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6 Attorneys for Defendants

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RICHARD ENOS, JEFF BASTASINI,  
12 LOUIE MERCADO, WALTER GROVES,  
MANUEL MONTEIRO, EDWARD  
13 ERIKSON, VERNON NEWMAN,

14 Plaintiffs,

15 v.

16 ERIC HOLDER, as United States Attorney  
General, and ROBERT MUELLER, III, as  
17 Director of the Federal Bureau of Investigation,

18 Defendants.

CASE NO. 2:10-CV-02911-JAM-EFB

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE AND RESPONSE TO  
PLAINTIFFS' OBJECTIONS TO  
MATERIAL SUBMITTED BY  
DEFENDANTS**

1 **I. INTRODUCTION**

2 Defendants respectfully ask the Court to take judicial notice of the following materials that  
3 were submitted as an Appendix to their Opposition to Plaintiffs’ Motion for Summary Judgment:  
4 Attachment A (*National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, a  
5 publication of the National Center for Injury Prevention and Control of the Centers for Disease Control  
6 and Prevention)<sup>1</sup>; Attachment B (*Homicide Trends in the United States, 1980-2008*, a publication of the  
7 United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics)<sup>2</sup>; and  
8 Attachment G (*Profile of Intimate Partner Violence Cases in Large Urban Counties*, a publication of  
9 the United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics)<sup>3</sup>.

10 **II. DISCUSSION**

11 **A. Request for Judicial Notice**

12 The Court may take judicial notice of facts that are not subject to reasonable dispute because  
13 they “can be accurately and readily determined from sources whose accuracy cannot reasonably be  
14 questioned.” Fed. R. Evid. 201(b). “The Court may take judicial notice at any stage of the  
15 proceeding.” Fed. R. Evid. 201(d).

16 Courts routinely take judicial notice of government-compiled statistics and official reports and  
17 publications of agencies of the United States. See *United States v. Orozco-Acosta*, 607 F.3d 1156,  
18 1164 n.5 (9<sup>th</sup> Cir. 2010) “[W]e take judicial notice of the fact that while nearly 281,000 aliens were  
19 removed from the United States pursuant to final orders of removal in 2006, see U.S. Dep’t of  
20 Homeland Sec., Office of Immigration Statistics, *Yearbook of Immigration Statistics* 95 (2008),  
21 available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois\\_yb\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois_yb_2008.pdf), just over  
22 17,000 federal prosecutions for immigration offenses were commenced during approximately the same  
23 period, see U.S. Dep’t of Justice, Bureau of Justice Statistics, *Federal Judicial Statistics* tbl.4.1 (2006),  
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25 \_\_\_\_\_  
26 <sup>1</sup> Attachment A is at <http://www.cdc.gov/violenceprevention/nisvs/>

27 <sup>2</sup> Attachment B is at <http://www.bjs.gov/content/pub/pdf/htus8008.pdf>

28 <sup>3</sup> Attachment G is at <http://www.bjs.ojp.usdoj.gov/index.cmf?ty=pbdetail&iid=2024>

1 available at <http://bjs.ojp.usdoj.gov/content/pub/html/fjsst/2006/fj06st.pdf>); *Corrie v. Caterpillar, Inc.*,  
2 503 F.3d 974, 978 n.2 (9<sup>th</sup> Cir. 2007) (taking judicial notice of the Defense Security Cooperation  
3 Agency's guidelines for implementing the Foreign Military Financing program, and citing *Tampa Elec.*  
4 *Co v. Nashville Coal Co.*, 365 U.S. 320, 332 & n.10 (1961) for the proposition that a court may take  
5 judicial notice of a government publication); *United States v. Esquivel*, 88 F.3d 722, 726-27 (9<sup>th</sup> Cir.  
6 1996) (taking judicial notice under Fed. R. Evid. 201 of 1990 census data and stating that the census  
7 data "are not subject to reasonable dispute" because they are "capable of accurate and ready  
8 determination by resort to sources whose accuracy cannot reasonably be questioned."); *Trundle v.*  
9 *Astrue*, 2010 WL 5421418, at \* 11 n.10 (E.D. Cal. 2010) ("The United States Department of Labor,  
10 Bureau of Labor Statistics, is a source whose accuracy cannot reasonably be questioned, and judicial  
11 notice may be taken [of] website of the government agency."); *Seely v. Cumberland Packing Corp.*,  
12 2010 WL 5300923, at \*7 n.5 (N.D. Cal. 2010) ("The Court takes judicial notice of the statistics  
13 published by the Administrative Office of the Courts (available at  
14 <http://www.uscourts.gov/statistics.aspx>). Because these statistics are an official report of the United  
15 States government, they are "capable of accurate and ready determination by resort to sources whose  
16 accuracy cannot reasonably be questioned." (citing Fed. R. Evid. 201(b)); *Victoria Cruises v.*  
17 *Changjiang Cruise Overseas Travel Co.*, 630 F. Supp. 2d 255, 263 n.3 (E.D.N.Y. 2008) ("The Court  
18 can take judicial notice of government statistics."); *see also Ross v. O'Neal*, 2011 WL 5041967, at \*1  
19 (C.D. Cal. 2011) (taking judicial notice of a record of Shaquille O'Neal's professional basketball  
20 statistics obtained from the official website of the NBA, [www.nba.com](http://www.nba.com)).

21 The domestic violence statistics compiled by the Department of Justice's Bureau of Justice  
22 Statistics and the Centers for Disease Control and Prevention and the official publications attached as  
23 Attachments A, B, and G are not subject to reasonable dispute and most have been cited and relied  
24 upon by the First Circuit in *United States v. Booker*, 644 F.3d 12 (1<sup>st</sup> Cir. 2011), the Fourth Circuit in  
25 *United States v. Staten*, \_\_\_ F.3d \_\_\_, 2011 WL 6016976 (4<sup>th</sup> Cir. 2011), the Seventh Circuit in *United*  
26 *States v. Skoien*, 614 F.3d 638 (7<sup>th</sup> Cir. 2010) (en banc) and numerous district court decisions such as  
27 *United States v. Smith*, 742 F. Supp. 2d 855 (S.D.W.Va. 2010) and *United States v. Tooley*, 717 F.  
28

1 Supp. 2d 580 (S.D.W.Va. 2010). “A trial court may presume that public records are authentic and  
2 trustworthy.” *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999). Defendants  
3 respectfully ask the Court to take judicial notice of these materials.

4 The remainder of the materials attached to defendants’ Opposition to Plaintiffs’ Motion for  
5 Summary Judgment are simply courtesy copies of three medical and psychology journal articles and a  
6 project report submitted to the National Institute of Justice, for which judicial notice is unnecessary:  
7 Attachment C (Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and*  
8 *Intimate Assaults*, from the Division of Injury Control, National Center for Environmental Health and  
9 Injury Control, Centers for Disease Control, printed in 267 J. Am. Medical Ass’n 3043 (1992))<sup>4</sup>;  
10 Exhibit D (Arthur L. Kellerman et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329  
11 *New England J. Medicine* 1084 (1993))<sup>5</sup>; Attachment E (John Wooldredge et al., *Reconsidering*  
12 *Domestic Violence Recidivism: Individual and Contextual Effects in Court Dispositions and Stake in*  
13 *Conformity*, 6 (2001),<sup>6</sup> a federally-funded grant final report); and Attachment F (J.C. Babcock et al.,  
14 *Does Batterers’ Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23  
15 *Clinical Psychology Review* 1023, 1039 (2004))<sup>7</sup>. See, e.g., *Oso Group, LTD v. Bullock & Associates,*  
16 *Inc.*, 2009 WL 2422285, at \*2 n.3 (N.D. 2009) (“The Court may consider the law review article  
17 submitted as support for a party’s legal theory without taking judicial notice of the article.”); *Emery v.*  
18 *Hunt*, 236 F. Supp. 2d 1033, 1041 (D.S.D. 2002) (“Judges do not take ‘judicial notice’ or federal laws,  
19 domestic session laws, domestic statutes, law review articles, or similar legal authorities.”); see also  
20 *Quelimane Co. v. Stewart Title Guaranty Co.*, 19 Cal.4th 26, 46 n.9 (Cal. 1998) (“A request for judicial  
21 notice of published material is unnecessary. Citation to the material is sufficient.”).

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23 <sup>4</sup> Attachment C (an abstract) is at <http://jama.ama-assn.org/content/267/22/3043.short>

24 <sup>5</sup> Attachment D is at <http://www.nejm.org/doi/full/10.1056>

25 <sup>6</sup> Attachment E is at <http://ncjrs.gov/pdffiles1/nij/grants/188509.pdf>

26 <sup>7</sup> Attachment F is at  
27 [http://www.public.iastate.edu/~ccutrona/psych592a/articles/Treatment%20meta%20analysis%20for%20](http://www.public.iastate.edu/~ccutrona/psych592a/articles/Treatment%20meta%20analysis%20for%20batterers.pdf)  
28 [batterers.pdf](http://www.public.iastate.edu/~ccutrona/psych592a/articles/Treatment%20meta%20analysis%20for%20batterers.pdf)

1 **B. Plaintiffs' Evidentiary Objections Lack Merit**

2 Plaintiffs' evidentiary objections to the materials submitted by defendants with their Opposition  
3 to Plaintiffs' Motion for Summary Judgment lack merit.

4 First, plaintiffs' argument that the materials constitute hearsay is incorrect. The government  
5 reports and publications in Attachments A, B, and G fall within the exception to hearsay under Fed. R.  
6 Evid. 803(8) (providing an exception to the rule against hearsay for public records). *See, e.g.,*  
7 *Paralyzed Veterans of America v. McPherson*, 2008 WL 4183981, at \*7 (N.D. Cal. 2008) ("Given the  
8 frequency with which official publications from government agencies are relevant to litigation and the  
9 increasing tendency for such agencies to have their own websites, Rule 902(5) provides a very useful  
10 method for authenticating these publications. When combined with the public records exception to the  
11 hearsay rule, Rule 803(8), these official publications posted on government agency websites should be  
12 admitted into evidence easily.") (quoting *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 551 (D.  
13 Md. 2007)).

14 Second, it is unclear on what basis the plaintiffs are arguing that the materials lack foundation.  
15 Assuming that plaintiffs' argument is that the materials for which defendants seek judicial notice have  
16 not been authenticated, official publications from a public authority are self-authenticating under Fed.  
17 R. Evid. 902(5). *See Hispanic Broadcasting Corp. v. Educational Media*, 2003 WL 22867633, at \*5  
18 n.5 (C.D. Cal. 2003) (stating that records from government websites are authenticating under Fed. R.  
19 Evid. 902(5)).

20 Third, although plaintiffs argue that the materials are not relevant, they in fact establish that 18  
21 U.S.C. § 922(g)(9) is substantially related to a legitimate government purpose.

22 Finally, although plaintiffs argue that "[t]he material is not part of any discovery provided by  
23 the Defendants," *see* Objections at 3, there has been no discovery in this case.

24 **III. CONCLUSION**

25 For the foregoing reasons, the defendants respectfully ask the Court to take judicial notice of  
26 Attachments A, B, and G, which are attached to defendants' Opposition to Plaintiffs' Motion for  
27 Summary Judgment, and to reject plaintiffs' evidentiary objections.  
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1 Dated: February 1, 2012

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2  
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