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Gun Violence: The American Hate Crime Epidemic

Melissa Charbonneau

INTRODUCTION

In the United States, 321 people are shot every day.¹ Whether it occurs directly to you or to a family member or friend, or whether one simply witnesses the recurring events on the news, it is one of the few constants in all our lives.² In the United States alone, there have been 38,421 gun violence deaths as of November 12, 2022.³ With a number that large, it is concerning to note the reason behind the statistic—hate crimes.⁴ American citizens are able to exercise their constitutional right to bear arms under the Second Amendment by purchasing firearms or obtaining a concealed carry permit pursuant to state laws.⁵ Regrettably, the epidemic in this country means citizens exercising that right in hateful ways by committing gun violence against others due to implicit biases.⁶ The question on all our minds is, how do we fix this—or is this something we will always have to fear living in America?

CURRENT LAWS AND COURT DECISIONS ON CONCEALED CARRY PERMITS

Concealed carry, or allowing firearm owners to carry a handgun in public, is legal in all 50 states.⁷ To obtain a concealed carry permit, an individual generally needs to be a United States citizen, 21 or older, with a clean criminal record, free of felonies, misdemeanors, and mental illnesses, and a legal resident of the state in which they apply.⁸ Someone seeking this permit will also

¹ *The Facts That Make Us Act*, BRADY (Dec. 15, 2022, 3:42 PM), <https://www.bradyunited.org/key-statistics>.

² *Id.*

³ *Gun Violence Archive 2022*, GUN VIOLENCE ARCHIVE (Nov. 12, 2022, 7:14 PM), <https://www.gunviolencearchive.org>.

⁴ *Hate Crimes*, EVERYTOWN FOR GUN SAFETY (Dec. 15, 2022, 3:41 PM), <https://www.everytown.org/issues/hate-crimes/>.

⁵ U.S. Const. amend. II, <https://constitution.congress.gov/constitution/amendment-2/>.

⁶ Yolanda Mitchell and Tiffany Bromfield, *Gun Violence and the Minority Experience*, NAT'L COUNCIL ON FAM. RELATIONS (Dec. 15, 2022, 3:38 PM), <https://www.ncfr.org/ncfr-report/winter-2018/gun-violence-and-minority-experience>.

⁷ *Concealed Carry Permits: A Guide to Firearm Information by State*, USACARRY (Oct. 18, 2022, 7:34 PM), <https://www.usacarry.com/concealed-carry-permit-information/>.

⁸ *Id.*

undergo a background check and may need to complete a firearm safety and concealed carry course depending on which state they live in.⁹

States vary on whether they have constitutional carry, permits, or both.¹⁰ “Constitutional carry refers to the legal carrying of a handgun without a license or permit.”¹¹ Some states are “shall issue” jurisdictions, meaning “that if an applicant satisfies the legal requirements and completes whatever training course may be required under state law, the state shall issue the applicant a permit or license to carry a handgun.”¹² On the other hand, “may issue” states “may issue a license or permit to carry to an applicant, but they do not have to do so.”¹³

In the United States, 19 states have constitutional carry and permits for residents and non-residents.¹⁴ Four states have constitutional carry and permits for residents only.¹⁵ One state has constitutional carry but no permit required.¹⁶ Fifteen states have shall issue permits to residents and non-residents with no constitutional carry.¹⁷ Six states have shall issue permits to residents only with no constitutional carry.¹⁸ Three states have may issue permits to residents and non-residents with no constitutional carry and one state has may issue permits to residents only with no constitutional carry.¹⁹

Unfortunately, recently-decided court cases have led to the influx of many states moving in the wrong direction in terms of gun possession and permits to carry.²⁰ In May 2022, the Wisconsin Supreme Court unanimously reversed a circuit judge’s ruling that a man’s conviction for disorderly conduct counted as a domestic violence misdemeanor under federal law which prohibited him from possessing a gun.²¹ The high court found that, while the offense was

⁹ *Id.*

¹⁰ *The Terms You NEED to Know for Constitutional carry and Concealed Carry*, U.S. LAW-SHIELD (Nov. 12, 2022, 7:30 PM), <https://www.uslawshield.com/shall-issue-constitutional-carry/> (There are shall-issue states and may-issue states).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Concealed Carry Permits: A Guide to Firearm Information by State*, USACARRY (Oct. 18, 2022, 7:34 PM), <https://www.usacarry.com/concealed-carry-permit-information/>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Doubek v. Kaul*, 2022 WI 31 (Wis. 2022); *New York State Rifle & Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al.*, 142 S. Ct. 2111 (2022).

²¹ *Doubek*, 2022 WI at 31.

domestic and violent, it is not the facts that matter but the nature of Wisconsin's disorderly conduct statute.²² Wisconsin allows a person to be convicted for disorderly conduct for a variety of actions, but since violence is not a required element, it does not match the federal definition.²³ Wisconsin Attorney General Josh Kaul said that "this decision means that more perpetrators of domestic violence will be able to possess and get concealed carry licenses."²⁴ Mike Monaco, a criminal defense attorney in Chicago, when asked if he believed convicted persons should or should not be prohibited from possessing a firearm depending upon the conviction, he stated "I would say that it depends on the conviction, whether it involves violence or not, and it also depends on how recent the conviction is. So, there's a temporal issue as well as an issue related to the nature of the conviction. I think those are two very important factors to consider."²⁵

In June of 2022, the Supreme Court made a disheartening decision on a New York state law concerning permits to carry.²⁶ This law required New York residents to secure a permit to carry a gun in public.²⁷ As part of this process, applicants had to show that they had a proper cause for wanting to carry in public and the proper cause had to be greater than what a member of the general public might need.²⁸ In other words, they had to show a special need for carrying a gun in public.²⁹

In *New York State Rifle & Pistol Association v. Bruen*, two men applied for concealed carry permits.³⁰ The proper cause for one of the men was based upon a string of robberies in his neighborhood and the other man stated his proper cause as self-defense.³¹ When they were both denied permits for their

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Telephone Interview with Mike Monaco, Criminal Defense Attorney, Law Office of Michael J. Monaco (Oct. 18, 2022) [*hereinafter* Monaco].

²⁶ *New York State Rifle & Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al.*, 142 S. Ct. 2111 (2022) [*hereinafter* Bruen].

²⁷ Penal Law § 400.00(2): "A license for a pistol or revolver . . . shall be issued to . . . (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof. . ." Jill K. Sanders, *SCOTUS Strikes "Proper Cause" Requirement in NY Gun Licensing Law*, PAPPALARDO & PAPPALARDO, LLP (Nov. 12, 2022 8:05 PM), <https://pappalardolaw.com/2022/06/scotus-strikes-proper-cause-gun-licensing-law/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Bruen*, *supra* note 26.

³¹ *Id.*

proper cause not being greater than what a member of the general public might need, they appealed with the help of the New York State Rifle & Pistol Association.³² The case ultimately went all the way to the Supreme Court where the justices made a split decision, 6–3, which struck down New York’s law because it violated the Fourteenth and Second Amendments.³³

“The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’ *McDonald*, 561 U.S. at 780 (plurality opinion). We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need . . . New York’s proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.”³⁴ In doing so, the Court ruled that the Second Amendment protects the public carry of firearms, which was not the case before this decision.³⁵

During the interview, Mr. Monaco was also asked about his thoughts on the *Bruen* case as to whether this was the right decision based upon the excessive gun violence recently.³⁶ He responded, “I do, in principle, agree with the Supreme Court’s ruling. I think it’s a fair decision because I don’t think people need to justify why they need to exercise their own Second Amendment right.”³⁷ Conversely, “Justice Breyer argued that states should be able to pass restrictions in an effort to curb the number of deaths caused by gun violence, and the Court’s decision ‘severely burdens the States’ efforts to do so.”³⁸

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Monaco, *supra* note 25.

³⁷ *Id.*

³⁸ *New York State Rifle & Pistol Association Inc. v. Bruen*, OYEZ (Nov. 12, 2022 7:49 PM) <https://www.oyez.org/cases/2021/20-843>; “It gives the State no opportunity to present evidence justifying its reasons for adopting the law or showing how the law actually operates in practice, and it does not so much as acknowledge these important considerations. Because I cannot agree with the Court’s decision to strike New York’s law down without allowing for discovery or the development of any evidentiary record, without considering the State’s compelling interest in preventing gun violence and protecting the safety of its citizens, and without considering the potentially deadly consequences of its decision, I respectfully dissent.” Justice Breyer’s Dissenting Opinion, *New York State Rifle & Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al.*, 142 S. Ct. 2111 (2022).

STATISTICS ON GUN VIOLENCE COMMITTED BY POLICE OFFICERS

Gun violence is not only committed by citizens against citizens.³⁹ There are also systemic issues with authority figures, such as police, partaking in gun violence.⁴⁰ Every year, police in America shoot and kill more than 1,000 people.⁴¹ Ninety-six percent of the deaths of civilians caused by police are with a firearm.⁴² African Americans are disproportionately nearly three times more likely to be shot and killed by police than white people.⁴³ Statistics such as this demonstrated the need for change and the #BlackLivesMatter movement answered.⁴⁴ Black Lives Matter Global Network Foundation, Inc. is a global organization in the United States, United Kingdom, and Canada.⁴⁵ Its mission is to eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the State and vigilantes.⁴⁶

On May 25, 2020, an African American man named George Floyd was murdered by a white police officer in Minneapolis, Minnesota.⁴⁷ The officer pressed his knee to Floyd's neck for an unknown amount of time while Floyd was handcuffed face down in the street.⁴⁸ The police officer, Derek Chauvin, did not remove his knee even after Floyd lost consciousness for a full minute and twenty seconds once paramedics arrived at the scene.⁴⁹ This sparked nationwide protests led by the #BlackLivesMatter movement.⁵⁰ As a result, police precincts began implementing implicit bias training for their officers.⁵¹ Implicit bias training is an important part of police officers' overall training. In 2013, the Philadelphia Police Department received a grant from the Department of Justice to further educate officers on the effects of unconscious bias

³⁹ *Gun Violence by Police*, EVERYTOWN RSCH. & POL'Y (Oct. 18, 2022), <https://everytownresearch.org/issue/gun-violence-by-police/#by-the-numbers>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *About*, BLACK LIVES MATTER (Oct. 18, 2022, 7:42 PM), <https://blacklivesmatter.com/about/> [*hereinafter* Black Lives Matter].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Evan Hill, et al., *How George Floyd Was Killed in Police Custody*, NEW YORK TIMES (Oct. 18, 2022, 7:45 PM), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Black Lives Matter, *supra* note 44.

⁵¹ Jacob Stark, *Addressing Implicit Bias in Policing*, POLICE CHIEF MAG. (Oct. 18, 2022, 7:51 PM), <https://www.policechiefmagazine.org/addressing-implicit-bias-in-policing/>.

where they found “an overemphasis on firearms training, and an underemphasis on defensive tactics, ground fighting, and non-lethal weapons training for recruits.”⁵²

IMPLICIT BIAS TRAINING

“Implicit bias is the unconscious, unknowing differential treatment of another person based on a number of discriminatory factors, including but not limited to race, color, age, sex, gender, nationality, disability, and religion.”⁵³ Regarding racial bias, it is imperative that officers are trained in a baseline understanding of how implicit bias may impact their thought processes, which will help ensure that they are engaging in fair and impartial policing.⁵⁴ Police departments can have consultants come in to provide implicit bias training services.⁵⁵

Jennifer Eberhardt, a Stanford professor and author of *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think and Do*, has worked with several police departments on improving their practices to make the interactions between police and communities of color more productive by informing officers about bias.⁵⁶ There are “shoot, don’t shoot” studies where participants are supposed to push a button labeled *shoot* if they see someone who’s holding a gun and *don’t shoot* if they’re holding a harmless object.⁵⁷ Professor Eberhardt stated, “The finding was that police officers as well as community members are faster to shoot black people with guns than white people with guns.”⁵⁸ She went on to say, “Think about bias as the sort of automatic associations that people make between African Americans and crime that they practice over a lifetime. If you have training that disrupts that association and pushes you to override it, then you might imagine that that could also decrease racial disparities in terms of their actions.”⁵⁹

⁵² *Id.*

⁵³ Christine Jolls and Cass R. Sunstein, “*The Law of Implicit Bias*,” CAL. L. REV. 94, no. 4, 969–996 (July 2006).

⁵⁴ Stark, *supra* note 51.

⁵⁵ Belinda Luscombe, *She Wrote a Book About Bias. Here’s How She Thinks Police Departments Should Approach Reform*, ASS’N FOR PSYCH. SCI. (Oct. 18, 2022, 7:55 PM), <https://www.psychologicalscience.org/news/she-wrote-a-book-about-bias-heres-how-she-thinks-police-departments-should-approach-reform.html>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

RECOMMENDATION TO PREVENT FURTHER GUN VIOLENCE

As with any epidemic, statistics alone will not provide enough background information in order to determine a solution. The most imperative influence of gun violence is not typically an aspect of statistics, but rather a psychological analysis of the problem.⁶⁰ Looking to the motivation of one who commits gun violence, the majority of occurrences have an underlying reasoning—bias.⁶¹ Mass shootings, in particular, predictably transpire due to one individual's racial, cultural, or societal bias against a group of people.⁶²

Since the COVID-19 pandemic began, hate crimes against Asian Americans and Pacific Islanders rose 339 percent from 2020 to 2021.⁶³ This includes the 2021 mass shooting of eight people across three spas in Atlanta, Georgia.⁶⁴ Six of the victims in those shootings were women of Asian descent.⁶⁵ Young black males between 15 and 34 years of age account for 38 percent of gun deaths, even though they represent only two percent of the total population in the United States.⁶⁶ In 2016, a mass shooting occurred at Pulse, a gay nightclub in Orlando, Florida, which left 49 people dead and more than 50 wounded.⁶⁷

As the gun violence death toll rises, many people are calling for gun reform.⁶⁸ But as American politician Mike Thompson stated in the Congress-

⁶⁰ Mitchell, *supra* note 6.

⁶¹ *Id.*

⁶² Aimee Thunberg, *Statement from Sandy Hook Promise on the Mass Shootings in Atlanta, Georgia*, SANDY HOOK PROMISE (Oct. 18, 2022, 7:58 PM), <https://www.sandyhookpromise.org/press-releases/statement-from-sandy-hook-promise-on-the-mass-shootings-in-atlanta-georgia/>; Michael Ray, *Orlando shooting of 2016*, BRITANICA (Oct. 18, 2022, 8:01 PM), <https://www.britannica.com/event/Orlando-shooting-of-2016>.

⁶³ Gover, Angela R., et al., *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AM. J. OF CRIM. JUST., 647–67 (2020), <https://doi.org/10.1007/s12103-020-09545-1>.

⁶⁴ Aimee Thunberg, *Statement from Sandy Hook Promise on the Mass Shootings in Atlanta, Georgia*, SANDY HOOK PROMISE (Oct. 18, 2022, 7:58 PM), <https://www.sandyhookpromise.org/press-releases/statement-from-sandy-hook-promise-on-the-mass-shootings-in-atlanta-georgia/>.

⁶⁵ *Id.*

⁶⁶ *Gun Violence Archive 2022*, GUN VIOLENCE ARCHIVE (Nov. 12, 2022, 7:14 PM), <https://www.gunviolencearchive.org>.

⁶⁷ Michael Ray, *Orlando shooting of 2016*, BRITANICA (Oct. 18, 2022, 8:01 PM), <https://www.britannica.com/event/Orlando-shooting-of-2016>.

⁶⁸ *We have a plan to end gun violence*, EVERYTOWN FOR GUN SAFETY (Dec. 15, 2022 3:37 PM) <https://www.everytown.org>.

sional Record of 2016, “guns don’t kill people; people kill people.”⁶⁹ He went on to state, “Everyone knows that guns don’t kill people, which is exactly why responsible gun owners and the overwhelming majority of the American people understand that it’s important to run a background check to see if the person buying the gun is a danger to our community.”⁷⁰ In order to further prevent people purchasing a firearm that may be a danger to the community, the addition of bias training to the process of obtaining a concealed carry permit could be beneficial.⁷¹

Firing a gun occurs in a matter of seconds during high pressure situations for police officers and civilians alike.⁷² This means implicit biases affect everyone. As Professor Eberhardt stated, the findings from the “shoot, don’t shoot” studies proved that community members were also faster to shoot black people with guns than white people with guns.⁷³ That study only focused on racial bias, but the findings suggest that it is worth exploring all implicit biases. If police officers are beginning to undergo training to inform them on how their implicit biases might affect how they react on the job, the same training should apply to all people who would like to obtain a concealed carry permit. Furthermore, civilians do not undertake the same professional training that police officers do, which could inevitably lead to worse gun violence outcomes.⁷⁴ Therefore, an approach to counteract this hate crime epidemic is to analyze it from the human perspective rather than the gun perspective. Instituting preemptive training that could lower the incidents of hate crimes between American citizens by informing them of their implicit biases might be an answer to our initial question but has yet to be explored as an option.

⁶⁹ *Congressional Record*, Vol. 162 No. 112, p. 4666–667 (July 12, 2016), <https://www.govinfo.gov/content/pkg/CREC-2016-07-12/pdf/CREC-2016-07-12-house.pdf>.

⁷⁰ *Id.*

⁷¹ Adam Benforado, *Quick on the Draw: Implicit Bias and the Second Amendment*, RESEARCHGATE (Dec. 15, 2022, 3:31 PM), https://www.researchgate.net/publication/47640662_Quick_on_the_Draw_Implicit_Bias_and_the_Second_Amendment (“[s]tudies suggest that people who carry implicit racial bias may be able to counteract its effects through training.”).

⁷² Scottie Andrew, *Why police shoot so many times to bring down a suspect*, CNN (Dec. 15, 2022, 3:33 PM) <https://www.cnn.com/2020/08/26/us/why-police-shoot-so-many-rounds-trnd/index.html>.

⁷³ *Supra* note 55.

⁷⁴ Stark, *supra* note 51.