



January 25, 2021

President Joseph R. Biden Jr.  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Vice President Kamala D. Harris  
Office of the Vice President  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Biden and Vice President Harris:

As co-chairs and on behalf of Prosecutors Against Gun Violence (PAGV), a non-partisan coalition of 46 prosecutors serving over 60 million Americans in 24 states across the country, we write to recommend changes to confront the growing and urgent crisis of gun violence in the jurisdictions we serve.

Since 2014, PAGV has held a dozen national forums on a range of topics, from gun crimes committed in the home, to safe storage, to illegal firearms trafficking, to mass shootings. PAGV has issued a nationwide blueprint<sup>1</sup> on removing guns from domestic abusers that was re-circulated on social media by the Obama/Biden Administration, and a first-of-its-kind report, *Mass Shooting Resource Guide For Prosecutors: How to Prevent, Protect, and Prosecute*.<sup>2</sup> Our organization has filed amicus briefs in several important cases, including those pertaining to ghost guns<sup>3</sup> and gun licensing.<sup>4</sup> During the Obama/Biden Administration, a PAGV representative made a presentation on the role of state and local leadership on gun violence prevention at an event convened by the White House. Our members also bring their substantial expertise to bear in advocating for legislation and policy objectives at the city, county, state and federal levels.

Since March, the COVID-19 pandemic has sparked a record-shattering surge in gun sales.<sup>5</sup> As individuals tasked with ensuring public safety in our jurisdictions, we are deeply concerned by the proliferation of dangerous firearms in our country, as well as the increasing gun violence plaguing many of our nation's big cities. In addition, the violent siege upon our nation's Capitol on January 6, 2021 laid bare the need to better investigate and prosecute domestic terrorists. During your presidential campaign, you stated your support for numerous commonsense gun safety and violence prevention measures.<sup>6</sup> We share these goals, and would welcome the opportunity to participate with you in effectuating them.

As a first step, we write now to urge you to take the following actions, which we believe will make our country safer without impinging on law-abiding Americans' ability to possess firearms for lawful purposes. We hope that these recommendations, achievable through executive order, congressional action, and other means, will be useful to you and your team. Our work with the nation's leading gun safety groups, including Giffords, Brady, Everytown for Gun Safety, March For Our Lives, the Coalition to Stop Gun Violence, and the Joyce Foundation, has helped inform these proposals, many of which are shared by the coalition of 86 organizations who wrote to you in November.<sup>7</sup> Our recommendations fall within the following categories:

- I. Streamlining and Prioritizing the Fight to End the Gun Violence Epidemic
- II. Investing in Ending the Gun Violence Epidemic
- III. Strengthening Background Checks, Closing Loopholes & Increasing Accountability
- IV. Stopping the Proliferation of Ghost Guns and Modified Weapons

## **I. Streamline and Prioritize the Fight to End the Gun Violence Epidemic**

As you discussed on the campaign trail, gun violence in the United States is a public health epidemic. The global struggle with COVID-19 underscores that, now more than ever, the only way to get through a public health epidemic is to treat it with the gravity the situation demands. One hundred Americans die by firearms every day,<sup>8</sup> and that reality unquestionably demands that the federal government take action to prioritize the fight to end gun violence. We urge you to take the following actions as soon as possible to streamline the nation's approach to ending the havoc gun violence wreaks:

- Appoint a Presidential Director of Gun Violence Prevention to coordinate federal efforts
- Create a Task Force on Gun Violence Prevention that brings together representatives across all federal agencies
- Build a unified gun violence research database that collects timely data on firearm-related deaths and injuries<sup>9</sup>
- Hold periodic White House convenings on gun violence prevention, particularly on rising gun violence in urban areas, to encourage effective strategies and information-sharing among state and local entities
- Encourage Congress to hold hearings regarding oversight of the gun industry by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Direct the ATF to publish data on the sources of guns used in crimes<sup>10</sup>
- Direct the ATF to develop and issue federal guidance on firearm safety and safe storage practices at home, set new Consumer Product Safety Commission standards for gun storage, and encourage gun dealers to provide all purchasers with educational materials on safe storage<sup>11</sup>
- Direct the Department of Education to promote interventions to prevent student firearm access<sup>12</sup>
- Direct the Department of Justice to work with state and local entities to disarm hate-motivated individuals and other people in crisis through the use of extreme risk protection orders<sup>13</sup>
- Strengthen the ability to investigate and prosecute domestic terrorism and hate crimes by improving data collection and using existing counterterrorism resources and civil rights laws to prosecute white supremacists and armed extremists<sup>14</sup>

## **II. Invest in Ending the Gun Violence Epidemic**

The gun violence epidemic has cost far too many American lives. Directing federal funds to end violence and support survivors will save millions of individuals from suffering the risks and consequences of the epidemic. The following recommendations mirror and complement the strategies you both have already championed, such as President Biden’s initiative to create a \$900 million, eight-year program to fund evidence-based interventions,<sup>15</sup> and must be acted on swiftly:

- Invest in evidence-based community violence prevention and intervention programs<sup>16</sup>
- Provide sufficient funding to ATF, so it has the resources and staffing to increase the number of gun seller inspections it conducts to better hold sellers with violations accountable<sup>17</sup>
- Help gun violence survivors obtain Victims of Crime Act (VOCA) assistance funds, which often go unspent by states and are under-utilized by survivors, including mass shooting survivors<sup>18</sup>
- Direct the National Institute for Justice to fund and test smart gun and microstamping prototypes, and provide incentives to states to adopt smart gun, microstamping, and other technological strategies to reduce gun violence<sup>19</sup>
- Provide grants to states and local government agencies to encourage the passage of strong red-flag laws so that entities can petition for the removal of firearms from high-risk individuals<sup>20</sup>
- Appropriate sufficient funding to the CDC to complete a comprehensive, longitudinal study of the gun violence epidemic<sup>21</sup>

### **III. Strengthen Background Checks, Close Loopholes & Increase Accountability**

Ending the gun violence epidemic requires effective background check laws on the front end and consequences on the back end for those who try to subvert the system. Thanks to President Biden’s work with others on the Brady Handgun Violence Prevention Act (Pub. L. 103-159, 107 Stat. 1536, enacted Nov. 30, 1993), background checks are mandated for all gun sales licensed by a gun dealer. That Act was a crucial first step and must be built upon.

The National Instant Criminal Background Check System (NICS) facilitates most background checks and has stopped 3 million purchases from ineligible individuals since 1993, yet loopholes still make it possible to buy many other firearms without any background check.<sup>22</sup> In that regard, approximately 80% of firearms acquired for criminal purposes are obtained from unlicensed sellers, approximately 22% of all gun owners in this country obtained their most recent firearm absent a background check, and approximately 45% of all individuals who have purchased a gun online within the past two years have done so without completing a background check.<sup>23</sup> These loopholes have not gone unnoticed by you or your team, as evidenced by Vice President Harris, during her time as Senator, introducing the Background Check Completion Act.<sup>24</sup> Likewise, our laws shield websites – ranging from mainstream platforms to sites like 8chan and Armslist – from liability for facilitating unlawful firearms sales.<sup>25</sup> Indeed, Vice President Harris has urged Facebook to enforce gun-selling rules on its digital marketplace.<sup>26</sup> These loopholes must be closed.

Acting through Executive Order or Congress to implement the following recommendations to improve the background check system, close the loopholes that allow dangerous individuals to obtain firearms, and increase liability for entities that facilitate such acquisitions is essential to ending the gun violence epidemic:

- Require background checks on all gun sales, including gun show and online purchases<sup>27</sup>
- Direct the ATF to ensure that the background check system covers all firearms
- Provide additional funding for Fix NICS and to increase capacity at the National Instant Criminal

#### Background Check System<sup>28</sup>

- Require the FBI to notify state and local law enforcement when a person fails a criminal background check in their jurisdiction<sup>29</sup>
- Improve the prohibited purchaser reporting infrastructure, so that the background check system has all the records it needs, and incentivize states to maximize timely reporting<sup>30</sup>
- Close the Charleston loophole, which enables sales to go forward before a check is complete<sup>31</sup>
- Close the “boyfriend loophole” so that dating partners convicted of domestic abuse will be treated the same as spouses<sup>32</sup>
- Prioritize the prosecution of “straw purchases” to prevent ineligible individuals from circumventing background check requirements by having another individual purchase a firearm for them<sup>33</sup>
- Standardize, clarify, and strengthen the definitions of “mass shooting,” “school shooting,” and “fugitive from justice” across the federal government<sup>34</sup>
- Amend the Communications Decency Act to hold online intermediaries accountable for facilitating criminal sales of firearms<sup>35</sup>

#### **IV. Stop the Proliferation of Ghost Guns and Modified Weapons**

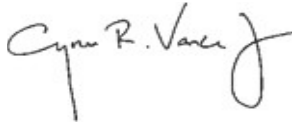
Our laws should prevent any guns from getting into the wrong hands and the wrong guns from getting into any civilian hands. The grave risks posed by everyday citizens possessing military-grade weapons is not a new reality, as you well know given President Biden’s key role in the passage of 1994’s 10-year ban on assault weapons and high-capacity magazines. What is new, however, is the additional risk posed by the availability of ghost guns, which can be 3D printed or assembled from kits purchased online and easily bypass metal detectors.<sup>36</sup> As now Vice President Harris stated when introducing the Untraceable Firearms Act in the Senate, “ghost guns exist to evade detection and background checks” and it is “common sense” that they not be allowed on the market.<sup>37</sup> Indeed, the proliferation of assault weapons and ghost guns alike has manifested in more – and more deadly – shootings and mass shootings, and it must be put to an end.<sup>38</sup> We urge the federal government to take the following actions, which strongly align with proposals you have already endorsed on the campaign trail:

- Ban military-style assault rifles
- Ban certain accessories from the public that enhance the lethality of firearms, such as high-capacity magazines and bump stocks
- Ban ghost guns

The above list is intended to be comprehensive, but not exhaustive. Other critical focus areas that PAGV members support include reducing firearm suicides, student access to guns, and police-involved shootings, while at the same time increasing police accountability.

We are encouraged by your commitment to reduce gun violence and know that Vice President Harris’ experience as both a prosecutor and senator will be invaluable to this endeavor. PAGV will vigorously support efforts by your administration to reduce gun violence, and our members stand ready to assist in developing and implementing gun violence prevention policies and laws.

We look forward to hearing from you. Thank you for your consideration.



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<sup>1</sup> See Prosecutors Against Gun Violence & The Consortium for Risk-Based Firearm Policy, Firearm Removal/Retrieval in Cases of Domestic Violence (2016), available at <http://efsgv.org/wp-content/uploads/2016/02/Removal-Report-Updated-2-11-16.pdf>.

<sup>2</sup> See Prosecutors Against Gun Violence, Mass Shooting Resource Guide for Prosecutors: How to Prevent, Protect, and Prosecute at 30–31 (Spring 2020), available at <https://prosecutorsagv.org/2021/01/22/press-release-prosecutors-against-gun-violence-mass-shooting-resource-guide/>.

<sup>3</sup> *City of Syracuse, et al. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, et al.*, No. 20 Civ. 6885 (GHW) (S.D.N.Y.) (pending).

<sup>4</sup> *Young v. Hawaii*, 896 F.3d 1044, rehearing en banc granted 915 F.3d 681 (9th Cir. 2019); *Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018), cert. denied 141 S. Ct. 108 (2020).

<sup>5</sup> NICS Firearms Checks: Month/Year, FBI.GOV, available at [https://www.fbi.gov/file-repository/nics\\_firearm\\_checks\\_-\\_month\\_year.pdf/view](https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view) (last visited Jan. 13, 2021).

<sup>6</sup> The Biden Plan to End Our Gun Violence Epidemic, BIDEN HARRIS, <https://joebiden.com/gunsafety/> (last visited Jan. 13, 2020).

<sup>7</sup> Letter to Biden-Harris Transition, Gun Violence Prevention Coalition (Nov. 17, 2020), available at <https://drive.google.com/file/d/1SE3GvJVP7Wzt1zmiQGbk-5yNvBhCGUtm/view> (last visited Jan. 13, 2021).

<sup>8</sup> Home, GIFFORDS LAW CENTER, <https://giffords.org/> (last visited Jan. 13, 2021).

<sup>9</sup> Gun Violence Prevention Coalition, *supra* note 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; Safe Storage, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/child-consumer-safety/safe-storage/> (last visited Jan. 13, 2021).

<sup>12</sup> See Everytown Responds to Dr. Miguel Cardona’s Nomination as Secretary of Education, EVERYTOWN FOR GUN SAFETY (Dec. 23, 2020), <https://everytown.org/press/everytown-responds-to-dr-miguel-cardonas-nomination-as-secretary-of-education/> (last visited Jan. 13, 2021).

<sup>13</sup> Gun Violence Prevention Coalition, *supra* note 7.

<sup>14</sup> See Prosecutors Against Gun Violence, *supra* note 2 at 30–31.

<sup>15</sup> Thomas Abt, *We Can’t End Inequality Until We Stop Urban Gun Violence*, THE TRACE (Jul. 12, 2019), <https://www.thetrace.org/2019/07/we-cant-end-inequality-until-we-stop-urban-gun-violence/> (last visited Jan. 13, 2021).

<sup>16</sup> Press Release, Giffords Law Center Releases New Report on the Failure of Federal Funding to Halt Gun Homicides and Urges Robust, Refocused Investments to Save Lives, GIFFORDS LAW CENTER (Dec. 17 2020), <https://giffords.org/press-release/2020/12/giffords-law-center-releases-new-report-on-the-failure-of-federal-funding-and-urges-investment/> (last visited Jan. 17, 2020).

<sup>17</sup> See Gun Violence Prevention Coalition, *supra* note 7.

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

<sup>19</sup> Microstamping & Ballistics, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/microstamping-ballistics/> (last visited Jan. 13, 2021).

<sup>20</sup> See Prosecutors Against Gun Violence, *supra* note 2 at 25.



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<sup>21</sup> See *id.* at 32.

<sup>22</sup> NICS & Reporting Procedures, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/nics-reporting-procedures/> (last visited Jan. 13, 2020).

<sup>23</sup> Universal Background Checks, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/> (last visited Jan. 13, 2021).

<sup>24</sup> U.S. Senator for California Kamala D. Harris, Press Release, Harris, Feinstein, Blumenthal Introduce Bill to Close Background Check Loophole for Gun Sales (June 25, 2020), available at <https://www.harris.senate.gov/news/press-releases/harris-feinstein-blumenthal-introduce-bill-to-close-background-check-loophole-for-gun-sales>.

<sup>25</sup> 47 U.S.C.A. § 230 (West 2020); MARY ANNE FRANKS, *THE CULT OF THE CONSTITUTION* 175 (2019); see *See* Prosecutors Against Gun Violence, *supra* note 2 at 29–30.

<sup>26</sup> U.S. Senator for California, Kamala D. Harris, Press Release, Harris, Colleagues Urge Facebook to Enforce Gun Selling Rules on its Digital Marketplace (Sept. 6, 2019), available at <https://www.harris.senate.gov/news/press-releases/harris-colleagues-urge-facebook-to-enforce-gun-selling-rules-on-its-digital-marketplace>.

<sup>27</sup> Universal Background Checks, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/> (last visited Jan. 13, 2021).

<sup>28</sup> See Gun Violence Prevention Coalition, *supra* note 7.

<sup>29</sup> This proposal is contained in the Gun Buyer Alert Act (H.R. 3552) (2019-2020).

<sup>30</sup> See United States Government Accountability Office: Report to Congressional Requesters, Gun Control: DOJ Can Further Improve Guidance on Federal Firearm Background Check Records at 42 (Jul. 2020), available at <https://www.gao.gov/assets/710/707986.pdf>.

<sup>31</sup> Close the Charleston Loophole, EVERYTOWN FOR GUN SAFETY, <https://everytown.org/solutions/close-the-charleston-loophole/> (last visited Jan. 13, 2021).

<sup>32</sup> What is the “boyfriend loophole”?, EVERYTOWN FOR GUN SAFETY, <https://everytown.org/what-is-the-boyfriend-loophole/> (last visited Jan. 13, 2021).

<sup>33</sup> Trafficking & Straw Purchasing, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing/> (last visited Jan. 13, 2021).

<sup>34</sup> General Methodology, GUN VIOLENCE ARCHIVE, <https://www.gunviolencearchive.org/methodology> (last visited Jan. 13, 2021) (discussing the fungible definitions of “mass shooting” and “school shooting”); Sari Horwitz, *Tens of Thousands with Outstanding Warrants Purged From Background Check Database for Gun Purchases*, WASH. POST (Nov. 22, 2017), [https://www.washingtonpost.com/world/nationalsecurity/tens-of-thousands-with-outstanding-warrants-purged-from-background-check-database-for-gunpurchases/2017/11/22/b890643c-ced1-11e7-9d3a-bcbe2af58c3a\\_story.html](https://www.washingtonpost.com/world/nationalsecurity/tens-of-thousands-with-outstanding-warrants-purged-from-background-check-database-for-gunpurchases/2017/11/22/b890643c-ced1-11e7-9d3a-bcbe2af58c3a_story.html) (discussing the changing definition of “fugitive from justice”).

<sup>35</sup> Prosecutors Against Gun Violence, *supra* note 2 at 29-30.

<sup>36</sup> Carolyn Wilke, *3-D Printed ‘Ghost Guns’ Pose New Challenges for Crime-Scene Investigators*, SCIENCE NEWS (Sept. 24, 2019), <https://www.sciencenews.org/article/3d-printed-guns-plastic-ballistics-crime>.

<sup>37</sup> U.S. Senator for California Dianne Feinstein, Press Release, Senators Introduce Bill to Ban Untraceable ‘Ghost Guns’ (May 14, 2020), available at <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=4D03B852-FDD0-46D3-8B9E-307AD75B763E>.

<sup>38</sup> See Prosecutors Against Gun Violence, *supra* note 2 at 26–29; Dakin Andone, *The Gunman in the Saugus High School Shooting Used a ‘Ghost Gun,’ Sheriff Says*, CNN (Nov. 21, 2019), available at <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html>; Jennifer Medina, *A New Report on the Last Vegas Gunman Was Released. Here are Some Takeaways*, N.Y. TIMES (Jan. 19, 2018), available at <https://www.nytimes.com/2018/01/19/us/las-vegas-attack-shooting-paddock.html>.