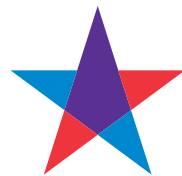


***LEADING WITH ACTION:
ADDRESSING GUN VIOLENCE
WITH EXECUTIVE AUTHORITY***



BRADY
UNITED AGAINST GUN VIOLENCE

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ABOUT BRADY

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America’s gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife Sarah led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah’s legacy by uniting Americans from coast to coast — red and blue, young and old, liberal and conservative — against the epidemic of gun violence.

A NEED FOR DECISIVE ACTION

In the United States, gun violence is an epidemic: on average, 300 people are shot each day, and 100 die by gunfire. In 2018, 40,000 people were killed by firearms in America.¹ More Americans have been shot and killed since 1968 than have died on the battlefields of all the wars in American history combined. As one of the oldest gun violence prevention organizations in the country, Brady knows all too well that gun violence affects all Americans, albeit in different and unequal ways. Every day, people die, people are injured, survivors suffer trauma, communities of color are exploited and left in a cycle of violence and poverty, and our children are faced with the omnipresent risk of gun violence, a social ill of many faces: it is domestic violence, threats of violence, mass killings, chronic community violence, self-harm, hate crimes, police violence, unintentional shootings, witness and survivor trauma, and escalated incidents of violence. Similarly, the ways to reduce and prevent gun violence are varied and multifaceted.

Brady recognizes that a long-term and meaningful reduction in gun deaths and injuries throughout the U.S. will certainly require Congressional action in order to fund purposeful, evidence-based programs and to implement national common-sense policies. Despite this, it is within the power of the President of the United States to take *immediate* action against gun violence by leveraging the power of the executive branch to promote public health and safety, enhance enforcement of existing federal gun laws, and improve the operations of — and promote transparency within — the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).²

In order to set priorities for necessary legislative goals, Brady is recommending decisive executive actions in the following areas:

1. Enhancing and strengthening the Brady background check system;
2. Ensuring sufficient gun industry oversight and accountability;
3. Preventing the diversion of firearms to the illegal market;
4. Mandating ATF accountability; and
5. Reforming and prioritizing public health and safety.

The actions proposed are part of a comprehensive approach to gun violence prevention that must include a focus on the upstream source of crime guns that are infiltrating communities of color across the country. Easy access to firearms causes problems in all communities, but it cannot be overstated how much more acutely communities of color suffer the ripple effects. Gun violence is responsible for a more than a four year reduction in life expectancy for black men in America, and while gun violence touches Americans in diverse communities across the country, homicides are largely concentrated in urban areas with high minority populations. Based on the five-year average of Centers for Disease Control (CDC) data from 2012 to 2016, approximately 80 percent of gun homicides occur in such areas.³ The repercussions these

communities experience stretch well beyond the victims of gun violence themselves; the pervasive nature of gun violence produces collective trauma, and communities burdened by fear and pervasive shootings cannot prioritize such quality of life issues as investment in collective spaces.⁴ These impacted communities also bear numerous societal costs: depressed property values; lower rates of home ownership; fewer new retail and service businesses; diminished economic opportunities, such as prospects for career advancement; and lack of access to health care, healthy food, and social opportunities.⁵

According to ATF data, a small percentage of Federal Firearms Licensees (FFLs) are the source of most crime guns.⁶ In the name of profit, these dealers often willfully engage in illegal or irresponsible behavior by selling or transferring guns that they know — or have reason to believe — will be trafficked to criminals and areas of high crime. The ravages of the resulting gun violence, combined with the systemic inequities that accompany poor economic and social

conditions, contribute to the enduring poverty and cyclical violence that disproportionately impact communities of color, particularly Black communities. The president has the ability not only to take immediate and decisive action that would ensure gun industry oversight and accountability, but also to identify and shut down irresponsible dealers enabling — and profiting from — the proliferation of crime guns at the expense of communities throughout the country.

In this report, Brady will lay out a blueprint for what kinds of executive action the president can take to protect Americans from gun violence in all its forms. In a new administration — one focused on gun violence prevention solutions, such as those advanced by Vice President Biden — these actions, which could be taken in the first 100 days of office, would immediately begin making a difference in the gun violence epidemic, saving lives it would otherwise claim. The following road map lays out the route an administration thus committed could travel to make those changes happen.

BRADY RECOGNIZES THAT A LONG-TERM AND MEANINGFUL REDUCTION IN GUN DEATHS AND INJURIES THROUGHOUT THE U.S. WILL CERTAINLY REQUIRE CONGRESSIONAL ACTION IN ORDER TO FUND PURPOSEFUL, EVIDENCE-BASED PROGRAMS AND TO IMPLEMENT NATIONAL COMMON-SENSE POLICIES.

EXECUTIVE ACTIONS TO IMMEDIATELY ADDRESS AMERICAN GUN VIOLENCE

CATEGORY 1: ENHANCE AND STRENGTHEN THE BRADY BACKGROUND CHECK SYSTEM

While Brady background checks do not fix the gun violence problem on their own, they are the bedrock foundation upon which all other gun laws stand. Since the Brady Bill was signed into law, the National Instant Criminal Background Check System (NICS) has prevented over 3.5 million unlawful transactions, with an average of over 528 prohibited persons being denied each day between 2011 and 2015.⁷ The system is clearly saving lives, but could be saving more; it continues to harbor a stubborn set of dangerous gaps that undermine existing gun violence prevention laws supported by the background check system. Action must be taken to make certain that this system functions properly and comprehensively.

The President Can Take the Following Executive Actions to Enhance and Strengthen the Brady Background Check System:

Strengthen Brady Background Checks by Limiting the Private Sales Loophole

While the Brady Bill requires all FFLs to conduct a background check on potential buyers, an estimated 1 in 5 guns is sold each year without confirming whether the purchaser can legally buy or possess such a weapon.⁸ Transactions of this nature are able to occur because of a provision

in the law intended to allow private citizens not “engaged in the business” of selling guns to occasionally sell or dispose of their property without obtaining a federal license. However, federal agencies have failed to effectively enforce the law against persons who exploit this loophole to illegally “engage in the business” of selling guns without a license. As a result, private individuals have been able to illegally sell dozens of firearms to strangers at gun shows — or through third-party online platforms — for profit, with no questions asked.⁹ That such individuals can freely sell firearms without oversight both presents a clear danger to public safety and runs contrary to the intent behind Congress criminalizing the commercial dealing of firearms without a license.

The negative implications of this loophole are clear: over 70 percent of firearms used in criminal offenses are obtained from unlicensed individuals.¹⁰ Furthermore, exploitations of the law’s shortcomings have created a secondary market for negligent or corrupt firearms dealers: roughly 90 percent of crime guns can be traced back to 5 percent of gun dealers.¹¹

Recommendation # 1: Limit the private sales exception to those who sell 5 or fewer firearms a year to unlicensed individuals for profit.

Treat “Ghost Guns” Like All Other Guns

Ghost guns are untraceable firearms constructed by individuals using “unfinished” frames or receivers, pieces of a firearm which, because they contain essential operating parts of the firing mechanism, are the only part of a gun regulated under federal law. However, when a frame or receiver is “unfinished” by a small fraction, it is unregulated — a consequence of ATF not interpreting unfinished components as firearms.¹² Ghost gun kits include all of the necessary instructions and hardware to turn the unfinished frame or receiver into a fully functioning gun. These parts and kits are designed and marketed to circumvent federal regulations like Brady background checks because they can be purchased by anyone, even someone who, because they cannot pass such a check, would be prohibited from purchasing a fully assembled gun. This includes prohibited purchasers, domestic abusers, gun traffickers, persons subject to an extreme risk order, and even children and teenagers. To be sure, once a ghost gun is assembled, it looks, feels, and functions like a traditional gun, whether it be a handgun or an assault weapon, and is just as deadly and dangerous in the wrong hands.

Ghost guns not only evade the requirements of the Gun Control Act and the Brady Law, but also make crime gun tracing by law enforcement impossible in many instances. Federal law requires that firearms be uniquely marked, or “serialized,” so that law enforcement can trace a gun back to its last retail sale; ghost guns, because they are unserialized, pose a rising threat to this critical piece of criminal detection.

ATF is well aware of the ghost gun problem — in 2020, Thomas Brandon, the agency’s former acting director, noted that, because of their ease of assembly, ghost gun kits should be reclassified as firearms, and he recommended such a reclassification prior to his April 2019 retirement.¹³

Sales of the kits and parts to make ghost guns have increased significantly in recent years; not surprisingly, the use of ghost guns in crime has increased exponentially. These weapons have been linked nationwide to homicides, suicides, mass shootings, robberies, the shooting deaths of law enforcement officers, and acts of domestic violence. Ghost guns are also playing a role in the disproportionate impact of gun violence in communities of color as they flow into the illegal market. In California, where this proliferation has been especially egregious, ghost guns have recently been used in three mass shootings that received national media attention: in Saugus (2019), Tehama County (2017), and Santa Monica (2013). These shootings combined resulted in 12 deaths, with dozens more injured, and were all perpetrated by individuals prohibited from legally purchasing or possessing firearms.¹⁴ Carlos A. Canino, the Special Agent in charge of ATF’s Los Angeles Field Division, explained in early 2020 that “forty-one percent, so almost half our cases we’re coming across, are these ghost guns.”¹⁵ The kits and the weapons they produce are, however, quickly spreading across the country: in 2017, law enforcement in the District of Columbia recovered three; in 2018, three became 25; and, in 2019, the ghost gun haul jumped to 116, at least three of which were subsequently connected to homicides.¹⁶

Recommendation #2: Instruct ATF to broaden its interpretation of the term “firearm” to include unfinished frames and receivers which are designed and marketed to be converted into firearms.

Prevent Domestic Abusers from Accessing Guns

Although the 1996 Lautenberg Amendment, which created the firearms prohibition for domestic abusers, has had a meaningful impact on intimate partner violence involving guns, time has exposed significant loopholes in this well-intentioned addition to the Gun Control Act. For instance, some dangerous domestic abusers may not be prohibited from obtaining guns simply because they are not married to their partner — though members of Congress, recognizing the problem, have introduced bills to close this so-called “boyfriend loophole.” While it is critically important that Congress fully close this loophole through legislation,¹⁷ the president can act to limit it by instructing ATF to include violence against dating partners within the Gun Control Act’s definition of domestic violence.

Currently, a misdemeanor act of violence against a dating partner does not clearly prohibit the abuser from buying and owning firearms under federal law. This is a dangerous limitation that relies on an outdated understanding of intimate partner violence.¹⁸ Since 1980, homicides committed by a spouse have dropped from 69 to 47 percent, but homicides perpetrated by a non-married partner have skyrocketed from 27 to 49 percent.¹⁹ Firearm ineligibility based on partner violence must be interpreted more broadly to encompass violence

against dating partners, regardless of sex, sexual orientation, or gender identity. Congress granted sufficient authority to include dating partners and persons “similarly situated to a spouse” within the definition of domestic violence under the Gun Control Act, and to do so would prohibit offenders who meet those criteria from buying and owning firearms under the law.

Recommendation #3: Instruct ATF to expand the prohibition against firearms possession to include individuals convicted of misdemeanor crimes of domestic violence against dating partners regardless of sex, sexual orientation, or gender identity.

Restore An Interpretation of “Fugitive from Justice” That Ensures All Fugitives Are Prohibited From Buying Firearms

Federal law prohibits “fugitives from justice” from purchasing firearms.²⁰ However, in 2017, the Department of Justice (DOJ) narrowed the term’s definition, thereby allowing some previously prohibited people to buy guns. Under this new interpretation, the “fugitive from justice” prohibition only applies to individuals who have fled across state lines to “avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding.”²¹ Previously, the Federal Bureau of Investigation had prohibited anyone with an outstanding arrest warrant from purchasing a gun.²² The narrowed definition means that most individuals with outstanding warrants may now legally purchase a firearm. In addition to the obvious dangers of allowing people attempting to avoid prosecution to purchase firearms, the change has generated mass confusion about who

does or does not qualify as a fugitive from justice. As noted by Darrell Stephens, former Executive Director of the Major Cities Chiefs Association, each individual case would need to be investigated to see if it fits the narrow definition, making it “more difficult in the future to deny a fugitive.”²³ It is not always clear when a warrant satisfies the current standards, and there is a heightened risk of misinterpretation or mischaracterization resulting in the transfer of a firearm to a prohibited person even if they did flee their state.²⁴

What is clear is the impact the rule change is already having on gun purchases by people previously barred from such transactions. Between 2014 and 2016, an average of 20,632 individuals were denied by NICS based on the fugitive from justice restriction; however, an average of only 6,287 individuals were denied on the same basis between 2017 and 2018, after the rule was changed — a nearly 70 percent decrease in denials of fugitives from justice.²⁵

Recommendation #4: Instruct the DOJ to clarify that fugitives from justice, regardless of whether or not they have crossed state lines, are prohibited from purchasing guns.

Close the “Fire Sale Loophole”

The “Fire Sale Loophole” allows FFLs who have seriously violated the law and had their licenses revoked to transfer their firearms inventory to their personal collections, family members, or

employees.²⁶ Despite having already displayed an unwillingness or inability to comply with federal and state regulations, these sellers, after transferring their inventory to their private collections, can proceed to sell any remaining inventory without additional federal oversight or regulation — and, importantly, without conducting background checks. This loophole is a clear threat to public safety, as individuals positioned to exploit it have arrived at that point by displaying a proclivity for engaging in unlawful or dangerous sales practices.

Brady wrote about this problem in a report concerning Valley Guns, a Maryland gun dealer who, despite having had their license revoked, was nevertheless able to sell all their remaining inventory, some of which armed criminals.²⁷ Similarly, in 2003 ATF shut down a Chicago-based FFL whose owner, after racking up over 500 violations,²⁸ transferred to himself the remaining inventory of over 200 firearms. This owner later admitted that he trafficked at least some of these transferred weapons over the border and into Canada.²⁹ It is imperative that FFLs who have seriously and repeatedly violated federal law such that they have had their licenses revoked not be permitted to maintain their inventory or continue to engage in firearms transfers.

Recommendation #5: Instruct ATF to allow dealers whose licenses have been revoked only two options with regard to their remaining inventory of firearms: 1) sell their firearms to another FFL, or 2) surrender their inventory to ATF

CATEGORY 2: GUN INDUSTRY OVERSIGHT AND ACCOUNTABILITY

Most federal efforts to prevent gun violence focus exclusively on the people who pull the trigger. However, a comprehensive approach to ending gun violence — one that addresses social and racial inequities — must also address the epidemic’s supply-side: specifically, the gun manufacturers, distributors, and dealers contributing to gun violence.

Negligent, irresponsible, and occasionally criminal behavior by some gun dealers and manufacturers is a major source of America’s gun violence epidemic. By engaging in unsafe business practices or ignoring important standards and guidelines, these merchants and companies place firearms in the hands of those who should not have them. And while maintaining tight oversight of the gun industry would seem an obvious necessity, under-regulation is the norm. Where the federal government does have oversight authority, enforcement is inconsistent and inadequate. To illustrate, ATF — which considers FFLs to be “the first line in maintaining the security and lawful transfer of firearms” — has issued detailed guidance on safe business practices and security measures that licensed sellers can adopt to prevent legal guns from entering the criminal market.³⁰ Despite that recognition, the agency provides inadequate oversight of FFLs’ general business practices, and furthermore has failed to adequately identify, prioritize, and inspect high-risk licensees, let alone revoke the licenses of repeat and gross offenders. Similarly dispiriting is how rarely federal law enforcement seeks to prosecute FFLs that act unlawfully. The gun industry’s protection from civil liability only exacerbates the problems that stem from this lack of ATF oversight and accountability.

The consequences of this lack of oversight and accountability cannot be overstated: this is literally a matter of life or death. For communities disproportionately impacted by gun violence, especially communities of color, the deadly consequences of these failures can be a daily occurrence. To mitigate that pain, there needs to be a focus on the upstream sourcing of crime guns from those irresponsible dealers who profit from the sales of firearms that infiltrate all of our communities, but especially our poorest and most vulnerable.

In communities of color, the consequences that spring from access to these trafficked firearms are devastating:

- Based on the 5-year average of CDC data from 2012 to 2016, approximately 80 percent of gun homicides occur in urban communities of color.³¹
- The firearm homicide rate for Black children is approximately 10 times higher than it is for white children.³²
- In 2016, Black Americans only represented approximately 13 percent of the US population, but comprised 58 percent of gun homicide victims nationwide.³³
- A Black male between the ages of 15 and 34 is 10 times more likely than a similarly aged white male to be the victim of a firearm homicide,³⁴ contributing to a four year loss in life expectancy for Black males.³⁵

While most gun dealers sell guns responsibly, making every effort to comply with federal, state, and local law, a small minority supply the criminal market: nationwide, about 5 percent of gun dealers are responsible for about 90 percent of recovered crime guns. These dealers, who often sit outside of the communities their business practices affect the most, profit from irresponsible or illegal sales that drive guns into impacted communities.

Until we fundamentally change our approach to community violence, these cycles of violence will persist.

The president can tackle this problem head-on by issuing executive orders that enhance enforcement efforts against irresponsible dealers, manufacturers, and distributors while rewarding those who, by acting responsibly, undermine gun violence.

The President Can Take the Following Executive Actions to Enhance Gun Industry Oversight and Accountability:

Shut Down Persistently Noncompliant Dealers

ATF is authorized to revoke the licenses of FFLs that willfully break the law, particularly when such actions are repeated and pose a risk to public safety. Unfortunately, ATF does not adequately use its authority to stop licensees who wrongfully supply the criminal market by selling to gun traffickers, straw purchasers, or self-identified prohibited purchasers, or who fail to report multiple firearms sales or “missing” firearms.

ATF inspection reports obtained by Brady and analyzed by the New York Times found that higher-ranking agency officials routinely downgraded remedial actions recommended by Industry Operations Inspectors (IOIs) — the investigators charged with inspecting individual FFLs — against licensees despite repeated indications that those dealers had violated federal law.³⁶ Area Supervisors and Directors of Industry Operations habitually reversed IOI recommendations to revoke the licenses of FFLs, even in cases where egregious repeat violations were uncovered, and downgraded other serious administrative actions. The beneficiaries of this malfeasance included dealers who failed to perform background checks, who sold firearms to customers identified as felons or other prohibited purchasers, and who otherwise seriously and repeatedly violated the law. In fact, less than 0.5 percent of inspections resulted in the revocation of a license despite widespread noncompliance.³⁷ As the only federal agency with oversight authority over the gun industry, ineffective enforcement by ATF poses a significant danger to public safety. This must change.

Recommendation #6: Instruct ATF to overhaul its internal standards for issuing remedial actions — including license revocations — so that repeat and serious violators are no longer permitted to sell guns to the public.

Require Gun Dealers to Perform Annual Background Checks on Employees

Because of the inherent danger associated with irresponsible or criminal firearms transfers, it is critically important that all FFLs properly vet all employees who transfer guns to the public. ATF

guidance reinforces this practice's importance, stating that it "is neither lawful nor in the licensee's interest to knowingly allow a prohibited person to possess firearms or engage in firearms sales."³⁸ In line with this, the president can take action to ensure that FFLs are complying with federal law by mandating that they conduct annual background checks of all employees who either transfer or may transfer firearms. These background checks can be carried out by private companies, but must include a comprehensive criminal background check. Such a mandate would serve to protect the FFL, their employees, and the general public.

Recommendation #7: Direct the ATF to require that FFLs perform annual background checks on all employees who transfer or may transfer firearms.

Empower State and Local Law Enforcement with Federal Inspection Data

Although ATF is the only federal entity that inspects the gun industry to check for compliance with federal gun laws, many state and local law enforcement agencies also have the authority to license and conduct inspections of gun industry actors within their jurisdiction. Ideally, these different systems of compliance inspections should complement one another, which requires agencies to share information. ATF, however, does not systematically share the results of its compliance inspections with state and local authorities who conduct similar inspections. Such information sharing is necessary to optimize the use of federal, state, and local resources and to ensure that non-compliant FFLs receive increased scrutiny from law enforcement.

Recommendation #8: Require that ATF share FFL inspection data with state and local law enforcement on a regular basis.

Prioritize Enforcement of Existing Federal Law to Oversee Gun Dealers

In the Gun Control Act (GCA), Congress imposed criminal penalties on individuals who engage in the business of dealing in firearms without a license³⁹ or who misrepresent their identity to an FFL when attempting to procure a firearm.⁴⁰ It is also unlawful for a person, including an FFL, to knowingly transfer a firearm to a prohibited purchaser⁴¹ or enter false information on ATF Form 4473.⁴² Also, in the National Firearms Act (NFA), Congress instituted civil and criminal fines to be levied against those who unlawfully deal in or transfer NFA-regulated firearms.⁴³ As it stands, however, civil or criminal cases against dealers based upon violations of the GCA or NFA are rarely pursued.

For example, in March 2018 the DOJ announced its "Lie and Try" initiative to swiftly prosecute individuals who lie on a federal firearm transaction form (ATF Form 4473) in order to obstruct a proper background check and unlawfully obtain a firearm.⁴⁴ This initiative, however, does not also target FFLs who ignore the signs of such deception, or are active and willing participants who knowingly certify the same forms as true, and unlawfully transfer firearms to such individuals.

For too long, the DOJ and Attorney General have rarely pursued cases against FFLs that are complicit in risky and prohibited transactions such as straw purchases. As a result, irresponsible gun dealers are simply not held accountable for

willfully engaging in the illegal or irresponsible — but highly profitable — behavior of selling or transferring guns they know will be trafficked into already-impacted areas. This must change.

Recommendation #9: Instruct the Attorney General to prioritize legal action against the gun industry for violations of federal law.

Leverage Purchasing Power to Promote Gun Dealer Code of Conduct

FFLs play a vital role in protecting the public from gun violence.⁴⁵ As described in the Brady Dealer Code of Conduct, it is important that licensees responsibly enact policies that prevent straw purchases and trafficking, protect against the theft of firearms, facilitate cooperation with law enforcement, and promote the proper screening and training of employees who handle the transfer of firearms.⁴⁶ Gun manufacturers and distributors can — and should — implement measures requiring downstream sellers of firearms to engage in safe business practices, and they should furthermore refuse to do business with merchants who either fail to embrace these practices or who sell a disproportionate amount of guns subsequently recovered from criminals or crime scenes. The federal government should support responsible industry actors, not subsidize those who choose to put profits over public safety by recklessly supplying the criminal market.

Recommendation #10: Direct federal agencies to procure firearms solely from manufacturers, distributors, and dealers that have adopted safe business practices, and mandate that the FFLs in their distribution chains implement these policies and standards.

Restore Thorough Oversight of Arms Exports

In March 2020, export controls of semi-automatic pistols, assault-style firearms, sniper rifles, ammunition, and some artillery was transferred from the jurisdiction of the State Department, which maintained these controls for nearly half a century, to the less stringent purview of the Department of Commerce, removing congressional oversight and easing regulations for the gun industry.⁴⁷ Removing State Department and congressional oversight from the export process has created new and unacceptable risks of exacerbating domestic and overseas gun violence, making it easier for bad actors around the globe to secure the means of committing human rights abuses and initiating or perpetuating armed conflicts.⁴⁸ In addition to removing vital oversight of the arms export process, this rule change has lowered requirements for the gun industry to export firearms,⁴⁹ putting profits over people and American national security interests.⁵⁰

Recommendation #11: Return regulatory authority of arms exports back to the State Department.

CATEGORY 3: PREVENT THE DIVERSION OF FIREARMS TO THE ILLEGAL MARKET

Gun trafficking — the unlawful movement of guns from the legal market to the criminal one — is a major method of obtaining firearms for people who cannot legally purchase or possess them. Allowing this illicit market to thrive has dire consequences, particularly for Americans in communities impacted by chronic gun violence. Accordingly, a comprehensive approach to gun violence prevention must include a focus on undermining the upstream source of crime guns infiltrating communities across the country, particularly the disproportionately-affected communities of color. Stemming the flow of trafficked weapons will slow the flooding of guns onto American streets, enabling communities to concentrate on community violence prevention and intervention programs.

Deterring gun trafficking has been made more difficult by the fact that the corporate gun industry and ATF have hidden from the public critical data — such as which gun companies supply the criminal market — that would best inform policy solutions to the gun violence epidemic. In the Tiahrt Amendments, a series of riders to federal appropriations bills that collectively limit ATF’s gun industry oversight activities, Congress imposed some restrictions on ATF’s use of federal funds to share information contained in its Firearms Trace database. In 2003, the first Tiahrt Amendment, attached to the bill funding ATF operations, severely limited the agency’s ability to publicly disclose information from the database. Today, executive action can help curb gun trafficking by strengthening reporting and tracking capabilities, but even more so by interpreting the Tiahrt

Amendments in such a way that they cannot be used to shield the most negligent gun dealers from the light of public scrutiny, a practice which deprives policymakers of data key to the development of solutions effective against the diversion of firearms to the criminal market.

The President Can Take the Following Executive Actions to Prevent the Diversion of Firearms to the Illegal Market:

Pull Back the Curtain on America’s Worst Gun Dealers

Federal law gives Americans a presumptive right to government data, and restrictions on public access to that data should accordingly be construed narrowly. ATF, however, has adopted an overly broad interpretation of the Tiahrt Amendment provisions that unduly restricts the public release of trace data. For example, the Tiahrt Amendments allow for the public release of “statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations,” as well as “the publication of annual statistical reports on products regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives” It follows that ATF may — and should — include information in the annual trafficking reports that identifies, state by state, the gun dealers with the largest numbers of crime gun traces, plus the aggregate number of crime guns traced back to each. ATF, however, has chosen not to make this data available.

Communities have the right to know which federally licensed dealers are responsible for the guns flooding onto their streets, and simple acts of transparency like those mentioned above would encourage gun dealers to adopt the safest business practices.

Recommendation #12: Direct ATF to interpret the phrase “statistical aggregate data” in the Tiahrt Amendments to include the aggregate number of crime gun traces on a per dealer basis, and to include information about the largest crime gun suppliers in the annual state trafficking reports.

Give States Discretion to Utilize Trace Data

ATF’s overly broad interpretations of the Tiahrt Amendment’s trace data restrictions have been included in many of the Memoranda of Understanding (MOU) between ATF and local and state law enforcement agencies that govern access to ATF’s eTrace system. As a result, local and state efforts to publish statistical aggregate data regarding the sources of crime guns in their communities have been chilled. ATF should audit — and, when necessary, amend — such MOUs to ensure that each narrowly construes the Tiahrt Amendment and gives appropriate deference to its exceptions, such as for the release of “statistical aggregate data.”

Recommendation #13: Direct ATF to assess the terms of all MOUs with state and local law enforcement agencies regarding the use of eTrace data and ensure that no provisions place any restrictions on state and local use of trace data that are not necessary to comply with the language of Tiahrt.

Require Multiple Sales Reporting to Tackle Domestic and International Trafficking

ATF has long used multiple sales information to detect, investigate, and prevent domestic firearms trafficking, and has recently employed a broader reporting obligation in four states along the southern border to help prevent assault-style weapons from being trafficked into Mexico.⁵¹ According to ATF data, about 70 percent of the crime guns recovered in Mexico between 2009 and 2014 were traced back to gun dealers in the United States.⁵² A 2010 OIG report found that (1) “the percentage of crime guns recovered in Mexico that were long guns steadily increased each year from 20 percent in FY 2004 to 48 percent in FY 2009”; (2) “long guns tend to have a shorter time-to-crime than handguns, and shorter time-to-crime intervals generate more valuable leads for ATF”; and (3) “Mexican cartels are obtaining long guns in multiple sales.”⁵³ The report found that “the lack of a reporting requirement for multiple sales of long guns . . . hinders ATF’s ability to disrupt the flow of illegal weapons into Mexico.”⁵⁴

In 2011, the DOJ announced the new multiple sales reporting requirement for some long guns, including semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22, mandating that all gun dealers in Arizona, California, New Mexico, and Texas submit to ATF reports of multiple sales when two or more long guns are transferred at the same time or within five consecutive business days.⁵⁵ However, because this requirement only applies to those four states, it is possible that traffickers will simply travel to other states for attractive environments in which to bulk purchase long guns.⁵⁶

Recommendation #14: Instruct ATF to require all states to report multiple sales of long guns so that it can identify traffickers and the dealers that facilitate gun trafficking.

Bolster Interstate Law Enforcement Capabilities

Law enforcement agencies that have login credentials to ATF's eTrace system can both share their own trace data with other law enforcement agencies and access the data external agencies have themselves opted to share. However, this data sharing feature is currently limited to trace data within the same

state as the law enforcement agency, and gun trafficking is often a regional problem that ignores state borders. Access to trace data across state lines will help local and state law enforcement to understand and disrupt all trafficking routes that support the illegal crime gun market, and will additionally facilitate cooperative efforts with other law enforcement agencies on those routes, regardless of their location.

Recommendation #15: Direct ATF to permit entities with eTrace logins to share trace data across state lines.

**ACCESS TO TRACE DATA ACROSS STATE LINES WILL
HELP LOCAL AND STATE LAW ENFORCEMENT TO
UNDERSTAND AND DISRUPT ALL TRAFFICKING ROUTES
THAT SUPPORT THE ILLEGAL CRIME GUN MARKET**

CATEGORY 4: ATF ACCOUNTABILITY AND REFORM

ATF is the sole federal agency tasked with overseeing FFLs, a critical role in preventing and reducing gun violence. And yet, ATF inspection reports of dealers, obtained via Freedom of Information Act (FOIA) litigation by Brady, show that the agency allows many of the worst violators in the gun industry to keep their licenses after failed compliance inspections, making leniency for repeat and serious violators the rule rather than the exception.⁵⁷ ATF's failure to enforce the law and revoke the licenses of repeat offenders is a significant contributor to the country's crime gun problem. Also troubling is that ATF provides very little transparency on their inspections or findings, precluding accountability for failures and shortcomings. A president can take action to ensure clarity, accountability, and reform of ATF policies and practices.

The President Can Take the Following Executive Actions to Ensure ATF Accountability and Reform:

Enhance ATF Inspection Efficacy

ATF has an internal goal of inspecting every FFL once every three to five years; however, it inspects less than 8 percent of FFLs per year on average,⁵⁸ and over 58 percent of FFLs are not inspected within any five-year period.⁵⁹ As a result, negligent — and even criminal — gun dealers can operate with relative impunity for years without fear of a compliance inspection. Based on data from ATF indicating how long it took on average for investigators to complete inspections, ATF would have needed 1,140,139 investigator hours to complete 5-year cyclical compliance inspections

alone — a shortfall of 199,639 hours.⁶⁰ Due to ATF's significant resource constraints, it is critical that its leaders and agents prioritize inspections of dealers who supply the most crime guns and who are most likely to be noncompliant. Notably, ATF has implemented a field division discretionary investigative initiative to prioritize compliance inspections of FFLs that the agency has identified as "high risk."⁶¹ ATF may assign this classification to an FFL in response to indicators such as a high number of crime gun traces; numerous multiple sales or multiple sales of guns used in crimes; thefts or losses of firearms; being located in a high-crime or border area; and tips from law enforcement.⁶² However, a 2013 OIG report found that ATF did not track whether the FFL inspections it conducted met the high-risk priority it laid out each fiscal year in its operating plan. Because of this, ATF does not know, and OIG was unable to determine, whether investigators give proper priority to high-risk FFL inspections, how many high-risk FFLs are inspected, or how long high-risk FFLs can go between inspections.⁶³

Recommendation #16: Direct ATF to prioritize crime gun suppliers, non-compliant FFLs, and other high-risk FFLs for more frequent compliance inspections, and to formally track and report its progress on an annual basis

Increase ATF Inspection Transparency

ATF's compliance inspection program is the central component of its mandate to provide rigorous oversight of the firearms industry. As the only federal agency responsible for such oversight, it is essential that the public not only has information

sufficient to assess ATF's effectiveness at policing the gun industry, but is also kept aware of what the agency is doing to protect American communities from industry actors who either refuse or are unable to comply with the law. ATF already releases some aggregate data about its inspections each fiscal year,⁶⁴ but this information is woefully insufficient to reach conclusions about the effectiveness of ATF's inspection program and gun industry compliance, diminishing public and congressional accountability.

Recommendation #17: Direct ATF to issue an annual report providing detailed information about legal violations by gun dealers, distributors, and manufacturers and how ATF has chosen to address such violations, broken down by geographic areas that correspond with ATF field divisions, to provide transparency about gun industry compliance and ATF compliance inspections.

Lift the Veil on Crime Gun Trace Data

Increasing knowledge of gun commerce both helps hold bad actors in the gun industry

accountable and informs the efforts of law enforcement, researchers, and policymakers to create effective violence prevention strategies. In 2000, the ATF released its last annual Commerce in Firearms report to feature trace data, providing valuable insight into the origins of crime guns.⁶⁵ This comprehensive report included a distribution of traces among dealers, which found that just 1.2 percent of FFLs accounted for over 50 percent of crime gun traces, while 86.5 percent of FFLs had no crime guns traced to them that year.⁶⁶ Today's Firearms Commerce reports issued by ATF no longer include any aggregated trace information.⁶⁷ This lack of transparency regarding trace data greatly obstructs lawmakers and researchers hoping to develop policies to combat gun violence.

Recommendation #18: Direct ATF to release an annual updated report containing all of the same categories of information contained in the 2000 report. This would equip policymakers with information necessary to prevent violence in their communities.

ATF INSPECTION REPORTS OF DEALERS, OBTAINED VIA FREEDOM OF INFORMATION ACT (FOIA) LITIGATION BY BRADY, SHOW THAT THE AGENCY ALLOWS MANY OF THE WORST VIOLATORS IN THE GUN INDUSTRY TO KEEP THEIR LICENSES AFTER FAILED COMPLIANCE INSPECTIONS, MAKING LENIENCY FOR REPEAT AND SERIOUS VIOLATORS THE RULE RATHER THAN THE EXCEPTION

CATEGORY 5: PRIORITIZE PUBLIC HEALTH AND SAFETY

Whether instigated by civilians or law enforcement, the public health epidemic that is gun violence has stifled too many American lives to be treated without a whole-of-government approach. Despite a heightened awareness of the gun violence crisis in communities across the country, firearm injuries and deaths continue to rise in both rural and urban areas. To combat this crisis, the president should take immediate action to provide properly comprehensive educational materials for the public and private sectors on how best to reduce gun violence, an undertaking which, if truly made a national priority, will require a coordinated response at the federal level that brings together the many disparate government agencies and synergizes their efforts. We must take steps to ensure that the federal government is accurately and completely collecting the data that both policymakers and the public at large will require if they are to confront and resolve this issue.

The President Can Take the Following Executive Actions to Prioritize Public Health and Safety:

Appoint a National Director of Gun Violence Prevention

Echoing March for Our Lives, Brady joins in calling for the appointment of a National Director for Gun Violence Prevention. Reporting directly to the president, this appointee would help educate the public about gun violence, coordinate federal gun violence prevention grant programs, and work in close concert with those sectors of government either responsible for implementing relevant Executive Orders or which have oversight functions that directly relate to the nation's gun

violence prevention efforts.⁶⁸ The complex nature of the problem the National Director faces would require a coordinated effort by numerous federal agencies in order to thoroughly study, investigate, and develop policies which reduce gun violence in all of its forms. This degree of coordination and resource management cannot be accomplished without the guidance of a designated director.

Recommendation #19: Appoint a well-qualified National Director of Gun Violence Prevention to coordinate federal responses to gun violence.

Create a Task Force on Police Violence

Compared to other countries, the U.S. suffers a disproportionate amount of police violence. As noted by renowned criminologist Franklin Zimring, "American police kill not only more often than other developed world police but at a vastly higher rate than any nation the United States would want to measure itself against."⁶⁹ While America's exceptional rate of police violence impacts all ethnic and racial groups in the country, "African American men and women, American Indian/Alaska Native men and women, and Latino men face higher lifetime risk of being killed by police than do their white peers"⁷⁰ While death at the hands of police is the ultimate degradation, people of color, and especially Black, American Indian/Alaska Native, and Latinx people face manifold aggressions everyday.

As Pulitzer Prize Winner and "1619 Project" creator Nikkole Hannah-Jones wrote, "[p]olice killings are just the worst manifestations of countless slights and indignities that build until there's an explosion.

Since 1935, nearly every so-called race riot in the U.S. — and there have been more than 100 — has been sparked by a police incident . . . This can be an act of brutality, or a senseless killing. But the underlying causes run much deeper. Police, because they interact in Black communities every day, *are often seen as the face of larger systems of inequality* in the justice system, employment, education, and housing.”⁷¹

Indeed, there is no shortage of infamous incidents of police violence in recent years: George Floyd of Minnesota; Breona Taylor of Kentucky; Dreasjon Reed of Indiana; Eric Garner of New York; Michael Brown of Missouri; Philando Castile of Minnesota; Sergio Adrián Hernández Güereca of Ciudad Juarez, Chihuahua, Mexico, who was shot and killed in a cross-border shooting by a U.S. Immigration and Customs Enforcement (ICE) agent; and many more. In fact these are only recent examples of a problem that has plagued America since its inception.⁷²

Given that entrenched inequity, asymmetric power, lack of accountability, and distrust underlie police violence, progress will require a multidisciplinary approach. That is even more important for an issue like police violence, which necessarily exploits every fissure and disparity in society.

Notably, President Obama convened “The President’s Task Force on 21st Century Policing”⁷³ after several infamous police killings in 2014. “The task force was created to strengthen community policing and trust among law enforcement officers and the communities they serve.”⁷⁴ This task force made a variety of recommendations to improve community/police relations. The president can build on this effort by convening a

new task force whose mission would be to not only consider community/law enforcement relations, but also the many root factors that perpetuate police violence. Police violence does not occur in a vacuum, and the task force should therefore include not only individuals with expertise related to law enforcement and criminal justice, but also individuals with expertise in areas that contribute to police violence — history, psychology, immigration, sociology, behavioral economics, organizational anthropology, implicit and explicit bias — as well as activists and residents from impacted communities, including American Indian/Alaska Natives.

Recommendation #20: Convene a task force that would seek comprehensive, actionable solutions to police violence.

Direct the CDC to Reform its Methodology for Collecting Gunshot Injury Data

CDC fatality and injury data is a critical source for researchers, academics, journalists, and legislators all across the country.⁷⁵ In developing a comprehensive understanding of the gun violence epidemic, it is vital to have accurate information about who is being injured by firearms, where they are being injured, and how firearm injuries are occurring.

The CDC’s gun fatality data tracks figures from death certificates nationwide, a reliable methodology for collecting such information. Conversely, the CDC’s gun injury data set is estimated based upon a very small sample size. In 2017, that sample came from just 60 hospitals across the country.⁷⁶ Additionally, there is no mandated standardization for how hospitals collect

firearm injury information, leading to inconsistent and insufficient methods of data collection. The ramifications of these poor processes and methods is troubling. Based upon the CDC's data for 2017, a range of 31,000 to 236,000 people were injured by firearms.⁷⁷ That range makes the data essentially unusable.⁷⁸ The CDC itself has flagged the 2016 and 2017 firearm injury data as "unstable and potentially unreliable." In fact, the data since 2016 has been so unreliable that it has been suppressed on the CDC's website, prompting an independent review of the database.⁷⁹ This is unacceptable. Following reporting on the shortcomings of the database, 11 senators sent a letter to the leadership of the Department of Health and Human Services asking why the CDC has elected to use an inferior data sample to collect information regarding gunshot injuries.⁸⁰

Recommendation #21: Direct the CDC to adopt a methodology that provides reliable and accurate data regarding gunshot injuries.

Promote Safe Storage and Gun Safety to End Family Fire

ATF should issue federal guidance regarding safe storage and gun safety, which is vital to prevent incidents of family fire — a shooting involving an improperly stored or misused gun found in the home that results in death or injury.⁸¹ While the great majority of gun owners practice responsible firearms storage, it is estimated that 4.6 million children live in homes with access to an unlocked or unsupervised gun,⁸² and 75 percent of kids know where that gun is stored.⁸³ Eight children or teens are unintentionally injured or killed each day due to incidents of family fire.⁸⁴ Improvements in safe storage practices among gun owners

drastically reduce the risk of family fire: simply keeping guns locked and unloaded reduces the risk of unintentional shooting deaths and gun suicides among youth by 73 percent.⁸⁵

Recommendations #22: Instruct ATF to develop and issue federal guidance on firearm safety and home storage safety and encourage FFLs to provide all firearms purchasers with educational materials on safe storage options, including offsite storage that may be available in their area. Providing such information and guidance can work to change social norms and proactively prevent avoidable incidents of family fire,⁸⁶ whether unintentional discharges, intentional shootings, or firearm suicide, which will save lives.

Promote Safety and Security at Gun Ranges

Gun ranges place firearms in the hands of individuals without the benefit of Brady background checks or other mandated screening procedures. Most also house numerous firearms that are available to rent. Though the majority of range owners and their employees are vigilant about preventing such things, these locations are not immune to incidents of gun violence and theft. Ranges nationwide have seen guns stolen in burglaries,⁸⁷ guns stolen by customers,⁸⁸ unintentional shootings,⁸⁹ firearm suicides,⁹⁰ and firearm homicides.⁹¹

Recommendation #23: Instruct ATF to develop and provide guidance, education, and suggested procedures to gun range owners and their employees to prevent incidents of gun violence onsite, as well as theft or burglary.

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