



GLOBAL ACTION
ON GUN VIOLENCE

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**IA Court Hearing Testimony (Arturo Carrillo)
November 28, 2023**

Buenos días, good morning. My name is Arturo Carrillo, I am a professor at the George Washington University Law School, where I direct the Civil and Human Rights Law Clinic. I am speaking on behalf of myself as well as Jon Lowy and the non-profit he directs, Global Action on Gun Violence, known as GAGV. Together we submitted a brief to this Honorable Court in August. I am also affiliated with GAGV, as the Project Lead for Human Rights. This testimony will highlight key factors that contribute to how gun manufacturers, distributors, and dealers in the United States (“collectively referred to as the gun industry”) make, sell, and distribute guns to civilians in ways that supply the criminal market; contribute to gun deaths and injuries; fuel transnational crime; and infringe on fundamental human rights.

1.

Gun violence is a global crisis that results in massive casualties: each year over 250,000 people die from gunfire worldwide.ⁱ The ten countries with the highest rates of violent gun deaths are all in this hemisphere.ⁱⁱ In fact, over half of global gun deaths occur in just five countries: Brazil, the United States, Venezuela, Mexico, and Colombia.ⁱⁱⁱ This panorama is no coincidence. The United States is the nation that produces the most firearms in the world, as well as the one that fails to regulate the manufacture, distribution, and sale of guns in a reasonable way.^{iv}

This confluence of extraordinary firearm production and weak gun control laws in the United States creates a thriving gun market for criminals and the gun traffickers who supply them. Firearms tracing data confirms the source of the regional public security crisis: firearms trafficked from the United States.^v Some estimates point to “[b]etween 70 and 90 percent of guns recovered at crimes scenes in Mexico” being traceable back to the U.S.”^{vi} This pattern is reproduced in several other countries like Jamaica, Haiti, and Canada.^{vii}

Global Action on Gun Violence was founded a year ago to address this exact problem. To that end, GAGV and Mr. Lowy have filed lawsuits on behalf of Mexico in U.S. federal courts against major U.S. gun manufacturers^{viii} and U.S. gun dealers in Arizona.^{ix} These cases directly address the transboundary harms Mexico has suffered because of the U.S. gun industry’s role in facilitating gun trafficking across the U.S.-Mexico border.

Mexico and GAGV filed their first case against major U.S. gun manufacturers, “to put an end to the massive damage [these manufacturers] cause by actively facilitating the unlawful trafficking of their guns to cartels and other criminals in Mexico.”^x Mexico argues that its citizens are victims of the U.S. gun industry’s abusive business practices that feed the flood of firearms across the border into criminal hands, because that flood of guns is a foreseeable consequence of those practices.^{xi} Specifically, U.S. gun manufacturers design, market, and sell

guns in ways they know routinely target drug cartels in Mexico.^{xii} Examples of these tactics include recklessly marketing assault weapons and designing these “guns to be easily modified to fire automatically and to be readily transferable on the criminal market in Mexico.”^{xiii} The case is pending before the U.S. Court of Appeals for the First Circuit.

The second joint Mexico-GAGV action was filed against Arizona firearms dealers, which the Mexican government alleges “systematically participate in trafficking military-style weapons and ammunition to drug cartels in Mexico by supplying gun traffickers.”^{xiv} Their claim is that these dealers “know or should know that their reckless and unlawful business practices . . . supply dangerous criminals in Mexico,” but continue to engage in such practices because they are profitable.^{xv} This case is pending before the U.S. District Court for the District of Arizona.

These lawsuits are stark examples of the transnational impact caused by the U.S. gun industry’s complicity in cross-border gun trafficking. They denounce the transboundary harms and human rights abuses that result as a foreseeable consequence of that criminal activity, which the U.S. gun industry knowingly facilitates. Ultimately, these cases strive to put a stop to that industry’s business practices that fuel the diversion of firearms into criminal markets.

2.

As this Honorable Court has repeatedly recognized, OAS Member States like the United States must exercise due diligence to protect human rights under regional human rights law.^{xvi} In the present context, this means that the State is obligated to enact an adequate and effective regulatory framework for its domestic gun industry. It must also enforce that regulatory framework to prevent foreseeable negative impacts on the enjoyment of human rights in its own territory as well as extraterritorially, and to provide access to justice for victims of abusive gun industry practices. With respect to the right to life and the other fundamental human rights, due diligence is the “benchmark” for determining when an OAS Member State is obligated “to prevent and respond to the acts or omissions of private actors,”^{xvii} like those in the gun industry. States must adopt “the necessary measures to create an *adequate* regulatory framework that deters *any* threat to [the] right to life.”^{xviii} This duty “encompasses the organization of the entire state structure – including the State’s legislative framework, public policies, law enforcement machinery and judicial system[.]”^{xix} Crucially, it arises whenever a State is “aware of a situation of real and imminent danger for a specific individual or group of individuals and has reasonable possibilities of preventing or avoiding that danger,”^{xx} which is precisely the scenario of gun-fueled violence and criminality in the United States.

With respect to harm caused by the U.S. based gun industry beyond the country’s borders, the State is clearly “in a position to prevent [those actors] from [contributing to foreseeable] transboundary harm that impacts the enjoyment of human rights of persons outside its territory.”^{xxi} But it has not done so. This duty to regulate and prevent transnational harm arises because the business conduct at issue – recklessly producing and selling guns -- is inherently hazardous in nature, and its cross-border effects, namely, arms trafficking and gun violence, are foreseeable.^{xxii} Studies confirm that violent criminal cartels in Mexico and elsewhere, armed with weapons made in the United States, are the primary beneficiaries of the gun trafficking enabled by the State’s lax gun laws and ineffective enforcement.^{xxiii} A recent legislative attempt by the

U.S. Congress to address the problem of arms trafficking, the 2022 Stop Illegal Trafficking Firearms Act,^{xxiv} does nothing to regulate the gun industry sources of trafficking, relying instead on raising the penalties for those charged with illegal trafficking of firearms.

3.

In the United States, a framework of lax gun laws provides ready access to firearms, grants generous immunity from civil liability for gun manufacturers and distributors, and enables dealers to sell guns that are easily obtained by criminals and gun traffickers. The sheer number of firearms manufactured in the United States, together with the ease with which firearms can be purchased, carried, and moved across internal state borders, enables gun trafficking across national borders as well.^{xxv} The United States famously has more guns than people – some 400 million.^{xxvi} Every year, hundreds of thousands of those guns flood across the U.S.’s southern border into Mexico and arm the deadly cartels there: estimates range from 200,000 to 500,000 trafficked firearms per year.^{xxvii}

Gun manufacturers, distributors and dealers contribute to illicit flows of firearms in and out of the United States through a process known as “diversion.” Diversion “[is] any movement of firearms from the legal to the illegal marketplace through an illegal method for an illegal purpose.”^{xxviii} Manufacturers generally choose to supply the retail gun market through a three-tier distribution system that is easily abused.^{xxix} As a result, most “illegal guns” begin as “legal guns” and are then diverted to the illegal market; those guns are transferred or sold in private sales that are wholly unregulated.^{xxx}

Indeed, federal law imposes minimal legal restrictions on gun manufacturers and sellers. There are no requirements for buyers to obtain a license before acquiring a firearm; no background checks into the buyer’s mental health; and, aside from age, no restrictions on obtaining assault weapons – unlike the law in virtually all other OAS countries.^{xxxi} Sellers are not required to adopt safe sales practices to minimize the risk of diversion to the criminal market.^{xxxii} In practice, manufacturers will supply *any* distributor or dealer who has a federal license, despite evidence that a significant percentage of sellers engage in illegal and reckless business practices.^{xxxiii} Firearm manufacturers could offer their weapons to the public through responsible dealers who do not sell to criminals or their proxies directly, but they choose not to. There are no laws or legal authorities in the United States to require them to act in the more responsible way.^{xxxiv}

Nor does the United States respond effectively to corrupt dealers who collaborate with gun traffickers, exploiting the lack of meaningful legal regulation for profit. For example, U.S. law permits gun dealers to engage in high volume firearm sales and repeat transactions to one customer without question; these practices are often indicators of a firearms trafficking operation.^{xxxv} By comparison, Mexico has only one gun shop which is run by the military and only allows licensed gun owners to possess two firearms for legitimate defense purposes.^{xxxvi} The United States does not even enforce the minimal regulations that do exist for gun dealers. Sellers are rarely shut down, even when they are found to have violated federal gun laws.^{xxxvii} Some dealers are allowed to retain their license even after they have been caught engaging in illegal conduct that arms the criminal market.^{xxxviii}

The weak regulatory framework for gun control that does exist is further undermined by legislation that either strengthens gun rights or shields gun industry actors from legal liability. We describe this deficient framework in Part II of our brief; I would highlight just a few aspects of it here. The first is that the domestic gun industry in the United States enjoys an exclusive exemption from even the most basic consumer protection regulations; it is the only consumer product industry protected in this way.^{xxix} The second is the Protection of Lawful Commerce in Arms Act, or PLCAA, enacted by the U.S. Congress in 2005, which gives manufacturers and other gun industry actors immunity from civil liability that no other industry, business, or consumer product enjoys.^{xi} As intended, PLCAA has led to the dismissal of multiple lawsuits that could have held gun companies accountable, and generally acts as deterrent to litigation.^{xli}

A third example of how the lack of reasonable gun control laws fuels gun violence and trafficking is the U.S. government's failure to prohibit military-style assault weapons for civilian use. The United States banned the sale of assault weapons from 1994-2004, leading to a marked decrease in gun massacres carried out with that type of weapon.^{xlii} The U.S. Congress's failure to renew the ban led to a rise in the use of assault weapons in mass shootings in the United States.^{xliii} Because of their lethality, assault weapons are often used to perpetrate gun massacres, including those at Sandy Hook Elementary School and Parkland high school.^{xliiv} They are also preferred by criminal organizations in Mexico and elsewhere for the same reason..

The combination of little-to-no regulation and legal protection from accountability enables the U.S. gun industry to make, market and sell firearms, including assault weapons, in a reckless, and sometimes illegal, manner that leads to violations of human rights throughout the Western Hemisphere.^{xliv} In Mexico, the percentage of homicides committed with a gun rose from 25% in 2004 to more than 69% in 2018, which coincided with the increased production of assault weapons in the U.S. after 2005 when the assault weapons ban expired.^{xlvi} In response to the subsequent influx of assault rifles throughout the region, Caribbean Community (CARICOM) leaders met last April and "agreed on plans to introduce bans in their countries on assault-style weapons mostly manufactured in the U.S."^{xlvii} Clearly the United States is not taking this problem as seriously as its neighbors.

Thank you.

ⁱ See *Gun Deaths by Country 2023*, World Population Rev., <https://worldpopulationreview.com/country-rankings/gun-deaths-by-country>.

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

ⁱⁱⁱ See *id.*

^{iv} Small Arms Survey, *Global Firearms Holdings*, Mar. 29, 2020, <https://www.smallarmssurvey.org/database/global-firearms-holdings>.

^v See generally *Firearms Trace Data – 2021*, ATF, <https://www.atf.gov/resource-center/firearms-trace-data-2021>.

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- ^{vi} Liz Mineo, *Stopping toxic flow of guns from U.S. to Mexico*, Harv. Gazette (Feb. 18, 2022), <https://news.harvard.edu/gazette/story/2022/02/stopping-toxic-flow-of-gun-traffic-from-u-s-to-mexico/>. See also *Firearms Trace Data: Mexico – 2016-2021*, ATF, <https://www.atf.gov/resource-center/firearms-trace-data-mexico-2016-2021>.
- ^{vii} See, e.g., Sarah Morland, *Caribbean armed violence fueled by small-scale gun traffickers, report says*, REUTERS, April 26, 2023 (discussing report noting U.S. trafficking as major source), <https://www.reuters.com/world/americas/caribbean-armed-violence-fueled-by-small-scale-gun-traffickers-report-2023-04-26/>; Government of Canada, *Firearms, Accidental Deaths, Suicides and Violent Crime: An Updated Review of the Literature with Special Reference to the Canadian Situation*, https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/wd98_4-dt98_4/p9.html.
- ^{viii} See Complaint, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 1:21-cv-11269 (D. Mass. Aug. 4, 2021), https://www.gob.mx/cms/uploads/attachment/file/720300/01_Estados_Unidos_Mexicanos_vs_Smith_Wesson_Brand_et_al_4.08.21.pdf (“Mexico Mass. Compl.”).
- ^{ix} See Complaint, *Estados Unidos Mexicanos v. Diamondback Shooting Sports, Inc.*, 4:22-cv-00472-JR (D. Ariz. Oct. 10, 2022), https://www.gob.mx/cms/uploads/attachment/file/767153/Arizona_Dealer_Complaint-Official.pdf (“Mexico Ariz. Compl.”).
- ^x Mexico Mass. Compl. at para. 1.
- ^{xi} *Id.*
- ^{xii} *Id.*
- ^{xiii} *Id.* at para. 3.
- ^{xiv} Mexico Ariz. Compl., at para. 1.
- ^{xv} *Id.*
- ^{xvi} See *Joint Submission of Observations on Request for Advisory Opinion by the State of Mexico Regarding the Activities of Private Companies engaged in the Firearms Industry and Their Effects on Human Rights* (hereinafter “Joint Submission Brief”), Global Action on Gun Violence and The George Washington Law School Civil and Human Rights Law Clinic, para 83.
- ^{xvii} *Lenahan v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (July 21, 2011), at para. 125.
- ^{xviii} *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment, Inter-Am. Cr. H.R., Series C No. 257, para. 172 (Nov. 28, 2012). (Emphasis added).
- ^{xix} *Lenahan v. United States*, at para. 125.
- ^{xx} *Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Cr. H.R., Series C, (Oct. 10, 2013), at para. 123; *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Cr. H.R., Series C (Jan. 31, 2006), at para. 123.
- ^{xxi} See Inter-Amer. Ct. H.R., *The Environment and Human Rights*, Advisory Opinion OC-23/17, (Nov. 15, 2017), para. 102.
- ^{xxii} See *id.* at para. 102, 135.
- ^{xxiii} See Nina Lakhani, Dana Priest, & Paloma Dupont, *Murder in Mexico: journalists caught in the crosshairs*, THE GUARDIAN, December 6, 2020, <https://www.theguardian.com/world/2020/dec/06/murder-in-mexico-journalists-caught-in-the-crosshairs-regina-martinez-cartel-project>; THE ECONOMIST, *Mexico’s gangs are becoming criminal conglomerates*, May 11, 2023, <https://www.economist.com/the-americas/2023/05/11/mexicos-gangs-are-becoming-criminal-conglomerates>; Sam Garcia, *How Texas’s gun laws allow Mexican cartels to arm themselves to the teeth*, THE GUARDIAN, October 17, 2022, <https://www.theguardian.com/us-news/2022/oct/17/texas-lax-gun-laws-us-mexico-border>; THE ECONOMIST, *Several violent episodes in Mexico suggest a worrying trend, September 1, 2022*, <https://www.economist.com/the-americas/2022/09/01/several-violent-episodes-in-mexico-suggest-a-worrying-trend>.
- ^{xxiv} 18 U.S.C. § 932-934.
- ^{xxv} See Sam Garcia, *How Texas’s gun laws allow Mexican cartels to arm themselves to the teeth*, THE GUARDIAN, Oct. 17, 2022, <https://www.theguardian.com/us-news/2022/oct/17/texas-lax-gun-laws-us-mexico-border>; THE ECONOMIST, *Mexico’s gangs are becoming criminal conglomerates*, May 11, 2023, <https://www.economist.com/the-americas/2023/05/11/mexicos-gangs-are-becoming-criminal-conglomerates>; THE ECONOMIST, *Small, sensible steps could help ease America’s border woes*, May 11, 2023, <https://www.economist.com/leaders/2023/05/11/small-sensible-steps-could-help-ease-americas-border-woes>.
- ^{xxvi} Jennifer Mascia and Chip Brownlee, *How Many Guns Are Circulating in the U.S.?*, THE TRACE, March 6, 2023, <https://www.thetrace.org/2023/03/guns-america-data-atf-total/>.

^{xxvii} See THE ECONOMIST, *Several violent episodes in Mexico suggest a worrying trend*, September 1, 2022, <https://www.economist.com/the-americas/2022/09/01/several-violent-episodes-in-mexico-suggest-a-worrying-trend> (citing estimates of 200,000 guns).; *versus* Garcia, *supra* note **Error! Bookmark not defined.**(quoting Mexican official figures of 500,00 guns).

^{xxviii} ATF, *FOLLOWING THE GUN: ENFORCING FEDERAL LAWS AGAINST FIREARMS TRAFFICKERS* at 3 (2000), <https://www.hsdl.org/?view&did=1622>.

^{xxix} See Kevin D. Bradford et al., *Countermarketing in the Courts: The Case of Marketing Channels and Firearms Diversion*, 24(2) JOURNAL OF PUB. POLICY & MARKETING 284 (2005), https://www.researchgate.net/publication/237803755_Countermarketing_in_the_Courts_The_Case_of_Marketing_Channels_and_Firearms_Diversion.

^{xxx} *Id.* See also 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>.

^{xxxi} U.N. CASA, June 11, 2015, International Small Arms Control Standard (ISACS) 03.30:2015IV1.0.

^{xxxii} 18 U.S.C. 921 et seq.; 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>.

^{xxxiii} See ATF, *FOLLOWING THE GUN: ENFORCING FEDERAL LAWS AGAINST FIREARMS TRAFFICKERS* at 3 (2000), <https://www.hsdl.org/?view&did=1622>; 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>; *City of Gary v. Smith and Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003) <https://casetext.com/case/city-of-gary-v-smith-and-wesson-corp>; Brian Freskos, Dabie Nass, Alain Stephens, *After repeated ATF warnings, gun dealers can count on the agency to back off; sometimes firearms flow to criminals*, USA Today, 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/>; The problem of corrupt dealers has been well known for decades, see, e.g., Jack Cheevers, *Corrupt Licensed Dealers Called Key Source of Handguns Used in Southland Crimes*, LOS ANGELES TIMES, April 19, 1995, <https://www.latimes.com/archives/la-xpm-1995-04-19-me-56331-story.html>; 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.”), <https://www.courtlistener.com/opinion/2563669/naacp-v-acusport-inc/?page=351>.

^{xxxiv} See Joint Submission Brief, para 10.

^{xxxv} See, e.g., Christopher Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearms, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, Report to the National Institute of Justice, Department of Justice, 2007, <https://www.ojp.gov/pdffiles1/nij/grants/221074.pdf>.

^{xxxvi} Kate Linthicum, *There is only one gun store in all of Mexico. So why is gun violence soaring?*, LOS ANGELES TIMES, May 24, 2018, <https://www.latimes.com/world/la-fg-mexico-guns-20180524-story.html>.

^{xxxvii} 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 Brady United, *Explore Gun Store Inspection Reports*, Gun Store Transparency Project, <https://gunstoretransparency.org/?table-page=1>.

^{xxxviii} *Id.*

^{xxxix} See, e.g., Consumer Product Safety Act, 15 U.S.C. §§2051-2084 (excluding firearms from federal product safety regulations).

^{xl} Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901–7903. See Everytown for Gun Safety, *Repeal Gun Industry Immunity*, <https://www.everytown.org/solutions/industry-reform/>.

^{xli} See, e.g., *City of New York v. Beretta*, 524 F.3d 384 (2d Cir. 2008) (dismissing lawsuit against gun manufacturers alleging negligent supply of criminal gun market as barred by PLCAA); see Joint Submission Brief para. 14; see generally 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/>.

^{xlii} See, e.g., Christopher Ingraham, *It’s time to bring back the assault weapons ban, gun violence experts say*, THE WASHINGTON POST, February 15, 2018 (discussing research in Louis Klaveras, *Rampage Nation*),

<https://www.washingtonpost.com/news/wonk/wp/2018/02/15/its-time-to-bring-back-the-assault-weapons-ban-gun-violence-experts-say/?noredirect=on>.

^{xliii} See Joint Submission Brief, para 23 and accompanying footnote; 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/>.

^{xliiv} See, e.g., Jonathan Franklin, *How AR-15-style rifles write the tragic history of America's mass shootings*, NPR, May 10, 2023, <https://www.npr.org/2023/05/10/1175065043/mass-shootings-america-ar-15-rifle>.

^{xlv} See Mexico Mass. Compl. at para. 13-14; Linthicum, *There is only one gun store in all of Mexico. So why is gun violence soaring?* (2018).

^{xlvi} Mexico Mass. Compl. at para. 443; See also Eugenio Weigend Vargas & Silvia Villarreal González, *Regulatory challenges for preventing firearms smuggling into Mexico*, 7 Mex. L. Rev. 2 (2015) accessible

at <https://www.elsevier.es/en-revista-mexican-law-review-123-articulo-regulatory-challenges-for-preventing-firearms->

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^{xlvii} *Caribbean leaders agree on plan to ban assault-style weapons*, AP NEWS (Apr. 19, 2023),

<https://apnews.com/article/caribbean-assault-weapon-ban-caricom-rowley-4fd922b08f52031161a0de395613fe2f>.