



WASHINGTON OFFICE ON
LATIN AMERICA



Violence Policy Center



**RESEARCH
REPORT**

GUN-RUNNING NATION

How Foreign-Made Assault Weapons are Trafficked from the United States to Mexico and What to Do About It

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JULY 2015

KEY FINDINGS

A SIGNIFICANT NUMBER OF FIREARMS THAT ARE RECOVERED IN MEXICO COME FROM THE UNITED STATES, BUT ARE NOT U.S.-MANUFACTURED; THEY ARE FIRST IMPORTED, PRINCIPALLY FROM ROMANIA. Data from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) show that about 25 percent of U.S.-sourced firearms traced in Mexico were first imported into the United States, and the number could perhaps even be higher. A database of illegal firearms trafficking indictments from U.S. court records compiled by the Violence Policy Center indicates that between 2008 and 2014 the majority of Latin America-bound guns seized by U.S. authorities during the trafficking process—59 percent—were imports.

THE EXECUTIVE BRANCH HAS A GREAT DEAL OF LATITUDE IN ITS ABILITY TO RESTRICT THE IMPORTATION OF ASSAULT WEAPONS. The president has the authority, granted in the Gun Control Act of 1968, to restrict the importation of firearms that are not “particularly suitable for or readily adaptable to sporting purposes.” This authority has been used by previous presidents from both parties to restrict the importation of semiautomatic assault rifles. The president has the authority to ban the semiautomatic assault rifles that are currently being imported legally and then trafficked illegally to Mexico.

CROSS-BORDER FIREARMS TRAFFICKING FROM THE UNITED STATES CONTINUES AT SIGNIFICANT LEVELS. It is widely known that the majority of firearms recovered by authorities in Mexico and submitted to ATF for tracing are U.S.-sourced.¹ Between 2009 and 2014, 104,850 firearms were recovered in Mexico and submitted to ATF for tracing; 70 percent (73,684) of those firearms were determined by ATF to be U.S.-sourced. Trace data are also now available for several countries in Central America and the Caribbean: 40 percent of the 8,157 firearms submitted to ATF for tracing in Central America in 2014 were U.S.-sourced. In that year, 60 percent of the 1,387 firearms submitted to ATF in five Caribbean countries came from the United States.

RECOMMENDATION

ATF SHOULD ESTABLISH A NEW ANNUAL REVIEW PROCESS TO DETERMINE THE IMPORTABILITY OF SEMIAUTOMATIC RIFLES. This review should take into account a number of factors, including firearm configuration and the degree of association with gun trafficking, drug trafficking, and other serious crimes. Upon completion of the review, ATF should notify importers of its decisions and make public the list of those firearms determined unsuitable for importation. This review would allow ATF to adapt more quickly to changing industry practices and would help keep dangerous semiautomatic assault rifles out of the hands of criminals, gangs, and drug cartels in the United States, Mexico, and throughout the Americas.

INTRODUCTION

The prevalence of U.S.-made guns in the arsenals of Mexican drug traffickers has been widely reported, even if the volume of firearms is often disputed. Experts and policymakers have disagreed in congressional hearings, newspaper columns, and talk shows about the number of U.S.-sourced guns that end up in Mexico, how they got there, and how much harm they have done.

What has been largely overlooked, however, is the fact that many of the guns trafficked to Mexico from the United States are not actually manufactured here; such guns, primarily AK-47 variants, come from places like Romania and Bulgaria. This distinction might be largely academic, were it not for the fact that the president has the authority, granted in the Gun Control Act of 1968, to restrict the importation of firearms that are not “particularly suitable or readily adaptable to sporting purposes.”

What has been largely overlooked, however, is the fact that many of the guns trafficked to Mexico from the United States are not actually manufactured here; such guns, primarily AK-47 variants, come from places like Romania and Bulgaria. This distinction might be largely academic, were it not for the fact that the president has the authority, granted in the Gun Control Act of 1968, to restrict the importation of firearms that are not “particularly suitable or readily adaptable to sporting purposes.”² Thus, with the stroke of a pen, the president could significantly limit Mexican drug trafficking organizations’ access to military-style firearms from the United States.

This report offers new data about imported firearms and cross-border gun trafficking. These data, drawn from U.S. indictments that involve gun trafficking to Mexico and other Latin American countries, indicate that imported firearms may represent a larger percentage of overall cross-border firearms traffic than previously thought. This report reviews these data and their potential significance, and explains how the president could use his authority to significantly restrict the importation of non-sporting firearms. In order to properly contextualize these data, however, it is necessary to first review what is already known about illegal firearms trafficking from the United States to Mexico, and elsewhere in Latin America.



Barrett .50 caliber anti-armor sniper rifle

U.S. GUNS IN LATIN AMERICA

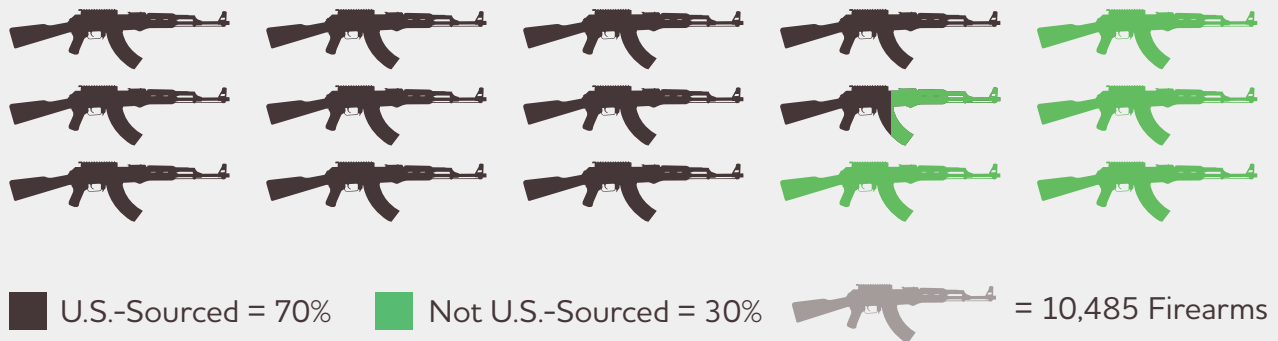
Much of the debate about U.S. firearms trafficking to Latin America has focused on Mexico, which saw a dramatic increase in violence between 2007 and 2011. (The country's homicide rate nearly tripled during this period, from 7.8 per 100,000 in 2007 to 22.8 in 2011.)³ As U.S. policymakers became increasingly nervous about Mexico's violence, the U.S. federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) expanded its gun-tracing program, working with Mexican authorities to enter seized firearms into its online eTrace system. In 2009, ATF traced 21,783 firearms in Mexico; 14,604 of them came from the United States. This trend has held true for several years: 70 percent of the firearms that ATF traced in Mexico between 2009 and 2014 were determined to be of U.S. origin.⁴

It is clear that the volume of cross-border traffic is significant. As noted in the Key Findings section, from 2009 to 2014, ATF traced 73,684 U.S.-sourced firearms recovered in Mexico, a number that represents only those firearms that are recovered, submitted to ATF for tracing, and successfully traced. The true figure is almost certainly much larger. In a recent report, the University of San Diego estimates 253,000 firearms per year, or about 693 per day, are illegally trafficked from the United States to Mexico. The authors based this estimate on projected demand, and the margin of error is high (the low-end estimate is 106,700, while the high-end is 426,729). The same study estimates that U.S.-Mexico trafficking comprises approximately two percent of domestic arms sales.⁵

As gun rights supporters have sought to minimize the impact of cross-border gun trafficking, ATF's Mexico trace data have been the source of some controversy. Some, including Senator Charles Grassley (R-IA), have argued that the ATF data over represent the presence of U.S. guns in Mexico.⁶ This is possible. Authorities do not, of course, recover all crime guns in Mexico, nor do they submit all recovered guns to ATF for tracing (looking at the period from 2010 to 2013, the 67,670 firearms traced by ATF represented only 59 percent of the 115,553 firearms reportedly seized by Mexican police during that period).⁷ Nor have Mexican authorities made public the criteria that they use in determining which weapons to submit to ATF for tracing. It is possible that the majority of the weapons not submitted for tracing are, in fact, sourced from countries other than the United States. But even if none of the 47,883 firearms that Mexican authorities failed to submit for tracing between 2010 and 2013 turned out to be from the United States, 42 percent (48,019) of all firearms recovered in Mexico would still be U.S.-sourced. Furthermore, ATF is not able to identify a source country for all the firearms that it traces, so it is likely that at least some of the 30 percent of firearms that ATF has not determined to be U.S.-sourced are, in fact, U.S.-sourced. Hence, it may actually be true that more than 70 percent of the guns recovered in Mexico are from the United States.⁸

FIGURE 1

FIREARMS SUBMITTED TO ATF FOR TRACING MEXICO, 2009-2014



Source: ATF Trace Data, https://www.atf.gov/sites/default/files/assets/statistics/tracedata-2012/mexico_cy09-14.pdf

The reason that cartels and criminal groups have sought to acquire firearms from the United States is simple: they cannot purchase them legally in Mexico, which maintains strict restrictions on firearm sale and possession. The Mexican Army (*Secretaría de la Defensa Nacional*, SEDENA) is the only legal seller of firearms to private citizens. In order to purchase a firearm, citizens must first acquire a license from SEDENA, which costs MXN\$1,915 (approximately US\$122) and is valid for two years. Furthermore, SEDENA has only one gun store in the entire country, located in Mexico City.⁹ (In contrast, as of April 2015 there were 8,827 licensed gun dealers in the U.S. southern border states alone—1,184 in Phoenix, Arizona, 4,864 in Texas, 564 in New

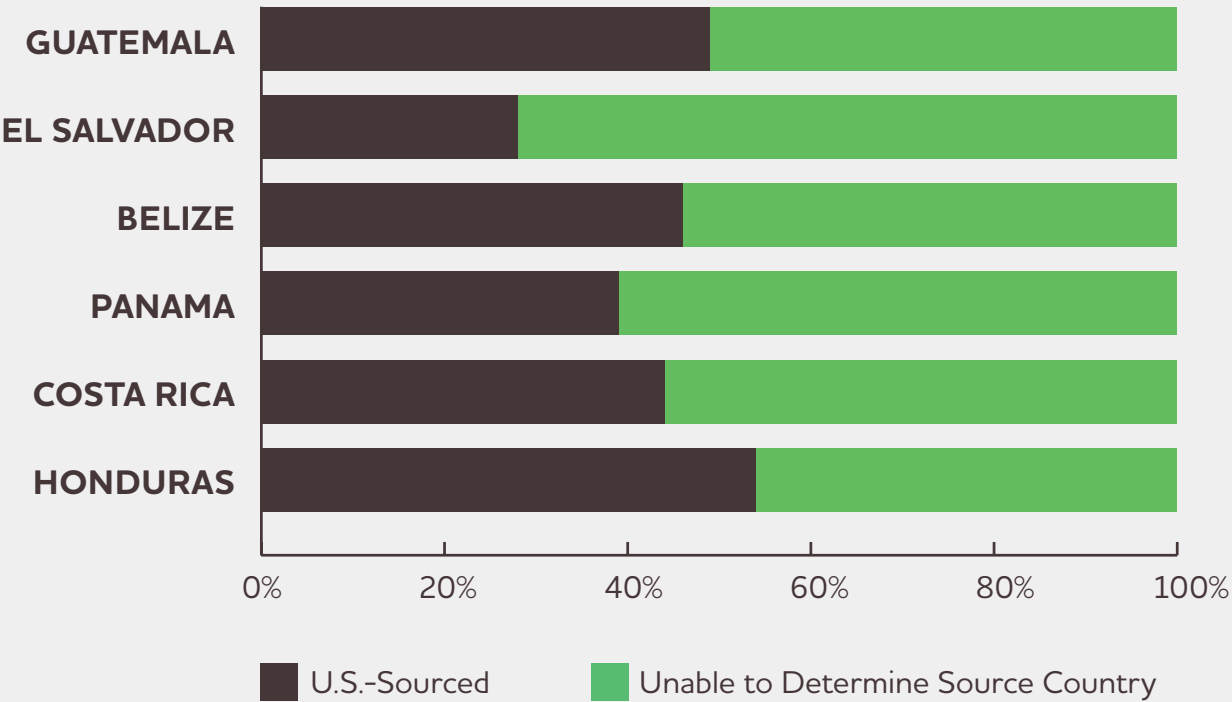
Mexico, and 2,215 in California.)¹⁰ Even when Mexican citizens are able to acquire firearms legally, selection is limited. Civilians in Mexico cannot purchase many types of firearms that are legal in the United States, such as .223 caliber rifles (the round commonly used in AR-15 assault rifles) and .357 revolvers.¹¹ In contrast, the U.S. civilian gun market offers a wide variety of militarized firearms ranging from high-capacity semiautomatic pistols, to assault rifles and assault pistols, to long-range .50 caliber armor-piercing sniper rifles. Traffickers exploit weak U.S. firearm laws, using straw purchasers to avoid background checks, or purchasing firearms at gun shows or through private sellers, where background checks are not required under federal law.

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Unfortunately, even less is known about illegal firearms trafficking to other Latin American countries from the United States, even though Latin America has the highest rate of firearm homicides in the world.¹² However, ATF has begun tracing firearms in several Central American and Caribbean countries. While the number of firearms traced is smaller in these subregions, and the results vary by country,

it appears that the United States is an important source of illegal firearms for these countries as well (see Figure 2). This is significant and merits further scrutiny because some of these countries, especially Honduras, El Salvador, Guatemala, Jamaica, and the Bahamas, have some of the highest homicide rates in the world.¹³

FIGURE 2
ATF TRACE RESULTS FOR CENTRAL AMERICA, 2014



Source:
ATF Trace Data, https://www.atf.gov/sites/default/files/assets/statistics/tracedata-2012/caribbean_cy14_152492.pdf

TWO CASES:

CROSS-BORDER GUN TRAFFICKING

The following cases illustrate some of the illegal networks involved in cross-border firearms trafficking, as well as the types of firearms, including imported firearms, favored by traffickers. Furthermore, they illustrate how gun seizures and traces in Mexico and other foreign countries provide evidence for domestic trafficking prosecutions.

1

On March 2, 2012, Gary Lee Madison was indicted on gun trafficking charges in the U.S. District Court in Alabama. Madison allegedly ran a smuggling ring involving several individuals who purchased firearms for him; several of the firearms were later recovered in Mexico. For example, Ruffin Blaylock Jr. reportedly purchased three firearms for Mr. Madison in March 2011, including a Barrett .50 caliber sniper rifle and a Steyr HS50 sniper rifle. The Barrett and other weapons were recovered less than two months later, in May 2011, at a crime scene in Mexico. Another firearm reportedly purchased by Madison, a Sabre Defence SR-15 .223 caliber rifle, was recovered from a separate buried cache in Mexico in June 2011, less than four months after purchase. Quentin Donta Hall was also cited as a straw purchaser for Madison, and Mexican authorities recovered one of the weapons he purchased, a Hi-Point pistol, 98 days after its purchase.¹⁴

2

In a 2010 case, prosecuted in the U.S. District Court for the Western District of Oklahoma, Gregorio Morales-Martinez and Jorge Alexis Blanco were indicted on gun-trafficking charges. The two men allegedly used straw purchasers to acquire firearms on several occasions, and often removed the weapons' serial numbers to inhibit tracing. Some of the guns were intercepted on their way to Mexico, including an imported Romarm/Cugir 7.62 caliber semiautomatic rifle, which was part of a shipment of 28 semiautomatic firearms stopped by law enforcement agents in Ellis County, Texas. A Century AK-47-type 7.62 caliber semiautomatic rifle (Century is one of the largest arms importers in the United States) acquired by these men through straw purchasers was recovered by the Mexican military in Tamaulipas, the violent Mexican state that borders south Texas. A Barrett .50 caliber semiautomatic sniper rifle, which the men acquired for US\$9,244.68 via a straw sale, was recovered by the Mexican military in Tamaulipas, in the border town of Nuevo Laredo, less than two months after purchase.¹⁵

IMPORTED FIREARMS

AND CROSS-BORDER GUN TRAFFICKING

Little attention has been paid to how often firearms are imported into the United States, rather than being manufactured here and then trafficked to Mexico or other countries in Latin America. These imported weapons, particularly AK-47-type rifles, constitute a significant portion—perhaps the majority—of the flow of firearms across the border.

The prevalence of imported firearms in cross-border gun trafficking is especially significant because their importation can be restricted without congressional approval, whereas only an act of Congress could ban a specific category of domestically manufactured firearms. The executive branch has broad authority to restrict the importation of specific categories of firearms into the United States, as the Gun Control Act of 1968 gives the president the authority to prohibit the importation of any firearm lacking a “sporting purpose,” including assault rifles and assault pistols.

What, exactly, constitutes a “sporting purpose”? According to ATF, “the legislative history indicates the term ‘sporting purposes’ refers to traditional sports such as target shooting, skeet and trap shooting, and hunting.” Certain classes of firearms have been determined not to meet these criteria. On

July 7, 1989, President George H.W. Bush’s ATF Director, Stephen E. Higgins, announced a permanent ban on the importation of foreign-made firearms that were classified as “semiautomatic assault rifles,” following an ATF review that determined that such rifles did not fit within the “sporting purposes” criteria. In justifying the decision, Higgins cited a “dramatic increase in the number of these weapons being imported and police reports of their use in violent crime.” Henceforth, firearms were to be classified as “semiautomatic assault rifles” (and therefore non-importable) if they possessed a “military configuration,” as evidenced by the incorporation of any of eight physical features: the ability to accept a detachable ammunition magazine, folding/telescoping stocks, separate pistol grips, the ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. Firearms that possessed any of these eight features, with the exception of a detachable magazine, would not be importable. Also considered was whether the firearm was a semiautomatic version of a machine gun and whether the rifle was chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.¹⁶

Among those firearms that were banned from importation were “AK-47-type” firearms.¹⁷

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However, foreign firearm manufacturers subsequently began to modify their rifles in order to take advantage of the fact that rifles that did not incorporate any other “military configuration features” but that could accept a detachable ammunition magazine could still be considered importable. Importers began, producing rifles devoid of prohibited features but that could accept detachable magazines, including large-capacity magazines.¹⁸ The industry dubbed this process “sporterization,” and, particularly after the passage of the 1994 Assault Weapons Ban, the practice frustrated policymakers. President Clinton said, in reference to the foreign-made “sporterized” guns:

[Y]ou don't need an UZI to go deer hunting, and everyone knows it. As effective as the assault-weapons ban has been, we know that some foreign gun manufacturers are getting around the ban by making minor modifications to their weapons that amount to nothing more than cosmetic surgery. We didn't fight as hard as we have—to pass the assault-weapons [ban] in the first place—only to let a few gun manufacturers sidestep our laws and undermine our progress.¹⁹

In 1998, the Clinton administration strengthened the import restrictions,

expanding the definition of prohibited “military configuration features” to include the ability to accept a large-capacity magazine “originally designed and produced for military assault weapons;” it specifically banned more than 50 types of assault rifles.²⁰ ATF also noted that such rifles are “attractive to certain criminals,” and identified “specific examples of the LCMM [large capacity military magazine] rifles’ being used in violent crime and gun trafficking.”²¹

Importers and foreign manufacturers once again found ways to evade these restrictions; ironically, the loophole that they exploited originated in legislation designed to prevent industry from circumventing import restrictions. The Crime Control Act of 1990 contained a provision that made it illegal to import firearms in parts and reassemble them in the United States, if the reassembled firearm would not be importable under federal regulations. However, the regulations implementing this provision determined that it would only apply to firearms that were constructed with more than 10 imported parts. Thus, importers began importing firearm parts and assembling assault weapons with the requisite number of U.S.-made parts, creating firearms that would not be importable, yet were technically legal.²²



Imported AK-type assault rifle

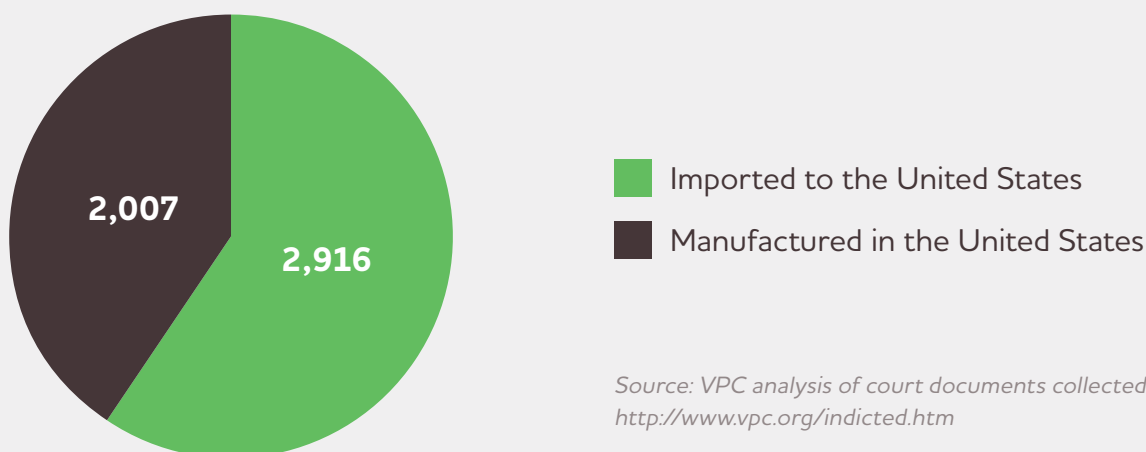
IMPORTED FIREARMS IN MEXICO

In seeking to identify the prevalence of foreign-made assault weapons in cross-border gun trafficking, the Violence Policy Center (VPC) has collected and analyzed indictments and other documents from 138 court cases. Fifty-nine percent of the firearms identified in the court cases analyzed were first imported into the United States; the remaining 41 percent were manufactured domestically in the United States.²³ The percentage of seized guns that were first imported into the United States increased from 41 percent in 2008 to a high of 83 percent in 2012 (see Figure 4). As drug-related violence intensified during this period, traffickers seem to have focused their efforts on acquiring inexpensive, powerful, and

reliable AK-47 variants such as the WASR-10, imported principally from Romania. This is a much higher percentage than indicated by the ATF trace data, which show that only about 25 percent of U.S.-sourced guns recovered in Mexico and submitted for tracing between 2008 and 2013 were first imported into the United States (rather than being manufactured in the United States). While the small sample size of the VPC data may cause variance between the two data sets, it raises questions regarding the trends associated with imported firearms. One possible cause of this discrepancy may be that traffickers' increased preference for imported weapons has yet to be reflected in ATF trace data.

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FIGURE 3
FIREARMS MENTIONED IN UNITED STATES COURT RECORDS INVOLVING TRAFFICKING TO LATIN AMERICA, 2008-2014



Source: VPC analysis of court documents collected at <http://www.vpc.org/indicted.htm>

FIGURE 4

DISCREPANCY BETWEEN ATF TRACE DATA & U.S. COURT RECORDS

Percentage of imports among U.S.-sourced firearms submitted to ATF for tracing in Mexico, compared to percentage of imports among firearms named in court cases involving firearms trafficking to Latin America.

	2008	2009	2010	2011	2012	2013	2014	Average
ATF Data	23%	23%	31%	27%	24%	24%	26%	25%
Court Records	41%	35%	63%	68%	83%	39%	68%	59%
Discrepancy	18%	12%	32%	41%	59%	15%	42%	34%

Source for 2008 ATF Data: https://www.atf.gov/sites/default/files/assets/statistics/TraceData/TraceData_Intl/2013/mexico_-_cy08-13_atf_website.pdf; Source for 2009-2014 ATF Data: https://www.atf.gov/sites/default/files/assets/statistics/tracedata-2012/mexico_cy09-14.pdf; Source for Court Records: VPC analysis of court documents available at <http://www.vpc.org/indicted.htm>

Raw numbers for imports and total firearms named in U.S. court records are as follows:

2008—194 imports (out of 479 guns named);	2012—256 imports (out of 310 guns named);
2009—278 imports (out of 788 guns named);	2013—54 imports (out of 140 guns named);
2010—597 imports (out of 947 guns named);	2014—28 imports (out of 41 guns named).
2011—1,509 imports (out of 2,218 guns named);	

ATF has not released trace data that are broken down by time-to-crime; releasing such data would significantly improve our understanding of the role of imported firearms in cross-border gun trafficking.

Each year's gun-tracing data capture a composite picture of trafficking across several prior years, as many of the guns that ATF traces each year may have been trafficked across the U.S.-Mexico border in previous years. Of course, ATF can only trace a weapon once it has been seized by authorities—it may be kept in a cache or otherwise in the possession of criminal groups for several years before authorities seize the weapon. ATF uses a concept called “time-to-crime” to measure the time that elapses

from the first sale of a firearm to the time it is used in a crime or seized by authorities. Time-to-crime can vary widely; Mayors Against Illegal Guns estimated in 2010 that time-to-crime for Mexico was below three years.²⁴ ATF has not released trace data that are broken down by time-to-crime; releasing such data would significantly improve our understanding of the role of imported firearms in cross-border gun trafficking.

METHODOLOGICAL CONSIDERATIONS

LIMITATIONS

The findings of this report should not be viewed in any way as offering an estimate of the overall numbers of guns being trafficked from the United States into these countries. The VPC court data represent a much smaller sample than the ATF trace data, since the VPC data represent only those guns associated with persons who are actually prosecuted. Fewer than 5,000 guns were included in the indictments, compared to the 83,378 U.S.-sourced guns that ATF has traced since 2008, and the estimated 250,000 guns that, according to the previously mentioned University of San Diego report, are trafficked from the United States to Mexico each year.

SCOPE OF THE INQUIRY

The majority of the cases were from Arizona, Texas, and New Mexico, but cases from non-border states were included as well. All involved illegal gun trafficking to Mexico and other Latin American and Caribbean countries filed in U.S. federal courts since 2006, and were obtained using Internet searches and Public Access to Court Electronic Records (PACER). The VPC includes all the cases it discovers in which there is at least one firearm specifically identified and clear evidence of smuggling or intent to smuggle guns to Mexico or other Latin American countries. The vast majority of guns seized during the trafficking process were headed to Mexico (other intended destination countries included Bolivia, El Salvador, and Costa Rica), so the trends identified here would hold true when cases involving trafficking to countries other than Mexico are excluded from the dataset. While the cases included here may not include all federal cases alleging illegal gun trafficking to Mexico or other Latin American and Caribbean countries, they are representative of such cases.

FIREARMS INCLUDED

In many of the cases, prosecutors alleged that traffickers were responsible for smuggling larger numbers of guns than were specified in the criminal charging documents. The numbers presented in the VPC's tabulations represent only the weapons specifically named in court documents associated with the specific criminal charges. Most of these documents include manufacturer, model, caliber, and serial number and many include the names of the point-of-sale dealers.

VARIATION IN NUMBER OF CASES PER YEAR

It is important to note that the number of cases found by the VPC decreased significantly between 2011 (when there were 33 cases) and 2012 (when there were only 18). This may be due to a variety of factors; including changing trafficking patterns (especially increasingly sophisticated smuggling techniques used by traffickers). However, it may also be true that ATF began to pursue gun traffickers less aggressively, because agents were wary of trying to build trafficking cases after the Fast and Furious scandal, in which ATF was accused of losing track of as many as 2,000 firearms that were smuggled by a trafficking ring it was investigating.²⁵ One indication of such hesitancy is the dramatic decrease in firearms seizures by Phoenix ATF agents after 2011, when Congress began investigating Fast and Furious.²⁶

IMPORT RESTRICTIONS CAN WORK

TO RAISE PRICES & REDUCE SUPPLY OF MILITARY-STYLE RIFLES

The vast majority of military-style rifles imported into the United States in recent years are AK-47 (Kalashnikov)-type firearms made in a variety of countries including Romania, Bulgaria, Serbia, and Russia.²⁷ However, since July 2014, U.S. sanctions have prevented the importation of firearms from the Russian company Kalashnikov Concern, which manufactures such rifles. (Such sanctions, however, do not cover AK-47-type rifles that are manufactured by companies in Romania, Bulgaria, Serbia, or other countries.) Anecdotal evidence suggests that these sanctions have resulted in an increase in prices, which in turn may reduce the overall number of sales. Such a price increase would likely occur if the U.S. government implemented stricter restrictions on all imported firearms, as described in the Recommendation section.

While the embargo on Russian gun imports set off a buying spree in the United States, it significantly raised the price of the Russian-made Kalashnikov rifles, and the Saiga rifles and shotguns that were affected by the sanctions as well. Estimates are that the price of a Russian-made Kalashnikov rifle quickly jumped from as low as US\$800 to as high as US\$1,500. Retailers report that existing inventories have sold out. Atlantic Firearms, a major retailer of imported rifles, stated on its website:

Due to recent import restrictions we have had a run on our supply of Russian Manufactured Firearms. We are currently SOLD OUT of the Russian BAX-132 Rifle as of 7/17/14. We are working with our importer to try and acquire what we can but are expecting Price increases.²⁸

If restrictions on the importation of all semiautomatic assault rifles, rather than only those manufactured by Kalashnikov Concerns, were enforced more strictly (as discussed in the “Recommendation” section of this report), domestic firearm manufacturers would find it difficult to fill the gap in the market for AK-type firearms. In fact, gun buyers frequently complain that American-made AK-type rifles are of lower quality and more expensive than comparable imports.

Discussions about American-made AKs can be found on many online forums. For example:

- In 2012 on NCGunowners.com, the user “rotorhead” noted, “The problem with purely American made AKs is that there are only a few companies making them, and the prices are way higher than the more commonly purchased one that come from foreign factories.” And user “Moshe” stated on the same site, “I have a

co-worker who bought an American made AK last year. It was garbage and he finally had to get rid of it after sending it back to the factory (Charlotte, I.O. I think) several times. I've owned a Norinko [sic] MAK90 [import] since the mid-90's and it has never jammed. Not once.”²⁹

- In a discussion of American made AKs on M4Carbine.net in 2013, the user “trinydex” asked, “How come there are no American manufactures of aks? The responses included, “I would imagine you might have many issues, 1st being that your not going to bring it in anywhere near the price of an imported AK.” The user “SPQR476” responded, “Yes...I.O. and Century have made aks in the US. As stated previously, neither of these has been well received.” User “LibertyNeverDies” chimed in, “If I were to buy an AK I think I would prefer a foreign build or at least genuine foreign parts for the collect-ability/cool-factor...The AK is not an american platform.”³⁰

Since these regulations were announced, some manufacturers have increased domestic production of AK-47s, but, as the above comments indicate, it is not clear that the market will respond positively to these domestic models.³¹ Hence, the anecdotal evidence suggests that further restrictions of imported firearms could reduce the supply of AK-type firearms in the United States, raising the price of these firearms and making it more difficult for criminals to purchase them in bulk.



Rescue workers aid a shooting victim in Ciudad Juárez, Mexico. Photo Credit: Ricardo Ruiz, ProcesoFoto Chihuahua

NEED FOR AN ANNUAL REVIEW PROCESS TO INVESTIGATE AND MAKE DETERMINATIONS ABOUT FIREARM IMPORTABILITY

The importation of semiautomatic assault weapons continues to be a problem. ATF should conduct an annual review of imported firearms for the purpose of identifying, by make and model, “non-sporting” firearms that are closely associated with gun and drug trafficking and other serious crimes, and to specifically prohibit the importation of such firearms. A focus on association with crime is entirely consistent with the primary purpose of the import restrictions. As ATF documented in its 1998 *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*:

The GCA [Gun Control Act of 1968] was enacted in large part “to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States.” However, the Senate Report to the act also made clear that Congress did not intend the GCA to place any undue or unnecessary restrictions or burdens on responsible, law-abiding citizens with respect to acquiring, possessing, transporting, or using firearms for lawful activities. Consistent with this general approach, legislative history indicates that Congress intended the importation standard provided in section 925(d)(3) to exclude military-type weapons from importation to prevent such weapons from being used in crime, while allowing the importation of high-quality sporting rifles. According

to the Senate Report, section 925(d)(3) was intended to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting.” The report goes on to explain that “[t]he importation of certain foreign made and military surplus nonsporting firearms has an important bearing on the problem which this title is designed to alleviate [crime]. Thus, the import provisions of this title seem entirely justified.” Indeed, during debate on the bill, Senator Dodd, the sponsor of the legislation, stated that “Title IV prohibits importation of arms which the Secretary determines are not suitable for . . . sport The entire intent of the importation section is to get those kinds of weapons that are used by criminals and have no sporting purpose.”³²

Such a review should draw from a careful study of the design characteristics of currently imported firearms, along with information collected in the course of investigations into gun trafficking, as well as a review of eTrace data, including from Caribbean and Latin American countries where ATF conducts eTrace operations. The designation of a firearm as “non-sporting” should examine whether particular firearms are closely associated with gun and drug trafficking and other serious crimes, and should be based on a consideration of the following factors.

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CHARACTERISTICS OF IMPORTED FIREARMS

ATF should review the characteristics of imported firearms to determine whether specific makes and models are equivalent to, or essentially the same as, makes and models previously determined to be non-importable or that are more suitable for military and/or law enforcement use. As part of this process, ATF should carefully review marketing materials to determine whether firearm manufacturers and sellers are marketing weapons as equivalent or virtually equivalent to makes and models suitable for military and/or law enforcement

use, or as actually suitable for military and/or law enforcement use (importers should not be permitted to import firearms under the “sporting purposes” classification and then subsequently market the same firearms as equivalent to military and/or law enforcement weapons or suitable for military and/or law enforcement use). Furthermore, ATF should identify firearms assembled within the United States primarily from imported parts when such firearms are of a configuration not permissible for importation under existing criteria.

CLOSE ASSOCIATION WITH GUN AND DRUG TRAFFICKING AND OTHER SERIOUS CRIMES

ATF should examine trace and seizure data to identify firearms that are closely associated with gun trafficking or other serious crimes, including attacks on law enforcement and use in mass shootings. ATF should consult with state and local law enforcement officials to identify imported firearms associated with domestic gun trafficking and use in violent

crime. In addition, ATF should consult with U.S. Immigration and Customs Enforcement (ICE), Drug Enforcement Administration (DEA), and independent experts to determine which firearms are “weapons of choice” of international or domestic drug trafficking organizations.

FREQUENCY OF ASSOCIATION WITH ILLEGAL GUN TRAFFICKING

ATF should analyze trace data in the United States and other countries, and consult with its field agents as well as state and local law enforcement officials and independent experts where appropriate, to identify those makes and models that are most frequently illegally trafficked, both domestically and internationally. Particular attention should be given to the

following patterns that are indicative of gun trafficking: multiple sales of same make/model by the same Federal Firearms License (FFL) holder in one day; multiple sales of the same make/model to the same purchaser; multiple cash sales of the same make/model; and, prevalence of a given make/model in multiple sales reports and short time-to-crime.³³

ANNUAL DETERMINATION OF “NON-SPORTING”

Once ATF has determined, based on a consideration of the above factors, that any specific firearm makes or models are “non-sporting” and closely associated with gun and drug trafficking and other serious crimes, it should make public the names of the rifles that are deemed inadmissible for importation, as well as notify the importers of said makes and models in a timely fashion.

In addition to stopping the importation of firearms that are most frequently utilized by gun and drug traffickers and other criminals, such actions would provide an incentive for firearm manufacturers and importers to

produce and import only weapons that are truly suitable for sporting purposes; and, refrain from marketing firearms that are ostensibly for sporting purposes as being suitable for law enforcement and/or military purposes, or as being equivalent to firearms used for law enforcement and/or military purposes.

By ensuring better enforcement of the “sporting purposes” test, this process will help remove many dangerous military-style firearms from the streets throughout the Americas, help protect law enforcement, and increase public safety.



Investigators gather evidence at the scene of a fatal shooting in Cuernavaca, Mexico. Photo credit: Margarito Perez Retana, ProcesoFoto Morelos

NOTES

¹ “U.S.-sourced” firearms are purchased or acquired in the United States; while this category includes firearms manufactured in the United States, it can also include firearms that were manufactured outside the United States and subsequently imported into the United States prior to being trafficked.

² *The Gun Control Act of 1968*, Public Law 90-618, U.S. Statutes at Large 82 (1968): 1213-1236, accessed July 13, 2015, <http://www.gpo.gov/fdsys/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213-2.pdf>.

³ United Nations Office on Drugs and Crime, “Global Study on Homicide,” 2013, accessed July 13, 2015, <http://www.unodc.org/gsh/en/data.html>.

⁴ United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Strategic Intelligence and Information, *Mexico*, March 2015, accessed July 13, 2015, <https://www.atf.gov/file/2751/download>.

⁵ Topher McDougal et al., *The Way of the Gun: Estimating Firearms Traffic Across the U.S.-Mexico Border*, University of San Diego Trans-Border Institute and Igarapé Institute, March 2013, accessed July 13, 2015, http://catcher.sandiego.edu/items/peacestudies/way_of_the_gun.pdf.

⁶ Office of Senator Chuck Grassley, “Grassley Disputes Firearms Figures from the ATF,” June 21, 2011, accessed July 13, 2015, <http://www.grassley.senate.gov/news/news-releases/grassley-disputes-firearms-figures-atf>.

⁷ United Nations Office on Drugs and Crime, *Study on Firearms*, 2015, accessed on July 20, 2015 <https://www.unodc.org/unodc/en/firearms-protocol/global-firearms-trafficking-study.html>

⁸ Earlier estimates by the U.S. Government Accounting Office had put the figure closer to 90 percent. See United States Government Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges*, GAO 09-709, June 2009, accessed July 13, 2015, <http://www.gao.gov/assets/300/291223.pdf>, 15. It is important to mention that ATF cannot identify a purchaser for all firearms determined to be “U.S.-Sourced.” In 2014, of the 11,061 U.S.-sourced firearms that ATF traced in Mexico, 5,173 were traced to a retail purchaser, 273 were traced to a foreign country. For 5,615, ATF was unable to determine a purchaser. ATF cited the following common reasons for being unable to determine a purchaser – “incomplete firearms identifying data on the trace request forms;” “incomplete or never received out-of-business Federal firearms licensee records;” “altered or obliterated firearm serial numbers...”; and “the firearm is considered to be too old to trace.” Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Strategic Intelligence and Information, *Mexico*.

⁹ Secretaría de la Defensa Nacional, “Licencia Particular Individual,” 2014, accessed July 13, 2015, <http://www.sedena.gob.mx/tramites-y-servicios/registro-federal-de-armas-de-fuego/licencias-clubes-y-colecciones/licencias-de-portacion/licencia-particular-individual>.

¹⁰ State totals reflect number of Type 1 Federal Firearms License (FFL) holders in each state. See: United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, “Listing of Federal Firearms Licensees (FFLs) – 2015,” accessed July 13, 2015, <https://www.atf.gov/content/firearms/firearms-industry/listing-FFLs>.

¹¹ GunPolicy.org, “Mexico – Gun Facts, Figures and the Law,” accessed July 13, 2015, <http://www.gunpolicy.org/firearms/region/mexico>.

¹² Donald G. McNeil Jr., “Gun Proliferation Fuels Homicide Rates in the Americas,” *The New York Times*, December 15, 2014, accessed July 13, 2015, http://www.nytimes.com/2014/12/16/health/gun-proliferation-fuels-homicide-rates-in-the-americas.html?_r=2.

¹³ United Nations Office on Drugs and Crime, “Global Study on Homicide.”

¹⁴ United States District Court of Alabama, *Affidavit of James M. Grider*, No. CR 10-067, (AL, District Court, February 2, 2012), accessed July 13, 2015, <http://www.vpc.org/alabama/ALMadisonAffidavit120229.pdf>.

*Other defendants were named in the indictment as participants in the trafficking ring but are not mentioned in the cited affidavit, and it is not clear whether the firearms they purchased were ever recovered in Mexico.

¹⁵ United States District Court for the Western District of Oklahoma, *United States of America vs. Gregorio Morales-Martinez and Jorge Alexis Blanco*, No. CR 00-313, (OK, District Court, September 21, 2010), accessed July 13, 2015, <http://www.vpc.org/oklahoma/OKMorales-MartinezIndictment100921.pdf>.

¹⁶ United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Report and Recommendation on the Importability of Certain Semiautomatic Rifles*, July 6, 1989, accessed July 13, 2015, <https://www.atf.gov/files/firearms/industry/july-1989-%20importability-of-certain-semiautomatic-rifles.pdf>.

¹⁷ United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, “ATF Determines Semiautomatic Assault Rifles Cannot Be Imported into the United States,” July 7, 1989, accessed July 13, 2015, <https://www.atf.gov/files/publications/newsletters/ffl/ffl-newsletter-1989-07.pdf>.

¹⁸ United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, April 1998, accessed July 13, 2015, <https://www.atf.gov/files/firearms/industry/april-1998-sporting-suitability-of-modified-semiautomatic-assault-rifles.pdf>.

¹⁹ “President Bill Clinton Discusses Assault Weapon Ban,” transcript, CNN, April 6, 1998, accessed July 13, 2015, <http://www.cnn.com/ALLPOLITICS/1998/04/06/assault.weapons/transcript.html>

²⁰ Jeff Brazil and Steve Berry, “Clinton Imposes Import Ban on Assault Guns,” *Los Angeles Times*, November 15, 1997, accessed July 13, 2015, <http://articles.latimes.com/1997/nov/15/news/mn-54043>; United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Department of Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*.

²¹ United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Department of Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*.

²² Rick Schmitt and Rick Young, “Romanian weapons modified in the U.S. become scourge of the Mexican drug war,” *The Center for Public Integrity*, February 3, 2011, accessed July 13, 2015, <http://www.publicintegrity.org/2011/02/03/2158/romanian-weapons-modified-us-become-scurge-mexican-drug-war/>.

²³ Violence Policy Center, *Cross-Border Gun Trafficking*, updated February 23, 2015, accessed July 13, 2015, <http://www.vpc.org/indicted.htm>.

²⁴ Mayors Against Illegal Guns, "Issue Brief: The Movement of Illegal Guns Across the U.S.-Mexico Border," September 2010, July 13, 2015, http://www.tracetheguns.org/Issue_Brief_Mexico_2010.pdf.

²⁵ United States Department of Justice, Office of the Inspector General, Oversight and Review Division, *A Review of ATF's Operation Fast and Furious*, September 2012, accessed July 13, 2015, <http://1.usa.gov/1zTjN2i>.

²⁶ Katherine Eban, "The truth about the Fast and the Furious scandal," *Fortune*, June 27, 2012, accessed July 13, 2015, <http://fortune.com/2012/06/27/the-truth-about-the-fast-and-furious-scandal/>.

²⁷ However, whether certain military-style rifles available on the U.S. civilian market are imports is sometimes unclear. For example, evidence suggests that FNH PS90 assault rifles have been imported, but such information is not publically available, despite Freedom of Information Act (FOIA) requests submitted to ATF.

²⁸ Listing for AK-47 rifle on website of Atlantic Firearms, accessed July 13, 2015, <http://www.atlanticfirearms.com/component/virtuemart/shipping-rifles/russian-ak47-bax-132-7-62x39mm-rifle-detail.html?Itemid=0>

²⁹ North Carolina Gun Owners' web forum, accessed July 13, 2015, <http://www.ncgunowners.com/forum/archive/index.php?thread-6570.html>. For users' comments, all grammatical, typographical, and technical errors are included as in original.

³⁰ M4Carbine web forum, accessed April 29, 2015, <http://www.m4carbine.net/archive/index.php/t-130600.html>.

³¹ Aaron Smith, "AK-47s: Soon to be made in USA," *CNN Money*, January 20, 2015, accessed July 13, 2015, <http://money.cnn.com/2015/01/20/news/kalashnikov-made-in-usa/>.

³² United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Department of Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*.

³³ All of these factors are recognized trafficking indicators. See: United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Project Gunrunner: The Southwest Border Initiative*, 2008, accessed July 13, 2015, <http://www.nssf.org/share/PDF/ProjectGunrunner.pdf>; Christopher Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, Report to the National Institute of Justice, U.S. Department of Justice, 2007, accessed July 13, 2015, <https://www.ncjrs.gov/pdffiles1/nij/grants/221074.pdf>.

ABOUT WOLA

WOLA is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies in the Americas protect human rights, recognize human dignity, and where justice overcomes violence. WOLA tackles problems that transcend borders and that require both domestic and international solutions. Through strategic collaborations, we partner with courageous individuals working on social change—advocacy organizations, academics, religious leaders, artists, business, and government officials—and together, we advocate for more just societies in the Americas.

ABOUT THE VPC

The Violence Policy Center (VPC), is a national tax-exempt 501(c)(3) non-profit organization based in Washington, DC, that works to stop firearms death and injury through research, policy development, education, collaboration, and advocacy.

ACKNOWLEDGEMENTS

WOLA Executive Director Joy Olson and Communications Director Kristel Muciño, as well as VPC Executive Director Josh Sugarmann, provided valuable comments and development of suggestions during the production of this report and its principal recommendations. Colby Goodman at the Security Assistance Monitor also provided important insights on an early draft of this report. This report was made possible thanks to the generous support of the David Bohnett Foundation.

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