



March 9, 2021

**Re: Amnesty International USA urges a vote “YES” on H.R. 8, the Bipartisan Background Checks Act of 2021, and H.R. 1446, the Enhanced Background Checks Act of 2021**

Dear Representative:

On behalf of Amnesty International USA (“AIUSA”), we urge you to vote YES on the Bipartisan Background Checks Act of 2021 (H.R. 8) and the Enhanced Background Checks Act of 2021 (H.R. 1446).

If passed, these bills would require a background check prior to the purchase of any firearm in the U.S., with limited exceptions, and strengthen background check procedures to be followed before a federal firearms licensee may transfer firearms to a private individual.

Universal and enhanced background checks would close deadly loopholes, preventing threats to public safety and ensuring that guns do not fall into the hands of those who would misuse them. Strengthening safeguards intended to shield the public against potential harm or deadly force by private individuals is a critical step towards protecting universally recognized human rights—including the right to life, the right to security of person, and the right to be free from discrimination—all of which fall within the United States’ obligations under international law.

In 2019 nearly 40,000 people died by gun violence, with an average of 108 deaths *per day* from firearm related deaths.<sup>1</sup> The U.S. has both the highest absolute and highest per capita rates of gun ownership in the world.

**I. The Bipartisan Background Checks Act of 2021 (H.R. 8) Mandates Background Checks Prior to the Purchase of Any Firearm- an Essential Safeguard to Meet Human Rights Obligations**

Background checks prior to firearm purchases provide a critical safeguard to ensure that guns do not end up in the hands of those likely to misuse them. Under federal law, specifically the Brady Act of 1993, all federal firearms licensees (“FFLs”) must conduct

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<sup>1</sup> Analysis of Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Injury prevention & control; Data statistics (WISQARS), Fatal Injury Reports, 2017, [www.webappa.cdc.gov/sasweb/ncipc/mortrate.html](http://www.webappa.cdc.gov/sasweb/ncipc/mortrate.html)

comprehensive background checks prior to the sale of a gun.<sup>2</sup> FFLs can use the National Instant Criminal Background Check System (“NICS”), through the FBI, to search three separate national databases to check on potential purchasers’ mental health and criminal histories and any relevant civil orders.<sup>3</sup> Since 1998, when the NICS system became operational, the FBI has processed more than 257 million online background checks<sup>4</sup> and, as a result, almost three million people have been stopped from obtaining a firearm through an FFL.<sup>5</sup>

There are four main ways an individual purchasing a firearm may circumvent a legally required background check: (1) by arranging a purchase through a private seller rather than an FFL; (2) if the background check takes more than three working days; (3) if they have a firearm permit from a state where such a permit overrides the federal requirement to pass a background check; or (4) by presenting false or forged identification documents which are not required to be verified at the point of sale. Purchasers may also avoid background checks in numerous other ways, including by using a straw purchaser (someone who buys a gun for someone else), purchasing from a “dirty dealer” (dealers who intentionally violate or fail to comply with the law) or by purchasing firearm parts separately and building a “ghost gun” (self-manufactured firearm without a serial number).

States differ significantly in the ways they address these gaps, but 28 states still do not require background checks on firearm sales between private parties.<sup>6</sup> As a result, studies have shown that 22 percent of all firearm acquisitions are conducted without any background check.<sup>7</sup> While data is relatively limited, one study found that all states with universal handgun background checks experienced a rise in the number of homicides between 2009 and 2016, yet the overall average for those states decreased in terms of homicides caused by firearm.

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<sup>2</sup> *The Brady Handgun Violence Prevention Act of 1993*, 18 USC. § 922(s), amending the Gun Control Act of 1968, For more on the Brady Act see Chapter 2

<sup>3</sup> *National Instant Criminal Background Check System (NICS)*, FBI, [www.fbi.gov/services/cjis/nics](http://www.fbi.gov/services/cjis/nics)

<sup>4</sup> NICS Firearm Background Checks, November 30, 1998 - August 31, 2018, [www.fbi.gov/file-repository/nics\\_firearm\\_checks\\_-\\_month\\_year.pdf](http://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf)

<sup>5</sup> Bureau of Justice Statistics, US DoJ, *Background Checks for Firearm Transfers, 2013-2014 – Statistical Tables*, [www.bjs.gov/content/pub/pdf/bcft1314st.pdf](http://www.bjs.gov/content/pub/pdf/bcft1314st.pdf)

<sup>6</sup> *Universal Background Checks*, Giffords Law Center to Prevent Gun Violence, [www.lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/#state](http://www.lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/#state)

<sup>7</sup> M. Miller, et al, *Firearm Acquisition Without Background Checks: Results of a National Survey*, *Ann Intern Med.* 2017;166(4):233-239, 21 February 2017, [www.annals.org/aim/article/2595892/firearm-acquisition-without-background-checks-results-national-survey](http://www.annals.org/aim/article/2595892/firearm-acquisition-without-background-checks-results-national-survey)

These states also had lower levels of gun violence across the board than states that deferred to the federal standard, with 47 percent fewer women killed in firearm-related violence by an intimate partner and 53 percent fewer police officers killed on duty.<sup>8</sup> Also, taking population disparities into account, states with universal background check requirements for firearm purchases from private sellers encountered significantly less firearm trafficking<sup>9</sup> and substantially fewer suicides using firearms.<sup>10</sup>

There is broad public support for universal background checks on all firearm sales. Nearly 97 percent of all Americans<sup>11</sup> and 85 percent of all gun owners surveyed have supported universal background checks.<sup>12</sup> Support for universal background checks also extends to organizations representing public health researchers, mental health professionals, doctors, pediatricians, law enforcement, and educators.<sup>13</sup> Despite evidence

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<sup>8</sup> *Background Checks Reduce Gun Violence and Save Lives*, Everytown for Gun Safety, [www.everytownresearch.org/wp-content/uploads/2017/01/Background\\_Check\\_FactSheet\\_web.pdf](http://www.everytownresearch.org/wp-content/uploads/2017/01/Background_Check_FactSheet_web.pdf)

(Everytown compared the number of women killed with guns by current or former partners between 2010 and 2014 in states that did or did not require background checks for unlicensed handgun sales. Data were obtained from the FBI's Supplementary Homicide Reports and from the Florida Department of Law Enforcement.)

<sup>9</sup> D. Webster, et al, *Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking*, *Journal on Urban Health*, July 2009, 86(4): 525–537, [www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273/)

<sup>10</sup> M. Anestis, et al, *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, *American Journal of Public Health* 105, no. 10, e1, e3, 2015, [www.researchgate.net/publication/280997383\\_Suicide\\_Rates\\_and\\_State\\_Laws\\_Regulating\\_Access\\_and\\_Exposure\\_to\\_Handguns](http://www.researchgate.net/publication/280997383_Suicide_Rates_and_State_Laws_Regulating_Access_and_Exposure_to_Handguns)

<sup>11</sup> *U.S. Support For Gun Control Tops 2-1, Highest Ever, Quinnipiac University National Poll Finds; Let Dreamers Stay, 80 Percent Of Voters Say* (February 20, 2018), [https://poll.qu.edu/images/polling/us/us02202018\\_ugbw51.pdf/](https://poll.qu.edu/images/polling/us/us02202018_ugbw51.pdf/)

<sup>12</sup> C. Barry, et al, *Two Years after Newtown -Public Opinion on Gun Policy Revisited*, *Preventive Medicine*, 18 May 2015, [www.jhsph.edu/news/news-releases/2015/large-majority-of-americans-includin-gun-owners-support-stronger-gun-safety-policies.html](http://www.jhsph.edu/news/news-releases/2015/large-majority-of-americans-includin-gun-owners-support-stronger-gun-safety-policies.html)

<sup>13</sup> *APHA supports executive actions to prevent gun violence*, American Public Health Association, 5 January 2016, [www.apha.org/news-and-media/news-releases/apha-news-releases/2016/apha-supports-actions-to-prevent-gun-violence](http://www.apha.org/news-and-media/news-releases/apha-news-releases/2016/apha-supports-actions-to-prevent-gun-violence)

*Preventing Gun Violence*, American Public Health Association, [www.apha.org/-/media/files/pdf/factsheets/160317\\_gunviolencefs.ashx?la=en&hash=AB71DE1BEDEBB2A797F8EC378E672791904FCF87](http://www.apha.org/-/media/files/pdf/factsheets/160317_gunviolencefs.ashx?la=en&hash=AB71DE1BEDEBB2A797F8EC378E672791904FCF87); *Gun Violence: Prediction, Prevention, and Policy*, American Psychological Association, [www.apa.org/pubs/info/reports/gun-violence-prevention.aspx](http://www.apa.org/pubs/info/reports/gun-violence-prevention.aspx); *AMA Calls Gun Violence 'A Public Health Crisis'*, American Medical Association, 2016, [3](http://www.ama-</a></p></div><div data-bbox=)

that these background checks are effective in reducing firearm violence, the federal government has yet to modify requirements on background checks and address the dangerous gaps in security and screening for those attempting to acquire guns.

Given the risk that a firearm sold without a background check may end up in the hands of an individual who will misuse it, the federal government should require that all sellers of firearms perform background checks through FFLs, so that a record of sale is made and a background check is conducted by an independent and licensed dealer.

## **II. The Enhanced Background Checks Act of 2021 (H.R. 1446) Extends the Three-Day Waiting Period Prior to Default Proceed Sales of Firearms, Reducing the Likelihood that Firearms End up in Dangerous Hands**

Under federal law, if an FFL initiating a background check is not informed within three business days that the sale would violate state and/or federal law, the dealer may proceed with the sale<sup>14</sup> without informing the FBI or ATF.<sup>15</sup> This gap is often referred to as “default proceed” sales.<sup>16</sup>

In 2015 Dylann Roof, who had a criminal record, shot and killed nine Black parishioners at the Emanuel AME Church in Charleston, South Carolina.<sup>17</sup> Although he should have

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[assn.org/ama-calls-gun-violence-public-health-crisis](http://assn.org/ama-calls-gun-violence-public-health-crisis); *American Academy of Pediatrics Gun Violence Policy Recommendations*, American Academy of Pediatrics, 2012, [www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAPGunViolencePreventionPolicyRecommendations\\_Jan2013.pdf](http://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAPGunViolencePreventionPolicyRecommendations_Jan2013.pdf)

See also, B. Zadrozny, *Pediatricians Take on the NRA Over Gun Safety*, The Daily Beast, 15 May 2014, [www.thedailybeast.com/pediatricians-take-on-the-nra-over-gun-safety](http://www.thedailybeast.com/pediatricians-take-on-the-nra-over-gun-safety); *Statement On Comprehensive Gun Safety Proposals*, National Law Enforcement Partnership to Prevent Gun Violence, 21 May 2018, [www.lepartnership.org/wp-content/uploads/2018/05/LEP-Letter-2018-4-Gun-Laws-Redux\\_FINAL.pdf](http://www.lepartnership.org/wp-content/uploads/2018/05/LEP-Letter-2018-4-Gun-Laws-Redux_FINAL.pdf); *Testimony for Gun Violence Prevention Hearing*, National Education Association, 12 February 2013, [www.nea.org/home/54528.htm](http://www.nea.org/home/54528.htm).

<sup>14</sup> The Brady Handgun Violence Prevention Act of 1993, 18 U.S.C. § 922(t)(1), amending the Gun Control Act of 1968

<sup>15</sup> 18 U.S.C. § 922(t)(1); see also *A NICS Delay*, FBI, [www.fbi.gov/services/cjis/nics/a-nics-delay](http://www.fbi.gov/services/cjis/nics/a-nics-delay)

<sup>16</sup> *A NICS Delay*, FBI, [www.fbi.gov/services/cjis/nics/a-nics-delay](http://www.fbi.gov/services/cjis/nics/a-nics-delay)

<sup>17</sup> J. Hamel, *Nine Struck Down in Violent Church Shooting in Charleston*, The Guardian, 18 June 2015, [www.guardianlv.com/2015/06/9-struck-down-in-violent-church-shooting-in-charleston/](http://www.guardianlv.com/2015/06/9-struck-down-in-violent-church-shooting-in-charleston/)

been a prohibited buyer, he had been able to purchase the gun two months earlier; his background check was not processed within the requisite three business days, so the seller proceeded with the sale of the gun later used in the mass shooting.<sup>18</sup>

While default proceed sales represent only a small percentage of all firearm sales by FFLs, around 300,000 in 2016,<sup>19</sup> the danger resulting from these sales is clear and increasing. This is particularly so in the case of domestic violence where a 2016 government report confirmed that FBI agents take longer to complete background checks where there have been domestic violence convictions than with other prohibited buyers.<sup>20</sup> Default proceed sales that were subsequently denied following delayed background check information allowed 6,700 individuals convicted of domestic violence to obtain guns between 2006 and 2015.<sup>21</sup>

The ATF is the organization tasked with retrieving guns obtained through default proceed sales which are later denied. Yet for years the ATF has been seriously understaffed and underfunded.<sup>22</sup>

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A. Holpuch, *FBI Chief Admits Gun Background Check System Failure Over Dylann Roof*, The Guardian, 10 July 2015, [www.theguardian.com/us-news/2015/jul/10/dylann-roof-gun-fbi-background-check-failed-charleston-shooting](http://www.theguardian.com/us-news/2015/jul/10/dylann-roof-gun-fbi-background-check-failed-charleston-shooting)

<sup>18</sup> A. Holpuch, *FBI Chief Admits Gun Background Check System Failure Over Dylann Roof*, The Guardian, 10 July 2015, [www.theguardian.com/us-news/2015/jul/10/dylann-roof-gun-fbi-background-check-failed-charleston-shooting](http://www.theguardian.com/us-news/2015/jul/10/dylann-roof-gun-fbi-background-check-failed-charleston-shooting)

<sup>19</sup> J. Eaton, *Exclusive: In 2016, The FBI Allowed 300,000 Gun Sales Before Completing A Background Check: New Data From The FBI Reveals The Problem Is Only Getting Worse*, Think Progress, 15 June 2017, [www.thinkprogress.org/exclusive-the-fbi-allowed-over-300-000-gun-purchases-last-year-before-completing-a-background-9d380d53aa1d/](http://www.thinkprogress.org/exclusive-the-fbi-allowed-over-300-000-gun-purchases-last-year-before-completing-a-background-9d380d53aa1d/)

<sup>20</sup> *Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records*, GAO, July 2016, [www.gao.gov/assets/680/678204.pdf](http://www.gao.gov/assets/680/678204.pdf)

See also J. Mascia, *The Federal Background Check System Allowed Nearly 7000 Domestic Abusers to Buy Guns*, The Trace, 7 July 2016, [www.thetrace.org/2016/07/federal-background-check-system-domestic-abusers-guns/](http://www.thetrace.org/2016/07/federal-background-check-system-domestic-abusers-guns/)

<sup>21</sup> *Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records*, GAO, July 2016, [www.gao.gov/assets/680/678204.pdf](http://www.gao.gov/assets/680/678204.pdf)

<sup>22</sup> Amnesty International interview with David Chipman, Senior Policy Advisor, Giffords Law Center to Prevent Gun Violence, Former ATF Special Agent, 7 December 2017 (“If we don’t link

The FBI is aware of the concerns about timely completion of background checks for FFLs and the potential danger posed by default proceed sales.<sup>23</sup> The prohibited buyer may be

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what ATF does with reductions in gun violence, how can you measure effectiveness? There are stories of subjective victories, but there are also roadblocks to effectiveness: look at the resources given to ATF. The budget is just over two billion dollars. We have about 5000 employees, about 2600 of them are officers, so it is smaller than – for example – the Washington, D.C. Police Department.); see also *Congressional Budget Submission, Fiscal Year 2016*, US Department of the Treasury, ATF, February 2015, at 10, [www.edit.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/26\\_bureau\\_of\\_alcohol\\_tobacco\\_firearms\\_and\\_explosives\\_atf.pdf](http://www.edit.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/26_bureau_of_alcohol_tobacco_firearms_and_explosives_atf.pdf); N. Wing, *The ATF is Getting Crushed Under the Weight of the Gun Industry*, The Huffington Post, 23 February 2018, [www.huffingtonpost.com/entry/atf-gun-industry\\_us\\_5a8dc6ece4b0273053a737dd](http://www.huffingtonpost.com/entry/atf-gun-industry_us_5a8dc6ece4b0273053a737dd) ; *Fact Sheet – Staffing and Budget*, ATF, [www.atf.gov/resource-center/fact-sheet/fact-sheet-staffing-and-budget](http://www.atf.gov/resource-center/fact-sheet/fact-sheet-staffing-and-budget); *Appropriations for the Department of Justice*, Congressional Research Service, 2 May 2018, at 10, [www.everycrsreport.com/files/20180502\\_R44938\\_45e744b3fb5ba3e7aae972578e8c16a4d62057a0.pdf](http://www.everycrsreport.com/files/20180502_R44938_45e744b3fb5ba3e7aae972578e8c16a4d62057a0.pdf); *National Instant Criminal Background Check System (NICS) Operations*, DoJ, 2017, at 19, [www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view](http://www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view) (In fact, in its 2016 Congressional Budget Submission, the ATF explained that despite a budget that has remained relatively stagnant for 10 years, its “workload and mission requirements have exponentially increased.” In 2018, the ATF budget was increased slightly from US\$1,258,600 (in 2017) to US\$1,293,800. The budgetary increase is not proportional to the increased demand on the ATF in recent years. Additionally, in 2017, the FBI issued 6,004 requests to retrieve guns from prohibited buyers who had acquired them through default proceed sales.); L. Gambino, *Agency Tasked With Enforcing Obama’s Gun Control Measures Has Been Gutted*, The Guardian, 6 January 2016, [www.theguardian.com/us-news/2016/jan/06/bureau-alcohol-tobacco-firearms-obama-gun-control-measures-funding-understaffing](http://www.theguardian.com/us-news/2016/jan/06/bureau-alcohol-tobacco-firearms-obama-gun-control-measures-funding-understaffing)

<sup>23</sup> *Audit of the Handling of Firearms Purchase Denials Through the National Instant Criminal Background Check System*, DoJ, Office of the Inspector General, 2016, [www.oig.justice.gov/reports/2016/a1632.pdf](http://www.oig.justice.gov/reports/2016/a1632.pdf)

(The OIG identified 1,092 transaction records in which the FBI denied the transaction within 3 business days and indicated that ATF retrieval may be required. They selected 306 out of the 1,092 transactions for evaluation. For 241 of them, it was determined that the FBI appropriately followed its processes, or the errors did not affect operations. For 6 transactions, while the FBI recorded denials internally within 3 days, the denial was not communicated to dealers in a timely manner. Additionally, it was found that 59 transactions that were initially approved by the FBI should have been denied. To assess ATF’s firearm recoveries, the OIG reviewed field divisions’ retrieval efforts for 125 firearms needing recovery from the sampled transactions evaluated,

in possession of a gun for months before anyone is able to track them down, putting themselves and others at increased risk of death or injury. Multiple reports note the need for more time to determine complicated case histories as background checks are processed.<sup>24</sup> Only seven states have either extended the three-day federal background check timeframe or required that no firearm sale by an FFL may proceed without the completion of a background check.<sup>25</sup> For example, California requires that all firearm purchases be subject to a 10-day waiting period, with the potential for an extension.<sup>26</sup> However, the majority of states have failed to take action to close this dangerous loophole.

The U.S. government should extend the three-day federal background check waiting period. No firearm sale or transfer should take place without a background check having been completed. H.R. 1446 would extend the three-day federal background check waiting period to 10 business days, after which the prospective purchaser may petition the FBI, through a certified petition process, to permit the firearm transfer to proceed. This added safety precaution represents another significant step towards enhancing public safety and protecting human rights.

Moreover, H.R. 1446 would also change the prohibition of firearms being acquired by “mental defectives” by removing the phrase “adjudicated as a mental defective,” which is outdated and offensive terminology and replacing it with: “adjudicated with mental illness, severe developmental disability, or severe emotional instability.”

In addition to requiring universal background checks on all firearm purchases and enhancing background check procedures, Congress should fund agencies including the U.S. Centers for Disease Control and Prevention (“CDC”) to research the impact of

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finding that ATF recovered 116 of those firearms and that ATF made reasonable attempts to recover 8 of the 9 remaining firearms.)

<sup>24</sup> In its initial operations report for the NICS system, the FBI listed “more time to complete checks when records are not electronically available” as the first of five changes it could make to help keep weapons away from prohibited people.” J. Eaton, *EXCLUSIVE: In 2016, the FBI allowed 300,000 gun sales before completing a background check*, Think Progress, 15 June 2017, [www.thinkprogress.org/exclusive-the-fbi-allowed-over-300-000-gun-purchases-last-year-before-completing-a-background-9d380d53aa1d/](http://www.thinkprogress.org/exclusive-the-fbi-allowed-over-300-000-gun-purchases-last-year-before-completing-a-background-9d380d53aa1d/)

<sup>25</sup> *Background Check Procedures: Summary of State Laws*, Giffords Law Center to Prevent Gun Violence, [www.lawcenter.giffords.org/gun-laws/policy-areas/background-checks/background-check-procedures/](http://www.lawcenter.giffords.org/gun-laws/policy-areas/background-checks/background-check-procedures/)

<sup>26</sup> Cal. Penal Code §§ 26815(a), 26950-27140, 27540(a), 27600-27750.

background checks on the sale and transfer of firearms and to research and develop added viable strategies for gun violence prevention related to these policies. Furthermore, Congress should commit to sustained and robust funding for community-based gun violence intervention groups. Over the past year, as gun sales have surged due to COVID-19 and other factors, and budgets have been constrained, shootings have increased in cities nationwide. Now more than ever, community-based violence intervention programs that have proven to reduce gun violence have been critically endangered due to a lack of sustainable funding.

If passed, H.R. 8, the Bipartisan Background Checks Act of 2021, and H.R. 1446, the Enhanced Background Checks Act of 2021, would be the first steps in addressing significant and potentially deadly loopholes in the current background check system in the U.S., enhancing the protection of human rights jeopardized by gun violence: the right to life and the right to security of person.

As a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the U.S. government is obligated to protect the people living in this country from gun violence. In order to meet its obligations, the U.S. government must take clear and urgent action to strengthen protections that safeguard against gun violence and misuse of firearms and work to prevent future violence that is putting so many rights in jeopardy.

Congress should create domestic mechanisms that will allow the U.S. to meet its human rights obligations to prevent the loss of life, whether it be when a person is walking down the street, in their home, at school, attending a concert, or worshipping with their faith community. Every person has the right to live, to safety and security, and the right to be free from discrimination.

Passage of the Bipartisan Background Checks Act of 2021 and the Enhanced Background Checks Act of 2021 is the first step in the U.S. meeting its obligations under international human rights law. **AIUSA strongly urges you to vote “YES” on H.R. 8 and H.R. 1446.**



For more information, please contact Joanne Lin 202/281-0017 or [jlin@aiusa.org](mailto:jlin@aiusa.org).

Sincerely,

A handwritten signature in cursive script that reads "Joanne Lin".

Joanne Lin  
National Director  
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Ernest Coverson  
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