

No. 22-1823

**In the United States Court of Appeals
for the First Circuit**

ESTADOS UNIDOS MEXICANOS,

v.

SMITH & WESSON BRANDS, INC.; BARRET FIREARMS
MANUFACTURING, INC.; BERETTA U.S.A. CORP.; GLOCK, INC.;
STURM, RUGER & COMPANY, INC.; WITMER PUBLIC SAFETY
GROUP, INC., d/b/a INTERSTATE ARMS; CENTURY
INTERNATIONAL ARMS, INC.; BARETTA HOLDINGS SPA; GLOCK
GES.M.B.H.; COLT'S MANUFACTURING COMPANY, LLC,

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (CIV. NO. 21-11269)
(THE HONORABLE F. DENNIS SAYLOR IV, J.)*

**BRIEF OF AMICI CURIAE LATIN AMERICAN AND CARIBBEAN NATIONS
AND NGO IN SUPPORT OF PLAINTIFF-APPELLANT AND IN FAVOR OF
REVERSAL**

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TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| CORPORATE DISCLOSURE STATEMENT..... | viii |
| INTEREST AND IDENTITY OF AMICI CURIAE | ix |
| ARGUMENT..... | 1 |
| I. Illicit Firearms Trafficking from the United States Harms People Throughout the LAC Region | 1 |
| A. The LAC region faces an unprecedented crisis of gun violence caused by the ubiquity of illegal firearms..... | 1 |
| B. A significant number of the firearms causing this violence are manufactured or distributed in the United States and then illegally trafficked to the LAC region | 3 |
| C. Every day, U.S. firearms end or forever alter the lives of innocent citizens in the LAC region | 10 |
| D. American firearms also trigger many collateral harms, such as dislocation of those fleeing gun violence..... | 17 |
| II. The Relief Sought in This Litigation Would Mitigate These Harms | 19 |
| CONCLUSION | 28 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
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CORPORATE DISCLOSURE STATEMENT

(Rule 26.1)

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), Amici Curiae make the following corporate disclosure statement:

The Association for Public Policies, d/b/a the Latin American and Caribbean Network for Human Security, coordinates a network of non-governmental organizations (“NGOs”), none of which has corporate parents or stockholders.

INTEREST AND IDENTITY OF AMICI CURIAE

Amici curiae Antigua & Barbuda, Belize, the Commonwealth of the Bahamas, Jamaica, and Trinidad & Tobago are sovereign states in the Latin America and Caribbean (“LAC”) region. These governments have a solemn duty to protect the lives, health, and security of their citizens.

Amicus curiae Association for Public Policies, d/b/a the Latin American and Caribbean Network for Human Security (“SEHLAC”), coordinates a network of NGOs and affiliated professionals specializing in international humanitarian law and seeks the disarmament of the LAC region and the world.¹ SEHLAC has members in Argentina, Brazil, Chile, Colombia, El Salvador, Guatemala, Mexico, and Peru and works with other NGOs throughout the region, including in Costa Rica, Ecuador, Honduras, Nicaragua, Panama, Paraguay, and Uruguay.

Violent crime has gravely harmed LAC nations and their citizens, especially in recent years. A substantial portion of this violence has been perpetrated using firearms unlawfully trafficked from the United

¹ Seguridad Humana en Latinoamerica y El Caribe (SEHLAC), SEHLAC.org (last visited Mar. 20, 2023).

States. LAC nations have diligently pursued an end to this unlawful gun trafficking, but these steps have not proved capable of stemming the tide. Unlawful trafficking of American firearms must be curtailed at its source: the U.S. gun industry. The gun manufacturers and distributors from a single nation must not be permitted to hold hostage the law-abiding citizens of an entire region of the world.

The undersigned amici curiae respectfully submit this brief to inform the Court that, although Mexico is the only party plaintiff, the defendants' business practices have also harmed, and continue to harm, many other nations. If the Court vacates and remands the decision below and the case proceeds on the merits, a properly framed remedy—in addition to ensuring the defendants' compliance with applicable state, federal, and international laws—would save many lives throughout the LAC region.²

² No counsel for a party authored this brief in whole or in part. No person, including but not limited to any party or party's counsel, contributed any money intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief pursuant to Federal Appellate Rule 29(a)(2).

ARGUMENT

I. Illicit Firearms Trafficking from the United States Harms People Throughout the LAC Region

A. The LAC region faces an unprecedented crisis of gun violence caused by the ubiquity of illegal firearms

Gun violence is one of the most pressing public health crises facing the LAC region today. The region experiences a disproportionate share of violent crime. It accounts for 8% of the world's population but 37% of the world's homicides.³ The Americas suffer 17.2 intentional homicide deaths per 100,000 people each year, nearly three times the global average.⁴ The Caribbean, despite being made up of less than 1% of the world's population, experienced 23% of all recorded homicides, with an intentional homicide rate of 15.1 per 100,000 people.⁵ The region has recorded approximately 20,000 firearm homicides and shootings in the past decade, with firearms used in 70% of homicides (compared to 30%

³ Laura Chioda, *Stop the Violence in Latin America: A Look at Prevention from Cradle to Adulthood* 1 (The World Bank, 2017) (hereinafter the "World Bank Report").

⁴ See United Nations Office on Drugs and Crime, *Global Study on Homicide: Extent, Patterns, Trends and Criminal Justice Response* 14 fig.2 (2019).

⁵ See United Nations Office for Disarmament Affairs, *Roadmap for Implementing the Caribbean Priority Actions on the Illicit Proliferation of Firearms and Ammunition Across the Caribbean in Sustainable Manner by 2030*, Information Sheet (2020).

globally).⁶ The World Health Organization characterizes violence as “endemic” throughout the region.⁷ This crisis of violent crime also persists despite major recent gains in wealth and welfare across the region, including a decrease in poverty from 45% to 25% and a decrease in income inequality.⁸ While homicide deaths in the region began to fall in the early 2000s when the federal government of the United States banned assault weapons, those gains were lost when the ban was lifted.⁹

The principal cause of this abnormally high rate of violence in the LAC region is the ubiquity of illegal firearms. As the United Nations has explained, “[t]he availability of firearms is linked to the homicide rate: a rise in the rate of firearms possession in a country often goes together with an increase in the homicide rate.”¹⁰ Firearm availability is linked especially closely to “homicides related to gangs or organized

⁶ *Id.*

⁷ *See* World Bank Report 1.

⁸ *Id.* at 3.

⁹ *Id.* at 1.

¹⁰ *See* United Nations Office on Drugs and Crime, *Global Study of Firearms Trafficking 2020*, at 13 (2020).

crime,” which are unfortunately common in the LAC region.¹¹ Put simply, “firearms are key enablers of high homicide levels.”¹²

It is, therefore, unsurprising that firearms cause the vast majority of homicides in the Americas and Caribbean: nearly four out of every five.¹³ By contrast, in other regions of the world, firearms are used to commit less than half of all homicides.¹⁴

B. A significant number of the firearms causing this violence are manufactured or distributed in the United States and then illegally trafficked to the LAC region

American manufacturers are a significant source—for some LAC nations, the single most significant source—of illegal firearms. The playbook for trafficking guns from America to the LAC region is well-known. Many guns are purchased “at gun shows and other secondary sources, which require fewer checks on a person’s identity and criminal history.”¹⁵ Manufacturers and distributors like the

¹¹ *Id.*

¹² *Id.* at 81.

¹³ See United Nations Office on Drugs and Crime, *Global Study on Homicide: Understanding Homicide: Typologies, Demographic Factors, Mechanisms and Contributors* 77 fig.52 (2019).

¹⁴ *Id.*

¹⁵ Colby Goodman and Michael Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and*

defendants supply guns to these venues, despite knowing that many will ultimately end up in criminals' hands.

Furthermore, traffickers buy many guns from traditional firearms dealers. They commonly recruit “straw purchasers”--people capable of executing the necessary paperwork and passing background checks, who buy guns on the traffickers' behalf, using the traffickers' funds.¹⁶ Traffickers also rely heavily on bulk purchases, in which an individual (often a straw purchaser) buys many firearms at once without any lawful purpose for doing so. Indeed, “20–25% of all handguns recovered at crime scenes were originally purchased as part of a multiple sale.”¹⁷

Challenges 25 (Woodrow Wilson International Center for Scholars, Mexico Institute 2010).

¹⁶ Gabriela Martinez, *The Flow of Guns from the U.S. to Mexico Is Getting Lost in the Border Debate*, PBS (2019), <https://www.pbs.org/newshour/politics/the-flow-of-guns-from-the-u-s-to-mexico-is-getting-lost-in-the-border-debate>; Goodman and Marizco, *supra* note 3, at 22 (“In a large majority of cases, several straw purchasers and one or more intermediaries or brokers are used to traffic firearms to Mexico.”).

¹⁷ *Bulk Gun Purchases*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/bulk-gun-purchases/> (last visited Mar. 5, 2023).

Most dealers are reputable and decline to engage in such business; as appellant’s Complaint alleges, more than 85% of dealers have never had their guns traced to a crime. (D. Ct. Dkt. 1 “Compl.” ¶ 119.) However, a relatively small number of dealers condone straw purchases, unwarranted bulk purchases, and other improper practices. The defendants nevertheless continue to supply these dealers with guns. (Compl. ¶¶ 118–133.)

Once traffickers have guns in hand, their paths to the LAC region vary. Many smuggle guns by land across the southern border using ordinary “cars, trucks, vans, or buses.”¹⁸ Sometimes they “disassemble[] [guns] into many parts, making them easier to hide.”¹⁹ Other evasive techniques include “zip-tying the firearms to a hidden compartment of the vehicle” or “stuff[ing] the[m] [] under a truck bed liner or in a fuel tank.”²⁰ Sometimes traffickers use more sophisticated methods, including “tunnels under the U.S.-Mexican border,”²¹ boats, and planes.

¹⁸ Goodman and Marizco, *supra* note 3, at 26.

¹⁹ Gabriela Martinez, *supra* note 16.

²⁰ Goodman and Marizco, *supra* note 3, at 26.

²¹ *Id.* at 27.

Catching smugglers once they have already acquired defendants' guns can be difficult. Gun smuggling from the United States to the LAC region is undertaken in part by transnational crime organizations, fostering "intense competition . . . to dominate lucrative smuggling corridors," including for the "southbound flow of . . . illegal weapons across the U.S. border."²² Such organizations "use firearms, ammunition, and explosives to protect their trafficking routes . . . [and] have orchestrated sophisticated attacks on . . . security forces, with increasing use of .50 caliber rifles, modified fully automatic rifles, and belt-fed machine guns to counter Mexican security forces."²³

Researchers have estimated that about 873,000 guns are trafficked from the United States to Mexico each year. (Compl. ¶ 437.)²⁴ Nearly half of all guns involved in criminal activity that are recovered in

²² *Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis*, United States Government Accountability Office, 4 (Feb. 2021), available at <https://www.gao.gov/assets/gao-21-322.pdf>.

²³ *Id.*

²⁴ The United States Government Accountability Office itself has estimated that 200,000 U.S.-sourced firearms are trafficked into Mexico each year, despite U.S. agencies' efforts to address this problem. United States Government Accountability Office, *supra* note 22, at 36.

Mexico (47.9%) were traced back not just to the United States in general but to the defendants in particular. (Compl. ¶¶ 434–435.) These overland gun trafficking routes do not stop in Mexico; they continue on to Central and South America, as well as through Caribbean ports. Nearly 40% of firearms recovered and submitted for tracing in Belize, El Salvador, Guatemala, and Honduras were U.S. sourced.²⁵ Of those, 17% were identified as having been purchased at U.S. retailers. Smugglers also directly fly guns into the LAC region.²⁶

It is no surprise that the United Nations describes North America as a significant “departing subregion” for transnational firearms trafficking to Central and South America,²⁷ nor that data from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and

²⁵ *Firearms Trafficking: More Information Is Needed to Inform U.S. Efforts in Central America*, United States Government Accountability Office, 13 (Jan. 11, 2022), available at <https://www.gao.gov/assets/gao-22-104680.pdf>.

²⁶ See, e.g., Colby Goodman, *U.S. Firearms Trafficking to Guatemala and Mexico* 9 (Woodrow Wilson Center for Scholars 2013) (examining the flow of guns from the United States to Guatemala and describing “[t]wo main smuggling routes . . . 1) crossing U.S., Mexican, and Guatemalan borders by land; and 2) carrying firearms in checked luggage on commercial and civilian passenger airplanes flying from the United States to Guatemala.”).

²⁷ United Nations Office on Drugs and Crime, *supra* note 10, at 10.

Explosives (the “ATF”) supports this conclusion. Based on ATF data for 2021, for many Central American and Caribbean countries, more than half of all firearms submitted for tracing were manufactured in or trafficked through the United States: Belize (64.8%); Commonwealth of the Bahamas (99.2%); Dominican Republic (86.2%); El Salvador (49.2%); Guatemala (35.7%); Haiti (84.8%); Honduras (62%); Jamaica (69.4%); Panama (52%); Trinidad and Tobago (51.7%).²⁸ Indeed, for the Commonwealth of the Bahamas, the Dominican Republic, Haiti, and Jamaica, more than *two thirds* of firearms traced by the ATF originated in the United States.

Between 2014 and 2016, across 15 countries in North America, Central America, and the Caribbean, 50,133 guns that originated in the United States were recovered as part of criminal investigations.²⁹ Recognizing the severity of the harms caused by the illicit trafficking and diversion of arms, the United Nations’ Security Council has recently

²⁸ See *Firearms Trace Data – 2021*, Bureau of Alcohol, Tobacco, Firearms and Explosives (2021), <https://www.atf.gov/resource-center/firearms-trace-data-2021>.

²⁹ See Chelsea Parsons and Eugenio Weingend Vargas, *Beyond Our Borders*, Center for American Progress (Feb. 2, 2018), <https://www.americanprogress.org/article/beyond-our-borders/>.

passed a unanimous resolution directing member states to take action to prevent the direct or indirect supply of firearms.³⁰ The Community of Latin American and Caribbean States, comprised of various LAC countries,³¹ issued a January 2023 declaration warning against the dangers of illicit firearms trafficking and associated collateral damage, including impacts to education, humanitarian aid, work opportunities, and livelihood.³²

Given the prevalence of illegal U.S. guns in the LAC region and the clear link between these guns and elevated rates of violence, there can be no doubt that the U.S. gun industry's practices, as detailed in the

³⁰ See S.C.Res. 2653, 11, U.N.Doc.S/RES/2653 (Oct. 21, 2022)

³¹ This intergovernmental forum is comprised of the following countries: Antigua and Barbuda, Argentina, The Commonwealth of the Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela. See <https://celacinternational.org/> (last visited Mar. 16, 2023).

³² See Community of Latin American and Caribbean States, *Special Declaration on the Need to Combat Against Illicit Trafficking of Firearms, Their Parts, Components and Ammunition* (Jan. 24, 2023), available at <https://www.cancilleria.gob.bo/celac/sites/default/files/2019-01/18.%20DE%20CONVENTIONAL%20WEAPONS%20EN.pdf> (last accessed Mar. 20, 2023).

Complaint, have caused significant harm not only to Mexico but also to nations throughout the LAC region.

C. Every day, U.S. firearms end or forever alter the lives of innocent citizens in the LAC region

Illegal firearms trafficking from the United States has a devastating impact on the citizens of LAC nations, ending many lives and upending many more. Statistics, while useful, cannot fully capture these losses. The individual stories of people in LAC whose lives have been ended or forever altered by firearm violence demonstrate why the district court’s decision should be reversed.³³

Commonwealth of the Bahamas: The Bahamas has experienced an increase in gun violence in recent years. Tragically, this violence

³³ Citizens from every nation in the LAC region have suffered the effects of gun violence. However, in the interest of brevity, the amici offer here only a representative sample of incidents from several LAC nations. Furthermore, amici do not represent that defendants’ weapons were used in every incident described herein. It is not always possible to know who manufactured or distributed the gun used to commit a crime. Still, given that “U.S.-sourced guns [a]re used to commit crimes in nearby countries approximately once every 31 minutes,” *id.*, and that defendants’ guns comprise about half of all American firearms trafficked illegally over the southern border, *see* Compl. ¶¶ 434–435, it is certain that if the defendants’ guns were not used to commit a specific crime described herein, they were used to carry out other, similar crimes.

includes collateral harm to unintended victims. One of those victims was a four-year old boy named Kenton, who was shot and killed in July 2022, when a “bullet entered the front windshield” of a car and struck Kenton while he “was sitting on his mother’s lap.”³⁴ Another victim was a 10-year-old child, affectionally known by his family as “Guppy,” who was shot and killed in March 2021. In that same incident, another 10-year-old child, a seven-year-old child, and an adult man were shot and injured.³⁵ These deaths and injuries were devastating for the victims’ families and for the broader Bahamian community. These incidents have only become more common as firearms-related crimes have increased in the past few years. 99.2% of all guns entering the Commonwealth of the Bahamas traced by the ATF originated in the United States. *See supra* p. 8.

³⁴ See Lee Yan LaSur, *4-year-old boy is Bahamas’ latest murder victim*, St. Vincent Times (July 27, 2022), <https://www.stvincenttimes.com/4-year-old-boy-is-bahamas-latest-murder-victim/>.

³⁵ See Rayston Jones Jr., *Even Criminals Have Codes: Rolle blasts killing of child as “egregious” act*, Eyewitness News (Mar. 16, 2021), <https://ewnews.com/even-criminals-have-codes-rolle-blasts-killing-of-child-as-egregious-act>.

Belize: In the past few years, gang-related gun violence has risen sharply in Belize. In September 2021, the country mourned a 15-year-old student who was shot and killed while purchasing bread for his mother at a shop in Belize City.³⁶ The tragic killing prompted Prime Minister John Briceno to lament that “gang leaders and their surrogates . . . for more than two decades have terrorized [sic] and plagued our once peaceful communities in Belize City” and that this violence had spread “in the past 10 years [to] all urban areas across the country.”³⁷ Unfortunately, the violence Prime Minister Briceno spoke about continued into 2022, including two separate gun-related murders recorded in a span of just 24 hours in January 2022.³⁸ In June and July

³⁶ See Melissa Wong, *Gangs Terrorising [sic] Belize, Prime Minister Says the Violence Must Stop*, Loop Caribbean News (Sept. 28, 2021), <https://caribbean.loopnews.com/content/gangs-terrorising-belize-prime-minister-says-violence-must-stop>.

³⁷ *Id.*

³⁸ See BBN Staff, *As gun violence flares, Police Commissioner says department doing all it can but needs the public's help*, Breaking Belize News (Jan. 24, 2022), <https://www.breakingbelizenews.com/2022/01/24/as-gun-violence-flares-police-commissioner-says-department-doing-all-it-can-but-needs-the-publics-help/>.

2022, there were multiple incidents of gun violence, including seven gun-related murders.³⁹

Costa Rica: Historically a very peaceful country with a low crime rate, the murder rate in Costa Rica is now at “epidemic levels,”⁴⁰ following a significant increase in gun-related crimes in the years following the expiration of the U.S. federal assault weapons ban.⁴¹ In October 2021, for instance, six people—including an American man—were killed by gunfire in what officials believe may have been a robbery at a ranch owned by the American.⁴² In 2022, the country experienced record homicides.⁴³

³⁹ See Charles Gladden, *Gun violence surges in June and July*, Amandala (July 30, 2022), <https://amandala.com.bz/news/gun-violence-surges-in-june-and-july/>.

⁴⁰ Jude Webber, *Costa Rica Flinches as Crime Taints Its Reputation for the Pura Vida*, Financial Times (January 15, 2020), <https://www.ft.com/content/fd1fc974-36b9-11ea-a6d3-9a26f8c3cba4>.

⁴¹ *Id.*

⁴² See Associated Press, *6 people, including 1 American, slain at ranch in Costa Rica*, AP News (October 18, 2021), <https://apnews.com/article/caribbean-san-jose-robbery-costa-rica-4589a94c3fcff4e003009da3c2dc58b8>.

⁴³ See Peter Appleby, Chris Dalby, Sean Doherty, Scott Mistler-Ferguson, and Henry Shuldiner, *InSight Crime’s 2022 Homicide Round-Up*, InSight Crime (Feb. 8, 2023), <https://insightcrime.org/news/insight-crime-2022-homicide-round-up/#Costa-Rica>.

Haiti: Gun violence in Haiti has made headlines worldwide. In 2020, Haitian authorities reported 1,380 killings, a 20% increase from the previous year. No one is safe: victims of gun violence included a judge, the president of the Port-au-Prince Bar Association, and four police officers who were killed during a failed raid on the stronghold of a criminal gang; the gang then held the bodies of the slain officers hostage.⁴⁴ In July 2021, “assassins armed with assault rifles” stormed the residence of the sitting President of Haiti and assassinated him.⁴⁵ In the aftermath of the assassination, gang violence has increased in Haiti, reaching new levels in the summer of 2022, with more than 200 people killed in the space of 10 days in July 2022.⁴⁶

Illegal firearms have also been used to perpetrate recent kidnappings throughout Haiti. For instance, in April 2021, a group of

⁴⁴ See Evens Sanon and Danica Coto, *Surge in Violence Rattles Haiti as Poverty, Fear Deepens*, AP News (April 16, 2021), <https://apnews.com/article/port-au-prince-kidnapping-violence-poverty-haiti-06ba2725c9639a532a69ac3c6645d916>.

⁴⁵ Reuters, *Explainer: The Hunt for the Haitian President's Assassins* (Jul. 23, 2021), <https://www.reuters.com/world/americas/hunt-haitian-presidents-assassins-2021-07-16/>.

⁴⁶ See Vanessa Buschschluter, *Haiti Gang Violence: 209 Killed in Cite Soleil in 10 Days*, BBC News (Jul. 26, 2022), <https://www.bbc.com/news/world-latin-america-62292007>.

men carrying automatic firearms barged into the Gospel Kreyol Ministry during a Holy Thursday church service and abducted the pastor and three parishioners while other parishioners participating via livestream watched in horror.⁴⁷ The kidnappers held the victims for three days, until Church members paid ransom.⁴⁸ Other recent hostages have included priests, a hospital director, elementary school children, and a member of the president's security unit.⁴⁹

Jamaica: Gun violence in Jamaica has so sharply increased in recent years that the government called a state of emergency and activated the military to counter the bloodshed.⁵⁰ American guns are commonly found to fuel these jarring episodes of violence. For instance, SBS News identified a single U.S.-manufactured handgun as being used in the killing of nine individuals in Jamaica between 2015 and 2018.⁵¹ SBS News effectively summarized American manufacturers' role in

⁴⁷ Evens Sanon and Danica Coto, *supra* note 44.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See Azam Ahmed, *One Handgun, 9 Murders: How American Firearms Cause Carnage Abroad*, SBS News (Aug. 26, 2019), <https://www.sbs.com.au/news/dateline/one-handgun-9-murders-how-american-firearms-cause-carnage-abroad>.

⁵¹ *Id.*

contributing to this violence: “Worldwide, 32 per cent of homicides are committed with firearms . . . In Jamaica, the figure is higher than 80 per cent. Law enforcement officials, politicians and even gangsters on the street agree: It’s the abundance of guns, typically from the United States, that makes the country so deadly.”⁵² The same could be said of the LAC region as a whole.

Trinidad and Tobago: Trinidad and Tobago has also faced increased violent gun crime in recent years, with criminal activity cutting across all of society. There has been an increase in armed robberies, some of which have resulted in the shooting deaths of security guards.⁵³ In February 2022, a number of armed individuals broke into a home in Westmoorings. One of the homeowners was shot and killed during a melee with the home invaders.⁵⁴ Many of the illegal firearms in

⁵² *Id.*

⁵³ See Charles Kong Soo and Mark Bassant, *Deadly gun violence in T&T leaves citizens in fear*, Trinidad and Tobago Guardian (Feb. 27, 2022), <https://www.guardian.co.tt/news/deadly-gun-violence-in-tt-leaves-citizens-in-fear-6.2.1460439.ddd6f56eb6>.

⁵⁴ *Id.*

Trinidad and Tobago are shipped into the country directly from the United States.⁵⁵

D. American firearms also trigger many collateral harms, such as dislocation of those fleeing gun violence

The gun violence plaguing the LAC region has also contributed to a variety of secondary harms. For instance, the violence has caused waves of dislocation as frightened citizens of LAC nations migrate north, fleeing violence. As a State Department official explained to Congress, “[i]n Central America and elsewhere in the hemisphere, traffickers, criminal gangs, and terrorists use illegally obtained small arms and light weapons to advance a culture of violence and fear that threatens civilian security and contributes to the root causes of migration.”⁵⁶ Asked why

⁵⁵ *Id.*

⁵⁶ Karen Chandler, *Weapons Security in Latin America: Addressing the Root Causes of Migration*, Congressional UXO and PSSM Caucus, U.S. Department of State (Oct. 27, 2021), <https://www.state.gov/weapons-security-in-latin-america-addressing-the-root-causes-of-migration/>.

they left home, Central American asylum applicants frequently cite attacks by criminals bearing firearms.⁵⁷

Another tragic secondary harm has been the disruption of lifesaving aid efforts. The surge of gun violence in Haiti, for instance, has disrupted efforts to distribute aid as the country continues to recover from a massive earthquake in 2010, a recent cholera outbreak, and the COVID-19 pandemic.⁵⁸

Gun crime also exacts a significant economic toll. Tourism is an important industry for many LAC nations—for example, comprising nearly 60% of Antigua & Barbuda’s gross domestic product.⁵⁹ Increases in gun crime jeopardize the tourism industry, seriously threatening the region’s economic well-being. For example, in January 2020, Costa Rica suffered 20 murders during the first week of the year. Soon thereafter, the United States altered its travel advisory for Americans visiting

⁵⁷ See Ioan Grillo, *US-made Guns Are Ripping Central America Apart and Driving Migration North*, *The Guardian* (Apr. 16, 2021), <https://www.theguardian.com/commentisfree/2021/apr/16/us-made-guns-central-america-migration>.

⁵⁸ See Evens Sanon and Danica Coto, *supra* note 44.

⁵⁹ See *Antigua and Barbuda – Economic Indicators*, Moody’s Analytics, <https://www.economy.com/antigua-and-barbuda/indicators> (last visited Mar. 20, 2023)

Costa Rica from Level 1 to Level 2, recommending travelers exercise “increased caution” due to crime.⁶⁰ This could have a negative impact on Costa Rica’s economic outlook, as the United States is Costa Rica’s largest single market for tourism, the primary industry driving the country’s economy.⁶¹ As the Complaint describes, it is U.S. companies—and in particular the defendants here—that have the power to curb this violence by adopting retail and manufacturing practices that address the illegal sale and smuggling of firearms to LAC.

II. The Relief Sought in This Litigation Would Mitigate These Harms

As Mexico’s Complaint alleges in detail, the remedies Mexico seeks include simple, commonsense steps that could sharply curtail the trafficking and criminal use of defendants’ firearms, as well as the resulting harms suffered by LAC nations and their citizens. This Court should vacate and remand the case and allow Mexico to pursue the following remedies in the district court.

First, the district court should order the defendants to cease working with the small number of dealers whose unlawful conduct

⁶⁰ See Jude Webber, *supra* note 40.

⁶¹ *Id.*

precipitates the vast majority of illegal firearms trafficking. Most guns used in crimes are traced back to a very small number of dealers: as the Complaint alleges, about 90% of such guns are traced back to under 10% of dealers. (Compl. ¶ 119.)⁶² Defendants “are not foreclosed from closing off illegal flows of their guns to such retailers.”⁶³ Indeed, as Judge Weinstein found in *N.A.A.C.P. v. AcuSport, Inc.*, “[r]elatively excessive numbers of traces to specific retailers or first purchasers is . . . cause for alarm by [manufacturers].”⁶⁴ Nevertheless, defendants turn a blind eye. The district court should require defendants to implement a simple, commonsense reform: refraining from supplying these dealers.

Excommunicating these few bad actors would make a meaningful difference in ensuring that the defendants’ firearms are not illegally trafficked. “In Milwaukee, for example, a single dealer was linked to a

⁶² See also ATF, *Crime Gun Trace Reports (2000): The Youth Gun Interdiction Initiative*, at 47 tbl.19 (Jul. 2002) (showing that among dealers who were the subject of at least one trace, just 7.2% of dealers accounted for more than half of all traces).

⁶³ *N.A.A.C.P. v. AcuSport, Inc.*, 271 F. Supp. 2d 435, 504 (E.D.N.Y. 2003).

⁶⁴ *Id.*

majority of the guns used in the city's crime."⁶⁵ After that dealer was pressured to reform its practices, "the city saw a 76 percent reduction in the flow of new guns from that shop to criminals and a 44 percent reduction in new crime guns overall."⁶⁶ A similar reduction in trafficking of defendants' guns would save thousands of lives in the LAC region.

Second, the district court should order the defendants to work only with dealers that implement commonsense steps at the counter to ensure that the defendants' guns are not sold to criminals. Specifically, the defendants should require dealers to (1) hinder straw purchases by imposing reasonable identification requirements, (2) permit bulk sales only with appropriate evidence that the purchases are for lawful use, and (3) carefully screen civilian purchasers who seek to buy military grade weapons.

⁶⁵ Robert Gebelhoff, *6 Solutions to Gun Violence That Could Work*, Washington Post (Jun. 2, 2022), <https://www.washingtonpost.com/graphics/2018/opinions/gun-control-that-works/>.

⁶⁶ *Id*; see also Webster, et al., *Effects of a Gun Dealer's Change in Sales Practices on the Supply of Guns to Criminals*, 83(5) J. Urban Health 778 (2006), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2438583/>.

Evidence shows that such steps are effective. For example, Virginia limited bulk gun sales through a one-gun-a-month law in 1993. Significantly fewer crime guns were thereafter traced back to Virginia dealers, demonstrating that “limiting the purchase of handguns to no more than 1 per month per person is an effective means of disrupting the illegal interstate transfer of firearms.” Douglas S. Weil and Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759, 1761 (1996); see also 141 Cong. Rec. S11,201-03 (Aug. 2, 1995) (Douglas S. Weil and Rebecca C. Knox, *Evaluating the Impact of Virginia’s One-Gun-A-Month Law*) (noting “a strong, consistent pattern in which guns originally obtained in the Southeast are less likely to be recovered as part of a criminal investigation and traced back to Virginia if they were purchased after the Virginia law went into effect”); *AcuSport, Inc.*, 271 F. Supp. 2d at 450 (finding as a fact, after trial, that “requiring retailers to avoid multiple or repeat sales to the same customers . . . [is] an effective way of checking illegal handgun diversion as revealed by the fact that Virginia, which was a major supplier of illegal handguns to New York,

almost immediately largely choked off that supply when it enacted a law limiting multiple sales to the same person”).

Amici curiae do not suggest that the district court must require manufacturers to “ban” bulk purchases; Virginia dealers, for example, still permit bulk sales when residents apply for a waiver of the one-gun-a-month limit. The vast majority of waiver applications are granted, without diminishing the efficacy of the policy. *See Study of Virginia’s Law on Handgun Purchase Limits*, Virginia State Crime Commission, at 7 (House Document No. 28, 1996) (concluding that “law-abiding gun purchasers in Virginia are not unduly burdened by Virginia’s one-gun-a-month law”).⁶⁷ By the same token, the district court could substantially remedy the harms caused by defendants’ practices, while still permitting lawful bulk purchases, by requiring defendants to take reasonable steps to ensure that dealers make bulk sales only with adequate documentation.

⁶⁷ *See also Fact Sheet on Virginia’s One-Handgun-A-Month Law*, The Virginia Center for Public Safety, <https://www.vacps.org/images/fact-sheet-on-one-handgun-a-month-law.pdf> (last visited Mar. 20, 2023).

Finally, the district court should require defendants to make long-promised manufacturing changes—changes that could increase safety and reduce death.⁶⁸ While data on nascent manufacturing measures is scarcer than data on retailer reforms, there is evidence that implementation of smart guns, trigger locks, and hidden serial numbers, for example, could profoundly reduce harms caused by firearms—as could manufacturing changes that would prevent criminals from easily converting guns to enable fully automatic fire.⁶⁹ Despite the defendants’ refusal to implement these safety measures, some of these forms of technology are already commercially available.⁷⁰

⁶⁸ Cf. Daniel Trotta, *Exclusive: Smart Guns Finally Arriving in U.S., Seeking To Shake Up Firearms Market*, Reuters (Jan. 11, 2022), <https://www.reuters.com/technology/exclusive-smart-guns-finally-arriving-us-seeking-shake-up-firearms-market-2022-01-11/> (“When Smith & Wesson pledged in 1999 to promote smart gun development, among other gun safety measures in an agreement with the U.S. government, the National Rifle Association sponsored a boycott that led to a drop in revenue.”).

⁶⁹ See Gebelhoff, *supra* note 65 (“One small study found that over seven years, 37 percent of gun deaths could have been prevented by smart guns.”); see also, e.g., David Hemenway, *Reducing Firearm Violence* 46 *Crime & Justice* 201, 210–211 (2017) (discussing manufacturing changes to make guns safer).

⁷⁰ See Compl. ¶¶ 99 (“Internal locks, and other features less sophisticated than smart guns, have been used in some guns sold to the public.”), 101 (“Defendants have long had the commercial and

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Courts have ordered reforms like these to curb illegal gun trafficking. For example, a Georgia court appointed a special master to administer a settlement between New York City and many gun dealers. The special master was directed “to ensure that each gun dealer complied with all applicable firearm sales laws.”⁷¹ Under the terms of the order, “[g]un dealers were required to allow the special masters to use in-store observation (including use of videotape surveillance); records monitoring . . . ; inventory inspections; random and repeated sales integrity testing; and instructional programs designed to provide best practices sales training to all employees involved in firearm sales.”⁷²

technological capability to install these safeguards in their guns.”), 365 (“For example, years ago Beemiller d/b/a Hi Point Guns began including a second hidden serial number on some guns.”); *see* Trotta, *supra* note 68 (detailing arrival of smart guns in America this year, including some that are already being beta tested by law enforcement).

⁷¹ Bloomberg, et al, *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* 126 (Daniel W. Webster and Jon S. Vernick eds., Johns Hopkins University Press 2013); *see also* Diane Cardwell, *2 Georgia Gun Dealers Settle Suit Brought by New York City* (Aug. 1, 2006), <https://www.nytimes.com/2006/08/01/nyregion/2-georgia-gun-dealers-settle-suit-brought-by-new-york-city.html>.

⁷² Bloomberg, et al., *supra* note 71, at 126.

The dealers were “also required to file a performance bond with the Court” that “required the gun dealer, usually within 15 days of its signing, to forfeit a designated amount of money to New York City anytime the special master found that the dealer sold a gun to a straw purchaser or violated other applicable gun sales laws and regulations.”⁷³ These simple changes made a world of difference. Following the settlement, the rate at which guns recovered by the New York Police Department were linked to these dealers dropped by more than 80 percent.⁷⁴

Likewise, Judge Weinstein of the U.S. District Court for the Eastern District of New York found as fact after a trial that there are “obvious and easily implemented steps” to reduce the harms caused by guns, including “requiring retailers to avoid multiple or repeat sales to the same customers.” *AcuSport, Inc.*, 271 F. Supp. 2d at 504. Other approaches that manufacturers could have employed “include[ed] ‘imposing liability insurance standards; limiting sales at gun shows; limiting multiple sales; limiting how the consumer gun transaction can

⁷³ *Id.* at 126–27.

⁷⁴ *Id.* at 128–29

be conducted to insure security; education and training of dealers; and monitoring dealers through visitation and other regular interaction.”
Id. at 523. Judge Weinstein imposed no remedy only because he found plaintiffs had not carried their burden related to New York’s law of nuisance.⁷⁵

At this stage of the case, the Court need not determine the proper form of any specific remedy; lay and expert discovery will develop evidence bearing on that inquiry. Amici curiae offer these observations on remedy at this stage only to assure the Court that, once the case is remanded and Mexico has an opportunity to prove its case, the district court can craft a decree compelling the defendants to take commonsense steps that could not only ensure their compliance with state, federal, and

⁷⁵ As noted in the Complaint, the efficacy and practicability of the remedies Mexico requests are also borne out by the inclusion of many of those remedies in a global settlement between defendant Smith and Wesson and the United States Department of Justice. Under the Settlement, Smith and Wesson agreed to a variety of sales, distribution, and manufacturing controls intended to reduce gun violence. *See* Press Release, The White House, Clinton Administration Reaches Historic Agreement with Smith and Wesson (Mar. 17, 2000), https://clintonwhitehouse4.archives.gov/WH/New/html/20000317_2.html.

international laws but also save many lives, not only in Mexico but also throughout the LAC region.

CONCLUSION

The Court should vacate the district court's decision and remand the case for further proceedings.

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Robert J. Gonzalez, counsel for amici curiae and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 29(a)(4) and 32(g)(1), that the attached Brief of Amici Curiae is proportionally spaced, has a typeface of 14 points or more, and contains 5,198 words, excluding the portions exempted by Rule 32(f).

/s/ Roberto J. Gonzalez
ROBERTO J. GONZALEZ

MARCH 21, 2023

CERTIFICATE OF SERVICE

I, Roberto J. Gonzalez, a member of the Bar of this Court, certify that, on March 21, 2023, the foregoing brief was filed with the Clerk of the Court through the electronic-filing system, and service was made on all counsel of record via the Court's electronic-filing system.

/s/ Roberto J. Gonzalez
ROBERTO J. GONZALEZ