

**IN THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
ORGANIZATION OF AMERICAN STATES**

**WASHINGTON, D.C. USA**

---

**Petition of**

**MANUEL (“MANNY”) AND PATRICIA OLIVER, ON BEHALF OF  
THEMSELVES AND THEIR SON JOAQUIN OLIVER**

**—v.—**

**THE UNITED STATES OF AMERICA**

**Presented by**

**Global Action on Gun Violence (GAGV) and the George Washington University  
Law School Civil and Human Rights Law Clinic**

---

**Contacts:**

<b>Professor Arturo J. Carrillo, Director</b>	<b>Jonathan Lowy, President</b>
The George Washington University Civil and Human Rights Law Clinic	Global Action on Gun Violence (GAGV)
650 20 <sup>th</sup> Street N.W. Washington DC 20052 United States of America	805 15 <sup>th</sup> Street, N.W., #601 Washington DC 20005 United States of America
Tel: (202) 994-5794	Tel: (202) 415-0691
<a href="mailto:acarrillo@law.gwu.edu">acarrillo@law.gwu.edu</a>	<a href="mailto:jlowy@actiononguns.org">jlowy@actiononguns.org</a>

**November 2023**

Submitted with the support of The George Washington University Civil and Human Rights Law Clinic: Madeline Byers (2024), Laura Mezzanotte (2024), Bennett Page (2023), Caroline Uehling (2024), Olivia Velasco (2023), and Kailee Vick (2024).

<b><i>I. INTRODUCTION AND SUMMARY</i></b>	<b>3</b>
<b><i>II. THE PARKLAND GUN MASSACRE AND THE KILLING OF JOAQUIN OLIVER</i></b>	<b>7</b>
A. Events Leading to The Parkland Gun Massacre	8
B. The Parkland Gun Massacre and the Killing of Joaquin Oliver	11
C. Events Following the Parkland Massacre and the Killing of Joaquin Oliver	13
D. The Oliver Family’s Pursuit of Justice and Accountability	14
<b><i>III. THE PARKLAND GUN MASSACRE: BACKGROUND AND CONTEXT</i></b>	<b>17</b>
A. Comparing Gun Violence in the U.S. to Gun Violence Internationally	18
B. Efforts to Force State Intervention	25
C. Gun Massacres with Assault Weapons in USA	27
<b><i>IV. FEDERAL, STATE, AND INTERNATIONAL REGULATORY REGIMES REGARDING THE MANUFACTURE, SALE, AND POSSESSION OF FIREARMS</i></b>	<b>35</b>
A. United States Federal Regulatory Legal Framework	35
1. Licensing Requirements and Restrictions on the Sale of Firearms (Generally)	37
2. Mental Illness or Incapacity	39
4. Assault weapons	42
5. Other Federal Gun Industry Controls (Or Lack Thereof)	43
6. Enforcement	43
7. Special Protections and Immunity for the Gun Industry	45
8. United States Affirmative Support for the Firearms Industry	48
9. Gaps in the Federal Regulatory Regime	49
B. Florida State Controls on the Purchase and Possession of Firearms by Civilians	50
C. U.S. Gun Laws Compared to International Norms on Firearms Regulation	56
<b><i>V. INTER-AMERICAN HUMAN RIGHTS LAW: DUE DILIGENCE AND ADMISSIBILITY</i></b>	<b>59</b>
A. The Due Diligence Principle in Inter-American Law	59
B. Admissibility	63
1. Expedited Processing	63
2. Competence of the Commission	65
3. Duplication	65
4. Exhaustion of Domestic Remedies	65
5. Timeliness of the Petition	72
<b><i>VI. VIOLATIONS OF THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN</i></b>	<b>73</b>
A. Right to Life, Liberty, and Personal Security (Article I) and Domestic Legal Effects	73
B. Right to a Family and to Protection Thereof (Article VI) and Right to Protection for Children (Article VII)	75
C. Right to Education (Article XII) and Rights of Assembly and Association (Articles XXI & XXII)	75
D. Right to Equality Before the Law (Article II), Right to Juridical Personality and Civil Rights (Article XVII), and Right to Judicial Protection (Article XVIII)	77



## I. INTRODUCTION AND SUMMARY

1. This petition is respectfully submitted by Global Action on Gun Violence and the Civil and Human Rights Clinic at the George Washington University Law School on behalf of Joaquin Oliver, deceased, and his parents, Manuel (“Manny”) and Patricia Oliver, both citizens of the United States. Joaquin Oliver was shot and killed on February 14<sup>th</sup>, 2018 in the infamous gun massacre at Marjorie Stoneman Douglas High School in Parkland, Florida (“Parkland Gun Massacre”). He was 17 years old when he was deprived of his life.

2. Joaquin Oliver was killed as a consequence of the actions and omissions of the United States of America (“United States” or “U.S.”) that enabled and facilitated high-risk firearm sales to unsuitable civilian buyers and prevented the adoption of widely accepted measures to protect persons from being injured or killed by guns. Joaquin’s death typifies the woeful inadequacy of U.S. gun policy: the U.S. allowed and enabled gun companies to sell his killer a lethal firearm, even though he was a 19-year-old with a lengthy, documented record of violence, instability, mental illness and indicators of dangerousness. Worse, the U.S. allowed gun companies to sell him a military-style AR-15 assault weapon, that is designed to effectively commit massacres, and has been repeatedly used within the U.S. to commit massacres in elementary schools,<sup>1</sup> high schools,<sup>2</sup> universities,<sup>3</sup> supermarkets,<sup>4</sup> churches,<sup>5</sup> music festivals,<sup>6</sup> night clubs,<sup>7</sup> bowling alleys,<sup>8</sup> restaurants,<sup>9</sup> stores,<sup>10</sup> and more. The U.S. also provided special immunity for the gun companies who manufactured, designed and sold these weapons preventing the Olivers from holding them accountable for their reckless practices.

---

<sup>1</sup> James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES (Dec. 14, 2012), <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html>; Annie Gimbel, *19 students dead, 2 adults killed after Uvalde elementary school shooting*, CBS NEWS (updated May 23, 2023), <https://www.cbsnews.com/texas/news/mass-shooting-robb-elementary-school/>.

<sup>2</sup> Mark Obmascik, *Columbine High School shooting leaves 15 dead, 28 hurt*, DENVER POST (Apr. 21, 1999), <https://www.denverpost.com/1999/04/21/columbine-high-school-shooting/>.

<sup>3</sup> Stan Wilson, et. al., *Santa Monica shooting victim dies, bringing toll to 5*, CNN (June 9, 2013), <https://www.cnn.com/2013/06/09/justice/california-college-gunman/index.html>.

<sup>4</sup> Minyvonne Burke, *Buffalo grocery mass shooter gets life in prison at tense sentencing hearing for racist attack* (Feb. 15, 2023), NBC NEWS, <https://www.nbcnews.com/news/us-news/man-rushes-buffalo-grocery-mass-shooter-emotional-sentencing-hearing-r-rcna70250>.

<sup>5</sup> David Montgomery, *Gunman Kills at Least 26 in Attack on Rural Texas Church*, N.Y. TIMES (Nov. 5, 2017), <https://www.nytimes.com/2017/11/05/us/church-shooting-texas.html>.

<sup>6</sup> Andrew Blankstein, *Las Vegas Shooting: 59 Killed and More Than 500 Hurt Near Mandalay Bay*, NBC NEWS, <https://www.nbcnews.com/storyline/las-vegas-shooting/las-vegas-police-investigating-shooting-mandalay-bay-n806461>.

<sup>7</sup> Ariel Zambelich, *Orlando Shooting: What Happened at the Pulse Nightclub*, NPR (June 16, 2016), <https://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update>.

<sup>8</sup> Jenna Russell, *‘Dark Day for Maine’ After Gunman Kills 18 at Bowling Alley and Bar*, N.Y. TIMES (Oct. 26, 2023), <https://www.nytimes.com/2023/10/26/us/maine-lewiston-mass-shooting.html>.

<sup>9</sup> Jamie Burch, *Looking back: Luby’s 1991 mass shooting 2nd worst in Texas history*, KXXV (Oct. 15, 2021), <https://www.kxxv.com/news/lubys-massacre-30-years-later/looking-back-lubys-1991-mass-shooting-2nd-worst-in-texas-history> (23 killed and 20 others wounded in 1991 shooting at Luby’s Cafeteria in Killeen, Texas); Merrie Montegudo, *From the Archives: 21 die in San Ysidro restaurant shooting in 1984*, SAN DIEGO UNION-TRIB. (July 18, 2023), <https://www.sandiegouniontribune.com/news/local-history/story/2023-07-18/from-the-archives-21-die-in-san-ysidro-restaurant-shooting-in-1984>.

<sup>10</sup> Morgan Lee, *The Texas shooter in a racist Walmart attack is going to prison*, AP NEWS (July 5, 2023), <https://apnews.com/article/el-paso-walmart-texas-crusius-bf7d25f3567959ee8b121deabcf1d9a1>.

3. These acts and omissions of the U.S. have led—and continue to lead—to rampant foreseeable gun violence resulting from the inadequately unregulated marketing, sales, and civilian acquisition and use of firearms. The U.S. is aware, from studies and the far lower gun violence rates in comparable countries and within some U.S. states, that strong regulation of guns is necessary and effective to protect lives from gunfire. The U.S. has seen countries tighten already-tight gun laws in response to single gun massacres, while the U.S. has tolerated thousands of mass shootings over decades. The U.S.’s failure to join the world community in implementing sensible gun policies causes over one hundred thousand persons on U.S. territory to be shot or killed every year, and many thousand more throughout the Americas are similarly harmed with U.S. guns that are trafficked as a result of U.S. gun policy.

4. Accordingly, Petitioners allege multiple violations by the United States of its obligations under the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man (“American Declaration”) with respect to Joaquin Oliver and his parents, Manny and Patricia Oliver, who bring this action on his behalf. Given the structural underpinnings of the gun violence represented in this action, Petitioners also request that the Commission expedite its review of this petition under Article 29(2)(d) of its Rules of Procedure.

5. Petitioners specifically allege a violation of Joaquin’s right to life and personal security in American Declaration Article 1, in addition to his rights to: equality before the law (Article II); a family and protection thereof (Article VI); special protection for minors (Article VII); education (Article XII); juridical personality and civil rights (Article XVII); fair trial (Article XVIII); assembly and association (Articles XXI and XXII); as well as to give domestic legal effect to the aforementioned American Declaration protections. Joaquin’s parents, Manny and Patricia Oliver claim violations of their rights under the American Declaration to equality before the law (Article II); a family and protection thereof (Article VI); special protection for minors (Article VII); education (Article XII); juridical personality and civil rights (Article XVII); fair trial (Article XVIII); assembly and association (Articles XXI and XXII); as well as to give domestic legal effect to the aforementioned American Declaration protections.

6. The human rights law principle that obligates the government to protect the right to life is wholly consistent with the founding principles of the United States. The U.S.’s founding document, the Declaration of Independence, recognized that its first freedoms were the rights to life, liberty and pursuit of happiness, and announced that a democratic government is necessary to secure these rights.

7. The United States, like other nations, is obligated to protect the exercise of these human rights; a State cannot simply tolerate its people to be systematically and repeatedly deprived of their lives. Human rights law generally, and Inter-American human rights law specifically, requires the United States to adequately regulate firearms companies who put profits over people, and to prevent firearms manufacturers, distributors and dealers from making and selling guns in ways that cause deaths and injuries. Virtually every nation on the planet does so. The United States stands alone among nations in this region, and among high-income nations in the world, in failing to reasonably regulate firearms.

**8.** The fundamental human rights which the United States and other nations are obligated to protect are not abstract concepts; they protect what makes life possible and worth living. Joaquin Oliver had a right to life, which means that Joaquin had a right to fall in love, to have his heart broken, and to find his life partner – or not. Joaquin had a right to search for his dreams and chase them, to try and to fail and to try again. Joaquin had a right to visit his grandfather in Venezuela, to read Gabriel Garcia Marquez and Pablo Neruda, to lie on a beach in Barbados, to snorkel in Jamaica, to hike the Inca Trail, to see many seasons of NBA playoffs and World Cups, to travel to Europe with his mother and enjoy the best pizza in Italy and fresh pastries in France, to attend a Rolling Stones concert with his father. All this was taken from him as a result of the United States allowing a deeply troubled 19-year-old to buy a military-style assault rifle, with which he could easily commit a massacre.

**9.** The killing of Joaquin Oliver was far from an isolated event: 16 other people died in the Parkland Gun Massacre alone. Over 19,000 people have been killed or injured in the over 4,300 mass shootings that have occurred in the U.S. since 2015. For decades the United States has enabled these mass killings by allowing loosely regulated sales of military-style assault weapons and other firearms, and in the face of this sustained slaughter of its residents, it has consistently refused to enact adequate and effective measures to prevent such gun violence. Every year over 100,000 are shot or killed in smaller-scale homicides, suicides, and unintentional shootings in the U.S – over one million people each decade. The U.S.’s woefully inadequate policies enable and facilitate a gushing crime pipeline of guns trafficked throughout the region, arming the cartels in Mexico, criminals and gangs in Haiti, Jamaica, and other Caribbean nations, and causing violence throughout Central and South America and Canada.

**10.** If that panorama were not bleak enough, the United States has actively adopted measures at the state and federal levels that make gun massacres more likely, more common, and more deadly. In the past 20 years the United States Congress has relaxed key gun regulations, such as allowing the federal assault weapon ban to lapse, and created special exemptions for the gun industry from accountability, such as the federal Protection of Lawful Commerce in Arms Act (“PLCAA”), that shields gun companies from much civil liability, and the “Tiahrt” Amendment, that shields important crime gun data from public view.

**11.** The judiciary in the United States has exacerbated this crisis by restricting the authority of governments to protect public safety and placing the relatively few gun laws that exist at risk of being struck down. The Second Amendment to the U.S. Constitution was understood for over two centuries to only concern the “well-regulated militia” which the Framers intended to protect and therefore mentioned in the text, not private gun ownership. But in 2008 the Supreme Court of the United States created a new right to handguns for self-defense which was not mentioned by the Second Amendment’s Framers or in the text, and then the Court vastly expanded that right in 2022, requiring historical precedent for gun laws and making public safety considerations of little relevance in determining the constitutionality of gun laws. These rulings have led courts to strike down numerous gun laws, and may constrain future regulations. The United States appears to be the only nation in the world that has chosen to put gun industry profits over public safety and gun rights over human rights.

**12.** The results are as predictable as they are tragic. As anyone who reads the news in the United States is aware, there is no respite in sight from the gun violence and massacres in the United States: residents of the country are more than 20 times more likely to die from gun violence than in other comparable countries.

**13.** For these reasons, Manny and Patricia Oliver, on behalf of themselves and their son, Joaquin, bring the present action to hold the United States accountable for its utter failure to comply with applicable Inter-American human rights law relating to the country's rampant gun violence and mass killings in general, and particularly the Parkland gun massacre in which Joaquin perished.

**14.** Petitioners will show that the United States failed in its duty to exercise due diligence in two basic respects. The United States failed to protect not just Joaquin but all persons on its territory from human rights abuses by private actors. Firstly, the U.S. failed to act affirmatively to prevent those abuses and, secondly, where such abuses occur, as in Parkland, the U.S. failed to provide adequate and effective remedies to the victims. The United States' failures in this respect prior to the Parkland Gun Massacre in 2018 contributed directly to Joaquin Oliver's killing at the hands of the teenage shooter. Its corresponding failures in the aftermath of that tragedy have perpetuated the impunity that currently shields the gun industry actors and the United States itself from any semblance of accountability for Joaquin's killing.

**15.** This Petition qualifies for expedited processing under Article 29 of the Inter-American Commission's Rules of Procedure. Expedited processing is required in this case because Commission decisions will address and, we expect, contribute to repairing the grave structural deficiencies identified herein that directly impact the enjoyment of human rights by past and future victims of gun violence in the United States, like Joaquin Oliver and his parents. Moreover, the Commission's decisions will help promote the legal reforms and changes in State practice needed to avoid repetition of the grave violations alleged, and the reception of multiple petitions on the same issue as well.

**16.** The Petition is admissible. The Commission is the competent body to hear the claims advanced, all of which are legally and factually sufficient as alleged to make out, at the very least, a *prima facie* case. Furthermore, Petitioners are excused from exhausting domestic remedies due to the unavailability of adequate remedies and the ineffectiveness of the few existing ones. They have filed this action in a timely manner. Finally, there is no other proceeding based on said claims pending before the Commission or any other international body.

**17.** The Olivers are represented in this action by counsel from Global Action on Gun Violence ("GAGV") and the Civil and Human Rights Clinic at the George Washington University Law School ("CHRL Clinic"). GAGV is a non-profit which delivers impactful gun violence prevention strategies nationally and internationally, with a focus on promoting the effective regulation of guns and the gun industry at their U.S. source. GAGV is led by Jonathan Lowy, ex-legal director at the Brady Center to Prevent Gun Violence. Mr. Lowy has more than 25 years of experience leading impact litigation and advocating for strong policies to prevent and punish gun violence in the United States. The CHRL Clinic at GW Law School is directed by Professor Arturo J. Carrillo, a

longstanding human and civil rights advocate with extensive experience in strategic litigation. Contact information for counsel is included on the cover page.

**18.** This Petition proceeds as follows. After this introductory Part I, Part II provides a detailed account of the Parkland Gun Massacre and the killing of Joaquin Oliver (and sixteen other people) by a teenage shooter armed with a military-style assault weapon. Part III then provides background on government and gun industry practices in the United States with respect to the lack of meaningful controls on the purchase and possession of guns and assault weapons by civilians; it describes the social and business context within which the Parkland gun massacre occurred. Part IV centers on detailing the federal and state regulatory regimes in place to govern the manufacture, marketing and sale of firearms, including assault weapons, that made the Parkland Gun Massacre possible; it documents the obstacles to accountability that exist under the legal frameworks described.

**19.** In Part V the Petition turns to the legal analysis of admissibility, which in this case is anchored in the State’s utter failure to fulfill its due diligence responsibilities under Inter-American human rights law. Part V also presents Petitioners’ request for expedited processing under Article 29 of the Commission’s Rules of Procedure (“ROP”) as well as for admissibility under ROP Articles 30–34, and 51–52. There can be no doubt that this action justifies, if not demands, expedited processing and a prompt admissibility decision considering the due diligence and systemic issues raised. Part VI outlines in more detail the aforementioned violations of the American Declaration arising from the Parkland Gun Massacre with respect to Joaquin Oliver and his parents, Manny and Patricia Oliver. The Petition concludes with a prayer for relief.

**20.** Every day brings a new mass shooting like the one that took Joaquin’s life, with no meaningful response from the State—even though polls consistently show that most Americans favor stronger gun laws. As far as counsel is aware, the Olivers’ case, once admitted, will be the first of its kind to be considered and decided by the Commission (or any other international human rights body), with enormous—and potentially enormously positive—implications for the legal, political and social debates ongoing in the United States around the scourge of gun violence.

## **II. THE PARKLAND GUN MASSACRE AND THE KILLING OF JOAQUIN OLIVER**

**21.** On February 14, 2018, Joaquin Oliver, known by family and friends as Guac, started the day anticipating that he would arrive at school to see his girlfriend and professed soulmate Victoria Gonzalez, his dedicated creative writing teacher Stacy Lippel, and his large group of close friends who considered him family.<sup>11</sup> Joaquin imagined he was on his way to another day of excelling in his creative writing class with his love for writing and expressing himself authentically.<sup>12</sup>

**22.** Unbeknownst to Joaquin, on the same day, a 19-year-old male showed up to his former high school with a Smith and Wesson MP-15 AR-15-style semi-automatic assault rifle. The 19-

---

<sup>11</sup> Eagle Eye News Staff, *In Memoriam*, ISSUU, [https://issuu.com/melissafalkowski4/docs/memorial\\_donate/s/69187](https://issuu.com/melissafalkowski4/docs/memorial_donate/s/69187).

<sup>12</sup> *Id.*



year-old would use that firearm to open fire on the students and staff inside the school.<sup>13</sup> Fourteen students and three staff members were killed, and 17 others wounded, in one of the deadliest school massacres in the United States' history.<sup>14</sup> The last to be killed was Joaquin Oliver, the 17-year-old son of petitioners Manuel and Patricia Oliver. Hereinafter this 19-year-old male will be referred to only as "the shooter" or the "perpetrator" in relation to the Parkland Gun Massacre.<sup>15</sup>

**23.** This Part begins with a section describing the events leading to the Parkland Gun Massacre, including the shooter's troubled history and his gun purchases (Section A). The next section will recount the events of the massacre itself and the killing of Joaquin Oliver (Section B). The subsequent section summarizes the events following the massacre, including the shooter's capture, prosecution and sentencing (Section C). The final section (Section D) discusses Manny and Patricia Oliver's pursuit of justice and accountability in the wake of their son's killing, leading up to and including the presentation of this Petition.

#### *A. Events Leading to The Parkland Gun Massacre*

**24.** The shooter, 19-years-old at the time of the Parkland Gun Massacre, was a former student at Marjory Stoneman Douglas High School.<sup>16</sup> He was a troubled child who displayed aggressive and violent tendencies, had numerous run-ins with police, and had been under the care of mental health professionals from age eleven until he turned eighteen. As early as three years old, the shooter exhibited violent behavior, which became a regular and frequent feature of his life leading up to the shooting.

**25.** Between 2002 and 2018, there were 69 documented incidents where the shooter threatened someone, engaged in violence, talked about guns or other weapons, or otherwise displayed aggressive behavior.<sup>17</sup> Several of the documented incidents could have been charged as crimes but were not. Prior to the massacre, the Broward County Sheriff's Office had a total of 21 contacts involving the shooter.<sup>18</sup> One of these incidents involved the perpetrator shooting at a neighbor's chickens with an airsoft gun, killing one.<sup>19</sup> Another incident in February 2016 involved a photograph the shooter had posted on Instagram with a statement saying "I am going to get this gun when I turn 18 and shoot up the school."<sup>20</sup>

**26.** In September 2016, school administration conducted a threat assessment on the shooter due to reports concerning his patterns of behavior, resulting in his being prohibited from carrying

---

<sup>13</sup> Marjory Stoneman Douglas High School Public Safety Commission, *Initial Report Submitted to the Governor, Speaker of the House of Representatives and Senate President*, at 7 (Jan. 2, 2019), <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> [hereinafter Commission Report].

<sup>14</sup> *Id.*

<sup>15</sup> The "Don't Name Them" campaign urges the press and other media to leave out the names of mass shooters when reporting on shootings such as the Parkland Gun Massacre. Many shooters are motivated by a desire for fame, notoriety, and recognition. In line with this approach, the Petition makes the deliberate choice not to mention the shooter by name to reduce his notoriety. See [dontnamethem.org](http://dontnamethem.org)

<sup>16</sup> Commission Report at 7.

<sup>17</sup> Commission Report at 234.

<sup>18</sup> *Id.*

<sup>19</sup> Commission Report at 236.

<sup>20</sup> Commission Report at 237.

a backpack to school.<sup>21</sup> Katherine Blaine, a friend of the shooter's mother, called the sheriff's office on November 1, 2017, the day that the shooter's mother died.<sup>22</sup> Blaine reported that the shooter was armed at the same time he was supervising his 17-year-old brother. Blaine also reported that the shooter's mother had confided in Blaine that approximately three months earlier the shooter had knocked out three of her teeth.<sup>23</sup>

**27.** After his mother died, the shooter moved in with the family of Roxanne Deschamps, whose son was his friend.<sup>24</sup> On November 24, 2017, Deschamps called the Palm Beach Sheriff's Office (PBSO) because the shooter had buried a firearm in her yard.<sup>25</sup> On November 28, 2017, Deschamps again called PBSO.<sup>26</sup> She reported that the shooter hit her son, and notes from the call indicate the perpetrator said he would leave, go get a gun, and come back. The notes taken by law enforcement at the time also indicated that the shooter had just bought a gun the previous week and was going to pick it up. The Deschamps also stated that the shooter possessed a lot of ammunition and had held a gun to people's heads in the past.<sup>27</sup>

**28.** On November 30, 2017, another friend of the shooter's mother called the sheriff's office to report that he had weapons and wanted to join the military to kill people.<sup>28</sup> She stated that the perpetrator "might be a Columbine in waiting" and was a threat to kill himself.<sup>29</sup> The mention of "Columbine" referenced a famous gun massacre in 1999 in which 2 teenagers brought assault weapons and two bombs to their high school and killed 15 people and wounded 24.<sup>30</sup>

**29.** The Parkland shooter received extensive mental health treatment and school-based treatment from multiple providers.<sup>31</sup> Over a nine-year period, until he was 18-years old, the perpetrator regularly received hundreds of hours of therapy sessions from Henderson Behavioral Health.<sup>32</sup> The shooter did not receive any treatment in the months immediately preceding the massacre.<sup>33</sup>

**30.** Several of the shooter's peers knew him to express hatred toward specific groups and violence towards animals.<sup>34</sup> He was known to make statements such as, "I wish all the Jews were dead," or, in reference to the 2016 gun massacre at the Pulse nightclub, a gay establishment in Orlando, in which 49 were killed and 53 wounded, "I'm glad they killed all those gay people."<sup>35</sup>

---

<sup>21</sup> *Id.*

<sup>22</sup> Commission Report at 238.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Commission Report at 239.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Commission Report at 238.

<sup>29</sup> *Id.*

<sup>30</sup> Nicole Guzman, *A Brief History of Columbine and Its Effect*, UNIVERSITY OF COLORADO, [https://clas.ucdenver.edu/nhdc/sites/default/files/attached-files/entry\\_434.pdf](https://clas.ucdenver.edu/nhdc/sites/default/files/attached-files/entry_434.pdf).

<sup>31</sup> Commission Report at 239.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Commission Report at 240.

<sup>35</sup> *Id.*; Frank Straub et al., *Rescue, Response, and Resilience*, COMMUNITY ORIENTED POLICING SERVICES, <https://portal.cops.usdoj.gov/resourcecenter/ric/Publications/cops-w0857-pub.pdf>.

He also expressed an interest in hate groups such as Nazis, Hitler, and the KKK, and was known to use phrases such as “White Power;” people saw swastikas drawn on his personal belongings.<sup>36</sup> He had a known history of killing small animals and even bringing a dead animal to school in a lunchbox to show to his classmates.<sup>37</sup>

**31.** Prior to the massacre, the shooter had often brought knives to school and shown his firearms (off campus) to some of his classmates.<sup>38</sup> He frequently made social media posts displaying his firearms. He had told one student that he wanted to shoot up the school, but later said he was joking.<sup>39</sup> Another student reported concerns to the school administration about the shooter, saying he had seen a video outlining warning signs for potential school shooters and that many of these warning signs were present in the perpetrator’s conduct.<sup>40</sup> A law enforcement officer was present in the office for this discussion.<sup>41</sup>

**32.** The State’s failure to prevent the Parkland Gun Massacre and protect its residents began with law enforcement and other public authorities’ failure to diligently heed the warning signs of impending violence. Prior to 2018, Broward County Public Schools (BCPS) documented nearly 70 incidents involving the shooter in its incident-based computer system.<sup>42</sup> BCPS’s disciplinary referral system also contained nearly 55 school incidents involving the shooter.<sup>43</sup> The Federal Bureau of Investigation (FBI) had also previously received tips concerning the perpetrator’s conduct.<sup>44</sup> For example, on September 25, 2017, the FBI was alerted to a YouTube video in which the perpetrator stated “I’m going to be the next school shooter;” the user’s account was identified as belonging to the shooter.<sup>45</sup>

**33.** A second FBI tip was made by Mary Hamel, a friend of the shooter’s mother.<sup>46</sup> Hamel said she had become increasingly concerned about postings the shooter was making on Instagram and feared he would actually follow through on threats to harm others by perpetrating a school shooting. Hamel provided the FBI with details about the shooter’s gun purchases, animal mutilations, escalating temper and Instagram usernames. The shooter’s social media posts to which the FBI had access included statements such as “I wanna fucking kill people;” “Random fucking people man fuck people I’ll kill them all;” “I wish to kill as many as I can,” “iam [sic] going to kill them in the future,” “I whana [sic] shoot people with my AR-15,” and “I wanna die Fighting killing shit ton of people.”<sup>47</sup>

**34.** The State’s failure to prevent the massacre deepened as the dearth of reasonable gun control measures described in the next Part made it easy for the perpetrator, with his long history of violent

---

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Commission Report at 241.

<sup>40</sup> Commission Report at 242.

<sup>41</sup> *Id.*

<sup>42</sup> Commission Report at 243.

<sup>43</sup> *Id.*

<sup>44</sup> Commission Report at 244.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Commission Report at 246.

conduct and mental illness, to purchase multiple firearms, including an assault rifle. Among other failures, neither the United States nor the state of Florida had any laws, policies and procedures in place to attempt to determine whether the shooter posed a risk to himself or others before he was allowed to purchase a firearm. Further, neither the United States nor the state of Florida had any laws, policies, and procedures in place that would prohibit someone with the shooter's record of violence, hate and instability from purchasing a firearm. Nor do any such laws, policies or procedures exist today under United States federal law or Florida state law.

**35.** As a result of these acts, omissions and policy failures by the State, on September 30<sup>th</sup>, 2016, the shooter was issued a Florida identification card that allowed him to purchase firearms.<sup>48</sup>

**36.** As a result of these acts, omission and policy failures by the State, between December 3, 2016 and January 19, 2018, the shooter lawfully purchased a total of seven firearms:<sup>49</sup> a 500A 12-gauge shotgun, a Smith & Wesson MP-15 semi-automatic rifle (the gun used in the shooting), a Ruger ZZ rifle, a Hi-Point 995TS rifle, two Maverick Arms / Mossberg model 88 12-gauge shotguns purchased on the same day, and a Century Arms RAS47 rifle.<sup>50</sup> Three of these firearms were purchased from Advanced Firearms in Margate, one was purchased from Dick's Sporting Goods in Boynton, one was purchased from Gun World of South Florida in Deerfield Beach, and one (the gun used in the massacre) was purchased from Sunrise Tactical Supply in Coral Springs.<sup>51</sup>

**37.** According to Sunrise Tactical Supply, a licensed dealer, the firearm used in the Parkland Gun Massacre was purchased legally from it when the shooter filled out all the required paperwork, showed a valid Florida driver's license, assured it he did not suffer from mental illness, and his background check was immediately approved.<sup>52</sup> Taken in context, the State's failure to act on the precise tips and multiple warnings it received, together with the permissive regulatory frameworks that permitted the sale of firearms to the patently unfit shooter, made it an enabler and cause of the Parkland Gun Massacre.

**38.** As will be explained more below, the laws of Florida and the United States were so permissive that even if the firearms sellers had been provided with the shooter's extensive troubled history, there was no legal requirement that they not sell him any or all of the firearms he desired.

### ***B. The Parkland Gun Massacre and the Killing of Joaquin Oliver***

**39.** At 2:19 p.m. on February 14, 2018, the shooter exited an Uber ride-sharing service at Marjory Stoneman Douglas High School armed with an AR-15 style assault rifle and several hundred rounds of ammunition concealed in a rifle bag.<sup>53</sup> He entered the school premises through

---

<sup>48</sup> Commission Report at 262.

<sup>49</sup> The applicable regulatory frameworks set out in federal and state law are described in Part IV.

<sup>50</sup> Commission Report at 262-264.

<sup>51</sup> Commission Report at 264.

<sup>52</sup> Gene Marks, *Small Gun Shop that Sold Weapon to Alleged Florida High School Shooter 'Closes Indefinitely,'* CHICAGO TRIBUNE (Feb. 19, 2018), <https://www.chicagotribune.com/nation-world/ct-gun-shop-florida-school-shooting-20180219-story.html>.

<sup>53</sup> Commission Report at 7.

a gate that had been opened for school dismissal and made his way toward a building on the north side of the campus known as Building 12.<sup>54</sup>

**40.** Once inside Building 12, the shooter made his way through all three floors of the building, firing into classrooms and hallways and killing or wounding 34 individuals.<sup>55</sup> The shooter never entered a single classroom in the building, only shooting those in his line of sight in the hallways or through classroom doors and windows.<sup>56</sup>

**41.** On the first floor, the shooter fired the first rounds in the hallway where he shot four students. Three of the students in this hallway, Martin Duque, Luke Hoyer, and Gina Montalto, were shot fatally while Ashley Baez, the first person shot, was non-fatally wounded.<sup>57</sup> The shooter proceeded to fire into classroom 1216, which he did on two occasions, resulting in five students being wounded: William Olson, Genesis Valentin, Justin Colton, Alexander Dworet and Kheshava Managapuram. While three students were killed: Aylssa Alhadeff, Alaina Petty, and Alex Schachter.<sup>58</sup> The shooter then fired into classroom 1214 in which there were two fatally shot students, Nicholas Dworet (Alexander Dworet's older brother) and Helena Ramsay, and another four wounded, Isabel Chequer, Samatha Fuentes, Samantha Grady, and Daniela Menescal.<sup>59</sup> He exited the hall and turned in the direction of Chris Hixon, shooting him fatally, and headed to classrooms 1212 and 1213.<sup>60</sup> In the same room, he shot Carmen Schentrup fatally.<sup>61</sup>

**42.** As the shooter entered the alcoves for the classrooms 1212 and 1213, he fired off additional rounds hitting Samantha Mayor, Madeleine Wilford, and Ben Wikander who all sustained non-fatal injuries.<sup>62</sup> As the shooter headed toward the stairwell to access the upper levels, he walked into Coach Aaron Feis and fatally shot him.<sup>63</sup>

**43.** On the second floor, all the students who were in the halls concealed themselves in classrooms before the shooter arrived.<sup>64</sup> This meant the second-floor hallways were empty when the shooter walked through them, and no one was shot on the second floor before the shooter headed to the third floor.<sup>65</sup>

**44.** Joaquin Oliver was on the third floor, where several students and staff were stuck in the hallway because classroom doors had automatically locked.<sup>66</sup>

**45.** After the shooter had made his way through the first and second floors, he reached the third floor. He shot multiple rounds down the hallway where approximately 20 people remained in the

---

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Commission Report at 25.

<sup>57</sup> *Id.*

<sup>58</sup> Commission Report at 25-26.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Commission Report at 28.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Commission Report at 31.

hall, including Joaquin Oliver.<sup>67</sup> Once the shooter began his attack, Joaquin and another student, Meadow Pollack, darted into the alcove of the women's restroom, but the door was locked.<sup>68</sup> Pollack then ran across the hall to the alcove of Teacher Ernest Ropierski's locked classroom, where Ropierski and some other students were hiding. Following the shooter's initial attack on the third floor, three more people were fatally shot: Teacher Scott Beigel, Jaime Guttenberg, and Peter Wang.<sup>69</sup> Four more suffered non-fatal injuries: Anthony Borges, Marian Kabachenko, Kyle Laman and Creative Writing Teacher Stacey Lippel.<sup>70</sup>

46. As the third floor was rampaged, Joaquin ran to the alcove of the men's restroom after seeing that there was limited space in the alcove of Ropierski's classroom, but the men's restroom door was also locked.<sup>71</sup> Joaquin remained in the alcove of the men's restroom with no other place to hide. The shooter then made his way down the hall and reached the alcove for Ropierski's classroom, where he shot and killed both Meadow Pollack and another student, Cara Loughran.<sup>72</sup> The shooter then entered the alcove to the men's restroom where Joaquin Oliver had hidden.

47. The shooter raised the AR-15 assault rifle and shot and killed Joaquin Oliver.<sup>73</sup>

### *C. Events Following the Parkland Massacre and the Killing of Joaquin Oliver*

48. Joaquin Oliver was the last victim shot in the massacre. The shooter then placed his rifle vest and 180 live rounds on the ground before running down the stairs, where he exited the building and blended in with a group of evacuating students.<sup>74</sup> He was able to break away from the group, and was later detained by police at 3:37 p.m., approximately one hour after the last shots were fired.<sup>75</sup>

49. The Smith and Wesson MP-15 AR-15 style assault rifle was the only firearm used in the shooting.<sup>76</sup> It was recovered in the stairwell of Building 12 with eight 30- and 40-round capacity magazines.<sup>77</sup> The magazines had swastikas carved into them.<sup>78</sup>

50. The shooter was charged with seventeen counts of premeditated murder and seventeen counts of attempted murder.<sup>79</sup> On October 13, 2022, a Florida jury returned a verdict of life without

---

<sup>67</sup> *Id.*

<sup>68</sup> Commission Report at 32.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Commission Report at 33.

<sup>73</sup> *Id.*

<sup>74</sup> Commission Report at 34.

<sup>75</sup> Commission Report at 37.

<sup>76</sup> Commission Report at 262.

<sup>77</sup> *Id.*

<sup>78</sup> Commission Report at 263.

<sup>79</sup> Commission Report at 7.

parole. Broward County Circuit Judge Elizabeth Scherer sentenced the shooter to life in prison on November 2, 2022.<sup>80</sup>

#### ***D. The Oliver Family's Pursuit of Justice and Accountability***

**51.** Whatever justice punishing the perpetrator provided for Joaquin's death, it was incomplete. Manny and Patricia Oliver understood that responsibility for what happened to Joaquin also falls on other actors, private and public. However, they were prevented from bringing legal actions against Smith & Wesson and other gun industry companies for their role in the manufacture, sale and reckless marketing of the assault rifle used by the shooter to carry out the Parkland massacre, as well as against the gun seller who sold him that weapon, because of the special state and federal laws that protect gun companies, and place victims of gun company negligence at risk of bankruptcy if they exercise their right to sue them.

**52.** The Olivers were prevented from securing full justice for their loss through these initiatives because of a combination of United States and Florida laws that provide special protection for gun companies that no other industry in the U.S. enjoys, and thereby bars victims of gun company misconduct from seeking redress in many cases which would be permitted against any other industry or person. Further, while the United States generally follows the "American rule," which enables people to exercise their right to seek legal redress in the courts by generally requiring parties to bear their own costs of litigation, regardless of whether the lawsuit is successful or not,<sup>81</sup> Florida law has created a special exception to this rule to protect the gun industry; it prevents lawsuits against gun companies by requiring certain losing parties to pay the costs of the opposing party in certain litigation against firearms companies.<sup>82</sup> For the reasons explained further below, then, Petitioners were impeded from pursuing a legal action against the gun manufacturer because the law was configured against them.

**53.** The federal Protection of Lawful Commerce in Arms Act ("PLCAA") impeded the Olivers from obtaining redress from the manufacturer, Smith & Wesson, and holding the gun dealer liable as they could from any other industry that engaged in wrongful conduct that caused harm. PLCAA has been interpreted by several courts in the United States as shielding negligent gun manufacturers and dealers from liability to victims for death or injury caused by their negligent or reckless misconduct.<sup>83</sup> Hence, some families like the Olivers, whose loved ones are killed as a

---

<sup>80</sup> Emily Shapiro & Meredith Deliso, *Parkland sentencing: Nikolas Cruz sentenced to life in prison*, ABC NEWS (Nov. 2, 2022), <https://abcnews.go.com/US/live-updates/parkland-nikolas-cruz/?id=91883130>.

<sup>81</sup> John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 AMER. UNI. L.REV., 1567, 1569, (1993).

<sup>82</sup> Thomas O. Wells & Diane Noller Wells, *Judicial Exceptions to Limited Liability Protection Provided by Florida LLCs*, 90 FL. BAR. J., 26, (2016).

<sup>83</sup> See, e.g., *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009); *Adames v. Sheahan*, 233 Ill. 2d 276, 909 N.E.2d 742 (Ill. 2009); *Est. of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380 (Alaska 2013); and *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244 (E.D.N.Y. 2005).

result of negligent or reckless sales, marketing, and design of practices of gun companies, have had their lawsuits dismissed without even discovery.<sup>84</sup>

**54.** Florida law added another obstacle that prevented the Olivers from obtaining redress. In addition to the protection gun companies receive under the federal PLCAA, Florida law further limits negligence suits against gun companies of the sort that the Olivers would bring.<sup>85</sup> A court could therefore dismiss a legal action brought by the Olivers against the gun's manufacturer or dealer even if the case was allowed under PLCAA. Additionally, if the Olivers brought a lawsuit against the manufacturer or dealer and a court dismissed the case based on the Florida law, the court would be required by Florida law to award the gun companies' attorneys' fees and costs against the Olivers, requiring the Olivers to pay likely several hundred thousand dollars, if not millions, to the very companies that negligently contributed to the death of their son. For these reasons, Petitioners were impeded by the real risk of bankruptcy from suing the gun manufacturer.

**55.** The Olivers' fear of losing everything if they tried to sue Smith & Wesson was well founded. Victims of the Aurora, Colorado movie theater gun massacre were driven into bankruptcy by similar Colorado laws.<sup>86</sup> In 2018, the parents of two separate Parkland massacre victims sought declaratory relief from a Florida court to avoid the risk of financial liability in bringing an action against Smith & Wesson and Sunrise Tactical Supply. The court refused to issue a declaratory judgment that the families would not be financially responsible for Smith & Wesson's costs and, as a result, the families did not file the lawsuit out of fear of crippling financial liability.

**56.** On a related front, the United States was found responsible for violating the civil rights of the Olivers' and other families who lost loved ones in the Parkland Gun Massacre based on federal law enforcement's failure to prevent the shooting despite the ample warnings it received. The plaintiffs in that case received an award of \$127.5 million dollars. The case, *In re Marjory Stoneman Douglas High Sch. Shooting FTCA Litig.*, was filed by the families of the 17 victims who were killed in the Parkland Gun Massacre on November 13<sup>th</sup>, 2018, including the Olivers, alleging the FBI "failed to comply with its mandatory obligations to handle, investigate, and intervene on tips it received about [the shooter]'s plans to carry out a mass shooting," resulting in the death of 17 victims.<sup>87</sup> In response to the FBI's motion to dismiss the case for lack of jurisdiction and attempting to exercise their immunity under the Federal Tort Claims Act, the Court held that the FBI had a duty of care to the victims of the massacre.<sup>88</sup> The FBI's breach of that duty of care by failing to handle, investigate, and intervene on tips was not decided in the case before settlement, however, the Court demonstrated the FBI was potentially negligent in their handling of the tips they received regarding the shooter.<sup>89</sup>

**57.** Importantly, the lawsuit did not claim that the United States failed to prevent the shooter from obtaining or keeping his firearms, as there would not be a legal basis for such claims.

---

<sup>84</sup> See, e.g., *Travieso v. Glock, Inc.*, 526 F. Supp. 3d 533 (D. Ariz. 2021), appeal dismissed, No. 21-15539, 2021 WL 4295762 (9th Cir. July 6, 2021); *Gilland v. Sportsmen's Outpost, Inc.*, No. X04CV095032765S, 2011 WL 4509540 (Conn. Super. Ct. Sept. 15, 2011).

<sup>85</sup> See *infra* para.165.

<sup>86</sup> See *infra*, e.g., note 322.

<sup>87</sup> *In re Marjory Stoneman Douglas High Sch. Shooting FTCA Litig.* 482 F. Supp. 3d 1273 (S.D. Fla. 2020).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*



**58.** The Olivers have not limited themselves to seeking comprehensive justice for the killing of their son, Joaquin. Since their son’s death, Manuel and Patricia Oliver have dedicated their lives to advocating for effective change aimed at preventing future human rights violations like those they suffered. To this end, they founded a nonprofit organization, “Change the Ref,” which works to raise awareness about gun massacres and reduce the influence of gun manufacturers and lobbyists through strategic interventions and the use of art as a form of communication.<sup>90</sup> Change the Ref was formed to amplify and support youth efforts and movement building. The organization uses urban art and non-violent creative confrontation to advocate for the eradication of the gun violence epidemic.<sup>91</sup> Its mission is to shift America’s social response to gun violence by uniting creativity, activism, disruption, and education.<sup>92</sup>

**59.** Manny Oliver has also used his artistic training and guerrilla advertising skills to keep focus on his son through many forms of activism.<sup>93</sup> One of his biggest endeavors has been a year-long art installment including 30 separate murals, sculptures, 3D printed likenesses, and paintings of his son all across the country.<sup>94</sup> Manny has also been involved in other political forms of activism. For example, in 2021, he held a protest in front of the White House for eight days pushing for better gun regulation.<sup>95</sup> In March, 2023 he also spoke up at a House Oversight and Accountability Committee hearing on gun regulation. The Republican Chair of the committee ordered Manny removed, without a warning, about which one Florida representative stated, “[the Chair] completely escalated the situation... MANNY IS A HERO.”<sup>96</sup> Manny has performed a one-man play, *Guac: My Son, My Hero*, about Joaquin in New York, Chicago and other cities across the U.S.<sup>97</sup> More recently, Manny and Patricia have taken their fight against gun violence on the road by taking a school bus across the country stopping at various locations to hold events, rallies, and gatherings of mass shooting survivors spreading information and awareness of the horrors of gun violence in the U.S.<sup>98</sup>

**60.** Manny Oliver joined the staff of petitioner organization Global Action on Gun Violence (GAGV), a nonprofit civil society organization working with the international community to prevent gun violence in the United States as well as the rest of the world. Manny is the Global Outreach and Artistic Adviser at GAGV.<sup>99</sup>

---

<sup>90</sup> See CHANGE THE REF, [changetheref.org](https://changetheref.org).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> GLOBAL ACTION ON GUN VIOLENCE, *Team Page*, <https://actiononguns.org/the-organization/who-we-are/team>.

<sup>94</sup> Manuel Oliver, *AAE Speakers: Manuel Oliver*, ALL AMERICAN SPEAKERS, <https://www.allamericanspeakers.com/celebritytalentbios/Manuel+Oliver/451989>.

<sup>95</sup> LOCAL 10, *Parkland’s Manny Oliver Continues Gun Control Protest Outside White House*, <https://www.local10.com/video/local-news/2021/12/09/parklands-manny-oliver-continues-gun-control-protest-outside-white-house/>.

<sup>96</sup> Candy Woodall, *Manuel Oliver, Father of Parkland Victim, Arrested During Heated House Gun Law Hearing*, USA TODAY (Mar. 24, 2023), <https://www.usatoday.com/story/news/politics/2023/03/24/manuel-oliver-parkland-arrested-gun-violence-hearing/11533368002/>.

<sup>97</sup> See, e.g., Manuel Oliver, *In GUAC: My Son, My Hero*, PLAYBILL, <https://playbill.com/article/in-guac-my-son-my-hero-manuel-oliver-will-change-americas-future-one-unexpected-performance-at-a-time>.

<sup>98</sup> WFOR Staff, *Parkland Parents Go On Bus Tour in Honor of Slain Son’s 23rd Birthday*, WAFB (July 4, 2023), <https://www.wafb.com/2023/07/04/parkland-parents-go-bus-tour-honor-slain-sons-23rd-birthday/>.

<sup>99</sup> *Supra* note 93.

61. Manny and Patricia Oliver’s advocacy for the right to live free from gunfire has brought them to the White House, meeting President Biden.<sup>100</sup> Even though President Biden has called for an assault weapon ban and other strong gun laws,<sup>101</sup> and stated that ending PLCAA’s special legal protections for the gun industry is his top priority to end gun violence,<sup>102</sup> the Olivers have seen the appropriate change has not happened, and gun massacres and other gun violence continues. That is why they are bringing this action.

62. Manny and Patricia Oliver bring the present action to hold the United States accountable for its failure to comply with applicable Inter-American human rights law relating to the country’s endemic gun violence and mass killings in general, and in particular the Parkland gun massacre in which Joaquin perished.

### III. THE PARKLAND GUN MASSACRE: BACKGROUND AND CONTEXT

63. The Parkland Gun Massacre was part of the ongoing gun violence epidemic in the United States. Gun violence in the United States has long been at epidemic levels, and it is getting worse. More Americans died of gun-related injuries in 2020 than in any previous year on record, according to recently published statistics from the Centers for Disease Control and Prevention (CDC).<sup>103</sup> That included a record number of gun murders and a near-record number of gun suicides,<sup>104</sup> and 45,222 deaths overall from gun-related injuries in the U.S.<sup>105</sup> That total excludes deaths in which gunshot injuries played a contributing, but not a principal, role.<sup>106</sup> Approximately 79% of U.S. murders in 2020 – 19,384 out of 24,576 – involved a firearm.<sup>107</sup> That marked the highest percentage since at least 1968, the earliest year for which the CDC has online records.<sup>108</sup>

64. While total gun deaths in 2020 represented a 14% increase from the previous year, a 25% increase from five years earlier, and a 43% increase from a decade prior,<sup>109</sup> U.S. gun deaths

---

<sup>100</sup> Ari Hait, *Parkland families meet with President Biden in the Oval Office*, WPBF (Apr. 12, 2022), <https://www.wpbf.com/article/parkland-families-meet-with-president-biden-in-the-oval-office/39696376>.

<sup>101</sup> Statement from President Joe Biden on Gun Violence Across America, July 4, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/04/statement-from-president-joe-biden-on-gun-violence-across-america/>; Zoe Richards, *Biden questions ‘who the hell needs’ high capacity assault weapons in wake of Maine shootings*, NBC NEWS (October 27, 2023), <https://www.nbcnews.com/politics/white-house/biden-questions-hell-needs-high-capacity-assault-weapons-wake-maine-sh-rcna122581>.

<sup>102</sup> Alex Seitz-Wald, *Biden wants to end gun-maker liability protections. That could sink the industry, advocates say*, NBC NEWS (Apr. 9, 2021), <https://www.nbcnews.com/politics/white-house/biden-wants-end-gun-maker-liability-protections-could-sink-industry-n1263556>.

<sup>103</sup> John Gramlich, *What the data says about gun deaths in the U.S.*, PEW RESEARCH CENTER (Feb. 3, 2022), <https://www.pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> CDC fatality statistics are based on information contained in official death certificates, which identify a single cause of death. *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

increased by another 8% in 2021, to 48,830 deaths.<sup>110</sup> Gun deaths of children increased by 12.7% in 2021.<sup>111</sup>

**65.** Gun murders have climbed sharply in recent years. The 19,384 gun murders that took place in 2020 were the most since at least 1968, exceeding the earlier peak of 18,253 recorded by the CDC in 1993.<sup>112</sup> The 2020 total represented a 34% increase from the year before, a 49% increase over five years, and a 75% increase over 10 years.<sup>113</sup> These statistics confirm that the Parkland Gun Massacre was but a drop in the bucket of gun violence in the United States and testify to the wholesale inadequacy of the State's response to that gun massacre and many others that preceded it.

**66.** Gun deaths are just a part of the problem; indeed, experts have found that murder rates would be five times higher but for medical developments over the past 40 years, that save lives that otherwise would be ended.<sup>114</sup> Nonfatal gun injuries are more than double gun fatalities; there are over 120,000 people shot in the United States every year, over 320 per day.<sup>115</sup>

#### ***A. Comparing Gun Violence in the U.S. to Gun Violence Internationally***

**67.** Among high-income countries, the United States is an outlier in terms of civilian gun violence. The United States is the only country in the world with more guns than people.<sup>116</sup> As highlighted below, it has been well-documented that firearm ownership rates are associated with increased firearm-related death rates. The U.S. has the highest firearm ownership and highest firearm death rates of 27 high-income countries.<sup>117</sup> The firearm homicide rate in the U.S. is nearly 25 times higher than other high-income countries and the firearm suicide rate is nearly 10 times that of other high-income countries.<sup>118</sup> See graph below:

---

<sup>110</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *About Multiple Cause of Death, 2018-2021*, <https://wonder.cdc.gov/controller/saved/D157/D320F915>.

<sup>111</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *About Multiple Cause of Death, 2018-2021*, <https://wonder.cdc.gov/controller/saved/D157/D321F601>.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> See, e.g., Roger Dobson, *Medical advances mask epidemic of violence by cutting murder rate*, BMJ (Sept. 21, 2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1124155/>; Anupam B. Jena et al., *Does the Declining Lethality of Gunshot Injuries Mask a Rising Epidemic of Gun Violence in the United States?* J.GEN. INTERN. MED. (July, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4061370/>.

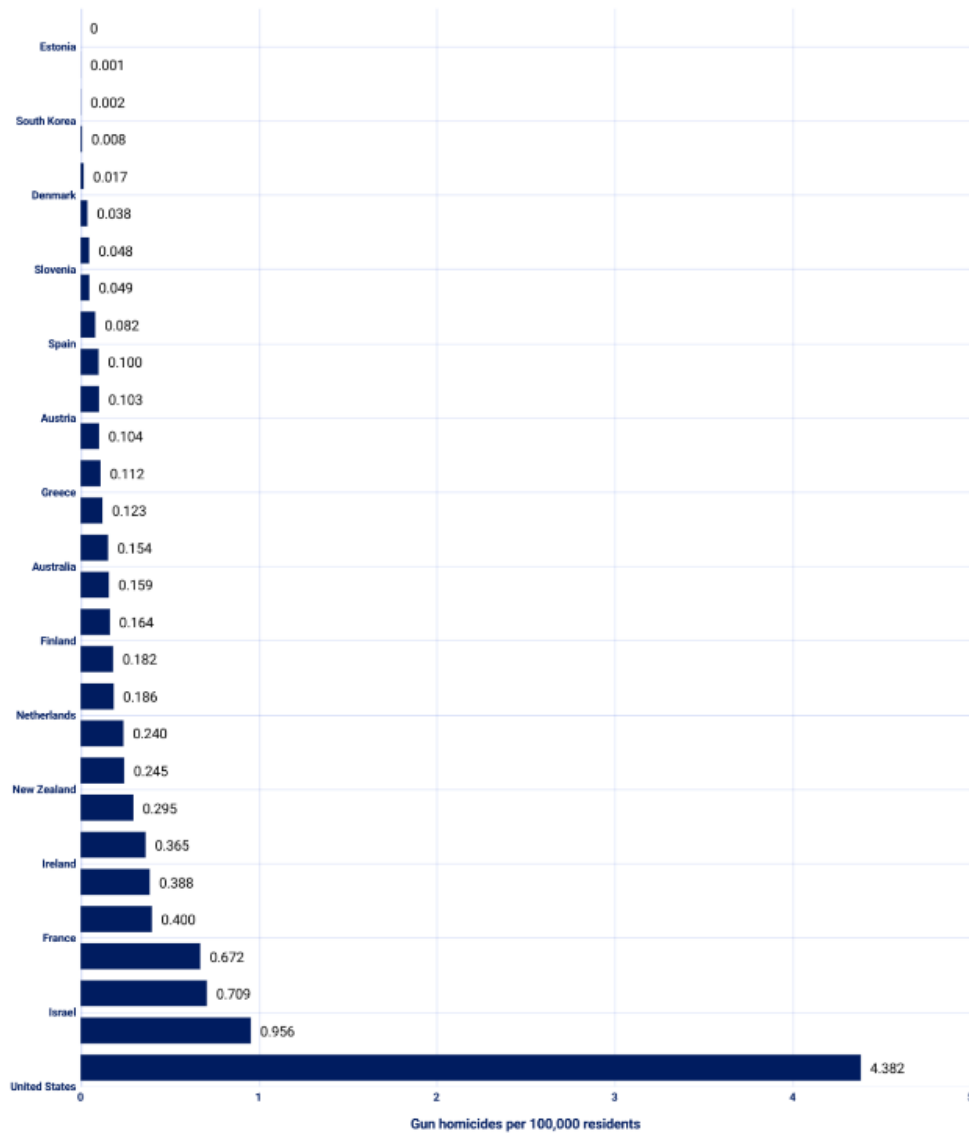
<sup>115</sup> PENN MEDICINE, *Study Shows 329 People are Injured by Firearms in U.S. Each Day, But for Every Death, Two Survive* (Dec. 7, 2020), <https://www.pennmedicine.org/news/news-releases/2020/december/study-shows-329-people-are-injured-by-firearms-in-us-each-day-but-for-every-death-two-survive>.

<sup>116</sup> Karp, *Estimating Global Civilian-Held Firearms Numbers*, SMALL ARMS SURVEY (2018), <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Infographics-global-firearms-holdings.pdf>.

<sup>117</sup> Bangalore & Messerli, *Gun ownership and firearm-related deaths*, AMERICAN J. OF MED. (2013).

<sup>118</sup> Grinshteyn & Hemenway, *Violent death rates in the US compared to those of the other high-income countries, 2015*, PREVENTIVE MEDICINE (2019).

The US gun homicide rate is 26 times that of other high-income countries.



Everytown analysis of the most recent year of gun homicides by country (2013 to 2019), GunPolicy.org (accessed January 7, 2022).



The U.S. Gun Homicide Rate is 26 Times that of Other High-Income Countries, accessible at <https://everytownresearch.org/graph/the-u-s-gun-homicide-rate-is-26-times-that-of-other-high-income-countries/>.

**68.** As shown in the graphic, when compared to other high-income countries with populations of 10 million or more, the U.S. gun homicide rate is many times higher than other countries: 4.12 per 100,000 compared to 1.82 in Chile, .5 in Canada, and .02 in Japan.<sup>119</sup> The U.S. also far exceeds

<sup>119</sup> INSTITUTE FOR HEALTH METRICS AND EVALUATION, *On gun violence, the United States is an outlier*, (May 31, 2022) <https://www.healthdata.org/news-events/insights-blog/acting-data/gun-violence-united-states-outlier>. See also Gramlich, *supra* note 103.

their peer countries in mortality rates by firearms of children and teens, as shown in the graph below:

## The U.S. Has By Far the Highest Child and Teen Firearm Mortality Rate Among Peer Countries

Firearm mortality rates per 100,000 for children and teens ages 1-19 years, U.S. (2021) and peer countries (2019)



KFF

Child and Teen Mortality Rate in the U.S. and Peer Countries, accessible at <https://www.kff.org/mental-health/issue-brief/child-and-teen-firearm-mortality-in-the-u-s-and-peer-countries/>.

69. U.S. firearm ownership rates vastly exceed those of other high income countries.<sup>120</sup> While the United States makes up approximately 4% of the world’s population,<sup>121</sup> people in the United States own 46% of the world’s civilian-owned firearms.<sup>122</sup> Thirty percent of U.S. residents report owning a gun, with estimates of the total number of privately-owned guns in the U.S. ranging from 265 million to nearly 400 million.<sup>123</sup> Sixty-six percent of gun owners report owning multiple guns<sup>124</sup>, and it is estimated that half of all guns are in the hands of just 3% of the U.S. population.<sup>125</sup>

70. Other countries in the Americas regulate the gun industry far more comprehensively and effectively than does the United States. For example, Canada imposed major gun reforms after a gun massacre by a student armed with a semiautomatic rifle in 1989.<sup>126</sup> Some of those reforms included a twenty- eight day waiting period for purchases, mandatory safety training courses, more

<sup>120</sup> Bangalore & Messerli, *supra* note 117.

<sup>121</sup> THE GLOBAL ECONOMY, *USA Percent of world population*, [https://www.theglobaleconomy.com/USA/population\\_share/](https://www.theglobaleconomy.com/USA/population_share/).

<sup>122</sup> Karp, *supra* note 116.

<sup>123</sup> *Id.*; St. Martin, *Study: 70M more firearms added to US gun stock over past 20 years*, NORTHEASTERN GLOBAL NEWS (Sept. 26, 2016), [https://www.atf.gov/firearms/docs/report/firearms-commerce-united-states-2011/download](https://news.northeastern.edu/2016/09/26/study-70m-more-firearms-added-to-us-gun-stock-over-past-20-years/#:~:text=The%20estimated%20number%20of%20privately,co%2Dled%20by%20Northeastern%20University; U.S. Department of Justice, <i>Firearms Commerce in the United States</i>, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (2011), <a href=).

<sup>124</sup> Parker et. al, *America’s Complex Relationship With Guns*, PEW RESEARCH CENTER (June 22, 2017), <https://www.pewresearch.org/social-trends/2017/06/22/americas-complex-relationship-with-guns/>.

<sup>125</sup> St. Martin, *supra* note 123.

<sup>126</sup> Jonathan Masters, *U.S. Gun Policy: Global Comparisons*, COUNCIL ON FOREIGN RELATIONS (last updated June 10, 2022, 9:00 AM), <https://www.cfr.org/backgrounders/us-gun-policy-global-comparisons#chapter-title-0-3>.

detailed background checks, bans on large capacity magazines, and greater restrictions on military-style firearms and ammunition.<sup>127</sup> In 2020, after the deadliest gun massacre in Canada occurred, the Prime Minister announced a ban on “assault-style” firearms and required those who owned the prohibited firearms to either participate in a buyback program or comply with a strict storage regime.<sup>128</sup>

**71.** Latin American countries have enacted similar protections. In virtually all member states of the Organization of the Americas, there are restrictions on civilians obtaining assault weapons.<sup>129</sup> In Brazil, for example, assault weapons are illegal for civilians.<sup>130</sup> In Mexico, high-caliber firearms are prohibited for civilians, making assault weapons illegal;<sup>131</sup> other gun laws are also far more restrictive than in the United States, and there is only one gun store in the entire country, on a military facility.<sup>132</sup> While countries in Latin America and the Caribbean have stronger gun control measures than their neighbor to the North, their efforts are undermined by the illicit flow of arms internationally. For example, the expiration of the U.S. ban on assault weapons was associated with increases in homicides and crime gun seizures in cities close to those U.S. states that began selling assault weapons to civilians.<sup>133</sup> Gun trafficking from the U.S. – which is enabled by its weak laws – is one reason why most of the countries experiencing the highest gun violence are near the U.S.<sup>134</sup>

**72.** The people of the U.S. are not 20 times more criminal, violent, or dangerous than the people of the European Union or Australia, but U.S. gun homicide rates are 22 and 23 times higher, respectively.<sup>135</sup> Easy access to firearms exacerbates the lethality of crimes and can transform incidents that would otherwise be non-violent disputes into deadly incidents.<sup>136</sup>

**73.** Gun purchasing in the United States is significantly driven by the fact that more than six in ten Americans falsely believe that a gun in the home makes the family safer – a figure that has nearly doubled since 2000.<sup>137</sup> This increase in perceived safety is reflected in shifting reasons for gun ownership and is a product of misleading gun industry marketing that the U.S. has allowed. In a 2017 Pew Research survey, two-thirds (67%) of gun owners cited protection as a major reason for gun ownership.<sup>138</sup> This represents a notable increase from the mid-1990s when most American

---

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> U.N. CASA, June 11, 2015, International Small Arms Control Standard (ISACS) 03.30:2015IV1.0.

<sup>130</sup> Chase Harrison et al., *Explainer: Gun Laws in Latin America’s Largest Economies*, AS/COA (Mar. 29, 2023), <https://www.as-coa.org/articles/explainer-gun-laws-latin-americas-largest-economies#brazil>.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Arindrajit Dube et. al., *Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico*, Cambridge University Press (July 10, 2013), <https://www.cambridge.org/core/journals/american-political-science-review/article/abs/crossborder-spillover-us-gun-laws-and-violence-in-mexico/438E607A07F32D57AF244B61ED38FB28>.

<sup>134</sup> JAMA, Global Mortality From Firearms, 1990 – 2016 (2018), <https://jamanetwork.com/journals/jama/fullarticle/2698492>.

<sup>135</sup> Kara Fox, et al., *How U.S. gun culture stacks up with the world*, CNN (May 26, 2022), <https://www.cnn.com/2021/11/26/world/us-gun-culture-world-comparison-intl-cmd/index.html>.

<sup>136</sup> Franklin Zimring & Gordon Hawkins, *Crime is Not the Problem: Lethal Violence in America (1997)*, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/crime-not-problem-lethal-violenceamerica>.

<sup>137</sup> Justin McCarthy, *More Than Six in 10 Americans Say Guns Make Homes Safer*, GALLUP (2014).

<sup>138</sup> Parker, *supra* note 124.

gun owners cited recreation as their primary reason for gun ownership and fewer than half owned guns primarily for protection.<sup>139</sup> However, despite the number of Americans believing gun ownership makes their home safer, polls show most American's favor stronger gun regulation.<sup>140</sup>

74. However, it has long been established as an empirical matter that guns do not make you safer. Contrary to the gun industry's marketing messages, described in more detail below, overwhelming research shows that widespread gun ownership and easy access to firearms puts more individuals and their families at higher risk of death and injury whether through homicide, suicide, or unintentional shootings.<sup>141</sup>

75. Nearly 75% of all U.S. homicides are by firearm.<sup>142</sup> Over 35% of all gun deaths in the United States are homicides.<sup>143</sup> Access to firearms – such as the presence of a gun in the home – correlated with an increased risk for homicide victimization.<sup>144</sup> States with high rates of gun ownership consistently have higher firearm homicide rates.<sup>145</sup> Studies show that access to firearms doubles the risk of homicide.<sup>146</sup> Studies show that the lethality of guns transform incidents that would otherwise be nonfatal into fatalities.<sup>147</sup>

76. Most gun deaths in the U.S. are suicides,<sup>148</sup> and studies have similarly shown that owning a handgun is associated with greatly increased risk of suicide.<sup>149</sup> Access to guns is also associated with domestic violence,<sup>150</sup> and with multiple victims in domestic homicides.<sup>151</sup> Firearms are now

---

<sup>139</sup> Adrienne LaFrance, *The Americans Who Stockpile Guns*, THE ATLANTIC (2016), <https://www.theatlantic.com/health/archive/2016/09/the-americans-who-stockpile-guns/500564/>.

<sup>140</sup> Sara Burnett, *AP-NORC poll: Most in US say they want stricter gun laws*, AP NEWS, <https://apnews.com/article/gun-violence-covid-health-chicago-c912ecc5619e925c5ea7447d36808715>

<sup>141</sup> Andrew Anglemeyer, Tara Horvath & George Rutherford, *The accessibility of firearms and risk for suicide and homicide victimization among household members: a systematic review and meta-analysis*, ANN. INTERN. MED. (May 6, 2014); Sara J Solnick & David Hemenway, *Unintentional firearm deaths in the United States 2005-2015*, INJURY EPIDEMIOLOGY (Oct. 14, 2019).

<sup>142</sup> National Center for Health Statistics, *About Underlying Cause of Death, 1999-2019*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://wonder.cdc.gov/ucd-icd10.html>.

<sup>143</sup> *Id.*

<sup>144</sup> Anglemeyer, *supra* note 141; Linda L. Dahlberg et. al., *Guns in the home and risk of a violent death in the home: findings from a national study*, AM. J. OF EPIDEMIOLOGY (Nov. 15, 2004).

<sup>145</sup> Michael Siegel et. al., *Examining the relationship between the prevalence of guns and homicide rates in the USA using a new and improved state-level gun ownership proxy*, INJURY PREVENTION (Dec. 20, 2014).

<sup>146</sup> Anglemeyer, *supra* note 141.

<sup>147</sup> Anthony Braga, et. al., *Firearm Instrumentality: Do Guns Make Violent Situations More Lethal?* ANNUAL REVIEW OF CRIMINOLOGY (January 2021), <https://www.annualreviews.org/doi/10.1146/annurev-criminol-061020-021528>.

<sup>148</sup> John Gramlich, *What the data says about gun deaths in the U.S.*, PEW RESEARCH CENTER (April 26, 2023) (54% of gun deaths were suicides), <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/>.

<sup>149</sup> See, e.g., David Studdert, et. al., *Handgun Ownership and Suicide in California*, NEW ENGLAND JOURNAL OF MEDICINE (June 4, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMsa1916744>.

<sup>150</sup> See, e.g., Elizabeth Tobin-Tyler, *Intimate Partner Violence, Firearm Injuries and Homicides; A Health Justice Approach to Two Intersecting Public Health Crises*, J. LAW MED ETHICS (Spring 2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10209983/>.

<sup>151</sup> See, e.g., Liza H. Gold, *Domestic Violence, Firearms, and Mass Shootings*, THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW (February 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10209983/>.

the leading cause of death of children and adolescents in the U.S.<sup>152</sup> Following its visit to the U.S. in 2015, the U.N. Working Group on Discrimination against Women and Girls in Law and Policy raised concerns at the “persistent, fatal consequences for women. . . in particularly in cases of domestic violence,” due in part to the fact that abusers are not required to relinquish their guns.<sup>153</sup>

77. Despite the overwhelming evidence that guns do not make people safer, manufacturers are allowed to market their firearms in a way that continues to make Americans believe their weapons are an effective form of self-protection. For example, Smith & Wesson ran an advertisement that describes a gun as “homeowner’s insurance,” twice invokes “self-defense,” and claims that the gun is “specifically designed for home defense.”<sup>154</sup> In 1996, the year that Center to Prevent Handgun Violence (now Brady) filed its first complaint calling on the Federal Trade Commission to investigate gun manufacturer marketing, approximately 60% of advertisements in *Guns Magazine* related to hunting and sport shooting, while only 25% of advertisements related to self-defense and concealed carry.<sup>155</sup> In 2019, over 60% of such ads are related to self-defense and concealed carry while less than 5% relate to hunting and sport shooting.<sup>156</sup> See graph below:

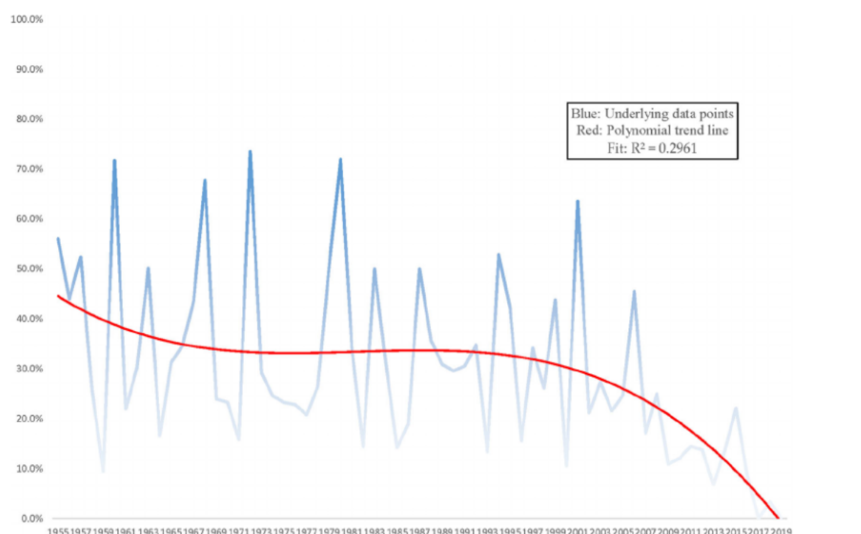


Fig. 2 Sport/recreational shooting theme as percentage of total coded advertising space, *Guns Magazine*, 1955–2019.

<sup>152</sup> See, e.g., Goldstick, J., Cunningham, R., Carter, P., *Current Causes of Death in Children and Adolescents in the United States*, NEW ENG J. MED. 2022, <https://publications.aap.org/pediatrics/article/150/6/e2022060070/189686/Firearm-Related-Injuries-and-Deaths-in-Children?autologincheck=redirected>.

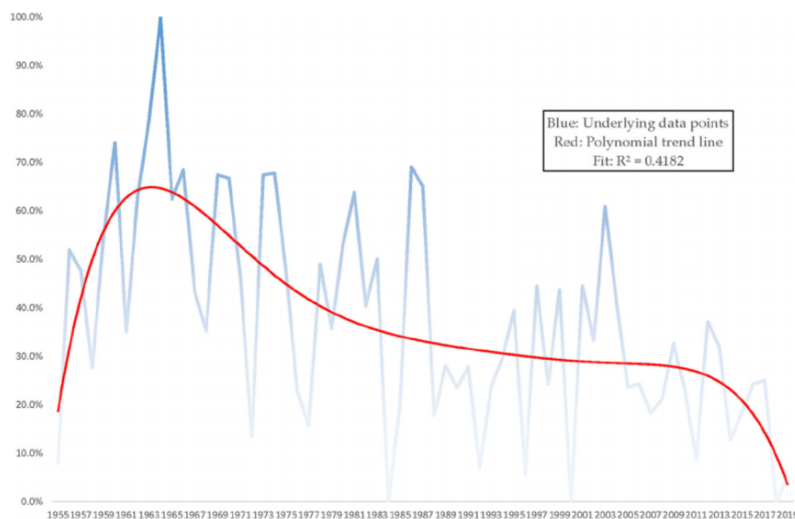
<sup>153</sup> Report of the Working Group on the Discrimination against women in law and in practice on its mission to the United States of America, U.N. Doc. A/HRC/32/44/Add.2, para. 77 (Aug. 4, 2016).

<sup>154</sup> “Homeowner’s Insurance” Advertising Campaign, SMITH & WESSON.

<sup>155</sup> David Yamane et al., *Targeted Advertising: Documenting the Emergence of Gun Culture 2.0 in Guns Magazine, 1955–2019*, 6 PALGRAVE COMM’N 1, 4 (Apr. 15, 2020).

<sup>156</sup> *Id.*





**Fig. 1** Hunting theme as percentage of total coded advertising space, *Guns Magazine*, 1955–2019.

**78.** Gun massacres have occurred in the United States since at least 1966, when a shooter at a University of Texas tower killed 17 and injured 31. After the 1999 gun massacre at Columbine High School, which killed 13 and injured 24, mass shootings have been a major issue of political discussion in the United States. In the past decade mass shootings (defined as incidents in which four or more people were injured or killed) have more than doubled: in 2014 there were 273 mass shootings in the U.S.; in 2021 there were 690.<sup>157</sup> These shootings include:

- a. in 2007 at Virginia Tech, 32 people were killed, and 23 were injured;
- b. in 2012 in an Aurora, Colorado movie theater, 12 people were killed and 70 injured;
- c. in 2012, at Sandy Hook Elementary School, 27 were killed, many of them small children;
- d. in 2016, at the Pulse nightclub in Orlando, Florida, 49 people were killed, 50 injured;
- e. in 2017, at a music festival in Las Vegas, Nevada, 60 people were killed, 867 injured;
- f. in 2017, at a church in Sutherland Springs, Texas, 26 people were killed, 22 injured;
- g. in 2019, at a Wal-Mart store in El Paso, Texas, 23 people were killed, 23 injured;
- h. in 2022, at Robb Elementary School in Uvalde, Texas, 21 people were killed, many of them small children, 18 injured;
- i. in 2023, at a bowling alley and restaurant in Lewiston, Maine, 18 people were killed, 13 were injured.

**79.** That list is just a small sampling of gun massacres in the United States in recent decades.

**80.** The United States stands alone among comparable developed countries in its toleration of gun massacres. Only five developed countries have had more than two mass shootings in the past

---

<sup>157</sup> See *supra* note 103.

22 years;<sup>158</sup> the U.S. averages almost two mass shootings a day.<sup>159</sup> Half of developed countries have had no mass shootings in the past 22 years.<sup>160</sup> Over 70% of mass shootings in developed countries occur in the U.S.<sup>161</sup>

**81.** Other countries have responded quickly and effectively when their people have suffered mass shootings. A 1987 mass shooting in the United Kingdom led to prohibiting some semiautomatic weapons by 1988.<sup>162</sup> Another mass shooting in 1996 led to further restrictions on handguns in 1997.<sup>163</sup> One mass shooting in Australia led to extensive restrictions on gun ownership and a government buyback of 650,000 firearms.<sup>164</sup> Within 24 hours of a 2019 mass shooting in New Zealand, the Prime Minister called for changes to gun laws, which led to restrictions on semiautomatic weapons and AR-15s, and a gun buyback the next month.<sup>165</sup> A 2020 mass shooting in Canada led to a ban on assault weapons two weeks later.<sup>166</sup> However, the U.S. has failed to respond to the slew of massacres occurring in its territory for the last 60 years, despite international pressure.

### ***B. Efforts to Force State Intervention***

**82.** Efforts have been made to force the State to intervene and protect people's right to live. Multiple complaints have been filed with the Federal Trade Commission (FTC) calling on it to investigate and regulate the gun industry's advertising practices, including one filed on behalf of Fred Guttenberg, who lost his daughter Jaime in the Parkland Gun Massacre.<sup>167</sup> Despite these actions, the FTC has failed to thoroughly investigate the industry's advertising practices or make any regulatory changes.<sup>168</sup> In the absence of effective investigation and regulation, gun manufacturers' continued marketing practices have led the American public to believe that guns make them safer when the opposite is true.

---

<sup>158</sup> Jason Silva, *Global mass shootings: comparing the United States against developed and developing countries*, INTERNATIONAL JOURNAL OF COMPARATIVE AND APPLIED CRIMINAL JUSTICE (2022).

<https://www.tandfonline.com/doi/full/10.1080/01924036.2022.2052126>

<sup>159</sup> Gun Violence Archive, *supra* note 103.

<sup>160</sup> Silva, *supra*, note 158.

<sup>161</sup> *Id.*

<sup>162</sup> Adam Taylor, et. al., *How countries around the world have responded to mass shootings*, THE WASHINGTON POST (May 8, 2023), <https://www.washingtonpost.com/world/2021/03/23/mass-shootings-response-other-countries-gun-laws/>.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> EVERYTOWN FOR GUN SAFETY, *Everytown Calls on the FTC to Investigate Smith & Wesson's Dangerous Assault Rifle Marketing Practices* (June 2, 2020), <https://everytownlaw.org/case/everytown-calls-on-the-ftc-to-investigate-smith-wessons-dangerous-assault-rifle-marketing-practices/>; *see also* FIREARMS ACCOUNTABILITY, *The Gun Industry's Advertising: Effective, Deadly, and Actionable* (Apr. 7, 2020), <https://firearmsaccountability.org/FTCPetition.pdf>.

<sup>168</sup> Andrew Ross Sorkin, *Democratic Lawmakers Want F.T.C. to Go After Gun Ads*, NEW YORK TIMES (July 28, 2022), <https://www.nytimes.com/2022/07/28/business/ftc-guns.html>.

**83.** This Commission has repeatedly called on the United States to take action to protect human rights that are infringed by firearms. In response to the June 12, 2016 gun massacre in Orlando, Florida that killed 49 and wounded 53 persons the Commission stated:

The IACHR urges the United States to adopt effective measures to prevent and reduce gun-related violence, such as effective gun control policies... Additionally, the IACHR has highlighted the importance of background check processes and psychological examinations, as well as other effective measures regarding licensing and registration requirements, such as restricting high-powered weapons... Commission Notes Executive Actions to Reduce Gun Violence and Make Our Communities Safer, issued on January 4, 2016 by the White House, which included several measures to reduce gun violence, but stated that “some gaps in the country's gun laws can only be filled through legislation.” The IACHR urges the United States, including all branches of power, to adopt effective measures to substantially reduce violence related to firearms, and to prevent the occurrence of mass shootings.<sup>169</sup>

**84.** In June 2022, following the massacre at an elementary school in Uvalde, TX, which killed 21 people and injured 17 more, the Commission stated:

The IACHR notes that the current federal administration has adopted measures to control gun violence, mainly through the implementation of executive orders. In this context, the Commission reiterates the call on the U.S. government to adopt urgent and effective legislative measures, to eradicate the series of armed violence in the country, such as effective gun control... In order to prevent human loss, it is essential for the United States to implement more restrictive laws to control the possession and carrying of weapons. This includes restrictions concerning assault weapons, like the AR-15 type rifle used in this and other attacks, including the one that took place on October 1, 2017 in Nevada. Further, the State must take effective action to enable greater supervision of the issuance of licenses, registration requirements, and access to ammunition.<sup>170</sup>

**85.** In October 2017, in the wake of the Las Vegas Gun Massacre which left 60 people dead and 413 injured, Commissioner Margarette May Macaulay, Rapporteur for the United States, condemned the shooting and stated:

The most egregious thing about this latest mass murder is that such events are preventable. This again highlights the need for broad systemic reform of gun laws in the United States. As long as average citizens continue to have relatively free access to heavy weaponry, including military-grade assault rifles, mass shootings are certain to continue to take place. The United States Congress must take immediate action to reform the laws that enable these tragedies to happen... The United States must take effective measures to prevent and substantially reduce gun-related violence, such as through effective gun control policies... The IACHR reiterates the importance of effective background checks

---

<sup>169</sup> *Inter-Am. Comm'n H.R., IACHR Condemns the Mass Shooting in a Gay Bar in the United States*, Press Release, June 14, 2016, available at <https://www.oas.org/es/cidh/prensa/comunicados/2016/076.asp>.

<sup>170</sup> *Inter-Am. Comm'n H.R., IACHR Condemns the Mass Shooting at an Elementary School in Uvalde, Texas, United States*, Press Release, June 1, 2022, available at [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2022/122.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/122.asp).

and psychological testing, as well as other effective measures on license and registration requirements.<sup>171</sup>

**86.** The Commission has made similar statements after subsequent gun massacres.<sup>172</sup> In the next section we give a more detailed description of gun massacres and how easy access to assault weapons – the weapon of choice for many perpetrators of such massacres in the United States – has aggravated an already serious problem.

### ***C. Gun Massacres with Assault Weapons in USA***

**87.** Joaquin Oliver’s killing by a Smith and Wesson MP-15, an AR-15-style semi-automatic assault rifle, was part of a widespread pattern of gun massacres in the US with assault weapons. A gun massacre is defined as “any incident in which four or more people are shot and wounded or killed, excluding the shooter.”<sup>173</sup> Gun massacres are a continuous threat in the United States and can occur anywhere at any time. People in the United States have been massacred with guns in locations ranging from offices and places of employment, elementary schools, high schools, universities, supermarkets, and shopping malls; to churches, synagogues, temples, movie theaters, music festivals, community centers, homes, parties, dance clubs, military bases, and other places where people are just going about their daily lives.

**88.** Since 2015, over 19,000 people have been shot, wounded or killed in gun massacres in the United States.<sup>174</sup> There was a record high of 686 gun massacres in 2021,<sup>175</sup> in 2022 alone, over 600 people were killed, with over 2,700 wounded.<sup>176</sup> According to data from the Gun Violence Archive, gun massacres in the United States are still on the rise.<sup>177</sup> And it is not just their numbers but their lethality that is increasing, as this table shows:

---

<sup>171</sup> *Inter-Am. Comm’n H.R., IACHR Condemns Mass Shooting in the United States*, Press Release, October 6, 2017, available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2017/154.asp](https://www.oas.org/en/iachr/media_center/PReleases/2017/154.asp).

<sup>172</sup> See e.g., *Inter-Am. Comm’n H.R., IACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measures to Prevent Future Tragedies*, Press Release, November 16, 2017, available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2017/182.asp](https://www.oas.org/en/iachr/media_center/PReleases/2017/182.asp); *Inter-Am. Comm’n H.R., IACHR Condemns Mass Shooting and All Hate Speech, Racism and Intolerance in United States of America*, Press Release, August 6, 2019, available at <https://www.oas.org/es/cidh/prensa/comunicados/2019/193.asp>; *Inter-Am. Comm’n H.R., IACHR Special Rapporteur Expresses Alarm and Condemns Mass Shooting in the Capital Gazette Editorial Office in the United States*, Press Release, July 2, 2018, available at <https://www.oas.org/es/cidh/expresion/showarticle.asp?IID=2&artID=1108>.

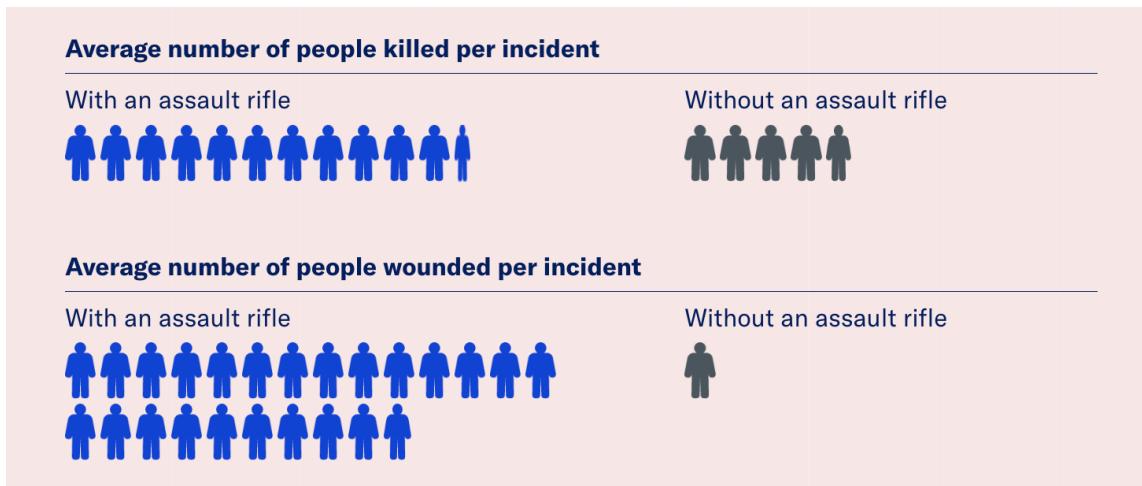
<sup>173</sup> The question of how to best define a mass shooting remains unsettled. However, the Everytown definition is widely accepted by major news outlets and the Gun Violence Archive. See Everytown for Gun Safety, *Mass Shootings in the United States*, EVERYTOWN RESEARCH (Mar., 2023), <https://everytownresearch.org/mass-shootings-in-america/>.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Paul LeBlanc, *One Nation, under Gun Violence: America tops 100 Mass Shootings in 2023*, CNN (Mar. 6, 2023), <https://www.cnn.com/2023/03/06/politics/america-mass-shootings-2023-gun-violence/index.html>.



Gun Massacres in the United States, accessible at <https://everytownresearch.org/mass-shootings-in-america/#section-intro>.

89. As evident in the graphic above, assault weapons make the occurrence of gun massacres far more lethal.<sup>178</sup> A study of gun massacres between 1981 and 2017 found that assault rifles accounted for 86 percent of the 501 fatalities reported in 44 of the incidents.<sup>179</sup> Compared to mass shootings where an assault rifle was not present, gun massacres where the perpetrator used an assault rifle resulted in an average of 2.3 times more deaths and 22.7 times more people wounded.<sup>180</sup> Many of the deadliest gun massacres carried out to date have involved one or more military-style assault weapons.<sup>181</sup>

90. The AR-15 evolved from the military M16 rifle.<sup>182</sup> A company called ArmaLite designed the AR-15 (or ArmaLite Rifle).<sup>183</sup> Armalite’s goal was to create a lightweight, portable, select-fire rifle that would allow combatants to quickly put many rounds on target, from distances of 500 yards.<sup>184</sup> The AR-15 was designed to be effective in combat by killing as many enemy soldiers as possible as quickly as possible, even from far away.<sup>185</sup>

91. The United States government has not just allowed military-style assault weapons to be sold to civilians; the U.S.’s financial support helped the evolution of the AR-15 from the military’s M16. Colt acquired the manufacturing and marketing rights to the AR-15 in 1959 and, in 1962,

<sup>178</sup> For a full depiction of how bullets from an AR-15 blow the body apart see e.g. *The Blast Effect*, THE WASH. POST, <https://www.washingtonpost.com/nation/interactive/2023/ar-15-damage-to-human-body/>.

<sup>179</sup> DiMaggio C, Avraham J, Berry C, et al., *Changes in US mass shooting deaths associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of open-source data*, J. OF TRAUMA AND ACUTE CARE SURGERY (Jan. 2019). This study defines a mass shooting as an incident in which four or more people, not including the shooter, are killed with a firearm.

<sup>180</sup> Everytown for Gun Safety, *supra* note 167.

<sup>181</sup> Such as those in Las Vegas, Orlando, Sutherland Springs, Newtown, El Paso. See Mark Follman, Gavin Aronsen & Deanna Pan, *US Mass Shootings, 1982–2023: Data From Mother Jones’ Investigation*, MOTHER JONES (updated Mar. 27, 2023), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/>.

<sup>182</sup> Tim Dickinson, *How the AR-15 Became Mass Shooters’ Weapon of Choice*, ROLLING STONE (Feb. 22, 2018), <https://www.rollingstone.com/politics/politicsfeatures/all-american-killer-howthe-ar-15-became-mass-shooters-weapon-of-choice107819/>.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

the United States Department of Defense's Advanced Research Project Agency agreed to test 1,000 weapons in its Vietnam-oriented Project Agile. By the end of 1963, the United States Army ordered roughly 85,000 AR-15s, showcasing the U.S. government's significant role in promoting and advancing assault rifle technology.

**92.** In the United States, assault weapons are not only generally legal for civilian purchase, but they are allowed to be marketed to youth and other persons not fit to possess much less use them. As seen below, Smith & Wesson's advertising mimics the first-person shooter video game aesthetic. Further, Smith & Wesson markets its firearms with knowledge of how they will likely be used and by whom.<sup>186</sup> It is well known that assault rifles, made and sold by Smith & Wesson and other companies, are frequently used by mass shooters. It is common knowledge that many mass killers are often young men who arm themselves to engage in military-like assaults on civilians in schools, movie theaters, places of worship, and during other everyday activities. It is against this background that Smith & Wesson chooses to market its M&P assault rifles in the reckless way that it does, with at best the acquiescence, and at worst the tacit support, of the State.

**93.** The M&P brand name of Smith & Wesson's rifles stands for "Military & Police." As illustrated below, Smith & Wesson publishes advertisements featuring individuals who appear to be active U.S. military service members in full uniform carrying weapons that resemble M&P rifles. The intent of this branding and marketing campaign seems clear: to increase civilian sales by conveying the message that M&P rifles are approved and used by the U.S. military.

**94.** Beyond what appear to be exaggerated or deceptive military associations, Smith & Wesson's marketing of the M&P rifle series is also problematic because of its use of advertisements that resemble first-person-shooter video games popular among young males, as well as advertisements that promise consumers that they will "Experience More Adrenaline" and encourage them to "Kick Brass" depicted further below.

**95.** A few of the relevant images from this marketing are:

---

<sup>186</sup> Everytown Calls on the FTC to Investigate Smith & Wesson's Dangerous Assault Rifle Marketing Practices, *supra* note 167.



### Official Call of Duty®: WWII Insider - Loadouts

204,870 views • Jan 3, 2018

9.3K 625 SHARE SAVE ...

Compare Call of Duty, Official Call of Duty: WWII Insider – Loadouts (Jan. 3, 2018), [https://www.youtube.com/watch?v=s\\_G67\\_YRWVo&has\\_verified=1](https://www.youtube.com/watch?v=s_G67_YRWVo&has_verified=1).



#experience #mandp

### M&P Rifle Experience Commercial

20,046 views • Feb 13, 2015

156 2 SHARE SAVE ...

With Smith & Wesson, M&P Rifle Experience Commercial (Feb. 13, 2015), <https://www.youtube.com/watch?v=TsqhpE1H5I8>.



smithandwessoninc • Following ...

smithandwessoninc Always be sure you have the right ammunition before loading it into your magazine.  
#firearmsafety #gunsandammo #practicemakesperfect

55w



4,828 likes

APRIL 11, 2019

Add a comment...

Post

Image of what appears to be a soldier holding a magazine and ammunition. Caption reads: "Always be sure you have the right ammunition before loading it into your magazine." Instagram - @smithandwessoninc (April 11, 2019).



smithandwessoninc • Follow ...

smithandwessoninc We thank you for your service. We are proud to give members of the U.S. Armed Forces up to \$100 prepaid MasterCards with a purchase on select Smith & Wesson and M&P firearms. #savings #rebate #rifles #revolvers #pistols

81w



rexstasy @vince.a\_i6

81w Reply

thomasfromflorida @adventuresofgreer



11,293 likes

NOVEMBER 4, 2018

Add a comment...

Post

Image of an M&P rifle and an American flag superimposed over what appears to be an active-duty soldier. Caption reads: "We thank you for your service. We are proud to give members of the U.S. Armed Forces an up to \$100 prepaid MasterCard with a purchase on select Smith & Wesson and M&P firearms." Instagram- @smithandwessoninc (Nov. 4, 2018).





96. The gun industry is well aware that its business practices contribute to gun violence, and it knows how it could more safely make and sell firearms in ways that would greatly reduce the related violence.

97. The firearm industry introduced semiautomatic versions of military assault weapons for sale to the public to create and exploit new civilian markets for these deadly weapons. Smith & Wesson incorporated specific features into their design that enable shooters to spray (“hose down”) a large number of bullets over a broad killing zone without having to aim at each target. These features not only give assault weapons a distinctive appearance, but they also make it easy to simply point the weapon while rapidly pulling the trigger. The most salient of these design features include:

- **Detachable ammunition magazines** that can hold as many as 100 rounds of ammunition. This allows the high volume of fire critical to hosing down a broad killing zone with no interruption for reloading;
- **A rear pistol grip**, including so-called “thumb-hole stocks” and magazines that function like pistol grips to enable easier and more rapid shooting;
- **A forward grip or barrel shroud.** Forward grips (located under the barrel or the forward stock) give a shooter greater control over the weapon during recoil. Forward grips and barrel shrouds also make it possible to hold the gun with the non-trigger hand, even though the barrel gets extremely hot from firing multiple rounds; and

- **Modifiable for automatic fire.** A design that allows for easy modification for automatic fire gives a would-be mass shooter an additional means to easily increase the lethality of the weapon, subverting federal restrictions on automatic weapons.

**98.** These design features, especially when paired with high-capacity ammunition magazines that can hold 30, 75 or more rounds, create the ability to quickly lay down a high volume of fire without reloading, making semiautomatic assault weapons a particularly dangerous addition to the civilian gun market. Not surprisingly, these features are the reason why transnational criminal organizations, terrorists, mass killers, and violent criminals favor assault weapons to kill or maim as many people as possible in as short a time as possible.

**99.** Assault weapons have been recognized as a threat to public safety for years. The International Association of Chiefs of Police has supported a ban on assault weapons since 1992, and takes the position that such weapons “are routinely the weapons of choice for gang members and drug dealers,” and their criminal use “pose a grave risk to [] officers and the communities they are sworn to protect.”<sup>187</sup> Assault weapons are very rarely used for self-defense, and they are never or almost never necessary for self-defense.<sup>188</sup>

**100.** Largely in response to law enforcement calls to prevent police from being outgunned by criminals, the United States banned assault weapons and large-capacity ammunition magazines in 1994. However, the U.S. Congress took the unusual measure of enacting the Assault Weapon Ban (AWB) with a provision by which it expired or sun-setted after 10 years, unless Congress chose to renew it. Congress then allowed the AWB to expire in 2004, making assault weapons again available to civilians.

**101.** The U.S. federal Assault Weapon Ban (AWB) resulted in fewer gun massacres. The lapse of the AWB led to an increase in gun massacres. A 2018 study found that gun massacre fatalities were 70 percent less likely to occur from 1994 to 2004, when the federal prohibition on assault weapons and high-capacity magazines was in effect than during the 12 years studied before and after the prohibition.<sup>189</sup> Researchers estimate a federal AWB would have prevented 314 of 448 gun massacre deaths that occurred during the studied periods where the AWB was not in effect.<sup>190</sup>

**102.** How the gun industry chooses to sell and distribute its guns is a major contributor to gun violence. The gun industry has long known that virtually all crime guns are sold by a small percentage of gun dealers; U.S. federal law enforcement reported in 2000 that about 5% of gun dealers sell about 90% of crime guns; about 1% of gun dealers sell about 60% of crime guns.<sup>191</sup> These high-crime-gun sellers often engage in reckless if not unlawful sales practices that supply

---

<sup>187</sup> International Association of Chiefs of Police, Firearms Policy Position Statement, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.theiacp.org/sites/default/files/2019-05/IACP%20Firearms%20Position%20Paper\_2018%20(1).pdf.

<sup>188</sup> Jennifer Mascia, *How Often Are AR-Style Rifles Used for Self-Defense?*, THE TRACE (August 29, 2023), <https://www.thetrace.org/2023/08/ar15-rifle-self-defense-shooting-data/>.

<sup>189</sup> Everytown for Gun Safety, *Fact Sheet: Assault Weapons and High-Capacity Magazines*, EVERYTOWN RESEARCH (Mar. 10, 2023), <https://everytownresearch.org/report/assault-weapons-and-high-capacity-mags/>.

<sup>190</sup> DiMaggio, *supra* note 179.

<sup>191</sup> BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *Commerce in Firearms* (February 2000), <https://www.nycourts.gov/reporter/webdocs/020400report.pdf>.

criminals, such as engaging in multiples sales (selling more than one gun in one transaction or within a short period of time), repeat sales (where the buyer returns to the store to buy more guns, straw purchases (where one person buys a gun for someone else).<sup>192</sup> For 30 years, gun industry insiders have called on the industry to police its distribution network to prevent diversion to the criminal market, and stop supplying gun dealers who sell most crime guns.<sup>193</sup>

**103.** Over 20 years ago, the U.S. federal government called on the industry to implement specific safer practices to reduce gun violence, including selling through authorized dealers who are trained and do not sell large numbers of crime guns.<sup>194</sup>

**104.** In 2000, Smith & Wesson entered into a settlement with the United States and several cities and counties, in which it agreed to implement some of these safer practices. These practices included significantly reforming its sales, design, marketing, and distribution practices to make gun deaths and injuries less likely, including agreeing to only sell through authorized dealers and distributors who follow safe sales practices; not market guns in ways appealing to juveniles or criminals; and not make or allow its authorized dealers and distributors to sell high-capacity magazines that hold over 10 rounds.<sup>195</sup>

**105.** However, Smith & Wesson then reneged on its agreement and has since refused to make and sell firearms safely and has doubled down on dangerous practices.<sup>196</sup> The United States never took enforcement action to require Smith & Wesson to obey the settlement to which it had agreed.

**106.** Smith & Wesson and other gun manufacturers have deliberately chosen to engage in practices they have been told supply's the criminal market, thus enabling the gun industry to profit off criminal endeavors.

---

<sup>192</sup> See *NAACP v. AcuSport*, 271 F.Supp. 2d 435 (E.D.N.Y. 2003), <https://casetext.com/case/national-assn-for-the-advancement-v-acusport-inc-edny-2003>; *Estados Unidos Mexicano v. Smith & Wesson, et. al.*, Case 1:21-cv-11269-FDS (D.Mass., August 4, 2021), <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.courthousenews.com/wp-content/uploads/2021/08/mexico-smith-wesson-complaint.pdf>.

<sup>193</sup> Allen Rostron, *Smoking Guns: Exposing the Gun Industry's Complicity in the Illegal Gun Market* (Jul. 2012), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2111318](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2111318).

<sup>194</sup> U.S. DEPARTMENT OF JUSTICE, *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy* (2001), see at "Industry Self-Policing," <https://www.justice.gov/archive/opd/gunviolence.html>.

<sup>195</sup> As part of a settlement that ended several lawsuits, Smith & Wesson agreed to adopt additional safety practices, such as selling safety devices with each handgun, establishing a code of conduct for authorized dealers and distributors, and including a hidden set of serial numbers on the inside of all new guns. See The White House: Office of the Press Secretary, Clinton Administration Reaches Historic Agreement with Smith and Wesson (2000), [https://clintonwhitehouse4.archives.gov/WH/New/html/20000317\\_2.html](https://clintonwhitehouse4.archives.gov/WH/New/html/20000317_2.html). Cities that filed lawsuits against firearms manufacturers and distributors—alleging that their actions had undermined public health and caused those municipalities to incur substantial financial obligations—include Atlanta, Chicago, Gary and New York City. See *City of Atlanta v. Smith & Wesson Corp.*, 543 S.E.2d 16 (Ga. 2001); *City of Chicago v. Beretta U.S.A.*, 213 Ill. 2d 351 (Ill. 2004) 821 N.E.2d 1099; *City of Gary v. Smith & Wesson Corp.*, Ill. 891 N.E.2d 1222 (2003); *City of New York v. Beretta*, 401 F. Supp. 2d 244; see also Avi Selk, *A gunmaker once tried to reform itself. The NRA nearly destroyed it.*, WASHINGTON POST (Feb. 27, 2018), <https://www.washingtonpost.com/news/retropolis/wp/2018/02/27/a-gunmaker-once-tried-to-reform-itself-the-nra-nearly-destroyed-it/>.

<sup>196</sup> Michael Luo & Mike McIntire, *Gun Makers Saw No Role in Curbing Improper Sales*, NEW YORK TIMES (May 27, 2013), <https://www.nytimes.com/2013/05/28/us/gun-makers-shun-responsibility-for-sales-suits-show.html>.

**107.** The lack of widely accepted, reasonable gun control measures in the United States prior to 2018 was characteristic of the perilous context that gave rise to Parkland Gun Massacre, as well as many other such massacres occurring before and after. The State's continued failure to protect its residents from gun violence, especially gun massacres carried out with assault weapons, make it liable for the killings, including Joaquin Oliver's. Given this context, what was discussed above in Part II of this Petition was the chronicle of a death foretold: the foreseeable massacre and killing of Joaquin Oliver by a teenage shooter armed with an AR-15-style semi-automatic assault rifle.

#### **IV. FEDERAL, STATE, AND INTERNATIONAL REGULATORY REGIMES REGARDING THE MANUFACTURE, SALE, AND POSSESSION OF FIREARMS**

**108.** In this Part, we will describe the current federal and state regulatory frameworks regarding the manufacture, marketing, and sale of firearms, as well as the legal regimes governing the purchase and possession of firearms by civilians. We will likewise examine other relevant factors connected to the conduct of gun industry actors (such as manufacturers, distributors, and dealers) within the current regulatory landscape, and how that conduct knowingly contributes to gun violence as exemplified by the Parkland Gun Massacre. Then, we will compare these regulatory frameworks to gun policy norms internationally, with a focus on OAS countries.

**109.** The United States of America is fully aware of the threat to fundamental human rights it has fostered through its minimal and ineffective regulation of firearms and the gun industry. By not acting decisively to prevent foreseeable gun violence, the State is effectively deciding as a matter of policy to prioritize non-regulation and the firearms industry's profits over the lives of its residents. It thereby enables the continuous stream of gun violence and its lethal consequences, which it could otherwise act to effectively prevent. This deliberate omission by the State makes it liable for the deaths of so many innocent men, women and children resulting from the resulting gun massacres, including Joaquin Oliver.

##### ***A. United States Federal Regulatory Legal Framework***

**110.** Access to firearms in the United States is largely controlled by federal law which regulates the manufacture and sale of guns and ammunition, as well as their possession by civilians. There are, however, few federal gun control laws. Those that exist suffer from notable deficiencies that facilitate access to firearms for persons unfit to possess them. At the same time, they shield gun industry actors from accountability for negligent and reckless business practices.

**111.** Over the past 25 years, the U.S. Congress has done more to relax the few existing federal firearms regulations than to supplement them with other effective control measures that, if enacted, would help reign in the gun industry and hold it accountable for its harmful conduct.

**112.** For example, in 1994, Congress enacted a Federal Assault Weapons Ban, which banned the manufacture, sale, and possession of specific military-style assault weapons and high-capacity

ammunition magazines.<sup>197</sup> However, it contained an unusual provision that required it to be renewed after 10 years, so the ban expired in September 2004, and Congress has not renewed this law. As a result, federal law allows military-style assault rifles and magazines that can hold 15, 30, 75 rounds or more to be available for legal purchase by anyone over 18 who can pass a background check. Although these weapons have been repeatedly used in mass shootings,<sup>198</sup> Congress has refused to restrict or prohibit their possession and sale. As a result, as noted above, the gun industry has been allowed to recklessly market and sell assault weapons to civilians, including teenagers over 18 years old.

**113.** In 2005, Congress enacted the Protection of Lawful Commerce in Arms Act (“PLCAA”), which provided firearms manufacturers, dealers and distributors with unique protection from civil liability for harm they cause through their negligent and reckless business practices.<sup>199</sup> As a result, the gun industry has been able to cause harm without internalizing any of the damages or costs it causes.

**114.** Recent decisions by the Supreme Court of the United States have placed even the minimal federal and state gun laws at risk of being struck down by courts. For over two centuries the Second Amendment to the United States Constitution was widely recognized as only protecting participation in state militias – the “well-regulated militia” referenced in its text – from federal infringement.<sup>200</sup> The idea that the Second Amendment posed an obstacle to laws regulating civilian purchase, possession, and use of guns was viewed, as former Chief Justice Warren Burger put it, as “one of the greatest pieces of fraud, I repeat the word fraud, on the American public by special interest groups that I have ever seen in my lifetime.”<sup>201</sup> However, the Supreme Court in its 2008 decision in *District of Columbia v. Heller*<sup>202</sup> adopted that position by a 5-4 vote, holding that the Second Amendment provides “law-abiding, responsible citizens” with the right to a handgun in the home for self-defense. In 2022, the Court went further in *NYSRPA v. Bruen*,<sup>203</sup> striking down a century-old New York law that regulated gun carrying in public spaces, declaring that gun laws that did not have sufficient historical precedent were unconstitutional. In the year since *Bruen* numerous gun laws have been struck down by courts in the U.S.<sup>204</sup>

---

<sup>197</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110101, 108 Stat. 1796, 1996 (1994).

<sup>198</sup> Ashley R. Williams, *More Mass Shooters are Using Semi-Automatic Rifles – Often Bought Legally*, USA TODAY (July 12, 2022), <https://www.usatoday.com/story/news/nation/2022/07/12/mass-shootings-weapons-legal-what-to-know/7814081001/>.

<sup>199</sup> See *infra* notes 264-266.

<sup>200</sup> U.S. CONST., amend. II (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”)

<sup>201</sup> MacNeil/Lehrer NewsHour, *Special interest push behind 2<sup>nd</sup> Amendment a ‘fraud,’ former chief justice said in 1991* (December 16, 1991), accessible at <https://www.youtube.com/watch?v=hKfQpGk7KKw>.

<sup>202</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>203</sup> *N.Y. State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

<sup>204</sup> See e.g., *Range v. Attorney General United States of America*, 69 F.4th 96 (3rd Cir. 2023) (18 U.S.C. § 922(g)(1) is unconstitutional); *United States v. Price*, 635 F.Supp. 3d 455 (S.D. W.Va. 2022) (§ 922(k) is unconstitutional); *United States v. Stambaugh*, 641 F.Supp. 3d 1185 (W.D. Okla. 2022) (§922(n) is unconstitutional). The U.S. Supreme Court is reviewing an appellate court decision that held that the federal ban on gun possession by persons subject to domestic violence protective orders was unconstitutional. *United States v. Rahimi*, 61 F.4th 443 (5<sup>th</sup> Cir. 2023), *cert granted* 2023 U.S. LEXIS 2830 (June 30, 2023).

**115.** Federal gun control laws in the United States are enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (commonly referred to as “ATF”) and state (local) law enforcement agencies. What follows is an overview of the regulatory framework of federal laws that governs the licensing of gun sellers and distributors; the regulation of civilian access to and possession of guns; and the ATF’s role in enforcing those laws. This overview is broken down into sections dealing with various relevant aspects of the State’s licensing requirements, on the one hand, and on the other, with the (minimal) restrictions on gun manufacturing and sales in place. In particular, we will discuss the limitations – both existent and non-existent – on the sale of firearms to minors and young adults; to persons with a history of mental illness, violent conduct or a criminal record; as well as on the production and sale of assault weapons and related devices.

**116.** Part IV, Section A discusses federal legislation enacted at the behest of the gun industry to protect its members from prosecution and ensure no accountability on their part for their documented role in fueling gun violence in the United States, including through the marketing, sale and distribution of assault weapons to persons unfit to possess them. The overarching goal here is, first and foremost, to explain how the teenage Parkland shooter with his long record of violence and mental illness was permitted to legally purchase the military-style assault rifle he used to carry out the massacre, along with several other firearms. At the same time, it is important to understand why neither the manufacturer (Smith & Wesson) nor the seller of the weapon used in the Parkland Gun Massacre could be held liable for their role in that crime. The answers to both inquiries definitively establish the bases for the State’s due diligence failures analyzed in Parts V and VI.

### **1. Licensing Requirements and Restrictions on the Sale of Firearms (Generally)**

**117.** In enacting the Gun Control Act of 1968 (“GCA”), the U.S. Congress recognized the need to regulate firearms sales to prevent gun violence. For that reason, the GCA affirms that “[f]irearms are channeled through dealers to eliminate the mail order and the generally widespread commerce in them, and to insure that, in the course of sales or other dispositions by these dealers, weapons could not be obtained by individuals whose possession of them would be contrary to the public interest.”<sup>205</sup>

**118.** As a result, to limit the dangers of gun commerce, the U.S. Congress requires companies engaged in the gun business to obtain a federal firearms license (“FFL”) and prohibits sellers from engaging in the business of dealing in firearms unless they have a FFL.<sup>206</sup> The GCA does not, however, prohibit people who are unlicensed from selling guns, so long as they are not “engaged in the business [of selling firearms].”<sup>207</sup> As it is difficult for law enforcement to prove that an unlicensed person who is selling firearms is “engaged in the business,” unlicensed “private” gun

---

<sup>205</sup> *Huddleston v. United States*, 415 U.S. 814, 825 (1974).

<sup>206</sup> 18 U.S.C. § 922.

<sup>207</sup> See BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (“ATF”), *Do I Need A License to Buy and Sell Firearms?*,

<https://www.atf.gov/file/100871/download#:~:text=A%20person%20who%20willfully%20engages,up%20to%20%24250%2C000%2C%20or%20both.>

sellers are able to sell massive quantities of guns. This “private sale loophole” enables a thriving gun market for unregulated firearm sales by “private sellers,” who sell guns at gun shows, through Internet ads, or on the streets, with no checks, no records, no questions asked.<sup>208</sup> This exception has swallowed the rule requiring background checks for sales by licensed dealers, thereby enabling widespread criminal activity in the sale, purchase, possession, and trafficking of firearms throughout the United States.

**119.** The U.S. Congress has rightfully created federal limits regarding age when purchasing guns. Under the GCA, 18-year-olds are generally permitted to purchase a variety of firearms—including shotguns and rifles.<sup>209</sup> However, they may not purchase handguns from a federally licensed firearms dealer until they turn 21.<sup>210</sup> As AR-15s, AK-47s, and other assault rifles are long guns, licensed dealers may sell them to 18-year-olds. Licensees are not only bound by the minimum age requirements established by the GCA; if state law or local ordinances establish a higher minimum age for the purchase or disposition of firearms, the licensee must observe the higher age requirement. No such requirements existed in Florida at the time that the Parkland shooter purchased his weapons.<sup>211</sup>

**120.** Astonishingly, federal law (and most states) does not explicitly require any investigation, assessment, or testing of any kind before someone can purchase one firearm – or 100 firearms. Rather, federal law only requires a minimal instant background check by sellers through the National Instance Check System (NICS) to determine if there is a record of the purchaser falling into any of the limited categories of persons whom the GCA prohibits from possessing a gun.

**121.** The GCA only prohibits would-be purchasers from obtaining firearms if they fall into certain prohibited categories.<sup>212</sup> Those categories are:

- persons convicted or under indictment for a crime punishable by over a year in prison (felon);
- fugitives from justice;
- unlawful users or addicted to a controlled substance;
- persons adjudicated as a “mental defective” or has been committed to a mental institution at 16 years of age or older;
- illegal aliens or most nonimmigrant visas;
- dishonorable military discharges;
- persons who have renounced U.S. citizenship;

---

<sup>208</sup> See 18 U.S.C 922(a)(5) and 922(d); 27 CFR 478.30, 478.32; and see generally ATF, *To whom may an unlicensed person transfer firearms under the GCA?*, <https://www.atf.gov/firearms/qa/whom-may-unlicensed-person-transfer-firearms-under-gca>; Serge Kovaleski & Glenn Thrush, *A Craigslist for Guns, With No Background Checks*, NEW YORK TIMES (Aug. 1, 2023), <https://www.nytimes.com/2023/08/01/us/gun-laws-private-sales-background-checks-armslist.html>; Garen Wintemute, *Inside Gun Shows: What Goes On When Everybody Thinks Nobody's Watching*, (2009), <https://health.ucdavis.edu/vprp/pdf/IGS/IGScoverprefweb.pdf>; ATF, *Gun Shows: Brady Checks and Crime Gun Traces* (1999), accessible at <https://www.atf.gov/file/57506/download>.

<sup>209</sup> GUN CONTROL ACT OF 1968, 18 U.S.C. § 921 et seq (2022).

<sup>210</sup> *Id.*

<sup>211</sup> *Infra* para. 159.

<sup>212</sup> 18 U.S.C. § 922.

- persons subject to a domestic violence restraining order or convicted of a misdemeanor crime of domestic violence;
- persons who intend to sell or dispose of firearm or ammunition in furtherance of certain other crimes or to a prohibited person;
- persons under 18 years old for long guns; under 21 for handguns.

## 2. Mental Illness or Incapacity

**122.** As indicated, the U.S. Congress has adopted restrictions regarding the mental capacity of persons seeking to purchase firearms. Federal law prohibits a person from transporting, receiving, possessing, or shipping firearms or ammunition if he or she has been “adjudicated as a mental defective” or “committed to a mental institution.”<sup>213</sup>

**123.** According to federal regulations, a person has been “adjudicated as a mental defective” if a court, board, commission or other lawful authority has determined that he or she, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself, herself, or others, or; (2) lacks the mental capacity to contract or manage his or her own affairs.<sup>214</sup> Federal regulations define a person as “committed to a mental institution” if a court, board, commission, or other lawful authority has formally committed him or her to a mental institution.<sup>215</sup> The term is defined to include involuntary commitments for “mental defectiveness or mental illness.” It also includes commitments for other reasons, such as drug use, but does not include people admitted to a mental institution voluntarily or for observation.<sup>216</sup>

**124.** This definition is very narrow and was drafted 60 years ago, when outpatient and voluntary commitments were far less frequent.<sup>217</sup> As a result, even if a person is residing at a mental health facility after voluntarily committing herself, or is currently under extended treatment for serious mental illness that renders her at great risk to herself or others, or is currently in the midst of serious mental health episode, she may not fall under any identifiable prohibited category under the GCA. At the same time, persons who have been involuntarily committed to a mental hospital years ago and no longer pose a danger to themselves or others remain prohibited from purchasing firearms unless their rights to purchase guns are restored.

**125.** Federal law also prohibits anyone from knowingly selling or otherwise providing firearms or ammunition to people who fall into the mental incapacity category if the provider knows or has

---

<sup>213</sup> 18 U.S.C. § 922.

<sup>214</sup> 27 CFR § 478.11(a).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> From a peak of 558,992 inpatient psychiatric beds in state hospitals in 1955, the number of residential treatment beds dwindled to 101,351 in 2014. The use of outpatient mental health services by adults in the U.S. has also been rising since 1995. Furthermore, the COVID-19 pandemic significantly increased the use of telemedicine for mental health services, thereby adding diversity to the range of outpatient treatment options. *See* American Psychiatric Association, *The Psychiatric Bed Crisis in the US: Understanding the Problem and Moving Toward Solutions* (2022), <https://www.psychiatry.org/getmedia/81f685f1-036e-4311-8dfc-e13ac425380f/APA-Psychiatric-Bed-Crisis-Report-Full.pdf>; Hayley D. Germack et al., *National Trends in Outpatient Mental Health Service Use Among Adults Between 2008 and 2015*, *PSYCHIATRIC SERVICES* 1127–1135 (2020); Ryan K. McBain et al., *Mental Health Service Utilization Rates Among Commercially Insured Adults in the US During the First Year of the COVID-19 Pandemic*, *4 JAMA HEALTH FORUM* (2023).



reasonable cause to believe that they are ineligible.<sup>218</sup> The law, however, does not require a seller to take measures to inform themselves of whether this incapacity may be present. Nor is there any verification required from a medical or mental health professional that a gun purchaser is of sound mind or does not pose a danger to herself or others. As a result, if a prospective purchaser is clearly evidencing serious mental illness in the gun store, it is generally up to the discretion of the FFL to decide whether to sell him or her a gun, so long as there is not reasonable cause to believe he or she is within a prohibited category. Dealers may claim that the fact that the purchaser was not flagged by the background check “proved” that there was no reasonable cause to deny the sale, despite indicators of dangerousness or signs that the purchaser appears to pose a grave risk.<sup>219</sup>

**126.** This GCA framework intended to curtail access to firearms for individuals experiencing mental health issues and other disqualifying conditions is riddled with dangerous loopholes.<sup>220</sup> Experience has shown that it is still far too easy for people with mental health issues to obtain firearms. For instance, federal law and the law of most states enable people to purchase guns when they are mentally ill and dangerous, so long as they have not been involuntarily committed or formally adjudicated as a danger. Further, federal law does not require states to provide information identifying such persons to federal or state agencies that perform background checks; such participation is merely voluntary.<sup>221</sup> As a result, many states – including Florida – either refuse or fail to report all of the necessary records to the FBI’s National Instant Criminal Background Check System (NICS), seriously undermining its effectiveness.<sup>222</sup> This is especially true with respect to people prohibited from possessing guns for mental health reasons. Consequently, individuals who are known to pose a serious risk to themselves and others like the Parkland shooter can pass background checks and obtain firearms.

### 3. Background Checks

**127.** The Brady Handgun Violence Prevention Act of 1993 requires licensed dealers to conduct background checks on gun buyers to determine if they fall into a prohibited category and establishes a criminal background check system that is maintained by the FBI.<sup>223</sup> But, as noted

---

<sup>218</sup> 18 U.S.C. § 922(d)(4).

<sup>219</sup> See, e.g., *Delana v. CED Sales*, 486 S.W.3d 316 (Mo. 2016), in which a gun dealer was told by a prospective gun buyer’s mother that the buyer was seriously mentally ill and a danger to herself or others, but the dealer sold her a gun, which she then used to kill her father. The dealer never was sanctioned by the state or federal government charged with a crime, though a court held it could be civilly liable to the victim’s family.

<sup>220</sup> GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, *Background Checks: Mental Health Record Reporting*, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/mental-health-reporting/>.

<sup>221</sup> See 28 C.F.R. § 25.4. The NICS Improvement Act awards grants to states to enable greater uploading of records to the National Instant Check Reporting System that is checked before gun sales. See NICS Improvement Amendment Act of 2007, 121 Stat. 2559 (2008); See generally *Mental Health Records in NICS Focus Group, Reporting Mental Health Records to the NICS Index*, July 2015, accessible at [https://www.search.org/files/pdf/Reporting\\_Mental\\_Health\\_Records\\_NICS\\_Index.pdf](https://www.search.org/files/pdf/Reporting_Mental_Health_Records_NICS_Index.pdf).

<sup>222</sup> See U.S. DEPARTMENT OF JUSTICE, *NICS Participation Map (2023)*, <https://www.fbi.gov/file-repository/nics-participation-map.pdf/view>; Nick Penzenstadler, *Gun violence policy is focusing on mental health but federal records still lack some states*, USA TODAY (June 16, 2022), <https://www.usatoday.com/story/news/investigations/2022/06/16/gun-checks-mental-health-records-can-still-blindspot/7582379001/>; Glenn Thrush & Serge F. Kovaleski, *Loopholes and Missing Data: The Gaps in the Gun Background Check System*, NEW YORK TIMES (June 19, 2022), <https://www.nytimes.com/2022/06/19/us/gun-background-checks.html>.

<sup>223</sup> 107 Stat. 1536 (1993), amending 18 U.S.C. § 922.

above, unlicensed sellers who are not formally “engaged in the business” of selling firearms are allowed to sell guns without any of the record-keeping, paperwork or background checks required of licensed dealers.<sup>224</sup> And even unlicensed people who are actually engaged in the business can often get away with selling guns without a license, given the difficulty of proving violations.

**128.** Originally, the Brady Act imposed a five-day waiting period, but Congress allowed that provision to expire. Studies have shown that waiting periods for gun purchases can significantly reduce gun deaths.<sup>225</sup> But now there is an instant check system, which results in most guns being transferred to buyers within minutes of purchase, typically while the customer waits in the gun store.<sup>226</sup>

**129.** The background check may be extended to a maximum of three days when results are not immediately complete.<sup>227</sup> But dealers are nonetheless permitted to transfer guns when the three days expire, even if the system has not determined that the buyer can legally buy a firearm.<sup>228</sup> As a result, not only is there no waiting period for gun sales, but dealers may transfer firearms to people who are legally prohibited from possessing guns if the check system has not located the disqualifying records within three days and the dealer is not aware that they are prohibited.<sup>229</sup> This deficit in the federal system of background checks is commonly known as the “Charleston Loophole.”<sup>230</sup> And, as noted already, unlicensed sellers are not required under federal law to even conduct a background check, much less delay the transfer of a gun.<sup>231</sup>

**130.** The Bipartisan Safer Communities Act (“BSCA”) was enacted in 2022. The BSCA amended the GCA to require the National Instant Criminal Background Check System to conduct additional investigative steps to determine whether juvenile offense records disqualify a person from buying guns as a part of the background check process before an 18- to 20-year-old can purchase a long gun.<sup>232</sup> The BSCA further clarified “which gun sellers must obtain a federal firearms license and conduct background checks;” established “federal statutes to clearly define and penalize trafficking and straw purchasing;” and prohibited “a person convicted of a violent misdemeanor against a ‘current or recent former dating’ partner from possessing firearms for five

---

<sup>224</sup> See *Do I Need A License to Buy and Sell Firearms?*, *supra* note 207.

<sup>225</sup> Michael Luca, et. al., *Handgun waiting period reduce gun deaths*, PNAS (Sept. 21, 2017), <https://www.pnas.org/doi/10.1073/pnas.1619896114>.

<sup>226</sup> NICS reviewers are required to make an immediate determination in 90 percent of cases according to Department of Justice guidelines. In 2021, the immediate determination rate was approximately 80 percent. See U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations (2013)*, <https://archives.fbi.gov/archives/about-us/cjis/nics/reports/2013-operations-report>; U.S. Department of Justice, *2020-2021 NICS Operations Report (2022)*, <https://www.fbi.gov/file-repository/nics-2020-2021-operations-report.pdf/view>.

<sup>227</sup> See FEDERAL BUREAU OF INVESTIGATION, *How We Can Help You: Firearms Checks (NICS)*, <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/nics>.

<sup>228</sup> EVERYTOWN FOR GUN SAFETY, *Close the Charleston Loophole*, <https://www.everytown.org/solutions/close-the-charleston-loophole/>.

<sup>229</sup> 18 U.S.C. § 922(t)(1).

<sup>230</sup> *Supra* note 228.

<sup>231</sup> See ATF, *Do I Need A License to Buy and Sell Firearms?*, *supra* note 207.

<sup>232</sup> Pub. L. 117-159, 136 Stat. 1323 (2022).

years.”<sup>233</sup> The BSCA made cross-border gun trafficking a federal crime.<sup>234</sup> However, the BSCA did not address the major flaws in U.S. gun laws. For example, it did not prohibit assault weapons; it did not require investigation or vetting of purchasers; it did not require background checks for sales by unlicensed sellers; it did not restrict gun sales and possession of any type of firearm; it did not even raise the age limit for assault rifles, which remains 18 years old; it did not require licensing, registration or vetting for firearm purchases; and it did not remove any special protections for the gun industry, including the protections from civil liability in PLCAA.

#### 4. Assault weapons

**131.** The National Firearms Act (“NFA”) prohibits the manufacture, sale, and transfer of fully automatic machine guns and certain other weapons that cannot be generally sold at retail to the civilian public.<sup>235</sup> In an administrative ruling, the ATF has determined that machine guns include guns that “have not previously functioned as machineguns but possess design features which facilitate full automatic fire by a simple modification or elimination of existing component parts.”<sup>236</sup> If enforced, this would encompass AR-15 semi-automatic rifles, which are a weapon of choice for many mass shooters as well as criminal gang and cartel members, because they can be modified to fire automatically. Under the ATF’s interpretation, AR-15 rifles would be deemed subject to the same legal restrictions as machine guns.<sup>237</sup> However, the United States has opted not to enforce that interpretation of the law;<sup>238</sup> if it had, the perpetrators of countless gun massacres who used such weapons would not have been unable to obtain them as they did.

**132.** In 1994, at the behest of law enforcement authorities, the U.S. Congress promulgated a Federal Assault Weapons Ban, which prohibited the manufacture, sale, and possession of specific military-style assault weapons and high-capacity ammunition magazines.<sup>239</sup> Due to a built-in sunset clause, the ban expired a decade later, in September 2004, when Congress failed to renew the law. As a result, since 2004, military-style assault rifles and magazines that can hold dozens of rounds have been available for legal purchase by anyone over 18 who can pass a background check. Although these weapons are repeatedly used in gun massacres,<sup>240</sup> Congress to this day has

---

<sup>233</sup> See Pub. L. 117-159, 136 Stat. 1324 (2022); Pub. L. 117-159, 136 Stat. 1326-1327 (2022); Pub. L. 117-159, 136 Stat. 1333 (2022).

<sup>234</sup> Pub. L. 117-159, 136 Stat. 1327 (2022).

<sup>235</sup> 26 U.S.C §§ 5841–5849.

<sup>236</sup> ATF, Rul. 82-8 at 1, 1982-2 A.T.F.Q.B. 49 (1982), <https://www.atf.gov/file/55376/download>.

<sup>237</sup> ATF, *National Firearms Act Handbook*, Apr. 2009, at 143, <https://www.atf.gov/firearms/national-firearms-act-handbook>.

<sup>238</sup> In 2017, the ATF banned “bump stocks,” devices that allow semiautomatic weapons to rapidly fire multiple rounds like machine guns, by classifying them as “machine gun” parts. In 2023, however, a federal appeals court struck down the ban. Considering that in 2008 the ATF concluded it could not ban bump stocks through regulation, some U.S. Senators have called on Congress to enact corresponding legislation. Congress has failed to do so to date. See *Hardin v. Bureau of Alcohol, Tobacco, Firearms and Explosives et al*, 6th U.S. Circuit Court of Appeals, No. 20-6380; Dianne Feinstein, *Dianne Feinstein: Don’t celebrate the Trump administration’s bump stock ban too quickly*, WASHINGTON POST (December 19, 2019), <https://www.washingtonpost.com/opinions/2018/12/20/dianne-feinstein-dont-celebrate-trump-administrations-bump-stock-ban-too-quickly/>.

<sup>239</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110101, 108 Stat. 1796, 1996 (1994).

<sup>240</sup> Ashley R. Williams, *More mass shooters are using semi-automatic rifles – often bought legally*, USA TODAY (July 12, 2022), <https://www.usatoday.com/story/news/nation/2022/07/12/mass-shootings-weapons-legal-what-to-know/7814081001/>.

refused to restrict or prohibit their manufacture, sale, or possession in any way. Unfortunately, the current reality is that U.S. gun manufacturers and dealers regularly sell assault rifles that can be readily modified to become fully automatic weapons to the general public.<sup>241</sup> Devices that convert these firearms to fire full auto are also easy to obtain.<sup>242</sup>

## 5. Other Federal Gun Industry Controls (Or Lack Thereof)

**133.** Under U.S. law, there currently are no limits whatsoever on how many guns a civilian may purchase, either in one transaction or in any period of time. As a result, gun dealers often engage in bulk or repeat sales of guns that have the indication of obvious gun trafficking. The GCA only requires dealers to submit a form to ATF informing them of purchases of multiple pistols or revolvers over five consecutive business days by the same buyer, but ATF has no authority to stop such sales, however large they may be.<sup>243</sup> The same reporting requirement now applies to multiple sales of some semi-automatic rifles in states near the Mexican border, to provide law enforcement information to investigate cross-border gun trafficking.<sup>244</sup> But even this modest reporting requirement was challenged in court by the gun industry trade association, the National Shooting Sports Foundation (“NSSF”), who unsuccessfully sued the ATF in an attempt to strike it down.<sup>245</sup>

**134.** Purchasers are not required to provide any reason for wanting to buy a firearm, including assault weapons, or multiple firearms, or for repeated purchases of firearms. As a result, firearms traffickers can purchase dozens of weapons, repeatedly, with no questions asked other than the minimal instant background check. In one incident in 2000, a gun trafficker purchased 85 handguns in a single transaction, and his trafficking ring bought 190 more guns from the same dealer in a series of bulk sales over several months, without any charges brought against the dealer.<sup>246</sup>

**135.** The ease with which individuals can buy guns in the United States is matched only by the difficulty of taking them away afterwards, even in extreme cases. Short of arrest for actual or suspected criminal activity, there is no mechanism or process at the federal level to remove guns from owners who are subsequently revealed to be dangerous or otherwise unfit to possess or use firearms, unless they are fall under a prohibited category under the GCA or similar state law.<sup>247</sup>

## 6. Enforcement

---

<sup>241</sup> Alain Stephens & Keegan Hamilton, *The Return of the Machine Gun* (Mar. 24, 2022), <https://www.thetrace.org/2022/03/auto-sear-gun-chip-glock-switch-automatic-conversion/>.

<sup>242</sup> Ernesto Londono & Glenn Thrush, *Inexpensive Add-on Spawns a New Era of Machine Guns*, NEW YORK TIMES, (August 12, 2023), <https://www.nytimes.com/2023/08/12/us/guns-switch-devices.html>.

<sup>243</sup> 18 U.S.C. § 923(g)(3); ATF, *Reporting Multiple Firearms Sales*, <https://www.atf.gov/firearms/reporting-multiple-firearms-sales>.

<sup>244</sup> See ATF, *Reporting Multiple Firearms Sales*, <https://www.atf.gov/firearms/reporting-multiple-firearms-sales>.

<sup>245</sup> *NSSF v. Jones*, 716 F.3d 200 (D.C. Cir. 2013).

<sup>246</sup> The subsequent lawsuit is discussed at Brady United, *Williams v. Beemiller*, accessible at <https://www.bradyunited.org/legal-case/williams-v-beemiller>.

<sup>247</sup> Extreme risk protection (or “red flag”) laws can provide some procedures to remove guns in certain circumstances. They are now the law in some states, but not federal law. See EVERYTOWN FOR GUN SAFETY, *Extreme Risk Laws*, <https://www.everytown.org/solutions/extreme-risk-laws/>.

**136.** Weak enforcement hampers even those minimal controls the law does mandate. ATF is responsible for ensuring dealer compliance with gun laws, but limited resources and legal restrictions prevent it from inspecting all dealers.<sup>248</sup> Even when ATF investigations reveal violations of law and red flags for trafficking, dealers are rarely shut down, even when they are found to have violated federal gun laws.<sup>249</sup> ATF has allowed licensed dealers to retain their FFLs even when they have been shown to engage in blatantly illegal conduct that arms the criminal market.<sup>250</sup> This lack of action by the ATF to shut down dealers has fostered a “culture of impunity.”<sup>251</sup> For example, “[i]n many cases when the ATF catches dealers breaking the law, the agency issues warnings, sometimes repeatedly, but allows the stores to operate for months or years. Others are still selling guns to this day.”<sup>252</sup>

**137.** In some cases, even when a gun dealer loses its license because of its violation of law, it is still allowed to sell its inventory.<sup>253</sup> For example, one dealer had his license revoked for multiple serious violations of law, including a failure to account for hundreds of guns in his inventory.<sup>254</sup> This dealer was permitted nonetheless to sell his remaining stock of over 700 guns even after his license was revoked.<sup>255</sup> In other cases, relatives of dealers who lose their license are allowed to obtain a dealer’s license to operate the same business, even with the problem gun seller continuing to work in the gun store.<sup>256</sup>

**138.** Federal law uniquely and arbitrarily restricts ATF enforcement, unlike any other law enforcement entity. The Firearm Owners Protection Act (“FOPA”) prohibits ATF from conducting

---

<sup>248</sup> ATF, *Firearms Compliance Inspections*, <https://www.atf.gov/firearms/compliance-inspections> (reporting 3,277 inspections in 2020 for over 53,000 dealers); ATF, *Firearms Commerce in the United States: Annual Statistical Update 2014*, <https://www.atf.gov/resource-center/docs/undefined/firearmscommerceannualstatisticalreport2014pdf/download> (reporting 7% of dealers were inspected by ATF).

<sup>249</sup> Documents obtained by the Brady Center to Prevent Gun Violence demonstrate how even in the rare cases when ATF inspects arms dealers, finds serious violations of law, and recommends that their FFLs be revoked, ATF often ultimately does not even initiate proceedings to attempt to revoke the FFL, and allows the dealer to remain in business, selling guns. See Brian Freskos et al., *After Repeated ATF Warnings, Gun Dealers can Count on the Agency to Back Off; Sometimes Firearms Flow to Criminals*, USA TODAY (May 26, 2021), <https://www.usatoday.com/in-depth/news/investigations/2021/05/26/gun-dealers-let-off-hook-when-atf-inspections-find-violations/7210266002/>. See also, BRADY UNITED, *Explore Gun Store Inspection Reports*, GUN STORE TRANSPARENCY PROJECT, <https://gunstoretransparency.org/?table-page=1>.

<sup>250</sup> Freskos, *supra* note 249.

<sup>251</sup> Freskos, *supra* note 249.

<sup>252</sup> *Id.*

<sup>253</sup> Legislation has been introduced in previous sessions of Congress to close this “fire sale loophole,” but it has not passed. See, e.g., *Booker Announces Senate Introduction of Legislation to Close Gun Fire Sale Loophole*, Sept. 9, 2022, accessible at <https://www.booker.senate.gov/news/press/booker-announces-senate-introduction-of-legislation-to-close-gun-fire-sale-loophole>, and Bill at [https://www.booker.senate.gov/imo/media/doc/fire\\_sale\\_loophole\\_closing\\_act.pdf](https://www.booker.senate.gov/imo/media/doc/fire_sale_loophole_closing_act.pdf).

<sup>254</sup> Amit R. Paley, *Gun Seller’s Case Reveals Hurdles of Enforcement Md. Shop’s Decade of Lapses Bring Scrutiny to House Bill*, July 23, 2006, WASH. POST, <https://www.washingtonpost.com/archive/politics/2006/07/23/gun-sellers-case-reveals-hurdles-of-enforcement-span-classbankheadmd-shops-decade-of-lapses-brings-scrutiny-to-house-bills/3ce5f44c-6575-421a-a0e9-48e26537e5de/>.

<sup>255</sup> THE CRIME REPORT, *NRA Official Who Lost License Allowed to Sell Gun Stock*, July 13, 2006, <https://thecrimereport.org/2006/07/13/nra-official-who-lost-license-allowed-to-sell-gun-stock/>.

<sup>256</sup> John Diedrich & Ben Poston, *Ineffective Rules Let Gun Stores Endure*, MILWAUKEE J. SENTINEL (Dec. 15, 2010), <https://archive.jsonline.com/watchdog/watchdogreports/111976219.html/>.

more than one unannounced inspection of a given dealer each year without a warrant.<sup>257</sup> This enables dealers to know when they are essentially free from spot inspections for a year. FOIA also prohibits government authorities from maintaining a centralized database of records; this prevents ATF from using computerized records, forcing them to use outdated, time-consuming methods and making law enforcement far more cumbersome.<sup>258</sup>

**139.** In addition, the sale and purchase of ammunition is largely unregulated.<sup>259</sup> Certain categories of people cannot purchase ammunition.<sup>260</sup> For example, there are age requirements to purchasing ammunition, and one must obtain a license to import, manufacture, or sell ammunition.<sup>261</sup> There is, however, no federal requirement to conduct background checks on buyers of ammunition to determine if they may legally purchase ammunition.

## 7. Special Protections and Immunity for the Gun Industry

**140.** The threat of civil litigation can generally incentivize industries to take reasonable steps to prevent their products or business practices from causing foreseeable risks to human life and well-being. In the 1990s, a series of civil lawsuits resulted in court judgments holding that members of the firearms industry could be liable for negligent business practices that contribute to gun violence and the supply of the criminal gun market.<sup>262</sup> But instead of comprehensively reforming its business practices in response, the gun industry responded by lobbying to pass new gun industry immunity laws to prevent plaintiffs from bringing many types of lawsuits against firearm and ammunition manufacturers and sellers.<sup>263</sup> The United States agreed that such immunity should exist, and obliged by adopting legislation to shield the gun industry from many legal actions seeking accountability.

**141.** In 2005, Congress enacted the Protection of Lawful Commerce in Arms Act (“PLCAA”),<sup>264</sup> a federal law that requires the dismissal, and prohibits the filing, of certain

---

<sup>257</sup> Pub. L. 99-308, 100 Stat. 449 (1986), amending Gun Control Act.

<sup>258</sup> Determining the gun owner of a gun found at a crime scene is a complicated and time-consuming process: The ATF must “sift through hundreds of thousands of paper records, make numerous phone calls to the manufacturer and retail dealer that first sold the weapon, and rely on records kept by federally licensed firearms dealers to attempt to identify the weapon’s owner.” This inefficient system impedes criminal investigations as a “firearms trace can take days, or even weeks.” Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-610 (2011); See Winnie Stachelberg, Arkadi Gerney & Chelsea Parsons, *Blindfolded, and with One Hand Tied Behind the Back* (2013), <https://www.americanprogress.org/article/blindfolded-and-with-one-hand-tied-behind-the-back/>.

<sup>259</sup> See GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, *Ammunition Regulation*, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ammunition-regulation>.

<sup>260</sup> Federal laws disqualifying people from accessing firearms based on certain criminal or other histories also apply to ammunition. See 18 U.S.C. § 922.

<sup>261</sup> 18 U.S.C. § 923(a).

<sup>262</sup> GIFFORDS LAW CENTER, *Gun Industry Immunity*, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/>.

<sup>263</sup> *Id.*

<sup>264</sup> 15 U.S.C. §§ 7901-7903

otherwise-permissible lawsuits brought against manufacturers,<sup>265</sup> sellers,<sup>266</sup> and importers of “qualified products,” meaning firearms, ammunition, or component parts of a firearm or ammunition. Some courts have held that PLCAA provides broad civil immunity to federally licensed manufacturers, dealers, and importers who negligently sell or make guns.<sup>267</sup> PLCAA does provide limited exceptions to allow some civil lawsuits to proceed; the most widely used exception applies to actions in which a manufacturer or seller knowingly violated a state or federal statute, commonly invoked as the “predicate violation” exception.<sup>268</sup> However, this requires victims of gun industry negligence or recklessness to prove a statutory violation of law that no other victims must prove in order to obtain civil justice, and some courts construe this exception narrowly.<sup>269</sup>

**142.** Before PLCAA, the threat of legal accountability led to some reforms by the gun industry, such as Smith & Wesson’s settlement with the U.S. government and several cities in which it agreed to significantly reform its sales, design, marketing, and distribution practices to make gun deaths and injuries less likely.<sup>270</sup> But with the passing of PLCAA and similar state laws, the gun industry is immune from many forms of lawsuits and no longer faces the general accountability that incentivizes all other industries to take reasonable steps to prevent their products from causing foreseeable harms.<sup>271</sup>

**143.** For decades, crime gun data was openly available to researchers and the public and obtainable via the Freedom of Information Act (“FOIA”), which presumptively entitles the public to government data, so long as it does not fall under a FOIA exception to disclosure.<sup>272</sup> Using data about crime guns researchers identified trafficking patterns and determined which gun companies

---

<sup>265</sup> PLCAA defines the term “manufacturer” for these purposes to mean “a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code [18 USCS §§ 921 et seq.].”

<sup>266</sup> PLCAA defines “seller” to mean: (A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code [18 USCS §§ 921 et seq.]; (B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code [18 USCS §§ 921 et seq.]; or (C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level. 15 U.S.C. § 7903(6).

<sup>267</sup> 15 U.S.C. §§ 7901–03.

<sup>268</sup> 15 U.S.C. § 7903(5)(A)(iii)

<sup>269</sup> THE EDUCATION FUND TO STOP GUN VIOLENCE, *Gun Industry Immunity*, <https://efsgv.org/learn/policies/gun-industry-immunity/>.

<sup>270</sup> See *supra* note 195. As part of a settlement that ended several lawsuits, Smith & Wesson agreed to adopt additional safety practices, such as selling safety devices with each handgun, establishing a code of conduct for authorized dealers and distributors, and including a hidden set of serial numbers on the inside of all new guns. See The White House: Office of the Press Secretary, Clinton Administration Reaches Historic Agreement with Smith and Wesson (2000), [https://clintonwhitehouse4.archives.gov/WH/New/html/20000317\\_2.html](https://clintonwhitehouse4.archives.gov/WH/New/html/20000317_2.html). Cities that filed lawsuits against firearms manufacturers and distributors—alleging that their actions had undermined public health and caused those municipalities to incur substantial financial obligations—include Atlanta, Chicago, Gary and New York City. See *City of Atlanta v. Smith & Wesson Corp.*, 543 S.E.2d 16 (Ga. 2001); *City of Chicago v. Beretta U.S.A.*, 213 Ill. 2d 351 (Ill. 2004) 821 N.E.2d 1099; *City of Gary v. Smith & Wesson Corp.*, Ill. 891 N.E.2d 1222 (2003); *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244 (E.D.N.Y. 2005).

<sup>271</sup> See 15 U.S.C. §§ 7901–03..

<sup>272</sup> 5 U.S.C. §552.

sold the most crime guns, and under what circumstances.<sup>273</sup> This evidence was publicly reported, and was effectively used against gun companies in litigation to establish that a small percentage of dealers sell virtually all crime guns.<sup>274</sup> The research demonstrated at the same time that, despite this damning evidence, U.S. gun manufacturers nonetheless continued to choose to use those very dealers to sell their guns, without oversight, seemingly to profit off of the criminal gun market.<sup>275</sup>

**144.** In response to this damaging information, the gun industry lobbied Congress for unprecedented exemptions to FOIA that would shield the public from obtaining or learning about this data.<sup>276</sup> Rather than use this information to regulate or prohibit the sale of guns through high-crime gun selling dealers, the U.S. Congress acceded to the gun lobby and limited the public's access to crime gun data. Congress prohibited the ATF from releasing certain firearm trace data to the public, so it could not be obtained by cities, states, researchers, litigants, and members of the public; prohibited the use of trace data as evidence in civil proceedings; immunized certain gun data from legal process; and restricted such data availability to subpoena or other discovery.<sup>277</sup> This process began in 2003, when the U.S. Congress attached to ATF appropriations legislation the "Tiahrt Amendment," which prohibits ATF from releasing certain information from its firearms trace database to anyone except law enforcement or prosecutors in connection with a criminal investigation.<sup>278</sup> This legislation has worked as intended: it keeps much if not most crime data hidden from the public and severely hinders study and analysis of the sources and movement of guns.<sup>279</sup> Similarly, for many years the "Dickey Amendment" also prevented the U.S. Centers for Disease Control and Prevention ("CDC") from studying gun violence prevention – another

---

<sup>273</sup> *See id.*

<sup>274</sup> Crimes guns can be understood as guns that have been "recovered by law enforcement after being used in a crime, suspected of being used in a crime, or the possession of the gun itself may have been a crime." BRADY CAMPAIGN TO END GUN VIOLENCE, *What is a Crime Gun?*, <https://www.bradyunited.org/program/combating-crime-guns/what-is-a-crime-gun>. In a successful suit against 11 gun manufacturers, the city of Gary alleged that "the manufacturers know of these illegal retail sales of handguns, and know that a small percentage of dealers, including the dealer-defendants here, account for a large portion of illegally obtained handguns." *City of Gary v. Smith Wesson, Corp.*, 801 N.E.2d 1222, 1228 (Ind. 2003).

<sup>275</sup> In Georgia, by example, one gun dealer sold more than 6,000 guns (10% of all crime guns) over five years that were later recovered at crime scenes. That dealer is still in business and supplied by major gun manufacturers. In fact, four gun manufacturers accounted for over half of the recovered crime guns, underscoring their potential in curbing the illicit flow of firearms: Glock (21.1%), Smith & Wesson (13.5%), Taurus (13.0%), and Ruger (7.0%). *See* Carolyn B. Maloney, *Letter to Bureau of Alcohol, Tobacco, Firearms and Explosives from House Oversight and Reform Committee* (2022), <https://int.nyt.com/data/documenttools/house-committee-atf-guns/bcb0abe2fc89407f/full.pdf>; U.S. DEPARTMENT OF JUSTICE, *PART III: Crime Guns Recovered and Traced Within the United States and Its Territories* (2023), at 19 <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download>.

<sup>276</sup> *See* Mayors Against Illegal Guns, *Access Denied: How the Gun Lobby is Depriving Police, Policy Makers, and the Public of the Data We Need to Prevent Gun Violence*, January 2013, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/access-denied-how-gun-lobby-depriving-police-policy-makers-and>.

<sup>277</sup> *See* discussion of Tiahrt Amendments at EVERYTOWN FOR GUN SAFETY, *Repeal Restrictions on Trace Data*, <https://www.everytown.org/solutions/gun-trace-data/>.

<sup>278</sup> Gun Control Act of 1968, Pub. L. No. 112-55, 125 Stat. 609-610.

<sup>279</sup> GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, *Tiahrt Amendments*, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiahrt-amendments/>.



special legislation enacted at the behest of the gun lobby.<sup>280</sup> In 2019, Congress finally reached an agreement to fund gun violence research.<sup>281</sup>

**145.** Finally, the State has deliberately carved out an exception to consumer protection laws for the design, manufacture and sale of firearms. The federal Consumer Product Safety Act, which governs product safety regulation by the Consumer Product Safety Commission, explicitly excludes firearms.<sup>282</sup> As a result, guns are the only consumer products in the U.S. that are not required to include feasible safety features.<sup>283</sup> Numerous life-saving safety features could be required if CPSA oversight were allowed, including magazine disconnect safeties and loaded chamber indicators that could prevent many unintentional shootings with guns mistakenly thought to be unloaded; and internal locks, “smart guns,” and other personalized user features that prevent unauthorized users from firing guns. But the gun industry, unlike every other consumer-oriented industry in the country, is excused from developing and implementing safety features for their lethal products, despite these features having been available for decades and proven to save lives.<sup>284</sup>

## **8. United States Affirmative Support for the Firearms Industry**

**146.** The United States is not simply a passive enabler of reckless gun industry business practices – it has long financially supported the industry as a significant customer. Instead of using its purchasing power to ensure safe gun industry practices, the United States has facilitated the dangerous marketing and sale of firearms such as assault weapons that has contributed to repeated deprivation and violation of human rights.

**147.** The United States is a customer of the firearm industry and therefore provides it with extensive financial support. The U.S. Department of Defense awards contracts to manufacturers for assault rifles and ammunition. During the “War on Terror,”<sup>285</sup> for example, ten major companies received \$40.3 billion worth of small arms related contracts.<sup>286</sup> Between fiscal years 2010 and 2017, 20 federal law enforcement agencies reported spending at least \$38.8 million on firearms, \$325.9 million on ammunition, and \$1.14 billion on tactical equipment, totaling at least

---

<sup>280</sup> See Allen Rostron, *The Dickey Amendment on Federal Funding for Research on Gun Violence: A Legal Dissection*, AMERICAN JOURNAL OF PUBLIC HEALTH (July 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5993413/>.

<sup>281</sup> Rachel Roubein, *Now the government is funding gun violence research, but it's years behind*, WASHINGTON POST, May 26, 2022, accessible at <https://www.washingtonpost.com/politics/2022/05/26/now-government-is-funding-gun-violence-research-it-years-behind/>.

<sup>282</sup> 15 U.S.C. §§ 2051–2089. See also U.S. CONSUMER PRODUCT SAFETY COMMISSION, *Products Under the Jurisdiction of Other Federal Agencies and Federal Links*, <https://www.cpsc.gov/Regulations-Laws--Standards/Products-Outside-CPSCs-Jurisdiction>.

<sup>283</sup> THE EDUCATIONAL FUND TO STOP GUN VIOLENCE, *Justice Denied: The Case Against Gun Industry Immunity* (2013) at 7, <http://efsgv.org/wp-content/uploads/2013/11/Justice-Denied-Report-PDF.pdf>.

<sup>284</sup> U.S. GOVERNMENT ACCOUNTING OFFICE, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented*, Mar. 1991, <https://www.gao.gov/assets/pemd-91-9.pdf>.

<sup>285</sup> U.S. DEPARTMENT OF STATE, *Terrorists and Terrorism*, <https://2001-2009.state.gov/coalition/terr/index.htm>.

<sup>286</sup> AOAV, 2016. Top ten companies awarded US DoD small arms contracts during the War on Terror. [online] Available at: <https://aoav.org.uk/2016/top-ten-companies-awarded-us-dod-small-arms-related-contracts-during-the-war-on-terror/>.

\$1.5 billion.<sup>287</sup> SIG Sauer secured a \$4.5 billion contract to manufacture the U.S. Army's rifles and ammunition for the coming decade.<sup>288</sup>

**148.** In addition to its general support of the firearm industry, the U.S. government has supported the deadly evolution of military-style weapons. The U.S. played a specific and significant role in the evolution of the AR-15 from the military's M16. In 1962, after Colt acquired the manufacturing and marketing rights to the AR-15, Colt received a contract with the Department of Defense's Advanced Research Project Agency to test 1,000 weapons.<sup>289</sup> By the end of 1963, the Army ordered roughly 85,000 AR-15s.<sup>290</sup>

**149.** U.S. government support is significant in at least two ways. One, as a customer of the firearm industry, the State's revenue enables and facilitates the industry's marketing and sales of assault weapons and other guns in irresponsible and dangerous ways. Two, due to its purchasing power, the U.S. can influence and change gun industry practices in a safe and positive way. For example, the U.S. government could require, as a condition for obtaining and retaining contracts, that the gun industry use safe business practices, such as not selling assault weapons to the general public or to minors. But it has chosen not to.

## 9. Gaps in the Federal Regulatory Regime

**150.** As experience in other countries shows,<sup>291</sup> there are many straightforward, widely recognized gun control measures that if adopted by the United States would reduce improper access to and possession of firearms, especially assault weapons, by unfit or dangerous persons, thereby helping to curb the endemic gun violence in this country. For example, the State could promulgate federal laws to:

- Prohibit civilian purchase or possession of assault weapons, or further restrict access to assault weapons by age, mental incapacity, or for certain limited purposes;
- Mandate design safety standards for firearms, to make them less lethal and prevent their use by children, thieves and unauthorized users;
- Require more effective vetting, investigation, testing, training and background checks of would-be gun purchasers, including indicators of dangerousness and unsuitability for firearm possession and established competence;

---

<sup>287</sup> See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, 2021. *Federal Law Enforcement: Purchases and Inventory Controls of Firearms, Ammunition, and Tactical Equipment*, <https://www.gao.gov/assets/gao-21-101sp.pdf>.

<sup>287</sup> See *supra* note 287, *Federal Law Enforcement: Purchases and Inventory Controls of Firearms, Ammunition, and Tactical Equipment*.

<sup>288</sup> Jane Edwards, *Sig Sauer awarded Army Next Generation Squad Weapon production contract*, GOVCON WIRE, <https://www.govconwire.com/2022/04/sig-sauer-awarded-army-next-generation-squad-weapon-production-contract/>.

<sup>289</sup> DEFENSE ADVANCED RESEARCH PROJECTS AGENCY, *M16 Rifle*, <https://www.darpa.mil/about-us/timeline/agile-and-m16>.

<sup>290</sup> Jerad W. Alexander, *From Military to Mainstream: Evolution of the AR-15*, HOWSTUFFWORKS, <https://science.howstuffworks.com/from-military-to-mainstream-evolution-of-AR-15.htm>.

<sup>291</sup> See *infra* Part VI.C.

- Requiring background checks for all gun sales, including by private sellers, especially when assault weapons are involved;
- Require a waiting period before all firearms sales;
- Ensuring that states submit all data regarding the prohibited purchaser categories to the FBI's NICS database, especially data on mental incapacity and criminal activity, so that existing checks are effective;
- Require registration of all legally purchased guns;
- Require purchasers to obtain a license or permit to buy or possess a gun;
- Require gun owners to obtain a license or permit to carry a gun in public spaces;
- Require record-keeping for guns sold by "private persons" not just dealers;
- Authorize the removal of guns from owners in cases where certain "red flags" exist indicating that the person is a danger to themselves or others;
- Place limits on the number of guns one person can buy at any one time, over a short period of time, and in total;
- Prohibit the sale of high-capacity magazines of the type used in automatic and semi-automatic weapons;
- Enforce laws to prevent the sale of guns that can be easily modified to fire automatically to the public, and prohibit the sale of devices that enable such conversion;
- Allow gun companies to be fully subject to civil liability and accountability, like other industries and people;
- Require safe sales practices and training for gun companies in their sale and distribution of firearms;
- Effectively enforce laws to revoke licenses and launch prosecutions of firearms dealers, distributors and manufacturers who violate the law;
- Prohibit false, misleading, or risky marketing of assault weapons and other firearms;
- Provide public access to crime gun data.

**151.** Because of the numerous deficiencies in the federal regulatory regime, unfit or dangerous individuals can obtain guns - or even an arsenal of guns -- with relative ease. While some states have stronger measures to cover these gaps, Florida is not among them.

### ***B. Florida State Controls on the Purchase and Possession of Firearms by Civilians***

**152.** This section begins by summarizing the status of Florida law relating to guns prior to 2018, when the Parkland Gun Massacre took place. It then reviews the minimal legal reforms enacted in the wake of that tragic event. Although post-2018 reforms led to some improvements, the Florida regulatory framework today is scarcely more protective than the permissive regime it replaced.

**153.** Though officially nicknamed the "Sunshine State," Florida has also been called the "Gunshine State" for its abundance of firearms, loose gun restrictions, and strong relationship with the National Rifle Association ("NRA").<sup>292</sup>

---

<sup>292</sup> David Smiley, *Florida returns to its 'Gunshine State' roots a year after Parkland*, TAMPA BAY TIMES, April 12, 2019, <https://www.tampabay.com/florida-politics/2019/04/12/florida-returns-to-its-gunshine-state-roots-a-year-after-parkland/>.

**154.** Florida was the first state in the country to enact an NRA-supported law which deprived law enforcement of the authority to prevent dangerous people from carrying concealed handguns in public and required that authorities issue concealed carry permits to people who met a minimal set of objective criteria, no opportunity for law enforcement to investigate whether the person posed a danger.<sup>293</sup>

**155.** In 2005, Florida enacted the first-in-the-nation “Stand Your Ground” law favored by the NRA. The law altered longstanding common law restrictions on using deadly force in public spaces by allowing use of deadly force rather than obligating retreat to avoid a potentially fatal conflict.<sup>294</sup> The law received international notoriety when it was invoked by George Zimmerman, who was found not guilty of fatally shooting an unarmed African-American teenager, Trayvon Martin.<sup>295</sup> One study found Stand Your Ground laws associated with an 8% increase in homicides, equating to 600 additional deaths in states with such laws.<sup>296</sup> Such laws also have been shown to have racial disparities, with killings of African-Americans and Latinos in Florida two times more likely to result in no conviction than killings of Whites.<sup>297</sup>

**156.** In 2011, Florida enacted another first-in-the-nation law favored by the NRA that prohibited health care providers from providing routine safety information about firearms to patients; the law was later struck down by the courts for violating the First Amendment to the U.S. Constitution.<sup>298</sup>

**157.** To prevent embarrassing public reporting on crimes committed by persons allowed to carry concealed firearms Florida enacted a law that specially exempt concealed weapon data from public disclosure.<sup>299</sup>

---

<sup>293</sup> George Volsky, *Guns in Florida: This Week It Becomes a Lot Easier to Bear Arms Legally*, NEW YORK TIMES, (Sept. 27, 1987), <https://www.nytimes.com/1987/09/27/us/guns-in-florida-this-week-it-becomes-a-lot-easier-to-bear-arms-legally.html>.

<sup>294</sup> See NATIONAL CONFERENCE OF STATE LEGISLATURES, *Self-Defense and ‘Stand Your Ground,’* <https://www.ncsl.org/civil-and-criminal-justice/self-defense-and-stand-your-ground>; see generally GIFFORDS LAW CENTER, *Stand Your Ground in Florida*, <https://giffords.org/lawcenter/state-laws/stand-your-ground-in-florida/>.

<sup>295</sup> Greg Botelho and Holly Yan, *George Zimmerman found not guilty of murder in Trayvon Martin’s death*, CNN (July 14, 2013), <https://www.cnn.com/2013/07/13/justice/zimmerman-trial/index.html>; UN News, UN experts urge United States to wrap up review of Trayvon Martin case, examine laws, September 3, 2013, <https://news.un.org/en/story/2013/09/448112>.

<sup>296</sup> Cheng Cheng and Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?* JOURNAL OF HUMAN RESOURCES, July 2018, <https://jhr.uwpress.org/content/48/3/821>.

<sup>297</sup> Nicole Ackerman, et. al., *Race, law, and health: Examination of ‘Stand Your Ground’ and defendant convictions in Florida*, SOCIAL SCIENCE AND MEDICINE (October 2015), <https://www.sciencedirect.com/science/article/abs/pii/S0277953615300642?via%3Dihub>.

<sup>298</sup> Ben Guarino, *Appeals court strikes down Florida ‘docs v. Glocks’ law that barred physicians from asking about gun ownership*, WASHINGTON POST (Feb. 17, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/17/appeals-court-strikes-down-fla-docs-v-glocks-law-that-barred-physicians-from-asking-about-gun-ownership/>.

<sup>299</sup> FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, *Public Records Exemption for Concealed Weapons*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Public-Records-Exemption-for-Concealed-Weapons>.

**158.** After the massacre at the Pulse nightclub in Orlando, Florida in 2016 that killed 49 people and wounded 53, Florida rejected efforts to strengthen gun laws, including a proposed ban assault weapons.<sup>300</sup>

**159.** At the state level, Florida prior to 2018 did little to control or regulate the sale or possession of firearms. In February 2018, a U.S. gun violence prevention advocacy group that rates state gun laws gave Florida an “F.”<sup>301</sup> At the time, Florida gun laws permitted 18-year-olds to legally purchase firearms; lacked an extreme risk protection order law that could authorize taking guns away from certain people who posed a risk with guns; lacked a three-day waiting period on purchases of firearms; and did not ban bump stocks, an accessory used to make semiautomatic rifles operate automatically.<sup>302</sup> The state did not address the Charleston Loophole, thus allowing gun sales to proceed after three business days regardless of whether the background check was completed.<sup>303</sup>

**160.** Immediately following the Parkland Gun Massacre, Florida legislators rejected the appeal of the Parkland survivors and others to adopt a comprehensive package of gun control legislation, including an assault weapons ban.<sup>304</sup> Instead, they enacted a much weaker set of measures to strengthen the deficient legal regime in place.<sup>305</sup> This package included raising the minimum age to purchase any firearm from dealers to 21 (from 18); requiring a three-day waiting period on gun purchases from dealers; and closing the Charleston Loophole, which allowed individuals to purchase guns if a background check had not been completed after three days.<sup>306</sup>

**161.** While the post-Parkland enactment of the Marjory Stoneman Douglas High School Public Safety Act<sup>307</sup> addressed some of these aforementioned regulatory deficiencies, Florida gun laws remain weak.<sup>308</sup> Only the minimal federally-mandated background checks are required to purchase a gun; assault weapons are legal for civilian purchase, with no additional scrutiny required; no licensing or permitting is required to buy or own a gun; no ban on large capacity magazines exist;

---

<sup>300</sup> Jake Stofan, *Criminology experts claim latest mass shooting won't affect Florida gun laws*, WCTV (Oct. 3, 2017) <https://www.wctv.tv/content/news/Las-Vegas-mass-shooting-incites-new-calls-for-gun-control-449324153.html>.

<sup>301</sup> Katie Zezima, *Florida Among 25 states to receive an 'F' in gun-control group's annual scorecard*, WASHINGTON POST (February 28, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/02/28/florida-among-25-states-to-receive-an-f-in-gun-control-groups-annual-scorecard/>.

<sup>302</sup> *Id.*

<sup>303</sup> GIFFORDS LAW CENTER, *Florida Gun Laws*, <https://giffords.org/lawcenter/gun-laws/states/florida/>.

<sup>304</sup> For example, Florida legislators rejected an assault rifle ban. Avery Anapol, *Florida lawmakers reject motion to consider bill that would ban assault rifles*, THE HILL (February 20, 2018, 4:12 PM), <https://thehill.com/homenews/state-watch/374724-florida-lawmakers-reject-motion-to-consider-bill-that-would-ban-assault/>.

<sup>305</sup> 2018 Fla. Laws 10, 18– 19 (codified at Fla. Stat. § 790.065(13)). See also Sophia Pargas, *Here's How Florida's Gun Purchasing Laws Have Changed Since the Parkland Shooting*, NBC (July 27, 2022), <https://www.nbcmiami.com/news/local/heres-how-floridas-gun-purchasing-laws-have-changed-since-the-parkland-shooting/2820394/>.

<sup>306</sup> GIFFORDS LAW CENTER, *Florida Gun Laws*, <https://giffords.org/lawcenter/gun-laws/states/florida/>.

<sup>307</sup> See discussion *infra* para. 160.

<sup>308</sup> In 2023, Florida's gun laws were scored a “C-” by the same gun violence prevention advocacy group that had rated them an “F” in 2018. See GIFFORDS LAW CENTER, *Annual Gun Law Scorecard for 2023*, <https://giffords.org/lawcenter/resources/scorecard/>.

no strong concealed carry law exists.<sup>309</sup> Even though Florida voters overwhelmingly approved of a state Constitutional amendment in 1998 to allow counties to mandate background checks for private gun sales, Florida continues to allow unlicensed private gun sales without background checks, and few counties mandate universal background checks.<sup>310</sup>

**162.** Not long after the post-Parkland massacre reforms were enacted, Florida took steps to loosen existing guns laws rather than strengthen them. For example, in 2023, Florida weakened its already lax concealed carry permitting system by eliminating the requirement to always have a permit when carrying hidden handguns in public.<sup>311</sup> The governor of Florida and Florida legislators have attacked the 2018 law prohibiting individuals under the age of 21 from buying firearms, attempting to undo one of Florida's few steps forward.<sup>312</sup> In 2023 Florida also enacted a law prohibiting credit card companies or other business from assigning transaction codes for firearms, making monitoring of suspicious gun purchases difficult.<sup>313</sup>

**163.** The weak regulatory regime in the United States and Florida does not only place people in the U.S. and Florida at risk, but it endangers and harms others in the region. South Florida has gained notoriety as a source of many guns trafficked to nations in the Caribbean and Central America.<sup>314</sup>

**164.** Despite the Parkland-inspired 2018 reforms, Florida gun laws today continue to lack many of the straightforward, widely recognized gun control measures that if adopted would further reduce improper access to and possession of firearms, especially assault weapons, by unfit or dangerous persons, thereby helping to curb gun violence in the state towards the future. For example, Florida has failed to enact measures that:

- Require gun purchasers and owners to obtain a license;
- Require background checks for all gun purchases;
- Require additional vetting of prospective gun purchasers beyond instant background checks;
- Require record-keeping of private owned firearms and their owners;

---

<sup>309</sup> GIFFORDS LAW CENTER, *Florida Gun Laws*, accessible at <https://giffords.org/lawcenter/gun-laws/states/florida/>.

<sup>310</sup> *Gun-show loophole laws on the books in Florida, but ignored*, TAMPA BAY TIMES (April 6, 2013), <https://www.tampabay.com/news/publicsafety/gun-show-loophole-laws-on-the-books-in-florida-but-ignored/2113376/>.

<sup>311</sup> James Call, *Gov. Ron DeSantis quietly signs permitless carry bill within hours of it landing on his desk*, TALLAHASSEE DEMOCRAT (April 3, 2023), <https://www.tallahassee.com/story/news/politics/2023/04/03/guns-and-florida-gov-desantis-signs-permitless-carry-bill-into-law/70076001007/>.

<sup>312</sup> *Appeals court upholds Florida's 21-year age requirement to buy guns*, NBC NEWS (Mar. 9, 2023), <https://www.nbcnews.com/politics/politics-news/court-upholds-floridas-21-year-age-requirement-buying-guns-rcna74288>.

<sup>313</sup> FLORIDA SENATE, CS/SB 214, Sales of Firearms and Ammunition, <https://www.flsenate.gov/Session/Bill/2023/214>;

<sup>314</sup> UNODC, *Haiti's criminal markets: Mapping Trends in Firearms and Drug Trafficking*, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/[https://www.unodc.org/documents/data-and-analysis/toc/Haiti\\_assessment\\_UNODC.pdf](https://www.unodc.org/documents/data-and-analysis/toc/Haiti_assessment_UNODC.pdf); Will Freeman, *Stopping Illegal Gun Trafficking Through South Florida*, COUNCIL ON FOREIGN RELATIONS (April 25, 2023), <https://www.cfr.org/blog/stopping-illegal-gun-trafficking-through-south-florida>; Department of Justice, *Three Members of Caribbean Arms Trafficking Ring Plead Guilty* (April 13, 2023), <https://www.justice.gov/usao-mdfl/pr/three-members-caribbean-arms-trafficking-ring-plead-guilty>.

- Require any person who carries a concealed firearm in public to first obtain a permit from law enforcement based on a valid need to carry;
- Mandate design safety standards on firearms;
- Prohibit or further regulate the sale and possession of assault weapons;
- Prohibit or regulate large capacity ammunition magazines;
- Prohibit gun purchases by people with assault or other violent misdemeanor convictions;
- Prohibit staff or other permit holders from carrying guns in K-12 schools;
- Require safe sales and marketing practices by the gun industry;
- Restrict the sales or purchases of multiple firearms.<sup>315</sup>

**165.** Florida has other problematic laws on the books that complicate the panorama of gun control and accountability for gun violence. First, a Florida law enacted by the legislature “finds” “that the unlawful use of firearms and ammunition, rather than their lawful manufacture, distribution, or sale, is the proximate cause of injuries arising from their unlawful use.”<sup>316</sup> Although the law expressly allows certain actions against gun companies, it does not expressly allow negligence suits. This “finding” is directly contrary to the general law of Florida, and elsewhere in the United States, as recognized by courts and as it applies to any other industry or activity. Proximate cause in liability cases in Florida and elsewhere in the United States is usually determined by courts, based on the facts of the case, and an unlawful act – including a criminal shooting -- is generally not deemed a superseding cause of harm if it is foreseeable. Thus, if a gun dealer or manufacturer negligently contributes to a criminal shooting, such as by negligently selling or distributing the gun to enable criminal possession, it can be deemed a legal cause of the subsequent criminal shooting. Indeed, before Florida enacted this special protection law several courts had held that gun companies could be liable for harm caused by their negligent sales when that negligence resulted in a criminal.<sup>317</sup> But this “finding” purports to reverse that rule for gun companies.

**166.** Florida Statute § 790.331(2) similarly prohibits any legal action against a firearms or ammunition manufacturer, distributor or dealer, or firearms trade association, on behalf of Florida or its agencies.<sup>318</sup> No political subdivision or agency of the state may sue for or recover from a firearm or ammunition manufacturer, distributor or dealer, or firearms trade association, damages, abatement, or injunctive relief in any case that arises out of or results from the lawful design, marketing, distribution, or sale of firearms or ammunition to the public.<sup>319</sup>

**167.** If and when a lawsuit is unsuccessfully brought against gun industry actors for the harms caused by firearms, Florida Statute § 790.331(2) establishes that the defendant may recover all resulting expenses, including attorney’s fees, costs and compensation for loss of income, from the party bringing the action:<sup>320</sup> “[in] any civil action where the court finds that the defendant is immune as provided in this section, the court shall award the defendant all attorney’s fees, costs

---

<sup>315</sup> *Id.*

<sup>316</sup> Fla. Stat. § 790.331(1).

<sup>317</sup> *See, e.g., Coker v. Wal-Mart*, 642 So. 2d 774 (Fla. Dist. Ct. App. 1994); *Kitchen v. K-Mart*, 697 So. 2d 1200 (Fla. 1997).

<sup>318</sup> Fla. Stat. § 790.331(2).

<sup>319</sup> Fla. Stat. § 790.331(3).

<sup>320</sup> Fla. Stat. § 790.331(6);

and compensation for loss of income, and expenses incurred as a result of such action.”<sup>321</sup> This provision, working in concert with the federal PLCAA, has deterred parties from filing lawsuits attempting to hold manufacturers accountable for the harm caused by their firearms in Florida, especially given that a similar statute in Colorado was used to drive the parents of a mass shooting victim into bankruptcy after they brought an unsuccessful lawsuit against arms companies.<sup>322</sup> In Colorado in 2015, family members of victims of the Aurora, Colorado movie theater gun massacre sought to hold gun industry actors liable for their conduct and lost.<sup>323</sup> As a result, they were ordered to pay the defendants litigation costs, in the amount of \$203,001.86.<sup>324</sup> The attorneys’ fee award drove the family into bankruptcy.

**168.** These and other legal obstacles like PLCAA made holding gun industry actors accountable for the Parkland Gun Massacre an exercise in futility. In 2018, the parents of two other Parkland victims, Jaime Guttenberg and Alex Schachter, filed an action seeking declaratory relief from a Florida state court.<sup>325</sup> In order to avoid the risk of financial liability of bringing and losing an action against Smith & Wesson in light of § 790.331(2), they asked the court to declare whether Florida and/or federal statutes barred their suit as a matter of law.<sup>326</sup> The Florida court refused to issue the requested declaratory judgment.<sup>327</sup> Some families and victims of gun violence have undoubtedly decided they could not risk bringing a lawsuit against gun manufacturers or dealers out of fear of the crippling financial liability that would ensue if they could not overcome the significant legal obstacles posed by Florida and federal law.<sup>328</sup>

---

<sup>321</sup> Fla. Stat. § 790.331(6);

<sup>322</sup> See Jesse Paul, *Colorado law makes it very difficult and financially perilous to sue the gun industry. That’s likely to change*, COLORADO SUN (Feb. 21, 2023), <https://coloradosun.com/2023/02/21/gun-lawsuits-colorado-law-change/>.

<sup>323</sup> *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216 (D. Colo. 2015).

<sup>324</sup> *Phillips v. Lucky Gunner, LLC*, Civ. No. 14-cv-02822-RPM (D. Colo., June 17, 2015).

<sup>325</sup> Filing of Petitioners, *Frederic Guttenberg et al. v. Smith & Wesson Corp et. al*, Case No. 18-12475(26) (17th Judicial Circuit Florida, May 23, 2018), accessible at

[https://www.browardclerk.org/Web2/WebForms/Document.aspx?CaseID=MTAwNjcxMTE%3dTl1quCMnso%3d&CaseNumber=CACE18012475&FragmentID=MzI0MjExODA%3d-aQh5DxphpTg%3d&DtFile=05/23/2018&DocName=Complaint+\(eFiled\)&PgCnt=13&UserName=&UserType=ANONYMOUS](https://www.browardclerk.org/Web2/WebForms/Document.aspx?CaseID=MTAwNjcxMTE%3dTl1quCMnso%3d&CaseNumber=CACE18012475&FragmentID=MzI0MjExODA%3d-aQh5DxphpTg%3d&DtFile=05/23/2018&DocName=Complaint+(eFiled)&PgCnt=13&UserName=&UserType=ANONYMOUS).

<sup>326</sup> *Id.*, para. 39.

<sup>327</sup> *Frederic Guttenberg et al. v. Smith & Wesson Corp et. al*, Case No. 18-12475(26) (17th Judicial Circuit Florida, November 21, 2019), accessible at <https://www.nssf.org/wp-content/uploads/2019/11/SWmotiontodismiss2Acomplaint.pdf>.

<sup>328</sup> See, e.g., *City of New York v. Beretta*, 524 F.3d 384 (2d Cir. 2008) (dismissing lawsuit against gun manufacturers alleging negligent supply of criminal gun market as barred by PLCAA); *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008) (same); *Adames v. Sheehan*, 909 N.E.2d 742 (Ill. 2009) (dismissing products liability for unintentional shooting of child that was preventable by safety features as barred by PLCAA); *Travieso v. Glock*, 526 F. Supp. 3d 533 (D. Az. 2021) (same); *In re Academy, Ltd.*, 625 S.W.3d 314 (Tex. 2021) (dismissing lawsuit by victims of Sutherland Springs massacre for allegedly illegal sale of assault weapon as barred by PLCAA); *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 2022 U.S. Dist. Lexis 178496 (D. Mass. 2022) (appeal pending) (dismissing lawsuit against gun manufacturers alleging negligent supply of criminal gun market as barred by PLCAA); *Estate of Charlot v. Bushmaster Firearms*, 628 F.Supp.2d 174 (D.D.C. 2009) (dismissing lawsuit by victims of D.C. sniper shootings against manufacturer of assault weapon as barred by PLCAA); *Jefferies v. District of Columbia*, 916 F.Supp.2d 42 (D.D.C. 2013) (dismissing lawsuit against gun manufacturer as barred by PLCAA); *Phillips v. Lucky Gunner*, 84 F.Supp.3d 1216 (D. Colo. 2015) (lawsuit by victims of Aurora, Colorado movie theater mass shooting dismissed as barred by PLCAA and Colorado immunity law; victims later ordered to pay gun company over \$200,000 in attorneys’ fees for bringing suit); *Ileto v. Glock*, 565 F.3d 1126 (9<sup>th</sup> Cir. 2009) (victims of spree shootings lawsuit against gun manufacturer dismissed as barred by PLCAA); *Gilland v. Sportsmen’s Outpost*,



### ***C. U.S. Gun Laws Compared to International Norms on Firearms Regulation***

**169.** Gun violence is not a problem in search of a solution; the solutions to protect human life from the risks posed by firearms are well-established, well-known, and virtually universally applied by countries in the world and the OAS region. The United States simply refuses to join the world community in elevating human rights over gun rights.

**170.** Compared to the gun policy norms set forth in the International Small Arms Control Standard (ISACS), as well as the norms found amongst the 35 OAS countries and G10 countries (U.S., Canada, Germany, Switzerland, Sweden, France, Italy, Belgium the Netherlands, the U.K. and Japan), the United States is a clear outlier with respect to its lax laws regulating civilians' access to firearms.<sup>329</sup> The U.S. deviates from internationally-practiced, common-sense firearms regulations. Below, comparison is focused on three key areas that could have prevented the Parkland gun massacre and prevented Joaquin's death: Licensing requirements, minimum age requirements, and the availability of assault weapons.

**171.** In accordance with the ISACS, both OAS and G10 countries uniformly require civilians to obtain a license from the competent licensing authority to purchase a firearm. These licensing requirements include mental health background checks – frequently certified by a professional – and the provision of a genuine reason to own a firearm. The genuine reasons to own a firearm are commonly stipulated by law; invoking “self-defense” or “personal protection” as a justification merits proof subject to evaluation by the licensing authority.

**172.** In most OAS countries that permit owning firearms for self-defense (including Belize, Chile, Colombia, Cuba, Dominican Republic, Mexico, Paraguay, St. Lucia, St. Vincent & Grenadines and Venezuela), the competent authorities must verify the justification with supporting documents. In Venezuela, for example, applicants for permits to carry a firearm for personal defense require a “sworn declaration, certified by a notary, in which the applicant explains in detail the circumstances of risks and vulnerability which affect him and on the basis of which he should be granted a permit to carry firearms for his own personal defense or that of his goods and family.”<sup>330</sup> In other OAS countries (i.e., Bolivia and Costa Rica), justifying a firearm for self-defense depends on the existence of an emergency. In Bolivia, licenses for a private firearm for personal defense require a state of “extraordinary insecurity,” which refers to situations where

---

*Inc.*, 2011 Conn. Super. LEXIS 1320 (May 26, 2011) (dismissing lawsuit against gun dealer as barred by PLCAA); *Bannerman v. Mt. State Pawn, Inc.*, 2010 U.S. Dist. LEXIS 145292 (N.D.W.V. 2010)(same); *Noble v. Shawnee Gun Shop*, 409 S.W.3d 476 (Mo. App. 2013) (same). See generally Center for American Progress, *Immunizing the Gun Industry: The Harmful Effect of the Protection of Lawful Commerce in Arms Act*, Jan. 15, 2016, accessible at <https://www.americanprogress.org/article/immunizing-the-gun-industry-the-harmful-effect-of-the-protection-of-lawful-commerce-in-arms-act/#:~:text=Jan%2015%2C%202016-.Immunizing%20the%20Gun%20Industry%3A%20The%20Harmful%20Effect%20of%20the%20Protection.seekin%20to%20hold%20it%20accountable>.

<sup>329</sup> U.N. CASA, June 11, 2015, International Small Arms Control Standard (ISACS) 03.30:2015IV1.0.

<sup>330</sup> See Venezuela's 2014 'Permit to Carry Firearms for Personal Defence (Permiso de Porte de Arma para Defensa Personal).' Decree No. 881, promulgating Regulations for the Law on Disarmament and Control of Firearms and Ammunition; Title III, Chapter II, § I (Article 42), pp. 6-7. Caracas: Official Gazette of the Bolivarian Republic of Venezuela No. 6.129.

“people are exposed to unusual risks, be this by their job, possession of goods, custody and transfer of valuables.”<sup>331</sup>

**173.** The U.S., on the other hand, is the only nation in which civilians in many states simply have to pass a quick criminal background check to purchase a firearm, with no other questions asked – except in those states that require some additional vetting – and no statement of need or reason to own or buy any firearm (or 100 firearms).<sup>332</sup> Federal U.S. law and the law of most states (including Florida) do not require a reason, or training, or even a permit to carry a gun in public places.

**174.** At least 31 OAS countries require mental health background checks in order to purchase a firearm. Of those 31 countries, 16 require a medical certificate by a medical professional certified by the competent ministry or department. In the absence of a medical certificate, at least 14 OAS countries require an evaluation of the applicant’s mental fitness and good character by the Licensing Authority. While Haiti, Honduras, and Suriname also require background checks, mental health background checks are not specified in national legislation.<sup>333</sup>

**175.** At least twenty-nine OAS countries require the provision of a genuine reason to own a firearm.<sup>334</sup> In all G10 countries except for the U.S., licensing requirements include mental health background checks and the provision of a genuine reason to own a firearm.<sup>335</sup>

**176.** While the ISACS require a minimum age of 18 for acquiring a firearm,<sup>336</sup> in line with U.S. law and common U.S. state practice, in the OAS, 10 states require a minimum age higher than 18.<sup>337</sup> Argentina, Bolivia, El Salvador, Nicaragua, and St. Vincent & the Grenadines set the minimum age at 21 years, while Panama has a minimum age of 22 years to purchase a firearm.

---

<sup>331</sup> See Supreme Decree No. 2175, Regulation of the Act No. 400 on the Control of Firearms, Ammunition, Explosives and other Related Materials.

<sup>332</sup> Some states have enacted legislation that goes beyond federal law: 21 states and the District of Columbia have expanded mandatory background checks to gun sales from unlicensed sellers. Universal background checks at the point of sale for all sales of all firearms, whether they are purchased from a licensed or an unlicensed seller, are required in 14 states (California, Colorado, Connecticut, Delaware, Maryland, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia and Washington) and the District of Columbia. See GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, *Universal Background Checks*, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/#:~:text=Fourteen%20states%20>.

<sup>333</sup> See Alpers, Philip, Miles Lovell and Michael Picard, *Guns in Brazil: Gun Owner Background Checks*. Sydney School of Public Health, The University of Sydney, 2002, GunPolicy.org, <https://tinyurl.com/OAS-background-checks>.

<sup>334</sup> See Alpers, Philip, Miles Lovell and Michael Picard, *Guns in Brazil: Genuine Reason Required for Firearm Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/OAS-genuine-reason>.

<sup>335</sup> See Alpers, Philip and Michael Picard, *Guns in Japan: Gun Owner Background Checks*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/G10-mental-health>; Alpers, Philip and Michael Picard, *Guns in Japan: Genuine Reason Required for Firearm Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/G10-genuine-reason>.

<sup>336</sup> U.N. CASA, June 11 2015, International Small Arms Control Standard (ISACS) 03.30:2015(E)V1.0, Section 8.2.4.2.1.

<sup>337</sup> See Alpers, Philip, Miles Lovell and Michael Picard, *Guns in Brazil: Minimum Age for Firearm Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/OAS-minimum-age>.

Four countries—including Barbados, Brazil, Trinidad & Tobago, and Venezuela—set their minimum age to 25 years.<sup>338</sup>

**177.** All OAS and G10 countries restrict access to assault weapons in some way – except for the U.S. These restrictions take place either through adjustments in the licensing requirements according to the firearms’ level of risk or through a prohibition on civilians’ access to assault weapons.<sup>339</sup> In the G10 countries, for example, it is exceedingly difficult to obtain an assault weapon. Amongst the OAS countries, civilians must undergo licensing requirements unique to the acquisition of an assault weapon. The U.S. is the only country in which civilians can purchase an assault weapon without any form of license.<sup>340</sup>

**178.** Many countries categorize their firearms in accordance with their risk factors and legal classification and require different licenses corresponding to the firearms’ level of risk. In this respect, the U.S. is the only country amongst both OAS and G10 states to permit civilian access to assault weapons in the absence of a license.<sup>341</sup>

**179.** The ability of a 19-year-old to obtain an assault weapon, such as an AR-15, is unique to the U.S. and would be prohibited in most countries – either due to an absolute prohibition on civilians’ access to AR-15s or due to heightened minimum age and licensing requirements for such an assault weapon.<sup>342</sup>

**180.** Taken together – especially in the absence of firearms licenses and licensing requirements evaluating an individual’s risk for public safety – the U.S.’s gun policies substantially differ from both OAS and G10 country norms on firearms regulation. The U.S.’s lax gun laws, combined with the unparalleled degree of immunity enjoyed by the gun industry, indicate the appalling negligence

---

<sup>338</sup> *Id.*

<sup>339</sup> For a comparison on the regulation of semi-automatic assault weapons in OAS countries *see* Alpers, Philip, Miles Lovell and Michael Picard, *Guns in Brazil: Regulation of Semiautomatic Assault Weapons*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/OAS-semi-automatic>. Information is missing for the Dominican Republic, Cuba, Grenada, Haiti, Jamaica, Paraguay, Peru, Suriname and St. Vincent & Grenadines. For a comparison on the regulation of semi-automatic assault weapons in the G10 countries *see* Alpers, Philip, Miles Lovell, and Michael Picard, *Guns in Belgium: Regulation of Semiautomatic Assault Weapons*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/G10-semiautomatic-weapons>.

<sup>340</sup> *See supra* note 341 for an overview of licensing requirements in G10 and OAS countries. *See supra* note 339 for an overview of the prohibition of assault weapons in the G10 and OAS countries.

<sup>341</sup> In all OAS countries, except for the U.S., civilians must acquire a license to purchase a firearm. *See* Alpers, Philip, Amélie Rossetti and Leonardo Goi, *Guns in Peru: Gun Ownership and Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/OAS-licensing-requirements>. Similarly, licensing is required in all G10 countries, meaning that the U.S. is the only country where civilians can buy firearms without undergoing mandatory licensing. *See* Alpers, Philip and Michael Picard, *Guns in Japan: Gun Ownership and Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/G10-licensing-requirements>.

<sup>342</sup> *See id.* for an overview of licensing requirements in OAS and G10 countries. For an overview of minimum age requirements in G10 countries, *see* Alpers, Philip and Michael Picard, *Guns in Japan: Minimum Age for Firearm Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/G10-minimum-age>. For an overview of minimum age requirements in OAS countries, *see* Alpers, Philip, Miles Lovell and Michael Picard, *Guns in Brazil: Minimum Age for Firearm Possession*, Sydney School of Public Health, The University of Sydney, 2022, GunPolicy.org, <https://tinyurl.com/OAS-min-age>.

and disregard given to respecting, protecting, and fulfilling the governments human rights obligations, which include the right to life.

## V. INTER-AMERICAN HUMAN RIGHTS LAW: DUE DILIGENCE AND ADMISSIBILITY

**181.** The United States of America has failed to discharge its duty to prevent gun violence on its territory and thus protect Petitioners from predictable gun massacres like the one in which Joaquin Oliver lost his life. Because of the deficient federal and state regulatory regimes just reviewed, the State likewise has not implemented the remedies required to hold gun industry actors like Smith & Wesson, as well as the United States, accountable for the unchecked manufacture, marketing, and sale of the assault weapon used by the Parkland shooter to murder Joaquin (and 16 other persons). As a result, the teenage Parkland shooter, with his long record of violence and mental illness, was able to legally purchase the military-style assault rifle he used to carry out the massacre, with no legal recourse thereafter available against the manufacturer (Smith & Wesson), the seller of the weapon, or the State, for its failure to regulate guns.

**182.** In this Part, we begin with an overview of the United States' due diligence responsibilities under Inter-American human rights law, before turning to the analysis supporting the admissibility of this Petition. First and foremost, it is critical that the Petition be granted expedited review pursuant to Article 29(2) of the Inter-American Commission's Rules of Procedure. Expedited processing is required here because, so long as the State does not adequately conduct the due diligence required with respect to the constant gun violence, it is not of question of *whether* other innocent people will soon suffer the same fate as the Olivers, but *when* and *how many*. The sooner the Commission admits and proceeds to evaluate the merits of this case under the American Declaration on the Rights and Duties of Man, the sooner it can contribute substantively to addressing the dire panorama of gun violence and repairing it.

### A. *The Due Diligence Principle in Inter-American Law*

**183.** Article 1 of the American Declaration safeguards a person's right to life and security, while Article 4(1) of the American Convention recognizes the right to life of "every person." The Inter-American Commission has established that in cases involving private actor violence, specifically in relation to American Declaration Article 1's right to life, the "evolving standards [under international law] related to the due diligence principle are relevant to interpret the scope and reach of the State's legal obligations[.]"<sup>343</sup> In the Inter-American system of human rights, then, cases of violence "perpetrated by private actors require an *integrated analysis* [under international norms] of the State's legal obligations under the American Declaration to act with due diligence to prevent, investigate, sanction and offer remedies."<sup>344</sup> International law in this context refers not only to the American Convention and other pertinent OAS instruments, but also to the corresponding human rights norms developed by the United Nations.<sup>345</sup>

---

<sup>343</sup> *Lenahan v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (July 21, 2011), at ¶ 130.

<sup>344</sup> *Id.* (emphasis added).

<sup>345</sup> Inter-Am. Comm'n H.R., Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, *Thematic Report on Business and Human Rights: Inter-American Standards*, OEA/Ser.L/V/II (Nov. 2019) at 54.

**184.** In other words, with respect to the right to life and other fundamental human rights, the due diligence principle acts as a “benchmark” for determining when an OAS Member State is obligated “to prevent and respond to the acts or omissions of private actors.”<sup>346</sup> In this regard, the Inter-American Court of Human Rights has found that inherent in the protection of this right is the State’s duty to adopt “the necessary measures to create an *adequate regulatory framework* that deters any threat to [said] right to life.”<sup>347</sup> The Commission, in turn, has affirmed that this same duty “encompasses the organization of the entire state structure—including the State’s legislative framework, public policies, law enforcement machinery and judicial system - to adequately and effectively prevent and respond to [private actor] problems.”<sup>348</sup> Crucially, this obligation arises whenever a State is “aware of a situation of real and imminent danger for a specific individual or group of individuals and has reasonable possibilities of preventing or avoiding that danger.”<sup>349</sup>

**185.** In its *Report on Citizen Security and Human Rights*, this Commission acknowledged that all OAS Member States are bound to protect the rights to life and personal security of persons within their jurisdiction from the human rights abuses committed by private parties, including companies.<sup>350</sup> A State thus violates its due diligence obligations when it “fails to adopt effective measures of protection against the actions of [such] private parties who threaten or violate the right to life of persons subject to its jurisdiction.”<sup>351</sup> Said measures include “effective prevention plans and programs whose objective is to stop the spread of violence and crime [ . . . ].”<sup>352</sup> In particular, OAS Member States have a duty to take the necessary steps to ensure that dangerous business practices are “adjusted to the standards recognized by international human rights law.”<sup>353</sup> Both the Inter-American Court and Commission have found States internationally liable for breaching their international obligations where the conduct of business actors has a negative impact on human rights.<sup>354</sup>

**186.** Ensuring that dangerous business practices conform to human rights standards requires that “the relevant authorities adopt adequate measures to avoid real risks to human rights originating from the activities of [hazardous] businesses, of which they have or should have knowledge, from materializing.”<sup>355</sup> Such measures must include provisions obliging companies to identify risks and potential abuses, as well as to ensure that they implement the necessary corrective measures.<sup>356</sup> State institutions that promulgate and enforce such regulations are critical to ensuring implementation of this duty. For this reason, effective due diligence obligates States to “establish

---

<sup>346</sup> *Lenahan v. United States*, *supra* note 343, at ¶ 125.

<sup>347</sup> *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs. Judgment, Inter-Am. Cr. H.R., Series C No. 257, para. 172 (Nov. 28, 2012) (emphasis added).

<sup>348</sup> *Lenahan v. United States*, *supra* note 343, at ¶ 125.

<sup>349</sup> *Luna López v. Honduras*, Merits, Reparations, and Costs, Judgement, Inter-Am. Cr. H.R., Series C, (Oct. 10, 2013), at ¶ 123; *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Cr. H.R., Series C (Jan. 31, 2006), at ¶ 123.

<sup>350</sup> See Inter-Am. Comm’n H.R., *Report on Citizen Security and Human Rights*, OEA/Ser.I/V/II. Doc. 59 (Dec. 2009) at Parts V.A (Right to Life). & V.B (Security of Person).

<sup>351</sup> *Id.* at ¶ 107.

<sup>352</sup> *Id.* at ¶ 109.

<sup>353</sup> *Thematic Report on Business and Human Rights*, *supra* note 345, at ¶ 105.

<sup>354</sup> *Id.* at ¶ 65.

<sup>355</sup> *Id.* at ¶ 89.

<sup>356</sup> *Id.*

the legal and regulatory framework in which private [companies] can carry out their activities and operations *according to the industry and type of particular risk to human rights*[.]”<sup>357</sup> This duty “includes the adoption of domestic legislation and relevant policies for the protection of human rights in the context of the [particular] business activity in question.”<sup>358</sup>

**187.** Ensuring that dangerous business practices conform to human rights standards also requires that States supervise and enforce the legal and regulatory framework they are obligated to enact. In giving effect to these duties, the Inter-American Court in a seminal judgment from 2021 confirmed Honduras’ international responsibility for failing to monitor unlawful private business practices in the deep diving lobster fishing industry, which resulted in serious human rights abuses, and for not enforcing its domestic laws regulating the operations of company actors in that sector.<sup>359</sup> In mapping the State’s due diligence obligations, the Court interpreted Articles 1(1) and 2 of the American Convention to say that Honduras (like all States) had a duty to “establish regulations requiring companies to implement actions aimed at ensuring respect for human rights [...] especially in relation to hazardous activities.”<sup>360</sup> The Court also emphasized that governments were also required to “implement inspection [and] oversight measures” to ensure the effective enforcement of those regulations.<sup>361</sup> This duty to supervise and enforce regulatory frameworks is another cornerstone of the State’s due diligence obligations in the Inter-American system.

**188.** With reference to the United Nations Guiding Principles on Business and Human Rights and their integration into the regional system,<sup>362</sup> the Inter-American Court in the Honduras case observed that OAS Member States were furthermore obliged to enact protective measures “to ensure that business enterprises have: (a) appropriate policies for the protection of human rights; (b) due diligence processes for the identification, prevention and correction of human rights violations [...]; and (c) processes that allow businesses to remedy human rights violations that result from their activities.”<sup>363</sup> Examples of effective preventive and protective measures applied to businesses generally in this context include requiring human rights impact assessments, as well as corporate due diligence laws that obligate businesses to monitor all aspects of their own operations for potential human rights abuses.<sup>364</sup>

**189.** Regarding remedies in the context of business and human rights, the Inter-American Commission has observed that the duty to investigate and punish means that “States must take appropriate measures to ensure that the [persons] affected by [the] human rights abuses or violations produced [...] may access effective mechanisms for redress, which includes

---

<sup>357</sup> *Id.* at ¶ 192 (emphasis added).

<sup>358</sup> *Id.* at ¶ 106.

<sup>359</sup> *Case of the Miskito Divers (Lemoth Morris et. al.) v. Honduras*, Judgment, Inter-Am. Ct. H.R., Series C No. 432, (August 31, 2021), at ¶ 162 (finding that Miskito petitioners had died and been disabled in the course of carrying out dangerous diving activities for the lobster fishing companies due to the negligent conduct of those business and the Honduran State’s failures to monitor and enforce the workplace safety regulations it had in place to protect the deep divers from preventable harm such as that resulting from decompression disease).

<sup>360</sup> *Id.* at ¶ 48.

<sup>361</sup> *Id.* at 58.

<sup>362</sup> *Id.* at 47.

<sup>363</sup> *Id.* at 49.

<sup>364</sup> *Thematic Report on Business and Human Rights*, *supra* note 345, at ¶ 92; *see also Miskito Divers Case*, *supra* note 359, at ¶ 58.

accountability of the businesses and the determination of their criminal, civil, or administrative responsibility.”<sup>365</sup> In other words, OAS Member States dealing with private actor or company abuses are bound to deploy their “normative, supervisory, preventive, investigative, and punitive powers, as well as sustained political will on the matter, [to achieve] the effective protection of human rights,” not least by establishing appropriate remedies.<sup>366</sup> Such remedies must be both adequate and effective to discharge the State’s duty in this regard.<sup>367</sup>

**190.** With regards to the issue of gun violence specifically under the foregoing framework, OAS Member States are bound to implement and enforce the legal, political and other measures necessary to prevent foreseeable human rights abuses flowing from the misconduct of gun industry actors, such as assault weapon-enabled gun massacres, and to provide remedies for those abuses. In this regard, the Commission has insisted that:

(. . .) it is not the formal existence of such remedies that demonstrates due diligence, but rather that they are available and effective. Therefore, when the State apparatus leaves human rights violations unpunished and the victim’s full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law. The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in the governing instruments of the inter-American system.<sup>368</sup>

**191.** Finally, it is worth highlighting that the Inter-American Commission has long been concerned about the human rights abuses flowing from the unregulated misconduct of gun industry actors in the United States. In 2017, the year *before* the Parkland Massacre, the Commission affirmed the State’s responsibility to prevent and protect in a public statement it issued in response to a devastating gun massacre in which a shooter armed with a converted automatic assault weapon murdered 58 people and injured more than 500 in Las Vegas, Nevada.<sup>369</sup> The Commission declared that:

The most egregious thing about this latest mass murder is that such events are preventable. This again highlights the need for broad systemic reform of gun laws in the United States. As long as average citizens continue to have relatively free access to heavy weaponry, including military-grade assault rifles, mass shootings are certain to continue to take place. The United States Congress must take immediate action to reform the laws that enable these tragedies to happen.

The IACHR reiterates that the United States must take effective measures to prevent and substantially reduce gun-related violence, such as through effective gun control policies. [. . .] The IACHR reiterates the importance of effective background checks and psychological testing, as well as other effective measures

---

<sup>365</sup> *Thematic Report on Business and Human Rights*, *supra* note 345, at ¶ 121.

<sup>366</sup> *Id.* at ¶ 195.

<sup>367</sup> *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R., Series C No.4, (July 29, 1988), at ¶ 174.

<sup>368</sup> *Lenahan v. United States*, *supra* note 343, at ¶ 173.

<sup>369</sup> Press Release, Inter-Am. Comm’n H.R., *IACHR Condemns Mass Shooting in the United States*, Oct. 6, 2017, available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2017/154.asp](https://www.oas.org/en/iachr/media_center/PReleases/2017/154.asp).

on license and registration requirements. This includes restrictions on assault weapons, such as the AR-15-style rifle used by the gunman in this attack, so that their possession is limited to State forces, due to their lethal nature.<sup>370</sup>

**192.** In sum, OAS Member States have four clear duties with respect to ensuring their due diligence obligations are met. These are the duty to:

- i. “regulate [under] domestic law,
- ii. [. . .] to prevent human rights violations in the framework of business activities,
- iii. [. . .] to supervise such activities, and
- iv. [. . .] to investigate, punish and ensure access to [justice] for victims in said contexts.”<sup>371</sup>

**193.** As demonstrated in this petition, the United States has not met -- and is not meeting -- any one of these duties. In particular, the patent lack of adequate and effective remedies for victims of gun violence like Petitioners against the United States and complicit firearm industry actors based in the State’s territory creates a culture of impunity that denies them justice,<sup>372</sup> and establishes the conditions required for this Petition to be admitted.

### ***B. Admissibility***

**194.** Given the systemic problems that gave rise to the Parkland Gun Massacre described in Parts III and IV, *supra*, this Petition should be processed on an expedited basis. Once reviewed, the Petition should be found admissible. The Commission is the competent body to hear the case. Being factually and legally sufficient, this Petition makes out a *prima facie* case under the American Declaration and is pled in full accordance with the Commission’s Rules of Procedure (“ROP) in Articles 30–34, and 51–52. At the same time, Petitioners are excused from exhausting domestic remedies and have filed this action within a reasonable time. As all other admissibility requirements are likewise met, the Commission should proceed on an expedited basis to admit this Petition forthwith.

#### **1. Expedited Processing**

**195.** The criteria for granting expedited processing are amply met in this case; the reasons for doing so here are compelling. ROP Article 29(2) states that the Commission may expedite the evaluation of a petition where its decisions could have the effect of repairing “serious structural situations” that would have an impact on the enjoyment of human rights [ROP 29(2)(d)(i)] or could

---

<sup>370</sup> *Id.*

<sup>371</sup> *Thematic Report on Business and Human Rights, supra* note 345, at ¶ 84.

<sup>372</sup> *See id.* at ¶ 130. It is for this reason that Mexico requested an Advisory Opinion from the Inter-American Court of Human Rights on the question, *inter alia*, of “the appropriate remedies to ensure access to justice for victims of violence perpetrated with weapons traded careless, negligently and/or intentionally to facilitate their illicit trafficking, their indiscriminate disposal, and the subsequent increased risk of violence.” Inter-Am. Ct. H.R., Request for an Advisory Opinion Submitted by the State of Mexico, Nov. 11, 2022, available at [https://www.corteidh.or.cr/observaciones\\_oc\\_new.cfm?lang=es&lang\\_oc=en&nId\\_oc=2629](https://www.corteidh.or.cr/observaciones_oc_new.cfm?lang=es&lang_oc=en&nId_oc=2629).



promote changes in legislation or state practices and avoid the reception of multiple petitions on the same matter [ROP 29(2)(d)(ii)]. In its 2017 statement quoted above, the Commission emphasized the urgent need for “systemic reform” in the United States to combat the scourge of gun-related violence and mass killings. This deficient structural situation requires immediate attention.

**196.** Commission decisions protecting human rights in the context of endemic gun violence would have the salutary effect of addressing, and potentially helping to repair, this grave structural situation. By taking this case on an expedited processing basis, decisions by the Commission would continue to focus on the dearth of “gun laws” and “gun control policies” that lay at the heart of the problem<sup>373</sup>—i.e., the patent deficiencies in the State’s regulatory and enforcement frameworks that enable the unchecked and reckless manufacture, sale, and possession of firearms. The Commission’s eventual admissibility and merits decisions would draw national and international attention to the structural situation that gives rise to widespread and systematic gun violence in the United States, especially the 2018 Parkland Gun Massacre in which Joaquin Oliver lost his life. In addition, the Commission’s thematic and case specific hearings could similarly contribute to generating pressure on the State by requiring it to address the structural deficiencies that enable the unabated gun violence in the United States, thereby offering a modicum of the accountability that to date has been utterly lacking.

**197.** The increased domestic and international attention generated by Commission decisions protecting human rights in the U.S. gun violence crisis context would further serve to strengthen ongoing domestic and international efforts to promote positive reforms in legislation and State practice at both the federal and state levels.<sup>374</sup> For example, advocates including but not limited to Petitioners’ counsel would amplify the Commission’s decisions and actions through national and global media and advocacy campaigns. In these ways, expedited processing of the present Petition would have the immediate effect of further addressing the serious structural deficiencies described above in Parts II, III and IV, *supra*. The combined effect of all these decisions would serve to promote more effectively the desperately needed changes in legislation and state practice related to gun violence, and thereby ensure greater human rights protections for the past and future victims of gun massacres in the United States.

**198.** For the foregoing reasons, this Commission not only *can* decide to expedite this Petition, it *should* do so as well. As noted already, it is difficult to imagine a situation of widespread and systematic human rights abuses as serious as the United States’ endemic gun violence and repeated mass killings, the victims of which number in the thousands with more added with virtually every passing day. Petitioner Joaquin Oliver is one of many persons who needlessly lost their lives due to the policy choices of the State and its refusal to take action to enact reasonable measures to regulate the manufacture, sale, and possession of firearms, especially assault weapons. His parents, Manny and Patricia Oliver, have also suffered because of the United States’ failure to provide adequate redress for the victims of gun industry abuses and their families. Their case thus presents the Commission with an opportunity to affect exactly the type of corrective impact contemplated

---

<sup>373</sup> See *IACHR Condemns Mass Shooting in the United States*, *supra* note 369.

<sup>374</sup> See GLOBAL ACTION ON GUN VIOLENCE, *Advocacy*, <https://actiononguns.org/advocacy/> (providing a bulleted list of legislative solutions that GAGV advocates for on the domestic and global level, and featuring a photo of Petitioner Manny Oliver holding a GAGV poster at an event in Mexico City, February 2023).

by the expedited processing regime enacted in ROP Art. 29. The Commission should not hesitate to do so here.

## **2. Competence of the Commission**

**199.** The Commission is the competent body to examine this Petition. Petitioners Joaquin, Manny, and Patricia Oliver have resided in the United States since August 3, 2003, and have been citizens of the United States since January 20, 2017. They allege violations of their rights under the American Declaration on the Rights and Duties of Man and the Charter of the Organization of American States, which the United States ratified on June 19, 1951. Specifically, Petitioners allege violations by the State of Articles I, II, VI, VII, XII, XVII, XVIII, XXI, and XXII of the American Declaration, all of which occurred on U.S. territory before, during and after the Parkland Gun Massacre of February 14, 2018, but subsequent to the entering into effect of the OAS Charter.

## **3. Duplication**

**200.** There is no duplication of proceedings barring admissibility under ROP Article 33. The violations denounced in this Petition have not previously been submitted for examination by this Commission or by any other similar international organization or human rights body.

## **4. Exhaustion of Domestic Remedies**

**201.** Petitioners are excused from exhausting domestic remedies because they have been denied due process. Neither adequate nor effective remedies exist for victims of the grave situation of gun violence in the United States like Petitioners with respect to either gun industry actors such as Smith & Wesson or the State for their respective roles in enabling mass shootings—in this case, the Parkland Gun Massacre. Moreover, Petitioners have as a practical matter been denied access by the State to the very limited remedies that in theory exist to take recourse against negligent gun industry actors, primarily Smith & Wesson, further excusing them from exhausting domestic remedies. At the behest of the gun industry, the United States has acted not only to narrow the few legal avenues available to victims of gun violence in this respect, but also to block access to research and information about gun industry practices that would be essential to making any such remedies truly available and effective. For these and other reasons explained below, any attempt by Petitioners to exhaust domestic remedies, such as they are, would be futile.<sup>375</sup> Accordingly, they are excused from having to do so.

**202.** American Convention Article 46 and Commission ROP Article 31(1) establish that Petitioners must pursue and exhaust domestic remedies unless a recognized exception applies. The relevant exceptions here are two: denial of due process and denial of access to remedies. With respect to the first, American Convention Article 46(b)(1) and ROP Article 31(2)(a) establish that exhaustion is excused if the domestic legislation of the State does not afford “due process of law” for the protection of the rights allegedly violated. Due process in this context requires that remedies be adequate and effective.<sup>376</sup> A remedy is “adequate” or appropriate when it is “suitable to address

---

<sup>375</sup> See *Velásquez Rodríguez v. Honduras*, *supra* note 367.

<sup>376</sup> See *id.*

an infringement of a legal right.”<sup>377</sup> Effective remedies are those capable of producing the outcomes intended by the legal process established.<sup>378</sup>

**203.** As the Commission itself has noted, the United States does not afford due process of law for the protection of the human rights impacted by the endemic gun violence, which is precisely the case of the Parkland Gun Massacre.<sup>379</sup> Petitioners are thus excused from exhausting domestic remedies under ROP Article 31(2)(a) for the following reasons: (1) there are no adequate remedies available against the United States for its failure to protect against the foreseeable harms caused by gun massacres like the one in Parkland; and (2) adequate and effective legal recourse does not exist for the grossly negligent, if not reckless, conduct of gun manufacturer Smith & Wesson, whose AR-15 assault weapon was used to carry out the Parkland Gun Massacre.

**204.** Regarding the “adequacy” prong of the due process exception, there are no domestic remedies available against the United States or gun industry actors for victims of gun massacres like Petitioners that are “suitable to address infringement[s]” of the multiple legal rights violated as a result of the United States’ failure to protect against these foreseeable harms and the abusive conduct of gun industry actors.<sup>380</sup> On the effectiveness prong of this exception, the few remedies that exist in theory for victims of gun massacres such as Petitioners with respect to gun industry actors like Smith & Wesson are not capable of holding them accountable in practice; this is because they are either not enforced by State authorities or are not viable as a practical matter.<sup>381</sup> Each is examined in more detail below.

#### 1. *Denial of Due Process: Lack of Adequate Remedies*

**205.** The United States’ failure to enact adequate remedies to protect the victims of the Parkland Gun Massacre and prevent mass shootings, which were foreseeable under the circumstances described, is manifest. First and foremost, as described in Part IV, *supra*, the United States had not enacted an “adequate regulatory framework” to deter the clear threats to the right to life (among several other human rights) posed by the consequences of underregulating the domestic gun industry while overprotecting gun rights.<sup>382</sup> The list of protective measures that are commonplace in other countries but nonexistent in the United States is a long one.<sup>383</sup> Particular measures that, if in place beforehand, could have prevented the tragedy at Parkland (and other gun massacres) include: a ban on selling assault weapons, or at least heightened age restrictions for purchasing them; expanded prohibited categories and heightened background checks to prevent firearm purchase or possession by persons with documented or manifest mental illness or violent tendencies; required licensing registration and record keeping for firearm purchases; diligent

---

<sup>377</sup> *Id.* at ¶ 64.

<sup>378</sup> *See id.* at ¶ 66.

<sup>379</sup> *See* discussion *supra* para. 191.

<sup>380</sup> *Velásquez Rodríguez v. Honduras*, *supra* note 367 at ¶ 64.

<sup>381</sup> *See id.* at ¶ 66.

<sup>382</sup> *See Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, *supra* note 347. *See also* discussion *supra* para. 184.

<sup>383</sup> *See* discussion *supra* para. 70 (“Other countries in the Americas regulate the gun industry far more comprehensively and effectively than does the United States.”).

monitoring by law enforcement of dangerous or violent persons who own firearms along with “red-flag” removal systems; and robust enforcement of these and other measures.<sup>384</sup>

**206.** Unfortunately, none of these basic safeguards were in place at the time of the Parkland Gun Massacre, or are at present, as outlined in Part IV(B), *supra*. Instead, under U.S. federal law and the law of most states, including Florida, sales by licensed sellers can be completed upon a minimal background check with no other assessment or investigation of the purchaser to determine if their possession of a firearm would pose a danger to themselves or others.<sup>385</sup> Thus, despite the Parkland Gun Massacre shooter’s long history of mental illness and violent behavior documented by state authorities, he was able to purchase and possess a military-style assault weapon; the seller of the military-style weapon used by the Parkland Gun Massacre shooter to commit the massacre did not, as a legal matter, incur any consequences under domestic law. Under U.S. federal law, because the shooter did not fall into any prohibited category—such as being formally convicted of a felony or involuntarily committed to a mental hospital prior to his purchase of the MP-15 assault rifle—there was no “relevant record” of his dangerous conduct or high-risk profile that would impede the sale.<sup>386</sup> Similarly, Florida law permitted (and still permits) the purchase of military-style assault weapons by 18-year-olds, with no special reason or registration required and no subsequent monitoring or oversight of the buyer.<sup>387</sup>

**207.** A key factor worth highlighting is the United States’ permissive policies that allow 18-year-olds to buy military-style assault rifles and how the U.S. federal ban on assault weapons, which demonstrably lowered the number of gun massacres committed using such weapons in the country, was allowed to lapse in 2004.<sup>388</sup> Further, in the absence of decisive federal action to the contrary, states like Texas and Florida have since made it easier, not harder, for bad actors to obtain and carry firearms.<sup>389</sup> To make matters worse, even where minimal regulations are in place, either at the federal level or in some states, these regulations are either regularly ignored or under-enforced by law enforcement authorities.<sup>390</sup> The existing pattern of repeated and continual gun violence in the United States further demonstrates that the Parkland Gun Massacre (like so many gun massacres) was a direct, foreseeable consequence of the egregious accumulation of regulatory lapses under domestic law described in the foregoing paragraphs. The State has thus not complied with its duty to provide adequate remedies to Petitioners, therefore denying them due process.

## 2) *Denial of Due Process: Lack of Effective Remedies*

---

<sup>384</sup> See discussion *supra* paras. 34–38 (“The State’s failure to prevent the massacre deepened as the dearth of reasonable gun control measures described in the next Part made it easy for the perpetrator, with his long history of violent conduct and mental illness, to purchase multiple firearms, including an assault rifle.”).

<sup>385</sup> See discussion *supra* para. 119.

<sup>386</sup> See discussion *supra* para. 120.

<sup>387</sup> See discussion *supra* paras. 159–160 (describing Florida’s minimum-age law and later rejection by the state legislature to raise the minimum age to purchase assault weapons).

<sup>388</sup> See discussion *supra* para. 101 (“The U.S. federal Assault Weapon Ban (AWB) resulted in fewer gun massacres. The lapse of the AWB led to an increase in gun massacres.”).

<sup>389</sup> See discussion *supra* paras. 150–151 (describing gaps in U.S. federal regulatory regime which are left to states to fill), 164 (giving a broad overview of Florida’s firearms regulations).

<sup>390</sup> See *Freskos et. al.*, *supra* note 249. See also discussion *supra* para. 136.

**208.** In addition, the minimal U.S. federal gun regulations that do exist are ineffective. The States gun control regime is so lax that manufacturers, dealers, and distributors are able to engage in abusive business practices they know contribute to the gun violence epidemic without violating any state or federal regulations, and with zero consequences.<sup>391</sup> This lack of effective State regulation also makes it much harder to hold firearms companies like Smith & Wesson accountable in civil actions for their abuses that enable gun violence; this is especially true given that these companies also enjoy immunity under PLCAA and other laws that afford them significant legal protection.<sup>392</sup>

**209.** This lack of civil accountability enables firearms companies like Smith & Wesson to profit from practices that supply the criminal market and contribute to gun violence without facing any consequences for their abuses. The protective regime that the United States has created for the firearms industry, which combines a grossly deficient regulatory regime with legal immunity under PLCAA—is unique, but not in the positive sense: no other industry in the country enjoys the same protection from civil liability and domestic remedies for those harmed by a consumer product. Thus, to further illustrate the point, the Consumer Product Safety Act expressly excludes firearms and, as a result, guns are the only consumer product in the United States *not* subject to federal product safety regulation; this means that firearms manufacturers are not required to include feasible safety measures capable of saving lives, and many fail to include life-saving features that have been feasible for more than a century.<sup>393</sup>

**210.** The lack of effective firearms regulation has a two-tiered effect. First, gun industry actors like Smith & Wesson have no incentive to make their products safe or keep their guns out of the hands of violent actors who intend to use them for criminal purposes.<sup>394</sup> In this sense, existing regulations do not provide a pre-violation remedy and do not prevent foreseeable human rights violations. Second, as noted, existing laws do not provide an effective post-violation remedy against gun industry actors like Smith & Wesson, who is responsible for enabling the human rights abuses that take place in the Parkland Gun Massacre. Because gun industry actors such as Smith & Wesson can carry out dangerous practices like manufacturing and marketing military-style weapons to minors and violent actors without being found to violate any laws, victims of gun violence like Petitioners in this case have no effective remedy against such actors despite the latter's' complicity in the violation of human rights.<sup>395</sup>

**211.** Given this framework of overlapping and negatively self-reinforcing regulatory lapses, together with the corresponding dearth of adequate remedies, the question prior to the Parkland tragedy was never *whether* there would be another gun massacre in the United States, but rather *when* and *where* it would happen. An effective regulatory scheme could have prevented the Parkland Gun Massacre, along with other subsequent mass shootings, from occurring in the first place. More thorough background check requirements and pre-purchaser vetting could have

---

<sup>391</sup> *See id.*

<sup>392</sup> *See* discussion *supra* Part IV(A)(7) (discussing statutory framework around gun industry immunity including PLCAA).

<sup>393</sup> 15 U.S.C. §§ 2051–89. *See also* U.S. CONSUMER PRODUCT SAFETY COMM'N, *Products Under the Jurisdiction of Other Federal Agencies and Federal Links*, <https://www.cpsc.gov/Regulations-Laws-Standards/Products-Outside-CPSCs-Jurisdiction>. *See also* discussion *supra* para. 145.

<sup>394</sup> *See* discussion *supra* para. 145.

<sup>395</sup> *See* discussion *supra* paras. 102–103.

prevented individuals with documented indicators of violence, like the Parkland shooter, from obtaining firearms in the first place. Additionally, reinstating the assault-weapon ban that the United States had in place from 1994 through 2004 would have decreased the likelihood of mass shootings like the Parkland Gun Massacre.<sup>396</sup> Repealing PLCAA and Florida gun industry protection laws would have enabled victims like the Olivers to obtain civil justice against Smith & Wesson and the gun seller, and would have incentivized safer gun industry practices.<sup>397</sup> These and other regulations would not only have had the pre-Parkland Massacre effect of preventing such human rights crimes, but would also have provided more adequate post-violation remedies, criminal and civil, for failure to enforce or comply with the regulations.<sup>398</sup>

**212.** As a result of its lax regulatory scheme and affirmative protection of and support for the gun industry, the State has prevented Petitioners from accessing adequate and effective remedies, thereby denying them due process of law and excusing them from having to exhaust domestic remedies. Due process for victims of gun violence like Petitioners requires *inter alia* providing for a viable civil cause of action against the abusive conduct of firearms manufacturers -- Smith & Wesson in this case. Under Inter-American human rights law, gun companies like Smith & Wesson that are complicit in human rights abuses like the Parkland Gun Massacre must be held accountable for their wrongful conduct.<sup>399</sup> Such a remedy would provide post-violation redress to victims as well as contribute to deterring abusive business practices by firearms manufacturers in the first place. Unfortunately, the United States has enacted a range of legislation that shields gun industry actors like Smith & Wesson from accountability—PLCAA in particular—thereby denying Petitioner’s access to justice for gun industry malfeasance.<sup>400</sup> These and other related obstacles are discussed more detail in the next section.

### 3) *Denial of Access to Remedies*

**213.** Petitioners are exempt from the exhaustion requirement for a second reason: under ROP Art. 31(2)(b), to the extent any civil remedies exist against the gun manufacturer, Smith & Wesson, Petitioners have been denied access to them. This rule applies when “domestic legal principles would prevent a petitioner from exhausting domestic remedies, when remedies are unavailable as a matter of law, when remedies are merely formalistic, or when the Petitioners are procedurally [or constructively] barred from pursuing the remedies.”<sup>401</sup> All of these conditions are present in the Olivers’ case, complementing and reinforcing each other to ensure that Smith & Wesson, like other gun industry actors complicit in gun violence and mass shootings, benefit from the blanket impunity guaranteed by the State.

**214.** While the U.S. and Florida government’s response in capturing, prosecuting, and punishing the Parkland shooter is laudable, it does not fully discharge the United States’ duty to provide Petitioners with full redress. Under regional human rights law, and in particular the due diligence principle, States have a duty to “ensure that [persons] affected by [such] human rights abuses or

---

<sup>396</sup> See discussion *supra* paras. 34–38.

<sup>397</sup> See discussion *supra* paras. 140–142.

<sup>398</sup> See discussion *supra* paras. 102–103.

<sup>399</sup> See discussion *supra* paras. 184–188.

<sup>400</sup> See discussion *supra* paras. 140–142 (describing how PLCAA functions).

<sup>401</sup> See INT’L JUST. RES. CTR., *Exhaustion of Domestic Remedies in the Inter-American Human Rights System*, at 6 (last accessed Nov. 8, 2023) (available at <https://ijrcenter.org/exhaustion-of-domestic-remedies/>).

violations [have] access [to] effective mechanisms for redress, which includes accountability of the businesses and the determination of their criminal, civil, or administrative responsibility.”<sup>402</sup> In other words, OAS Member States dealing with private actor or company abuses must deploy their “[...] investigative[...] and punitive powers, as well as sustained political will on the matter, [to achieve] the effective protection of human rights,” which means providing access to appropriate remedies for those abuses.<sup>403</sup> Moreover, said remedies in relation to private actor accountability must be not just adequate but also effective to discharge the State’s duty in this regard.<sup>404</sup>

**215.** With respect to the Parkland Gun Massacre, not only must the State punish the immediate perpetrator of the massacre, as it did here, it must also guarantee access to justice with respect to the firearms industry actor that aided and abetted the commission of that crime in a reckless, negligent, or knowing way. In this case, that refers to the manufacturer of the assault rifle used in the massacre, Smith & Wesson.<sup>405</sup> Among other things, Smith & Wesson continues to broadly and indiscriminately market military-style assault rifles to the general public, despite the fact that its guns have been used in multiple gun massacres, and it has reneged on a prior legal commitment to enact minimal safeguards in its production, sales, and marketing of firearms, including assault rifles.<sup>406</sup> Further, Smith & Wesson’s marketing targets the exact demographic of the majority of gun massacre perpetrators—young men—despite evidence of their predominant role in promulgating gun violence.<sup>407</sup> Yet, as the Parkland Gun Massacre events indicate, a combination of federal and state laws have made it practically impossible for the families of the students killed to sue Smith & Wesson, rendering any potential private actor remedy futile.<sup>408</sup>

**216.** Strategic policies and practices that bestow broad legal immunity on gun industry actors, implemented through federal and state laws, effectively block gun massacre victims such as Petitioners from obtaining justice from complicit firearms manufacturers like Smith & Wesson in this case. At the federal level, PLCAA prevents full accountability for gun companies that engage in wrongful conduct that contributes to gun violence, especially given the broad, protective interpretation given to it by many courts.<sup>409</sup> When coupled with state-level pro-gun industry statutes, some of which, like those in Florida, make complainants financially responsible for failed lawsuits against the protected companies,<sup>410</sup> the risks involved in pursuing a case against Smith & Wesson give rise to a well-founded fear of bankruptcy that impedes legal action. Thus, Parkland Gun Massacre families, including Manny and Patricia Oliver, could not risk bringing a lawsuit against the gun manufacturer without facing likely crippling financial liability that would ensue if they could not overcome the significant legal obstacles posed by Florida and federal law.<sup>411</sup> This structural undermining of accountability amounts to nothing less than the systemic denial of justice enforced by law.

---

<sup>402</sup> See *Thematic Report on Business and Human Rights*, *supra* note 345, at ¶ 121.

<sup>403</sup> *Id.* at ¶ 195.

<sup>404</sup> See *id.*

<sup>405</sup> See discussion *supra* para. 36.

<sup>406</sup> See discussion *supra* paras. 102–106.

<sup>407</sup> See discussion *supra* paras. 92–96.

<sup>408</sup> See discussion *supra* para. 168.

<sup>409</sup> See discussion *supra* para. 141.

<sup>410</sup> See discussion *supra* paras. 165–168 (discussing Florida’s gun industry immunity law).

<sup>411</sup> See *id.*

**217.** Regarding civil remedies for the Parkland Gun Massacre, most family members of victims—including Manny and Patricia Oliver—were able to bring a successful action against the United States for the failure of law enforcement to act on the bountiful warnings it received with respect to the Parkland shooter and thus prevent the foreseeable gun massacre that occurred.<sup>412</sup> Taken together with the criminal conviction and punishment of the perpetrator, it must be recognized that the State has discharged a segment of its due diligence responsibility to remedy the harm caused by this massacre by providing some domestic remedies. But these alone, as was demonstrated above, are insufficient and thus inadequate.<sup>413</sup>

**218.** Full redress under international law requires more.<sup>414</sup> The Commission has affirmed that a State’s duty to protect human rights “encompasses the organization of the entire state structure—including the State’s legislative framework, public policies, law enforcement machinery and judicial system - to adequately and effectively prevent and respond to [private actor] problems.”<sup>415</sup> Further, both the Inter-American Court and Commission have found States internationally liable for breaching their international obligations where the conduct of business actors has a negative impact on human rights.<sup>416</sup> Therefore, despite the remedies pursued against the United States and the Parkland Gun Massacre shooter, international law requires the State to provide redress against culpable private actors as well. In the context of the Parkland Gun Massacre, this applies to the gun manufacturer Smith & Wesson whose abusive conduct enabled the shooter to commit the crime in violation of Petitioners’ human rights. As we have seen, however, the State has implemented legislation blocking access to legal remedies against the gun industry, thereby denying Petitioners access to full redress for the harms they suffered as a result of those violations.

**219.** Despite the foreseeable risks involved, U.S. policymakers have been unable or unwilling to adopt the adequate remedies required to oblige the firearms industry to regulate itself more effectively, or to correct for its rampant abuses and the gun violence that ensues from decades of under-regulation. If anything, the State has moved in the opposite direction, consistently acting to protect gun rights and undermine legal efforts to implement common sense controls on the gun industry, which might curb the worst abuses in industry practice and the gun violence they feed.<sup>417</sup> This situation in the United States amounts to a denial of access to effective remedies that might otherwise exist, and thus meets the second exception to the exhaustion requirement.

**220.** On the one hand, current U.S. federal law in the form of PLCAA offers broad immunity from most lawsuits to manufacturers, sellers, and importers of firearms, as described above in Part IV(A)(7). Although there are exceptions to PLCAA, these are severely limited in practice.<sup>418</sup> In theory, they would allow for legal action against the gun industry under narrow circumstances,

---

<sup>412</sup> See discussion *supra* para. 56.

<sup>413</sup> See discussion *supra* para. 213.

<sup>414</sup> See *id.*

<sup>415</sup> *Lenahan v. United States*, *supra* note 343, at ¶ 125

<sup>416</sup> *Report on Citizen Security and Human Rights*, *supra* note 350 at ¶ 65.

<sup>417</sup> See discussion *supra* paras. 140-145 (detailing special protections and immunity for the gun industry), 146–149 (describing U.S. affirmative support for the gun industry).

<sup>418</sup> See *Gun Industry Immunity*, *supra* note 262.



such as the predicate exception.<sup>419</sup> However, because of lax federal regulations and their virtual non-enforcement, the exceptions to PLCAA rarely apply, the consequence of which is that victims of gun company-enabled violations are denied access to any legal remedies designed to address the harms at issue.<sup>420</sup> The intended and actual impact of PLCAA is that persons with otherwise valid claims are prevented from bringing civil lawsuits against gun industry actors, including manufacturers, distributors, dealers, and importers of firearms or ammunition, when the firearm worked as intended and regardless of the legality of the action.<sup>421</sup> In addition, many states, including Florida, have enacted similar laws that further shield firearm manufacturers, dealers, and other industry members from civil liability. This combination of federal and state legislation operates to deny access to remedies for victims of gun massacres like Petitioners.

**221.** Florida state law on gun industry immunity further compounds this denial of access to justice which Petitioners face in at least two ways. First, under state law, Florida “finds” the proximate cause of harm in an unlawful shooting to be caused by the shooter and not by negligent gun industry actors, regardless of the role that industry complicity plays in a shooting and the subsequent human rights violations.<sup>422</sup> This deliberately vitiates any possibility of success in a potential tort action against a gun industry actor like Smith & Wesson. When operating in conjunction with federal law and PLCAA, this legal “finding” in Florida law would most likely lead a court to dismiss an action brought by Petitioners against Smith & Wesson for harms suffered in the Parkland Gun Massacre. To make matters, if that were to happen, then Florida law would moreover require plaintiffs to pay for defendants’ legal fees and expenses,<sup>423</sup> raising a well-founded fear of bankruptcy. As a result, Petitioners are denied access to pursuing the limited domestic remedies available in theory because in practice they face nearly insurmountable legal obstacles and penalties for even trying.

**222.** In sum, the State’s anemic regulatory regime and lack of diligent enforcement together ensure that few constraints exist on the operation of gun companies in the United States, and guarantee a dearth of corresponding remedies. At the same time, the few legal remedies that exist in theory against private gun companies like Smith & Wesson under tort law are in practice unavailable and ineffective: they are rendered illusory by the operation of U.S. law in the form of PLCAA and Florida state law, both of which expressly shield gun manufacturers from liability. This amounts to a denial of access to effective remedies.

## **5. Timeliness of the Petition**

**223.** In accordance with ROP Article 32(2), this Petition has been submitted within a reasonable time from February 14, 2018, the date of the Parkland Gun Massacre in which Joaquin was killed. The filing of this Petition is therefore timely.

---

<sup>419</sup> See discussion *supra* para. 141 (discussing PLCAA’s predicate exception and its narrow construction in U.S. federal courts, still making U.S. federal law too hostile to give Petitioners access to causes of action against gun industry actors).

<sup>420</sup> See *id.*

<sup>421</sup> See *id.*

<sup>422</sup> See discussion *supra* para. 165.

<sup>423</sup> See discussion *supra* para. 167.

## VI. VIOLATIONS OF THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN

**224.** By failing to diligently protect human rights, prevent their abuse by firearms industry actors that enable the endemic gun violence, and provide adequate and effective remedies to the victims of this violence, the United States has and is falling short of its international obligations under Inter-American human rights law. The United States violated Petitioner Joaquin Oliver’s right to life, liberty, and personal security (Article I), equality before the law (Article II); a family and protection thereof (Article VI); special protection for minors (Article VII); education (Article XII); juridical personality and civil rights (Article XVII); fair trial (Article XVIII); assembly and association (Articles XXI and XXII); as well as to give domestic legal effect to the aforementioned American Declaration protections.<sup>424</sup> Joaquin’s parents, Manny and Patricia Oliver claim violations of their rights under the American Declaration to equality before the law (Article II); a family and protection thereof (Article VI); special protection for minors (Article VII); education (Article XII); juridical personality and civil rights (Article XVII); fair trial (Article XVIII); assembly and association (Articles XXI and XXII); as well as to give domestic legal effect to the aforementioned American Declaration protections.<sup>425</sup>

**225.** The United States has denied Petitioners and other victims of gun violence access to justice while absolving itself of responsibility for not addressing the crisis effectively or providing full redress to victims. As repeatedly recognized by the Inter-American Commission, such high-casualty crimes are foreseeable consequences of the bad policy choices made by U.S. officials, including those not to adequately or effectively regulate gun companies like Smith & Wesson, who manufactured and marketed the assault weapon used to perpetrate the Parkland Massacre.<sup>426</sup> As a result, the State is liable for the following violations of the American Declaration and related Inter-American human rights law with respect to Joaquin, Manny, and Patricia Oliver:

### *A. Right to Life, Liberty, and Personal Security (Article I) and Domestic Legal Effects*

**226.** The United States failed to respect and ensure respect for Joaquin Oliver’s right to life and personal security. Article I of the American Declaration provides that “[e]very human being has the right to life, liberty and [personal] security.” The right to life and personal security in the American Declaration, like in American Convention Articles 4 and 5, “extends to the obligations a State [has] to prevent and respond to the [injurious] actions of non-state actors and private persons.”<sup>427</sup> In this same vein, this Commission has recognized that States must “adopt measures to give [domestic] legal effect to the rights contained in the American Declaration.”<sup>428</sup> This means

---

<sup>424</sup> Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, 2 May 1948.

<sup>425</sup> *Id.*

<sup>426</sup> *Supra* para. 82-83 and accompanying text.

<sup>427</sup> *Lenahan v. United States*, *supra* note 219, at para. 142 [emphasis added]. See also *supra* note 233 and accompanying text; *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. I.

<sup>428</sup> IACHR, Report N° 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 118, (citing IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 162; IACHR Report N° 67/06, Case 12.476, *Oscar Elías Bicet et al.* (Cuba), October 21, 2006, paras. 227-231).

that States must adopt affirmative measures to guarantee that all persons under the State's jurisdiction can "exercise and enjoy" the rights in the American Declaration free from impingement by State or private actors,<sup>429</sup> especially with respect to the right to life and personal security.

**227.** As demonstrated throughout this petition, the United States violated Joaquin Oliver's right to life and security of person by not implementing adequate domestic measures to prevent the Parkland Gun Massacre and protect Joaquin from lethal gun violence.<sup>430</sup> Additionally, the United States did not provide adequate and effective remedies to fully redress the corresponding human rights violations by the State, as well as the abuses attributable to the complicit company actor, Smith & Wesson. Furthermore, in relation to Joaquin Oliver's right to personal security, it is also possible to claim that the United States is complicit in torture by failing to adequately regulate and respond to the rampant gun violence prior to 2018 that culminated in the Parkland Gun Massacre.<sup>431</sup>

**228.** The United States does not take the actions that are well-recognized and necessary to prevent gun violence. As we have seen, there are multiple ways the State could regulate gun companies and thus give effect to the rights enumerated in the American Declaration.<sup>432</sup> It could have *inter alia* maintained the highly-effective assault weapons ban; enacted more extensive background checks on gun purchasers; and adopted a requirement for firearm purchasers to obtain licenses first. These and other safeguards are standard throughout the region.<sup>433</sup> Law enforcement in the United States does not even enforce the limited restrictions on gun industry actors that do exist. Thus, for example, the ATF does not have the resources to inspect firearm dealers and is limited by law to making unannounced inspections of firearm dealers only once a year.<sup>434</sup>

**229.** Nor does the United States prevent or punish the abusive actions of gun companies. In addition to the grossly inadequate regulatory legal framework previously described, the State has singled out gun companies for preferential treatment, making them immune to many forms of legal liability. Petitioners were thus prevented from pursuing civil accountability, as the United States' legislative and judicial systems prevent Petitioners from bringing civil lawsuits against Smith & Wesson in the ways previously discussed, due to the legal obstacles erected by federal and state authorities.<sup>435</sup> The United States therefore violated, not only Joaquin Oliver's right to life and personal security, but also its duty to give domestic legal effect to the rights enshrined in the American Declaration.

---

<sup>429</sup> IACHR, Report N° 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 118.

<sup>430</sup> See discussion *supra* paras. 110-132

<sup>431</sup> See Leila Sadat & Madaline M. George, *Gun Violence and Human Rights*, 60 WASH. U. J. L. & POL'Y 1, 52 (2019) (citing *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C), ¶ 66 (July 5, 2006)).

<sup>432</sup> See discussion *supra* para. 150; *supra* para. 164.

<sup>433</sup> See discussion *supra* paras. 169-180.

<sup>434</sup> See discussion *supra* paras. 136-138.

<sup>435</sup> See discussion *supra* paras. 141-145, 165-168.

***B. Right to a Family and to Protection Thereof (Article VI) and Right to Protection for Children (Article VII)***

**230.** The United States did not fulfil its obligation to protect the Petitioners' right to a family because it did not take the necessary regulatory and investigative measures to prevent Joaquin Oliver's death or provide full redress to his parents, Petitioners Manny and Patricia Oliver. Article VI of the American Declaration provides the right of every person "to establish a family, the basic element of society, and to receive protection therefore."<sup>436</sup> Additionally, the United States did not satisfy its responsibility to guarantee special protection for children, such as Joaquin Oliver, who was a minor at the time of his death. Article VII of the American Declaration establishes that children "have the right to special protection, care and aid."<sup>437</sup>

**231.** Article VII imposes a heightened responsibility on States to ensure the special protection of minors like Petitioner Joaquin Oliver, thereby extending and reaffirming the Declaration's emphasis on the protection of the family.<sup>438</sup> Pursuant to Articles 19 of the American Convention and VII of the American Declaration, "States must act with greater diligence, care, and responsibility when it comes to children and must take special measures towards the principle of the best interests of the child."<sup>439</sup> Indeed, apropos of the gun violence rampant in the territory of this State, this Commission has observed that States are obligated to adopt appropriate measures to protect children from violence where they are faced with it.<sup>440</sup> This means that the State has an affirmative duty to enact special measures aimed at protecting children and adolescents from the foreseeable harm of gun violence perpetrated by private actors, especially at school.

**232.** The United States fell short of its duty under the American Declaration to protect Petitioners' family and, in particular, to prevent foreseeable, lethal harm to Joaquin Oliver, a minor, in the Parkland Gun Massacre. Moreover, the State failed in its concomitant duty to provide Petitioners with adequate and effective remedies that fully redress them for the harm caused by this tragedy, including those required to hold Smith & Wesson accountable. Petitioner Joaquin Oliver was taken from his family before he was able to graduate from high school and live a full life.<sup>441</sup> Facing this devastating loss, the Olivers' right to a family and Joaquin's right to special protection as a child was disrupted as a direct result of gun violence which the United States has a duty to address.<sup>442</sup>

***C. Right to Education (Article XII) and Rights of Assembly and Association (Articles XXI & XXII)***

**233.** The United States violated Petitioner's right to education and rights of assembly and association by failing to protect the life of Joaquin Oliver and ensure his continued access to education while he was peaceably assembled at school. Article XII of the American Declaration

---

<sup>436</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. VI.

<sup>437</sup> *Id.* at art. VII.

<sup>438</sup> See generally IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*.

<sup>439</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. VII.

<sup>440</sup> IACHR, *Report on Corporal Punishment and Human Rights of Children and Adolescents*, para. 92.

<sup>441</sup> *Supra*, note 11.

<sup>442</sup> *Supra* note 97.

provides the right to education for every person. It states that this is a “right to an education that will prepare [every person] to attain a decent life, to raise his standard of living, and to be a useful member of society.”<sup>443</sup> Furthermore, the right to education “includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.”<sup>444</sup> This Commission has interpreted the right to education to guarantee all children and adolescents “the right to grow and develop on an equal basis with others” and access to education “in the conditions necessary to ensure their full intellectual development.”<sup>445</sup>

**234.** The United States violated Petitioner Joaquin Oliver’s right to education by not adequately protecting him and the other students killed in the 2018 Parkland Gun Massacre despite having ample opportunities to do so. Endemic gun violence in the United States in the years leading up to the tragedy meant that the safety of minors at school like Joaquin were “constantly threatened by gun violence” and that “[t]he failure to protect children [at school] impact[ed] their ability to receive an education” under these circumstances.<sup>446</sup> Unlawfully deprived of his life and personal security, Joaquin was further denied his right to receive an education that would have “prepare[d] him to attain a decent life, to raise his standard of living, and to be a useful member of society.”<sup>447</sup>

**235.** The United States further violated Petitioner Joaquin Oliver’s rights of assembly and association by failing to protect his life and personal security, as well as by not holding the complicit gun company liable for his death while he was peacefully assembled at school. Article XXI of the American Declaration establishes a person’s right to “assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.” Article XXII of the American Declaration provides for a person’s related “right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.”<sup>448</sup> The right of assembly “is not just the State’s obligation to refrain from interfering in the exercise of that right, but also its obligation to adopt, in certain circumstances, positive measures to guarantee it.”<sup>449</sup>

**236.** The State violated Petitioner Joaquin Oliver’s rights to assembly and association by not adopting positive measures to guarantee them in the context of his right to education – the right to attend school with his peers free from gun violence – and by not holding responsible those who interfered with it. At the time of his death, Joaquin was engaging in peaceable assembly and association with other students at the public high school for the purpose of advancing his education.<sup>450</sup> By acting affirmative to prevent the Parkland Gun Massacre despite ample resources

---

<sup>443</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. XII.

<sup>444</sup> *Id.*

<sup>445</sup> *Yean and Bosico Girls v. The Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 130, para. 185 (Sept. 8, 2005).

<sup>446</sup> Leila Sadat & Madaline M. George, *Gun Violence and Human Rights*, 60 WASH. U. J. L. & POL’Y 1, 72-73 (2019) (internal citations omitted).

<sup>447</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. XII.

<sup>448</sup> *Id.* at art. XXI-XXII.

<sup>449</sup> IACHR, *Report on Citizen Security and Human Rights*, para. 192 citing IACHR, Annual Report 2007, Chapter IV, paragraph 259.

<sup>450</sup> *Supra* note 11.

to do so, the State permitted the unlawful deprivation of Joaquin’s right to life and personal security, which further undermined his rights to assembly and associate.

***D. Right to Equality Before the Law (Article II), Right to Juridical Personality and Civil Rights (Article XVII), and Right to Judicial Protection (Article XVIII)***

**237.** In Petitioners’ case, the United States’ deficient regulatory regimes block them and other victims of gun violence from pursuing legal accountability in the face of the State’s inaction and the gun manufacturer Smith & Wesson’s complicity in the Parkland Gun Massacre. This represents a form of legal discrimination that violates Petitioners Joaquin, Manny, and Patricia Oliver’s rights to equality before the law (Article II), as well as juridical personality and civil rights (Article XVII), and that denies them their right to judicial protection (Article XVIII) under the American Declaration and Inter-American human rights law.

**238.** Article II of the American Declaration establishes the right of all persons to equality under the law. It guarantees to individuals “the rights and duties established in [the] Declaration, without distinction as to race, sex, language, creed or any other factor.”<sup>451</sup> As this Commission has recognized, the principle of non-discrimination is a significant right that “permeates the guarantee of all other rights and freedoms under domestic and international law.”<sup>452</sup> The Inter-American system considers non-discrimination, equality before the law, and equal protection of the law for all people intertwined and foundational.<sup>453</sup> In addition, Article XVII enshrines the right to recognition of juridical personality and civil rights. Under this provision, “[e]very person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.”<sup>454</sup> This right recognizes that every human is entitled to rights purely on the basis of their humanity.<sup>455</sup> Like non-discrimination, juridical personality is a foundation for the enjoyment of other rights; when an individual is not recognized by virtue of their humanity, States or other individuals have license to violate their other rights.<sup>456</sup>

**239.** The United States violated Petitioners Joaquin, Manny, and Patricia Oliver’s rights to equality before the law, juridical personality, and civil rights by not providing adequate and effective remedies to gun violence victims, as it does for all other cases of wrongful death and injury. In fact, the State has affirmatively acted to *deprive* Petitioners and other similarly situated victims of access to effective remedies against gun companies.<sup>457</sup> This disparate treatment of gun violence victims including Petitioners amounts to discrimination under the law. On the federal level, PLCAA prevents gun violence victims from bringing civil lawsuits against manufacturers of firearms under most circumstances, leading to impunity for these and other gun industry actor abuses.<sup>458</sup> Laws in Florida further discriminate against individuals looking to bring lawsuits against gun companies. Most notably, rather than allowing courts to rule on proximate cause as they do in

---

<sup>451</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. II.

<sup>452</sup> IACHR Report 40/04, Case 12.053, Maya Indigenous Community (Belize), October 12, 2004, para. 163.

<sup>453</sup> IACHR Report 40/04, Case 12.053, Maya Indigenous Community (Belize), October 12, 2004, para. 164.

<sup>454</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. XVII.

<sup>455</sup> *Undocumented Workers v. U.S.*, Case 12.834, at ¶ 94, Inter-Am. Comm’n H.R., Report No. 50/16 (Nov. 30, 2016).

<sup>456</sup> *Id.*

<sup>457</sup> *Supra* notes 266-271, 318.

<sup>458</sup> *Supra* notes 266-271.

other liability cases, Florida dictates that the unlawful use of firearms is always the proximate cause of injuries resulting from their unlawful use.<sup>459</sup> Florida also discriminates in favor of gun companies and against victims of gun violence by requiring moving parties that unsuccessfully sue to cover all resulting expenses for the gun company defendants.<sup>460</sup>

**240.** In addition, Article XVIII provides that “[e]very person may resort to the courts to ensure respect for his legal rights” establishing an individual’s right to judicial protection.<sup>461</sup> Under such a proceeding, “the courts will protect [an individual] from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”<sup>462</sup> This Commission has interpreted the right to judicial protection as extending to those articulated in Article 25 of the American Convention, which include “the right of every individual to go to a tribunal when any of his or her rights have been violated; to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that establishes whether or not a violation has taken place; and the corresponding right to obtain reparations for the harm suffered.”<sup>463</sup>

**241.** In the United States, Petitioners and other victims of gun violence are prevented from seeking equivalent judicial recourse to that of victims in other cases of wrongful death or injury, a blatant deprivation of judicial protection. Due to the State’s deficient domestic regulatory regimes, gun violence victims do not have access to adequate remedies or a fair trial to determine their rights. As we have repeatedly seen, PLCAA and Florida’s related state laws prevent gun violence victims from bringing civil lawsuits against gun companies.<sup>464</sup> As a result, Petitioners Manny and Patricia Oliver did not bring a lawsuit against Smith & Wesson for its complicity in Joaquin’s murder and were thus unable to “resort to the courts to ensure respect for [their] legal rights.”<sup>465</sup> Judicial remedies must be available and effective; the State’s failure to provide Petitioners adequate and effective remedies in this case for the violations of their fundamental rights under the American Declaration violates the right to judicial protection.<sup>466</sup>

---

<sup>459</sup> *Supra* note 318.

<sup>460</sup> *Supra* note 322.

<sup>461</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. XVIII.

<sup>462</sup> *Id.*

<sup>463</sup> IACHR, Report N° 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 172 (citing IACHR, Report N° 40/4, Case 12.053, *Maya Indigenous Community* (Belize), para. 174; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 37).

<sup>464</sup> *See* discussion *supra* paras. 141-145, 165-168.

<sup>465</sup> *American Declaration of the Rights and Duties of Man*, *supra* note 424, art. XVIII.

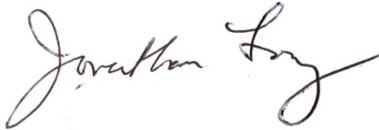
<sup>466</sup> IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendatriz, et al.*, United States, July 12, 2010, para. 62.

**VII. PRAYER FOR RELIEF**

Based on the foregoing, Petitioners respectfully urge the Honorable Commission to:

1. Grant expedited processing and evaluation of this Petition under Article 29(2)(d) of its Rules of Procedure.
2. Proceed to admit this Petition fully and forthwith in accordance with Articles 27-32 of the Commission’s Rules of Procedure, for the reasons set out above in paragraphs 181 – 223.
3. Declare that, for the reasons stated herein, the United States of America has violated Petitioners rights as alleged in Part VI and must award them full and effective reparations for the harm suffered.

Respectfully submitted,



Jonathan Lowy  
President  
Global Action on Gun Violence  
805 15th Street N.W., #601  
Washington, DC 20005  
United States of America  
(202) 415-0691  
jlowy@actiononguns.org



Professor Arturo Carrillo  
Director  
The George Washington University Civil and  
Human Rights Law Clinic  
650 20th Street N.W.  
Washington, D.C. 20052  
United States of America  
(202) 994-5794  
acarrillo@law.gwu.edu