



AIUSA SCOTUS POLICY

BRIEFING

WHAT THE RECENT SUPREME COURT DECISION ON GUNS MEANS
FOR YOUR HUMAN RIGHTS

AMNESTY
INTERNATIONAL



Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.



*Cover photo: People gather outside of Tops market in Buffalo, New York where a gunman opened fire at the store, killing ten people and wounding another three.
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STATEMENT: RULING

The central issue in the Supreme Court of the United States (“SCOTUS”) ruling on *NYSRPA v. Bruen*- the first Second Amendment case to be taken up by the high court in over a decade, is that in the absence of uniform federal firearm regulations – how can states and localities protect public safety without having discretion on who can carry firearms in public?

Recent events nationwide have demonstrated the grim realities and human rights impact of the United States’ gun violence crisis. Gun violence kills more than 40,000 Americans every year and wounds and traumatizes thousands more. In New York state, there have been two recent high-profile shootings- one in a supermarket where ten Black people were targeted and killed in Buffalo, New York and another one in a New York city subway.

Amnesty International USA has repeatedly called upon the U.S. to take action to address the epidemic of gun violence that threatens people’s human rights. At this point, the U.S. has more guns than people, with an estimated 390 million weapons that remain largely unregulated. That is why Amnesty International filed an amicus brief in *N.Y. State Pistol & Rifle Ass’n v. Bruen*.

Amnesty International urged the Supreme Court to sustain New York’s law and affirm Americans’ human rights to life, security, as well as their rights to equal protection to be free from discrimination. However, despite the long history of gun regulation and restrictions on the public carrying of firearms, SCOTUS ruled today that New York’s law is unduly burdensome. States cannot put special restrictions in place for gun licensing/permitting schemes. While the decision does say that states can restrict firearms in “sensitive places,” the decision will mean that the eight states and D.C. that currently allow for discretion in issuing firearm licenses/permits (“may issue” states) will be struck down.

With tens of thousands of individuals taking to the streets on June 11, 2022, to protest gun violence and the failure of government to enact gun safety legislation, it is hard to imagine striking down a century-old New York state law that regulates who can carry concealed firearms in public.



March for Our Lives Rally, June 11, 2022. © Amnesty International

The United States is not the only country that has suffered mass shootings and terrible gun violence. Australia, New Zealand, and the United Kingdom have experienced mass shootings and horrifying loss of life. But the United States is the only country that has done almost nothing in the face of the problem. Amnesty International USA urges that gun violence is not only a public health crisis; it is also a human rights crisis that the United States is legally obligated to address.

In the wake of today's SCOTUS decision, Amnesty International is calling for Congress to enact legislation to safeguard the ability of states to have discretion in their permitting systems to address public safety concerns in their localities. Congress should enact federal legislation prohibiting the carrying of firearms in public, whether open or concealed, unless there is a credible justification for doing so.

CARRYING OF FIREARMS IN PUBLIC

“Adding more guns to our streets is not the answer to reducing violence. The NYPD should continue to be able to set and regulate the conditions that must be met to legally carry a loaded firearm in our streets.”

New York City Police Commissioner Dermot Sheaⁱ

Regulating the carrying of firearms in public is a critical step in protecting the human rights of all people – the right to live, to feel safe and to be free from discrimination. The *Bruen* case hinges on a New York State statute that limits permits to carry handguns publicly to individuals who can demonstrate “proper cause” to local authorities. By striking down New York state’s “proper cause” requirement to obtain a permit to carry a concealed gun in public, SCOTUS has opened the door for more litigation aimed at deregulating the carrying of guns in public- at a time when the United States has some of the highest rates of gun violence in the world.

Evidence-based research confirms the danger of relaxing regulations and permitting systems that govern the carrying of concealed handguns in public. States that weakened their regulations on the carrying of concealed firearms experienced a 13-15 percent increase in violent crime.ⁱⁱ Many mass shooters in recent history either carried out their attack with a concealed firearm or had concealed firearm permits from “shall issue” states that did not allow local authorities discretion in issuing a concealed carry permit. Dylan Roof, the 21-year-old shooter who brought a concealed firearm to the bible study at the historic Emmanuel African Methodist Episcopal church in Charleston, S.C., killed nine parishioners in a matter of minutes. Robert Gregory Bowers, age 49, had been issued a concealed carry license in a “shall issue” state when he entered the Tree of Life Synagogue in Pittsburgh, P.A. and opened fire, killing 11 people. Omar Mateen, age 29, who frequented an LGBTQI nightclub, Pulse, in Orlando, F.L. used a concealed gun to shoot and kill 49 people dancing in celebration of Latin night.

The systems for regulating firearm permitting fall into three categories: permitless carry (no regulation), “shall issue” states (where satisfying basic objective checklists require a state to issue a permit), and “may issue” states (where the state’s permitting authority has discretion over whether to grant a permit to carry a firearm in public). “May issue” states offer licensing authorities ability to consider additional factors like moral character, demonstrated need for carrying a gun, etc.

Until 1987- Vermont was the only U.S. state that allowed permitless carry within its borders. As a result of the gun lobby, 25 states across the country now have permitless carry policies- meaning

that anyone who is legally entitled to carry a gun can carry one without a permit in private or public.ⁱⁱⁱ

When Florida passed its “shall issue” firearms permitting law in 1987, the first state to do so, the gun lobby ensured that other states were able to pass similar laws modeled on Florida’s standards in the decades that followed. There are currently 17 “shall issue” states.^{iv}

Only eight “may issue” states exist today. They are: California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, New York and New Jersey. The District of Columbia is also a “may issue” district.^v The population of impacted “may issue” states spans **almost a quarter** of all Americans.^{vi}

GUN VIOLENCE & HUMAN RIGHTS

“Given the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, public policies with respect to civilian access to firearms should be reviewed and formulated through a human rights lens.”^{vii}

Office of the United Nations High Commissioner for Human Rights (2016)

The prevention of firearm violence can be seen through many lenses: in terms of safeguarding public health, individual safety or security more generally; or as a means of combating crime.

International human rights law – including treaties ratified by the United States – requires parties to use due diligence in protecting the human rights of residents and citizens. These treaties include the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination. Customary international law, binding on the United States as on all countries, imposes similar obligations. The human rights at stake include the right to life, to personal security, to health, and to be free from discrimination. States’ responsibilities to prevent firearm violence, as part of their obligation to protect the right to life and other human rights, require two interrelated approaches: (i) Restricting access to firearms especially by those most at risk of misusing them; and (ii) Taking effective steps to put in place and implement violence reduction or protection measures where firearms misuse persists. Because of its poor record of protecting these rights against private gun violence the United States has been criticized by the Inter-American Commission on Human Rights, the UN Human Rights Committee, and the UN Human Rights Council.



An installation on the National Mall. Each flower represents a life lost to gun violence in the last year. © Amnesty International

PREVIOUS SUPREME COURT DECISIONS ON REGULATING FIREARMS (HELLER)

Looking back to history, New Jersey had a law regulating the wearing of weapons in public as early as 1686. The reason? Firearms incited fear and quarrels.^{viii} By the 1700s a handful of other states- including North Carolina, Virginia and Massachusetts enacted similar laws. In fact, throughout the 1800s and early 1900s- the government had a clearly demonstrated power to regulate public carry of firearms.^{ix}

In 2008, the Supreme Court heard the case of *D.C. v. Heller*- which contested a law in the District of Columbia that prohibited the presence of handguns in one's home. In the *Heller* case, SCOTUS struck down the law- finding it unconstitutional and holding that an individual has a right under the Constitution to protect themselves with a firearm in their own home. *McDonald v. Chicago* extended that SCOTUS decision to the states two years later.

It is important to note that the decision in *Heller* was limited in scope to the right to bear arms *in private*. The Second Amendment to the U.S. Constitution provides that “the right of the people to keep and bear Arms, shall not be infringed.” For more than 200 years, it was commonly assumed that the Second Amendment did not confer a private right to bear arms, but governed the right of states to have a militia. In *Heller*, a deeply divided Supreme Court suddenly found a individual right to bear arms, *Heller* only addressed handguns that are in the home for protection. It did not address other types of firearms, guns in public, or firearms owned for other purposes. Moreover, even Justice Scalia, who wrote for the majority in this decision, conceded in *Heller* that there is a “problem of handgun violence in this country, and [t]he Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures

regulating handguns.” Scalia also stated that like many other rights guaranteed in the Constitution, **Second Amendment rights are not unlimited.**^x

Currently most courts use either the two-part test gleaned from *Heller* to evaluate the constitutionality of a gun rights case or the time, history and tradition (“THT”) test as a standard for evaluation of the legality of firearms policy. The two-part test first asks whether the regulation covers conduct protected by the Second Amendment. If it does, the court then evaluates the law under a means-end scrutiny standard- assessing whether the law is constitutional under that standard of review.^{xi} The THT test utilizes the text of the Second Amendment, and historical precedent to decide constitutionality.

NEW YORK STATE REFILE & PISTOL ASSOCIATION V. BRUEN

For more than a hundred years, New York law has dictated that anyone who wants to carry a gun in public must: be 21 years of age, have no criminal record, have “good moral character” and “proper cause.” Two individuals with concealed carry permits were denied permits to carry concealed firearms at all times in public. Robert Nash, a resident of Rensselaer County, N.Y. had been granted a permit for the carrying of concealed firearms to hunt. After a string of robberies in his neighborhood- he appealed to a state supreme court judge to extend his permit to allow for carrying a firearm at all times. His request was denied. Brandon Koch, also a resident of New York was similarly denied a broad permit to carry firearms at all times in public. Both men were members of the New York State Rifle & Pistol Association (NYSRPA) members of the New York State Rifle & Pistol Association and challenged the law as unconstitutional. Laws like those in “shall issue” states have been associated with lower rates of gun violence. New York state for example has one of the lowest rates of gun death in the country.^{xii} New York City however has been grappling with an uptick in gun violence since the COVID pandemic. Officials there are concerned about the impact of the *Bruen* decision on the carrying of firearms in crowded public places.

Petitioners (and the slew of amici supporting them) argue essentially that all regulation of concealed weapons violates the Second Amendment of the Constitution. What they fail to consider, however, is that the actual and potential victims of private gun violence (which include everyone in the United States) have immensely more important rights that the State is obligated to protect, including the right to life. The open carrying of firearms creates an environment of fear and intimidation- which violates the right to security of person. Because it is well established that reasonable regulation of firearms reduces gun violence rates, and conversely, loosening of gun safety laws directly correlates to increases in gun deaths and injuries, we argue in our *amicus* filing that the failure to adopt common sense gun safety laws is inconsistent with the obligations of the United States to protect the human rights of its people.^{xiii} Laws like New York’s, which impose licensing requirements on firearm possession and public carry and thereby help fill a gap in the absence of comprehensive and effective federal gun regulation, are therefore not only consistent with the Second Amendment, as New York has argued in the case, but help the United States comply with its international human rights obligations — obligations that are binding on the United States under Article VI of the Constitution and longstanding Supreme Court precedent.^{xiv}

The *Bruen* case hinges on a New York State statute that limits permits to carry handguns publicly to individuals who can demonstrate “proper cause” to local authorities. “Proper cause” has been defined by state courts as a “special need for self-protection distinguishable from that of the general community.”^{xv} Under the aforementioned two-part test used by lower courts post-

Heller, the essential question before the court is: when the government regulates the carrying of guns outside the home, what must it show to establish the constitutionality of the regulation? Should the standard of review be one of “strict scrutiny”- meaning that any regulation must satisfy a compelling government interest and must be narrowly tailored as is the case with most restrictions on the right to free speech? Or should an “intermediate” standard of review be applied, indicating that the government’s interest has to be “important” but need not be compelling, and the regulation has to be “substantially related” to that interest? Or utilizing the THT test, did the founding fathers intend to protect the right of an individual to carry a firearm in public?



Members of the New York Police Department and emergency vehicles crowd the streets near a subway station in New York City on April 12, 2022 after at least 16 people were injured during a rush-hour shooting in Brooklyn, New York. © Timothy A. Clary/AFP via Getty Images

In the interest of arguing against the N.Y. law, some gun rights advocates argued that the subjective “proper cause” requirement in the permitting system could result in licensing authorities discriminating against Black gun owners. In fact, the Petitioners and their *amici* have advanced the remarkable argument that one of the problems with New York’s law is that it is racially discriminatory, *even though there is absolutely no evidence that the Petitioners were discriminated against in any way*. Indeed, this argument is so flawed in both facts and reasoning that it borders on the absurd. Government data shows that the homicides caused by insufficient federal and state regulation of firearms have a striking racially discriminatory effect. Despite making up just 14.7 percent of the U.S. population, Black Americans in 2019 represented almost 60 percent of all gun homicide victims. The disparate impact of gun violence on minority communities violates their human right to freedom from discrimination and to equal protection of the law, as noted by the U.N. Working Group of Experts on People of African Descent and the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. The

naive belief that more guns will solve the problem of gun violence has been disproved by study after study. In fact, higher levels of gun ownership directly correlate with higher levels of harm, which means that accepting the petitioners' demand for nationwide gun deregulation will only aggravate the disproportionate harm to Black communities and other communities of color in the United States.^{xvi}



Amnesty International activists at the 2019 Annual General Meeting in Chicago. © Amnesty International

AIUSA RECOMMENDATIONS

The U.S. Congress should enact legislation prohibiting the carrying of firearms in public, whether open or concealed, unless there is a credible justification for doing so and should reject federal legislation which would override existing state laws where safeguards and processes are in place to curtail misuse related to concealed carrying of firearms.

All state legislatures should enact legislation prohibiting the carrying of firearms in public, whether open or concealed, unless there is a credible justification for doing so.

All state legislatures should enact legislation requiring an individual to obtain a permit if they wish to carry any firearm in public. All permits issued should be recorded in the federal registry.

The failure to establish uniform stringent laws concerning concealed carry means that there is no guarantee that those individuals who legally carry concealed firearms in public have passed a comprehensive background check; have been trained on how to properly and safely handle a firearm; have been licensed; have received additional enhanced training including live fire, effective judgment training, verbal resolution, and shoot/don't shoot scenarios training; or have credible justification for carrying a firearm in public. The failure of all states to enact stringent concealed carry laws affects the safety and security of all individuals, putting lives at risk and jeopardizing law enforcement officers tasked with protecting against the misuse of weapons and

guarding the public. Today's SCOTUS decision further erodes states' abilities to protect human rights.

AIUSA'S GUN VIOLENCE RESOURCES & ACTION

heroes.amnestyusa.org

Take Action: Urge your senators to pass a universal background check bill.

ⁱ *States Fear Supreme Court Gun Case Will Undermine Local Control*, Bloomberg (April 27, 2021); <https://www.bloomberg.com/news/articles/2021-04-27/states-fear-supreme-court-gun-case-will-undermine-local-control#xj4y7vzkg>

ⁱⁱ <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>

ⁱⁱⁱ These states are: Alaska, Alabama, Arkansas, Arizona, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia and Wyoming;

<https://www.usconcealedcarry.com/resources/terminology/types-of-concealed-carry-licensurepermitting-policies/unrestricted/>

^{iv} These states are: Colorado, Illinois, Minnesota, Oregon, Pennsylvania, Rhode Island, Virginia, Florida, Louisiana, Michigan, Nebraska, Nevada, New Mexico, North Carolina, South Carolina, Washington and Wisconsin; <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>

^v <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>

^{vi} <https://www.infoplease.com/us/states/state-population-by-rank>.

^{vii} OHCHR, *Human rights and the regulation of civilian acquisition, possession and use of firearms*, A/HRC/32/21, 15 April 2016, paras. 52, 54, www.documents-dds-ny.un.org/doc/UNDOC/GEN/G16/078/72/PDF/G1607872.pdf?OpenElement

^{viii} *McDonald v. Chicago*, Amicus Brief of Professional Historians, https://www.scotusblog.com/wp-content/uploads/2010/01/08-1521_amicus%20Legal%20Historians.pdf at 13.

^{ix} Robert Spitzer, *Gun Law History in the United States and Second Amendment Rights*, Duke University, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4825&context=lcp>.

^x Jasmeet Sidhu, Leila Sadat, Aaron Fellmeth, Jonathan Hafetz, *Why NYSPPRA v. Brien is a Human Rights Case Not Just a Second Amendment Case*, *Opinio Juris* (Oct. 23, 2021),

<http://opiniojuris.org/2021/10/23/why-ny-state-pistol-rifle-association-v-bruen-is-a-human-rights-case-not-just-a-second-amendment-case/>.

^{xi} *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service (March 2019) at 12-13; <https://sgp.fas.org/crs/misc/R44618.pdf>.

^{xii} U.S. Centers for Disease Control and Prevention *Fatal Injury Data (2020)*; https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm

^{xiii} https://www.supremecourt.gov/DocketPDF/20/20-843/193066/20210920172334085_AIUSA%20Amicus%20Brief%20Final.pdf

^{xiv} Jasmeet Sidhu, Leila Sadat, Aaron Fellmeth, Jonathan Hafetz, *Why NYSPPRA v. Brien is a Human Rights Case Not Just a Second Amendment Case*, *Opinio Juris* (Oct. 23, 2021),

<http://opiniojuris.org/2021/10/23/why-ny-state-pistol-rifle-association-v-bruen-is-a-human-rights-case-not-just-a-second-amendment-case/>.

^{xv} *The New York Penal Code does not define "proper cause" but state courts have interpreted it to mean that an applicant must "demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession."* *Klenosky v. N.Y.*

^{xvi} Jasmeet Sidhu, Leila Sadat, Aaron Fellmeth, Jonathan Hafetz, *Why NYSPPRA v. Brien is a Human Rights Case Not Just a Second Amendment Case*, *Opinio Juris* (Oct. 23, 2021),

<http://opiniojuris.org/2021/10/23/why-ny-state-pistol-rifle-association-v-bruen-is-a-human-rights-case-not-just-a-second-amendment-case/>.