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United Nations Office of the High Commissioner for Human Rights: Human rights and the regulation of civilian acquisition, possession and use of firearms, Report

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Abstract

The Human Rights Council, in its resolution 50/12, requested the High Commissioner “to prepare, in consultation with Member States, a report on effective national regulations, policies and good practices, challenges and lessons learned to address the negative human rights impact of civilian acquisition, possession and use of firearms and underlying root causes and risks factors driving the availability of firearms and firearms-related violence, including contributions from business enterprises on measures adopted in this regard and their relationship with the Guiding Principles on Business and Human Rights and to present the report to the Human Rights Council at its fifth-third session.”² This submission is prepared by Global Action on Gun Violence in response to the High Commissioner’s call for inputs.

I. Introduction

A. Background

The subject of this report could not be more timely or urgent, or relevant to the mission of Global Action on Gun Violence (hereinafter, “GAGV”). Global Action on Gun Violence is a nonprofit civil society organization focused on working with the international community to stop gun trafficking from the U.S., to end the U.S. gun violence epidemic, and prevent it from spreading into a pandemic.³ GAGV is the only civil society organization providing litigation and advocacy to the international community to stop gun trafficking and violence.⁴

¹ This report was prepared by the author with the support of Kailee Vick, J.D. Candidate at The George Washington University Law School (2024) and legal intern for Global Action on Gun Violence.

² Human Rights Council Res. 50/12 (July 15, 2022).

³ *Who We Are*, GLOBAL ACTION ON GUN VIOLENCE, <https://actiononguns.org/the-organization/who-we-are/> (last visited Nov. 9, 2022).

⁴ *See, e.g.*, Baxter Brian, *Ex-Brady Attorney Debuts Group Targeting Gunmakers with Lawsuits*, BLOOMBERG LAW, Oct. 26, 2022, <https://news.bloomberglaw.com/business-and-practice/ex-brady-attorney-debuts-group-targeting-gunmakers-with-lawsuits> (last visited Dec. 14, 2022).

GAGV builds on strategies used by its founder, Jonathan Lowy, as a leading litigator and advocate for the past 25 years in efforts to stop the illegal trade in arms, mostly in litigation against firearms manufacturers and dealers for their complicity in causing gun violence. Mr. Lowy was Chief Counsel for the Brady Center to Prevent Gun Violence. He recently left Brady to found and lead GAGV.

B. Scope of Input

1. Summary of GAGV Submission

This submission focuses on how gun industry practices – particularly those in the United States – make, sell, and distribute guns to civilian markets in ways that supply the criminal market, contribute to and cause gun deaths, injuries, and crimes, and infringe on the fundamental human right to life, both in the U.S. and throughout the world.

The gun industry is well aware that it is contributing to gun violence, and it knows how it could more safely make and sell guns in ways that would greatly reduce gun violence. For 30 years, insiders have called on the industry to police its distribution network to prevent diversion to the criminal market; over 20 years ago the U.S. federal government called on the industry to implement specific safer practices to reduce gun violence and one manufacturer (Smith & Wesson) briefly agreed to implement some of these safer practices. However, in the past 25 years the industry has refused to make and sell guns safely and has doubled down on dangerous practices. The gun industry chooses to supply and profit off of the criminal gun market.

The U.S. government also has refused to do what it knows reduces gun violence. Every other comparable country has implemented strong gun laws, and none suffer from gun violence anywhere near the rates of the United States. But the U.S. Congress has refused to implement these common sense policies. Over the past 25 years Congress has even relaxed and eliminated some of the few gun laws that exist in the U.S., and it has provided additional special protections for the gun industry that allows it to profit off of crime guns without accountability to victims.

The gun industry's consistent practices that supply the criminal market represent a key failure to adhere to the guiding principles on business and human rights.⁵ Moreover, the United States has failed in its duties largely by failing to allow access for remedy.⁶ Laws such as the Protection of Lawful Commerce in Arms Act have shielded the gun industry from accountability to victims injured by negligent gun practices that cause gun violence.⁷ By limiting civil remedies, the United States has effectively prevented its citizens from accessing some form of potential remedy when violations of human rights occur.

⁵ See HR/PUB/11/04, United Nations Human Rights, Office of the High Commissioner, Guiding Principles on Business and Human Rights, 2011, accessible at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (last visited Jan. 28, 2023).

⁶ See *id.*

⁷ See 15 U.S.C. §§ 7901–7903.

The United States gun epidemic has become a global pandemic, as weak U.S. laws and reckless gun industry practices combine to supply gun traffickers who arm the cartels in Mexico, gangs in Haiti, and criminals in Jamaica, Canada, and other nations, especially in the Caribbean and Latin America.

C. Gun Violence is an International Public Health Crisis – and it is overwhelmingly caused by civilian guns in and around the United States.

Gun violence is an international public health and safety crisis. And the crisis is largely civilian, not military; regional, not global; and specifically, the result of the United States-based gun industry, and weak U.S. laws that enable it to make and sell guns in dangerous ways.

Over 250,000 children, women, and men die from gunfire every year around the globe.⁸ While international attention tends to focus on armed conflicts, over 85% of lethal violence occurs in civilian gun incidents.⁹ There are over a billion guns in the world, and over 85% of them are in civilian hands.¹⁰

The global gun crisis is also largely regional. Most gun deaths occur in the Americas:¹¹ over half of the world's gun deaths occur in Brazil, the United States, Venezuela, and Mexico; when Colombia and Guatemala are included, those six countries make up over 60% of world gun deaths,¹² even though they make up less than 10% of the world's population.¹³

There is a reason most global gun violence occurs in this region. The countries that make up over 60% of gun deaths – and the countries with the top 10 highest rates of violent gun deaths in the world – are all within the ambit of the dominant manufacturer and supplier of guns in the world: the United States of America. A 2018 study found that the U.S. makes up about 4% of

⁸ Gun Deaths by Country 2023, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/country-rankings/gun-deaths-by-country> (last visited Jan. 27, 2023).

⁹ Geneva Declaration on Armed Violence and Development, *Global Burden of Armed Violence 2015*, accessible at <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2015.html> (last visited Jan. 28, 2023).

¹⁰ Small Arms Survey, *Global Firearms Holdings*, Mar. 29, 2020, accessible at <https://www.smallarmssurvey.org/database/global-firearms-holdings> (last visited Jan. 28, 2023).

¹¹ Meghan Werbick, Imran Bari, Nino Paichadze, Adnan A. Hyder, *Firearm violence: a neglected “Global Health” issue*, *Globalization and Health*, 17:120 (2021), accessible at <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-021-00771-8> (last visited Jan. 28, 2023).

¹² *Id.*

¹³ Laura Santhanam, *There's a new global ranking of gun deaths. Here's where the U.S. stands*, *Health*, Aug. 28, 2018, accessible at <https://www.pbs.org/newshour/health/theres-a-new-global-ranking-of-gun-deaths-heres-where-the-u-s-stands> (last visited Jan. 28, 2023).

the world's population, but 40% of the world's guns.¹⁴ The U.S. is the only nation in the world with more guns than people.¹⁵

Analysis of tracing data shows that in seizures of firearms across the world, “the most prominent subregion of illicit origin is Northern America.”¹⁶ While this report refers to “Northern America,” it is clearly indicative of almost entirely U.S.-sourced firearms. The United Nations defines the subregion of “Northern America” for data collection purposes to include Bermuda, Canada, Greenland, Saint Pierre and Miquelon, and the United States of America.¹⁷ However, the United States’ supply and production of guns is overwhelmingly greater than other countries. Given the massive size of the U.S. gun industry, particularly relative to these other countries in “Northern America,” these statistics likely indicate that the United States is the top country of illicit origin for seized global crime guns.¹⁸

Even more significantly than the numbers of guns produced and purchased in the U.S., the U.S. has uniquely weak laws that make it easy for virtually anyone to obtain guns. Virtually alone among nations in the world, the United States has chosen to allow guns, including military assault weapons, to be easily available to virtually anyone, either through a thriving unregulated “private sales” gun market, or grossly under-regulated licensed sellers who supply it.¹⁹ As a result, the rate of gun deaths in the U.S. far exceeds any other high-income, comparable country – 22 higher than the European Union, and 23 times higher than Australia.²⁰

Not only does the U.S. fail to regulate guns and gun possession and use as every other comparable country does, but the U.S. fails to regulate guns as the U.S. regulates every other product, from automobiles to cold medicine. U.S. laws exempt the gun industry from basic

¹⁴ Small Arms Survey, accessible at <https://www.smallarmssurvey.org/resource/estimating-global-civilian-held-firearms-numbers>, discussed in Tom O’Connor, NEWSWEEK, *Americans Have 40 Percent of the World’s Guns Despite Being Four Percent of Population, Report Finds*, June 19, 2018, accessible at <https://www.newsweek.com/americans-have-40-percent-worlds-guns-despite-being-four-percent-population-984773#:~:text=Americans%20Have%2040%20Percent%20of,Percent%20of%20Population%2C%20Report%20Sh> (both last visited Jan. 28, 2023).

¹⁵ Small Arms Survey, accessible at <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Infographics-global-firearms-holdings.pdf> (last visited Jan. 28, 2023).

¹⁶ U.N. Off. on Drugs & Crime, *Glob. Study on Firearms Trafficking 2020*, at 10, Sales No. E.20.IV.1 (2020), accessible at <https://www.unodc.org/unodc/es/firearms-protocol/firearms-study.html> (last visited Jan. 27, 2023).

¹⁷ See U.N. Dep’t of Econ. & Soc. Affairs, Stat. Div., *Standard Country or Area Codes for Statistics Use (Revision 4)*, U.N. Doc. ST/ESA/STAT/SER.M/49/Rev.4, Sales No. 98.XVII.9 (1999), accessible at <https://unstats.un.org/unsd/methodology/m49/> (last visited Jan. 27, 2023).

¹⁸ Nurith Aizeman, *Gun violence Deaths: How the U.S. Compares with the Rest of the World*, NPR, Mar. 24, 2021, updated May 24, 2022, <https://www.npr.org/sections/goatsandsoda/2021/03/24/980838151/gun-violence-deaths-how-the-u-s-compares-to-the-rest-of-the-world> (last visited Dec. 14, 2022).

¹⁹ Jonathan Masters, *How Do U.S. Gun Laws Compare to Other Countries?*, PBS NEWS HOUR, Nov. 17, 2017, <https://www.pbs.org/newshour/nation/how-do-u-s-gun-laws-compare-to-other-countries> (last visited Dec. 14, 2022).

²⁰ IHME, *Global Burden of Disease: 2019*, accessible at <https://www.healthdata.org/gbd/gbd-2019-resources>, discussed in Kara Fox, *How US gun culture stacks up with the world*, CNN, May 26, 2022, accessible at <https://www.cnn.com/2021/11/26/world/us-gun-culture-world-comparison-intl-cmd/index.html> (last visited Jan. 28, 2023).

product safety regulations,²¹ civil liability,²² and transparency²³ that apply to every other business. This lack of regulation gives gun companies effective immunity from accountability. Immunity leads to impunity to recklessly and unlawfully supply criminals at home and abroad.

The gun industry acting with impunity causes a public health epidemic in the U.S., and a growing pandemic as the same dangerous practices that make guns easily accessible in the United States cause a flood of guns across borders to other nations. This deadly recklessness violates fundamental human rights, including the right to life.²⁴

There is a reason that people travel over oceans and across borders to obtain guns in the U.S.; U.S. laws make it easy to obtain guns that cannot be obtained closer to home. For example, Mexico has one gun store, and strict laws to prevent guns from falling into the wrong hands. But those laws are subverted by the U.S.'s lax gun policies. Every year hundreds of thousands of guns flood across the U.S.'s southern border into Mexico and arm the deadly cartels.²⁵ Guns flood across the U.S.'s northern border to subvert strong laws in Canada, where gun violence is rising.²⁶ Guns flow from Florida to arm criminals in Haiti, Jamaica, and throughout the Caribbean.²⁷

ATF tracing data has confirmed these large-scale illicit firearms flows, finding that in 2021 the percentage of seized guns traced back to the United States was 92.6% in Canada, 67.5% in Mexico, 99.2% in the Bahamas, 84.8% in Haiti, 86.2% in the Dominican Republic, 69.4% in

²¹ The Consumer Product Safety Act exempts guns from safety regulation. 15 U.S.C. § 2051.

²² The Protection of Lawful Commerce in Arms Act shields gun companies from some civil liability. 15 U.S.C. §§ 7901–7903.

²³ The “Tiahrt Amendments” bar some federal disclosure of crime gun data. See Pub. L. No. 113-6, 127 Stat. 198, 248 (2013); Pub. L. No. 112-55, 125 Stat. 552, 609-10, 632 (2011); Pub. L. No. 108-199, 118 Stat. 3, 53, 95; Pub. L. No. 108-7, 117 Stat. 11, 433 (2003).

²⁴ United Nations, *Universal Declaration of Human Rights*, Article 3, accessible at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Jan. 28, 2023). The “right to life” refers to the human right, not the political debate over protections of the fetus and denying abortion access. For that reason, we believe the term “right to live” is preferable when discussing the human right. However, this paper will use the recognized term, right to life.

²⁵ Liz Mineo, *Stopping Toxic Flow of Guns from U.S. to Mexico*, THE HARVARD GAZETTE, Feb. 18, 2022, <https://news.harvard.edu/gazette/story/2022/02/stopping-toxic-flow-of-gun-traffic-from-u-s-to-mexico/> (last visited Dec. 14, 2022).

²⁶ See Yvonne Lau, *Canada’s Tough Gun Laws aren’t Enough to Stop the Flood of Illegal Firearms from the U.S.*, FORTUNE, June 11, 2022, <https://fortune.com/2022/06/11/canada-gun-laws-control-us-school-mass-shooting-ualde/> (last visited Dec. 14, 2022).

²⁷ See Ellsworth Brian, *U.S. Reports Spike in Weapons Smuggling to Haiti and the Caribbean*, REUTERS, Aug. 17, 2022, <https://www.reuters.com/world/americas/us-reports-spike-weapons-smuggling-haiti-caribbean-2022-08-17/> (last visited Dec. 14, 2022); Horace Hines, *U.S. Reaffirms Commitment to Stem Flow of Guns to the Caribbean*, JAMAICA OBSERVER, Nov. 13, 2022, <https://www.jamaicaobserver.com/news/us-reaffirms-commitment-to-stem-flow-of-guns-to-the-caribbean/> (last visited Dec. 14, 2022); Mark Fineman, *Stemming Flow of Arms to Caribbean*, LOS ANGELES TIMES, May 22, 1999, <https://www.latimes.com/archives/la-xpm-1999-may-22-mn-39756-story.html> (last visited Dec. 14, 2022).

Jamaica, 52.0% in Panama, 62.0% in Honduras, and 49.2% in El Salvador.²⁸ It is important to note that these measures are likely understatements of the percentage of trafficked guns which come from the United States because these calculations are based on the number of crime guns that are both seized and traced specifically using the ATF's tracing system. This data only represents a fraction of trafficked firearms in a country. Most crime guns are never seized or traced, and not all seized guns are traced. Further, even where some crime guns may be both seized and traced, they may not be traced in conjunction with the ATF's systems, instead using independent local or national systems, adding to the underestimation of ATF trace data.

D. Immunity Leads To Impunity

The arms business is a classic case of externalities. The industry's quest for profits leads it to sell as many guns as possible, even though guns are restricted products sought after by criminals, and many guns are obtained by criminals or others who cannot legally possess guns and/or pose a danger when armed. As a result, the gun business imposes vast costs by those harmed with those guns, but those costs are borne by the rest of society, not the gun industry, which profits from every sale, regardless of whether the guns are headed for police, lawful civilians, criminals, or the military.²⁹

The influence of the gun lobby and gun industry has caused the political system in the United States to inadequately protect people from the dangers posed by guns, despite majorities of Americans supporting stronger gun laws.³⁰ In fact, over the past 25 years, the U.S. has mostly removed gun regulations and provided special protections for the gun industry that exacerbate gun violence. While some U.S. states have enacted strong gun laws, those laws are often undercut by weak laws in other states, as criminals and gun traffickers obtain their guns in those states and bring them across borders. The same phenomenon undercuts strong laws of other nations, as traffickers obtain guns easily in the U.S.

While the U.S. political system has failed to regulate the gun industry, civil litigation has proven to be an effective mechanism to reform dangerous gun industry practices by forcing the industry to internalize some of the costs the industry imposes and make it less profitable to

²⁸ See ATF, *Firearms trace data: Canada, 2016-2021*, <https://www.atf.gov/resource-center/firearms-trace-data-canada-2016-2021>; ATF, *Firearms trace data: Mexico, 2016-2021*, <https://www.atf.gov/resource-center/firearms-trace-data-mexico-2016-2021>; ATF, *Firearms trace data: The Caribbean - 2021*, <https://www.atf.gov/resource-center/firearms-trace-data-caribbean-2021>; ATF, *Firearms trace data: Central America - 2021*, <https://www.atf.gov/resource-center/firearms-trace-data-central-america-2021> (last visited January 28, 2023).

²⁹ Louis D. Johnston, *Economic Theory Gives Us Two "Weapons" to Combat Gun Violence*, MINNPOST, Dec. 20, 2012, <https://www.minnpost.com/macro-micro-minnesota/2012/12/economic-theory-gives-us-two-weapons-combat-gun-violence/> (last visited Dec. 14, 2022). ("In plain language, externalities are the side effects of producing and consuming goods. Firearms and ammunition create negative externalities in the form of injuries and death to innocent people. Gun manufacturers don't take these costs into account in making their production decision; guns are therefore cheaper, and more are purchased than if prices were higher.")

³⁰ See, e.g., Domenico Montanaro, Poll: *Support for controlling gun violence hits its highest point in a decade*, NPR, June 9, 2022, accessible at <https://www.npr.org/2022/06/09/1103661684/gun-control-npr-pbs-marist-survey-ualde-buffalo-biden> (last visited Jan. 24, 2023).

supply the criminal gun market. Litigation can incentivize safe business practices that prevent guns from being sold for the criminal market, force reforms in settlements or court orders, and provide some compensation to victims and survivors of industry misconduct.³¹ Studies have shown that reforms to gun industry business practices can significantly reduce gun violence.³²

Unfortunately, U.S. lawmakers enacted the Protection of Lawful Commerce in Arms Act (“PLCAA”) that gave special protections to the gun industry.³³ PLCAA has led to the dismissal of lawsuits that would otherwise force gun companies to internalize some of the harm they cause through their negligence and led them to double down on their irresponsible conduct.³⁴

This lack of regulation and special protection from regulation and accountability enables the U.S. gun industry to make and sell guns in a reckless, and sometimes illegal way, that causes violations of human rights throughout the Western Hemisphere. The industry can be confident that it will not be punished or held accountable for its misconduct. So, the industry profits off of the criminal gun market, largely without cost for the damage it causes.

The denial of civil remedies to victims of gun industry misconduct also infringes on other human rights, such as the right to an effective remedy provided in Article 8 of the Universal Declaration of Human Rights.³⁵

II. Negative Human Rights Impacts of Civilian Acquisition, Possession and Use of Firearms

It is clear that the illicit cross-border trafficking of firearms which results in civilian firearm access and gun violence implicates several human rights violations. The work of scholars Leila N. Sadat and Madaline M. George provides a more in-depth discussion of the various negative human rights impacts on “rights enshrined in human rights treaties and customary international law.”³⁶ While applying these findings to the U.S. gun violence crisis, the legal

³¹ See Our History: Brady Legal, BRADY UNITED, <https://www.bradyunited.org/our-work/brady-legal/history-of-brady-legal> (last visited Nov. 9, 2022).

³² See, e.g., Johns Hopkins Bloomberg School of Public Health, *Reforms to Sales Practices of Licensed Gun Dealers Reduced Supply of New Guns to Criminals*, Sept. 27, 2006, <https://publichealth.jhu.edu/2006/webster-gun-dealer> (last visited Dec. 14, 2022) (discussing Daniel Webster study showing reduction in crime guns from dealer reforms).

³³ Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903. See Fact Sheet: What is PLCAA?, BRADY UNITED, <https://www.bradyunited.org/fact-sheets/what-is-plcaa> (last visited Nov. 9, 2022).

³⁴ Center for American Progress, *Immunizing the Gun Industry: The Harmful Effect of the Protection of Lawful Commerce in Arms Act*, Jan. 15, 2016, accessible at <https://www.americanprogress.org/article/immunizing-the-gun-industry-the-harmful-effect-of-the-protection-of-lawful-commerce-in-arms-act/#:~:text=PLCAA%20prevents%20plaintiffs%20from%20filing,monetary%20damages%20or%20injunctive%20relief> (last visited Jan. 28, 2023).

³⁵ U.N., Universal Declaration of Human Rights, accessible at <https://www.un.org/en/about-us/universal-declaration-of-human-rights/#:~:text=Article%208,the%20constitution%20or%20by%20law> (last visited Jan. 28, 2023).

³⁶ Leila N. Sadat & Madaline M. George, *Gun Violence and Human Rights*, 60 WASH. U. J. L. & POL’Y 1, 4 (2019).

framework Sadat and George derive from international human rights law can be applied in the international context to the gun violence impacts of illicit global gun trafficking.³⁷

III. Root Causes and Risk Factors Underlying Availability of Firearms and Firearms-Related Violence and Measures to Address

While there are numerous root causes of crime and violence, one key root cause that leads to significant lethal violence and much organized crime is the easy availability of firearms – specifically in and from the United States. Study after study has confirmed that more guns lead to more death and violence.³⁸ The people of the United States are not 20 times more criminal, violent, or dangerous than the people of Europe or Australia, but U.S. gun homicide rates are 22 and 23 times higher.³⁹ Franklin Zimring and Gordon Hawkins’s seminal studies showed that crime in U.S. cities is the same or less than comparable cities in other countries, but U.S. crime is much more often lethal – because of the easy accessibility to guns.⁴⁰

IV. Member States’ Adoption of National Regulations and Policies

A. Summary of U.S. Gun Laws

The U.S. has few federal gun laws and gaping holes in those laws enable the rampant gun trafficking that floods the region with guns. Further, over the past 25 years the U.S. Congress has relaxed regulations and accountability that could rein in the gun industry, making the gun crisis worse.

In the U.S., access to guns is controlled by federal and state laws which regulate the manufacture, trade, possession, transfer, sale of guns and ammunition. These laws are enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and state agencies.

The National Firearms Act (“NFA”) places taxes on and restricts the manufacture, sale, and transfer of fully automatic machine guns and certain other weapons, that cannot be generally sold at retail to the civilian public.⁴¹ However, even though ATF has determined that guns that can easily be modified to fire automatically are deemed fully automatic, and hence are legally

³⁷ *See id.*

³⁸ *See, e.g.,* Lisa M. Hepburn & David Hemenway, *Firearm availability and homicide: A review of the literature*, 9 *AGGRESSION & VIOLENT BEHAVIOR* 417 (2004); Douglas J. Wiebe, *Homicide and suicide risks associated with firearms in the home: a national case-control study*, 41 *ANNALS OF EMERGENCY MEDICINE* 771 (2003); Matthew Miller et al., *Rates of household firearm ownership and homicide across US regions and states, 1988–1997*, 92(12) *AM. J. OF PUB. HEALTH* 1988 (2002).

³⁹ Kara Fox, et al., “How U.S. Gun Culture Stacks up with the World.” CNN, May 26, 2022, <https://www.cnn.com/2021/11/26/world/us-gun-culture-world-comparison-intl-cmd/index.html> (last visited Jan. 28, 2023).

⁴⁰ FRANKLIN ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA* (1997), see <https://www.ojp.gov/ncjrs/virtual-library/abstracts/crime-not-problem-lethal-violence-america> (last visited Jan. 24, 2023).

⁴¹ 26 U.S.C §§ 5841–5849.

subject to those restrictions,⁴² the U.S. has failed to enforce that aspect of the law. As a result, U.S. gun manufacturers sell assault weapons that can easily be modified into fully automatic weapons to the general public.⁴³

The Gun Control Act of 1968 (“GCA”) prohibits people from engaging in the business of dealing in firearms unless they have a federal firearms license (“FFL”).⁴⁴ But it does not prohibit people who are unlicensed from selling firearms, so long as they are not “engaged in the business,”⁴⁵ which is difficult for law enforcement to prove. This enables a thriving criminal gun market of unregulated gun sales by “private sellers,” who sell guns at gun shows, through Internet ads, or on the streets, with no checks, no records, no questions asked.

The GCA also prohibits certain people from obtaining firearms, if they fall under certain discrete prohibited categories.⁴⁶ Those categories are people:

- convicted or under indictment for a crime punishable by over a year in prison (felon);
- fugitives from justice;
- unlawful users or addicted to a controlled substance;
- adjudicated as a “mental defective” or has been committed to a mental institution at 16 years of age or older;
- illegal aliens or most nonimmigrant visas;
- dishonorable military discharges;
- who have renounced U.S. citizenship;
- subject to domestic violence restraining order or convicted of misdemeanor crime of domestic violence;
- who intend to sell or dispose of firearm or ammunition in furtherance of certain other crimes or to a prohibited person;
- under 18 years old for long guns; under 21 for handguns.

The Firearm Owners Protection Act (“FOPA”) prohibits ATF from conducting more than one unannounced inspection of a given dealer each year without a warrant.⁴⁷ This enables dealers to know when they are essentially free from spot inspections for a year. FOPA also prevents the government from maintaining a centralized database of records. This prevents ATF from using computerized records, making law enforcement far more cumbersome.

⁴² ATF, *National Firearms Act Handbook*, Apr. 2009, at 143, <https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download> (last visited Dec. 14, 2022).

⁴³ Alain Stephens & Keegan Hamilton, *The Return of the Machine Gun*, Mar. 24, 2022, <https://www.thetrace.org/2022/03/auto-sear-gun-chip-glock-switch-automatic-conversion/> (last visited Dec. 14, 2022).

⁴⁴ 18 U.S.C. § 922.

⁴⁵ See ATF, *Do I Need A License to Buy and Sell Firearms?* accessible at <https://www.atf.gov/file/100871/download#:~:text=A%20person%20who%20willfully%20engages,up%20to%20%24250%2C000%2C%20or%20both> (last visited Dec. 14, 2022).

⁴⁶ 18 U.S.C. § 922.

⁴⁷ 100 Stat. 449 (1986), amending Gun Control Act.

The Brady Handgun Violence Prevention Act requires licensed dealers to conduct background checks on gun buyers to determine if they fall into a prohibited category, and established a criminal background check system that is maintained by the FBI.⁴⁸ However, unlicensed sellers who are not “engaged in the business” are allowed to sell guns without background checks.⁴⁹

Originally, the Brady Act imposed a five-day waiting period, but Congress allowed that provision to expire.⁵⁰ Now there is an instant check system, which may be extended to a maximum of three days when results are not immediately complete.⁵¹ Dealers are allowed to transfer guns when the three days expire, even if the system has not determined that the buyer can legally buy a firearm.⁵² As a result, not only is there no waiting period for gun sales, but dealers may transfer firearms to people who are actually legally prohibited from possessing guns if the check system has not located the disqualifying records within three days.

In 1994, a Federal Assault Weapons Ban was enacted which banned the manufacture, sale, and possession of specific military-style assault weapons and high-capacity ammunition magazines.⁵³ This ban expired in September 2004, and Congress has not renewed this law. As a result, military-style assault rifles and magazines that can hold 15, 30, 75 rounds or more are available and can be legally purchased by anyone over 18 who can pass a background check. Although these weapons have been repeatedly used in mass shootings,⁵⁴ Congress has refused to restrict or prohibit their possession or sale. While some states ban assault weapons, traffickers can obtain them from other states.

Crime gun data used to be available to the public, so researchers could identify trafficking patterns and determine which gun companies sold the most crime guns. This evidence was used against gun companies in litigation, as it revealed that a small percentage of dealers sell virtually all crime guns, yet manufacturers choose to use those dealers to resell their guns, and thereby profit from the criminal gun market. In 2003, Congress attached to ATF appropriations legislation the “Tiahrt Amendment,” which prohibits ATF from releasing certain information from its firearms trace database to anyone except law enforcement or prosecutors in

⁴⁸ 107 Stat. 1536 (1993), amending 18 U.S.C. § 922.

⁴⁹ See *Do I Need A License to Buy and Sell Firearms?*, *supra* note 45.

⁵⁰ See *supra* note 48.

⁵¹ See *How We Can Help You: Firearms Checks (NICS)*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/nics> (last visited Nov. 29, 2022).

⁵² *Close the Charleston Loophole*, EVERYTOWN FOR GUN SAFETY, <https://www.everytown.org/solutions/close-the-charleston-loophole/> (last visited Nov. 29, 2022).

⁵³ Violent Crime Control and Law Enforcement Act of 1994, 108 Stat. 1796 (1994).

⁵⁴ Ashley R. Williams, *More mass shooters are using semi-automatic rifles – often bought legally*, USA TODAY, July 12, 2022, <https://www.usatoday.com/story/news/nation/2022/07/12/mass-shootings-weapons-legal-what-to-know/7814081001/> (last visited Dec. 14, 2022).

connection with a criminal investigation. This keeps much crime data hidden from the public, and severely hinders study and analysis of the sources and movement of guns.⁵⁵

In 2005, Congress enacted the Protection of Lawful Commerce in Arms Act, which shields the gun industry from some civil liability in the United States. Some courts have held that PLCAA provides broad civil immunity to federally licensed manufacturers, dealers, and importers who negligently sell or make guns.⁵⁶ Before PLCAA, the threat of legal accountability led to some reforms by the gun industry, such as Smith & Wesson’s settlement with the U.S. government and several cities. While PLCAA is not ironclad, it has removed much of that pressure and led to the industry recklessly selling guns with impunity.

The Bipartisan Safer Communities Act (“BSCA”) was enacted in 2022. The BSCA amended the GCA to “to require additional investigative steps as a part of the background check process before an 18 to 20 year old is able to purchase a long gun;” clarifies “which gun sellers must obtain a federal firearms license and conduct background checks;” established “federal statutes to clearly define and penalize trafficking and straw purchasing;” and prohibits “a person convicted of a violent misdemeanor against a ‘current or recent former dating’ partner from possessing firearms for five years.”⁵⁷ The BSCA also made cross-border gun trafficking a federal crime. However, the BSCA did not restrict gun sales or possession of any type of firearm and did not even raise the age limit for assault rifles, which is 18 years old.

The Consumer Product Safety Act, which governs product safety regulation by the Consumer Product Safety Commission, excludes firearms.⁵⁸ Guns are the only consumer products in the U.S. that are not required to include feasible safety features. As a result, the gun industry can get away with failing to include safety features that are feasible, would save lives, and have been around for decades.⁵⁹

Ammunition is largely unregulated.⁶⁰ Certain classes of people cannot purchase ammunition, there are age requirements to purchase ammunition, and one must obtain a license to import, manufacture, or sell ammunition,⁶¹ but there are no background checks to determine if buyers are legally allowed to purchase.

⁵⁵ *Tiahrt Amendments*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiahrt-amendments/> (last visited Nov. 29, 2022).

⁵⁶ 15 U.S.C. §§ 7901–03.

⁵⁷ Pub. L. 117–159 (2022).

⁵⁸ 15 U.S.C. §§ 2051–2089. *See also* U.S. CONSUMER PRODUCT SAFETY COMMISSION, *Products Under the Jurisdiction of Other Federal Agencies and Federal Links*, <https://www.cpsc.gov/Regulations-Laws--Standards/Products-Outside-CPSCs-Jurisdiction> (last visited Dec. 17, 2022).

⁵⁹ U.S. GOVERNMENT ACCOUNTING OFFICE, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented*, Mar. 1991, accessible at <https://www.gao.gov/assets/pemd-91-9.pdf> (last visited Jan. 28, 2023).

⁶⁰ *See Ammunition Regulation*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ammunition-regulation> (last visited Nov. 29, 2022).

⁶¹ 18 U.S.C. § 923(a).

Federally licensed dealers have little required duties; they are required to initiate background checks on unlicensed buyers, maintain records of acquisition and sale, report the occurrence of multiple sales, and report gun thefts or losses within 48 hours after it is discovered.⁶² Unlicensed sellers are not even subject to the minimal duties of licensed dealers.

ATF is responsible for ensuring dealer compliance with gun laws, but limited resources prevent it from inspecting all dealers,⁶³ and even when ATF investigations reveal violations of law and red flags for trafficking, dealers are rarely shut down, even when they are found to have violated federal gun laws.⁶⁴ ATF has allowed licensed dealers to retain their FFLs even when they have been shown to engage in blatantly illegal conduct that arms the criminal market.⁶⁵

The lack of action by the ATF to shut down dealers has fostered a “culture of impunity.”⁶⁶ “In many cases when the ATF catches dealers breaking the law, the agency issues warnings, sometimes repeatedly, but allows the stores to operate for months or years. Others are still selling guns to this day.”⁶⁷

In some cases, even when a gun dealer loses its license because of its violations of law, it is still able to sell its inventory.⁶⁸ For example, one dealer had his license revoked for multiple serious violations of law, including hundreds of guns he could not account for,⁶⁹ but he was

⁶² See *Federal Firearms Licensee Quick Reference and Best Practices Guide*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, <https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide>. (last visited Nov. 29, 2022).

⁶³ *Firearms Compliance Inspections*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, <https://www.atf.gov/firearms/compliance-inspections> (last visited Nov 29, 2022) (reporting 3,277 inspections in 2020 for over 53,000 dealers); *Firearms Commerce in the United States: Annual Statistical Update 2014*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, <https://www.atf.gov/resource-center/docs/undefined/firearmscommerceannualstatisticalreport2014pdf/download> (last visited Dec. 17, 2022) (reporting 7% of dealers were inspected by ATF).

⁶⁴ Documents obtained by the Brady Center to Prevent Gun Violence demonstrate how even in the rare cases when ATF inspects arms dealers, finds serious violations of law, and recommends that their FFLs be revoked, ATF often ultimately does not even initiate proceedings to attempt to revoke the FFL, and allows the dealer to remain in business, selling guns. See Brian Freskos et al., *After Repeated ATF Warnings, Gun Dealers can Count on the Agency to Back Off; Sometimes Firearms Flow to Criminals*, USA TODAY NEWS, May 26, 2021, <https://www.usatoday.com/in-depth/news/investigations/2021/05/26/gun-dealers-let-off-hook-when-atf-inspections-find-violations/7210266002/> (last visited Dec. 14, 2022). See also, Brady United, *Explore Gun Store Inspection Reports*, GUN STORE TRANSPARENCY PROJECT, <https://gunstoretransparency.org/?table-page=1> (last visited Nov. 11, 2022).

⁶⁵ *Id.*

⁶⁶ Freskos, *supra* n. 64.

⁶⁷ *Id.*

⁶⁸ Legislation has been introduced in previous sessions of Congress to close this “fire sale loophole,” but it has not passed. See, e.g., booker.senate.gov, *Booker Announces Senate Introduction of Legislation to Close Gun Fire Sale Loophole*, Sept. 9, 2022, accessible at <https://www.booker.senate.gov/news/press/booker-announces-senate-introduction-of-legislation-to-close-gun-fire-sale-loophole>, and Bill at https://www.booker.senate.gov/imo/media/doc/fire_sale_loophole_closing_act.pdf.

⁶⁹ Amit R. Paley, *Gun Seller’s Case Reveals Hurdles of Enforcement Md. Shop’s Decade of Lapses Bring Scrutiny to House Bill*, July 23, 2006, WASH. POST, <https://www.washingtonpost.com/archive/politics/2006/07/23/gun->

allowed to sell his remaining stock of over 700 guns after his license was revoked.⁷⁰ In other cases, relatives of dealers who lose their license are allowed to obtain a dealer's license to operate the same business.⁷¹

Many measures that could reduce gun violence are not part of federal law. For example:

- Under U.S. federal law there are no limits on how many guns a civilian may purchase, either in one transaction or in any period of time.
- Purchasers are not required to provide any reason for why he or she wants to buy so many guns. As a result, obvious gun traffickers can purchase dozens of guns, repeatedly, no questions asked. In one incident, a trafficker purchased 85 handguns in a single purchase, and bought 190 guns from the same dealer in a series of bulk sales over several months.⁷²
- Federal law only imposes a multiple sale reporting requirement which requires that dealers send a form to ATF informing them of sales of multiple handguns over three days by the same purchaser.⁷³ The same reporting requirement now applies to multiple sales of some semi-automatic rifles in states near the Mexican border.⁷⁴
- There is no requirement that purchasers obtain a license or permit to buy or possess a gun. The only requirement is that they submit to a limited background check to determine if they fall under a prohibited category when the gun is purchased from a licensed dealer.
- There is no requirement that a purchaser be investigated or screened to determine if he or she is prone to violence, is addicted to drugs or alcohol, or has a mental illness that poses a risk. Limited background checks simply check for criminal and other official records that state whether the buyer is a convicted felon or falls into another prohibited category.

[sellers-case-reveals-hurdles-of-enforcement-span-classbankheadmd-shops-decade-of-lapses-brings-scrutiny-to-house-billspan/3ce5f44e-6575-421a-a0e9-48e26537c5de/](#) (last visited Dec. 14, 2022).

⁷⁰ *NRA Official Who Lost License Allowed to Sell Gun Stock*, THE CRIME REPORT, July 13, 2006, <https://thecrimereport.org/2006/07/13/nra-official-who-lost-license-allowed-to-sell-gun-stock/> (last visited Jan. 28, 2023).

⁷¹ John Diedrich & Ben Poston, *Ineffective Rules Let Gun Stores Endure*, MILWAUKEE JOURNAL SENTINEL, Dec. 15, 2010, <https://archive.jsonline.com/watchdog/watchdogreports/111976219.html/> (last visited Dec. 14, 2022).

⁷² Subsequent lawsuit discussed at *Brady United, Williams v. Beemiller*, accessible at <https://www.bradyunited.org/legal-case/williams-v-beemiller> (last visited Jan. 27, 2023).

⁷³ See ATF, *Reporting Multiple Firearms Sales*, accessible at <https://www.atf.gov/firearms/reporting-multiple-firearms-sales> (last visited Jan. 27, 2023).

⁷⁴ *Id.*

- There is no requirement that people obtain a license or permit to carry a gun in public spaces. While most states required permits to carry, and some required training, many of those states have eliminated those requirements in recent years.⁷⁵
- There is no requirement that guns be registered.
- There is no requirement that gun owners have training in how to safely use or store a gun.
- There is no requirement that guns be safely stored, to keep them from children or thieves.
- There is no requirement that records be kept when guns are sold by private persons.

As a result, as a general matter people who are untrained and dangerous are able to obtain guns, or an arsenal of guns, fairly easily. There is generally no mechanism to remove guns from people who are later revealed as dangerous.⁷⁶ There is often no record of who possesses guns. While some states have stronger measures to cover these gaps, those states are in the minority, and safety in those states can be undermined by the majority of states who do not require any such safety measures.

This lax regulatory scheme enables gun dealers to sell guns repeatedly and bulk to gun traffickers, and enables manufacturers and distributors to supply those dealers, all with impunity that they can supply and profit from the criminal gun market without being stopped or punished by law enforcement.

B. Summary of How Arms Industry Conduct Causes Gun Violence

This lax regulatory scheme enables dealers to sell guns that are easily and repeatedly obtained by criminals and gun traffickers in the United States. Those guns are then transferred or sold in private sales that are wholly unregulated. Gun dealers and manufacturers contribute to illicit flows of firearms through a process known as “diversion,” which “encompasses any movement of firearms from the legal to the illegal marketplace through an illegal method for an illegal purpose.”⁷⁷ Most “illegal guns” begin as “legal guns,” and are then diverted to the illegal

⁷⁵ Adam Edelman, *Carrying a concealed loaded gun without a permit may soon be legal in most states*, Jan. 13, 2023, <https://www.nbcnews.com/politics/politics-news/permitless-concealed-carry-may-soon-legal-states-rcna64947> (last visited Jan. 27, 2023).

⁷⁶ Extreme risk protection (or “red flag”) laws can provide some procedures to remove guns in certain circumstances. They are now the law in some states, but not federal law. See EVERYTOWN FOR GUN SAFETY, *Extreme Risk Laws*, <https://www.everytown.org/solutions/extreme-risk-laws/> (last visited Jan. 23, 2023).

⁷⁷ ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* at 3 (2000), accessible at <https://www.hsdl.org/?view&did=1622> (last visited Jan. 28, 2023).

market.⁷⁸ Unlike drugs that criminals often manufacture, the arms that are ultimately possessed and used by criminals generally are manufactured by “legal” arms manufacturers.⁷⁹

In the United States, arms manufacturers generally choose to sell their guns at retail through a three-tier distribution system.⁸⁰ The manufacturer will generally sell its guns to a “legal” distributor; the distributor will then generally sell the guns to a “legal” dealer; the dealer will then sell guns to civilian purchasers.⁸¹ Guns generally are obtained by criminals when the purchaser resells or transfers those guns.⁸²

Quotes are placed around “legal” because the arms manufacturers, distributors and dealers in this system are legal in the sense that they are licensed by the United States to engage in the arms business.⁸³ However, while an FFL is obligated to obey all firearms laws,⁸⁴ sales by licensed gun companies are not necessarily legal. Many licensed arms companies engage in illegal or reckless practices that routinely supply the criminal market.⁸⁵ The standards for obtaining and keeping an FFL are minimal: the terms of an FFL do not require (at least expressly) that a licensed arms seller, distributor, or manufacturer use business practices that are safe or reasonable. Even when a gun dealer completes legally-required background checks and forms, it may violate the law when it has reason to know that it is supplying an illegal purchaser or trafficker. And manufacturers and distributors may violate the law when they supply corrupt dealers and facilitate illegal retail sales.⁸⁶

⁷⁸ See Rebecca Peters, *Small Arms: No Single Solution*, UNITED NATIONS CHRONICLE at § 3. Closing the Gate Between the Legal and Illegal Markets, <https://www.un.org/en/chronicle/article/small-arms-no-single-solution> (last visited Dec. 14, 2022).

⁷⁹ While criminal use of make-your-own guns (often called “ghost guns”) and 3-D printed guns is a growing problem, “legal” manufacturers still make most guns used by criminals, and even “ghost guns” are often made from “legal” kits or parts, though a new federal regulation outlaws many such kits. See THE WHITE HOUSE, *FACT SHEET: The Biden Administration Cracks Down on Ghost Guns, Ensures that ATF has the Leadership it Needs to Enforce our Gun Laws* (2022), accessible at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws/> (last visited Dec. 14, 2022); DEP’T OF JUST., *Frame and Receiver Rule Goes Into Effect* (2022), accessible at <https://www.justice.gov/opa/pr/frame-and-receiver-rule-goes-effect> (last visited Dec. 14, 2022).

⁸⁰ See Kevin D. Bradford et al., *Countermarketing in the Courts: The Case of Marketing Channels and Firearms Diversion*, 24(2) J. OF PUB. POL’Y & MKTG. 284 (2005), accessible at https://www.researchgate.net/publication/237803755_Countermarketing_in_the_Courts_The_Case_of_Marketing_Channels_and_Firearms_Diversion (last visited Dec. 14, 2022).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Resource Center: Types of Federal Firearms Licenses (FFLs), BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (2018), accessible at <https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls#:~:text=What%20is%20an%20FFL%3F,in%20the%20business%20of%20firearms> (last visited Dec. 14, 2022).

⁸⁴ *Id.*

⁸⁵ See, e.g., *Following the Gun*, *supra* note 77; Ali Watkins, *When Guns Are Sold Illegally, ATF Is Lenient on Punishment*, N.Y. TIMES, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html> (last visited Dec. 14, 2022).

⁸⁶ See *City of Gary v. Smith and Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003), accessible at <https://casetext.com/case/city-of-gary-v-smith-wesson-corp> (last visited Jan. 28, 2023).

Gun industry actors enable the diversion of “legal guns” into the illegal market through several channels used by firearms traffickers, including corrupt FFLs, gun shows, straw purchasers, theft, and unlicensed dealers.⁸⁷

Some licensed gun dealers are corrupt, and sell firearms directly and knowingly to gun traffickers; they are often found to be a major means by which illegal firearms are diverted.⁸⁸ However, even where manufacturers are aware of these corrupt practices, manufacturers continue to distribute to these dealers with the knowledge that they will divert firearms to gun traffickers.⁸⁹ Gun manufacturers and distributors choose to supply these dealers, without requiring any safe sales standards or monitoring, even though they know that without those standards their guns will be recklessly or illegally sold and diverted to criminals.⁹⁰ Gun manufacturers, distributors and dealers engage in these practices in order to profit off of the criminal gun market.

At gun shows, unlicensed dealers can sell guns without conducting background checks and licensed dealers may pose as unlicensed sellers to avoid having to conduct background checks at gun shows; by avoiding background checks, prohibited purchasers, such as criminals, can circumvent the law to purchase firearms for diversion.⁹¹

Dealers also enable diversion by selling to obvious straw purchasers – individuals unlawfully buying a gun for a prohibited purchaser.

Gun industry actors enable diversion of guns through theft when they fail to adopt adequate security measures for facilities such as factories or storefronts.

Unlicensed sellers resell guns that they purchase from dealers or otherwise collected.

Gun dealers enable the downstream distribution and diversion through these individuals through previously discussed methods such as straw purchasers and gun shows, as well as large-volume sales. Large-volume sales occur when individuals purchase several guns in one transaction, often repeatedly over a short period of time, which allows a trafficker to divert large numbers of firearms into the illegal market at once.

No gun manufacturer or dealer restricts the sale of multiple firearms, despite the high potential for diversion posed by these transactions.

⁸⁷ See *Following the Gun*, *supra* note 77, at 12.

⁸⁸ See *Following the Gun*, *supra* note 77, at 12.

⁸⁹ See generally *Commerce in Firearms 2000*, accessible at http://www.joebrower.com/RKBA/RKBA_FILES/GOV_DOCS/BATF_report_020400.pdf (last visited Dec. 14, 2022).

⁹⁰ See *NAACP v. Acusport, Inc.*, 271 F.Supp.2d 435 (E.D.N.Y. 2003) (“Plaintiff’s experts provided reliable evidence of an industry-wide connection between the legal market and the illicit market that constitutes a public nuisance nationally and in New York State and City. Diversion from the legal to the illegal markets through imprudent marketing cause a large part of this diversion.”), accessible at <https://www.courtlistener.com/opinion/2563669/naACP-v-acusport-inc/?page=351> (last visited Jan. 28, 2023).

⁹¹ See ATF & Department of Justice, *Gun Shows: Brady Checks and Crime Gun Traces* (1999).

Unsafe designs add to the potential for diversion of firearms because manufacturers refuse to include feasible safety features that could prevent the criminal diversion of firearms by blocking unauthorized users from using the weapons.

In an analysis of criminal investigations involving firearms traffickers from July 1996 to December 1998, the ATF found that corrupt FFL traffickers produced “the highest mean number of illegally diverted firearms per investigation, over 350, and the largest total number of illegally diverted firearms, as compared to the other trafficking channels.”⁹² The ATF found gun shows had the second highest mean number of firearms per investigation (over 130) and connected to a total of “over 26,000 illegally diverted firearms.”⁹³ Straw purchasers and unlicensed sellers had an average of 37 and 75 firearms per investigation, with a combined total of over 20,000 illegal firearms. Stolen firearms “were associated with the smallest” number of average guns per investigation and total diverted firearms.⁹⁴ Additional ways that the gun industry facilitates diversion to the illegal market include large-volume sales,⁹⁵ sales with insufficient background checks,⁹⁶ and unsafe designs.⁹⁷

The ATF has found that FFLs and their negligent conduct can dramatically increase “the number of firearms illegally diverted in investigations involving gun shows, straw purchasers, and unlicensed sellers” because of dealers’ access to large supplies of guns.⁹⁸

Some “legal” arms dealers routinely engage in illegal conduct, including selling guns to obvious straw purchasers – that is, people who are buying guns for someone other than themselves – and gun traffickers – people buying guns to resell or transfer them on the criminal market. Arms manufacturers and distributors have long known this reality through news

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *See id.* at 9 (reporting the reason for initiation of ATF firearms trafficking investigations was due to review of multiple sales forms in 13.4% of cases); ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports 1999 National Report*, at 40 (2000) (finding multiple sales handguns accounted for 22 percent of all traced crime handguns first sold at retail in 1999 and traced in 1999).

⁹⁶ *See* Americans for Gun Safety Foundation, *Broken Records: How America’s Faulty Background Check System Allows Criminals to Get Guns* 4 (2002) (finding background checks that take more than two hours to complete are twenty times more likely to involve prohibited purchasers).

⁹⁷ *See* Owen Greene, *Examining the policy agendas and implications of smart gun technologies*, in *Smart Technology in SALW Control: Civilian Protection, the UN-PoA, and Transfer Control* 34 (Bonn Int’l Ctr. for Conversion (BICC), BICC Brief No. 49, 2013) (“[Smart gun technologies] have the potential to contribute usefully to enhancing controls to improve safety and reduce misuse and unauthorized diversion of arms transfers and holdings - as one element within a wider control agenda.”).

⁹⁸ *Following the Gun*, *supra* note 77, at 15.

articles,⁹⁹ ATF reports,¹⁰⁰ public indictments of traffickers and dealers,¹⁰¹ and trace data,¹⁰² which informs them whenever one of their guns is recovered by law enforcement.

V. Recommended Policies and Regulations

There are numerous simple measures that would stop much diversion of guns to the criminal market. Among the effective measures that should be enacted include requiring background checks for all gun sales would prevent many unregulated transfers in the criminal market. Permit-to-purchase and licensing requirements would prevent dangerous people from obtaining or keeping guns. Laws limiting gun purchases to one a month would prevent traffickers from amassing inventory. Greater regulation of gun dealers, distributors and manufacturers would prevent diversion to the criminal market. Bans on assault weapons would reduce mass shootings and violence by criminal organizations. Repeal of PLCAA and the Tiahrt Amendments would lead to greater accountability and transparency of the gun industry, that would lead to reduced gun violence and trafficking. Safety features, such as personalized or user-authorized guns, would prevent unintentional shootings and decrease the transferability of guns in the criminal market. Repeal of the Consumer Product Safety Act exclusion that prevents product regulation of firearms would lead to safer guns, and fewer deaths and injuries.

There are numerous measures that would prevent diversion that could be instituted voluntarily by the gun industry, or required by law. Some were agreed to by Smith & Wesson in its settlement with the United States and several cities (which it refused to obey), including:¹⁰³

- Some of the key provisions of the agreement included:

New design standards to make guns safer and prevent accidental shootings and gun deaths

- Locking devices.
- Smart guns.
- Make guns to not accept large capacity magazines.
- Chamber load indicators to show that a pistol is loaded

⁹⁹ See, e.g., Nick Penzenstadler, *Gun Used in Odessa Shooting Shows Risk when Chain of Illegal Sale Starts with Home-Based Hobbyist Dealers*, USA TODAY NEWS, May 8, 2021, accessible at <https://www.usatoday.com/in-depth/news/investigations/2021/05/28/home-based-gun-dealers-fail-atf-inspections-nationwide/7224860002/> (last visited Dec. 14, 2022).

¹⁰⁰ *Following the Gun*, *supra* note 77; *Commerce in Firearms 2000*, *supra* note 89.

¹⁰¹ See, e.g., DEP'T OF JUST., *Justice Department Announces Charges Against Alleged Gun Trafficker: Over 70 Guns Purchased in Just Six Months*, June 13, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-charges-against-alleged-gun-trafficker> (last visited Dec. 14, 2022).

¹⁰² DEP'T OF JUST., *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy*, (2001), accessible at <https://www.justice.gov/archive/opd/gunviolence.htm> (last visited Jan. 23, 2023) (“To assist industry efforts to keep guns from falling into the wrong hands, ATF will supply manufacturers and importers that request it with information about crime gun traces of the manufacturer's or importer's firearms.”).

¹⁰³ Clinton White House Archives, *Historic Agreement with Smith & Wesson*, accessible at https://clintonwhitehouse4.archives.gov/WH/New/html/20000317_2.html (last visited Jan. 27, 2023).

- Magazine disconnectors to prevent guns from firing when the magazine is removed.

New sales and distribution controls to help keep guns out of the hands of criminals and help law enforcement crack down on illegal gun traffickers.

- Manufacturers sell only to authorized dealers and distributors who agree to a code of conduct.
- Manufacturers cut off dealers with disproportionate crime guns.
- Authorized dealers do not sell at gun shows unless all sellers conduct background checks.
- Ballistics fingerprints to assist law enforcement.
- Safety training for purchasers.
- Dealers must implement a security plan to prevent gun theft.
- Authorized dealers and distributors will not sell large capacity ammunition magazines or assault weapons.
- Purchasers can only take one handgun from the day of sale, the remainder 14 days later.

Other effective measures were recommended by the U.S. in published reports.¹⁰⁴ In 2001 the Department of Justice called on the gun industry to engage in “self-policing,”¹⁰⁵ and outlined specific steps how the gun industry “could substantially reduce the illegal supply of guns”:

The firearms industry can make a significant contribution to public safety by adopting measures to police its own distribution chain. In many industries, such as the fertilizer and explosives industries, manufacturers impose extensive controls on their dealers and distributors. Gun manufacturers and importers could substantially reduce the illegal supply of guns by taking similar steps to control the chain of distribution for firearms. To properly control the distribution of firearms, gun manufacturers and importers should: identify and refuse to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers; develop a continual training program for dealers and distributors covering compliance with firearms laws, identifying straw purchase scenarios and securing inventory; and develop a code of conduct for dealers and distributors, requiring them to implement inventory, store security, policy and record keeping measures to keep guns out of the wrong hands, including policies to postpone all gun transfers until NICS checks are completed.¹⁰⁶

These measures would significantly reduce diversion of guns to the criminal market.

VI. Business Sector Best Practices

A. The Gun Industry Knows How It Supplies The Criminal Market, But Has Refused To Use Safer Practices

¹⁰⁴ *Supra* note 102.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

For over 20 years, public ATF reports have explained how the criminal gun market is supplied: a small percentage of gun dealers sell virtually all crime guns: about 1% of dealers sell over 50% of crime guns; about 5% of dealers sell about 90% of crime guns.¹⁰⁷ At the same time, about 90% of dealers sell no crime guns.¹⁰⁸ This informs manufacturers and distributors that they can easily cut off supplies to those dealers who sell virtually all crime guns, if they do not want to supply the criminal market; and there are ample responsible dealers to responsibly sell their guns if their only intent is to supply the legal market.

Despite knowing that their guns are supplied to the criminal market through dealers who recklessly or illegally sell guns, manufacturers generally choose to supply any dealer or distributor so long as it has an FFL.¹⁰⁹ Manufacturers know that the requirements for an FFL are minimal and that dealers often keep their licenses even where they violate gun laws.¹¹⁰

Some of the methods by which the gun industry enables diversion of legal guns to be trafficked into the illegal market has been discussed previously.¹¹¹

In addition to these industry practices, U.S. gun manufacturers and dealers specifically cater to sales of guns that will be diverted to the criminal market and trafficked into Mexico. Much of the U.S. gun industry is economically dependent upon this criminal activity as a source of revenue. Researchers have found that nearly half of all U.S. gun dealers economically depend on Mexican demand, or, in other words, roughly 47% survive by profiting off of the illicit trafficking of guns across the U.S.-Mexico border.¹¹² As a result, dealers have literally positioned themselves to profit off of these patterns of trafficking from the U.S. and into Mexico: in 2010, there were 8,354 FFLs in California, Texas, New Mexico, and Arizona, and by 2019, over 1,569 new licensed dealers opened in those states.¹¹³ These changes represented an 18.38% increase in the number of FFLs in border states from 2010 to 2019, while the rest of the nation saw a decrease in the number of dealers by 1.81% during that time period.¹¹⁴

The bulk sales of assault weapons to traffickers is a diversion method which the gun industry has worked diligently to protect. In 2010, following recommendations from a report by

¹⁰⁷ *Commerce in Firearms*, *supra* note 89.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Documents obtained by the Brady Center to Prevent Gun Violence demonstrate how even in the rare cases when ATF inspects arms dealers, finds serious violations of law, and recommends that their FFLs be revoked, ATF often ultimately does not even initiate proceedings to attempt to revoke the FFL, and allows the dealer to remain in business, selling guns. *See Freskos*, *supra* note 64. *See also* Gun Store Transparency Project, *supra* note 64; THOMAS ANTKOWIAK & ALEJANDRA GONZA, *THE AMERICAN CONVENTION ON HUMAN RIGHTS: ESSENTIAL ARTICLES* 19 (2017).

¹¹¹ *See* discussion *infra* Section IV.B.

¹¹² *See* Topher L. McDougal et al., *The Way of the Gun: Estimating Firearms Trafficking across the US-Mexico Border*, 15(2) J. ECON. GEOGRAPHY 297 (2015), accessible at <https://igarape.org.br/en/the-way-of-the-gun-estimating-firearms-traffic-across-the-us-mexico-border/> (last visited Jan. 28, 2023).

¹¹³ *See generally* ATF, *Listings of Federal Firearms Licensees*, accessible at <https://www.atf.gov/firearms/listing-federal-firearms-licensees> (last visited Jan. 28, 2023).

¹¹⁴ *See id.*

the U.S. Department of Justice Office of the Inspector General,¹¹⁵ the ATF issued emergency notice of a rule that would require FFLs in border states to report multiple sales of certain assault rifles, which only extended the coverage of previous reporting requirements for multiple sales of handguns.¹¹⁶ The gun lobby fought to block the rule and keep this information concealed from law enforcement. The National Shooting Sports Foundation (NSSF), the U.S. gun industry's trade association, sued the ATF to prevent the rule's enforcement.¹¹⁷ While the lawsuit failed, the U.S. gun industry's top even this low standard of transparency demonstrates the industry's knowledge that their practices facilitate firearms trafficking into Mexico, and they do not want law enforcement to stop it.

Some U.S. gun manufacturers are even less subtle in their efforts to supply Mexico's criminal market. Colt, a major U.S. gun manufacturer, produces three gun models which are designed and marketed specifically for the Mexican market: the Super "El Jefe" .38-caliber pistol; the Super "El Grito" .38-caliber pistol; and the "Emiliano Zapata 1911" .38-caliber pistol.¹¹⁸ These guns include features such as gold embellishments and designs (down to the name) implicating themes of Mexican independence and culture. These gun models by Colt are trafficked to Mexico in large numbers and are "status symbols [] coveted by the drug cartels."¹¹⁹ This explicit marketing is another example of the ways that the U.S. gun industry intentionally targets and supplies to the criminal market in Mexico.

As noted, the United States government has pointedly told the industry that its practices supply criminals and asked it to change those practices to reduce gun crime and assist law enforcement. The industry has refused.

U.S. federal law enforcement publicly stated in 2000 that its "[e]nforcement efforts would benefit if the firearms industry takes affirmative steps to track weapons and encourage proper operation of Federal Firearms Licensees to ensure compliance with all applicable laws."¹²⁰ In 2001, the U.S. Department of Justice published a report stating that gun crime could be significantly reduced if the industry acted responsibly, and called on manufacturers to institute safer sales practices, including by stopping the supply of dealers that sell to straw buyers and

¹¹⁵ See U.S. DEP'T OF JUST. OIG, REVIEW OF ATF'S PROJECT GUNRUNNER 31 (2010), accessible at <https://www.oversight.gov/report/doj/review-atf%E2%80%99s-project-gunrunner> (last visited Jan. 28, 2023).

¹¹⁶ See 60-Day Emergency Notice of Information Collection Under Review: Report of Multiple Sales or Other Disposition of Certain Rifles, 75 Fed. Reg. 79021 (Dec. 17, 2010).

¹¹⁷ See Nat'l Shooting Sports Found., Inc. v. Jones, 716 F.3d 200 (D.C. Cir. 2013).

¹¹⁸ See *Pistols with Mexican cultural motifs are manufactured in the U.S.*, MEXICANIST (Nov. 17, 2021), <https://www.mexicanist.com/l/pistols-with-mexican-cultural-motifs/> (last visited on January 28, 2023).

¹¹⁹ Complaint, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., et. al.*, (D. Mass. August 4, 2021) ("Mexico Mass. Complaint"), at ¶ 215, accessible at <https://www.courthousenews.com/wp-content/uploads/2021/08/mexico-smith-wesson-complaint.pdf> (last visited Dec. 14, 2022) (noting several instances of these gun models being seized in Mexico as a result of arms cross-border trafficking).

¹²⁰ DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS AND EXPLOSIVES, *ATF 2000-2005 Strategic Plan* 11 (2000), accessible at <https://www.atf.gov/file/57641/download> (last visited Dec. 14, 2022).

traffickers.¹²¹ The U.S. arms industry has refused to institute any of the steps recommended by federal law enforcement.¹²²

For decades, leading gun dealers and other voices in the gun industry have called on manufacturers to stop supplying irresponsible crime gun sellers, and instead use safe sales practices that would not supply criminals.¹²³ Those voices were ignored and often punished.¹²⁴ Gun manufacturers have chosen to deliberately continue to supply the criminal market – and reap money from those sales – by using irresponsible dealers and practices.¹²⁵ For example:

- Thirty years ago, the President of the National Gun Dealers Association called on manufacturers to cut off supply to scofflaw dealers; he was ostracized by the industry.¹²⁶
- Over 20 years ago, the head of a gun industry trade association called for similar reforms; he was fired.¹²⁷
- A few years later, another industry trade association leader brokered a modest agreement in which some manufacturers committed to include safety locks with handguns; he was fired, and his organization was disbanded.¹²⁸
- A former dealer of the year wrote an article for a gun magazine that pointedly called out gun manufacturers for supplying the criminal market, writing (in all CAPS): “IF YOU DO NOT KNOW WHERE AND HOW YOUR PRODUCTS ARE ULTIMATELY BEING SOLD – YOU SHOULD HAVE KNOWN OR ANTICIPATED THAT THEY WOULD BE ILLEGALLY SOLD AND SUBSEQUENTLY MISUSED. Let’s just get down and dirty. We manufacture, distribute and retail items of deadly force.” One manufacturer (Glock) pulled its advertising from the magazine as a result; and the dealer’s column was discontinued.¹²⁹

¹²¹ DEP’T OF JUST., *supra* note 102.

¹²² Mike McIntire & Michael Luo, *Gun Makers Saw No Role in Curbing Improper Gun Sales*, N.Y. TIMES, May 27, 2013, <https://www.nytimes.com/2013/05/28/us/gun-makers-shun-responsibility-for-sales-suits-show.html> (last visited January 28, 2023).

¹²³ See, e.g., Olivia Li, *Twenty Years Ago, a Gun Industry Exec Got Fed Up with How Many Firearms Wind Up in Criminal Hands*, THE TRACE, Dec. 16, 2015, <https://www.thetrace.org/2015/12/gun-industry-black-market-sales/> (last visited Dec. 14, 2022).

¹²⁴ *Id.*

¹²⁵ McIntire & Luo, *supra* note 122.

¹²⁶ Allen Rostron, *Smoking Guns: Exposing the Gun Industry’s Complicity in the Illegal Gun Market* (2012), accessible at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2111318 (last visited Dec. 14, 2022).

¹²⁷ *Id.*; see also, Rebecca Leung, *60 Minutes: Firing Back*, CBS NEWS, May 9, 2003, accessible at <https://www.cbsnews.com/news/firing-back/> (last visited Dec. 14, 2022).

¹²⁸ *Id.*

¹²⁹ *Id.*; see also, Paul M. Barrett, *Gun Dealer Blasts Manufacturers for Lax Policing of Gun-Show Sales*, WALL STREET JOURNAL, June 22, 1999, accessible at <https://www.wsj.com/articles/SB930005338595039330> (last visited Jan. 28, 2023).

- Dealers for one manufacturer (Sturm Ruger) asked the company to stop supplying dealers who did not have a store, because their shoddy practices tarnished the reputation of gun sellers by irresponsibly and illegally selling guns to criminals; the company refused and chose to continue to supply these “kitchen-table” sellers.¹³⁰
- An official for the gun industry trade association, National Shooting Sports Foundation (“NSSF”), wrote a memo in 1993 about an ATF report that “raise[d] a very serious question about the potential for illegal firearms transactions through ostensibly ‘legal’ FFL channels.”¹³¹ The official suggested a “proactive industry strategy” to minimize illegal gun sales.¹³² He was told that the NSSF chairman was “not keen on doing anything right now.”¹³³ No action was taken by the industry to ensure safe practices by its distribution network – nor has any action been taken over the intervening 30 years.¹³⁴

As noted, in 2000, Smith & Wesson entered a settlement with the United States government and several U.S. cities and counties, to resolve litigation that had been brought (or in the case of the U.S., threatened to be brought).¹³⁵ The settlement demonstrated the arms industry’s recognition of the need to reform its business practices, and that reforms are feasible. But like others who called for reform, Smith & Wesson was met with condemnation – a boycott that nearly bankrupted the company -- and although the settlement was legally binding, the company reneged on it.¹³⁶ No manufacturer since has followed the path of safer sales practices.

The industry has faced no negative repercussions from defying law enforcement or violating a binding legal agreement with the United States government.

Importantly, the gun industry’s chosen three-tier distribution system is deliberately established by arms manufacturers; it is not required by law, and is not even always followed. At times, manufacturers have sold their own guns at retail. This system is also unusual in many ways for modern business practice. Manufacturers of far less dangerous products involve themselves more in the downstream sales of their products to ensure proper distribution. Marketing experts have publicly explained how use of appropriate marketing mechanisms can reduce much of the industry’s supply of the criminal market.¹³⁷ One Harvard Business School Professor called on the gun industry to implement safer sales and design practices.¹³⁸

¹³⁰ Mexico Mass. Complaint, *supra* note 119, at ¶ 262.

¹³¹ *Smoking Guns*, *supra* note 126.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ DEP’T OF JUST., *supra* note 102, at Appendix D.

¹³⁶ Avi Selk, *A Gunmaker Once Tried to Reform Itself. The NRA Nearly Destroyed It*, WASHINGTON POST, Feb. 17, 2018, <https://www.washingtonpost.com/news/retropolis/wp/2018/02/27/a-gunmaker-once-tried-to-reform-itself-the-nra-nearly-destroyed-it/> (last visited Dec. 14, 2022).

¹³⁷ *See, e.g.*, Bradford et al., *supra* note 80.

¹³⁸ Robert J. Dolan, *Gun Manufacturers Need to Lead Change, Not Just Follow the Law*, HARV. BUS. REV., March 23, 2016, <https://hbr.org/2016/03/gun-manufacturers-need-to-lead-change-not-just-follow-the-law> (last visited Dec. 14, 2022).

As a legal matter, there is a strong argument that the arms manufacturers who choose to supply dealers without safeguards, conditions or scrutiny are criminally complicit in the downstream illegal sales and possession of their guns.¹³⁹ The legal concept of “willful blindness” holds that companies may not put their heads in the sand and claim that they do not know the obvious; rather, supplying dealers with a record of repeatedly selling crime guns, engaging in bulk and repeat sales, and supplying traffickers can support holding that the manufacturer knows that the guns they supply will be sold illegally.¹⁴⁰ Hence, sales by manufacturers to licensed distributors and dealers may actually be “illegal.” And the sales and distribution practices of the U.S. arms industry can certainly be deemed negligent or reckless.¹⁴¹

Recently, GAGV has advanced these legal arguments while representing the Government of Mexico as co-counsel in two lawsuits against U.S. gun industry actors in U.S. federal courts. The first of these lawsuits which the Government of Mexico initiated was filed against major gun manufacturers for their role in “actively facilitating the unlawful trafficking of their guns to drug cartels and other criminals in Mexico.”¹⁴² The second lawsuit was filed against gun dealers in the border state of Arizona “that systematically participate in trafficking military-style weapons and ammunition to drug cartels in Mexico by supplying gun traffickers.”¹⁴³

B. Examples of How the Arms Industry’s Distribution and Sales Practices Cause Gun Violence in and Outside of the U.S.

A few concrete examples demonstrate how the arms industry and U.S. policy contribute to gun deaths and injuries, both in the United States and in other countries.

1. A gun manufacturer chose to supply guns to a man who helped run its exclusive distributorship and ran a gun dealership. Like other U.S. manufacturers, the manufacturer placed no conditions or limits on how its guns would be sold, other than the minimal requirements of U.S. law. The dealer sold over 180 handguns to a gun trafficking ring over six months at gun shows in Ohio, often in high-volume bulk sales: in one the dealer sold 85 handguns in a single purchase to a single person; in another the dealer sold 35 handguns to a purchaser. All of the transactions were in cash, for thousands of dollars. The guns were then trafficked to New York, where they were sold in the criminal market. Several guns were used in crime, including one used to shoot a 16-year-old boy while shooting basketball near his home.¹⁴⁴

¹³⁹ See *City of Cincinnati v. Beretta*, 95 Oh. St. 3d 416 (Oh. 2002); *City of Gary v. Smith & Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003); *Ileto v. Glock, Inc.*, 349 F.3d 1191 (9th Cir. 2003); *City of Boston v. Smith & Wesson, Corp.*, No. 199902590, 2000 WL 1473568 (Mass. Sup. Ct. July 13, 2000); *NAACP v. AcuSport, Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003).

¹⁴⁰ *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011); *Direct Sales v. United States*, 319 U.S. 703 (1943).

¹⁴¹ See *supra* note 139.

¹⁴² Mexico Mass. Complaint, *supra* note 119, at ¶ 1.

¹⁴³ Complaint, *Estados Unidos Mexicanos v. Diamondback Shooting Sports, Inc., et al.*, 4:22-cv-00472-JR (D. Ariz. Oct. 10, 2022) (“Mexico Ariz. Complaint”), at ¶ 1, accessible at <https://www.gob.mx/sre/documentos/civil-lawsuit-filed-in-the-u-s-district-court-for-the-district-of-arizona-on-october-10-2022> (last visited Jan. 27, 2023).

¹⁴⁴ *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333 (N.Y. App. Div. 2012).

2. A Texas gun dealer reportedly sold a gun trafficking ring over 170 guns from April to November 2018. Among these 170 guns were numerous military-style weapons sought after by the cartels in Mexico: 76 AK-style assault rifles, 86 AR-style assault rifles, and six .50 caliber sniper rifles.¹⁴⁵
3. Another dealer reportedly conspired with a former police officer to straw purchase and traffic guns into Mexico. Together they trafficked 35 guns. One of these guns, a Barrett .50-caliber sniper rifle, was intercepted by ATF at the Mexican border. The investigation uncovered that the guns were sold to members from Mexican drug cartels and were intended for Mexico.¹⁴⁶
4. X-Caliber Guns, an Arizona gun dealer, reportedly sold more than 650 guns to straw purchasers recruited by a drug cartel. X-Caliber Guns sold the weapons after being told that the purchasers planned to sell the guns in Mexico, and even advised one buyer to break up the purchases to avoid drawing suspicion. Several crime guns recovered in Mexico could be traced back to sales by X-Caliber, including weapons used in include the killing of a Mexican police chief.¹⁴⁷

Each of these dealers was licensed by the U.S. government to engage in the business of dealing in firearms. Arms manufacturers and distributors willingly supplied each of these dealers. No manufacturers or distributors required that the dealers use safe sales practices that would have prevented supplying the criminal market.

Gun manufacturers are notified by ATF when guns they sell to distributors and dealers are recovered at crime scenes, which indicates which dealers are supplying the criminal market, and may help indicate that dealers engaged in unlawful or negligent sales.¹⁴⁸ Despite this notice, manufacturers do not cut off supply to problematic dealers who repeatedly supply crime guns.¹⁴⁹

Arms manufacturers also facilitate gun violence by designing guns for lethality, by selling and distributing military-style guns to the general civilian market without any standards or conditions, and by advertising them to appeal to potential mass shooters.¹⁵⁰

¹⁴⁵ Mexico Mass. Complaint, *supra* note 119, ¶ 171; Guillermo Contreras, *Ex-GI accused of gun smuggling*, SAN ANTONIO EXPRESS-NEWS (Dec. 11, 2018).

¹⁴⁶ Mexico Mass. Complaint, *supra* note 119, ¶ 150.

¹⁴⁷ Brian Ross, et al., *ATF: Phoenix Gun Dealer Supplied Mexican Drug Cartels*, ABCNEWS, May 6, 2008, <https://abcnews.go.com/Blotter/story?id=4796380&page=1>.

¹⁴⁸ *Commerce in Firearms*, *supra* note 89, at 25.

¹⁴⁹ Mexico Mass. Complaint, *supra* note 119, ¶121, 130–31.

¹⁵⁰ *Id.* See also, United States Senate, *Letter to Lina M. Khan, Chair, Federal Trade Commission*, (2022), <https://www.blumenthal.senate.gov/imo/media/doc/9122022ftcunfairmarketingbyfirearmsindustryletter.pdf> (last visited Dec. 14, 2022) (Letter from numerous Senators urging the Federal Trade Commission to “undertake an investigation and consider regulation of the unfair and deceptive advertising practices used by the firearms industry”).

For example, Barrett Firearms sells to the general public .50 caliber anti-armor sniper rifles, a military style gun that can shoot down helicopters and pierce airplane's fuselage.¹⁵¹ The gun has specifically been identified as a potential terrorist weapon.¹⁵² In 1999, the Government Accountability Office reported that Barrett's .50-caliber rifles were linked to criminal misuse "with a nexus to terrorism, outlaw motorcycle gangs, international and domestic drug trafficking, and violent crime."¹⁵³ The Barrett is a favorite weapon of the Mexican drug cartels.¹⁵⁴ In the U.S., anyone who is 18 years old and can pass a background check can buy one, or 100, with no wait or no explanation why he "needs" such a military weapon.

Arms manufacturers also make and market to the public assault weapons, which are designed to kill large amounts of people quickly and efficiently.¹⁵⁵ Many assault weapons are designed so they can be easily modified to fire fully automatically, so should be designated machine guns.¹⁵⁶ Assault weapons have been repeatedly used in mass slaughters of children, women and men in schools, workplaces, places of worship, shopping malls and virtually all venues.¹⁵⁷ Assault weapons are also sought after by the cartels in Mexico.¹⁵⁸

The extra-territorial cost of arms industry practices is devastating. A few examples:

- In October 2019, the Sinaloa Cartel conducted an attack in Culiacan, Mexico to try and free the son of "El Chapo." At least four people were killed. Two were young workers

¹⁵¹ VIOLENCE POL'Y CTR., *The Threat Posed to Helicopters by 50 Caliber Anti-Armor Sniper Rifles* (2004), accessible at <https://vpc.org/graphics/50Helicopters.pdf> (last visited Dec. 14, 2022); Christopher Ingraham, *Tennessee's New Official State Rifle is so Powerful it Can "Destroy Commercial Aircraft,"* WASHINGTON POST, Feb. 26, 2016, accessible at <https://www.washingtonpost.com/news/wonk/wp/2016/02/26/tennessees-new-official-state-rifle-is-so-powerful-it-can-destroy-commercial-aircraft/> (last visited Dec. 14, 2022).

¹⁵² VIOLENCE POL'Y CTR., *Clear and Present Danger*, 13–14, 25 (2005), <https://www.vpc.org/studies/50danger.pdf> (last visited Dec. 14, 2022).

¹⁵³ United States General Accounting Office, Office of Special Investigations, *Weaponry: .50 Caliber Rifle Crime*, (1999), accessible at <https://www.gao.gov/assets/osi-99-15r.pdf> (last visited Dec. 14, 2022).

¹⁵⁴ Diego Ore & Drazen Jorgic, *'Weapon of war': the U.S. rifle loved by drug cartels and feared by Mexican police*, REUTERS, <https://www.reuters.com/article/us-usa-mexico-arms-barrett-idAFKBN2F7151> (last visited Dec. 17, 2022).

¹⁵⁵ *Regulating the Gun Industry: Assault Weapons*, VIOLENCE POL'Y CTR., <https://vpc.org/regulating-the-gun-industry/assault-weapons/> (last visited Nov 29, 2022).

¹⁵⁶ Max Hauptman, *Synagogue Shooting Victims can Sue Gunmaker Smith & Wesson, California Judge Rules*, WASHINGTON POST, July 11, 2021, <https://www.washingtonpost.com/nation/2021/07/11/poway-synagogue-shooting-lawsuit/> (last visited Dec. 14, 2022); Scott Glover & Curt Devine, *A Device that can Turn a Semi-Automatic Weapon into a Machine Gun in Moments is Wreaking Havoc on American Streets*, CNN, Aug. 30, 2022, <https://www.cnn.com/2022/08/30/us/automatic-machine-gun-fire-invs> (last visited Dec. 14, 2022).

¹⁵⁷ Ashley R. Williams, *More mass shooters are using semi-automatic rifles – often bought legally*, USA TODAY, July 12, 2022, <https://www.usatoday.com/story/news/nation/2022/07/12/mass-shootings-weapons-legal-what-to-know/7814081001/> (last visited Dec. 14, 2022).

¹⁵⁸ Kevin Sieff & Nick Miroff, *The Sniper Rifles Flowing to Mexican Cartels Show A Decade of U.S. Failure*, WASH. POST, Nov. 19, 2020, <https://www.washingtonpost.com/graphics/2020/world/mexico-losing-control/mexico-drug-cartels-sniper-rifles-us-gun-policy/> (last visited Dec. 14, 2022); *Former Gulf Cartel Leader's Son Admits to Moving Assault Weapons into Mexico Following HSI, Federal Partner Investigation*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, August 3, 2022, <https://www.ice.gov/news/releases/former-gulf-cartel-leaders-son-admits-moving-assault-weapons-mexico-following-hsi> (last visited Dec. 14, 2022).

who were returning from a furniture delivery when they were caught in the gunfire. One 32-year-old policeman died after 100 bullets hit his car. The last victim was a 39-year-old father and husband who died when he was trying to close the shutters at his place of work to protect those inside.¹⁵⁹

- In June 2021, a 19-year-old bricklayer was killed along with others when he was outside fixing a drain when members of the Gulf Cartel began a city-wide shooting spree.¹⁶⁰
- In October 2022, an armed group wearing ski masks and driving two SUVs opened fire in a municipal hall and a house in a small town killing 20 individuals, including a San Miguel Totolapan's mayor and former mayor, and other local government members. This attack involved two criminal groups known as the Familia Michoacan and the Tequileros (who at one point in time controlled the sale of heroin poppy in the region).¹⁶¹
- In May 2021, at least five people, including two children, were killed at a restaurant in Mexico when an armed gang opened fire.¹⁶²

There are countless other examples from other countries in the region that could be told showing the human cost of U.S. gun industry practices.

VII. Conclusion

The problems posed by rampant, largely unregulated civilian gun ownership, and a vastly under-regulated gun industry, pose a major international human rights crisis that infringes on numerous fundamental rights, not the least of which is the right to life. The civilian gun industry creates a host of other international problems – it fuels and sustains organized crime, transnational drug trafficking, migration, political instability, threats to democracy. The scope of the civilian gun crisis cannot be overstated; it merits attention and action as much as wars, terrorism, and other crises that deservedly generate committed action by the United Nations.

The global problem posed by civilian guns is largely a problem attributable to the U.S. gun industry, which chooses to engage in destructive business practices, and weak U.S. gun laws and policies, that tolerate and facilitate this reckless and dangerous conduct.

¹⁵⁹ Paulina Villegas, *After Soldiers Surrender El Chapo's Son, a Shocked Mexican City Sighs With Relief*, N.Y. TIMES (Oct. 20, 2019), <https://www.nytimes.com/2019/10/20/world/americas/culiacan-mexico-chapo-son.html> (last visited Dec. 14, 2022); José y Nicolás las víctimas colaterales del "culiacanazo", LA SILLA ROTA (Oct. 22, 2019), <https://lasillarota.com/estados/2019/10/22/jose-nicolas-las-victimas-colaterales-del-culiacanazo-203441.html> (last visited Dec. 14, 2022).

¹⁶⁰ 23 people, mostly innocent civilians, killed in one day as violence rakes Reynosa, Tamaulipas, MEXICO DAILY NEWS (Jun. 21, 2021), <https://mexiconewsdaily.com/news/violence-rakes-reynosa-tamaulipas/> (last visited Dec. 14, 2022).

¹⁶¹ Alex Vasquez * Maya Averbuch, *Gunmen Kill 20, Including Mayor, in Attack on Mexico Town*, BLOOMBERG, Oct. 5, 2022, <https://www.bloomberg.com/news/articles/2022-10-06/gunmen-kill-18-including-mayor-in-attack-on-mexican-town> (last visited Dec. 14, 2022).

¹⁶² Andry Torres, *Assassins gun down five people including two children at restaurant in western Mexico*, DAILY MAIL, May 10, 2021, <https://www.dailymail.co.uk/news/article-9563239/Assassins-gun-five-people-including-two-children-restaurant-western-Mexico.html> (last visited Dec. 14, 2022).

These problems are solvable if the gun industry simply made and sold its guns in a safer, more responsible manner. This can be done through voluntary action by the gun industry, by regulation or laws, or some combination. The fact that most of the world has fairly low levels of civilian gun violence – even in countries with considerably civilian gun possession -- demonstrates that gun violence can be dramatically reduced.

The fact that most civilian gun violence occurs with guns from the United States highlights the fact that civilian gun violence can be significantly reduced in the U.S. gun industry conducted its business safely, or was required to.

The United States government, along among comparable countries in the world, has refused to take the actions needed to protect their people from the epidemic of gun violence, despite record levels of gun deaths and ever-escalating massacres. Opponents of sensible gun violence prevention measures have claimed that this is a solely domestic matter, that is properly resolved by the political will of Americans. That proposition has always been questionable, because the United States has obligations to protect its people's human rights, visitors from other countries are also killed from U.S. guns, and majorities of Americans support strong gun laws. But the U.S. refusal to join the world community in implementing gun safety measures is wholly indefensible in light of the fact that guns from the United States cause significant deaths and other harms in Mexico, Jamaica, Haiti and other countries.

U.S. gun policy is not simply a domestic political issue that is the sole purview of the U.S. political system. The United Nations, and the international community, should act to stop this pandemic of violence.