

Gun Violence Prevention 2.0: A New Framework for Addressing America's Enduring Epidemic

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The gun violence debate in this country has felt frozen for many years, and a re-framing of the issue from the perspectives of public health and human rights has the potential to help us as a society to re-think this epidemic in a way that could be truly transformative.

My name is Mike McLively and I'm a Senior Staff Attorney at Giffords Law Center, where I direct our Urban Gun Violence Initiative.¹ My organization is named for Gabby Giffords, the former Congresswoman who was shot in the head in Arizona in 2011.² We are a national organization dedicated to reducing gun violence in America.³

Our goal is to continue to push for better gun laws and policies in this country, while also recognizing that the law has a role to play in directly supporting evidence-based, community-driven solutions to gun violence. We advocate for the scaling up of those solutions in our most impacted communities, which all too often are underserved communities of color.

Gun violence is an American epidemic that claims more than 30,000 lives each year and leaves tens of thousands of people injured.⁴ In the face of these statistics, and as we start to talk about important but also sometimes abstract notions like human rights, it's easy to become numb to the pain this epidemic is bringing to our friends, neighbors, and fellow Americans every single day. So, I want to reflect for just a moment on

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1. *Intervention Strategies*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/other-laws-policies/intervention-strategies> (last updated July 16, 2017).

2. *Arizona Safeway Shootings Fast Facts*, CNN (Dec. 31, 2018, 7:17 AM) <https://www.cnn.com/2013/06/10/us/arizona-safeway-shootings-fast-facts/index.html>.

3. GIFFORDS: COURAGE TO FIGHT GUN VIOLENCE, <https://giffords.org/> (last visited Jan. 3, 2019).

4. *Fatal Injury Data*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/injury/wisqars/fatal.html> (follow "WISQARS" hyperlink; choose year(s) and follow "Explore Data" hyperlink) (last reviewed Oct. 3, 2018).

what daily gun violence looks like in its various forms.

If you would, take a deep breath, clear your mind, and imagine for just a moment that you are 17 years old and living in an American city; your mom works two jobs to support you and your family; you've always followed the rules, you play on your school's volleyball team, and you dream of going to college.

Then, one night, you're in the car with a friend when you suddenly feel like you've been struck by lightning, you have no idea what's going on, but your face feels strange and when you reach up to touch your jaw, it's not there anymore and you can hear your friend shouting next to you: "you've been shot, you've been shot." The next thing you remember, you wake up in the hospital and learn that a stray bullet hit you in the face and you'll need months of reconstructive surgery and physical therapy to recover. You are just one of an estimated 60,000 people that are shot and injured by another person in the US every single year.⁵

Now imagine you're the mother of a beautiful young son in Florida who is charismatic, outgoing, smart - you have high hopes for him and think he could be a community leader and social justice activist when he grows up.

One night, the phone rings, and you answer it, and you hear a frantic voice on the other end, telling you that your son has been shot and killed.⁶ As you try to process the idea that you'll never see him again, you learn that the reason he was shot is that he and his friends were playing music in their car at a gas station when a man who was carrying a loaded, concealed handgun--one of the more than 1.9 million people in the State of Florida who have a license to do so--got into an argument with your son's friends about the music, and then abruptly fired multiple shots into their car, hitting your unarmed son in the legs, lungs, and heart, taking his life.⁷

5. *WISQARS Nonfatal Injury Data*, CTR. FOR DISEASE CONTROL, <https://webappa.cdc.gov/sasweb/nipc/nfirates.html> (last visited July 10, 2018).

6. See Jasper Sherer, *Fla. 'Loud Music' Murder: Firing into Car Full of Teens Playing Rap Music Not 'Self-defense,' Court Rules*, WASH. POST: MORNING MIX (Nov. 18, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/11/18/fla-loud-music-murder-firing-into-car-full-of-teens-playing-rap-music-not-self-defense-court-rules/?noredirect=on&utm_term=.35583ac1b079.

7. DIV. OF LICENSING, FLA. DEP'T OF AGRIC. & CONSUMER SERVS., NUMBER OF LICENSEES BY TYPE AS OF OCTOBER 31, 2018, https://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf.

Your son is just one of more than 14,000 gun-related homicides that take place in this country each year.⁸

Finally, imagine that you're in your mid-twenties and life is looking up. You're engaged to be married in just a few months to your long-time partner who is outgoing, funny, and loved by many. He has just graduated from law school in Oregon and is on his way home to visit his parents before coming to live with you. The morning of his flight home, you talk to him and everything sounds fine, but then you hear from his parents that his flight landed, but he wasn't on it.

A few days later, your life is forever altered as you learn that your fiancé, on an impulse and in a moment of despair, purchased a gun in Oregon, one of many states without any kind of waiting period, and within just hours, used it to take his own life.⁹ As far as you knew, he had never even fired a gun before. Your fiancé is one of more than 20,000 Americans who take their own lives with a gun every single year.¹⁰

These true stories not only illustrate the daily toll of shootings in America, but also serve as a reminder of why we as an entire nation should be doing everything in our power to address the gun violence epidemic. Because behind every statistic are real lives that are unalterably devastated every single day in this country—and it doesn't have to be like this.

It's also important to underscore that the fundamental human rights of these individuals were arguably violated by a U.S. government that has failed to exercise due diligence, even under the most lenient standard imaginable, to take steps to prevent guns from doing unspeakable harm in our communities. As we gather here today in St. Louis, a city that has long suffered some of the nation's highest rates of gun violence,¹¹ we're at a

8. *Fatal Injury Data*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/injury/wisqars/fatal.html> (follow "WISQARS" hyperlink; choose year(s) and follow "Explore Data" hyperlink) (last reviewed Oct. 3, 2018).

9. See Elisabeth Rosenthal, *Suicide, with No Warning*, N.Y. TIMES (Mar. 8, 2013), http://www.nytimes.com/2013/03/10/sunday-review/suicide-with-no-warning.html?_r=0.

10. *Fatal Injury Data*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/injury/wisqars/fatal.html> (last visited Oct. 3, 2018).

11. John Gramlich & Drew DeSilver, *Despite Recent Violence, Chicago is Far from the U.S. 'Murder Capital'*, PEW RES. CTR.: FACTTANK (Nov. 13, 2018), <http://www.pewresearch.org/fact-tank/2018/11/>

13/despite-recent-violence-chicago-far-from-u-s-murder-capital ("St. Louis led the nation with 66.1 murders per 100,000 people in 2017, according to the FBI's most recent yearly statistics, released in

critical moment in our nation's history when it comes to this issue. A huge segment of our population is sick and tired of the daily carnage and is saying "enough is enough."

In the wake of the tragic shooting at Stoneman Douglas High School in Parkland, Florida, millions of people marched in Washington DC and at rallies around the country to demand that American political leaders stop ignoring this ongoing epidemic.¹²

For far too long, the debate about gun violence in America has been frozen and incredibly polarized. A series of polls by the Pew Research Center in recent years show that building a wall on the US-Mexico border is the only issue in which there is a larger gap in views between Democrats and Republicans.¹³ Just 22% of Democrats polled favored protecting gun rights over limiting gun access, compared with 76% of Republicans.¹⁴

Even with policies such as universal background checks enjoying support from more than 90% of Americans,¹⁵ there has been no federal action on gun safety in years. A bill to provide for universal background checks failed to pass the Senate, even in the wake of the devastating massacre at Sandy Hook Elementary School in Newtown, Connecticut.¹⁶

This is in part because we in America have a strong culture of gun ownership in many places, and a unique constitutional provision stating that the right to bear arms "shall not be infringed."¹⁷ The gun debate has been framed as one of big government stomping on individual liberties

September.").

12. Emanuella Grinberg & Nadeem Muaddi, *How the Parkland Students Pulled Off a Massive National Protest in Only 5 Weeks*, CNN (Mar. 26 2018, 9:17 AM), <https://www.cnn.com/2018/03/26/us/march-for-our-lives/index.html>.

13. Harry Enten, *The U.S. Has Never Been So Polarized On Guns*, FIVETHIRTYEIGHT (Oct. 4, 2017), <https://fivethirtyeight.com/features/the-u-s-has-never-been-so-polarized-on-guns>.

14. *Id.*

15. Julia Manchseter, *Poll: 97 percent support background checks for all gun buyers*, THE HILL (Feb. 20, 2018), <https://thehill.com/blogs/blog-briefing-room/news/374692-poll-97-percent-support-background-checks-for-all-gun-buyers>.

16. Grace Wylar, *Why Congress Was Too Wimpy To Pass A Gun Control Bill That Almost Everyone In America Wants*, BUSINESS INSIDER (Apr. 18, 2013), <https://www.businessinsider.com/why-backgrou>
[nd-check-bill-failed-2013-4](https://www.businessinsider.com/why-backgrou).

17. U.S. CONST. amend. II.

and freedoms.

This debate and this way of thinking has set up a false choice between respecting the Second Amendment or taking meaningful legislative action to address gun violence. The organization I work for is built on the premise that these ideas are not mutually exclusive.

Looking at the gun debate through the lens of human rights adds an important perspective that may help provide a new way forward. First, it helps to reframe the individual rights narrative that dominates the current conversation. Yes, there is a right to bear arms protected by the Second Amendment. But what about the fundamental human right to life of the seventeen students and teachers who were killed at Parkland?¹⁸ What about the human right to life and the right to equal protection of law for residents of cities like Chicago, where the vast majority of gun homicide victims are Black or Latino,¹⁹ and fewer than 30% of homicides were solved by the police in 2016?²⁰

Second, a human rights framework broadens the conversation by having us consider America's place within an international system. This reveals just what an outlier America is in terms of gun violence and gun ownership. In 2016, just two nations, Brazil and America, suffered one-third of the world's gun deaths.²¹ And the US has just 4% of the world's population, but almost half of the estimated 857 million firearms in civilian possession.²² More than 393 million guns for a population of 330 million people.²³ America has more guns per capita than any other

18. Audra D. S. Burch & Patricia Mazzei, *Death Toll Is at 17 and Could Rise in Florida School Shooting*, N.Y. TIMES (Feb. 14, 2018), <https://www.nytimes.com/2018/02/14/us/parkland-school-shooting.html>.

19. GUN VIOLENCE IN CHICAGO, 2016, UNIV. OF CHICAGO CRIME LAB 13 (2017), available at <http://urbanlabs.uchicago.edu/attachments/store/2435a5d4658e2ca19f4f225b810ce0dbdb9231cbdb8d702e784087469ee3/UChicagoCrimeLab+Gun+Violence+in+Chicago+2016.pdf> (noting that 94% of homicide victims were Black or Latino in 2016, with 78% being Black).

20. Aamer Madhani, *Unsolved Murders: Chicago, Other Big Cities Struggle; Murder Rate a 'National Disaster'*, USA TODAY (Aug. 10, 2018), <https://www.usatoday.com/story/news/2018/08/10/u-s-homicide-clearance-rate-crisis/951681002>.

21. Sara Chodosh, *Guess Which Two Countries Account for a Third of All Gun Deaths*, POPULAR SCIENCE (Aug. 29, 2018) <https://www.popsci.com/gun-violence-america-maps>.

22. Aaron Karp, *Estimating Global Civilian-Held Firearms Numbers*, SMALL ARMS SURVEY (June 2018), <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>.

23. *Id.*

country, and no one else is even close. The next-closest country is Yemen, which still has less than half the rate of civilian gun ownership that we do.²⁴

Third, the human rights framework can help develop a set of objective best practices in terms of what other nations are doing to better address this problem. For example, the United Nations provides guidance to nations through its International Small Arms Control Standards, which provide “guidance to practitioners and policymakers on fundamental aspects of small arms and light weapons control... *so as to reduce the risk of their falling into the hands of criminals, terrorists and those who would misuse them.*”²⁵ Seeing what’s working to reduce gun violence in other nations can improve our practices here in the United States, and shows us that rampant gun violence is not an inevitable outcome for developed nations.

Finally, this framework also allows us to see with more clarity the human rights implications of our incredibly lax policies on those living in other countries—for example, a huge percentage of crime-guns recovered in Canada and Mexico first originated from dealers in the United States.²⁶

We as a country have to seriously grapple with the fact that we are the world’s largest arms supplier, and to take seriously the obligations that should come with that role.²⁷ Are we comfortable with the fact that guns made in the United States are being used to slaughter innocent civilians in Mexico?

Polls show that a majority of Americans are unhappy with the status quo,²⁸ but for meaningful change to come, political pressure must be applied from all angles. This includes both the international community and the community of domestic human rights champions and activists.

24. *Id.*

25. *About ISACS*, INT’L SMALL ARMS CONTROL STANDARDS, <http://www.smallarmsstandards.org/about-isacs.html> (last visited Feb. 14, 2019) (italics in original).

26. *Beyond Our Borders*, CTR. AM. PROGRESS (Feb. 2, 2018), <https://www.americanprogress.org/issues/guns-crime/reports/2018/02/02/445659/beyond-our-borders>.

27. *International Arms Transfers and Arms Production*, STOCKHOLM INT’L PEACE RES. INST. (2015), <https://www.sipri.org/yearbook/2015/10>.

28. Dylan Matthews, *More Americans say guns are the country’s top issue than ever have before*, VOX (Mar. 29, 2018), <https://www.vox.com/2018/3/29/17157468/parkland-shooting-public-opinion-gun-control-gun-law-polling>.

Part of why we've seen such little movement on this issue at the federal level is the grip that the NRA has on politicians. This is fueled by money, of course, but also by the NRA's ability to mobilize groups of intensely passionate people who pay attention, show up, and vote on a single issue.²⁹ We need a united gun violence prevention community that is equally committed in opposition.

We're starting to see that movement really take shape and each tragic mass shooting activates another segment of our society. In the wake of recent high profile shootings, including Parkland, Pulse nightclub, and countless others, we've seen the LGBT community, concerned parents, and students all join the growing movement to address gun violence in America.³⁰ It's time to bring the human rights and public health communities fully into the fold as well.

There is a strong case to be made that the United States is in violation of its obligations under international law to protect fundamental human rights because it is failing miserably to put into place even basic systems to prevent foreseeable acts of gun violence. That case is outlined below. Moreover, America can abide by its human rights obligations without violating the Second Amendment.

Let us consider the right to life and the security of the person. Article 6 of the International Covenant of Civil and Political Rights, which the US ratified in 1992, states, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his (or her) life."³¹

The way this right has been interpreted under international law creates an obligation on the part of member nations to exercise due diligence to prevent foreseeable violations of the right to life that are committed by state and private actors alike.³² So, a failure to take reasonable measures to

29. Nick Wing, *NRA Spending Approached Half a Billion Dollars In 2016*, HUFFINGTON POST (Nov. 16, 2017), https://www.huffingtonpost.com/entry/nra-2016-spending_us_5a0dd3e6e4b0b17e5e14e636.

30. Emily Witt, *Launching a National Gun-Control Coalition, The Parkland Teens Meet Chicago's Young Activists*, NEW YORKER (June 26, 2018), <https://www.newyorker.com/news/dispatch/launching-a-national-gun-control-coalition-the-parkland-teens-meet-chicagos-young-activists>.

31. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966).

32. Cf. U.N. Human Rights Comm., General Comment 31 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (March 29, 2004) ("the positive obligations on States Parties to ensure Covenant rights will only be

prevent gun violence, including a failure to adopt effective laws and policies, could be considered a violation of international law.

There's no doubt that violations of the right to life and personal security are occurring. More than 100,000 gun-related deaths and injuries occur in the United States every year.³³ Since 1968, more Americans have died from gunfire than have died in all the wars in our nation's history combined—about 1.4 million deaths compared with 1.2 million in wars.³⁴

America is unique—other developed nations do not experience nearly the rates of gun death and injury that we do. Rates of gun-related suicide are eight times higher in the US than in other developed nations, and rates of gun homicide are 25 times higher.³⁵ As a result, among high-income countries, the United States accounts for 80% of all gun deaths.³⁶ This is American exceptionalism in the most perverse sense.

So, is the US United States meeting its legal obligation to exercise “due diligence” to try to address or prevent these foreseeable shootings?

I submit to you that we are absolutely failing to meet this standard, under whatever definition of “due diligence” one chooses to adopt, and I'll give you just a few examples to make this case.

The federal government has not put into place several basic laws to prevent guns from falling into the wrong hands and, in some cases, has enacted policies that actively undermine public safety.

Under U.S. law, there are a few categories of people prohibited from firearm ownership, such as convicted felons and those convicted of acts of domestic violence,³⁷ but the systems for enforcing these provisions are

fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights”); *see also* AMNESTY INT'L, IN THE LINE OF FIRE: HUMAN RIGHTS AND THE US GUN VIOLENCE CRISIS (Sept. 12, 2018).

33. *WISQARS Nonfatal Injury Data*, CTR. FOR DISEASE CONTROL, <https://webappa.cdc.gov/sasweb/nipc/nfirates.html> (last visited July 10, 2018).

34. Chelsea Bailey, *More Americans Killed by Guns Since 1968 Than in All U.S. Wars Combined*, NBC NEWS (Oct. 4, 2017), <https://www.nbcnews.com/storyline/las-vegas-shooting/more-americans-killed-guns-1968-all-u-s-wars-combined-n807156>.

35. Erin Grinshteyn & David Hemenway, *Violent Death Rates: The U.S. Compared with Other High-Income OECD Countries, 2010*, 129 AM. J. MED. 266, 267 (2016).

36. *Id.*

37. 18 U.S.C. § 922(d), (g) (2018).

inadequate.

For example, there is a glaring and well-known loophole in our background check system. Under federal law, if a person wants to obtain a gun, they only need to undergo a background check if they are buying from a federally licensed firearm dealer.³⁸ Anyone wishing to avoid a background check can simply find a private seller. This is incredibly easy to do online or at a gun show, and they can then legally buy a gun without a background check. A 2017 study estimated that 22% of Americans acquired their most recent firearm without a background check—meaning millions of Americans are acquiring guns each year with no questions asked.³⁹

The Human Rights Committee recommended in 2014 that the US take “all necessary measures to abide by its obligation to protect the right to life,” including through the continued pursuit of legislation requiring background checks for all private firearm transfers.⁴⁰ And this is a policy supported by more than 90% of the American public.⁴¹ Yet, here we are in 2019, and this is still not the law of the land.

In addition to the lack of universal background checks, there are many other basic features of gun laws in other nations that are completely absent at the federal level here in the United States.⁴² A prohibition on military-

38. *Universal Background Checks*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks> (last visited Jan. 3, 2019).

39. Matthew Miller et al., *Firearm Acquisition Without Background Checks*, 166 ANNALS INTERNAL MEDICINE 233 (2017).

40. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, HUMAN RIGHTS COMMITTEE, CONCLUDING OBSERVATIONS ON THE FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA 4 (Apr. 23, 2014), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2BI55yh1wlkDk6CF00AAdiqu2L8SNxDB4%2BVRPkf5gZFbTQO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2F>.

41. TIM MALLOY & PAT SMITH RUBENSTEIN, U.S. VOTERS REJECT GOP HEALTH PLAN MORE THAN 3-1, QUINNIPIAC UNIVERSITY NATIONAL POLL FINDS; VOTERS SUPPORT GUN BACKGROUND CHECKS 94-5 PERCENT 2 (June 18, 2017), https://poll.qu.edu/images/polling/us/us06282017_Uvx74gpk.pdf.

42. In Israel, for example, only licensed gun owners may lawfully acquire, possess or transfer a firearm or ammunition. See Haviv Rettig Gur, *Comparing America to Israel on Gun Laws Is Dishonest – And Revealing*, TIMES OF ISRAEL (March 1, 201) (“Israelis are well-armed, of course, but any similarity to conservative Americans masks a fundamental difference: In Israel, guns are tightly controlled and carefully tracked by the state”). For a comprehensive overview and comparison of gun safety laws in other nations, see GUNPOLICY.ORG, www.gunpolicy.org.

style weapons like assault rifles and large capacity ammunition magazines was allowed to expire in 2004 and has not been renewed since.⁴³ Neither does federal law require the licensing or registration of firearms.⁴⁴ This means that a person can legally purchase a gun without the slightest clue about how to use it or safely store it.

While there are federal age limits for purchasing a firearm from a licensed dealer (just eighteen years old for a long gun and twenty-one years old for a handgun), there is no age limit whatsoever if a child of any age wants to purchase a long gun and ammunition from a private seller.⁴⁵ There is no better illustration of the inadequacy of these policies than the fact that the Parkland shooter, a troubled 19-year-old boy, was able to legally purchase the AR-15⁴⁶ and ammunition that he used to gun down seventeen of his peers and teachers.⁴⁷

There are no federal limits on how many firearms or how much ammunition a person may purchase at a time.⁴⁸ Nor is there a federal minimum waiting period for when a person may be purchasing a gun on a violent or suicidal impulse.⁴⁹ In fact, in the US, if your background check

43. *Assault Weapons*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/hardware-ammunition/assault-weapons/> (last visited Jan. 3, 2019). While gun advocates may point to state laws as a source of regulation, these vary widely and as such do not form a sufficient substitute to the federal ban. *See generally, Gun Laws by State*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/search-gun-law-by-state/> (last visited Jan. 3, 2019).

44. *Licensing*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/licensing/#federal> (last visited Jan. 3, 2019).

45. 18 U.S.C. § 922(x)(2), (5) (2018) *see also Minimum Age to Purchase & Possess*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/#federal>.

46. Bart Jansen, *Florida Shooting Suspect Bought Gun Legally Authorities Say*, USA TODAY, (Feb. 15, 2018), <https://www.usatoday.com/story/news/2018/02/15/florida-shooting-suspect-bought-gun-legally-authorities-say/340606002>.

47. Audra D.S. Burch & Patricia Mazzei, *Death Toll Is at 17 and Could Rise in Florida School Shooting*, N.Y. TIMES, Feb. 14, 2018, <https://www.nytimes.com/2018/02/14/us/parkland-school-shooting.html>.

48. *Bulk Gun Purchases*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/crime-guns/bulk-gun-purchases/#federal> (last visited Jan. 3, 2019).

49. *Waiting Periods*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/gun-sales/waiting-periods/#federal> (last visited Jan. 3, 2019).

isn't completed within three days, perhaps because you have a complicated record, you are automatically allowed to go through with the purchase.⁵⁰

And despite the fact that 4.6 million children in the US live in homes with at least one loaded, unlocked firearm, no federal law requires the safe storage of guns.⁵¹ And there is not even a federal law that specifically makes it illegal to engage in the trafficking of firearms.⁵² In fact, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the federal agency that investigates gun-related crime, is not allowed to keep a searchable database of crime-guns.⁵³ So when it is trying to link a gun to a crime, it must do so using pencil and paper—a system that is horribly inefficient, as you can imagine.

So, despite countless deaths and widely publicized mass shootings,⁵⁴ inaction is still the status quo at the federal level. Although over one hundred pieces of federal legislation regarding gun violence have been introduced since the Sandy Hook shooting in 2012, Congress has failed to pass any meaningful federal laws regulating firearms.⁵⁵ How is this exercising due diligence to protect its residents' fundamental human right to life?

Furthermore, the notion that the Second Amendment somehow prevents

50. See *Background Check Procedures*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/background-check-procedures>; see also German Lopez, *America's Gun Laws Are Already Weak — And a Growing Loophole Is Making Them Even Weaker*, VOX (Feb. 28, 2018), <https://www.vox.com/policy-and-politics/2018/2/28/17060024/background-check-guns-charleston-loophole>.

51. Deborah Azrael et al., *Firearm Storage in Gun-owning Households with Children: Results of a 2015 National Survey*, 95 J. URB. HEALTH 295, 299 (2018).

52. *Trafficking & Straw Purchasing*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing/#federal> (last visited Jan. 7, 2019).

53. Dan Friedman, *The ATF's Nonsensical Non-Searchable Gun Databases, Explained*, TRACE (Aug. 24, 2016), <https://www.thetrace.org/2016/08/atf-non-searchable-databases>.

54. Campbell Robertson et al., *11 Killed in Synagogue Massacre; Suspect Charged with 29 Counts*, N.Y. TIMES (Oct. 27, 2018), <https://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html>.

55. *Gun Law Trendwatch*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/resources/trendwatch> (last visited Jan. 7, 2019).

such action is absurd. When the Supreme Court found for the first time in 2008, in the *Heller* case, that the Second Amendment protects an individual right to bear arms, it narrowly defined the right as one to possess an operable firearm in the home for self-defense purposes.⁵⁶

And the Court, in the majority opinion authored by the late Justice Scalia, was careful to point out that the Second Amendment does not confer the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”⁵⁷ Instead, the Court identified a number of “presumptively lawful” regulations, including safe storage laws, laws prohibiting guns in sensitive places, and laws prohibiting dangerous and unusual firearms, such as those most useful in military service.⁵⁸

In the thousands of decisions issued by lower courts in the wake of *Heller* in cases challenging various regulations on Second Amendment grounds, the vast majority of challenges have been rejected and the laws upheld.⁵⁹ This is still a developing area of jurisprudence and the Supreme Court has not been willing to hear many cases on this issue since *Heller*,⁶⁰ but for now, it’s safe to say that the majority of common sense gun laws are completely compatible with the Second Amendment.⁶¹

There’s evidence that filling these policy gaps would help to prevent gun deaths and injuries, so by failing to take these actions, the United States is violating its obligations under international law to protect the basic human rights of its residents.

What leads to this conclusion? Each state may create its own laws pertaining to guns, so we have a natural experiment happening in our

56. *District of Columbia v. Heller*, 554 U.S. 570, 679 (2008).

57. *Id.* At 626.

58. *Id.* at 627 n.26.

59. See *Post-Heller Litigation Summary*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE (Oct. 2010), <https://lawcenter.giffords.org/wp-content/uploads/2018/11/PHLS-October-18-Update.pdf>.

60. For a comprehensive list of Supreme Court denials of certiorari in Second Amendment cases, see Giffords Law Center to Prevent Gun Violence, *Protecting Strong Gun Laws: The Supreme Court Leaves Lower Court Victories Untouched* <https://lawcenter.giffords.org/protecting-strong-gun-laws-the-supre>

[me-court-leaves-lower-court-victories-untouched](https://lawcenter.giffords.org/protecting-strong-gun-laws-the-supre).

61. For a comprehensive list of gun safety laws upheld by the courts in the wake of *Heller*, see Giffords Law Center to Prevent Gun Violence, *Post-Heller Litigation Summary*, <https://lawcenter.giffords.org/gun-laws/the-second-amendment/post-heller-litigation-summary>.

country in which states like California and Massachusetts have enacted many of the features I've mentioned,⁶² and others that have done essentially nothing above the federal minimum threshold.⁶³

Each year, Giffords Law Center grades the 50 states based on the strength or weakness of their gun laws. Sadly, more than half of the states receive an "F" grade—with a tremendous correlation between weak gun laws and higher rates of gun death.⁶⁴

As state gun laws get stronger, we see an equivalent drop in gun death rates.⁶⁵ Chicago is the favorite exception that opponents of gun safety laws point to, since the city has very high rates of gun violence in a state that has relatively strict gun laws.⁶⁶ What they usually fail to mention is that half of crime-guns recovered in Chicago in recent years have come from outside the city, with almost a quarter coming from Indiana, which is a thirty-minute drive away and has very lax gun laws.⁶⁷

Nothing prevents a person from driving to Indiana, purchasing large quantities of firearms, and bringing them back to Chicago. A good counterpoint is Hawaii, which is literally an island, has very strong gun laws, and not surprisingly, among the lowest gun death rates in the country.⁶⁸

62. This includes universal background checks, licensing for firearm purchasers, restrictions on assault weapons and large capacity ammunition magazines, and many other policies. For more details, see *California*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/state-law/california> (last visited Jan. 19, 2019); *Massachusetts*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/state-law/massachusetts> (last visited Jan. 19, 2019).

63. *Annual Gun Law State Scorecard*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/scorecard> (last visited Jan. 7, 2019).

64. *Id.*

65. *Id.*

66. See Giffords Law Center to Prevent Gun Violence, Illinois, <https://lawcenter.giffords.org/gun-laws/state-law/illinois>.

67. *City of Chicago*, GUN TRACE REPORT 2017 (Oct. 2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>; *Indiana*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/state-law/indiana>.

68. *Annual Gun Law State Scorecard*, *supra* note 63, *Hawaii*, <https://lawcenter.giffords.org/scorecard/#HI> (last visited Jan. 7, 2019).

In addition, a number of studies have looked at the impact of these individual policies at the state level. For example, in 2007 Missouri repealed a law requiring people to go through a background check before they could get a license to purchase a gun.⁶⁹

What was the result of this repeal? The gun homicide rate rose nearly 25% in just a few years and the share of crime-guns recovered in Missouri that were originally purchased in-state also rose by 25%.⁷⁰

Conversely, Connecticut implemented a handgun licensing law in 1995 that researchers found to be associated with a 40% reduction in the state's firearm-related homicide rate during its first 10 years in place, and a 15% reduction in gun-related suicide.⁷¹

To bring another discipline to the table, the field of public health has developed a very effective process for addressing health epidemics and this has been used to effectively reduce harm from a host of sources including tobacco use, motor vehicle accidents, and communicable diseases.⁷²

The public health methodology has four steps: 1) understanding the scale and nature of the problem through data collection and analysis; 2) designing interventions and policies to tackle the problem from multiple angles; 3) monitoring and evaluating the impact of interventions; and finally, 4) scaling up successful strategies to ensure widespread adoption.⁷³

This is a powerful model; however, several features of federal law prevent us from moving past stage one of the public health process. There are two examples that really stand out here.

First, in 1996, in the wake of a study by the CDC showing that the

69. *New Study Shows Increased Gun Violence in Missouri*, KANSAS CITY STAR, (Mar. 1, 2013) <https://www.kansascity.com/news/local/article315467/New-study-shows-increased-gun-violence-in-Missouri.html>.

70. Daniel Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, J. URB. HEALTH: BULL. OF THE N.Y. ACAD. OF MED. (Mar. 7, 2014), <https://nyagv.org/wp-content/uploads/2013/03/Webster-Crifasi-Vernick-Missouri-Repeal-JUH-2014.pdf>.

71. Kara E. Rudolph et al., *Association Between Connecticut's Permit-to-Purchase Handgun Law and Homicides*, 105 AM. J. PUB. HEALTH 49 (2015).

72. David Hemenway, *The Public Health Approach to Motor Vehicles, Tobacco, and Alcohol, with Applications to Firearms Policy*, 22 J. PUB. HEALTH POL'Y 381 (2002).

73. CTR. FOR DISEASE CONTROL, *THE PUBLIC HEALTH APPROACH TO VIOLENCE PREVENTION* (2018), <https://www.cdc.gov/violenceprevention/overview/publichealthapproach.html>.

presence of a gun in the home was associated with an increased risk of death and injury, Congress passed the Dickey Amendment which specified that “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.”⁷⁴ While this was not necessarily a complete ban on research related to firearms, the legislation was accompanied by a \$2.6 million budget cut—exactly the amount of money spent by the CDC on gun research the year before.⁷⁵ Well, the CDC got the message, and by 2012, despite a \$5.6 billion budget, only \$100,000 was allocated for gun violence research.⁷⁶ For context, we allocate hundreds of millions of dollars a year to research issues like traffic accidents, food-borne illness, and the effects of tobacco, but almost nothing on understanding gun violence.⁷⁷ It’s not surprising that we are on pace to soon have more gun deaths than traffic-related deaths in this country.

Dickey himself regretted this state of affairs and wrote an op-ed piece in which he stated that “Firearm injuries will continue to claim far too many lives at home, at school, at work and at the movies until we start asking and answering the hard questions.”⁷⁸ Research could have been continued on gun violence without infringing on the rights of gun owners, in the same fashion that the highway industry continued its research without eliminating the automobile.

Regardless of the solutions ultimately adopted, surely a nation has an obligation to investigate and conduct basic research to better understand the nature of the problem.

And yet, federal policy also narrowly restricts how data about traced

74. Pub. L. No. 104-208, 1110 Stat. 3009 (1996); see also Laura Wexler, *Gun Shy: How a Lack of Funds Translates to Inadequate Research on Gun Violence in America*, HOPKINS BLOOMBURG PUB. HEALTH, Fall 2017, <https://magazine.jhsph.edu/2017/fall/features/cassandra-crifasi-hopkins-moderate-gun-owner-gun-policy-researcher/how-the-dickey-amendment-affects-gun-violence-research.html>.

75. Erin Dooley, *Here's Why the Federal Government Can't Study Gun Violence*, ABC NEWS (Oct. 26, 2017), <https://abcnews.go.com/US/federal-government-study-gun-violence/story?id=50300379>.

76. Christine Jamieson, *Gun Violence Research: History of the Federal Funding Freeze*, PSYCHOL. SCI. AGENDA (Feb. 2013), <https://www.apa.org/science/about/psa/2013/02/gun-violence.aspx>.

77. Doug Irving, *More Research Could Help Prevent Gun Violence in America*, RAND (July 10, 2018), <https://www.rand.org/blog/rand-review/2018/07/more-research-could-help-prevent-gun-violence-in-america.html>.

78. Jay Dickey & Mark Rosenburg, *We Won't Know the Cause of Gun Violence Until We Look For It*, WASH. POST (July 27, 2012), https://www.washingtonpost.com/opinions/we-wont-know-the-cause-of-gun-violence-until-we-look-for-it/2012/07/27/gJQAPfenEX_story.html?utm_term=.8acb68c1f142.

crime-guns may be used. Because of the Tiahrt Amendments, which were first enacted in 2003,⁷⁹ the ATF is essentially prohibited from releasing trace data to researchers, who might be able to use the information to better understand patterns about illegal gun trafficking in the US.⁸⁰

Chicago dared to use crime-gun trace data in a 2017 report that named several of the gun dealers that disproportionately supplied guns used to commit crimes in the city, including the alarming fact that just two retailers were the source of one in every ten recovered crime-guns.⁸¹

One would think federal officials would be happy that this report would help law enforcement to tamper down on illegal trafficking or otherwise be used to improve practices at the responsible gun dealers. Instead, a representative from the ATF stated in an interview that the report was published “contrary to federal law,” and that it constituted “a prohibited use of the data.”⁸²

So, an effort to better understand the source of crime-guns was greeted by the government as a potential violation of federal law, which is very, very difficult to understand. However, it may help explain why we’ve had trouble adequately addressing this public health epidemic in the United States.

Speaking of public health, there are a number of extremely promising community-based solutions to gun violence that have nothing to do with regulating guns and that deserve our attention and support. And to our fault, the Gun Violence Prevention community of which I am a part has not done a good enough job of highlighting these solutions, although I believe that is starting to change.

For context, it’s important to understand that the majority of

79. Pub. L. No. 108-7, § 644, 117 Stat. 11, 473 (2003).

80. *Tiahrt Amendments*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.gifford.org/gun-laws/federal-law/other-laws/tiahrt-amendments/> (last visited Mar. 14, 2018).

81. CITY OF CHICAGO, GUN TRACE REPORT (2017), <https://www.chicago.gov/content/dam/city/depts>

/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf; see also Timothy McLaughlin, *A Quarter of Chicago’s Crime-guns Were Sold By Just Ten Dealers*, TRACE (Oct. 29, 2017), <https://www.thetrace.org/rounds/quarter-chicagos-crime-guns-sold-just-ten-dealers>. Crime-gun

82. Alex Yablon, *ATF to Chicago: Your Release of Detailed Crime-gun Data Was Prohibited Under Federal Law*, TRACE (NOV. 2, 2017), <https://www.thetrace.org/2017/11/atf-chicago-release-detailed-crime-gun-data-prohibited-federal-law>. Crime-gun

interpersonal gun violence in the US is not from mass shootings, but rather from the day-to-day shootings that disproportionately impact communities of color.⁸³ Consider that in 2012, 90 people were killed in mass shootings, but more than 6,000 Black men lost their lives to gun violence that same year.⁸⁴ This violence is concentrated in cities and in specific neighborhoods. In cities across the country, less than 1% of the residents are responsible for the vast majority of serious violence.⁸⁵

Cities that identify high-risk individuals and then provide coordinated intervention services are seeing impressive reductions in rates of gun violence. Oakland, California has seen a 50% reduction in shootings since 2012 thanks in part to its willingness to embrace and institutionalize these approaches.⁸⁶ Rather than waiting for violence to occur, teams of community members, law enforcement officers, and social service providers in Oakland contact high-risk individuals and deliver a message that the shooting must stop. At the same time, they offer job placement, legal help, counseling, and other support to address root causes of violence.⁸⁷

Another emerging intervention strategy, also deployed in Oakland, is known as Hospital-based Violence Intervention Programs or HVIPs. This strategy is based on the insight that people who have been shot are at very elevated risk of re-injury and the five-year re-injury rate in many of our cities is close to 40%.⁸⁸

America's trauma centers are essentially revolving doors, where gunshot victims are expertly treated but then discharged right back into the same circumstances that led to their being shot in the first place. HVIPs

83. See Louis Beckett, *How the Gun Control Debate Ignores Black Lives*, PROPUBLICA (Nov. 24, 2015), <https://www.propublica.org/article/how-the-gun-control-debate-ignores-black-lives>.

84. *Id.*

85. GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, HEALING COMMUNITIES IN CRISIS (2016), <https://lawcenter.giffords.org/wp-content/uploads/2016/11/Healing-Communities-in-Crisis-URL.pdf>.

86. Reygan Cunningham & Mike McLively, *What Oakland Can Teach California About Gun Violence Prevention*, CALMATTERS (Dec. 11, 2018), <https://calmatters.org/articles/commentary/my-turn-what-oakland-can-teach-california-about-gun-violence-prevention>.

87. *Id.*

88. See GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, HEALING COMMUNITIES IN CRISIS: LIFESAVING SOLUTIONS TO THE URBAN GUN VIOLENCE EPIDEMIC (2016), <https://lawcenter.giffords.org/wp-content/uploads/2016/11/Healing-Communities-in-Crisis-URL.pdf>.

connect violently injured people with culturally competent case workers who build relationships with their clients and work with them long after discharge to identify the underlying risk factors for violence such as lack of employment or gang membership.⁸⁹

Where this has been implemented, studies show a large reduction in the violent re-injury rate for clients.⁹⁰ There are about 30 such programs around the nation,⁹¹ but there should be dozens and dozens more. At present, these programs operate without meaningful state or federal support.

Imagine the change in gun violence rates that could occur if the entire American medical system was harnessed to effectively intervene with those who are shot, rather than simply patching people up and releasing them back into the same dangerous conditions.

Public health strategies like this are increasingly gaining support, and I would encourage those gathered here today and the broader human rights community to get to know these solutions and continue pressing international bodies to incorporate them into their recommendations to state actors. A good starting place would be our 2016 report, called *Healing Communities in Crisis*, which highlights some of the most promising intervention strategies.⁹² Another is the website of the Movement towards Violence as a Health Issue.⁹³

Human rights scholars should consider the notion that a nation has an

89. *Id.*

90. Rochelle A. Dicker, *Hospital-based Violence Intervention: An Emerging Practice Based on Public Health Principles*, 1 *TRAUMA SURG. ACUTE CARE OPEN* 1 (2016); Gerardo Gomez et. al., *Project Prescription for Hope (RxH): Trauma Surgeons and Community Aligned to Reduce Injury Recidivism Caused by Violence*, 78 *AM. SURG.* 1000 (2012); Leslie S. Zun et al., *The Effectiveness of an ED-based Violence Prevention Program*, 24 *AM. J. EMERG. MED.*, 8 (2006); Michel B. Aboutanos et. al., *Brief Interventions with Community Case Management Services Are Effective for High-risk Trauma Patients*, 71 *J. TRAUMA* 228 (2011); Catherine Juillard et al., *Saving Lives and Saving Money: Hospital-based Violence Intervention is Cost-effective*, 78 *TRAUMA ACUTE CARE SURG.* 252 (2015).

91. *See Network Members*, NAT'L NETWORK OF HOSPITAL-BASED VIOLENCE INTERVENTION PROGRAMS, <http://nnhvip.org/network-membership> (last visited Mar. 14, 2018).

92. *See GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, HEALING COMMUNITIES IN CRISIS: LIFESAVING SOLUTIONS TO THE URBAN GUN VIOLENCE EPIDEMIC* (2016), <https://lawcenter.giffords.org/wp-content/uploads/2016/11/Healing-Communities-in-Crisis-URL.pdf>.

93. *Make Violence a Health Issue*, END THE VIOLENCE EPIDEMIC, <http://violenceepidemic.com/movement> (last visited Jan. 08, 2019).

obligation to not just enact policies to regulate the *supply* of guns, but also to enact policies designed to support and expand community-based solutions grounded in the principles of public health. Here in the United States, such solutions have greater promise for bipartisan support because they address the root of the problem without implicating constitutional rights.

We must look at gun regulation as being necessary, but by no means sufficient to solving this public health crisis.

In a report we released at the end of last year called “Investing in Intervention,” we found that only five states in the country were making these kinds of life-saving investments.⁹⁴ I hope that the human rights community will join us in demanding increased and sustained government support for these solutions as part of a comprehensive response to gun violence that addresses both supply *and* demand.

Given all of this, there is a strong argument to be made that the United States is violating fundamental human rights by failing to enact even basic laws and policies to protect its residents from foreseeable acts of gun violence. What are the implications of that?

For one thing, this is an opportunity for a new chorus of voices—both internationally and here at home—to join in the call to hold U.S. leaders responsible for these failures. We might not currently have a federal administration that cares much about the concerns of the international community,⁹⁵ but that will not always be the case.

This is also another important opportunity for concerned, politically active citizens to learn more about this problem and to come together to do something about it and to help break the vice grip that the gun lobby has had on our politics for far too long. Amnesty International’s great new report on this issue is an exciting example.⁹⁶

I’ve focused on the right to life, but there are a number of other

94. GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, *INVESTING IN INTERVENTION: THE CRITICAL ROLE OF STATE-LEVEL SUPPORT IN BREAKING THE CYCLE OF URBAN GUN VIOLENCE* (2018), <https://lawcenter.giffords.org/wp-content/uploads/2018/02/Investing-in-Intervention-02.14.18.pdf>.

95. John Haltiwanger, *America's Global Reputation Will Take 'Years to Repair' from the Trump Era, Experts Warn*, BUSINESS INSIDER (July 22, 2018), <https://www.businessinsider.com/us-global-standing-will-take-years-to-repair-from-trump-2018-7>.

96. AMNESTY INT’L, *IN THE LINE OF FIRE: HUMAN RIGHTS AND THE US GUN VIOLENCE CRISIS* (2018), https://www.amnistia.pt/wp-content/uploads/2018/09/In_the_Line_of_Fire_ReportFull.pdf.

fundamental human rights that are threatened by gun violence. What about the right to education in cities where kids don't feel safe walking to school? The right to speech in classrooms where fellow students and teachers may be packing heat? The right of equal protection of law for people of color in this country who aren't seeing investments in solutions other than mass arrest and incarceration in their neighborhoods?⁹⁷

Each of these rights has important implications and potentially brings another group of stakeholders to the table in the fight against gun violence.

So, although I'm convinced that human rights violations are occurring here in this country with respect rampant gun violence and our lack of an adequate response, I'll admit that I don't know the best way to leverage international institutions to help address that fact. What exactly are the remedies we can and should seek? Fortunately for us, we have an array of very qualified experts on international law who will help us work through these important issues.

This is the beauty of a multidisciplinary approach to this issue. If we all bring our unique skill sets and knowledge to the table and commit to a common cause, there's nothing that can stop us from bringing to life our shared vision of an America that is free from the oppression of gun violence. Bringing about that kind of vision doesn't just happen on its own; it takes an incredible amount of hard work.

As we do this work together, please keep in mind the stories you read at the beginning this article. Real lives are depending on our action. My hope is that the history books will look back on this time as the moment when we as a nation finally turned things around. All of us have an important role to play. I know that we are up to the great task before us.

97. *Id.*