
Semiautomatic		
Conventional	0.30	0.56
Military-style	0.13	0.27

Note: See tables 1 and 2 for survey estimates.

(Classified as *military-style semiautomatic* for analysis.)

A **rifle** is a firearm intended to be shot from the shoulder. It has a long barrel which shoots bullets. Types include:

— *Bolt-action, pump-action, lever-action, or single-shot rifles* require physical movement by the operator of some part of the rifle — a bolt, lever, or pump — to reload. A single shot rifle must be loaded after each shot. (Classified as *single shot* for analysis.)

— *Semiautomatic hunting-style rifle* is a rifle in which a shell is ejected and the next round of ammunition is loaded automatically from a magazine or clip. The trigger must be pulled for each shot. (Classified as *conventional semiautomatic* for analysis.)

— *Semiautomatic military-style rifle* has the characteristics of a semiautomatic hunting-style rifle. It also has military features such as a pistol grip, folding stock, flash suppressor, and bayonet mount. (Classified as *military-style semiautomatic* for analysis.)

A **shotgun** is a firearm intended to be shot from the shoulder with either a single- or double-barrel for firing shot

Appendix table 2. Standard errors for firearm possession during current offense, for State and Federal prison inmates, 1997

Current offense	Standard error for estimated percent armed during current offense	
	State	Federal
Violent offense	0.74%	2.66%
Homicide	1.50	8.52
Sexual assault	0.63	0.00
Robbery	1.39	3.31
Assault	1.67	8.21
Other violent	3.55	8.26
Property offense	0.41%	1.37%
Burglary	0.66	11.23
Other property	0.49	1.31
Drug offenses	0.65%	0.73%
Possession	0.98	1.59
Trafficking	0.90	0.86
Other drug	2.52	2.52
Public-order offenses	1.39%	2.46%
Weapons	3.35	4.05
Other public-order	0.75	1.78

Note: See table 4 for survey estimates.

(a concentration of small pellets) at short ranges. Types include:

— *Bolt-action, pump-action, lever-action, or single shot shotgun* requires physical movement by the operator of some part of the shotgun — a bolt, lever, or pump — to reload. A single shot shotgun must be loaded after each shot. (Classified as *single-shot* for analysis.)

— *Semiautomatic hunting-style shotgun* is a shotgun in which a shell is ejected and the next round of ammunition is loaded automatically from a magazine or clip. The trigger must be pulled for each shot. (Classified as *conventional semiautomatic* for analysis.)

— *Semiautomatic military-style shotgun* has the characteristics of a semiautomatic hunting-style shotgun.

In addition, the shotgun has military features, such as a pistol grip, folding-stock, and detachable magazine or clip. It looks like a semiautomatic military-style rifle. (Classified as *military-style semiautomatic* for analysis.)

A **semiautomatic gun** is a firearm in which a shell is ejected and the next round of ammunition is loaded automatically from a magazine or clip. The trigger must be pulled for each shot. Semiautomatic guns may be classified as handguns, rifles, or shotguns.

A **machine gun** is an automatic gun which, if the trigger is held down, will fire rapidly and continuously. It is not a semi-automatic gun for which the trigger must be pulled for each shot. (Classified as *fully automatic* for analysis.)

A **BB gun** shoots a single pellet, using air rather than an explosive to propel the pellet. (Excluded from analysis, as were toy guns.)

This report in portable document format and in ASCII, its tables, and related statistical data are available at the BJS World Wide Web Internet site:

<http://www.ojp.usdoj.gov/bjs/>

The data for this report may be obtained from the National Archive of Criminal Justice Data at the University of Michigan. The archive may be accessed through the BJS website.

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

BJS Special Reports address a specific topic in depth from one or more datasets that cover many topics. Caroline Wolf Harlow wrote this report.

Tom Bonczar and Lara Reynolds provided statistical assistance and verification. Terry Austin, Chief, National Tracing Center Division of the Bureau of Alcohol, Tobacco and Firearms, provided comments. Tom Hester and Tina Dorsey edited the report. Jayne Robinson administered final production.

November 2001, NCJ 189369

EXHIBIT 11



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SB-264 Firearms: the OC Fair and Event Center. (2021-2022)

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Date Published: 10/11/2021 02:00 PM

Senate Bill No. 264

CHAPTER 684

An act to add Section 27575 to the Penal Code, relating to firearms.

[Approved by Governor October 08, 2021. Filed with Secretary of State
October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 264, Min. Firearms: the OC Fair and Event Center.

Existing law generally regulates the sale and transfer of firearms, including, among other things, requiring transactions of firearms to be completed through a licensed firearms dealer. Existing law generally makes a violation of the requirements relating to the sale, lease, or transfer of a firearm a misdemeanor.

This bill would prohibit an officer, employee, operator, lessee, or licensee of the 32nd District Agricultural Association, as defined, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the OC Fair and Event Center, as specified. The bill would exempt from its provisions a gun buyback event held by a law enforcement agency, the sale of a firearm by a public administrator, public guardian, or public conservator within the course of their duties, a sale that occurs pursuant to a contract that was entered into before January 1, 2022, and the purchase of ammunition on state property by a law enforcement agency in the course of its regular duties. Because a violation of this prohibition would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Some state properties, such as fairgrounds in District Agricultural Associations (DAAs), lease a portion of their fairgrounds to entities that sponsor marketplaces popularly known as "gun shows," at which firearms and ammunition and other items are sold to the public approximately five times a year on average among state fairgrounds.

(b) The United States has experienced many gun-related tragedies with increasing severity and frequency in the last 30 years, including mass murders at Columbine High School, Sandy Hook Elementary School, and Marjory Stoneman Douglas High School, and an increasing rate of suicide by gun among all levels of society.

(c) Various California cities, such as the Cities of Del Mar, Solana Beach, and Encinitas have adopted resolutions requesting that their local Del Mar Fairgrounds (DMFG) Board discontinue leasing any portion of its property for use as a gun show. A committee appointed by the Board of Directors of the 22nd DAA to study gun shows conducted research, including inspection tours of the Del Mar Gun Show by members of the committee as well as by several other members of the DMFG Board.

(d) In direct response to this community concern, Assembly Member Todd Gloria passed AB 893 into law, banning gun shows from the DMFG, setting a precedent for gun show legislation in California.

(e) Gun shows bring grave danger to a community, and the following dangerous incidents, among others, have occurred at gun shows, including, but not limited to, an official vendor accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Armed Prohibited Persons System, and illegal importation of large-capacity magazines.

(f) Promoters maintain relationships with a core group of vendors, some selling guns and some selling other merchandise, who travel as the schedule dictates from city to city and state to state and in the west, for example, many of the same vendors can be seen at Crossroads of the West Gun Shows from San Francisco, California, to Tucson, Arizona.

SEC. 2. Section 27575 is added to the Penal Code, to read:

27575. (a) Notwithstanding any other law, an officer, employee, operator, lessee, or licensee of the 32nd District Agricultural Association, as defined in Section 3884 of the Food and Agricultural Code, shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the OC Fair and Event Center, in the County of Orange, the City of Costa Mesa, or any successor or additional property owned, leased, or otherwise occupied or operated by the district.

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

- (1) A gun buyback event held by a law enforcement agency.
- (2) The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties.
- (3) The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2022.
- (4) The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXHIBIT 12

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 264 **Hearing Date:** March 16, 2021
Author: Min
Version: February 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: state and county property*

HISTORY

Source: Author

Prior Legislation: AB 893 (Gloria), Ch. 731, Stats. of 2019
SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: American Academy of Pediatrics, California; Brady Orange County; Canyon Democrats; Democrats of Greater Irvine; HB Huddle; Laguna Beach Democratic Club; Laguna Woods Democratic Club; NeverAgainCA; Office of Chair Nathan Fletcher, San Diego County Board of Supervisors; San Diegans for Gun Violence Prevention; City of San Diego; Santa Barbara Women's Political Committee; Women for American Values and Ethics Action Fund; Women For: Orange County

Opposition: California Rifle and Pistol Association; California Sportsman's Lobby, Inc.; National Rifle Association – Institute for Legislative Action; National Shooting Sports Foundation, INC.; Outdoor Sportsman's Coalition of California; Safari Club International - California Chapter; Western Fairs Association

PURPOSE

The purpose of this legislation is to prohibit the sale of firearms on state or county property.

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

This bill prohibits a state or county officer or employee, or operator, lessee, or licensee of any state or county property, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on state or county property or in the buildings that sit on state or county property or property otherwise owned, leased, occupied, or operated by the state or county.

This bill makes the following findings and declarations:

- Some state properties, such as fairgrounds in District Agricultural Associations (DAAs), lease a portion of their fairgrounds to entities that sponsor marketplaces popularly known as "gun shows," at which firearms and ammunition and other items are sold to the public approximately five times a year on average among state fairgrounds.
- The United States has experienced many gun-related tragedies with increasing severity and frequency in the last 30 years, including mass murders at Columbine High School, Sandy Hook Elementary School, and Marjory Stoneman Douglas High School, and an increasing rate of suicide by gun among all levels of society.
- Various California cities, such as the Cities of Del Mar, Solana Beach, and Encinitas have adopted resolutions requesting that their local Del Mar Fairgrounds (DMFG) Board

discontinue leasing any portion of its property for use as a gun show. A committee appointed by the Board of Directors of the 22nd DAA to study gun shows conducted research, including inspection tours of the Del Mar Gun Show by members of the committee as well as by several other members of the DMFG Board.

- In direct response to this community concern, Assembly Member Todd Gloria passed AB 893 into law, banning gun shows from the DMFG, setting a precedent for gun show legislation in California.
- Gun shows bring grave danger to a community, and the following dangerous incidents, among others, have occurred at gun shows, including, but not limited to, an official vendor accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Armed Prohibited Persons System, and illegal importation of large-capacity magazines.
- Promoters maintain relationships with a core group of vendors, some selling guns and some selling other merchandise, who travel as the schedule dictates from city to city and state to state and in the west, for example, many of the same vendors can be seen at Crossroads of the West Gun Shows from San Francisco, California, to Tucson, Arizona.

COMMENTS

1. Need for This Bill

According to the author:

The urgency for common-sense gun safety remains prevalent during the COVID-19 pandemic, as 2020 saw a record high in gun-related deaths. Over 19,000 individuals died of gun violence in 2020, up nearly 25% from 2019.¹ According to the Giffords Law Center to Prevent Gun Violence, gun shows often create the opportunity to “circumvent gun safety laws” and are a common venue for straw purchases and illegal gun transfers.² Additionally, a Bureau of Alcohol, Tobacco, and Firearms report described gun shows as a “major trafficking channel” and found that gun shows were the second largest source of illegally trafficked firearms.³

SB 264 would prohibit the sale of firearms and ammunition on state and county property. The bill ensures California is not profiting of the sale of firearms and that taxpayer dollars are not being used to promote the distribution of firearms.

¹ Garcia-Navarro, L. (2021, January 3). 2020 Was A Record-Breaking Year For Gun-Related Deaths In The U.S. *NPR*. <https://www.npr.org/2021/01/03/952969760/2020-was-a-record-breaking-year-for-gun-related-deaths-in-the-u-s#:~:text=According%20to%20the%20Gun%20Violence,jump%20from%20the%20year%20before>

² Gun Shows. (2020, December 01). *Giffords Law Center*. <https://giffords.org/lawcenter/gun-laws/policy-areas/gun-sales/gun-shows/>

³ “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, June 2000. <http://www.nfaoa.org/documents/ATF-%20Following%20the%20Gun,%20Enforcing%20Federal%20Laws%20Against%20Firearms%20Traffickers.pdf>

2. Gun Shows

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sell, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.⁴

According to the NRA's Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.⁵ However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are "the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market."⁶

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁷ 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁸

3. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince

⁴ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

⁵ NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

⁶ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

⁷ <https://www.gao.gov/assets/680/674570.pdf>.

⁸ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes.” (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as Cow Palace.

4. Banning of Gun Shows on State Agricultural Land

There have been several legislative attempts to regulate gun shows on State Agricultural Land—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace DAA to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would “set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” Unlike SB 585, this bill will not impair any of Cow Palace’s ongoing contracts because, if chaptered, it will not become operative until January 1, 2020.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

In 2018, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 had an implementation date in 2020 and exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local

board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

Then, in 2019 AB 893 (Gloria) added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds. This bill was signed into law by Governor Newsom and Chaptered as 731 in the Statutes of 2019.

This bill would add county and state property to the provisions of SB 893 (Gloria).

5. Argument in Support

According to the Santa Barbara Women's Political Committee:

We support legislation that promotes community safety and are aware that under current law gun shows have brought dangerous incidents to our community. These include but are not limited to the following: an official vendor being accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Prohibited Persons System, and illegal importation of large-capacity magazines. Recent years have seen an alarming increase of gun violence including mass murders that have devastated communities at large. By prohibiting gun shows on state properties, SB 264 would open these properties to more family-friendly venues and avoid the use of taxpayer dollars to facilitate placing more guns on our streets.

6. Argument in Opposition

According to the Western Fairs Association

SB 264 would prohibit all sales of firearms and ammunition at events held at all District Agricultural Associations and county fairgrounds beginning in 2022. This prohibition will not enhance public safety as current law already requires all firearm transactions at events hosted at fairgrounds to be subject to the same stringent standards as required in a dealer's store. All firearms transactions that take place on a fairground are subject to the ten-day waiting period while requiring the firearm to remain in the possession of the transacting dealer until that period ends and the Department of Justice has completed the required background check. District Agricultural Associations (DAAs) and county fairs receive minimal support annually from the State Budget. Fairs are expected to generate their own revenues from trade shows, livestock auctions, concerts, etc. Each fair hosts events of interest to the communities they serve. Prohibiting gun shows on state and county property not only eliminates a legal venue for the sale of firearms and ammunition under the watchful eye of law enforcement and in full compliance with state law, but it also harms the finances of California's Fair Network.

EXHIBIT 13

Date of Hearing: July 13, 2021
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 264 (Min) – As Amended June 15, 2021

SUMMARY: Prohibits the sale of any firearm, firearm precursor part, or ammunition on state property. Specifically, **this bill:**

- 1) Prohibits a state officer or employee, or operator, lessee, or licensee of any state property, shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on state property or in the buildings that sit on state property or property otherwise owned, leased, occupied, or operated by the state.
- 2) Provides that the prohibition does not apply to any of the following:
 - a) A gun buyback event held by a law enforcement agency;
 - b) The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties;
 - c) The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2022; and,
 - d) The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties.
- 3) Makes Legislative findings and declarations.

EXISTING LAW:

- 1) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code, §§ 26500, 26505, & 26520.)
- 2) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice (DOJ) from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code, § 26525.)
- 3) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code, § 26805.)
- 4) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all

local ordinances, regulations, and fees. (Pen. Code, § 26805.)

- 5) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code, §§ 27200, 27245.)
- 6) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the DOJ. (Pen. Code, § 27200.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “County fairgrounds are intended to be family friendly venues. Instead, they’ve become known for hosting gun shows. While the Second Amendment protects the rights of individuals to bear arms, it does not require our great State of California to use taxpayer-owned property to disseminate more deadly firearms into our communities. Given the clear linkage between the sale of guns and the likelihood of gun violence in a community, our state must stop being in the business of selling guns. Unfortunately, all too often this year, we’ve seen headline after headline of terrible tragedies throughout the nation and California — two shootings in my district and in San Jose in May. Enough is enough.”
- 2) **Gun Shows:** A “gun show” is a trade show for firearms. At gun shows, individuals may buy, sell, and trade firearms and firearms-related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *Gun Shows: Brady Checks and Crime Gun Traces*, January 1999, available at: <https://www.atf.gov/file/57506/download>, [as of March 18, 2019].)

According to the NRA’s Institute for Legislative Action (NRA-ILA), less than one percent of persons incarcerated in state prisons for gun crimes acquired their firearms at a gun show. (NRA-ILA, <https://www.nra-ila.org/get-the-facts/background-checks-nics>.) However, according to a report published by UC Davis, gun shows have been identified as a source for illegally trafficked firearms. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 20, 2019].) Though violent criminals do not appear to regularly purchase their guns directly from gun shows, gun shows have received criticism as being “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.” (Gerney, *The Gun Debate 1 Year After Newtown*, Center for American Progress, December 13, 2013, available at: <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>, [as of March 18, 2019].)

In 1999, California enacted the nation's broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements.

In California, gun transactions at gun shows are treated no differently than any other private party transaction. This means that such transfers must be completed through a licensed California dealer. Such a transfer requires a background check and is subject to the mandatory ten day waiting period prior to delivering the firearm to the purchaser. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

- 3) **Banning Gun Shows on State Agricultural Land:** There have been several legislative attempts to regulate gun shows in Agricultural District 1A in San Mateo and San Francisco Counties at a location commonly known as the "Cow Palace." SB 221 (Wiener) of 2018, SB 475 (Leno) of 2013, SB 585 (Leno) of 2009, and others, all attempted to either ban gun shows at the Cow Palace altogether, or require prior approval from the county Board Supervisors prior to entering into a contract for holding a gun show there. All three attempts were vetoed by then-Governors Schwarzenegger and Brown.

Then, in 2019, AB 893 (Gloria) Chapter 731, Statutes of 2019, added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunition at the Del Mar Fairgrounds, effectively terminating the possibility for future gun shows at the Del Mar Fairgrounds. AB 893 was signed into law by Governor Newsom. This bill would expand the provisions of AB 893 by including all state property within the prohibition on the sale or transfer of firearms and ammunition.

- 4) **Constitutional Implications:** A federal judge recently ruled that California's ban on the AR-15 assault rifle is unconstitutional. (*See Miller v. Bonta*, (June 4, 2021) U.S. Dist. LEXIS 105640.) *Miller* becomes the third federal district court decision to find a California firearms regulation unconstitutional under the Second Amendment to the United States Constitution, joining *Rhode v. Becerra* (S.D. Cal., 2020) 445 F. Supp. 3d 902 (ammunition background checks), and *Duncan v. Becerra* (9th Cir., 2020) 970 F.3d 1133 (high-capacity magazines). All three of these decisions were made by the same federal judge. *Duncan* was upheld by the Ninth Circuit Court of Appeals, but is now pending a rehearing *en banc*. *Rhode* and *Miller* have been stayed pending further proceedings.

This bill is also likely to generate constitutional challenges. Opponents to the bill have cited to the Ninth Circuit Court of Appeals, which has held that “an offer to sell firearms or ammunition” is constitutionally protected commercial speech under the First Amendment to the United States Constitution. (*Nordyke v. Santa Clara County* (2009) 110 F.3d 707, 710.) This bill does not specifically prohibit “an offer” to sell guns or ammunition, but it does prohibit contracting for such a transaction. Opponents assert that such a prohibition constitutes impermissible viewpoint discrimination. They also state that this bill unduly burdens rights guaranteed by the Second Amendment.

- 5) **Argument in Support:** According to >
- 6) **Argument in Opposition:** According to >
- 7) **Related Legislation:** AB 311 (Ward) would prohibit a vendor at a gun show or event from possessing, displaying, offering to sell, selling, or transferring a firearm precursor part. AB 311 was held in the Assembly Appropriations Committee suspense file.
- 8) **Prior Legislation:**
 - a) AB 893 (Gloria) Chapter 731, Statutes of 2019, prohibited the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar.
 - b) SB 221 (Wiener) of the 2017-18 Legislative Session, would have prohibited the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County. SB 221 was vetoed by Governor Brown.
 - c) SB 475 (Leno), of the 2013-14 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 475 was vetoed by Governor Brown.
 - d) SB 585 (Leno), of the 2009-10 Legislative Session, would have prohibited events at which any firearm or ammunition is sold at the Cow Palace, as specified. SB 585 was vetoed by Governor Schwarzenegger.
 - e) AB 2948 (Leno), of the 2007-08 Legislative Session, would have prohibited the sale of firearms or ammunition at the Cow Palace. AB 2948 failed passage on the Senate Floor.
 - f) SB 1733 (Speier), of the 2003-04 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 1733 failed passage on the Assembly Floor.
 - g) AB 295 (Corbett), Chapter 247, Statutes of 1999, established the Gun Show Enforcement and Security Act of 2000, which includes a number of requirements for producers that promote gun shows.

- h) AB 1107 (Ortiz), of the 1997-98 Legislative Session, would have authorized any city, county or agricultural association to prohibit gun sales at gun shows or events. AB 1107 failed in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Brady Orange County
Canyon Democrats
City of Solana Beach
Democrats of Greater Irvine
Hb Huddle
Laguna Beach Democratic Club
Laguna Woods Democratic Club
League of Women Voters of California
Neveragainca
Office of Chair Nathan Fletcher, San Diego County Board of Supervisors
Peace and Justice Commission From St Mark Presbyterian Church in Newport Beach
San Diegans for Gun Violence Prevention
San Diego; City of
Santa Barbara Women's Political Committee
The Violence Prevention Coalition of Orange County
Women for American Values and Ethics Action Fund
Women For: Orange County

Oppose

Black Brant Group, the
Cal-ore Wetlands and Waterfowl Council
California Bowmen Hunters/state Archery Association
California Deer Association
California Houndsmen for Conservation
California Rifle and Pistol Association, INC.
California Sportsman's Lobby, INC.
California Statewide Law Enforcement Association
California Waterfowl Association
Gun Owners of California, INC.
National Rifle Association - Institute for Legislative Action
National Shooting Sports Foundation, INC.
Nor-cal Guides and Sportsmen's Association
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California (PORAC)
Rural County Representatives of California
Safari Club International - California Chapters
San Diego County Wildlife Federation
San Francisco Bay Area Chapter - Safari Club International

Tulare Basin Wetlands Association
Western Fairs Association

1 private individual

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

EXHIBIT 14

STATE CAPITOL
SACRAMENTO, CA 95814
(916) 651-4037

California State Senate

SENATOR
DAVE MIN

THIRTY-SEVENTH SENATE DISTRICT



Natalie Rubalcava-Garcia, Board Chair
32nd District Agricultural Association
OC Fair and Event Center
88 Fair Drive
Costa Mesa, CA 92626

Dear Chair Rubalcava-Garcia,

I write to you today in regards to Senate Bill 264, which I have authored and which has been sent to Governor Gavin Newsom's desk for his signature. As you know, SB 264 would prohibit the sale of firearms, firearm precursor parts, or ammunition at the OC Fair and Event Center. I understand that you are meeting today to discuss two agenda items related to SB 264. Under Item 6A, the Board will "discuss the status of SB264 and whether or not to send a letter to the Governor respectfully requesting he veto SB264 because it exclusively targets the 32nd DAA." Under Item 6B, the Board will consider a request from the Crossroads of the West Gun Shows to "pre-approv[e]" gun shows for the 2022 year, prior to SB 264's effective date of January 1, 2022. As I explain below, I believe both of these items are inappropriate for the Board to pursue and that if approved, they would represent bad faith action on the part of the Board and its members.

Item 6A: "Discuss and Vote on Communication to the Governor's Office Regarding Amendment to SB 264 Banning Gun Shows Solely at OC Fair & Event Center"

I admit I am surprised that the Board is considering taking a position on SB 264 and lobbying the Governor's office. During the formative stages of SB 264, when my office and I were researching and developing this bill, I was repeatedly advised by staff and Board members from the 32nd DAA that the Board was not a political entity and therefore could not respond to the preferences of the local community, no matter how strong those sentiments might be. I was told that the Board's role was simply that of a fiscal steward and that as long as gun shows were legal, no matter how much they might lead to harm in our community and no matter how strong the local opposition, the Board had a fiduciary duty to enter into contracts with the operators of these gun shows. For the Board to take what is in effect a political position on this issue is not only contrary to these assertions, but would also seem clearly ultra vires of its stated mission and

duties, as expressed in the California Code and in the California Department of Food and Agriculture's Board of Directors Handbook.

As you know, CDFA has its own Legislative Coordinator responsible for developing technical analysis and recommended positions on legislative activity affecting the 54 DAAs across the state of California. My understanding is that an individual DAA developing its own political position on a bill and lobbying the Governor to this effect is highly unusual and arguably prohibited. Indeed, in its 2008 Handbook for Board Directors, CDFA specifically states that "DAAs are not authorized to take independent positions on legislation or to provide testimony at legislative hearing regarding bills on which the Governor's Office has not issued an approved position."

Furthermore, the substantive merits of any such communication to the Governor are dubious. While Item 6A expresses a concern that SB 264 "exclusively targets the 32nd DAA," such action to ban gun shows at a single fairground site has recent precedent. In 2019, Gov. Newsom signed Assembly Bill 893 (Gloria) into law, ending the sale of firearms and ammunition at the Del Mar Fairgrounds, operated by the 22nd District Agricultural Association. In 2020, Sen. Scott Wiener authored SB 281, which would have ended the sale of firearms and ammunition at the Cow Palace. SB 281 passed out of the Senate with a large supermajority of votes, but was pulled by Sen. Wiener after the Cow Palace Board enacted a ban on all future gun shows.

Given the clear linkage between firearms sales and gun violence, and also given that Orange County has been the site of several recent high-profile shootings, including the mass shooting in Orange and the murder of young Aidan Leos on the 55 Freeway earlier this year, there is ample reason to support a ban on gun shows at the OC Fair and Event Center.

Finally, it is worth noting that there is strong local support for SB 264. In addition to the many Orange County residents and groups who have contacted you in support of this bill, it has also enjoyed strong support from local legislators. SB 264 passed out of the Senate and Assembly with overwhelming majorities, including support from myself and Assemblymember Cottie Petrie-Norris (AD-74). As you know, Asm. Petrie-Norris and I are the two legislators who represent the OC Fair and Event Center. Most of the other legislators who represent Orange County also supported this bill, including Senators Bob Archuleta (SD-32), Josh Newman (SD-29), and Tom Umberg (SD-34), and Assemblymembers Tasha Boerner Horvath (AD-76), Tom Daly (AD-69), and Sharon Quirk-Silva (AD-65).

Item 6B: Discuss and Vote on Whether or Not to Approve 2022 Rental Agreements with Crossroads of the West Gun Show to Exclude Sale of Firearm Precursor Parts

I also understand that the Board is considering whether or not to “pre-approve” contracts with the Crossroads of the West Gun Show for 2022 and possibly beyond. Item 6B is predicated on SB 264’s exclusion of firearms, firearm precursor parts, or ammunition sold pursuant to a contract entered into before January 1, 2022. For a number of reasons, I believe that any such “pre-approvals” of contracts, undertaken immediately after the passage of SB 264 from the Legislature, would be void for opposing public policy.

Some context here might be appropriate. In drafting SB 264, we considered whether or not to simply make the effective date January 1, 2022, with no exceptions. But to try to be fair to those who might have entered into contracts in good faith that extended beyond January 1, 2022, we crafted a narrow exception to this rule, allowing for contracts entered into before January 1, 2022 to also be excluded from the scope of SB 264.

However, with the bill now at the Governor’s desk ready for his signature, I believe that any such contracts entered into by the Board at this point would prima facie appear to be made in bad faith, with the specific intent of evading and opposing the purpose of SB 264. Moreover, the context of this meeting—a special meeting, described by one local news publication as an attempt to “rush to pre-approve the contracts for its annual gun shows,” in contravention of past established practices and procedures by this Board—gives further credence to the idea that the Board would be acting with the specific intent to thwart public policy if it pre-approved these contracts.

Let me be clear. Should the Board vote to approve Item 6B and “pre-approve” a long-term contract with Crossroads of the West or any other gun show operator, I would explore litigation and legislation seeking to void these contracts. I also believe that any such action by the Board would potentially expose its members to personal liability, since they would be acting specifically with clear intent to subvert and evade the purpose of a statute they believed was likely to take effect, in opposition to clearly established public policy.

I am grateful for your public service, and appreciate your close consideration of these matters. I am hopeful that you will fulfill your statutory and fiduciary duties and reject both of these Items presented to you today. My staff and I are available for further questions, and I encourage you to reach out to us for further dialogue on this and other matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "DM", with a long horizontal flourish extending to the right.

Senator Dave Min (SD-37)

cc: Michele Richards, CEO
Doug La Belle, Board Vice Chair
Ashleigh Aitken, Board Member
Barbara Bagneris, Board Member
Sandra Cervantes, Board Member
Nick Kovacevich, Board Member
Newton Pham, Board Member
Robert Ruiz, Board Member

EXHIBIT 15

Senate Bill No. 915

CHAPTER 145

An act to add Section 27573 to the Penal Code, relating to firearms.

[Approved by Governor July 21, 2022. Filed with Secretary of
State July 21, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 915, Min. Firearms: state property.

Existing law generally regulates the sale and transfer of firearms, including, among other things, requiring transactions of firearms to be completed through a licensed firearms dealer. Existing law generally makes a violation of the requirements relating to the sale, lease, or transfer of a firearm a misdemeanor.

Existing law, except as specifically exempted, prohibits an officer, employee, operator, lessee, or licensee of the 32nd District Agricultural Association, as defined, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the OC Fair and Event Center, as specified.

This bill would, except as exempted, prohibit a state officer or employee, or operator, lessee, or licensee of any state-owned property, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on state property, as specified. Because a violation of this prohibition would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 27573 is added to the Penal Code, to read:

27573. (a) A state officer or employee, or operator, lessee, or licensee of any state property, shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on state property or in the buildings that sit on state property or property otherwise owned, leased, occupied, or operated by the state.

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

(1) A gun buyback event held by a law enforcement agency.

(2) The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties.

(3) The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2023.

(4) The purchase of firearms, firearm precursor parts, or ammunition on state property by a law enforcement agency in the course of its regular duties.

(5) The sale or purchase of a firearm pursuant to subdivision (b) or (c) of Section 10334 of the Public Contract Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXHIBIT 16

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 915 **Hearing Date:** March 8, 2022
Author: Min
Version: February 2, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: state property*

HISTORY

Source: Author

Prior Legislation: SB 264 (Min), Ch. 684, Stats. of 2021
AB 893 (Gloria), Ch. 731, Stats. of 2019
SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: Brady Orange County; Brady United Against Gun Violence, Ventura County Chapter; Democratic Club of Cornejo Valley; Friends Committee on Legislation of California; Laguna Woods Democratic Club; NeverAgainCA; San Diego County Board of Supervisors; Santa Barbara Women’s Political Committee; Ventura County; Violence Prevention Coalition of Orange County

Opposition: Black Brant Group; Cal-ore Wetlands and Waterfowl Council; California Bowmen Hunters/State Archery Association; California Chapter Wild Sheep Foundation; California Deer Association; California Houndsmen for Conservation; California Rifle and Pistol Association; California Sportsman’s Lobby, INC.; California Waterfowl Association; Gun Owners of California; National Rifle Association – Institute for Legislative Action; Nor-cal Guides and Sportsmen's Association; Outdoor Sportsmen’s Coalition of California; Peace Officers Research Association of California; Rocky Mountain Elk Foundation; Safari Club International – California Chapters; San Diego County Wildlife Federation; San Francisco Bay Area Chapter - Safari Club International; Tulare Basin Wetlands Association

PURPOSE

The purpose of this legislation is to prohibit the sale of firearms, firearm precursor parts and ammunition on state property.

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state

prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law provides that an officer, employee, operator, lessee or licensee of the 32nd District Agricultural Association shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the Orange County (OC) Fair and Event Center, in the County of Orange, the City of Costa Mesa, or any successor or additional property owned, leased or otherwise occupied or operated by the district. (Pen. Code §27575(a).)

Existing law exempts the following from the prohibition in Penal Code § 27575(a):

- A gun buyback event held by a law enforcement agency.
- The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties
- The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2022.
- The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties. (Pen. Code §27575(b).)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

This bill prohibits a state officer or employee, or operator, lessee, or licensee of any state property from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on state property or property otherwise owned, leased, occupied, or operated by the state.

This bill exempts the following from the prohibition above:

- A gun buyback event held by a law enforcement agency.
- The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties
- The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2023.
- The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties.

COMMENTS

1. Need for This Bill

According to the author:

“County fairgrounds are meant to be a safe and welcome space for community gatherings. Instead, these tax-payer owned properties are used to facilitate the sales of guns and ammunition. According to the Giffords Law Center to Prevent Gun Violence, gun shows often create the opportunity to “circumvent gun safety laws” and are a common venue for straw purchases and illegal gun transfers.

Additionally, a Bureau of Alcohol, Tobacco, and Firearms report described gun shows as a “major trafficking channel” and found that gun shows were the second largest source of illegally trafficked firearms. The state should not play a role in facilitating or profiting off of the sales of these deadly weapons. Instead, the creation of statewide safeguards is necessary to ensure fairgrounds remain safe, family-friendly venues.”

2. Gun Shows Generally

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sale, and trade firearms and related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.¹

According to the NRA’s Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.² However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.”³

¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

² NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

³ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁴ In fact, 87% of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁵

3. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes." (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as the Cow Palace in Daly City.

4. Banning of Gun Shows on State Agricultural Land

There have been several legislative attempts to regulate gun shows on State Agricultural Land—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace District Agricultural Association (DAA) to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would "set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing

⁴ <https://www.gao.gov/assets/680/674570.pdf>.

⁵ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” This bill would apply to all DAAs equally.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

In 2018, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

Then, in 2019 AB 893 (Gloria) added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill effectively terminated the possibility for future gun shows at the Del Mar Fairgrounds. AB 893 was signed into law by Governor Newsom and Chaptered as 731 in the Statutes of 2019.

5. SB 264 (Min, 2021)

SB 264 (Min, Ch. 684, Stats. of 2021) as initially introduced was almost identical to this bill, and would have enacted a similar statewide ban on firearm and ammunition sales on state property. That measure was subsequently amended to include precursor parts – which can be assembled into so-called “ghost guns” – in the prohibition on sales, and to exempt several governmental

functions and contractual obligations from the prohibition. The scope of SB 264 was ultimately limited by amendments taken in Assembly Appropriations Committee, confining the measure's applicability to firearm, precursor part and ammunition sales in Orange County. This bill renews the author's efforts to enact a statewide ban, and retains the exemptions and ban on precursor part sales from the final version of SB 264.

6. Related Legislation

AB 1769 (Bennett) establishes a ban similar to that created by this bill, but limited to sales of firearms, precursor parts and ammunition in Ventura County. AB 1769 awaits a hearing in the Assembly Committee on Public Safety.

7. Argument in Support

According to the Santa Barbara Women's Political Committee:

"[...] Under current law gun shows have brought dangerous incidents to our community, including such incidents as sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Prohibited Persons System, illegal importation of large-capacity magazines, and more. Our nation continues to endure an alarming increase of gun violence including mass murders that have devastated communities. By prohibiting gun shows on state properties, SB 915 would help to restore these properties to more family-friendly venues. It would also curtail the use of taxpayer dollars to facilitate placing more guns on our streets."

8. Argument in Opposition

According to the National Rifle Association Institute for Legislative Action:

"In order for a person to purchase any firearm in California, they must possess a firearm safety certificate, pass a criminal background check and wait 10 days prior to receipt. The involvement of a licensed dealer is generally required for all firearms sales/transfers in addition to the sale or transfer of firearm precursor parts or ammunition, absent very narrow and limited circumstances. The restrictions on the sale and transfer of firearms, firearm precursor parts and ammunition applies to gun shows as well. Transactions at these events require strict adherence to the law and the process for completing the transfer is no different than if it had occurred at a nearby brick and mortar shop.

Studies have shown that firearms acquired at gun shows are not any more likely to be used in crime. This legislation fails to adequately balance the need to prohibit all gun shows at state controlled property versus the interests of the gun shows' promoters, vendors and attendees – individuals who will now be left with limited venues to convene to share in their mutual interest in the shooting sports in a commercial setting."

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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *B & L Productions, Inc., et al. v. Newsom, et al.*
Case No.: 8:22-cv-01518 JWH (JDEx)

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:

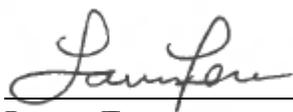
**DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

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

Nicole J. Kau, Deputy Attorney General
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Los Angeles, CA 90013-1230
Attorney for Defendants

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed January 16, 2026.



Laura Fera