

WHY DOMESTIC VIOLENCE OFFENDERS DON'T GIVE UP THEIR GUNS

Natalie Nanasi[†]

ABSTRACT: Perpetrators of intimate partner violence are barred by federal law and many states' laws from possessing firearms. While such prohibitions enjoy popular support, they are sporadically and inconsistently enforced, placing the lives of survivors at risk when offenders do not voluntarily comply. Many experts, including this author, have offered legal and policy solutions to increase the likelihood that perpetrators of domestic violence will either willingly relinquish their guns or otherwise be dispossessed of them. But these proposals may have been premature.

This Article is the first to take a step back and inquire why offenders do not surrender their firearms as ordered and what might incentivize them to do so. Understanding the worldviews and lived experiences of those subject to domestic violence gun prohibitions is a critical, and to-date ignored, first step to formulating viable solutions.

The Article is based on original empirical research conducted with perpetrators of intimate partner violence enrolled in a Batterer Intervention Program in Texas. The research reveals a range of novel findings based on both survey responses and in-depth interviews. The data show that most men subject to domestic violence firearm regulations are aware that they are prohibited possessors. They are reluctant to comply with the law, however, due to the atypically high levels of violence—including gun violence—they have experienced in their lifetimes, which has led them to conclude that firearms are necessary to protect themselves and their loved ones from harm. Respondents

[†] Associate Professor and Director, Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women, SMU Dedman School of Law (<https://orcid.org/0000-0002-5524-4921>). This research would not have been possible without the support and cooperation of the staff and leadership of Family Place's Battering Intervention and Protection Program, particularly Ben Meneses and Rhonda Lemons. Kathryn Faulk, JB Fishman, Maggie Gianvecchio, Abigail Lahvis, Erica Mellon, Samara Taper, and Meg Thomas were extraordinarily capable student researchers. Thank you also to my clinic partner, Demetrice Lopez, for her unwavering encouragement in this yearslong endeavor. Many experts generously provided critical guidance and feedback throughout this process, including Joseph Blocher, Daniel Bousquet, Debra Branch, Kate Elengold, Shannon Frattaroli, Lisa Geller, Tina Jiwatram-Negron, Margaret Johnson, Ernest Jouriles, Erin Scheick, and Anne Sidwell. Finally, this project would never have been realized without the candor of our interviewees, who opened our eyes and expanded our minds in countless ways. I am grateful to them for their trust.

also identify closely with a stereotypically masculine identity that leads them to associate gun ownership with power and control; have strong (but not necessarily accurate) opinions about the Second Amendment; and are enmeshed in cultures where gun-carrying is the norm.

These insights about the men who are impacted by domestic violence gun regulations can help us promulgate laws and policies that offenders will be more inclined to comply with and are more likely to be enforced and enforceable. And importantly, successfully removing firearms from the hands of abusers can bring us one step closer to ending the epidemic of intimate partner violence gun fatalities in the United States.

INTRODUCTION	54
I.DANGERS POSED BY ARMED DOMESTIC VIOLENCE OFFENDERS AND THE CURRENT FAILURE TO DISARM THEM	55
A. The Volatile Combination of Firearms and Intimate Partner Violence	56
B. Domestic Violence and the Second Amendment.....	58
C. The Necessity, and Paucity, of Enforcement	61
II.METHODOLOGY	66
A. Batterer Intervention Programs.....	69
III.FINDINGS	71
A. The Majority of Respondents Had Knowledge of Domestic Violence Firearm Prohibitions	72
B. Crime, Violence, and Safety	74
1. The Majority of Respondents Reported Significant Past Victimization.....	74
2. Many Respondents Reported Not Currently Feeling Safe in their Neighborhoods.....	78
3. Many Respondents Reported a Lack of Trust in Law Enforcement	80
4. The Need for Protection was the Most Significantly Cited Reason for Gun Ownership	83
C. Identity and Culture	87
1. Many Respondents Expressed Stereotypically Masculine Views, Emphasizing their Need for Power and Control	88
2. Respondents Have Strong, but not Necessarily Accurate, Opinions About the Second Amendment.....	91
3. Many Respondents Reported that Community Norms Influenced their Perceptions About and Desire to Possess Firearms.....	92
IV.AVENUES FOR INCENTIVIZING SURRENDER	93

2025]	<i>Why Domestic Violence Offenders Don't Give Up Their Guns</i>	53
A.	Criminalization / Enforcement.....	94
B.	Making Our Communities More Prosperous and Safer.....	95
C.	Financial Incentives	97
D.	Changing Culture and Norms	98
CONCLUSION	99

INTRODUCTION

It is well-documented that perpetrators of intimate partner violence (IPV), despite being prohibited by federal and state law from possessing firearms, often do not voluntarily surrender their weapons, and that enforcement of these domestic violence gun prohibitions remains insufficient.¹ Thus, offenders regularly retain possession of their guns, which increases the risk of violence and death for survivors.²

Although researchers, including this Author, have studied these phenomena and advanced legal and policy proposals to increase compliance with the law, recommendations have been made without consideration of the perspectives of those who are arguably most impacted: the perpetrators themselves. Understanding the lived experiences of those affected by domestic violence firearms regulations is essential because reasons for noncompliance can inform potential solutions. For example, do offenders not surrender their firearms because they are unaware of the legal prohibitions? Will the lack of access to a firearm cause them to lose their job? Are they intending to use a gun to further harm their intimate partner? Is the neighborhood in which they live unsafe, leading them to conclude that they would “rather be caught with a gun than without it”? Each of these explanations for not complying with the law would suggest a different solution.

1. See generally Alice Ellyson et al., *Firearm Restrictions in Domestic Violence Protection Orders: Implementation, Vetting, Compliance, and Enforcement*, 23 CRIMINOLOGY & PUB. POL’Y 803 (2024); Natalie Nanasi, *New Approaches to Disarming Domestic Abusers*, 67 VILL. L. REV. 561 (2022) [hereinafter *New Approaches*]; Shannon Frattaroli, April Zeoli & Daniel Webster, *Armed, Prohibited and Violent at Home: Implementation and Enforcement of Restrictions on Gun Possession by Domestic Violence Offenders in Four U.S. Localities*, 573 J. FAM. VIOLENCE 36 (2021); Natalie Nanasi, *Disarming Domestic Abusers*, 14 HARV. L. & POL’Y REV. 559 (2020) [hereinafter *Disarming Domestic Abusers*]; April Zeoli, Shannon Frattaroli, Kelly Roskam & Anastasia Herrera, *Removing Firearms From Those Prohibited From Possession by Domestic Violence Restraining Orders: A Survey and Analysis of State Laws*, 20 TRAUMA, VIOLENCE, & ABUSE 114 (2019); Katherine Vites, et al., *Removing Guns from Batterers: Findings from a Pilot Survey of Domestic Violence Restraining Order Recipients in California*, 19 VIOLENCE AGAINST WOMEN 602 (2013); Alyse Pfeil, *In Louisiana, Abusers Are Supposed to Give Up Their Guns. That Doesn’t Always Happen*, TIMES-PICAYUNE (July 29, 2024) [hereinafter *Louisiana*], https://www.nola.com/news/politics/in-louisiana-abusers-are-supposed-to-give-up-their-guns-that-doesnt-always-happen/article_b81cfd30-37f2-11ef-a283-dbce2b543a4a.html [perma.cc/FG49-GPLV]; Paige Pfleger, *How Tennessee’s Justice System Allows Dangerous People to Keep Guns—With Deadly Outcomes*, PROPUBLICA (Aug. 17, 2023, 5:00 AM) [hereinafter *Tennessee*], <https://www.propublica.org/article/how-tennessee-justice-system-allows-dangerous-people-to-keep-guns-deadly-outcomes> [https://perma.cc/3XS4-DNVQ]; Editorial, *Domestic Violence Homicides Were Up 240% Last Year. Why is Philly Getting Guns from so Few Accused Abusers*, PHILA. INQUIRER (Jan. 31, 2022) [hereinafter *Philly*], <https://www.inquirer.com/opinion/editorials/domestic-violence-guns-sheriff-police-act-79-20220131.html> [https://perma.cc/2UHX-DNCT]. See also *infra* Section I.C. and accompanying cites.

2. Those who have experienced intimate partner abuse, as well as other gender-based crimes, can be referred to as victims, survivors, or other chosen terms. See Meghan Warner, *Not a Victim, Not a Survivor*, 23 CONTEXTS 12, 13 (2024). The choice of terminology, and more broadly, how to identify, is a deeply personal one. This Article will use the term survivor to emphasize resilience in the aftermath of trauma.

In order to formulate laws or policies to address this problem, two critical questions must be posed: 1) why do domestic violence offenders fail to relinquish their firearms when ordered to do so by a court, and 2) what measures would compel them to comply? It is these vital questions that this Article, and the original empirical research on which it is based, aims to answer.

The Article begins by explaining the volatile, and often deadly, combination of firearms and intimate partner violence. It then details recent legal developments in Second Amendment jurisprudence that implicate domestic violence gun prohibitions and the need for, and lack of, enforcement of those laws. Section II describes the methodology of the mixed-methods—quantitative and qualitative—empirical research that is the basis of this Article. It also explains the history, philosophies, and structures of Batterer Intervention Programs, one of which was the site for this research. Section III details the broad range of findings: participants' knowledge of prohibitions against firearm possession; their significant past victimization experiences and beliefs that law enforcement cannot keep them safe; and the values, identities and cultures—including masculinity, the Second Amendment, and community norms—that lead them to both want to possess firearms and be reluctant to surrender them. The relevance of these findings to policymaking are discussed in Section IV, which reviews potential avenues for encouraging gun surrender, including enforcement through the criminal legal system, financial investment to increase community safety and financial incentives for offenders, and changing culture and norms around both masculinity and firearms.

This Article, and the novel research upon which it is based, uplifts the voices of impacted perpetrators with the aim of potentially saving the lives of their victims. Because forced compliance has proven inadequate, the data and policy solutions presented here offer pathways to increase voluntary compliance with domestic violence firearm regulations, proactively dispossessing offenders of their firearms before further violence can reoccur.

I. DANGERS POSED BY ARMED DOMESTIC VIOLENCE OFFENDERS AND THE CURRENT FAILURE TO DISARM THEM

The data presented in this Article can only be properly understood after consideration of three critical background elements: the deadly intersection of guns and domestic violence; the evolving state of Second Amendment law, including efforts to restrict offenders' access to firearms; and the challenges of enforcing laws that prohibit perpetrators of intimate partner violence from possessing guns. Each will be addressed in turn in this Section.

A. *The Volatile Combination of Firearms and Intimate Partner Violence*

An estimated 4.5 million physical assaults are committed against women by their intimate partners in the United States every year.³ This violence can lead to trauma,⁴ injuries,⁵ and in many cases, death. Between 2003 and 2014, over half of female murder victims under the age of forty-five in the United States were killed by an intimate partner.⁶

With approximately 120.5 firearms per 100 residents, the United States has more civilian-held guns than any country in the world.⁷ Although many gun owners are law-abiding, one study revealed that “[f]irearms were the primary weapon in 7 out of 10 IPV-related deaths.”⁸ Experts report that the weapon of choice for domestic violence offenders is a firearm.⁹ “[B]eginning in 2014, the number of [intimate partner homicides] in the United States began to climb, and the increase is entirely driven by homicides committed with firearms.”¹⁰

3. PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. JUST., EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 10 (2000), <https://www.ojp.gov/pdffiles1/nij/181867.pdf>. The report also notes that 2.9 million intimate-partner assaults are perpetrated against men. *Id.* See also PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. JUST., FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 26 (2000), <https://www.ojp.gov/pdffiles1/nij/183781.pdf> (reporting that approximately 1.3 million women and 835,000 men are physically assaulted by an intimate partner in the United States every year); Susan Sorenson, *Firearm Use in Intimate Partner Violence: A Brief Overview*, 30 EVALUATION REV. 229, 231 (2006) (“[I]n the past generation, the phenomenon of intimate partner homicide has changed to be largely the homicide of women.”).

4. E.g., Steven Ross Johnson, *Gun Violence Survivors and Witnesses Could Face Lifetime of Trauma and Bad Health*, MOD. HEALTHCARE (Nov. 5, 2016), <https://www.modernhealthcare.com/article/20161105/MAGAZINE/311059989/gun-violence-survivors-and-witnesses-could-face-lifetime-of-trauma-and-bad-health> [<https://perma.cc/QYT2-AWXY>].

5. See Lakshika Tennakoon et al., *Traumatic Injuries Due to Interpersonal and Domestic Violence in the United States*, 254 J. SURGICAL RSCH. 206, 211 (2020) (describing the prevalence and patterns of injury experienced by survivors of intimate partner violence treated in United States emergency departments in 2014).

6. Aaron Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 AM. ACAD. PSYCHIATRY L. 26, 26 (2020).

7. Aaron Karp, *Estimating Global Civilian-Held Firearms Numbers*, SMALL ARMS SURVEY (2018), <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf>. See also Jack Crosbie, *How to Disarm America*, SPLINTER (Aug. 27, 2019), <https://splinternews.com/how-to-disarm-america-1837100372> [<https://perma.cc/4FWN-N9E7>] (reporting 363 million civilian-owned guns in the United States).

8. Julie M. Kafka et al., *Fatalities Related to Intimate Partner Violence: Towards a Comprehensive Perspective*, 27 INJ. PREVENTION 137, 141 (2021).

9. See Kathryn Moracco, Carol Runyan & John Butts, *Female Intimate Partner Homicide: A Population-Based Study*, 58 J. AM. MED. WOMEN’S ASS’N 20, 20 (2003) (finding that 66% of intimate partner femicides were committed with a gun); Susan Sorenson, *Guns in Intimate Partner Violence: Comparing Incidents by Type of Weapon*, 26 J. WOMEN’S HEALTH 249, 253 (2017) (finding that guns were the most frequently used weapon to threaten an intimate partner).

10. Emily F. Rothman et al., *The Role of Firearms in Intimate Partner Violence*, in GUN VIOLENCE PREVENTION: A PUBLIC HEALTH APPROACH 65, 65 (2021) (citing Emma Fridel & James Fox, *Gender Differences in Patterns and Trends in U.S. Homicide, 1976-2017*, 6 VIOLENCE & GENDER 1, 37-43 (2017)). See also Sorenson, *supra* note 3, at 233 (“[A]s homicides of women by strangers have decreased, the number of homicides by intimates with hand-guns has increased.”).

Firearms are built for lethality, so when a family member or intimate partner is assaulted and a firearm is used, the victim is twelve times more likely to die.¹¹

Even the presence of a gun in the home can be a risk factor. Higher gun ownership is “significantly associated with increased nonstranger homicide rates.”¹² And a groundbreaking study found that a perpetrator’s access to a firearm led to an eightfold increase in risk of death for their intimate partner.¹³

In addition to higher femicide rates, guns are also associated with increased severity of intimate partner violence. In other words, firearms need not be lethal to cause significant harm. Researchers have found that “[w]eapon use is characteristic of a subgroup of offenders who commit more severe domestic violence.”¹⁴ Pregnant women, an already vulnerable group,¹⁵ “who reported that their intimate partner had access to a gun also reported higher levels of violence, threats of violence, severity of abuse, and feelings of danger.”¹⁶

Additionally, perpetrators can use firearms “to intimidate or coerce, as opposed to injure, their intimate partners, acts which result in fewer visible injuries but greater fear.”¹⁷ Such threats are pervasive; “approximately 4.5 million American women have reported that their intimate partner threatened them with a gun.”¹⁸ Overall, “the percentage of survivors of [intimate partner violence] who report being threatened by a gun is much higher than the percentage of the general population who report the same.”¹⁹

Dangers exist for non-intimate partners as well. As an initial matter, individuals with a history of IPV, including those who own or seek to own

11. Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 J. AM. MED. ASS’N 3043, 3046 (1992).

12. Michael Siegel et al., *The Relationship Between Gun Ownership and Stranger and Nonstranger Firearm Homicide Rates in the United States, 1981-2010*, 104 AM. J. PUB. HEALTH 1912, 1917 (2014).

13. See Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003).

14. Stephanie E. F. Folkes, N. Zoe Hilton & Grant T. Harris, *Weapon Use Increases the Severity of Domestic Violence but Neither Weapon Use nor Firearm Access Increases the Risk or Severity of Recidivism*, 28 J. INTERPERSONAL VIOLENCE 1143, 1144 (2013). See also Judith McFarlane et al., *Severity of Abuse to Pregnant Women and Associated Gun Access of the Perpetrator*, 15 PUB. HEALTH NURSING 201, 204 (1998) (noting that “[a] clear association exists between gun access and increased violence to abused women”).

15. See generally, Sristy Agarwal et al., *A Comprehensive Review of Intimate Partner Violence During Pregnancy and its Adverse Effects on Maternal and Fetal Health*, 15 CUREUS 1 (2023).

16. McFarlane et al., *supra* note 14.

17. Sorenson, *supra* note 9, at 255. See also Julie Kafka, Kathryn Moracco, Deanna Williams & Claire Hoffman, *Disarming Abusers: Domestic Violence Protective Order (DVPO) Firearm Restriction Processes and Dispositions*, 31 CRIMINOLOGY & PUB. POL’Y 379, 380 (2022) (reporting that “firearms are used not only to kill, but also to coerce, control and terrorize a partner”).

18. Susan B. Sorenson & Rebecca A. Schut, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 TRAUMA, VIOLENCE & ABUSE 431, 437 (2018). See also Emily Rothman et al., *Batterers’ Use of Guns to Threaten Intimate Partners*, J. AM. MED. WOMEN’S ASS’N 60, 66 (2005) (reporting that “12% of men enrolled in a Massachusetts Batterer Intervention Program had used guns to threaten their intimate partners”).

19. Rothman et al., *supra* note 10, at 66.

firearms, may reoffend.²⁰ This can include subsequent violence against intimate partners as well as violence against others, which means that “the burden of intimate partner violence extends beyond the couple involved.”²¹ Nearly thirty percent of intimate partner homicides involve additional victims such as family members, new intimate partners, friends or acquaintances, law enforcement, or strangers.²² Children living in a home where firearms are used to perpetrate domestic violence can experience gun-related threats and injuries themselves as well as significant psychological harm.²³ A clear link also exists between violence in the home and violence in the community (including mass shootings).²⁴ Finally, perpetrators of intimate partner violence who retain access to firearms are a risk to themselves. A recent study by the Violence Policy Center found that “[s]ixty-two percent of all murder-suicides involved an intimate partner.”²⁵

Federal and state legal prohibitions on firearm possession for perpetrators aim to address this epidemic of intimate partner firearm violence. But the evolution of Second Amendment jurisprudence in recent years has, as discussed in the following Sub-Section, led to doubts about their constitutionality.

B. *Domestic Violence and the Second Amendment*

Recognizing the dangers posed by armed domestic violence offenders, federal law prohibits perpetrators of intimate partner violence from possessing firearms in three distinct ways. First, the Gun Control Act,²⁶ enacted as Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, imposes a

20. Elizabeth Tomsich et al., *Intimate Partner Violence and Subsequent Violent Offending Among Handgun Purchasers*, 37 J. INTERPERSONAL VIOLENCE 162, 162 (2022) (finding that “[c]ompared with purchasers who had no criminal history at the time of purchase, those with a history of only IPV charges were at increased risk of subsequent arrest for a violent [c]rime”).

21. Sharon G. Smith, Katherine A. Fowler & Phyllis H. Niolon, *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003-2009*, 104 AM. J. PUB. HEALTH 461, 461 (2014).

22. *Id.*

23. See April Zeoli, *Children, Domestic Violence and Guns*, NAT’L RES. CTR. ON DOMESTIC VIOLENCE & FIREARMS 1 (2018), <https://www.preventdvgunviolence.org/children-domestic-violence-and-guns-022118.pdf>.

24. See e.g., April Zeoli & Jennifer Paruk, *Potential to Prevent Mass Shootings Through Domestic Violence Firearm Restrictions*, 19 CRIMINOLOGY & PUB. POL’Y 129, 143 (2019) (finding that more than 30 percent of mass shooters from 2014-2017 had a history of committing intimate partner violence); Lisa Geller, Marisa Booty & Cassandra Crifasi, *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014–2019*, 8 INJ. EPIDEMIOLOG 38, 42 (2021) (reporting that in 68% of mass shootings between 2014 and 2019, the perpetrator either killed at least one partner or family member or had a history of domestic violence).

25. VIOLENCE POL’Y CTR., AMERICAN ROULETTE: MURDER-SUICIDE IN THE UNITED STATES 2 (2023), <https://vpc.org/studies/amroul2023.pdf>.

26. Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1220 (codified as amended at 18 U.S.C. § 922(d)(1)-(7) (2012 & Supp. III)). The Gun Control Act is a comprehensive statute that created a set of regulations governing the manufacture, sale, production, and transfer of firearms and ammunition. *Id.*

permanent ban on possession for all felons, including those convicted of felony domestic violence offenses.²⁷ Misdemeanor domestic violence offenders are also permanently barred from possessing firearms under the Lautenberg Amendment to the Violence Against Women Act.²⁸ Finally, individuals subject to family violence protective orders face a ban on possession as long as the order is in place.²⁹ State-level domestic violence gun prohibitions exist as well, most mirroring the general contours of the federal laws.³⁰

Importantly, as will be discussed further in Section I.C below, although federal laws are comprehensive and robust, enforcement, which typically occurs at the local level, is not.³¹ Federal law unequivocally prohibits possession, but it does not detail processes or mechanisms for relinquishment or seizure from prohibited possessors, nor does it explicitly create an obligation to do so. State laws suffer from the same flaws.

Nevertheless, the legal justification for disarming domestic violence offenders has rested on a relatively strong foundation. Laws prohibiting perpetrators from possessing firearms have survived challenges under the Second, Fifth, and Eighth Amendments, as well as the Equal Protection, Commerce, and Ex-Post Facto Clauses.³² Recent developments in Second Amendment jurisprudence, however, have created uncertainty about their future constitutionality.

In 2008, the Supreme Court held, in *District of Columbia v. Heller*, that the Second Amendment protects an individual right to keep and bear arms, unconnected with militia service.³³ Two years later, the Court, in *McDonald v. City of Chicago*, extended this individual right to the states under the Due Process Clause of the Fourteenth Amendment.³⁴

Heller not only upended nearly two centuries of *past* Second Amendment jurisprudence,³⁵ but it also did not provide guidance on how to consider *future*

27. The Act also disqualifies fugitives, drug addicts, those deemed to be mentally incompetent, undocumented immigrants, those dishonorably discharged from the armed services, and those who have renounced their United States citizenship from gun ownership. *Id.*

28. See 18 U.S.C. § 922(g)(9) (2018) (“It shall be unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”); see also Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009, 371-72 (1996).

29. 18 U.S.C. § 922(g)(8) (2018).

30. See generally BATTERED WOMEN’S JUST. PROJECT, FIREARMS AND DOMESTIC VIOLENCE: STATE AND TERRITORIAL STATUTORY PROVISIONS (2020), <https://www.bwjp.org/assets/documents/pdfs/2020-fall-firearms-dv-matrix.pdf>.

31. See *supra* note 1; *infra* Section I.C.

32. See *Disarming Domestic Abusers*, *supra* note 1, at 570-71.

33. 554 U.S. 570 (2008). Prior to *Heller*, the Second Amendment was understood as a collective, as opposed to an individual, right.

34. 561 U.S. 742, 778 (2010).

35. JENNIFER TUCKER ET AL., A RIGHT TO BEAR ARMS? THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT 3 (2019) (explaining that “in three separate

challenges to firearm regulations. Federal appeals courts therefore eventually “coalesced around a ‘two-step’ framework for analyzing Second Amendment challenges that combine[d] history with means-end scrutiny,”³⁶ a methodology that rapidly became “ensconced in Second Amendment law.”³⁷ Courts across the United States applied this test from 2008 until 2022, when the Supreme Court expressly “decline[d] to adopt [the] . . . approach” in *New York State Rifle & Pistol Association v. Bruen*.³⁸

In its place, the *Bruen* Court adopted a new historically-focused test: a gun restriction is constitutional *only if* the government can “demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.”³⁹ In instructing “lower courts [to] abandon traditional tiers-of-scrutiny analysis in Second Amendment cases and instead review claims based *solely* on text, history, and tradition,” the Supreme Court created a standard that “is essentially *sui generis* in the Court’s individual-rights jurisprudence.”⁴⁰

Despite this dramatic jurisprudential change, the *Bruen* Court underscored that the test for whether or not a modern-day regulation was “consistent” with history need not be a “regulatory straightjacket.”⁴¹ As Justice Thomas explained, [o]n the one hand, courts should not “uphold every modern law that remotely resembles a historical analogue,” because doing so “risk[s] endorsing outliers that our ancestors would never have accepted.” On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.⁴²

Bruen faced its first major challenge in *United States v. Rahimi*. In that case, the Fifth Circuit Court of Appeals applied *Bruen*’s analysis to 18 U.S.C. § 922(g)(8)—the federal statute that prohibits those subject to domestic violence protective orders from possessing firearms—and determined that the law was unconstitutional because a sufficiently analogous historical statute did not exist.⁴³ This decision marked the first time a federal circuit court struck down a gun regulation post-*Bruen*.

decisions by the U.S. Supreme Court, in 1876, 1886, and 1939 [the Second Amendment was conceived] as granting the people a right to bear arms in the militia context”).

36. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

37. Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 DUKE L.J. 67, 85 (2023).

38. *Bruen*, 597 U.S. at 17.

39. *Id.* at 17 (majority opinion) (emphasis added).

40. Charles, *supra* note 37, at 67. Professor Charles further explains that “*Bruen* itself now subjects Second Amendment claims to an entirely different set of rules[.]” effectively “creating a super-right.” *Id.* at 72-73 (citing Khiara M. Bridges, *Foreword: Race in the Roberts Court*, 136 HARV. L. REV. 23, 69 (2022)).

41. *Bruen*, 597 U.S. at 30.

42. *Id.* (internal citations omitted).

43. *United States v. Rahimi*, 61 F.4th 443, 450 (5th Cir. 2023), *cert granted*, 143 S. Ct. 2688 (2023).

Rahimi rose to the Supreme Court, and in an 8-1 decision, the Court upheld the constitutionality of § 922(g)(8).⁴⁴ The opinion reinforced the Court's commitment to the historically-based *Bruen* test, but explained that “some courts have misunderstood the methodology of ... recent Second Amendment cases.”⁴⁵ Chief Justice Roberts reiterated that “the Second Amendment permits more than just those regulations identical to ones that could be found in 1791” and that the proper test is whether the contemporary regulation is “‘relevantly similar’ to law that our tradition is understood to permit.”⁴⁶ The Court then identified historical firearm regulations that restricted individuals who posed a threat of physical harm to others from possessing firearms, deeming these regulations sufficiently comparable to modern domestic violence protective order firearm prohibitions to survive constitutional scrutiny.

Although eight justices voted to uphold § 922(g)(8), the holding of the case was narrow⁴⁷ and Justice Thomas' dissent—along with concurring opinions from conservative justices Gorsuch, Kavanaugh, and Barrett—reaffirmed the Court's commitment to both *Bruen* and originalism. Taken together, the writings of the Court's conservative majority signal that future challenges to gun regulations, including potentially those involving intimate partner violence and firearms, are likely to succeed.⁴⁸

Until such a time, however, both federal and state laws that disarm domestic violence offenders—including felons, misdemeanants, and those subject to family violence protective orders—remain constitutional. The next Sub-Section will demonstrate how and why these lifesaving laws regularly go unenforced.

C. *The Necessity, and Paucity, of Enforcement*

Laws prohibiting domestic violence offenders from accessing firearms save lives. A study tracking fatalities in 45 states over 30 years found that firearm prohibitions against individuals subject to domestic violence protective orders were associated with a 10% reduction in intimate partner homicide.⁴⁹ These findings have been replicated by other researchers, who have reported reductions

44. *United States v. Rahimi*, 602 U.S. __ (2024).

45. *Id.* at 691.

46. *Id.* at 680-681.

47. As Chief Justice Roberts wrote, “we conclude *only* this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Id.* at __ (emphasis added).

48. Justice Gorsuch's concurring opinion pointedly described a series of hypothetical legal challenges regarding guns and domestic violence—including to the constitutionality of permanent bars (§922(g)(8) prohibits possession only while the protective order is in place) and an abuser who needs “his arms for self-defense”—that the opinion in *Rahimi* “leaves open.” *Id.* at __ (J. Gorsuch, concurring).

49. See April Zeoli et al., *Analysis of the Strength of Legal Firearm Restrictions for Perpetrators of Domestic Violence and Their Associations With Intimate Partner Homicide*, 187 AM. J. EPIDEMIOLOGY 1449 (2018) (article subsequently retracted; retraction does not implicate the data in support of this statement).

ranging from 8 percent (an average of 2.9 homicides per year),⁵⁰ to 9.7 percent,⁵¹ 19 percent,⁵² and 25 percent.⁵³ Increased safety exists outside the protective order context as well. For example, a recent study revealed that the federal law prohibiting domestic violence misdemeanants from possessing firearms “led to a substantial and significant gun homicide reduction of 17 percent among female intimate partners.”⁵⁴

Yet, it is one thing for laws disarming domestic abusers to exist and wholly another for them to be implemented and enforced. Researchers have long found that ensuring that domestic violence offenders comply with orders to surrender their firearms can make the difference between life and death for survivors. Enforcement—which includes crafting statutes that clearly delineate requirements and processes for either surrender or confiscation *and* law enforcement actually accepting or seizing those firearms—is critical,⁵⁵ and it is lacking.

Studies across the United States have demonstrated astonishingly low compliance with and enforcement of the law. In the largest court district in Utah, only six defendants were ordered by judges to surrender their firearms in 2022.⁵⁶ In North Carolina, judges ordered firearm surrender in only 38.6 percent of eligible protective order cases.⁵⁷ In Philadelphia, only 13 percent of defendants complied with orders to surrender firearms in 2021.⁵⁸ In Louisiana, hundreds of

50. See Elizabeth R. Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 337 (2006).

51. See Carolina Díez et al., *State Intimate Partner Violence-Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 ANNALS INTERNAL MED. 536, 536 (2017). The researchers also found that “[s]tate laws that prohibit persons subject to IPV-related restraining orders from possessing firearms and also require them to relinquish firearms in their possession were associated with ... 14.0% lower firearm-related IPH rates ... than in states without these laws.” *Id.*

52. See April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large US Cities*, 16 INJ. PREVENTION 90, 92 (2010).

53. See *Domestic Abuse Protective Orders and Firearm Access in Rhode Island*, EVERYTOWN FOR GUN SAFETY (June 15, 2015), <https://everytownresearch.org/report/domestic-abuse-protective-orders-and-firearm-access-in-rhode-island/> [<https://perma.cc/HUY9-2V79>].

54. Kerri M. Raissian, *Hold Your Fire: Did the 1996 Federal Gun Control Act Expansion Reduce Domestic Homicides?*, 35 J. POL’Y ANALYSIS & MGMT. 67, 69 (2016). Importantly, Professor Raissian did not find a “substitution effect,” whereby “reductions in gun homicides were offset by an increase in nongun homicides.” *Id.* at 67.

55. See e.g., Frattaroli et al., *supra* note 1, at 574 (explaining that “the protective impacts of DVRO firearm restrictions on intimate partner homicide rates are contingent upon the legal authority to require firearm dispossession”); *Disarming Domestic Abusers*, *supra* note 1; Díez et al., *supra* note 51, at 526 (noting that domestic violence firearm bans are effective at reducing intimate partner homicide only if enforcement provisions “explicitly require relinquishment of firearms”); Richardson Vigdor & Mercy, *supra* note 50, at 341 (2006) (explaining that “[t]he aggregate results are contingent upon the ability and will of a state to enforce them to the extent that an effect is measurable”).

56. Charles Diviney, Asha Parekh & Lenora Olson, *Outcomes of Civil Protective Orders: Results from One State*, 24 J. INTERPERSONAL VIOLENCE 1209, 1215 (2009).

57. Kafka et al., *supra* note 17, at 379.

58. Philly, *supra* note 1.

perpetrators of domestic violence did not relinquish their guns as required by law.⁵⁹

As I explained in a prior Article, the reasons for the lack of enforcement of domestic violence firearm prohibitions are myriad and complex.⁶⁰ The interplay of state and federal law as well as the absence of coordination and communication between entities (i.e., police departments, prosecutors' offices, and probation departments) hampers enforcement efforts.⁶¹

"Denials of possession are also problematic,"⁶² a challenge that is exacerbated by the lack of a comprehensive national system for gun registration. Without such a registry, officials cannot verify the assertion of a defendant or respondent who claims they do not have a firearm.⁶³ This poses a significant hurdle, as ". . . the value of complete registry or record-of-sales databases that capture all gun transactions (long guns and handguns; private sales and dealer sales) cannot be overstated for any effort to fully enforce [domestic violence restraining order] possession prohibitions."⁶⁴

The central role of the criminal legal system also creates barriers to enforcement at nearly all stages of the process, often through "intentional efforts of state actors to subvert . . . federal laws."⁶⁵ First, "[i]n some instances, state prosecutors are failing to fully charge and prosecute domestic violence crimes which would trigger the federal firearm ban, with the intent of subverting the ban."⁶⁶ If a disqualifying crime is charged, many state laws give judges discretion to order firearm surrender, discretion they often do not use.⁶⁷

59. Louisiana, *supra* note 1. The article notes that only 51 of 1,271 "gun transfer" orders issued in East Baton Rouge were transferred. *Id.* Similarly, only 17 of 624 ordered guns were transferred in Lafayette. *Id.*

60. See *Disarming Domestic Abusers*, *supra* note 1.

61. See *id.*

62. Garen Wintemute et al., *Identifying Armed Respondents to Domestic Violence Restraining Orders and Recovering Their Firearms: Process Evaluation of an Initiative in California*, 104(2) *Am. J. Pub. Health* 113, 116 (2014).

63. Gun registries do not exist in the United States because federal law prohibits using the National Instate Criminal Background Check System (NICS) to register firearms or firearm owners. 18 U.S.C. § 926(a) (2018); 28 C.F.R. § 25.9(b)(3) (2019). The vast majority of states do not have gun registries either.

64. April M. Zeoli & Shannon Frattaroli, *Evidence for Optimism: Policies to Limit Batterers' Access to Guns*, in *REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS* 53, 59 (Daniel W. Webster & Jon S. Vernick eds., John Hopkins Univ. Press 2013). A 2018 study by researchers at Johns Hopkins found that licensing systems were the policy most associated with fewer firearm homicides. Cassandra K. Crifasi et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 *J. URB. HEALTH* 383, 386-87 (2018).

65. Bonnie Carlson, *Keeping Guns in the Hands of Abusive Partners: Prosecutorial and Judicial Subversion of Federal Firearm Laws*, 87 *BROOK. L. REV.* 807, 809 (2022).

66. *Id.*

67. See Kafka et al., *supra* note 17, at 381 (reporting that "[r]esearch from California, Florida, New York, Arizona, Texas, and a large Southwestern city collectively suggests that only a small proportion of DVPO plaintiffs who report firearm violence, weapon threats, or who request defendant gun restrictions ultimately receive a full DVPO with firearm restrictions"); Carlson, *supra* note 65, at 809 (reporting that "[s]tate judges sometimes cross out the mandatory firearm ban provisions on preprinted protection order forms"); *Disarming Domestic Abusers*, *supra* note 1, at 579-81; Mikaela Wallin & Alesha Durfee, *Firearm Removal, Judicial Decision-Making, and Domestic Violence Protection Orders*, 7 *VIOLENCE &*

Even when judges order offenders to relinquish their guns, many jurisdictions lack the infrastructure to enforce dispossession, allowing prohibited possessors to retain their weapons. In Texas, for example, “[a]lthough there are laws on the books and court orders preventing certain people from possessing guns, there are few places in the state where the criminal justice system has programs to hand over firearms to law enforcement.”⁶⁸ Put another way, “many jurisdictions do not have protocols in place for implementation of firearm relinquishment policies, struggle with this process, and/or do not prioritize assuring these laws are implemented.”⁶⁹

A law enforcement-centered response is also hindered by economic challenges, given the resource-intensive nature of enforcement, as well as cultural challenges.⁷⁰ Traditionally marginalized communities suffer from both over- and under-policing,⁷¹ and distrust and/or fear of police therefore persists.⁷² This “deep ... racial divide in police-related fear represents ... a primary obstacle to law enforcement’s capacity to serve all communities equitably.”⁷³ It has also exacerbated the problem of gun violence. As experts note, “federal attempts to

GENDER 27, 30-1 (2020) (revealing that plaintiffs requested firearm removal in 50% of domestic violence protective order cases, but surrender was only mandated in 31% of orders); Daniel Webster et al., *Women with Protective Orders Report Failure to Remove Firearms From Their Abusive Partners: Results From an Exploratory Study*, 19 J. WOMEN’S HEALTH 93, 93 (2010) (finding that only 26% of women who received domestic violence protective orders in New York and Los Angeles reported that judges used their mandatory or permissive authority to require abusers to surrender their firearms and only 12% reported that the perpetrator had surrendered all their firearms).

68. William Melhado, *Texas Struggles to Get Guns Away from Domestic Violence Suspects, Leaving Victims in Danger*, TEX. TRIBUNE (Oct. 20, 2022, 5:00 AM), <https://www.texastribune.org/2022/10/20/texas-domestic-violence-firearm-surrender-programs> [https://perma.cc/BE6Y-5CYT]; see also LAURA CHOI ET AL., JUDGE ELMO B. HUNTER LEGAL CTR. FOR VICTIMS OF CRIMES AGAINST WOMEN, *TAKING AIM AT FAMILY VIOLENCE: A REPORT ON THE DALLAS COUNTY GUN SURRENDER PROGRAM 26* (2017), <https://www.smu.edu/-/media/Site/Law/clinics/elmo-b-hunter/2599-GunSurrender-LowRes.pdf>.

69. Frattaroli et al., *supra* note 1, at 575.

70. See COUNTY OF SAN MATEO, COUNTY EXECUTIVE’S OFFICE, *To Reduce Gun Violence, County Launches “Cutting Edge” Effort to Remove Guns from the Hands of Felons, Stalkers* (October 19, 2022), <https://www.smcgov.org/ceo/news/reduce-gun-violence-county-launches-cutting-edge-effort-remove-guns-hands-felons-stalkers> [https://perma.cc/BQW9-73MC] (detailing a partnership between San Mateo and South San Francisco Police Departments and District Attorney’s Office that cost \$2 million); Ann Givens, *This Tiny Louisiana Police Force Is a National Leader in Taking Guns From Abusers*, THE TRACE (Feb. 24, 2020), <https://www.thetrace.org/2020/02/guns-domestic-violence-lafourche-parish-valerie-martinez/> [https://perma.cc/F6Z8-KATZ] (describing the resource intensive enforcement process in Lafourche Parish, Louisiana).

71. See generally Hunter Boehme, Deanna Cann & Deena Isom, *Citizens’ Perceptions of Over- and Under-Policing: A Look at Race, Ethnicity, and Community Characteristics*, 68 CRIME & DELINQUENCY 123 (2022).

72. See generally Tom R. Tyler, *Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police*, 8 POLICE Q. 322 (2005) (examining the relationship of police policies and practices to trust in the police).

73. Justin Pickett, Amanda Graham & Francis Cullen, *The American Racial Divide in Fear of the Police*, 60 CRIMINOLOGY 291, 291 (2021).

confront daily gun violence have relied heavily on the criminal legal system, and all have failed to significantly decrease gun homicides.”⁷⁴

The myriad challenges to government enforcement of domestic violence gun regulations have resulted in a process that operates on the honor system; perpetrators of intimate partner violence must be entrusted to surrender their firearms voluntarily. Thus, “implementation is dependent on the respondent’s initiative to ensure compliance,”⁷⁵ which is precisely why we need to understand how to incentivize that compliance.

While some consequences are necessary,⁷⁶ “scholars have long rejected the simplistic idea that forced compliance alone can breed compliance with the law.”⁷⁷ Simply put, we need holistic approaches that utilize both carrots and sticks.⁷⁸ The remainder of this Article explores what those incentives and consequences might look like. It details what this study revealed about offenders’ backgrounds and beliefs in order to better understand their worlds and worldview and provide insights into why they may not surrender firearms as required by law and what might lead them to do so.

74. Taylor King, *Address Gun Violence by Going After the Root Causes*, BRENNAN CTR. FOR JUST. (Apr. 14, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/address-gun-violence-going-after-root-causes> [<https://perma.cc/7Z36-EU7R>] (describing initiatives launched under Presidents Trump and Obama that relied heavily on the criminal justice system to reduce gun violence and failed to meaningfully decrease gun homicides).

75. Shannon Frattaroli & Stephen Teret, *Understanding and Informing Policy Implementation: A Case Study of the Domestic Violence Provisions of the Maryland Gun Violence Act*, 30 EVALUATION REV. 347, 354 (2006).

76. See Frattaroli et al., *supra* note 1, at 575 (arguing that “relying on newly prohibited individuals to relinquish firearms without any additional law enforcement action is unlikely to result in gun dispossession”).

77. Andrew Papachristos, Tracey Meares & Jeffrey Fagan, *Why Do Criminals Obey the Law? The Influence of Legitimacy and Social Networks on Active Gun Offenders*, 102 J. CRIM. L. & CRIMINOLOGY 397, 401 (2012).

78. Examples of such holistic approaches are abundant in programs that seek to reduce the number of firearms in the United States. For instance, “focused deterrence” is a “blended strategy of law enforcement, community mobilization, and social service actions” that aims to remove firearms from those likely to use them to harm others. Anthony A. Braga, David Weisburd & Brandon Turchan, *Focused Deterrence Strategies and Crime Control*, 17 CRIMINOLOGY & PUB. POL’Y 205, 206 (2018). The model originated with Oakland Ceasefire, a partnership between community members and law enforcement, through which community partners provided social services to those deemed most likely to engage in gun violence but “narrowly targeted law enforcement actions [were also] taken against those individuals who continue[d] to engage in violent crime.” MIKE MCLIVELY & BRITTANY NIETO, GIFFORDS L. CTR., *A CASE STUDY IN HOPE: LESSONS FROM OAKLAND’S REMARKABLE REDUCTION IN GUN VIOLENCE* 25 (2019), <https://giffords.org/lawcenter/report/a-case-study-in-hope-lessons-from-oaklands-remarkable-reduction-in-gun-violence> [<https://perma.cc/2SUA-DKJJ>]. Holistic strategies like focused deterrence address criticism that “the only enduring commitment cities have made is to the police and criminal legal system, so they become the default plans in dealing with violence over time.” Casey Parks, *Portland’s High Stakes Experiment to Shrink the Role of Police in Fighting Gun Violence*, THE TRACE (Sept. 10, 2020), <https://www.thetrace.org/2020/09/portland-police-racism-gun-violence-shootings-data-hardesty> [<https://perma.cc/L2UA-5T3S>]. Professor Patrick Sharkey argues that interdisciplinary models are “more effective, and ... would not generate the same costs as when we rely entirely on police and the criminal legal system.” *Id.*

II. METHODOLOGY

The research for this project was initiated in early 2023, after study procedures were approved by the SMU Institutional Review Board (IRB). Participants were recruited from men enrolled in the Battering Intervention and Protection Program (BIPP)⁷⁹ at The Family Place—a family violence service provider in Dallas, Texas.⁸⁰ All participants had been ordered by a court to enroll in BIPP after being charged with a family violence offense against a female intimate partner.

During the recruitment phase of the project, the men were informed that their participation was voluntary and that the research and researchers were independent of The Family Place, the BIPP program, and the criminal legal system, including the District Attorney's Office and the courts. Additionally, they were advised that the interviewers—lawyers or law students—would not be able to provide any legal advice.

The individuals who agreed to participate first reviewed an informed consent form, which explained the study, participants' rights, confidentiality, and other critical topics. Written informed consent was obtained from each participant.

The first step of the study was a self-administered computerized survey. Upon completion of the survey, one of six researchers⁸¹ conducted a semi-structured⁸² in-person, in-depth interview. Interviews were conducted in private rooms at the offices of the Family Places' BIPP program, either immediately prior to or immediately after the participant's BIPP group session. The interviews ranged between 8 minutes to close to two hours and were audio recorded with written permission from the participants. At the conclusion of the interviews, participants were provided a \$50 Amazon gift card. Twenty-eight surveys were completed, and twenty-five interviews conducted, in the course of the study.

When the data gathering phase of the study was completed, survey responses were analyzed. Audio recordings were transcribed in their entirety and coded with a hybrid inductive-deductive approach.

79. See *infra* Section II.A.

80. *Battering Intervention and Prevention Program*, THE FAM. PLACE, <https://familyplace.org/bipp> [<https://perma.cc/J7DZ-GKJW>] (last visited Nov. 14, 2024). In 2023, the BIPP program served 285 men and conducted 6,144 hours of group sessions. See *2023 By the Numbers*, THE FAM. PLACE (2024) https://familyplace.org/docs/default-source/default-document-library/thefamilyplace_2023bythenumbers_finalproofed.pdf.

81. Interviewers included the author, law students enrolled in SMU Law School's Hunter Legal Center for Victims of Crimes Against Women, and one law student volunteer. All interviewers completed IRB-required training and received substantive education on the legal issues implicated by this research, social science interviewing, and strategies to eliminate bias and ensure high-quality and consistent interviews.

82. Interview protocols were structured, but flexibility was built in to allow conversations to develop naturally from the initial list of questions.

As with all empirical research, this study has limitations. First, are geographical constraints: data was collected in an urban community, so findings may not be generalizable to rural areas. The study is also not statewide or nationally representative.

Second, only men were recruited and enrolled in this study,⁸³ and research has shown that men and women can have different motivations for firearm ownership.⁸⁴ Relatedly, survey and interview questions relating to gender roles may have been influenced by gender bias, as the interviewers were predominantly female. Similarly, conducting interviews in the same location as BIPP classes may have caused participants to have in mind the BIPP curriculum, which includes “challenging rigid sex-role perceptions.”⁸⁵

A final limitation is that all data in this study was self-reported. As experts have noted, “[s]elf-report data are subject to potential inaccuracies due to social desirability responses, recall bias, intentional distortions, or noncandid responses.”⁸⁶ Challenges related to self-reported data have been identified in a range of fields, from nutrition⁸⁷ to occupational stress⁸⁸ to periodontal health.⁸⁹

83. In addition to the reasons articulated later in this paragraph, the decision to only study men was based on the fact that they perpetrate intimate partner violence in greater numbers than women. *See* Jac Brown, *Male Perpetrators, the Gender Symmetry Debate, and the Rejection–Abuse Cycle: Implications for Treatment*, 6 AM. J. MEN’S HEALTH 331, 332 (2012). Men may also have different motivations than women for committing domestic violence. *See* JoAnna Elmquist et al., *Motivations for Intimate Partner Violence in Men And Women Arrested for Domestic Violence and Court Referred to Batterer Intervention Programs*, 5 PARTNER ABUSE 359, 366 (2014) (explaining that while men and women report similar reasons for perpetrating physical aggression, differences remain. For example, the authors note that “women were significantly more likely to report that they were motivated to perpetrate partner violence out of retaliation and because of problems with negative emotions.”).

84. *See e.g.*, Margaret Kelley, *Feminism and Firearms: Gun Ownership, Gun Carrying, and Women’s Empowerment*, 65 SOCIO. PERSPS. 77 (2022) (finding that “feminist identity leads away from gun ownership” and that women are empowered by firearms differently than men); Juliana Menasce Horowitz, *How Male and Female Gun Owners in the U.S. Compare*, PEW RSCH. CTR. (June 29, 2017), <https://www.pewresearch.org/short-reads/2017/06/29/how-male-and-female-gun-owners-in-the-u-s-compare> [<https://perma.cc/9XF6-T9RR>]; Elizabeth Blair & Eva Hyatt, *The Marketing of Guns to Women: Factors Influencing Gun-Related Attitudes and Gun Ownership by Women*, 14 J. PUB. POL’Y & MKTG. 117 (1995) (explaining that “men consistently display a more pro-gun attitude than do women and are more likely to feel that owning a gun enhances a person’s personal safety.”).

85. Tricia B. Bent-Goodley et al., *Treatment for Perpetrators of Domestic Violence*, in 2 VIOLENCE AGAINST WOMEN AND CHILDREN: NAVIGATING SOLUTIONS 199, 200 (Mary P. Koss et al. eds., 2010).

86. Emily Rothman, Renee Johnson & David Hemenway, *Gun Possession Among Massachusetts Batterer Intervention Program Enrollees*, 30 EVALUATION REV. 283, 291 (2006) (citing LU ANN ADAY, DESIGNING AND CONDUCTING HEALTH SURVEYS 41 (2d ed. 1996)). *See also* John Goyder, *Surveys on Surveys: Limitations and Potentialities*, 50 PUB. OP. Q. 27 (1986) (discussing survey limitations generally).

87. *See* Luke Gemming et al., *Under-Reporting Remains a Key Limitation of Self-Reported Dietary Intake: An Analysis of the 2008/09 New Zealand Adult Nutrition Survey*, 68 EUR. J. CLINICAL NUTRITION 259, 259-264 (2014).

88. Tiffani Razavi, *Self-Report Measures: An Overview of Concerns and Limitations of Questionnaire Use in Occupational Stress Research 2* (2001) (MSc. monograph, University of Southampton), <https://eprints.soton.ac.uk/35712> [<https://perma.cc/Y2UW-5F27>].

89. Kåre Buhlin et al., *Validity and Limitations of Self-Reported Periodontal Health*, 30 CMTY. DENTISTRY & ORAL EPIDEMIOLOGY 431, 435 (2002).

Participants in this study may therefore have acted in a manner consistent with these studies and been less than forthright about their ownership of firearms. The fact that such an admission would put them at risk of criminal consequences is another disincentive to candor.⁹⁰ Only two study participants admitted to possessing a firearm, but all answered survey questions or spoke openly—sometimes at length—in response to hypothetical questions about why they might acquire or retain possession of one. Denials of ownership were therefore likely false, adding to instances of underreporting.⁹¹

Although the absence of a national gun registry⁹² makes it impossible to verify both whether a specific individual owns a firearm or the total number of firearms circulating in the United States, experts estimate the total United States gun stock to be approximately 270 million.⁹³ Other research reveals that the United States “is the only nation in the world where civilian guns outnumber people,” that “Americans own 393 million of the 857 million civilian guns available, which is around 46% of the world’s civilian gun cache,” and that approximately “44% of US adults live in a household with a gun.”⁹⁴ The low percentage of firearm ownership reported by study participants therefore seems improbable, given: (1) the sheer number of firearms in the United States, (2) higher levels of gun ownership in the southern half of the United States,⁹⁵ (3) the fact that “men are much more likely to own a gun than women,”⁹⁶ and (4) evidence suggesting that “[f]irearms, particularly handguns, may be more common in homes where battering has occurred than in the general population.”⁹⁷

90. For example, violations of the federal statute that prohibits persons convicted of misdemeanor crimes of domestic violence from possessing firearms are punishable by up to ten years in prison. *See* 18 U.S.C. § 924(a)(2) (2012 & Supp. III).

91. In a study similar to this one, only 1.8% of men enrolled in a Massachusetts BIP program reported having guns in or around their homes. The researchers believe that this small percentage was due to 1) the incarceration, and therefore non-representation, of the most violent offenders; and 2) underreporting. Rothman et al., *supra* note 86, at 291.

92. *See supra* note 63 and accompanying text.

93. Deborah Azrael et al., *The Stock and Flow of U.S. Firearms: Results from the 2015 National Firearms Survey*, 3 J. SOC. SCIS. 38, 52 (2017). The authors add that “[s]ince the mid-1990s, the U.S. civilian gun stock has increased from about 192 million (with 65 million handguns) to about 265 million (113 million handguns). *Id.*

94. Kara Fox et al., *How U.S. Gun Culture Stacks Up With the World*, CNN (Nov. 26, 2021), <https://www.cnn.com/2021/11/26/world/us-gun-culture-world-comparison-intl-cmd/index.html> [<https://perma.cc/HN7S-S578>].

95. Philip Cook & Harold Pollack, *Reducing Access to Guns by Violent Offenders*, 3 RUSSELL SAGE FOUNDATION JOURNAL OF THE SOCIAL SCIENCES 1, 8 (2017).

96. *Id.* *See also* Joseph Carroll, *Gun Ownership and Use in America*, GALLUP POLL (2005) (documenting that American gun owners are overwhelmingly male); KIM PARKER ET AL., PEW RESEARCH CENTER, *America’s Complex Relationship With Guns* 18 (2017), <https://www.pewresearch.org/wp-content/uploads/sites/20/2017/06/Guns-Report-FOR-WEBSITE-PDF-6-21.pdf> (noting that “about four-in-ten men (39%) say they personally own a gun, compared with 22% of women.”).

97. Susan Sorenson, *supra* note 3, at 235. Professor Sorenson describes a survey of California domestic violence shelters, which revealed that more than one-third of the women reported a firearm in their home, twice as many as in the general population. *Id.* *See also* Susan Sorenson & Douglas Wiebe, *Weapons in the Lives of Battered Women*, 94 AM. J. PUB. HEALTH 1412 (2004) (explaining that

A. Batterer Intervention Programs

A final consideration related to methodology is an explanation of Batterer Intervention Programs (“BIPs”), like the one that hosted this study. BIPs are community-based treatment and education programs that seek to prevent the recurrence of intimate partner violence by changing offenders’ behavior.⁹⁸ There are currently more than 2,500 BIPs in the United States.⁹⁹ While voluntary participation in Batterer Intervention Programs does occur, approximately 80% of those who receive BIP services are mandated by the criminal legal system to attend,¹⁰⁰ typically as an alternative to incarceration.¹⁰¹

A range of program structures and philosophies exist across the United States. Groups can be structured or unstructured.¹⁰² Structured models can utilize

“[f]irearms, especially handguns, are more common in the homes of battered women than in households in the general population.”) Professors Sorenson and Wiebe add that their “findings suggest that among households where violence has occurred that was sufficiently chronic or severe for the woman to have sought refuge at a battered women’s shelter, the proportion of households with a gun or guns is 36.7%, or about 20% higher than in the general population.” *Id.*

98. EDWARD W. GONDOLF, *BATTERER INTERVENTION SYSTEMS: ISSUES, OUTCOMES, AND RECOMMENDATIONS* 5 (2001); Bent-Goodley et al., *supra* note 85; KERRY MURPHY HEALEY & CHRISTINE SMITH, *NAT’L INST. JUST., BATTERER PROGRAMS: WHAT CRIMINAL JUSTICE AGENCIES NEED TO KNOW* 1 (1998).

99. Ying Cheng et al., *Compared to What? A Meta-Analysis of Batterer Intervention Studies Using Nontreated Controls or Comparisons*, 22 *TRAUMA, VIOLENCE, & ABUSE* 496, 497 (2021).

100. Jeremy Travis, *Foreword*, in *BATTERER INTERVENTION: PROGRAM APPROACHES AND CRIMINAL JUSTICE STRATEGIES* vii (Kerry M. Healey eds., 1998).

101. HEALEY & SMITH, *supra* note 98; Bent-Goodley et al., *supra* note 85; Amanda Dekki, Note, *Punishment or Rehabilitation? The Case for State-Mandated Guidelines for Batterer Intervention Programs in Domestic Violence Cases*, 18 *J. CIV. RTS. & ECON. DEV.* 549, 564-65 (2004). After a surge of many ‘pro-arrest’ practices for perpetrators of domestic violence in the 1980s led to jail overcrowding, see GONDOLF, *supra* note 98 at 6, many courts began referring perpetrators of intimate partner violence to BIPs “in lieu of incarceration and/or as a condition of probation.” See Ying Cheng et al., *supra* note 99 at 496. See also SHELLY JACKSON ET AL., *NAT’L INST. JUST., BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE?*, at iii (2003), <https://www.ojp.gov/pdffiles1/nij/195079.pdf> (explaining that “[b]atterer intervention programs were introduced as a way to hold batterers accountable without incarcerating them”). Moreover, in those early years as well as today, “although [some victims] wanted the battering to stop, they did not want their partners incarcerated. To respond to these requests while still holding batterers accountable, offenders were referred to batterer intervention programs.” *Id.* at 1.

102. An unstructured group therapy model does not utilize a strict program curriculum. See Eric S. Mankowski et al., *Collateral Damage: An Analysis of the Achievements and Unintended Consequences of Batterer Intervention Programs and Discourse*, 17 *J. FAM. VIOLENCE* 167, 169-70 (2002); HEALEY & SMITH, *supra* note 98. Conversations are instead guided by participants, who are encouraged to communicate freely and openly about their experiences. See Mankowski et al., *supra*. Sessions first focus on establishing trust and emotional safety and later address personal factors such as substance abuse, physical trauma, and difficulties with intimacy. *Id.*

either cognitive behavioral therapy,¹⁰³ the feminist psychoeducational approach,¹⁰⁴ or a combination of the two.¹⁰⁵

Although curricula vary in general, BIPs work with participants to “challeng[e] rigid sex-role perceptions, develop the necessary skills to be nonviolent and non-abusive in a relationship, and explor[e] the social and emotional backdrop of violent actions to control the behaviors of the victim.”¹⁰⁶ BIPs typically “educate men about the causes, dynamics, and consequences of violence.”¹⁰⁷ The programs aim to teach perpetrators “how to recognize and deal with anger without resorting to violence” and how to “reduce their general level of arousal through relaxation and self-control techniques.”¹⁰⁸ Another common goal of BIPs is to “[c]hange views and attitudes about intimate relationships that men have used to justify their abusive behaviors, including sexist attitudes.”¹⁰⁹

There is no consensus as to the effectiveness of BIPs in increasing the safety of victims of intimate partner violence.¹¹⁰ Some studies show modest reductions in recidivism among participants in BIPs.¹¹¹ However, critics of BIPs note a high dropout rate and argue that programs for offenders divert funding from victims’ services. They also contend that BIPs provide survivors who stay with their partners a false sense of hope that the abuse will cease, which often causes them

103. Cognitive behavioral batterer intervention therapy programs target thoughts and behaviors that contribute to violence and emphasize “changing performance through modification of reinforcement contingencies.” Johnna Rizza, *Beyond Duluth: A Broad Spectrum of Treatment for A Broad Spectrum of Domestic Violence*, 70 MONT. L. REV. 125, 128-29 (2009). The programs’ underlying theory is that because violence is a learned behavior, “nonviolence can similarly be learned according to the cognitive-behavioral model.” C. Babcock et al., *Does Batterers’ Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLINICAL PSYCH. REV. 1023, 1026 (2004).

104. Under the feminist psychoeducational approach “violence against women is not seen as episodic but rather as an expression of systematic male control” that results in “emotional, economic, sexual, and verbal abuse.” Mankowski et al., *supra* note 102, at 171. The first feminist psychoeducational program developed in the United States was the Duluth Model, which “focuses on deconstructing the basis of abusive episodes in ‘power and control’ motives and replacing these with an ‘equality’ model for relationships.” *Id.* The Duluth Model “is based on the feminist theory that patriarchal ideology, which encourages men to control their partners, causes domestic violence ... This model is the most common form of BIP in the Nation; many States mandate that BIPs conform to [it].” JACKSON ET AL., *supra* note 101, at 1.

105. For example, group practice operates from the premise that battering has multiple causes and therefore combines a psychoeducational curriculum, cognitive-behavioral techniques, and an assessment of individual needs. Examples of such programs include Emerge and AMEND (Abusive Men Exploring New Directions). JACKSON ET AL., *supra* note 101, at 1.

106. Bent-Goodley et al., *supra* note 85, at 200.

107. Etiony Aldarondo, *Evaluating the Efficacy of Interventions with Men Who Batter*, 4 FAM. & INTIMATE PARTNER VIOLENCE Q. 247, 255 (2012).

108. *Id.*

109. *Id.*

110. See, e.g., Bent-Goodley et al., *supra* note 85, at 206; Christopher I. Eckhardt et al., *The Effectiveness of Intervention Programs for Perpetrators of Victims of Intimate Partner Violence*, 4 PARTNER ABUSE VIOLENCE 196, 201 (2013).

111. Healey & Smith, *supra* note 98, at 3; Robert P. Butters et al., *Intimate Partner Violence Treatment: Tailoring Interventions to Individual Needs*, 49 CLINICAL SOCIAL WORK J. 391, 393 (2021); Aldarondo, *supra* note 107, at 256-57; Alisa J. Velonis et al., *Still Looking for Mechanisms: A Realist Review of Batterer Intervention Programs*, 21 TRAUMA, VIOLENCE, & ABUSE 741, 741-53 (2020).

to “put down their guard” and “make concessions.”¹¹² BIPs are also limited in their ability to reduce domestic violence because many programs fail to address underlying issues such as depression, PTSD, personality disorder, substance use, and other addiction disorders.¹¹³

Inconclusive evidence about the effectiveness of BIPs is often attributed to the challenges of isolating the effects of the program, given the interdependency on many other systems such as police practices, the courts, probation officers, programs that support victims, and community norms and state laws regarding domestic violence.¹¹⁴ Methodological problems such as low retention and completion rates, inadequate follow up data, and small sample groups have also led to indeterminate results.¹¹⁵ Nevertheless, BIPs remain a widely utilized tool to both address and prevent intimate partner violence across the United States. For this reason, the Family Place’s Battering Intervention and Protection Program emerged as an effective site to identify and interview perpetrators of intimate partner violence for this study.

III. FINDINGS

This Article draws on data from twenty-eight computerized surveys and twenty-five in-person interviews with male participants, ages 21 to 64 (mean age 38, median age 39). A little over half of respondents were Black or African American and 25% identified as Hispanic or Latino. The remaining respondents were White/Caucasian (7%) and American Indian/Alaskan Native, Asian, or “Other” (3% each). They represented 25 discrete zip codes across the Dallas-Fort Worth metropolitan statistical area.

The majority (approximately 75%) of respondents have biological children, but approximately 70% of these men were not living with their children at the time of their interview.¹¹⁶ Half of participants had a high school degree or GED. The remaining had a range of educational attainment: 10% did not graduate high school, 18% attended some college, and the remaining had either an associate’s degree, a 4-year college degree, had attended trade school or had technical or vocational training (7% each). Approximately 39% of the men were unemployed, 36% were employed full-time, and the remainder had either part-time or temporary employment. Annual income was largely concentrated under

112. Gondolf, *supra* note 98, at 29-30.

113. Butters et al., *supra* note 111; Penelope K. Morrison et al., *An Exploratory Study of the Relationship Between Human Service Engagement, Recidivism, and Completion of a Batterer Intervention Program*, 37 J. FAM. VIOLENCE 475, 476 (2022).

114. Gondolf, *supra* note 98, at 35.

115. HEALEY & SMITH, *supra* note 98, at 6; Morrison et al., *supra* note 113, at 476.

116. Relatedly, respondents’ marital status varied. The majority (46%) are single and have never been married, 14% are married, 21% are divorced, 7% are separated but not divorced, and 11% have a partner to whom they are not married.

\$50,000, with 81% of respondents in that bracket. The intimate partner violence charges that led respondents to enroll in the BIPP class were a range of felonies (68%) and misdemeanors (21%).¹¹⁷

A. The Majority of Respondents Had Knowledge of Domestic Violence Firearm Prohibitions

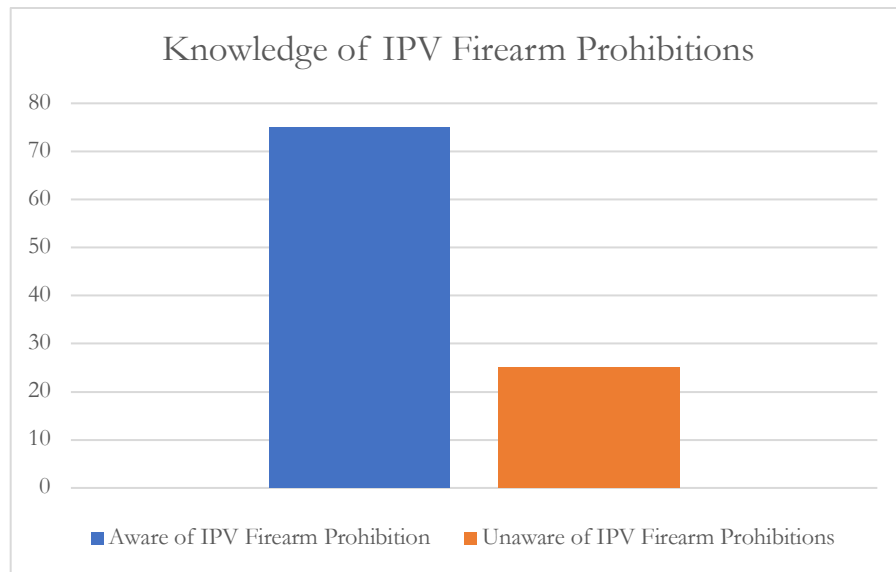
An important initial question of the study was whether respondents were aware that they were prohibited from possessing firearms. Where enforcement is largely lacking and compliance therefore frequently voluntary,¹¹⁸ such knowledge is critical. After all, “how can we expect individuals—and prohibited possessors in particular—to be deterred from illegally possessing guns and ammunition if they are not aware of the laws to begin with?”¹¹⁹ And providing that information would be a relatively simple solution to the complex problems raised by this Article.

Unfortunately, the data reveal that it will take more than an easy fix. A significant majority (75%) of respondents reported that someone in the criminal legal system told them that those with domestic violence convictions are legally prohibited from possessing firearms. Interviewees revealed that the information was coming from a variety of sources: judges, probation officers, and defense attorneys.

117. Eleven percent of participants indicated that they were unsure whether their charge was a felony or misdemeanor.

118. See *supra* Section I.C. and accompanying cites.

119. Melissa Barragan et al., *Prohibited Possessors and the Law: How Inmates in Los Angeles Jails Understand Firearm and Ammunition Regulations*, 3 RUSSELL SAGE FOUND. J. SOC. SCIS. 141, 156 (2017).



Several respondents indicated that they were aware of the prohibition prior to any interactions with the legal system. “I mean, they didn’t tell me,” one man stated, “I just know that [if] you have a felony you cannot own a firearm.”¹²⁰ Research suggest that this result is unsurprising. In another study where “respondents were well aware of the gun restriction associated with their status as prohibited possessors” researchers surmised that “[t]heir knowledge ... may be significantly greater than that of those who have not been arrested, charged and incarcerated ... because of the direct ... and recent nature of their experiences with the law.”¹²¹

Despite a relatively high level of knowledge regarding firearm prohibitions, some confusion about the specifics of the laws persisted. One participant noted that he “knew felons couldn’t possess firearms ... but ... didn’t know about the domestic violence thing.”¹²² He added that “as far as [he understood], Texas says you’re allowed, no matter what, to have a firearm in your home for protection, although the federal government says no, if you’re a felon.”¹²³ Such misperceptions are understandable given the complexity of federal and state firearms laws, the fact that state and federal prohibitions are often not precisely aligned, and recent high-profile challenges to the gun laws.¹²⁴ As experts have noted, “knowledge about gun and ammunition law is incomplete even among a

120. Transcript at 108 [hereinafter “Tr.”].

121. Barragan et al., *supra* note 119, at 156.

122. Tr. at 11.

123. *Id.* at 12.

124. *See supra* Section I.B.

population that should arguably know.”¹²⁵ Accordingly, to enhance compliance, all actors in the criminal legal system should ensure that firearm prohibitions are communicated clearly and unequivocally to defendants. This responsibility is especially crucial for defense attorneys and probation officers, whom participants identified as their primary sources of information on firearm prohibitions and as “high-touch” and potentially more trusted messengers.

One final related data point deserves discussion. Although 75 percent of respondents reported that they were told that their conviction prohibited them from possessing firearms, only 61 percent reported that the judge in their case ordered them to turn over their firearms. This is consistent with studies that have shown that judges do not regularly order surrender in cases involving intimate partner violence.¹²⁶ Judges arguably have the most important role to play in the legal process of disarming domestic abusers because they alone have the authority to enforce firearm prohibitions. As such, judges should take special care to not only order surrender of firearms where appropriate, but to ensure compliance with these orders.¹²⁷

B. Crime, Violence, and Safety

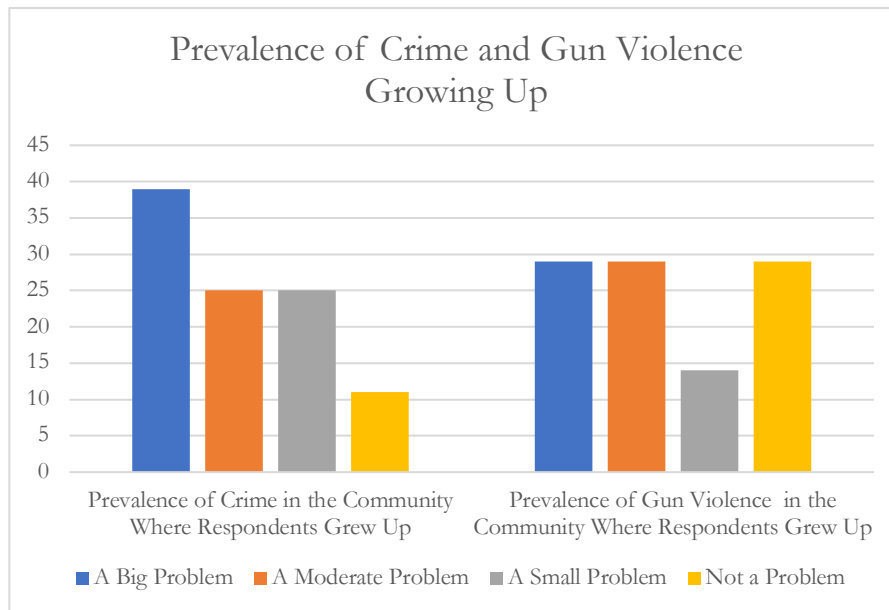
1. The Majority of Respondents Reported Significant Past Victimization

One of the most striking results from the data is the level of past victimization experienced by respondents. This finding is understandable given that 64 percent of study participants reported that crime was either a moderate or big problem in the community where they grew up.

125. Barragan et al., *supra* note 119, at 156.

126. Vites et al., *supra* note 1, at 611.

127. Findings from this study support the critical role of judges in another way. When asked whether they could trust certain system actors (police, prosecutors, and/or judges) to do what was right, respondents rated judges the highest (with 11% stating they could always trust judges to do what was right, 21% most of the time, and 57% some of the time).

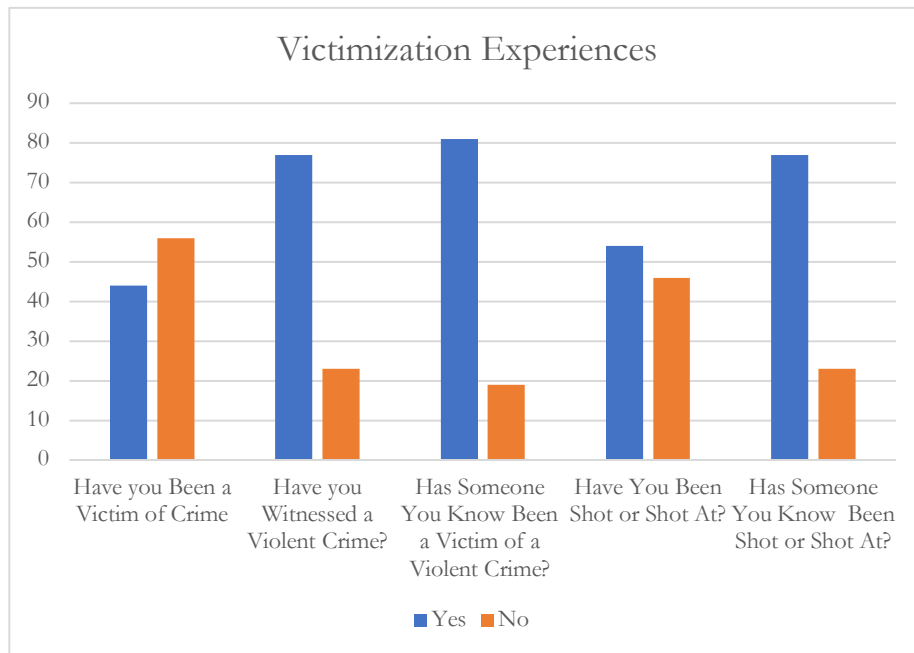


When asked about specific victimization experiences, the numbers told a sobering story. Forty-four percent of interviewees indicated that they had been the victim of a violent crime at some point in their lives. In 2022, the Bureau of Justice Statistics found that the rate of nonfatal violent victimization in the United States was 23.5 victimizations per 1,000 persons – just over 2 percent.¹²⁸ When compared to the national average, the level of victimization of participants in this study is markedly higher.

Drilling down further, 77 percent of respondents reported witnessing a violent crime and 81 percent stated that they knew someone who had been the victim of a violent crime. Taken together, participants reported considerable and extensive exposure to both violence and crime.

Levels of exposure to gun violence were also high. More than half (57%) of respondents reported that gun violence was either a big or moderate problem in the communities where they grew up. Fifty-four percent had been shot or shot at, with 87 percent of those incidents reported as intentional. Additionally, 77 percent reported that they knew someone who had been shot or shot at, and of those, 95 percent stated that the shooting was intentional.

128. ALEXANDRA THOMPSON & SUSANNAH N. TAPP, BUREAU JUST. STATS., CRIMINAL VICTIMIZATION, 2022 at 1 (2023), <https://bjs.ojp.gov/document/cv22.pdf>.



These findings are significant because researchers have consistently found that “[v]ictimization experiences ... are associated with owning a gun for protection.”¹²⁹ In a nationwide survey of nearly 900 people, “victims of crime were more likely to view guns as important.”¹³⁰ Those “who have been victimized at some time in their lives are significantly more likely to *own* guns than those who have not.”¹³¹ And numerous studies reveal “that victims of violence are significantly more likely than others to *carry* guns and other weapons.”¹³² Notably, victimization need not be personally experienced for the rate of gun ownership to be impacted. The Pew Research Center found that a

129. Tara Warner & Courtney Thrash, *A Matter of Degree? Fear, Anxiety, and Protective Gun Ownership in the United States*, 101 SOC. SCI. Q. 285, 303 (2019). See also J.C. Barnes, Brian Boutwell & Kevin Beaver, *Genetic and Nonshared Environmental Factors Predict Handgun Ownership in Early Adulthood*, 38 DEATH STUDIES 156, 162 (2014) (noting that “victimization experiences increase the odds of purchasing a handgun for self-protection”).

130. Tara Warner & Shawn Ratcliff, *What Guns Mean: Who Sees Guns as Important, Essential, and Empowering (and Why)?*, 91 SOCIO. INQUIRY 313, 332 (2021). The study further notes that “[h]aving actually experienced victimization appears to be a ... consistent correlate of gun ownership.” *Id.* at 315-16.

131. Catherine Ross, *Neighborhoods and Guns in Middle America*, 34 SOCIO. FOCUS 287, 293 (2001) (emphasis added).

132. Jordan Beardslee et al., *A Within-Individual Examination of the Predictors of Gun Carrying During Adolescence and Young Adulthood Among Young Men*, 50 J. YOUTH & ADOLESCENCE 1952, 1964 (2021) (citing several studies) (emphasis added). Importantly, the authors also found that “youth were more likely to carry guns in years when they were exposed to gun violence but not when they were exposed to non-gun-related violence,” suggesting that the impact of gun violence is particularly significant to the decision to carry. *Id.*

“higher share of gun owners (51%) than non-owners (40%) report that they know someone who has been shot.”¹³³

Interviews revealed that respondents’ victimization experiences were serious, significant, and personally impactful. Nineteen of the twenty-five interviewees (over 75%) described the crime and violence, including gun violence, they endured growing up:

- “It was rough. A lot of fighting, shootings, stabbings, and killing.”¹³⁴
- “And then when I turned eight, it was like people getting shot accidentally, shot on purpose. And just bodies dropping.”¹³⁵
- “Being in the neighborhood, just growing up in the hood, we would hear gunshots from afar and a couple of times the bullets went over my head ... I was getting groceries out of the car, taking them to the apartment, just like bullets were flying.”¹³⁶
- “I saw the chalk lines twice as a kid.”¹³⁷
- “From what I could last remember as a kid, just going outside, there was always, of course, drug dealings and fistfights. And, you know, it was always chaos. But that was a normal thing of coming home from school. Somebody would be scrapping by the corner store ... You hear gunshots. You hear the noise outside. I mean, it’s 24-7. You just don’t stop hearing it. You don’t stop seeing as it becomes a normal thing.”¹³⁸
- “I’ve heard multiple gunshots ... I’ve heard people, like, scream ... I’ve seen someone die before. It’s like, you know, it really, you know, makes you numb.”¹³⁹
- “That’s one of the moments that stick to my, you know, stick in my brain like a glue ... And it’s crazy because I didn’t really have like, I didn’t have an emotional attachment to this person, but I knew who she was ... But it’s like this person is on the ground, like the eyes are rolling behind her head. Body is just shaking. Maybe their brain is like a few feet away from them.”¹⁴⁰

These, and many similar, stories shared by respondents demonstrate how pervasive and severe crime and violence were in their formative years, and how regular exposure to such violence became normalized to them and others in their community.

133. PARKER ET AL., *supra* note 96, at 14.

134. Tr. at 172.

135. *Id.* at 120.

136. *Id.* at 262.

137. *Id.* at 155.

138. *Id.* at 343. Another interviewee noted something similar: “So it was a lot of drug use, stealing, fighting. Obviously, people shooting at each other. I can’t really tell you what for. They were shooting each other ... violence every day outside.” *Id.* at 84.

139. *Id.* at 318.

140. *Id.* at 337.

Several respondents were also direct victims of gun violence. One man reported that he had “looked down the barrel of a gun ... twice.”¹⁴¹ Another shared a story of a time a gun was pulled on him. “I remember one time someone had a gun to me, to my face,” he stated.¹⁴² “It was a revolver. And I could see the bullets in it. And they were pulling and clicking it.”¹⁴³

Even more had stories of friends and family members victimized by gun violence:

- “I have a lot of friends that are not here, no longer here. Have died from being shot. My best friend got killed like five years ago.”¹⁴⁴
- “I got a cousin and a homeboy who got murdered inside their car.”¹⁴⁵
- “You know, growing up, I was raised around a lot of young kids that would take ... guns from their homes ... You had a lot of kids killing themselves, killing their cousins, killing your friends.”¹⁴⁶
- “I saw my cousin get shot. Saw my uncle get shot.”¹⁴⁷
- “Seeing one of my friends being killed in front of my eyes. My friends getting killed. My friend was beside me [was killed] by a stray bullet.”¹⁴⁸

In sum, participants in this research experienced extreme levels of crime, generalized violence, and gun violence in their early years. And as will be discussed below, their perceptions of safety were commensurately impacted.

2. *Many Respondents Reported Not Currently Feeling Safe in their Neighborhoods*

Overall, study participants reported that their current neighborhoods were safer than those they grew up in. A substantial majority (82%) of survey respondents stated they felt either moderately safe or very safe going out after dark in their neighborhoods and slightly more than half (53%) thought it was either somewhat or very unlikely that they would be a victim of a crime in the next 12 months.

Although participants’ present-day reported safety, and perceptions of safety, were improved from what they experienced in their early years, many respondents still anticipated being victimized in the upcoming year. Moreover, approximately 40 percent of the men interviewed spoke about crime and violence

141. *Id.* at 316.

142. *Id.* at 262.

143. *Id.*

144. *Id.* at 34.

145. *Id.* at 202.

146. *Id.* at 356.

147. *Id.* at 102.

148. *Id.* at 479.

they were currently facing. Some described property crime,¹⁴⁹ others described the proliferation of illegal drugs in their neighborhoods.¹⁵⁰ Several others described gun violence

- “You can always hear gunshots.”¹⁵¹
- “Just bullets flying ... three of them came through the house because people were just shooting in the air or whatever, and it just came right through the house.”¹⁵²
- “You know, people got shot ... you hear about people getting shot and stuff like that in the neighborhood.”¹⁵³
- “But I mean, I can hear the gun. I can hear gunshots outside ... [I]f I was to be outside, just like just outside, just chilling ... it feels like ... I got to protect myself. If I have somebody, like, just comes up on me with a gun or tries to rob [me].”¹⁵⁴

Whether resulting from prior victimization or current lack of safety, study participants expressed significant feelings of insecurity in both online surveys and in-person interviews. This finding is significant because feeling unsafe has been identified as a leading cause for gun ownership. As Justice Alito stated in *Bruen*, “[t]oday, unfortunately, many Americans have good reason to fear that they will be victimized if they are unable to protect themselves.”¹⁵⁵ Echoing this, experts report that “higher fear among nonowners encourages them to become

149. For example, one respondent stated: “there’s a lot of break ins where I’m staying.” *Id.* at 194. Another reported that “[s]omebody broke into ... my ex-wife’s car and a bunch of laptop and stuff were broken.” *Id.* at 156.

150. As one participated said: “you know, you dealing with, you get out there hanging around out on the street, you got people selling drugs and you got all that stuff going on.” *Id.* at 219.

151. *Id.* at 243. Another interviewee similarly shared: “I hear gunshots sometimes in the nighttime.” *Id.* at 284.

152. *Id.* at 114.

153. *Id.* at 219.

154. *Id.* at 297.

155. *Bruen*, 597 U.S. at 79 (Alito, J., concurring). One important distinction that experts draw is feeling that one is in danger versus actual danger. The Pew Research Center notes that gun owners who see their local community as unsafe are not significantly more likely than those who say they live in a safe community to say protection is central to why they own a gun. ... There is a significant link, however, between owning a gun for protection and perceptions of whether the world, broadly speaking, has become more dangerous.

PARKER ET AL., *supra* note 96, at 21. Stated fear of crime can also be a proxy. Often, “gun ownership is rooted in general perceptions of safety rather than objective indicators of danger [and prior] research demonstrates that evaluations of safety are rooted in racial bias and the presence of racial and ethnic minorities is associated with perceptions of greater danger.” Michael Gearhart et al., *Fear of Crime, Racial Bias, and Gun Ownership*, 44 HEALTH & SOC. WORK 241, 246 (2019). In such cases, “gun ownership represents or symbolizes the individual’s feelings of empowerment against forces that are perceived to be threatening.” Robert Jiobu & Timothy Curry, *Lack of Confidence in the Federal Government and the Ownership of Firearms*, 82 SOC. SCI. Q. 77, 78 (2001). The data collected for this article demonstrates this phenomenon, with 12 percent of respondents reporting actual safety but a perception of danger.

gun owners.”¹⁵⁶ Moreover, “an individual is more likely to carry a firearm if they perceive greater levels of community violence.”¹⁵⁷

A study through which researchers interviewed residents of high-crime neighborhoods in Brooklyn and the Bronx revealed that “the looming threat of gun violence influenced” 90 percent of respondents’ decisions to carry a gun.¹⁵⁸ Significantly, “[d]espite the majority of [the] sample . . . acknowledging that they would assuredly face lengthy prison sentences if arrested with a gun, young men who reported habitually carrying were clear that fear of apprehension and resulting criminal justice sanctions were easily outweighed by perceived victimization risks.”¹⁵⁹ As one man bluntly put it: “a prison cell is better than a coffin.”¹⁶⁰

3. *Many Respondents Reported a Lack of Trust in Law Enforcement*

Another factor to consider is the relationship between gun ownership and perceptions that law enforcement cannot adequately protect or ensure one’s safety. As experts have stated, “an individual is more likely to carry a firearm if they perceive greater levels of community violence, and this association is stronger if the individual does not trust the police to protect them against such violence.”¹⁶¹

Scholars have found that “[i]ndividuals who believe that the police are willing and able to deter crime and respond promptly and effectively when summoned may see little need to own or acquire firearms for defensive purposes.”¹⁶² Conversely, “some research over the years has linked a lack of confidence in established mechanisms of social control, such as the police and courts, with an increased likelihood of defensive gun ownership.”¹⁶³ This “cynicism in law enforcement—or perceiving police are illegitimate,

156. Will Hauser & Gary Kleck, *Guns and Fear: A One-Way Street?*, 59 CRIME & DELINQUENCY 271, 271 (2013). Hauser and Kleck “also found that gun acquisition does not reduce fear, but relinquishment increases fear, suggesting the relationship between guns and fear may be asymmetrical.” *Id.* Scholars have similarly noted that “gun owners are more vigilant against perceived threats to their safety than are individuals who do not own guns.” Gearhart et al., *supra* note 155, at 245.

157. Rebeccah Sokol et al., *The Association Between Perceived Community Violence, Police Bias, Race, and Firearm Carriage Among Urban Adolescents and Young Adults*, 154 PREVENTIVE MED. 1, 4 (2002). Professor Sokol and her colleagues also report that “[a]n individual might be motivated to carry a firearm for self-protection in communities with high violence exposure.” *Id.* at 1.

158. Rod Brunson & Brian Wade, “*Oh Hell No, We Don’t Talk to Police*”: *Insights on the Lack of Cooperation in Police Investigations of Urban Gun Violence*, 18 CRIMINOLOGY & PUB. POL. 623, 635 (2019). Another study found that “the strongest within-person predictors of gun carrying were exposure to . . . gun-related events” such as gun violence. Beardslee et al., *supra* note 132, at 1964.

159. Brunson & Wade, *supra* note 158, at 640.

160. *Id.*

161. Sokol et al., *supra* note 157, at 4.

162. Margaret Kelly & Christopher Ellison, *Who Might Buy a Gun? Results from the Guns in American Life Survey*, 91 SOCIO. INQUIRY 455, 461 (2021).

163. *Id.*

unresponsive, and ill-equipped to ensure public safety—may motivate the carriage of a firearm for protection.”¹⁶⁴

This phenomenon may be particularly pronounced in communities of color, that are simultaneously over-policed (“i.e., the aggressive overenforcement of minor, petty crime”) and under-policed (“i.e., the persistent failure to address violent crime”).¹⁶⁵ As Professor Jennifer Carlson notes, “gun advocates articulate police failure in distinct and divergent ways: while some gun advocates imagine absent police, others face excessive police.”¹⁶⁶ The combination of “[u]nderpolicing and overpolicing justify and reinforce each other, and together function as a disturbingly efficient discriminatory system”¹⁶⁷ that can ultimately “undermine public trust and confidence across the criminal justice system.”¹⁶⁸ As a result, simply put, many members of historically marginalized communities do not trust the police.¹⁶⁹

Participants in this study—nearly 80 percent of whom were Black or Latino—generally distrusted law enforcement. Exactly half of respondents stated they either somewhat or strongly disagreed with the statement: “I feel comfortable talking with the police or other law enforcement.” Another 18 percent of respondents were neutral, indicating that they neither agreed nor disagreed with the proposition. Similarly, 42 percent of respondents stated they either somewhat or strongly disagreed with the statement: “I think law enforcement can keep my community safe.” And here again, 18 percent of respondents were neutral, indicating that they neither agreed nor disagreed with the proposition.

Close to half of interviewees elaborated on their views that police could not protect them (44%) and that they would not call the police if they needed help (40%). They expressed a wide range of reasons for their beliefs. Some found police response to be ineffective.¹⁷⁰ Many focused on response times being inadequate to address the dangers they faced, a marker of under-policing in

164. Sokol et al., *supra* note 157, at 2. In addition to skepticism regarding local law enforcement’s abilities, “respondents who lacked confidence in the federal government were more likely to own firearms than their counterparts who had greater faith in the federal government.” Jiobu & Curry, *supra* note 155, at 77.

165. Sarah L. Swan, *Discriminatory Dualism*, 54 GA. L. REV. 869, 872 (2020). See also Jonathan Jackson et al., *Centering Race in Procedural Justice Theory: Structural Racism and the Under- and Overpolicing of Black Communities*, 47 L. & HUM. BEHAV. 68, 69 (2023); I. Bennett Capers, *The Under-Policed*, 51 WAKE FOREST L. REV. 589 (2016).

166. Jennifer Carlson, *I Don't Dial 911: American Gun Politics and the Problem of Policing*, 56 BRIT. J. CRIMINOLOGY 1113, 1127 (2012).

167. Swan, *supra* note 165, at 879.

168. Loren T. Atherley et al., *Measurement of Potential Over- and Under-Policing in Communities*, 16 POLICING 443, 444 (2022).

169. See generally Tom R. Tyler, *Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police*, 8 POLICE Q. 322 (2005) (examining the relationship of police policies and practices to trust in the police).

170. “They won’t solve anything. Cause every time I called them, they never helped.” Tr. at 298.

traditionally marginalized communities.¹⁷¹ Others focused on police corruption.¹⁷²

The majority of respondents who addressed this issue, however, spoke about law enforcement's bias towards people of color and those with prior criminal histories. "I'm a Black man in America,"¹⁷³ one man stated. "I've had incidences where, you know, I've called the police where the police have come and I'm the one that goes to jail."¹⁷⁴ Many participants shared similar narratives of seeking police assistance and experiencing negative consequences as a result:

- "Well, I used to try to call the police, [but when] they find out who I am ... they don't want to come and help me."¹⁷⁵
- "I don't think police would make me feel safer. I mean, I guess they're here ... Don't get me wrong. The police they do have a job to do, but like I've been screwed over by police a lot."¹⁷⁶
- "Just because of everything that's going on lately ... it feels like you can't really trust the system anyway. Yeah, like you know, I guess police brutality."¹⁷⁷
- "I'm basically a criminal because they got me as criminal. But, like, let's say, if I was to shoot at somebody because they shot at me first, I must be taken into custody because I'm already a criminal."¹⁷⁸
- "And that just simple, cause every time we call police we go to jail. Ain't there a point to call y'all, you know, so why not let us protect ourselves? Not saying that we can't call y'all, but we're not going to call y'all. We are not."¹⁷⁹

In short, many respondents felt that "If you don't want to go to jail, you don't call the police."¹⁸⁰

171. Illustrative statements include: "They're barely around. So you know, it always take [sic] them 45 minutes for them to even come around," *id.* at 178; "Cause you know when you call the police you got to wait an hour and a half, 3 hours for them to come and the dude done broken cars by seven calls by then you just in there watching like? I wish they would pull up," *id.* at 115; "You know, there have been situations when I needed law enforcement and they didn't keep me safe. Because of the same thing I'm saying right now, they just get there too late. And then there's like, say I am in like a life-or-death situation. Will I even have time to really call the police?," *id.* at 55; "Even when we called the cops, it took them forever to come," *id.* at 346. A related idea was expressed by a respondent who stated: "I think they do (make things safer) ... But I think it's ... after [the] fact... They're reactive. They're not proactive." *Id.* at 26.

172. "They're just abuse of power, abusing the badge ... They don't ever take accountability for their actions and their corruptness because a lot of people ... [are] looking for the power so they can hide behind that badge." *Id.* at 307.

173. *Id.* at 27.

174. *Id.*

175. *Id.* at 286.

176. *Id.* at 104.

177. *Id.* at 244.

178. *Id.* at 298.

179. *Id.* at 148.

180. *Id.* at 27.

One study participant succinctly summed up the views of those who did not trust law enforcement to help them: “any encounter I have with the police is always off the charts negative.”¹⁸¹ Ultimately, it is these combined fears—the fear of community violence *and* “the fear that the ‘authorities’ cannot adequately protect them”—that may lead individuals to gun ownership.¹⁸² This view of firearms as necessary for protection is explored more fully in the following subsection.

4. *The Need for Protection was the Most Significantly Cited Reason for Gun Ownership*

As this study’s findings confirm, “protection has become the modal motivation for gun ownership.”¹⁸³ When individuals experience victimization, do not feel safe in their neighborhoods, and do not trust the police to aid them, they see firearm ownership as the only way to keep themselves and their loved ones safe.

Multiple surveys conducted by the Pew Research Center, spanning several years, substantiate the views expressed by this study’s participants. In a 2013 national survey, “nearly half of gun owners (48%) volunteer[ed] that the main reason they own a gun is for protection.”¹⁸⁴ A few years later, the percentage of gun owners who indicated that protection was a major reason they owned a gun increased to two-thirds.¹⁸⁵

Consequently, protection is also a significant factor in prohibited possessors’ decisions to not surrender their firearms. As a 2019 study participant put it, “I’d rather break the law, go to jail not to die. I’m still alive.”¹⁸⁶

Data collected for this Article is consistent with findings from these studies and others like it. Protection was the top reason identified by survey respondents for owning a firearm, with 64% of respondents selecting “for my own protection” as the reason they either currently own or have ever owned a gun. And as the chart below indicates, protection was by far the most frequently cited reason given by respondents in interviews for: a) initially acquiring a gun; b) currently desiring to own a gun; c) believing others might have a gun; d) feeling reluctant to surrender their own guns; or e) believing others may be reluctant to surrender their guns. Whether faced with a question about themselves or others, actual or hypothetical situations, or inquiries based in fact or conjecture, a significant

181. *Id.* at 85.

182. Jiobu & Curry, *supra* note 155, at 78.

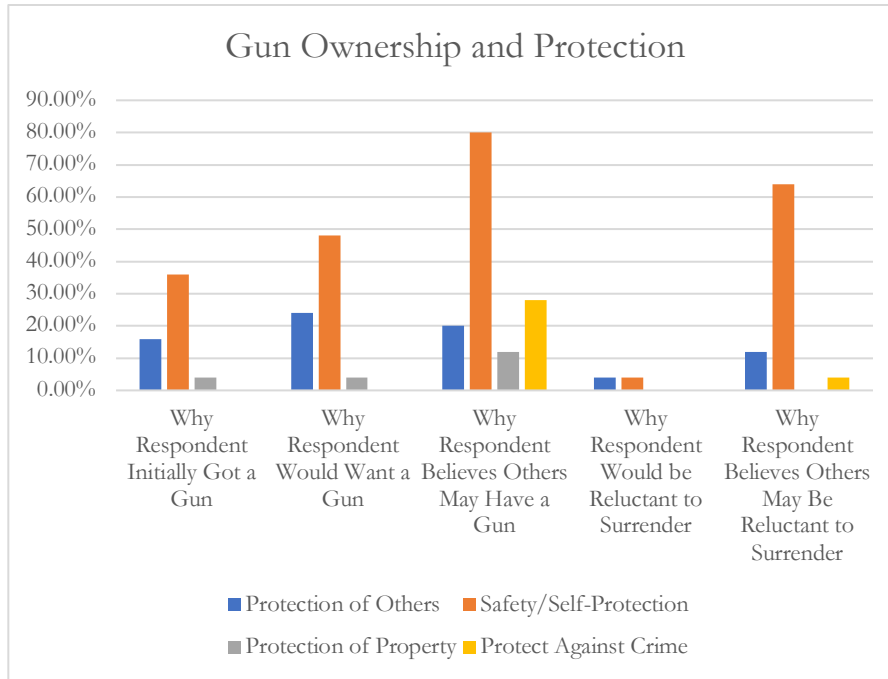
183. Warner & Ratcliff, *supra* note 130, at 313.

184. PEW RSCH. CTR., WHY OWN A GUN? PROTECTION IS NOW TOP REASON 1 (2013), <https://www.pewresearch.org/wp-content/uploads/sites/4/legacy-pdf/03-12-13-Gun-Ownership-Release.pdf>. In the same survey, “a large percentage (79%) [of gun owners stated that] having a gun makes them feel safer.” *Id.* at 3.

185. See PARKER ET AL., *supra* note 96, at 8.

186. Brunson & Wade, *supra* note 158, at 640.

percentage of interviewees indicated that firearms were necessary to protect either themselves, others, their property, and/or against crime.



In-person interviews revealed personal, heartfelt, and sometimes tragic stories behind these beliefs. When those who disclosed prior gun ownership were asked why they initially acquired firearms, 36 percent cited safety and protection. As one man stated, “we see people with no guns get robbed ... so I rather have my gun on me, with me, or in my home ... than caught without it.”¹⁸⁷ Another reported purchasing a gun at age 30 for personal protection. “Made me feel, I guess, confident and safe to have,”¹⁸⁸ he explained. “[I]f something happened, you know, I would be prepared.”¹⁸⁹ Another, describing the dangerous neighborhood in which he grew up, shared: “[w]hen I was younger, we have a lot of shootouts. So we’ll take things in our own hand and ... go back and shoot.”¹⁹⁰

Nearly half of all interviewees explained that they would presently want a gun to protect themselves. In essence, as one man remarked, “[a]ll of this just comes down to protection.”¹⁹¹ Another elaborated:

187. Tr. at 176.

188. *Id.* at 77.

189. *Id.*

190. *Id.* at 299.

191. *Id.* at 61. An exhaustive narration of all who expressed similar sentiments would be cumbersome, but some illustrative declarations include: “Oh I got my gun, I feel safe,” *id.* at 115; “To be

I will feel way safer with gun like, cause, you don't never know unless you're just gonna sit there and get shot or get robbed or whatever ... Somebody will come by. Literally. They will. They just don't scare you with guns these days. They would literally shoot you up so serious.¹⁹²

Another spoke candidly about his personal experiences with gun violence, stating:

I know people who get murdered, you know, inside their home ... I got a cousin and a homeboy who got murdered inside their car without having a gun ... Everything is like slow motion ... I would recommend anybody, not for a negative reason, like going out, robbing people whatever, but for protection of your home. Hell yeah, ... you should own it.¹⁹³

When asked to opine about others' motivations, a remarkable 80 percent of interviewees cited safety and protection as reasons for why they thought someone else may want to own a firearm. They stated:

- "From the neighborhood where everybody has one and if you don't have one, then you're not in the game and you can't win a game if you're not playing."¹⁹⁴
- "I sometimes feel like to protect themselves. It's an evil world."¹⁹⁵

Personal safety and protection were also common themes when interviewees were asked about compliance with legal prohibitions on firearms. "That gun might save my life," one man said, explaining why he would be reluctant to surrender it.¹⁹⁶ Others shared their own views about the necessity of guns for protection, especially in violent neighborhoods:

- "And some people just, don't abide by rules, some just feel like, why would I give them my gun? And I now have nothing to protect myself ... I want to be able to protect myself."¹⁹⁷
- "The people find out that they don't have a gun ... they become a victim. Really easy."¹⁹⁸
- "A lot of those guy in the BIPP class, like gun violence is part of their lives. There's a lot of murders happening ... Somebody's getting shot."¹⁹⁹

honest with you to anything that it would make me feel safer probably is just to own a gun," *id.* at 194; "You got to protect yourself first," *id.* at 513; "I want to have my gun on me. You know, because you feel more safer that way," *id.* at 144; "I got to defend myself. I got to protect myself," *id.* at 206.

192. *Id.* at 195.

193. *Id.* at 202.

194. *Id.* at 33.

195. *Id.* at 495-96.

196. *Id.* at 31. Conversely, another study participant explained that he surrendered his weapon because "I personally don't feel I need it or I'm in an environment where I have to have it." *Id.* at 394.

197. *Id.* at 501.

198. *Id.* at 271.

199. *Id.* at 164-65.

- “Because some people got shot already and their life was in danger. So it’s either you’re going to die or they’re going to die before you die.”²⁰⁰
- “Yes, I’m violent. Forgive me for doing what I did ... but I’m still going back home and I’m still in danger.”²⁰¹

A regular refrain was some version of the notion: “I’d much rather get caught with one than without one,” a succinct summation of the calculus prohibited possessors must make when deciding whether to comply with the law.²⁰²

Protection of others, particularly family members, also meaningfully impacted interviewees’ desire to have access to firearms. This quote from a study participant succinctly summed up the views of many: “I felt like if anything came to me and my family ... I would be able to protect them [if I had a gun].”²⁰³ Several respondents described acquiring firearms at a young age in order to protect their loved ones. “It was at the point where, like I was eight years old, I had to get a gun,” one explained.²⁰⁴ “It was like to protect myself and then like, protect certain people around me, because it was like some people just intentionally shooting people.”²⁰⁵ Another shared that he received a gun from his grandfather when his grandfather fell ill. “I think he wanted me to protect my grandma,” the man remembered.²⁰⁶ He was only thirteen years old at the time.

The need for firearms manifested as a binary choice for some respondents—“It’s either you have one or you don’t, or you protect yourself and your family or you don’t.”²⁰⁷ Many interviewees therefore justified their noncompliance with firearm surrender orders by the perceived necessity to protect their loved ones. As one man concisely stated: “You’re not supposed to have it, but you save lives.”²⁰⁸ A more defiant rationalization was: “[y]eah but me, I could care less. Somebody is trying to harm my family, if I need to go get a gun, I’m going to get a gun. I could give a damn about the law, I’m going to protect mine. I’d much rather get caught with one than without one.”²⁰⁹

Although protection of property was not as significant of a consideration in respondents’ desire for firearms access, a number of interviewees did raise the issue. One described the following situation in his neighborhood: “I have a nice

200. *Id.* at 301.

201. *Id.* at 398.

202. *Id.* at 92. Another respondent similarly articulated that “from my experience, you don’t want to get caught without one. You don’t want to get caught in that situation without one.” *Id.* at 31. Yet another explained, “the time we’re living in [you] got to have protection in this life ... my friends who were like ‘rather get caught with it than caught without it.’” *Id.* at 526. These sentiments nearly verbatim echo those expressed by a participant in a 2019 study in which researchers interviewed residents of high-crime neighborhoods in Brooklyn and the Bronx. *See* Brunson & Wade, *supra* note 158, at 643 (quoting a study participant as saying, “I’d rather be caught with it than without it”).

203. *Tr.* at 491.

204. *Id.* at 112.

205. *Id.*

206. *Id.* at 307-08.

207. *Id.* at 34.

208. *Id.* at 94.

209. *Id.* at 92.

truck yeah. You know where I come from, if somebody wants it, they'll take it."²¹⁰ Another participant described the following hypothetical situation: "what if one night I pull up and I see the dude breaking in the car and I want to go confront him, cause he might be the one who broke into mine."²¹¹

Finally, survey respondents also spoke about guns protecting them against crime in general. One man stated that someone might have a gun because "that's their form of protection ... or their form of being able to intimidate somebody away from messing with them."²¹² Another indicated that people in his community keep guns "in their cars [because they are] afraid to get carjacked or whatever. And the other older people ... they got guns to protect them because they feel like there's still a lot of dope heads still in the neighborhood, like crack addicts or whatever, and they will break in your house."²¹³ Yet another respondent conceived of firearms as a deterrent to crime, describing the following thought process of a would-be perpetrator: "you know what, [he] doesn't have a gun. Let's go rob him today ... Versus, you know, cool, he has a gun. He will shoot at you. So let's look for somebody else to rob."²¹⁴

C. *Identity and Culture*

A common theme that emerges from Second Amendment and firearms research is that "the gun debate is 'about *values* ... about *who* you are and who you aren't."²¹⁵ A firearm is often about more than just the weapon itself; "[t]he gun world is a world of ideological commitments, a world in which laying claim to the ownership of a gun is about laying claim to the ownership of a set of beliefs."²¹⁶ Firearms also have "multiple, symbolic meanings embedded within [them]. Guns ... are tied to themes of identity and selfhood; tradition and nationalism; and identities shaped by race, class, and gender."²¹⁷

This Section addresses masculine identities, beliefs about the Second Amendment, and a range of community norms that correlate with gun ownership. It explains how each could potentially impact a domestic violence offender's connection with, and decision to surrender (or not surrender), their firearm.

210. *Id.* at 88.

211. *Id.* at 115.

212. *Id.* at 29.

213. *Id.* at 196-97

214. *Id.* at 381.

215. Dan M. Kahan, *The Gun Control Debate: A Culture-Theory Manifesto*, 60 WASH. & LEE L. REV. 3, 6 (2003) (emphasis in original).

216. Harel Shapira, *Calvin's Problem: Racial Identity and Gun Ownership*, 29 PUB. CULTURE 221, 225 (2017). *See also* Joseph Blocher, *Gun Rights Talk*, 94 B.U. L. REV. 813, 832-33 (2014) (explaining that "the Great American Gun Debate is not just about the Constitution, nor rights, nor even just guns. It is, in large part, a cultural debate - even a culture war - about identity and values").

217. Warner & Ratcliff, *supra* note 130, at 314.

1. *Many Respondents Expressed Stereotypically Masculine Views, Emphasizing their Need for Power and Control*

As noted above, guns are “expressive in nature.”²¹⁸ They are a way for individuals to demonstrate their “values, from physical prowess and martial virtue to honor to individual self-sufficiency.”²¹⁹ One particular identity or culture that has long been correlated to and associated with firearm ownership is masculinity.²²⁰ Gun ownership allows men to express stereotypical manliness, “toughness, fearlessness, and aggressiveness,”²²¹ or put another way, to “assert their masculine identities within the context of the heteronormative family.”²²² As a result, “many gun owners in the United States appear to share an emotional or group-identity attachment to guns that extends beyond their daily utility.”²²³

Gun ownership is linked to men’s feelings of empowerment generally,²²⁴ but firearms take on a more significant role and meaning when men feel otherwise disempowered. Experts note that “guns are an easily accessed symbolic ‘tool’ to morally and emotionally cope with distress. As such, guns maintain ... a moral identity, one which gun owners literally hold onto as a physical representation of their power and autonomy.”²²⁵

Two factors which threaten masculinity are economic strain and white men’s perceived threats to their social dominance from women or racial minorities. These factors, in turn, drive increases in gun ownership.²²⁶ Studies have found

218. Kahan, *supra* note 215, at 5.

219. *Id.* at 4.

220. Masculinity is, of course, an expansive and varied concept that is deeply influenced by intersectional identities. In other words, “men as a group have significant power even though individual men do not always experience that power because of their race, class, or other characteristics.” Ann C. McGinley & Frank Rudy Cooper, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 NEV. L.J., 326, 332 (2013). The term “hegemonic masculinity” perhaps best describes the “stereotypical masculinity” discussed in this Article, namely, “any form of masculinity that has power over others in a particular place at a particular time.” *Id.* at 333.

221. Warner & Ratcliff, *supra* note 130, at 317. See also Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *THE GENDER OF DESIRE: ESSAYS ON MALE SEXUALITY* 25, 30-31 (2005) (delineating four rules of hegemonic masculinity: (1) never act feminine, (2) accrue power, success, wealth, and status, (3) always hold your emotions in check, and (4) always exude an aura of daring and aggression.).

222. Jennifer Carlson, *Mourning Mayberry: Guns, Masculinity, and Socioeconomic Decline*, 29 GENDER & SOC’Y 386, 403 (2014).

223. F. Carson Mencken & Paul Froese, *Gun Culture in Action*, SOC. PROBS. 3, 5 (2017). One interviewee in this study expressed this notion by describing his firearm in this way: “That’s kind of like your first-born child. Can’t really get rid of it. You can get rid of the second and third, but can’t get rid of the first born. That’s the one that is always going to come home when they get put out.” Tr. at 121.

224. See Mencken & Froese, *supra* note 223, at 3 (finding “a wide range of gun empowerment among gun owners,” including relationships “related to gender, race, religiosity, political views, gun use, and economic distress”).

225. *Id.* at 8.

226. See Dan Cassino & Yasemin Besen-Cassino, *Sometimes (But Not This Time), a Gun Is Just a Gun: Masculinity Threat and Guns in the United States, 1999-2018*, 35 SOCIO. F. 5, 5-6 (2020) (stating that “in times with greater economic strain on men, gun sales increase. Similarly, as men’s perceptions of threat to male social dominance increase, so too does their support for laxer gun laws.”).

that white men “who have undergone or fear economic distress tend to derive self-esteem and moral rectitude from their weapons ... The owners’ attachment to guns draws directly from popular narratives concerning American masculinity, freedom, heroism, power, and independence.”²²⁷

Threats to identity posed by socioeconomic insecurity are compounded when gender roles are implicated. For instance, when economic threat is defined as “wives outearn[ing] their husbands ... men’s dominance [is] threatened” and gun sales increase.²²⁸ When men fear that their role as provider or protector is at risk, firearms allow them to reassert their masculinity and (re-)assume that position. As Professor Jennifer Carlson explains,

guns provide a means for men to prove their utility and relevance outside the breadwinner role. By pivoting hegemonic masculinity on men’s capacity as protectors, gun-toting men are able to lay claim to a rendition of hegemonic masculinity that allows them to negotiate a sense of socioeconomic—and, therefore, gender—precarity.²²⁹

Forty-four percent of men interviewed for this study expressed a range of sentiments that can be categorized as hegemonically masculine²³⁰ or “machismo” (defined here as demonstrating exaggerated masculinity),²³¹ particularly with respect to displays of power and strength. They boasted about their lack of fear in the face of danger.²³² Others mythologized the idea of firearms allowing them to be saviors or heroes.²³³ Many explained that people in their community carry guns “just because it make[s] them seem cool.”²³⁴

227. Mencken & Froese, *supra* note 223, at 2.

228. Cassino & Besen-Cassino, *supra* note 226, at 20.

229. Carlson, *supra* note 222, at 405. Professor Carlson notes elsewhere that “[a]s women become income earners and displace men as sole breadwinners, men may respond to their eroding labor opportunities and the changing social status of women by emphasizing protection.” *Id.* at 391. *See also* WAYNE BAKER, *AMERICA’S CRISIS OF VALUES: REALITY AND PERCEPTION* 199 (2006) (noting that guns have become “symbolic of the male role as family protector”); Cassino & Besen-Cassino, *supra* note 226, at 8 (“By keeping their family safe, protecting women and children, gun ownership helps men negotiate masculinity and power.”).

230. *See supra* note 220.

231. *Machismo*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/machismo> [<https://perma.cc/7SRK-BSL3>] (last visited Nov. 14, 2024).

232. One interviewee, for example, stated: “I don’t look at criminals as somebody to be afraid of.” *Tr.* at 4. “Sometimes I entertain like I wish somebody would try that on me. I wish I could get a hold of one of these guys.” *Id.* Another described an altercation with another man: “So I went out there and I confronted him and, you know, I went to go tell a neighbor. So he ran up on me. He was trying to hit me and I shot up his car ... Kind of like a warning. Don’t mess with me.” *Id.* at 117. Yet another stated simply, “don’t try it with me cause I’m going to shoot the shit out of you.” *Id.* at 90.

233. One man fantasized: “one day where I’m sitting somewhere and all these people are getting shot and running, I would love to be able to help. So I don’t know if that opportunities are [sic] going to come, but yeah ... that would be the only reason I would want [a gun].” *Id.* at 10. “When I see people running out, you’re going to see me running in,” he added. *Id.* at 9. Professor John Lawrence and Robert Jewett describe this “myth of the American Superhero” as having three components: a community threatened by evil, institutions that cannot handle the threat, and a selfless hero who must save the day. JOHN SHELTON LAWRENCE & ROBERT JEWETT, *THE MYTH OF THE AMERICAN SUPERHERO* 6 (2002).

234. *Tr.* at 123. Several other participants echoed similar sentiments: “There’s a lot of people they do it for that cool factor they all look at me like what I got.” *id.* at 249; “Some people, just use ... guns

A regular refrain was gun ownership providing a sense of power, control, respect, and/or confidence. Many participants succinctly summed up such ideas:

- “With the gun, I felt empowered.”²³⁵
- “If I have the gun, I will have the power.”²³⁶
- “This is where I get my confidence and my control and my power.”²³⁷
- “I feel like if I own a gun, [it] does ... make people respect you a little bit more.”²³⁸

Another participant struggled to articulate his views as precisely, but his efforts to express his ideas nonetheless provided profound insights:

[I]t made me feel ... [I have a] hard time finding the right adjective, not grandiose. That’s not the right idea. Made me feel ... I’m powerful. Maybe a little more I don’t know if confidence is a good word, but it just gave me a sense of feeling a little more in control... But yeah, I mean ... it gave me a sense of I guess power and control.²³⁹

Interviewees’ statements about power, control, and respect are particularly noteworthy because it is widely recognized that the intended purpose of domestic violence is for perpetrators to maintain power and control over intimate partners.²⁴⁰ All the men participating in this research project had been convicted of a family violence offense, making it likely that they had at some point attempted to exercise power and control over their intimate partner. Although a sizeable percentage – 22 out of 25 interviewees – expressed the view that men and women should be equal partners in a relationship,²⁴¹ these responses may

... to, like, flex them, just to show them off. And that’s really it,” *id.* at 300; “I think it’s more for show than to actually have for protection ... They got a rap about it, you know, make music about it, flash it on Facebook and this and that,” *id.* at 201; “These kids ... raised up like it’s cool to have a gun and, you know, the movies and all this type of stuff so the moment they’re 18, they already want to go for it for no reason at all,” *id.* at 384.

235. *Id.* at 262.

236. *Id.* at 435.

237. *Id.* at 13.

238. *Id.* at 62.

239. *Id.* at 8.

240. See, e.g., Michael P. Johnson & Janel M. Leone, *The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence Against Women Survey*, 26 J. FAM. ISSUES 322, 322 (2005) (describing domestic violence as “violence that is embedded in a general pattern of controlling behaviors, indicating that the perpetrator is attempting to exert general control over his partner”). Feminist scholars have also identified a related motive, which is to preserve authority and superiority. See Martha Chamallas, *Hostile Domestic Environments: Commentary on Jane Maslow Cohen’s Regimes of Private Tyranny*, 57 U. PITT. L. REV. 809, 811-12 (1996). Professor Chamallas argues that perpetrators of intimate partner violence “see themselves as rightfully in control of their wives or partners and feel aggrieved and victimized when these women try to assert some independence.” *Id.*

241. A sampling of such comments includes: “There are no gender roles,” Tr. at 253; “As far as gender roles ... there’s no right or wrong way. I mean, if a woman wants to cut grass, let her cut the grass,” *id.* at 334; “[men and women] are equal in the relationship. Should just be we take care of it together,” *id.* at 109; “They’re equal because they’re in a relationship. So I don’t believe in 50/50. I believe in 100/100. ‘Cause I think that if you give a 50, you’re only giving a half. Man give 100, woman to give 100, co-existing, share responsibility,” *id.* at 268; “I think things are equal. [Some have said] all men are supposed to work and provide for the house, meanwhile, a woman stays with the kids. But that idea is basically, like, outdated. Like I feel like we’re in [a] new time,” *id.* at 239. Only three interviewees expressed “non-

have been impacted by the fact that the survey was administered and the interviews were conducted primarily by women, immediately before or after attending a BIPP class.²⁴²

2. *Respondents Have Strong, but not Necessarily Accurate, Opinions About the Second Amendment*

Professor Joseph Blocher has argued that “gun rights talk tends to be absolutist in its constitutional vision.”²⁴³ Although participants in this study did not possess a sophisticated legal understanding of the Second Amendment or the firearm prohibitions detailed in Section I, approximately one-quarter (28 percent) cited the Constitution as a reason to retain their firearms in spite of countervailing legal prohibitions. One interviewee argued that domestic violence firearms prohibitions “violat[e] our rights.”²⁴⁴ “I’m just a firm believer in the right to bear arms,” he added.²⁴⁵ One participant described the right to possess a firearm as an “entitlement,”²⁴⁶ while yet another voiced an expansive view of the Second Amendment: “I think ... if you got the right to bear arms, everybody should be able to possess ... Felony or no felony, you know what I’m saying.”²⁴⁷

One respondent articulated a variation on the Second Amendment argument, referencing the view of the right to bear arms as a limitation to the power of the government.²⁴⁸ “I think somebody wouldn’t want to give up their gun because ... [s]ome people want guns ... to prevent government tyranny.”²⁴⁹ This statement echoes what researchers have found—that men regularly understand

equality” viewpoints, but two of those three also indicated that women and men should be equal in an intimate relationship, leaving only one participant who exclusively believed that “the man should be the head of [the] household. The man takes the lead, the woman is like, to help me.” *Id.* at 80.

242. See *supra* Section II (discussing limitations). One interviewee alluded to this dynamic, stating, “ever since I started BIPP, it kind of ... opened my eyes ... it started to dawn on me ... women like to get outside. Yeah, women like to work, women like, you know, we have women fixing them cars. ... is not really a specific gender that doesn’t like to cook that doesn’t like ... to keep the home clean.” Tr. at 332-33.

243. Blocher, *supra* note 216, at 820.

244. Tr. at 12. “It seems to me that’s taking away my Second Amendment rights,” another added. *Id.* at 163.

245. *Id.* at 13.

246. *Id.* at 309.

247. *Id.* at 536.

248. See, e.g., Patrick M. Garry, *The Anti-Tyranny, Anti-Faction Aspect of the Second Amendment*, 53 U. MEMPHIS L. REV. 345, 364 (2022) (arguing that “[o]f all the rights contained in the Bill of Rights, the Second Amendment might be the most essential for achieving the most basic aspect of liberty: the ability of a free people to resist oppression”); *How Does an Armed People Secure a Free State?*, THE HERITAGE FOUND., <https://www.heritage.org/the-essential-second-amendment/how-does-armed-people-secure-free-state> [<https://perma.cc/6VVT-52HY>] (last visited Nov. 14, 2024) (positing that “[a] well-armed citizenry acts as a major check on the ability of would-be tyrants, enabling the people to forcibly resist oppression”); Heller, 554 U.S. at 598 (stating that “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny”).

249. Tr. at 235.

“gun ownership as a virtuous check on government authority. In this view, private arms serve as a bulwark against public tyranny.”²⁵⁰

Thus, study participants’ understanding of the Second Amendment emerged as a significant barrier to their compliance with laws that have been deemed by courts, including the Supreme Court in its recent *Rahimi* decision, to be constitutional restrictions on the right to bear arms.

3. *Many Respondents Reported that Community Norms Influenced their Perceptions About and Desire to Possess Firearms*

Gun ownership does not occur in a vacuum; it is significantly influenced by culture and community norms. As experts have noted, “[f]or many Americans, gun ownership is associated with a distinct culture closely tied to individuals’ values and social lives.”²⁵¹ In fact, “[t]he deeper one digs, the more it becomes evident that gun rights talk is not just about rights, has even less to do with the Constitution, and may not even be about guns. It is, at root, a debate about culture and values.”²⁵²

Many participants in this study, like many Americans across the United States, possess firearms because those around them possess firearms. In effect, “[a]s with any social behavior, gun ownership is a learned behavior.”²⁵³ Research shows that many “gun owners exist in a social context where gun ownership is the norm. In prior surveys, roughly half of all gun owners stated that all or most of their friends own guns.”²⁵⁴ The data collected for this Article reveal that for 40 percent of interviewees, the ubiquity of firearms or gun culture was a reason for either possessing or retaining a firearm. As one participant put it, “I mean, I feel like everybody owns one.”²⁵⁵ Another added, “[e]verybody in my neighborhood, honestly, everybody in my neighborhood, from older people all the way down to like guys probably a little older than me. When I was 18, everybody owned a gun.”²⁵⁶

250. Philip Cook & Harold Pollack, *Reducing Access to Guns by Violent Offenders*, 3 RUSSELL SAGE FOUND. J. SOC. SCIS. 1, 8 (2017).

251. Matthew J. Lacombe, Adam J. Howat & Jacob E. Rothschild, *Gun Ownership as a Social Identity: Estimating Behavioral and Attitudinal Relationships*, 100 SOC. SCI. Q. 2408, 2410 (2019).

252. Blocher, *supra* note 216, at 815. *See also* Kahan, *supra* note 215, at 6 (explaining that “[w]hat makes the gun control debate so intense is not a disagreement about the facts . . . but a disagreement about ‘alternative views of what America is and ought to be’”) (citation omitted).

253. Kelly & Ellison, *supra* note 162, at 465. *See also* Catherine Ross, *Neighborhoods and Guns in Middle America*, 34 SOCIO. FOCUS 287, 288 (2001) (noting that “[c]ommon values, norms, and standards in communities may shape perceptions that gun ownership is normative”).

254. PARKER ET AL., *supra* note 96, at 29. The report notes that “[i]n stark contrast, among those who don’t own a gun, only one-in-ten say that all or most of their friends own guns.” *Id.* at 5. *See also* Beardslee et al., *supra* note 132, at 1954 (explaining that “several studies found that having peers who carry guns is a significant risk factor for gun carrying and other violence”).

255. *Tr.* at 234.

256. *Id.* at 190-91.

When a sufficient number of individuals in a community own firearms, a culture of gun ownership begins to take root. In this iterative manner, “exposure to social gun culture [is] robustly associated with gun ownership.”²⁵⁷ According to the men interviewed for this study, a strong gun culture exists in the Dallas-Fort Worth metropolitan area, where this research was conducted. “It was just that lifestyle,” one interviewee stated, “you know, Texas was a gunslinging state.”²⁵⁸ The power of gun culture is so strong that even when a firearm is not seen as necessary—for safety or protection, for example—individuals still want to possess them. As one study participant explained, “[t]he community that I live in right now is kind of mild. But [I] still would not doubt that the most of the community that I stay in, have a firearm inside their area.”²⁵⁹

Finally, two additional sub-cultures for whom gun ownership is important are those who use guns for sport and/or hunting and those who collect firearms. A number of respondents indicated that they initially acquired, wanted to possess, or thought others wanted to possess firearms for shooting range use²⁶⁰ or to hunt²⁶¹. Others explained that people in their communities would be reluctant to surrender firearms, even if ordered to do so, because they considered their guns to be collectors’ items.²⁶²

IV. AVENUES FOR INCENTIVIZING SURRENDER

Some participants in this study were pessimistic about anything incentivizing surrender of firearms. As one man stated, “I don’t think that ... a law is going to change the fact that in this country people know that guns kill people. And they still own them.”²⁶³ Another noted that nothing would persuade populations that are at risk of violence to compromise their safety.²⁶⁴ But others were more optimistic about the likelihood of change, and guided by their responses, this Section considers potential mechanisms to encourage perpetrators of intimate partner violence to relinquish their firearms.

257. Bindu Kalesan et al., *Gun Ownership and Social Gun Culture*, 22 *INJ. PREVENTION* 216, 218 (2016).

258. Tr. at 358. Another noted, “I live in Texas, so, you know, a lot of people, you know ... they know that they have the right to carry one.” *Id.* at 89.

259. *Id.* at 60.

260. See, e.g., *id.* at 356 (“I like going to shooting range and trying to focus on targeting and hitting targets.”); *id.* at 322 (“I have a cousin who goes to the gun range all the time. So it’s like recreation for him, you know.”).

261. See, e.g., *id.* at 371 (“I come across actual hunters ... it’s just a sport for them.”); *id.* at 372 (“They have mostly rifles and [hand guns] because, of course, they actually utilize that because they go hunting”).

262. See, e.g., *id.* at 77 (“I know I talked to a guy at work and ... he likes to collect them.”); *id.* at 224 (“You got people who own whole different collection of guns, coins, you know, this is part of life, you know?”); *id.* at 372 (“I have friends ... they have collections”).

263. *Id.* at 32.

264. *Id.* at 302 (When asked if anything would encourage someone to surrender a firearm, a study participant answered: “not [for] people that have been shot, they got PTSD.”).

A. Criminalization / Enforcement

Although none of the potential solutions discussed in this Article can alone lead to every prohibited possessor voluntarily surrendering their firearms, they should all be considered as part of a comprehensive solution. This study reveals that an element that is now often the sole focus—criminal enforcement—should not be jettisoned as part of those holistic efforts.

A carceral or law-enforcement centric approach has limits. In addition to the enforcement challenges detailed in Section I.C. above, “multiple studies have found that severe penalties rarely, if ever, have a deterrent effect.”²⁶⁵ And as this author has previously argued, “individuals who commit intimate partner violence ‘are not rule followers.’ They knew they were breaking the law when they engaged in the act of violence that led to their conviction or the issuance of a protective order, but they did it anyway.”²⁶⁶ Thus, threatening arrest and incarceration for non-compliance with firearm prohibitions is likely to have limited impact.

Moreover, “if an offender does not expect to be caught, the severity of the punishment does not factor into any decisions.”²⁶⁷ And as previously detailed, enforcement of domestic violence firearm prohibitions is deficient,²⁶⁸ a fact known to both academic researchers and offenders. As one study participant put it, “they have a charge and the judge says you can’t have a gun, but to them is like, I’m keeping my gun because it’s not like the police is going to come knocking on you.”²⁶⁹

However, this study reveals, consistent with other research, that some carceral consequences may be necessary in order to achieve compliance. As experts have noted, “batterers are sensitive to changes in the ‘cost’ of battering and reduce their battering when the costs increase,”²⁷⁰ and people in general “primarily decide whether to comply or fail to comply based upon their levels of fear of punishment.”²⁷¹

Over a quarter of the participants in this study (32 percent) indicated that criminal consequences either had or would lead to them surrendering their firearms as required by both federal and state law. “I didn’t want to catch any

265. BEN JOHNSON, MINN. HOUSE RSCH. DEP’T, DO CRIMINAL LAWS DETER CRIME? DETERRENCE THEORY IN CRIMINAL JUSTICE POLICY: A PRIMER 5, 16 (2019), <https://www.house.mn.gov/hrd/pubs/deterrence.pdf>.

266. *New Approaches*, *supra* note 1, at 563-64 (citing Jane H. Aiken & Katherine Goldwasser, *The Perils of Empowerment*, 20 CORNELL J.L. & PUB. POL’Y 139, 152 (2010)).

267. JOHNSON, *supra* note 265, at 6.

268. *See supra* Section I.C.

269. Tr. at 272.

270. Raissian, *supra* note 54, at 73.

271. Tom R. Tyler, *Reducing Corporate Criminality: The Role of Values*, 51 AM. CRIM. L. REV. 267, 286 (2014).

more charges,” one man said, explaining his decision to relinquish his gun.²⁷² Many others shared similar sentiments:

- “I just got rid of it and said, you know what, actually, a buddy of mine went to jail for carrying a gun and that was just sort of like, you know, I don’t want this problem.”²⁷³
- “In my situation, [I’d] go back to jail. Like obviously, I don’t want to go back to jail. So they tell me to give it up, I’m giving it up.”²⁷⁴
- “They have a really serious charge, they don’t want to take any chances.”²⁷⁵

As this research demonstrates, law enforcement—including police, prosecutors, and judges—plays a critical role in efforts to dispossess domestic violence offenders of their firearms. But this study also reveals law enforcement cannot be the sole approach. Financial incentives, as well as education and culture change, have a role to play. And significantly, as discussed below, ensuring that people do not feel like they need firearms to keep themselves and their loved ones safe may be the most meaningful way to ensure that prohibited possessors comply with the law.

B. Making Our Communities More Prosperous and Safer

As discussed in detail in Section III.B, when people do not feel safe where they are—when they have been victims of crime, worry about being harmed again, and do not trust the police to help them—they see firearms as the only way to ensure their safety and protect both themselves and their loved ones. The data presented in this Article reinforces what other studies have shown, “that gun violence is concentrated in urban, metropolitan, and lower socio-economic neighborhoods.”²⁷⁶ Indeed, “like so many other structural failings of the American experiment, the grinding toll of everyday gun violence is primarily felt in poor communities, especially those of color, where the trauma of poverty is exacerbated by easy access to deadly force.”²⁷⁷

Our current “law enforcement-centric approach [to disarming domestic abusers] does not address the systemic causes of violence and abuse, or structural drivers such as socioeconomic inequality, food and housing insecurity, or misogyny.”²⁷⁸ But “[t]here is evidence that crime is disproportionately

272. Tr. at 252.

273. *Id.* at 88.

274. *Id.* at 93.

275. *Id.* at 200.

276. Beardslee et al., *supra* note 132, at 1955.

277. Crosbie, *supra* note 7.

278. *New Approaches*, *supra* note 1, at 605-06.

concentrated in economically distressed areas and that reducing poverty can also reduce crime.”²⁷⁹

As Professor Daniel Harawa notes, “poverty and socioeconomic status are important social determinants of crime. Thus, policies that address these socioeconomic factors, including community investment and robust social services ... work to reduce crime.”²⁸⁰ He cites social programs—such as access to healthcare and housing, as well as investment in infrastructure and neighborhood improvement projects—that have proven effective in making communities safer.²⁸¹

Such efforts can have particularly pronounced impacts in “urban, minority communities that face double-digit unemployment, high crime, failing schools, and other indices of poverty” where “private-sector investment, a critical component to economic development, has long lagged ... [and t]raditional public-sector participation has been largely under-funded and misdirected.”²⁸² Flowing from these financial inputs, researchers have cited to “empirical evidence [to demonstrate that] the presence of African American role models, and black business owners specifically, lead to lower black youth violence in a large sample of U.S. cities.”²⁸³

When communities experience less crime and violence, those who live in them have less reason to arm themselves for protection. Indeed, scholars have found that programs that reduce blight in urban areas are “high-value, high-return strategies” that can significantly and sustainably reduce firearm violence.²⁸⁴ Even the federal government has recognized that improving economic opportunities in communities impacted by gun violence can help

279. JOHNSON, *supra* note 265, at 2. See also Tracey Meares, Neal Katyal & Dan Kahan, *Updating the Study of Punishment*, 56 STAN. L. REV. 1171, 1189 (2004) (stating that “researchers have demonstrated in several studies that violence is associated with poverty and residential instability in neighborhoods”).

280. Daniel Harawa, *The Second Amendment’s Racial Justice Complexities*, 108 MINN. L. REV. 3225, 3247 (2024). Relatedly, improved social and economic status can increase the deterrent effects of existing punishments. For example, if “there is a job with economic and social value to lose, [if] relationships are stable and have value, and [if an offender] is socially embedded in a neighborhood or work context that accords status or metes out shame and social opprobrium,” legal punishment may be a more significant deterrent to criminal activity. Meares et al., *supra* note 279, at 1187. The authors add that “[r]esearch shows that individuals with regularized paying jobs have commitment that enhance the deterrent effect of formal legal sanctions.” *Id.*

281. See Harawa, *supra* note 280, at 3247-51.

282. Janet Thompson Jackson, *Can Free Enterprise Cure Urban Ills?: Lost Opportunities for Business Development in Urban, Low-Income Communities Through the New Markets Tax Credit Program*, 37 U. MEMPHIS L. REV. 659, 662 (2007).

283. Michael McDaniel et al., *Breaking the Cycle of Crime: Promoting the Positive Social Spillover Potential of Entrepreneurship*, 16 J. BUS. VENTURING INSIGHTS 1, 3 (2021).

284. Charles Branas et al., *Urban Blight Remediation as a Cost-Beneficial Solution to Firearms Violence*, 106 AM. J. PUB. HEALTH 2158, 2162 (2016). The authors found that non-firearm violence was not impacted by the anti-blight programs, “suggesting that there is something unique to firearm violence that makes it especially treatable with programs that transform blighted urban environments.” *Id.*

prevent future incidences of it, and has funded programs to increase access to jobs and alleviate poverty in acutely affected neighborhoods.²⁸⁵

The men interviewed for this study instinctively understood what these researchers have long reported. Over a quarter of respondents stated that increased safety would incentivize voluntary surrender of firearms from prohibited possessors. Some focused on better policing. As one respondent put it, “[i]f we had more protection from the police ... we wouldn’t have to really stress about things or things being stolen or taken or hurt no more.”²⁸⁶ Others addressed safety more generally: “If you can really ensure [sic] someone’s safety, then yeah, they feel like they probably feel like they don’t need to own a gun like that.”²⁸⁷ Put this way the solution is simple: if people feel safer, they are more likely to lay down their arms and comply with federal and state laws that require them to surrender their firearms.

C. *Financial Incentives*

In addition to funding initiatives that enhance safety and reduce poverty, offering financial incentives directly to offenders may also incentivize their surrender of firearms. Thirty-two percent of interviewees cited money as a potential motivation for turning over their gun(s). Those who suggested financial compensation for relinquishment were enthusiastic about the prospect. “Money ... is usually the best incentive,” one interviewee succinctly articulated.²⁸⁸ But several men took pains to note that the payout for turning in a gun would need to be substantial. “You want to be talking a whole lot of money for them,” one cautioned.²⁸⁹

Despite these interviewees’ enthusiasm for financial compensation, research demonstrates that gun buyback programs are not particularly effective in reducing violence. “Evidence suggests,” one study noted, “that there may be a small, improved impact in suicide prevention in older, white males, but no effect on interpersonal gun violence or homicides.”²⁹⁰ The National Bureau of

285. See U.S. Department of Labor Announces \$85m in Available Funding to Improve Job Opportunities For Youth in Communities Affected by Violence, Poverty, U. S. DEP’T LAB. (Feb. 7, 2024), <https://www.dol.gov/newsroom/releases/eta/eta20240207> [<https://perma.cc/UZU6-7Z76>].

286. Tr. at 213. Another participant suggested “[m]aybe more patrols. I guess ... a more visible presence of law enforcement.” *Id.* at 459.

287. *Id.* at 65.

288. *Id.* at 459. “It would have to be financial ... cause that’s all they care about,” another interviewee noted. *Id.* at 267.

289. *Id.* at 128. Another interviewee agreed, stating, “you know, I pay \$600 bucks for [a] gun. And why not at least get \$400 from it, right.” *Id.* at 400. Another participant shared: “I’ll be honest with you, because some guys out there just ... got some expensive guns, some nice guns and you’re not going to just, go and just, give up something [like that].” *Id.* at 199.

290. Stephanie L. Bonne et al., *Prevention of Firearm Violence Through Specific Types of Community-Based Programming: An Eastern Association for the Surgery of Trauma Evidence-Based Review*, 274 ANNALS SURGERY 298, 304 (2021); Meares et al., *supra* note 279, at 1172-73 (noting that “[t]he standard trope in criminal law, both in scholarship as well as contemporary public understanding,

Economic Research recently found that gun buybacks “have done little to reduce gun crime or firearm-related violence.”²⁹¹ The authors cite several potential reasons for this failure: the relatively small number of guns recovered when compared to those circulating the community, the low prices offered, and buybacks drawing participation from “populations with relatively lower crime risk.”²⁹² Nevertheless, in areas where a culture of gun ownership exists,²⁹³ and people possess firearms in part because others around them do, programs that even nominally reduce the number of guns can prove beneficial.

D. Changing Culture and Norms

Although it is no simple feat to change men’s relationship to masculinity, their views on the Second Amendment, and the central role of firearms in certain cultures, norms can be changed. In fact, one of the goals of BIPP programs is to institute precisely this type of change.²⁹⁴

Professor David Hemenway argues that “[s]ocial norms can encourage or discourage violence,” including gun violence.²⁹⁵ He posits that a range of groups—physicians, faith leaders, family members, community leaders, women’s organizations, and even gun owners—working together can change norms relating to firearms in the United States.²⁹⁶

Norms and laws exist in an iterative relationship. Laws can operate to change norms and “entrenched ... ways.”²⁹⁷ For example, discontinuing poll taxes and literacy tests led to increased Black voter registration, no-smoking ordinances ultimately decreased the rate of smoking in the United States, and environmental regulations that were costly to comply with eventually led companies to enact cleaner policies and protocols.²⁹⁸ But laws should not be enacted without considering existing norms. As experts have noted, “the social order is best

is that enacting high penalties on a particular crime will deter offenders from committing it” and subsequently rejecting and dismantling that trope).

291. Toshio Ferrazares et al., *Have U.S. Gun Buyback Programs Misfired*, NATIONAL BUREAU OF ECONOMIC RESEARCH WORKING PAPER SERIES 19 (2021), https://www.nber.org/system/files/working_papers/w28763/revisions/w28763.rev1.pdf

292. *Id.*

293. *See supra* notes 254-57 and accompanying text.

294. *See supra* Section II.A. and accompanying notes.

295. David Hemenway, *Preventing Gun Violence by Changing Social Norms*, 173 JAMA INTERNAL MED. 1167, 1167 (2013).

296. *See id.* Hemenway describes how norms change can keep children safe from firearms and reduce gun trafficking, suicide, and interpersonal gun violence.

297. Agnes Meroka-Mutua et al., *Coercion Versus Facilitation: Context and the Implementation of Anti-FGM/C Law*, 55 L. SOC. REV. 587, 589 (2021) (analyzing coercive (threatening use of force) and facilitative (producing a sense of duty to comply) approaches to implementation of laws prohibiting female genital mutilation/cutting).

298. *Id.*

guaranteed by gaining support for the legitimacy of the ruling authority.”²⁹⁹ Otherwise, social norms may preempt any promulgated rules or enacted laws.³⁰⁰

Participants in this survey were open to this concept of changing norms around firearms and intimate partner violence. A handful of respondents pointed to the possibility of education being beneficial. For instance, one man suggested “a program ... to further educate them ... on why they should not [possess firearms].”³⁰¹ Another solution occasionally raised was culture change. One man described a scenario in which someone who lost a family member to gun violence might debate whether “oh, I need my gun, or ... [saying] nah I don't want to be a part of this culture.”³⁰²

Such solutions are admittedly not quick fixes, and change is an undeniably slow and intensive endeavor—yet norms are capable of evolving. For example, norms related to drunk driving, using drugs, and domestic violence have shifted significantly over the course of a relatively short time, which suggests that norms relating to gun possession can change as well.³⁰³ Through effort, collaboration, community building, and hard work, “the unthinkable might become unthought.”³⁰⁴

CONCLUSION

This study is the first to engage directly with perpetrators of intimate partner violence on the question of compliance with laws prohibiting their possession of firearms. As others have noted, offenders “are the preeminent source of knowledge on crime. They have a firsthand perspective on what motivates the decision to break the law [or] obey it.”³⁰⁵ Without their insights, we can neither fully understand the problems we seek to solve nor formulate appropriate solutions. The involvement of perpetrators in the process of punishment can also potentially “increase compliance without generating additional enforcement

299. Andrew Papachristos, Tracey Meares & Jeffrey Fagan, *Why Do Criminals Obey the Law? The Influence of Legitimacy and Social Networks on Active Gun Offenders*, 102 J. CRIM. L. & CRIMINOLOGY 397, 401 (2012). *See also* Kahan, *supra* note 215, at 5 (noting that “citizens care less about how a particular law will affect behavior than they do about what the adoption of that law will say about the authority of contested moral values and about the relative status of the social groups and cultural styles associated with those values”).

300. *See generally* ROBERT C. ELLICKSON, ORDER WITHOUT LAW (1991).

301. *Tr.* at 397.

302. *Id.* at 310.

303. Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607, 628-34 (2000).

304. CASS R. SUNSTEIN, HOW CHANGE HAPPENS 9 (2020).

305. Scott Jacques & Elizabeth Bonomo, *Learning from the Offenders' Perspective on Crime Prevention* in CRIME PREVENTION IN THE 21ST CENTURY 9, 9 (2016).

costs ... causing them to consider the social and ethical dimensions of their actions ... [, and] reducing their psychological reactance.”³⁰⁶

Moreover, research about gun violence generally is sorely lacking. In 1996, Congress passed the “Dickey Amendment,” a law that prohibits the United States government, specifically the Centers for Disease Control and Prevention (CDC), from conducting research on issues related to firearms.³⁰⁷ The legislation was passed pursuant to a significant lobbying effort by the National Rifle Association following the CDC’s reframing of gun violence as a public health issue (and its release of a study that found that the presence of a gun in the home was associated with an increased risk of homicide).³⁰⁸ In the nearly three decades since the passage of the Dickey Amendment, federal “funding for firearm injury prevention has fallen ninety-six percent.”³⁰⁹ In other words, “the gun lobby ... has effectively shut down government-financed research on gun violence,”³¹⁰ leading “researchers [to] say they [have] ‘lost a generation’ of knowledge” about the issue.³¹¹

Although the tides may be turning, particularly in light of the United States Surgeon General’s recent designation of firearm violence as a public health crisis,³¹² “we need more data to formulate, analyze and evaluate [gun] policy.”³¹³ Without such research, “communities develop policies mostly in the dark.”³¹⁴ Saving lives and achieving “true reform requires a deeper understanding of the problem ... [of] [g]un violence and gun ownership ... [that is] as diverse,

306. Gilles Grolleau, Murat Mungan & Naoufel Mzoughi, *Letting Offenders Choose Their Punishment*, 75 KYKLOS 607, 608 (2022) (discussing “punishment menus.”).

307. Pub. L. No. 104-208, 1110 Stat. 3009 (“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”).

308. Allen Rostron, *The Dickey Amendment on Federal Funding for Research on Gun Violence: A Legal Dissection*, 108 AM. J. PUB. HEALTH 865, 866 (2018) (detailing the origins and impact of the Dickey Amendment).

309. 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 2 (2013), http://libcloud.s3.amazonaws.com/9/c1/6/1017/3/access_denied.pdf.

310. Editorial, *What We Don’t Know Is Killing Us*, N.Y. TIMES, Jan. 27, 2013, at SR10 [hereinafter *What We Don’t Know*]. As another journalist put it, “[t]he equation was simple: no money = no research.” Robin Abcarian, *The Surgeon General Acknowledged America’s Gun Violence Emergency. Here’s Why That Matters.*, L.A. TIMES (July 3, 2024, 3:00 AM), <https://www.latimes.com/opinion/story/2024-07-03/surgeon-general-gun-violence-public-health-crisis-vivek-murthy-robin-abcarian> [<https://perma.cc/W5RC-C3AA>].

311. Christine Spolar, *Why Even Public Health Experts Have Limited Insight Into Stopping Gun Violence in America*, KFF HEALTH NEWS (Mar. 6, 2024), <https://kffhealthnews.org/news/article/gun-violence-data-public-health-experts-research-funds> [<https://perma.cc/X9XN-GWPR>].

312. U.S. DEP’T HEALTH & HUM. SERVS., FIREARM VIOLENCE: A PUBLIC HEALTH CRISIS IN AMERICA 3 (2024), <https://www.hhs.gov/sites/default/files/firearm-violence-advisory.pdf>. The Surgeon General’s advisory notes that “[t]he federal investment in firearm violence research is drastically less than the federal investment in research for causes of death with comparable mortality.” *Id.* at 25.

313. *What We Don’t Know*, *supra* note 310.

314. Spolar, *supra* note 311.

multifaceted, and complex as America itself.”³¹⁵ This Article, and the research upon which it is based, brings us one step closer to achieving this important goal.

315. Crosbie, *supra* note 7.