

MEXICO'S GUN-CONTROL LAWS: A MODEL FOR THE UNITED STATES?

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The author completed all Spanish-English translations.

I. INTRODUCTION

The United States of America and the United Mexican States (Mexico) are the two largest nations with an explicit constitutional right to arms. In practice, the right is much weaker in Mexico than in the United States. President Obama is among the many U.S. gun-control advocates who have offered proposals that would make U.S. gun laws more like Mexico's gun laws.

Like President Obama, former Mexican President Felipe Calderón claims to have “a great deal of respect for the U.S. legislation, especially the Second Amendment.”¹ In an address to a joint session of Congress, President Calderón proclaimed: “I fully respect, I admire the American Constitution. And I understand that the purpose of the Second Amendment is to guarantee good American citizens the ability to defend themselves and their nation.”² Both President Obama and President Calderón also seem to view changing U.S. gun laws so that they more closely resemble Mexican gun laws as being consistent with the Second Amendment.

This article explicates Mexico's constitutional right to arms and Mexico's main gun-control statute, the Federal Law of Firearms and Explosives (*Ley Federal de Armas de Fuego y Explosivos*). Along the way, the article notes various proposals to move U.S. gun laws in a Mexican direction.

Part II of this article is an English translation of the Mexican constitution's guarantee of the right to arms, as well as predecessor versions of the guarantee.

Part III explains the operation of Mexico's gun-control system and provides some historical and statistical information about gun ownership and gun smuggling in Mexico.

Part IV describes some of the past and present cross-border trade in arms between the United States and Mexico and potential legal ramifications.

The Appendix provides a translation of the Mexican federal

1. Felipe Calderón, President of Mexico, Joint Press Conference by President Obama, President Calderón of Mexico, and Prime Minister Harper of Canada (Apr. 2, 2012).

2. Justin Sink, *Mexican President: US Should Reconsider 'Mistaken' Gun Laws*, THE HILL (July 22, 2012, 6:18 PM), <http://thehill.com/blogs/twitter-room/other-news/239369-calderon-us-should-reconsider-mistaken-gun-laws-after-tragedy> [<http://perma.cc/386U-QFSN>].

government's current gun-control statute. The Appendix also offers some explanatory footnotes to the statute when appropriate for better understanding.

II. CONSTITUTION OF MEXICO

Like three other nations in the region,³ Mexico's constitution guarantees the personal right to arms:

Article 10. The inhabitants of the United Mexican States have a right to arms in their homes, for security and legitimate defense, with the exception of arms prohibited by federal law and those reserved for the exclusive use of the Army, Navy, Air Force, and National Guard. Federal law will determine the cases, conditions, requirements, and places in which the carrying of arms will be authorized to the inhabitants.⁴

The above language is a revision of the 1917 constitution, which stated:

Article 10. The inhabitants of the United Mexican States are entitled to have arms of any kind in their possession for their protection and legitimate defense, except such as are expressly

3. For other nations, see CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA art. 38:

Possession and carrying of arms. The right of possession of arms for personal use is recognized, not prohibited by the law, in the home. There will be no obligation to surrender them, save in cases that are ordered by a competent judge. The right of carrying of arms is recognized, and regulated by the law.

The official text reads:

Tenencia y portación de armas. Se reconoce el derecho de tenencia de armas de uso personal, no prohibidas por la ley, en el lugar de habitación. No habrá obligación de entregarlas, salvo en los casos que fuera ordenado por el juez competente. Se reconoce el derecho de portación de armas, regulado por la ley.

See also LA CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI art. 268-1: ("Every citizen has the right to armed self defense, within the bounds of his domicile, but has no right to bear arms without express well-founded authorization from the Chief of Police." The official text reads: "*Tout citoyen a droit à l'auto-défense armée, dans les limites de son domicile mais n'a pas droit au port d'armes sans l'autorisation expresse et motivée du Chef de la Police.*"); U.S. CONST. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.").

4. The official text in Spanish reads:

Artículo 10. Los habitantes de los Estados Unidos Mexicanos tienen derecho a poseer armas en su domicilio, para su seguridad y legítima defensa, con excepción de las prohibidas por la Ley Federal y de las reservadas para el uso exclusivo del Ejército, Armada, Fuerza Aérea y Guardia Nacional. La ley federal determinará los casos, condiciones, requisitos y lugares en que se podrá autorizar a los habitantes la portación de armas.

Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 10, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

forbidden by law, or which the nation may reserve for the exclusive use of the army, navy, or national guard; but they may not carry arms within inhabited places without complying with police regulations.⁵

The current version replaced “are entitled” with “have a right,” but the right is now limited to the home.

In the 1857 constitution, there was an explicit right to carry: “Article 10. Every man has the right to have and to carry arms for his security and legitimate defense. The law will indicate which arms are prohibited and the penalty for those that will carry prohibited arms.”⁶ The later versions, besides eliminating the right to carry, phrased the right in gender-neutral language.

In the United States, some courts have read the Second Amendment as if it were Mexico’s article 10—a right confined solely to the home.⁷ Today, a law-abiding adult in all 50 states can obtain a permit to carry a concealed firearm for lawful protection,⁸ or even carry without a permit in some states.⁹ When running for U.S. Senate in 2004, Barack Obama endorsed a federal bill “banning concealed carried weapons except for law enforcement” that would have preempted all state laws.¹⁰

5. As enacted in 1917, article 10 stated:

Artículo 10: Los habitantes de los Estados Unidos Mexicanos tienen libertad de poseer armas de cualquiera clase, para su seguridad y legítima defensa, hecha excepción de las prohibidas expresamente por la ley y las que la nación reserve para el uso exclusivo del Ejército, Armada y Guardia Nacional; pero no podrán portarlas en las poblaciones sin sujetarse a los reglamentos de policía.

Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 10, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/Constitucion/1917.pdf> [<http://perma.cc/0ptLf58LzvV>].

6. The 1857 version: “Artículo 10: Todo hombre tiene derecho de poseer y portar armas para su seguridad y legítima defensa. La ley señalará cuales son las prohibidas y la pena en que incurren los que las portaren.” Constitución Federal de los Estados Unidos Mexicanos [C.F.], art. 10, Diario Oficial de la Federación [DO], 5 de Febrero de 1857 (Mex.), available at <http://www.ordenjuridico.gob.mx/Constitucion/1857.pdf> [<http://perma.cc/0Knezzr227Pz>].

7. See, e.g., *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011) (finding no right to carry a handgun in a motor vehicle within a national park); *Williams v. State*, 10 A.3d 1167 (Md. 2011) (finding no right to carry a firearm for lawful self-defense outside one’s home).

8. Charles C. W. Cooke, *All 50 States Now Enjoy Concealed-Carry*, NAT’L REV. ONLINE (July 10, 2013, 1:48 PM), <http://www.nationalreview.com/corner/353094/all-50-states-now-enjoy-concealed-carry-charles-c-w-cooke> [<http://perma.cc/0hcK2MAdyux>]. In eight states (or in some cities or counties of those eight), carry permit applications may be handled as they are in Mexico, with permits denied to everyone except special favorites of the issuing authority. Those states are California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island.

9. See STEPHEN P. HALBROOK, *FIREARMS LAW DESKBOOK* app. A (2012–2013 ed.).

10. Liam Ford, *Keyes Backs Law on Concealed Guns*, CHIC. TRIB., Aug. 25, 2004,

III. AN OVERVIEW OF MEXICAN GUN CONTROL

Despite the Mexican constitution guaranteeing the right to arms, Mexico has repressive statutory gun-control laws. These laws heavily regulate the ownership of guns and incorporate a strict permitting system.

A. Background and Summary of the Law

In the late 1960s and early 1970s, civil unrest in the United States and Mexico led to important restrictions on firearms.¹¹ Before then, many types of rifles and handguns were freely available in Mexico.¹² Anti-government student movements scared the Mexican government into closing firearms stores and registering all weapons.¹³ Mexico's Federal Law of Firearms and Explosives, enacted in 1972, established a Federal Arms Registry controlled by the Ministry of National Defense.¹⁴

http://articles.chicagotribune.com/2004-08-25/news/0408250096_1_concealed-gun-ownership-people [<http://perma.cc/0bbysVzWvVc>].

11. For the United States, see The Gun Control Act of 1968, 18 U.S.C. §§ 921–931 (2012). See also David B. Kopel, *The Great Gun Control War of the Twentieth Century—And Its Lessons for Gun Laws Today*, 39 *FORDHAM URB. L.J.* 1527, 1542–50 (2012). For Mexico, see Robert Farago, *Fewer Firearms, More Crime*, *WASH. TIMES*, Oct. 1, 2010, <http://www.washingtontimes.com/news/2010/oct/1/fewer-firearms-more-crime/> [<http://perma.cc/0DFJJvRM2By>].

12. Marlise Simons, *Mexico Imposes Tough New Controls on Guns*, *WASH. POST*, June 6, 1972, at A3. In the middle of the twentieth century, Mexico had been a popular hunting destination for Americans. In 1948, Mexican hunters invented a new shooting sport called silhouette shooting—shooting at metal silhouette targets in the shape of game animals. *History of IMSSU*, INTERNATIONAL METALLIC SILHOUETTE SHOOTING UNION, <http://www.imssu.org/history.aspx> [<http://perma.cc/0Ygpb4msn>] (last visited Jan. 7, 2014). The sport was created because Mexican hunters were looking for ways to sharpen their eyes between hunting seasons, so they began shooting at live animals who had been tied in place on a high ridgeline, visible in silhouette from hundreds of yards away. Whoever shot the animal would win a prize. American hunters near the Mexican border—most notably the Tucson Rifle Club—adopted the sport, but used life-sized metal targets instead; hence the sport's name of *Siluetas Metalicas*. *Metallic Silhouettes*, TUCSON RIFLE CLUB, http://www.tucsonrifleclub.org/Silhouette_Intro.shtml [<http://perma.cc/0UMpa5LdkVT>] (last updated June 27, 2008). The sport originally used high-power rifles to shoot at metal silhouettes of wild chickens, javelinas, turkeys, sheep, and other game. *Id.* In the 1970s, the National Rifle Association put silhouette shooting into its competition schedule. *History of IMSSU*, *supra*. Since then, the sport has spread worldwide, and many competitive shooters specialize in silhouette competition. *Id.* The NRA created separate classes for small-bore rifles, air rifles, and pistols. *NRA SILHOUETTE COMPETITION 2* (National Rifle Association ed., May 2011). This allowed the competitions to take place on much smaller ranges than the 500-meter ranges which had been standard for the high-power event. *Id.* *Siluetas Metalicas* remains the proper name for silhouette shooting with high-power rifles (6mm and up). *Id.*

13. Chris Hawley, *Mired in Violence, Gun-Strict Mexico Points to U.S.*, *ARIZ. REPUBLIC*, Apr. 1, 2009, http://www.azcentral.com/news/articles/2009/04/01/20090401_0negunstore0401.html [<http://perma.cc/04tkrZWWdgn>].

14. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 7, *Diario Oficial de la Federación* [DO], 11 de Enero de

Mexican compliance with registration has been low. The Small Arms Survey, an international gun-control think tank, guesstimates that there are about 15.5 million total firearms in civilian hands in Mexico,¹⁵ but acknowledges that the size of the civilian gun stock is very murky.¹⁶ About 4.5 million of these firearms are legally registered.¹⁷ A study conducted using polling techniques designed to elicit indirect disclosures of gun ownership estimated that 5.6 million Mexican homes, comprising 14% of Mexican households, have a firearm.¹⁸ In high violence areas, 50% of poor households have a gun.¹⁹ Generally speaking, firearms are readily available on the black market to Mexicans who want to obtain guns for self-defense or for criminal purposes.²⁰

In early 2013, residents of communities in Tierra Caliente formed self-defense groups for protection against the cartels.²¹

1972 (Mex.).

15. SMALL ARMS SURVEY 2007: GUNS AND THE CITY 47 (Graduate Institute of International Studies ed., 2007), available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/full/Small-Arms-Survey-2007-Chapter-02-EN.pdf> [<http://perma.cc/0Z96KfCV2FZ>]. The Small Arms Survey is a research institution at the Graduate Institute of International Studies in Geneva, Switzerland. *About the Small Arms Survey*, SMALL ARMS SURVEY, <http://www.smallarmssurvey.org/about-us/mission.html> [<http://perma.cc/0YAo5PKU2mP>] (last visited Nov. 15, 2013).

16. SMALL ARMS SURVEY 2003: DEVELOPMENT DENIED 87 (Graduate Institute of International Studies ed., 2003), available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2003/en/Small-Arms-Survey-2003-Chapter-02-EN.pdf> [<http://perma.cc/0WpcYRPhuQ6>] (“Even though [Brazil] may have the largest public firearms stockpiles in all of Latin America, anything beyond informed speculation about the national total remains impossible. The same may be true of Mexico, but even less is known about the situation there.”).

17. SMALL ARMS SURVEY 2007: GUNS AND THE CITY app. 3 (Graduate Institute of International Studies ed., 2007), available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-3-EN.pdf> [<http://perma.cc/0yRaSg8aUQ8>].

18. ALBERTO DÍAZ-CAYEROS, BEATRIZ MAGALONI, AILA MATANOCK & VIDAL ROMERO, LIVING IN FEAR: MAPPING THE SOCIAL EMBEDDEDNESS OF DRUG GANGS AND VIOLENCE IN MEXICO 31–33 (2011), available at <http://irps.ucsd.edu/assets/001/502978.pdf> [<http://perma.cc/0MYSK85zAsK>].

19. *Id.* at 37. The authors explain that one reason for gun ownership is that: [C]itizens in Mexico are trapped in between two illegitimate forces—the drug cartels and the police who are in charge of protecting them. Our results demonstrate the extent to which both sides prey on ordinary citizens, asking them for money in exchange for protection. Although the [cartels] extort citizens the most in high violence regions and the police in low violence ones, both forms of extortion are present everywhere in Mexico.

Id. at 47.

20. John Burnett, *Law-Abiding Mexicans Taking Up Illegal Guns*, NPR (Jan. 28, 2012, 6:16 AM), <http://www.npr.org/2012/01/28/145996427/mexican-community-takes-taboo-stance-on-guns> [<http://perma.cc/0z5rk5DCXYg>].

21. Katherine Corcoran, *Local Fight with Mexican Cartel Provides Small Victory*, DAILY CAMERA (Boulder), Nov. 8, 2013, at 8A, available at <http://www.dailycamera.com/nation>

These groups now have several thousand members and have succeeded at liberating some areas from cartel control.²² Although the members carry firearms that are normally forbidden for citizens, the government has sometimes worked cooperatively with them.²³ However, in early 2014, the government began taking a harsher stance and has even shot members of the peasant self-defense groups.²⁴

President Calderón has called for gun registration in America,²⁵ as has President Obama, although the Obama Administration prefers to talk about creating a national database for guns rather than invoking the words “gun registration.”²⁶ The Mexican Senate has also asked the United States to create a registry of all commercial firearms sales in the four southwest border states.²⁷ Based on experience with gun registration in Mexico and in U.S. states with gun registration laws,²⁸ voluntary compliance with federal gun registration in the United States might also be low. An attempt to impose universal gun registration in Canada was such a fiasco that the registration law was repealed in 2012 after costing over one hundred times more than promised, resulting in massive disobedience, and

world-news/ci_24487150/local-fight-mexican-cartel-provides-small-victory?IADID=Search-www.dailycamera.com-www.dailycamera.com [http://perma.cc/8FFH-CUWY].

22. *Id.*

23. *Id.*

24. Nathaniel Parish Flannery, *Mexican Soldiers Kill Citizen Militia Members*, FORBES, Jan. 15, 2014, <http://www.forbes.com/sites/nathanielparishflannery/2014/01/15/mexican-soldiers-kill-citizen-militia-members/> [http://perma.cc/39AF-7DJ3]; Lydiette Carrión, *Refuerzan Resistencia en Torno a Apatzingán*, EL UNIVERSAL, Jan. 10, 2014, <http://www.eluniversal.com.mx/estados/2014/impreso/refuerzan-resistencia-en-torno-a-apatzingan-93426.html> [http://perma.cc/4XSS-HKL6]; *Self-Defence Militias on the Rise in Mexico*, BUENOS AIRES HERALD, Jan. 6, 2014, <http://www.buenosairesherald.com/article/149002/selfdefence-militias-on-the-rise-in-mexico> [http://perma.cc/TE43-JTMP] (militias in ten Mexican states, with the largest numbers in Michoacán and Guerrero, with 7,000 members in the latter).

25. Calderón, *supra* note 1.

26. Philip Rucker, *White House Weighs Broad Gun-Control Agenda in Wake of Newtown Shootings*, WASH. POST, Jan. 5, 2013, http://articles.washingtonpost.com/2013-01-05/politics/36208875_1_gun-issue-brady-campaign-assault-weapons-ban [http://perma.cc/0aS6aPxNmoU].

27. Elyssa Pachico, *Mexico to Ask US Senate to Create Gun Registry in Border States*, INSIGHT CRIME (Jan. 10, 2013), <http://www.insightcrime.org/news-briefs/mexico-to-ask-us-senate-to-create-gun-registry> [http://perma.cc/0bTtTev2eVf].

28. David B. Kopel, *Assault Weapons*, in GUNS: WHO SHOULD HAVE THEM? 159, 186 (David B. Kopel ed., 1995); David T. Hardy & Kenneth L. Chotiner, *The Potential for Civil Liberties Violations in the Enforcement of Handgun Prohibition*, in RESTRICTING HANDGUNS: THE LIBERAL SKEPTICS SPEAK OUT 194, 201 (Don B. Kates, Jr. ed., 1979); Nicholas J. Johnson, *Imagining Gun Control In America: Understanding The Remainder Problem*, 43 WAKE FOREST L. REV. 837, 853 (2008).

producing very little of value for public safety.²⁹

B. Regulated Guns

The Second Title of Mexico's Federal Law of Firearms and Explosives allows possession of 12-gauge or smaller shotguns (*escopetas*) with barrels longer than twenty-five inches.³⁰ The impact of the gauge restriction is relatively minor. Although larger 10-gauge and 8-gauge shotguns were popular in the late nineteenth and early twentieth centuries, they are much less popular now.³¹ But the law does limit waterfowl hunting, a sport that still involves 10-gauge shotguns in the United States.³²

The minimum barrel length requirement has a much greater practical effect. In the United States, shotguns with barrels as short as eighteen inches are common.³³ Longer barrels are better for longer shots involved with bird-hunting or shooting skeet and trap.³⁴ Short barrels make the gun more maneuverable and easier to control, especially in a confined setting such as a home; thus, many American shotguns possessed primarily for self-defense have barrels well under twenty-five inches.³⁵ The Mexican twenty-five-inch minimum barrel length requirement significantly impairs shotgun utility for home defense.

As for rifles (the same word in English and Spanish), the Mexican statute prohibits any greater than .30 caliber.³⁶ By

29. Gary Mauser, *Why the Long-Gun Registry Doesn't Work—And Never Did*, NAT'L POST, Dec. 11, 2012, <http://fullcomment.nationalpost.com/2012/12/11/gary-mauser-why-the-long-gun-registry-doesnt-work-and-never-did/> [<http://perma.cc/0DVU6w6ie9>].

30. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 10(III), Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.) (indicating that the higher the gauge number, the smaller the diameter of the barrel of the shotgun).

31. Chuck Hawks, *Introduction to Shotgun Gauges and Shells*, CHUCK HAWKS, http://www.chuckhawks.com/intro_gauges.htm [<http://perma.cc/0Kh9troHWLL>] (last visited Jan. 7, 2014).

32. *See, e.g.*, John M. Taylor, *5 Best Shotguns for Goose Hunting*, OUTDOOR LIFE, <http://www.outdoorlife.com/photos/gallery/hunting/turkey-waterfowl/waterfowl-techniques/2011/09/best-goose-guns> [<http://perma.cc/0bsCUJfLjX3>] (last visited Jan. 7, 2014).

33. Shotguns with barrels shorter than eighteen inches fall under the highly restrictive procedures of the National Firearms Act, requiring a \$200 tax, federal registration, and months of paperwork to acquire. 26 U.S.C. §§ 5812, 5845(a)(1) (2012).

34. Chuck Hawks, *Shotgun Barrel Length*, CHUCK HAWKS, http://www.chuckhawks.com/shotgun_barrel_length.htm [<http://perma.cc/XJ3P-NQMB>] (last visited Jan. 7, 2014).

35. Jacob Herman, *Home Defense Shotgun: Myths and Reality*, THE DAILY CALLER (Oct. 14, 2013), <http://dailycaller.com/2013/10/14/home-defense-shotgun-myths-and-reality/> [<http://perma.cc/7G2B-5UFD>].

36. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 10(V), Diario Oficial de la Federación [DO], 11 de

American standards, the .30-caliber maximum forbids approximately half of the common calibers.³⁷ Caliber-based rifle bans are rare in the United States, but a few jurisdictions outlaw .50-caliber rifles and handguns.³⁸

Handguns (*pistolas*) are permissible in calibers of .380 or less in Mexico, although some calibers are excluded—most notably .357 magnum and 9mm parabellum.³⁹ Allowing .380 while banning 9mm makes no sense in terms of physics: the two calibers are nearly identical in size.⁴⁰ Both are mid-sized handgun calibers. In 1993–1994, in the spirit of Mexico's disparate treatment of 9mm and .380, U.S. Senator Pat Moynihan—a Democratic Senator from New York—sponsored legislation to impose a prohibitive tax on 9mm ammunition.⁴¹ Barack Obama, as a candidate for Illinois State Senate in 1996, endorsed the prohibition of handguns and later supported handgun bans in Chicago and the District of Columbia.⁴²

C. The Permitting System

Mexican gun permits are for a one-year term.⁴³ The vast majority of American states do not require a permit for gun ownership, and most of those that do only require a permit for handguns.⁴⁴ American permits are valid for a term of several years or for life, depending on the state.⁴⁵ Permits to *carry* a

Enero de 1972 (Mex.).

37. See, e.g., *Centerfire Rifle by Caliber*, REMINGTON, <http://www.remington.com/pages/news-and-resources/centerfirebycaliber.aspx> [<http://perma.cc/0nF847vgS6v>] (last visited Jan. 7, 2014).

38. *Fifty Caliber Rifles Policy Summary*, L. CTR. TO PREVENT GUN VIOLENCE (May 21, 2012), <http://smartgunlaws.org/fifty-caliber-rifles-policy-summary/> [<http://perma.cc/0Ez7bZa8ouc>].

39. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 9(II), Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

40. METRIC CONVERSIONS, <http://www.metric-conversions.org/length/inches-to-millimeters.htm> [<http://perma.cc/F8N5-6FGF>] (calculating that 0.380 inches is equal to 9.652 millimeters).

41. Adam Clymer, *Moynihan Asks Big Tax Increase on Ammunition*, N.Y. TIMES, Nov. 4, 1993, <http://www.nytimes.com/1993/11/04/us/moynihan-asks-big-tax-increase-on-ammunition.html> [<http://perma.cc/0JzyqFA3V64>].

42. *Barack Obama on Gun Control*, ON THE ISSUES, http://www.ontheissues.org/2012/Barack_Obama_Gun_Control.htm [<http://perma.cc/0htjANZgq7R>] (last updated Jan. 22, 2013).

43. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 44, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

44. See HALBROOK, *supra* note 9.

45. *Id.*

concealed handgun are required in the large majority of U.S. states, and typical permit terms are three to five years.⁴⁶ Annual re-authorization for carry permits exists in only a few states.⁴⁷ In 2000, Democratic presidential nominee Al Gore proposed a national licensing system for ownership of handguns;⁴⁸ his advocacy for gun control was seen as an important cause of his narrow defeat.⁴⁹

In Mexico, the military plays a leading role in domestic law enforcement.⁵⁰ The department of defense, SEDENA (*Secretaría de la Defensa Nacional*), issues Mexican gun permits.⁵¹ The SEDENA subdivision in charge of gun licensing is the *Dirección General del Registro Federal de Armas de Fuego y Control de Explosivos*.⁵² The idea of military enforcement of domestic civil laws, including gun permitting, is anathema to many Americans. The Posse Comitatus Act generally forbids use of the U.S. military for domestic law enforcement.⁵³

A Mexican applicant must belong to a shooting club in order to obtain a permit.⁵⁴ This is similar to a proposal from the group now known as the Brady Campaign to ban handgun ownership “except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors.”⁵⁵ If a

46. *Id.*

47. *Id.*

48. James Dao, *As Political Stage Changed, Gore Shifted on Gun Control*, N.Y. TIMES, July 6, 2000, <http://www.nytimes.com/2000/07/06/us/as-political-stage-changed-gore-shifted-on-gun-control.html?pagewanted=all&src=pm> [<http://perma.cc/0rEenKPGPWz>].

49. BILL CLINTON, MY LIFE 928 (2004).

50. *Mission*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://www.sedena.gob.mx/en/index.php/get-to-know-sedena/mission> [<http://perma.cc/0t9YSiti1CRs>] (last updated Jan. 8, 2013).

51. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 30, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

52. *See General Directorate for Federal Registry of Firearms and Explosive Control*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://www.sedena.gob.mx/en/index.php/get-to-know-sedena/organic-structure/49-general-directorate-for-federal-registry-of-firearms-and-explosive-control> [<http://perma.cc/0G9f32JyRYM>] (last updated July 20, 2012).

53. 18 U.S.C. § 1385 (2012). Since the early 1980s, “drug war” exceptions to the Posse Comitatus Act have led to military involvement in domestic law enforcement, sometimes with terrible consequences. *See* David B. Kopel & Paul H. Blackman, *Can Soldiers Be Peace Officers? The Waco Disaster and the Militarization of American Law Enforcement*, 30 AKRON L. REV. 619 (1997); David B. Kopel, *Militarized Law Enforcement: The Drug War’s Deadly Fruit*, in AFTER PROHIBITION: AN ADULT APPROACH TO DRUG POLICIES IN THE 21ST CENTURY 61, 68–70 (Timothy Lynch ed., 2000).

54. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 26(I), Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

55. Richard Harris, *A Reporter at Large: Handguns*, THE NEW YORKER, July 26, 1976, at 58. At the time of the interview, the group called itself the National Council to Control

Mexican belongs to a target-shooting club, it is straightforward to obtain a permit to own a handgun for home protection.⁵⁶ The Brady Campaign, on the other hand, has opposed allowing ordinary citizens to own firearms for self-defense.⁵⁷

A Mexican member of a gun club may in theory register up to nine long guns and one .22 caliber handgun.⁵⁸ Mexicans who do not belong to a club may register only one gun: a handgun for home defense.⁵⁹ All guns must be registered with the Ministry of National Defense within thirty days of acquisition.⁶⁰ Licensees may only buy ammunition for the caliber of gun for which they are licensed.⁶¹ On the other hand, gun registration in the United States varies from state to state, but it is rare in general—where it exists, it usually only applies to handguns.⁶² Only California and Hawaii require all guns to be registered.⁶³ California's registration is simply accomplished by harvesting dealer records of sale.⁶⁴ Hawaii requires citizens to report all their guns to the government.⁶⁵

To apply for a permit in Mexico, a person must go to the

Handguns. See *Our History*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradycampaign.org/?q=our-history> [<http://perma.cc/07A7k7FAbh>] (last visited Jan. 7, 2014). Later, the name was changed to Handgun Control, Inc. *Id.* Later still, the name became the Brady Campaign. *Id.*

56. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], as amended, art. 26(I), Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

57. As James Brady put it, “For target shooting, that’s okay . . . Get a license and go to the range. For defense of the home, that’s why we have police departments.” *In Step With: James Brady*, PARADE MAG., June 26, 1994, at 18.

58. *¿Qué cantidad de armas puedo tener registradas? (How many guns can I register?)*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://www.sedena.gob.mx/index.php/component/content/article/661-preguntas-frecuentes-rfayce/2190-ique-cantidad-de-armas-puedo-tener-registradas> [<http://perma.cc/0xFPYy1eRCl>] (last updated Nov. 4, 2010, 1:07 PM).

59. *Id.*

60. See Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], as amended, art. 17, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

61. *Id.* art. 10.

62. See HALBROOK, *supra* note 9.

63. CAL. PENAL CODE § 11106 (West 2013); HAW. REV. STAT. § 134-3 (2013).

64. Pursuant to California Assembly Bill 809, which was enacted in 2011, the state government will begin registration of long gun sales and of long guns brought into the state on January 1, 2014. Cal. Assemb. 809, 2011 Cal. Leg., Reg. Sess. (Cal. 2011), available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0801-0850/ab_809_bill_20110920_enrolled.pdf [<http://perma.cc/88FT-PBYJ>]; CAL. PENAL CODE § 11106 (West 2013) (requiring the Attorney General to retain all “dealers’ records of sales of firearms.”).

65. HAW. REV. STAT. § 134-3 (specifying that every firearm must be registered with the chief of police).

nearest military base.⁶⁶ The military is legally required to issue or reject a license within fifty days of the application.⁶⁷ A license applicant must be at least eighteen years old, must have fulfilled any obligation of military service, must have the physical and mental capacity to use firearms safely, must have no criminal convictions involving firearms, must not be a consumer of drugs, and must have an “honest living.”⁶⁸

There is only one firearms store in Mexico, the UCAM (*Unidad de Comercialización de Armamento y Municiones*).⁶⁹ Located in Mexico City, it is owned and operated by the military.⁷⁰ Barack Obama, running for the U.S. House of Representatives in 2000, proposed banning all gun stores within five miles of a school or park.⁷¹ This would eliminate all firearms stores in the inhabited portion of the United States.⁷² Private sales of guns in Mexico are legal, but the buyer must register the gun within thirty days with the military’s arms registry.⁷³ President Obama would go further, outlawing genuinely private sales entirely, by requiring background checks on person-to-person sales and requiring

66. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 7, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.) (requiring all firearms to be registered with the ministry of defense); *see also* Tkila, *Registro Federal de Armas de Fuego*, MÉXICO ARMADO (July 26, 2010, 1:35 AM) <http://www.mexicoarmado.com/content/401-registro-federal-de-armas-de-fuego.html> [<http://perma.cc/0hzHqh8DHpq>] (listing the military bases where a person may register a gun).

67. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 26, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

68. *Id.* art. 26(I). *See Military Service Law*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://www.sedena.gob.mx/en/index.php/national-military-service/legal-framework/614-military-service-law> [<http://perma.cc/0CxE7AzPRZE>] (last updated July 22, 2013) (noting that military service obligations arise at age eighteen).

69. Damien Cave, *At a Nation’s Only Gun Shop, Looking North in Disbelief*, N.Y. TIMES, July 24, 2012, <http://www.nytimes.com/2012/07/25/world/americas/in-mexico-a-restrictive-approach-to-gun-laws.html> [<http://perma.cc/07YYpDgJbtA>].

70. *Id.*

71. Chinta Strausberg, *Obama Unveils Federal Gun Bill*, CHI. DEFENDER, Dec. 13, 1999, at 3.

72. This is so because almost every small town has a park or school, and because there are essentially no urban areas more than five miles from at least one school or park. *See, e.g., Obama Exclusion Zone: King County*, BACON, ALCOHOL, TOBACCO, FIREARMS, EXPLOSIVES (Feb. 23, 2008), <http://blog.ryjones.org/2008/02/23/obama-exclusion-zone-king-county/> [<http://perma.cc/Y2K9-NCNT>] (providing a map of King County—the Washington State county containing Seattle—smaller towns, and uninhabited areas).

73. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 17, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.); *see also* RFA-RA-002: *Cambio de Propietario de Arma de Fuego*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://www.sedena.gob.mx/index.php/tramites-y-servicios/registro-federal-de-armas-de-fuego/registro-de-armas/8012-cambio-de-propietario-de-arma-de-fuego> [<http://perma.cc/0qZVzVgewHC>] (last updated July 27, 2012).

them to be routed through federally-licensed firearms dealers who must keep records of all their transactions.⁷⁴

A separate license is necessary for the transportation of firearms in Mexico.⁷⁵ A special permit for collectors allows the possession of more guns, including military-caliber firearms.⁷⁶ The military police may inspect the homes of gun collectors.⁷⁷ In the United States, the Brady Campaign has offered a similar proposal, “Brady II,” which would subject the homes of gun collectors to unannounced, warrantless inspections.⁷⁸ This proposal is a weaker version of Canadian law, which makes all homes of gun owners subject to police inspection without requiring a showing of probable cause that the law has been violated.⁷⁹

In Mexico, the grounds for issuing a carry permit are: a need due to occupation or employment, special circumstances related to one's place of residence, or other reasonable grounds.⁸⁰

74. NOW IS THE TIME: THE PRESIDENT'S PLAN TO PROTECT OUR CHILDREN AND OUR COMMUNITIES BY REDUCING GUN VIOLENCE 3 (Jan. 16, 2013), *available at* http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf [<http://perma.cc/0m43MUo59v2>].

75. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, arts. 24–26, 61, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.). Although transport would seem to be covered by article 61, the government relies on article 26 for its policy of requiring a permit to carry a gun to a target range or to hunt. *Preguntas Frecuentes*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://www.sedena.gob.mx/index.php/tramites-y-servicios/registro-federal-de-armas-de-fuego/preguntas-frecuentes> [<http://perma.cc/0uRtBeEj8Xn>] (last updated July 19, 2012) (discussing the question, “¿Para obtener un permiso de transportación de armas para eventos de tiro al blanco y cacería se debe de estar inscrito a un club de caza y tiro?” (Must you be registered with a hunting or shooting club to obtain a permit for transportation of firearms for hunting or target shooting events?)).

76. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, arts. 21–23, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

77. *RFA-LC-021: Visita de Inspección a Coleccionista de Armas de Fuego*, SECRETARÍA DE LA DEFENSA NACIONAL, <http://sedena.gob.mx/index.php/tramites-y-servicios/registro-federal-de-armas-de-fuego/licencias-clubes-y-colecciones/colecciones/7559-visita-de-inspeccion-a-coleccionista-de-armas-de-fuego> [<http://perma.cc/0TFsGiRnpYr>] (last updated July 18, 2012).

78. Gun Violence Prevention Act of 1994, S. 1878, 103d Cong. § 204(b)(2) (1994) (“The holder of an arsenal license shall be subject to all obligations and requirements pertaining to licensed dealers under this chapter.”); 18 U.S.C. § 923(g)(1)(B) (2012) (“The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant . . . for ensuring compliance with the record keeping requirements of this chapter . . . not more than once during any 12-month period . . .”).

79. Firearms Act, S.C. 1995, c. 39, §§ 102–104 (Can.).

80. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 26(I)(F), Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

Members of agricultural collectives and other rural workers are allowed (in theory at least) to carry legal handguns, .22 rifles, and shotguns, as long as they stay outside of urban areas and obtain a carry license.⁸¹ “In a nation of 112 million people, there are only 4,300 carry licenses.”⁸² Obama would like a similar result in the United States and has supported national legislation to “prevent other states’ laws [allowing citizens to conceal their guns] from threatening the safety of Illinois residents.”⁸³

The Mexican government may issue tourists temporary gun licenses for sporting purposes.⁸⁴ Mexican law provides penalties of five to thirty years in prison for people who attempt to bring a firearm, or even a single round of ammunition, into Mexico without prior permission.⁸⁵ In the past, the law was enforced stringently, even in cases where the violation was accidental—such as a Texan who drove across the border for dinner and forgot that there was some ammunition in his car.⁸⁶ In December 1998, however, the Mexican Congress enacted legislation relaxing the law for first-time, unintentional violations involving only a single gun.⁸⁷ Now, first-time violators will be fined “two

81. *Id.* art. 9(II).

82. Bryan Llenas, *Mexico Jumps into the U.S. Gun Control Debate*, FOXNEWS.COM, Jan. 15, 2013, <http://latino.foxnews.com/latino/news/2013/01/15/mexico-jumps-into-us-gun-control-debate/> [<http://perma.cc/0Njt7xazmTV>].

83. John Chase, *Keyes, Obama Are Far Apart on Guns*, CHI. TRIB., Sept. 15, 2004, http://articles.chicagotribune.com/2004-09-15/news/0409150153_1_concealed-gun-control-responsible-gun-ownership [<http://perma.cc/0CMvXKQUQDQg>].

84. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 27, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

85. *Id.* art. 84(I).

86. *See, e.g.*, *United States v. Bean*, 537 U.S. 71 (2002) (exemplifying the stringent application of the law, even in accidental cases). In this case, a licensed American firearms dealer, who resided in Laredo, Texas, spent the day working at a gun show, and later drove to dinner in Nuevo Laredo, Mexico. *Id.* at 72–73. He had told his employees to remove all arms and ammunition from his car, but the employees missed one box of shotgun shells. *Id.* at 73. Bean was convicted of a felony and served prison time in Mexico. *Id.* At the time, United States law was interpreted to prohibit arms possession by persons convicted in foreign courts of felonies. *Id.* Federal law also provided an administrative procedure for the restoration of firearms rights by persons whom the Bureau of Alcohol, Tobacco and Firearms deemed to be suitable to possess arms. 18 U.S.C. § 925(c) (2012). However, since 1992, Congress has prohibited ATF from expending appropriations to make determinations on restoration of rights. *Bean*, 537 U.S. at 74. In *Bean*, the Supreme Court majority held that ATF’s refusal to process Bean’s application for a restoration of rights did not amount to a “denial” which would allow a federal court to review ATF’s decision, and to decide that Bean’s rights should be restored. *Id.* at 78. Several years later, the Supreme Court ruled that the federal ban on arms possession by a person convicted of a felony in “any court” should not be read as encompassing foreign courts. *Small v. United States*, 544 U.S. 385, 394 (2005).

87. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 84 bis, Diario Oficial de la Federación [DO], 11 de

hundred days of fines” but not imprisoned.⁸⁸ The exemption does not apply for military weapons or prohibited calibers.⁸⁹

In Mexico, there are no shooting ranges open to the general public.⁹⁰ The Chicago City Council once passed a similar law outlawing public ranges, but the Seventh Circuit declared that the ban violated the Second Amendment.⁹¹ Nor is there any public land for hunting in Mexico.⁹² As a result, the only persons who can hunt are those who can afford to pay an outfitter or are friends with a landowner. The situation is quite different in the United States, where vast amounts of public land are open to hunters.⁹³

IV. THE CROSS-BORDER TRADE IN ARMS

According to Mexico’s ambassador to the United States, American gun stores could be described as “providers of material support to terrorists.”⁹⁴ The flow of arms from the United States into Mexico has become a major political issue in both nations. Part IV provides historical and contemporary analysis of the trade and some of the legal implications.

A. American Arms for Mexican Independence

Mexican independence—like American independence—might not have been possible without American guns. After assuming dictatorial powers in France, Emperor Napoleon III

Enero de 1972 (Mex.).

88. *Id.* art. 91. Article 91 of the Federal Law of Firearms and Explosives cross-references article 29 of the Federal Criminal Code, which provides methods for calculating “days of fines.” *Id.* The basic rule is that one “day of fines” is equal to one day of a person’s income. Código Penal Federal [CPF] [Federal Criminal Code], *as amended*, art. 29, Diario Oficial de la Federación [DO], 14 de Agosto de 1931 (Mex.).

89. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 84 bis, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

90. *See id.* art. 26. (limiting the issuance of special carry licenses for shooting and hunting activities to members of registered hunting and shooting clubs).

91. *Ezell v. Chicago*, 651 F.3d 684, 711 (7th Cir. 2011).

92. Semarnat-08-044: Licencia de Caza Deportiva [Hunting License], Diario Oficial de La Federación [DO], 30 de Septiembre de 2005 (Mex.) (requiring hunters to indicate which hunting club owns the property on which they will hunt).

93. *The Forest Service Welcomes Hunters to the Nation’s Forests and Grasslands*, U.S. FOREST SERVICE, <http://www.fs.fed.us/biology/wildlife/hunters.html> [<http://perma.cc/0BKEnB6iUkm>] (last visited Jan. 7, 2014).

94. *Letter to the Editor: On Mexico and Violence*, DALL. NEWS (Apr. 11, 2011, 5:37 PM), <http://letterstotheeditorblog.dallasnews.com/2011/04/on-mexico-and-v.html/> [<http://perma.cc/0rWFvnrE4yZ>] (discussing the ambassador’s argument against the claim that Mexican cartels were “terrorists” and his claim that if they were, then American gun stores were terrorist supporters).

began looking for more nations to rule. In 1863, he deposed Mexico's President Benito Juárez.⁹⁵ Napoleon III then installed Maximilian as Emperor of Mexico.⁹⁶ In northern Mexico, Juárez gathered an army of resistance.⁹⁷ The United States was a crucial source of arms for the Mexican nationalists.⁹⁸ They procured one thousand .44-caliber short rifles (Winchester Model 1866 carbines) as well as 500 rounds of ammunition for every gun.⁹⁹ The Winchesters were inscribed with the initials "R.M." (*República de México*) and are now valuable collector's items.¹⁰⁰ They helped the Mexican people win the war, remove Maximilian, and reestablish the Mexican republic.¹⁰¹

B. The Calderón Drug War and the Murder Escalation

Today, however, some American guns play a harmful role in Mexico. Before the election of President Calderón in December 2006, the Mexican government took a "passive approach to the illicit drug trade."¹⁰² Thanks to corruption and payoffs to various levels of government, the drug cartels could usually go about their business of drug smuggling while keeping their violence at a relatively low level.¹⁰³

All that changed once Calderón took office. The new President unleashed the Mexican army on the drug cartels, deploying 30,000 soldiers and federal police.¹⁰⁴ This push against drug cartels led to a counteroffensive by the drug lords, as well as more turf wars in areas where old gang territories were

95. MEXICO: A COUNTRY STUDY 30 (Tim L. Merrill & Ramón Miró eds., 4th ed. 1998).

96. DEAN K. BOORMAN, THE HISTORY OF WINCHESTER FIREARMS 31 (First Lyons Press ed., 2001).

97. *See id.*

98. *Id.*

99. *Id.*

100. *See Cinco de Mayo & The Juarez Winchester*, THE WINE COMMONSEWER (May 5, 2013, 8:03 PM), http://www.winecommonsewer.com/the_wine_commonsewer/2013/05/cinco-de-mayo-the-juarez-winchester.html [<http://perma.cc/0L9YYjsqmHq>].

101. MEXICO, A COUNTRY STUDY, *supra* note 95, at 31.

102. Colin Gray, *The Hidden Cost of the War on Drugs*, STANFORD PROGRESSIVE, May 2010, <http://www.stanford.edu/group/progressive/cgi-bin/?p=521> [<http://perma.cc/0jueQ2EDWva>].

103. *See* HAL BRANDS, MEXICO'S NARCO-INSURGENCY AND U.S. COUNTERDRUG POLICY 6 (2009). To be precise, the Mexican drug gangs do not always function as "cartels," in the sense of being oligopolists who have cooperatively divided the market. "Drug trafficking organization" (DTO) may be a more accurate term.

104. Sara Miller Llana, *Escalating Drug War Grips Mexico*, THE CHRISTIAN SCIENCE MONITOR, May 23, 2007, <http://www.csmonitor.com/2007/0523/p01s01-woam.html> [<http://perma.cc/0GQjZzT4why>].

destabilized.¹⁰⁵ The drug war quickly became as deadly as conventional war. From 2007 to 2008, drug war homicides rose over 100% to 6,844.¹⁰⁶ The overall Mexican homicide rate rose 57% from 2007 to 2008 (to 12.7 per 100,000 population).¹⁰⁷ After doubling in 2008, the drug war homicide rate rose another 41% in 2009.¹⁰⁸ By 2009, the overall homicide rate had risen to the level of 17.7 per 100,000 population.¹⁰⁹ A U.S. Congressional Research Service report explained: “the [Mexican] government’s crackdown on the cartels, as well as rivalries and turf wars among Mexico’s drug cartels fueled an escalation in violence throughout the country, including northern states along the United States–Mexico border.”¹¹⁰

With homicide surging, Calderón claimed that 95% of the drug war deaths had been drug gangsters killed by other drug gangsters.¹¹¹ Even if that was true, it still meant that many innocent civilians and police had also been killed. President Calderón also attempted to blame the surge in Mexican murders on the September 2004 sunset of the U.S. federal ban on sales of new “assault weapons.” He told a joint session of the U.S. Congress: “If you look carefully, you will notice that the violence in Mexico started to grow a couple of years before I took office in 2006. . . . This coincides, at least, with the lifting of the [U.S.] assault weapons ban in 2004.”¹¹²

Not so. The American gun ban expired in September 2004,¹¹³ yet the total number of homicides in Mexico declined from

105. *See id.* (noting that the violence escalated after the initial troop deployment and implying that the Zeta and Sianola cartels’ fight over smuggling routes was, in part, caused by the troop deployment).

106. *Mexico Drug War Fast Facts*, CNN, Sept. 2, 2013, <http://www.cnn.com/2013/09/02/world/americas/mexico-drug-war-fast-facts/index.html> [<http://perma.cc/0yMLN6ASYAa>].

107. U.N. OFFICE ON DRUGS AND CRIME, 2011 GLOBAL STUDY ON HOMICIDE 107 (2011), available at http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf [<http://perma.cc/04pGcWpSbsR>].

108. *Mexico Drug War Fast Facts*, *supra* note 106.

109. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 107.

110. CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., R40135, MÉRIDA INITIATIVE FOR MEXICO AND CENTRAL AMERICA: FUNDING AND POLICY ISSUES 2 (2009).

111. Susana Hayward, *A Report from Juarez, the Bleeding Front Line of the War on Drugs*, DALL. OBSERVER (Apr. 29, 2010), <http://www.dallasobserver.com/2010-04-29/news/a-report-from-juarez-the-bleeding-front-line-of-the-war-on-drugs/7/> [<http://perma.cc/0xo54phqjkt>].

112. Felipe Calderón, President of Mexico, Address at Joint Meeting of Cong. (May 20, 2010).

113. *Congress Lets Assault Weapons Ban Expire*, NBCNEWS.COM, Sept. 13, 2004, <http://www.nbcnews.com/id/5946127/ns/politics/t/congress-lets-assault-weapons-ban-expire> [<http://perma.cc/0hZySMjm83n>].

10,087 in 2003 to 9,329 in 2004.¹¹⁴ They fluctuated to 9,921 in 2005 and 10,452 in 2006, and then declined to 8,867 in 2007.¹¹⁵ This low figure in 2007 was far below earlier years' figures, when the 1994–2004 U.S. federal ban on some semi-automatic firearms was in full effect (13,552 homicides in 1997; 13,656 homicides in 1998; 12,249 homicides in 1999).¹¹⁶ In summation, the homicide rates were much lower in the three years after the end of the U.S. ban than they were at the height of the ban in the previous decade.

C. Data About American Guns in Mexico

In 2010, President Calderón told the U.S. Congress:

However, there is one issue where Mexico needs your cooperation, and that is stopping the flow of assault weapons and other deadly arms across the border. Let me be clear on this. I fully respect, I admire the American Constitution, and I understand that the purpose of the Second Amendment is to guarantee good American citizens the ability to defend themselves and their Nation. But believe me, many of these guns are not going to honest American hands. Instead, thousands are ending up in the hands of criminals. Just to give you an idea, we have seized 75,000 guns and assault weapons in Mexico in the last 3 years, and more than 80 percent of those we have been able to trace came from the U.S.¹¹⁷

President Calderón's "80 percent" claim was similar to the assertion in a report by New York City Mayor Michael Bloomberg's organization, Mayors Against Illegal Guns, that 90% of traced Mexican guns come from the United States, and 76% come from the four border states of Texas, Arizona, New Mexico and California.¹¹⁸ Much of the media has repeated Bloomberg's 90% figure as fact.¹¹⁹

If, as President Calderón and Mayors Against Illegal Guns claim, many thousands of guns are being legally purchased in the United States and smuggled over the border to Mexican

114. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 107.

115. *Id.*

116. *Id.*

117. Calderón, Address at Joint Meeting of Cong., *supra* note 112.

118. MAYORS AGAINST ILLEGAL GUNS, THE MOVEMENT OF ILLEGAL GUNS ACROSS THE U.S.–MEXICO BORDER 1–2 (2010).

119. See, e.g., *Guns and State Borders: Trekking North*, THE ECONOMIST, Sept. 30, 2010, <http://www.economist.com/node/17151375?zid=312&ah=da4ed4425e74339883d473adf5773841> [http://perma.cc/0sF6JMEBTJM].

drug gangs, shouldn't there be thousands of ongoing prosecutions in border state courts? After all, making a straw purchase is a U.S. federal felony.¹²⁰

In 2011, my research assistant called the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)¹²¹ for data on cases being prosecuted concerning firearms sold in the United States and later being sent to Mexico. After getting shuttled from one person to another, he was finally able to talk to an ATF representative in Houston, who was unable or unwilling to tell him anything about what she called his "unusual" request. She told him, instead, to submit a Freedom of Information Act (FOIA) request. That FOIA request was promptly submitted, but years later there has still been no response.

1. Most Mexican Crime Guns Are Not Traced

One general problem of using trace data as a proxy for gun crime is that the guns chosen for tracing are not necessarily representative of all crime guns seized by the police.¹²²

For years, the United States has been providing billions of dollars in anti-crime assistance to Mexico.¹²³ As part of that assistance, ATF has Mexican offices which will trace any gun that the Mexican authorities request.¹²⁴ Yet Mexican officials only request traces of a fraction of guns seized.¹²⁵

For example, according to ATF, Mexico asked for 7,743 firearm traces in the fiscal year that ended October 1, 2008, and

120. If one were to make a straw purchase from a Federal Firearms Licensee (FFL), one would need to lie about the end user on ATF Form 4473. It is a federal felony to make false statements to an FFL about a material fact on such form. *See* 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A) (2012).

121. The Bureau of Alcohol, Tobacco and Firearms (ATF) changed its name to the Bureau of Alcohol, Tobacco, Firearms and Explosives in 2003. *ATF's History*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, <http://www.atf.gov/about/history/index.html> [<http://perma.cc/0nFHkCsaf9N>] (last visited Jan. 7, 2014).

122. *See, e.g.*, David B. Kopel & Paul H. Blackman, *Firearms Tracing Data from the Bureau of Alcohol, Tobacco and Firearms: An Occasionally Useful Law Enforcement Tool, but a Poor Research Tool*, 11 CRIM. JUST. POL'Y REV. 44 (Mar. 2000); David B. Kopel, *Clueless: The Misuse of BATF Firearms Tracing Data*, 1999 L. REV. MICH. ST. U. DETROIT C. L. 171 (1999).

123. *Mérida Initiative*, U.S. DEP'T OF STATE, <http://www.state.gov/j/inl/merida/> [<http://perma.cc/09oZs1SMC5r>] (last visited Jan. 7, 2014).

124. *International Offices*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, <http://www.atf.gov/field/international.html> [<http://perma.cc/0GsAyNvkvyS>] (last visited Nov. 10, 2013).

125. D'Angelo Gore, *Counting Mexico's Guns*, FACTCHECK.ORG (Apr. 22, 2009), <http://www.factcheck.org/2009/04/counting-mexicos-guns/> [<http://perma.cc/02NzaCdF7KX>].

for 3,312 traces in the fiscal year ending October 1, 2007.¹²⁶ This was only about 38% of all guns seized.¹²⁷ Of those 11,055 traces, approximately 10,347 were traced to the United States.¹²⁸

Ever since the U.S. Gun Control Act of 1968, all manufacturers, wholesalers, importers, and retailers of firearms have been required to keep serial number records of all firearms that they produce, acquire, or sell.¹²⁹ So despite decades of American recordkeeping about the manufacture (or import), wholesale distribution, and retail sale of every American firearm, no records could be found for 708 of those guns. This suggests that those traced guns did not, in fact, originate in the United States.

Trace requests increased after 2008, so that from fiscal year 2007 to 2010, the Mexican government made 78,194 total trace requests to the United States. However, tens of thousands of these were duplicates; sometimes five different Mexican government entities requested a trace on the same gun.¹³⁰

A successful trace means that the guns were manufactured in or imported into the United States.¹³¹ It does not mean that the guns were necessarily sold in the civilian U.S. market. For example, a gun might have been lawfully sold to a Mexican police agency and then stolen. Or the gun might have been manufactured for U.S. Army use during the Vietnam War, later captured by the communist government that currently rules Vietnam, and then exported on the international black market.

Mexican law enforcement has several reasons for not asking ATF to trace all its seized firearms. First, many seized guns are plainly not American—such as guns that appear to be from China¹³² or Eastern Europe¹³³—and would be impossible for ATF

126. *Id.*

127. *Id.*

128. *Id.*

129. See 18 U.S.C. § 923 (2012); 27 C.F.R. § 478 (2013).

130. COLBY GOODMAN, UPDATE ON U.S. FIREARMS TRAFFICKING TO MEXICO REPORT 7 (2011), available at http://wilsoncenter.org/sites/default/files/update_us_firearms_trafficking_to_mex.pdf [<http://perma.cc/97X2-6HZW>].

131. William La Jeunesse & Maxim Lott, *The Myth of 90 Percent: Only a Small Fraction of Guns in Mexico Come From U.S.*, FOX NEWS (Apr. 2, 2009), <http://www.foxnews.com/politics/2009/04/02/myth-percent-small-fraction-guns-mexico-come/> [<http://perma.cc/0LCWseGAdV>].

132. Scott Stewart, *Mexico's Gun Supply and the 90 Percent Myth*, STRATFOR GLOBAL INTELLIGENCE (Feb. 10, 2011), <http://www.stratfor.com/weekly/20110209-mexicos-gun-supply-and-90-percent-myth> [<http://perma.cc/0RhQPnX9SiV>].

133. SYLVIA LONGMIRE, CARTEL: THE COMING INVASION OF MEXICO'S DRUG WARS 75 (2011).

to trace. The Chinese guns may be impossible for anyone to trace since they may be manufactured without serial numbers.¹³⁴

Sylvia Longmire, a retired counterintelligence officer who runs the website Mexico's Drug War,¹³⁵ asked an ATF official why so many Mexican guns are not traced.¹³⁶ Speaking anonymously, the officer explained that some guns are not traced because the serial number has been filed off.¹³⁷ Such numbers can often be recovered, but it is an arduous process. In addition, "[o]ther guns are stolen or 'misplaced' by corrupt law enforcement officials, either for personal use or for passing on to Mexican drug trafficking cartels. Some are never submitted for tracing because corrupt officials are attempting to protect the cartel-sponsored purchasers. And finally, some are simply destroyed without being traced in any fashion."¹³⁸

Longmire acknowledges that "America remains the cheapest and easiest way to obtain the drug traffickers' weapons of choice," but she points out that "[m]any guns, grenades, and other high-powered weapons that are used by Mexican drug trafficking organizations come from Central America, South Korea, and former-Eastern Bloc countries.¹³⁹ Some are remnants from civil wars and other conflicts in Latin America, and some are sold to cartels on the black market."¹⁴⁰

Further, according to a 2009 report from public-intelligence-analysis organization Stratfor:

Mexican authorities are also unlikely to ask the ATF to trace

134. By U.S. federal law, any firearm manufactured in the United States for sale or imported into the United States has a serial number. 18 U.S.C. § 923(i) (2012). In China, however, firearms manufacturing companies produce many guns using only simple geometric symbols but no serial numbers or manufacturer name. See WAYNE LAPIERRE, *THE GLOBAL WAR ON YOUR GUNS: INSIDE THE UN PLAN TO DESTROY THE BILL OF RIGHTS* 36 (2006). The non-binding international agreement on standards for firearms marking has an exemption that legitimizes the Chinese omission of serial numbers and manufacturer. International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, G.A. Res. 60/519, U.N. GAOR, 60th Sess., Supp. No. 49 (Vol II), U.N. Doc. A/60/88, at 8 (Dec. 8, 2005). These guns show up in very large quantities in the international black market that supplies warlords, dictators, drug gangs, and other international rogues. See LAPIERRE, *supra*, at 36.

135. MEXICO'S DRUG WAR, <http://www.mexicosdrugwar.com/> [<http://perma.cc/92C2-HWZJ>] (last visited Jan. 7, 2014).

136. LONGMIRE, *supra* note 133, at 74.

137. *Id.* at 74–75.

138. *Id.* at 75.

139. *Id.*

140. *Id.*

weapons that can be tracked through the Mexican government's own databases such as the one maintained by the Mexican Defense Department's Arms and Ammunition Marketing Division (UCAM), which is the only outlet through which Mexican citizens can legally buy guns. If they can trace a gun through UCAM there is simply no need to submit it to ATF.¹⁴¹

Since the government owns the only gun store in Mexico, tracing Mexican-origin guns is easy. But the decision not to ask ATF to trace the guns that have been lawfully sold in Mexico obviously means that guns ATF does trace will be a skewed, unrepresentative sample of Mexican crime guns.

Thus, U.S. Department of Homeland Security officials believe that:

[T]he 87 percent statistic¹⁴² is misleading as the reference should include the number of weapons that could not be traced (i.e., out of approximately 30,000 weapons seized in Mexico, approximately 4,000 could be traced and 87 percent of those—3,480—originated in the United States). Numerous problems with the data collection and sample population render this assertion as unreliable.¹⁴³

Research from Stratfor reveals that only 12% of Mexican crime guns were traced to U.S. retail gun stores in 2008.¹⁴⁴ Alternatively, Jorge G. Castañeda, who served as Foreign Minister of Mexico from 2000 to 2003, and Rubén Aguilar, who served as the Press Secretary for the President of Mexico from 2000 to 2006, estimate that 18% of Mexican crime guns can be conclusively determined to have come from the United States.¹⁴⁵

Some firearms researchers believe that the shorter the “time to crime,” the greater the possibility that the original sale of the gun was to a person acting on behalf of a criminal.¹⁴⁶ For

141. Scott Stewart & Fred Burton, *Mexico: Economics and the Arms Trade*, STRATFOR GLOBAL INTELLIGENCE (July 9, 2009), http://www.stratfor.com/weekly/20090708_mexico_economics_and_arms_trade [<http://perma.cc/0dxWb1iYpE>].

142. A variety of figures in the 80–90% range have been bandied at various times as the supposed percentage of Mexican crime guns that come from U.S. gun stores.

143. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-09-709, FIREARMS TRAFFICKING: U.S. EFFORTS TO COMBAT ARMS TRAFFICKING TO MEXICO FACE PLANNING AND COORDINATION CHALLENGES 69 (2009) [hereinafter GAO FIREARMS TRAFFICKING].

144. Stewart, *supra* note 132.

145. RUBÉN AGUILAR V. & JORGE G. CASTAÑEDA, *EL NARCO: LA GUERRA FALLIDA* 68 (2009).

146. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, *CRIME GUN TRACE ANALYSIS REPORT: THE ILLEGAL YOUTH FIREARMS MARKET IN JERSEY CITY* 8 (1999).

example, if a gun is sold at a store in May and found at a crime scene in July, this suggests that the May purchaser was working on behalf of the July criminal. Under the time-to-crime theory, a long period between the gun's sale and its recovery at a crime scene suggests that the gun was stolen from its lawful owner and then sold into the black market. Of the Mexican guns that are successfully traced, the average weapon age is fifteen years, indicating that they were legal American guns that were stolen and then sold into the black market.¹⁴⁷

2. The Mexican Government Sometimes Blocks Traces

Another problem with Mexican trace data is that sometimes the Mexican government refuses to allow ATF to trace guns. In 2008, Mexican police in Reynosa (a border town near the southern tip of Texas) made the largest weapons seizure in Mexican history: 288 assault rifles, 428,000 rounds of ammunition, 287 grenades, 126 pistols, and a grenade launcher.¹⁴⁸ ATF asked to see the serial numbers on the guns in order to trace them, but the Mexican government refused.¹⁴⁹

At other times, an initial trace may be successful, but further investigation is thwarted. For instance, February 15, 2007, was labeled "Black Thursday" in Mexico when drug gangsters in central Mexico murdered four law enforcement officers.¹⁵⁰ ATF traced the murder weapons to a gun store in Laredo, Texas, and found the man who had lawfully purchased the guns.¹⁵¹ He asserted that he had sold them to a total stranger whom he met at a shooting range.¹⁵² Although ATF wanted to continue the

147. Administrative Record at 54, *Nat'l Shooting Sports Found. v. Jones*, 840 F. Supp. 2d 310 (D.D.C. 2012) (No. 11-1401), *aff'd*, 716 F.3d 200 (D.C. Cir. 2013). The record included a report from the Bureau of Alcohol, Tobacco, Firearms and Explosives on the average time-to-crime rates for U.S.-sourced firearms recovered and traced in Mexico between December 1, 2006, and August 31, 2010. *Id.* The average age of firearms recovered in Mexico was 15.08 years; the average age of firearms recovered in the United States was 10.55 years for the same period. *Id.* Out of 20,023 traces conducted, the time-to-crime figures were: 546 under three months, 451 between three and seven months, 547 between seven months and one year, 1,167 between one year and two years, 894 between two years and three years, 15,995 three years or older, and 423 unknown. *Id.*

148. Jo Tuckman, *Mexico Considers Banning Toy Guns to Cut Child Aggression*, THE GUARDIAN, Jan. 11, 2009, <http://www.guardian.co.uk/world/2009/jan/12/mexico-toy-guns> [<http://perma.cc/0teS12sTkF4>].

149. Todd Bensman, *Gunrunners' Land of Plenty*, SAN ANTONIO EXPRESS-NEWS, Nov. 30, 2008, http://www2.mysanantonio.com/gun_run/index.html [<http://perma.cc/0n7X6rWaNew>].

150. *Id.*

151. *Id.*

152. *Id.*

investigation in order to discover which gun trafficking network had delivered the guns to the murderers, the Mexican government blocked the investigation.¹⁵³ According to the *San Antonio Express-News*:

[T]he ATF wouldn't get much from their Mexican counterparts, who imposed an almost total information blackout about the arrests of 14 suspects, including the alleged shooters.

Not even the four widows know what happened to their husbands' alleged killers. The mystery extends to local journalists and municipal police, who are told only the arrested are still in prison but not tried. And, federal authorities have so far refused *Express-News* interview requests to discuss the case.

The ATF's Elias Bazan, who oversaw the Laredo office at the time, said Mexico's investigators squandered an opportunity to provide the results of their interrogations and any evidence, outside of the guns' serial numbers, that would point to how the weapons were smuggled from the Laredo side.

"We don't have anything from the Mexican government, so we're screwed," Bazan said of his Laredo investigation, which was shut down as a result.¹⁵⁴

3. Additional Sources of Mexican Criminal Arms

The Mexican drug cartels have set up gangs in the United States to steal American guns and smuggle them into Mexico.¹⁵⁵ The Zetitas (little Zetas) gang has cells in Houston, Laredo, and San Antonio and is believed to be carrying out many gun-store robberies.¹⁵⁶ A gun stolen from Houston by a Mexican gang in 2007 might well end up being seized by Mexican police in 2010 and then traced to the United States. But that does not prove that American gun laws are to blame for Mexican crime.

Another key source of American crime guns in Mexico is the Mexican government. The United States sells large quantities of guns to the federal, state, and local Mexican governments.¹⁵⁷ These Mexican government purchases may themselves be a major source of Mexican crime guns. According to CNN, there

153. *Id.*

154. *Id.*

155. Fred Burton & Scott Stewart, *Mexico: Dynamics of the Gun Trade*, STRATFOR GLOBAL INTELLIGENCE (Oct. 24, 2007), http://www.stratfor.com/weekly/mexico_dynamics_gun_trade [<http://perma.cc/0sZ6ebJikTB>].

156. *Id.*

157. *See, e.g.*, U.S. DEP'T OF STATE, 2012 SECTION 655 REPORT 23 (2012).

were approximately 150,000 desertions from the Mexican army from 2003 to 2009.¹⁵⁸ Stated another way, about one-eighth of the Mexican army deserts annually.¹⁵⁹ Many of these deserters take their government-issued automatic rifles, some with U.S. origins, with them.¹⁶⁰

As CNN reported, many of these deserters go to work for higher-paying drug cartels.¹⁶¹ Indeed, the Zetas, an especially violent gang even by Mexican standards, was founded by Mexican Special Forces deserters.¹⁶² The Zetas, who also recruit from Guatemalan army special forces (Kaibiles),¹⁶³ have used counterinsurgency tactics to take over various regions from other drug cartels.¹⁶⁴ They have frequently launched grenade attacks on police stations, and they deploy weaponry that even includes .50-caliber anti-aircraft machine guns.¹⁶⁵

So the fact that a Mexican army deserter is later caught with his M-16 does not mean that the U.S. civilian gun market is somehow at fault. The same is true for M-16s and other U.S. military weapons that come to the Mexican drug cartels after first being legally sold to governments such as Guatemala or South Korea. Marlene Blanco Lapola, chief of the Guatemala National Police, says that the police have “lost” at least 2,000 guns, including automatic UZIs and AK-47s.¹⁶⁶ Likewise, many U.S. Army M-16 rifles were left behind in Vietnam and many of them have been sold into the global black market.¹⁶⁷

158. Rey Rodriguez, *Army Desertions Hurting Mexico's War on Drugs*, CNN, Mar. 11, 2009, <http://www.cnn.com/2009/WORLD/americas/03/11/mexico.desertions/index.html> [<http://perma.cc/0MjVXFgVBRF>].

159. Hector Tobar, *A Cartel Army's War Within*, L.A. TIMES, May 20, 2007, <http://articles.latimes.com/2007/may/20/world/fg-zetas20> [<http://perma.cc/0jxXW1CDrpF>].

160. Stewart, *supra* note 132.

161. Rodriguez, *supra* note 158.

162. Samuel Logan, *A Profile of Los Zetas: Mexico's Second Most Powerful Drug Cartel*, CTC SENTINEL, Feb. 2012, at 5.

163. *Id.* at 6.

164. Tracy Wilkinson, *Sinoloa Cartel, Zetas Push Mexico's Drug Violence to New Depths*, L.A. TIMES, May 27, 2012, <http://articles.latimes.com/2012/may/27/world/la-fg-mexico-cartel-war-20120528> [<http://perma.cc/0JhdsfDisYq>].

165. Tobar, *supra* note 159.

166. *Autoridades Admiten Debilidades de Inteligencia Civil*, PRENSALIBRE.COM, Dec. 9, 2008), <https://web.archive.org/web/20081231102457/http://www.prensalibre.com/pl/2008/diciembre/09/282231.html> [<http://perma.cc/MW67-8FNG>] (“También reconoció que en la institución hay un faltante de 2 mil armas de fuego, donde han desaparecido fusiles AK 47 y subametralladoras mini uzis.”).

167. Jack Anderson, *U.S. Weapons Left in Vietnam Turning Up Around the World*, DAILY REPORTER (Spencer, Iowa), Aug. 23, 1979, at 4, available at <http://news.google.com/newspapers?nid=1926&dat=19790821&id=9VcrAAAAIbAJ&sjid=pNkEAAAAIbAJ&pg=3095,3226404> [<http://perma.cc/0PLnD3CCBKF>].

According to Stratfor, besides the U.S. supply source for guns, “[t]he cartels also obtain weapons from contacts along their supply networks in South and Central America, where substantial quantities of military ordnance have been shipped over decades to supply insurgencies and counterinsurgencies. Explosives from domestic Mexican sources also are widely available and are generally less expensive than guns.”¹⁶⁸

The Mexico City newspaper *El Universal* reported on the weapons bazaars in Tepito, a Mexico City neighborhood notorious as a place where anyone can buy anything.¹⁶⁹ According to that report, anyone with 3,000 pesos—about \$228 U.S. at the current exchange rate of about 13.18:1¹⁷⁰—can buy a gun.¹⁷¹ A new 9mm pistol costs 12,000 pesos.¹⁷² Hand grenades and “assault rifles” (15,000 pesos) are available “on request.”¹⁷³ The Tepito black marketers reported receiving wholesale monthly or bimonthly shipments of “revolvers, submachine guns, rifles and grenade launchers.”¹⁷⁴ Significantly, “[a] percentage of the weapons, the seller said, come from Mexico via Ministry of Defense personnel who provide [them] in part from weapons seized in raids, or stolen from the ministry’s own arsenal.”¹⁷⁵

There is no doubt that the drug cartels have plentiful supplies of grenades, rocket launchers, machine guns, and other military weapons. A 2009 Mexican federal government document reported that the government seized 2,804 grenades in the previous three years alone.¹⁷⁶ According to the government report, the types of arms seized among “the highest quantity” were “anti-tank rockets M72 and AT-4, rocket launchers RPG-7,

168. Burton & Stewart, *supra* note 155.

169. *Rentan Armas para Matar*, EL UNIVERSAL (Mex.), May 4, 2010, <http://www.eluniversal.com.mx/notas/677658.html> [<http://perma.cc/0ZMm1DXjxYn>].

170. *US Dollar–Mexican Peso Exchange Rate*, BLOOMBERG, <http://www.bloomberg.com/quote/USDMXN:CUR> [<http://perma.cc/07mFv6LvKCd>] (last visited Jan. 7, 2014).

171. *Rentan Armas para Matar*, *supra* note 169.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. PROCURADURÍA GENERAL DE LA REPÚBLICA, TRÁFICO DE ARMAS MÉXICO–USA (MEXICO–USA FIREARMS SMUGGLING) (2009), *available at* <http://www.pgr.gob.mx/prensa/2007/docs08/trafico%20de%20armas%2030%20abril%202009.pdf> [<http://perma.cc/8QRJ-P9VN>]. *See also* Stewart M. Powell & Dudley Althaus, *Obama Vows Action of Flow of Guns Into Mexico*, HOUS. CHRON., Jan. 11, 2009, <http://www.chron.com/news/nation-world/article/Obama-vows-action-on-flow-of-guns-into-Mexico-1601044.php> [<http://perma.cc/0AMXqCCo7H2>].

grenade launchers MGL Caliber 37 mm, grenade launcher additional devices caliber 37 and 40 mm, 37 and 40 mm grenades, [and] fragmenting grenades.”¹⁷⁷ Arms in “second place” for highest quantity seized included “rocket launchers and submachine guns.”¹⁷⁸

The prevalence of grenades, grenade launchers, submachine guns, and other such weapons in Mexico shows that the Mexican drug cartels have important sources of weapons other than the law-abiding U.S. retail market. An individual cannot buy grenades or machine guns over the counter at a gun store in Tucson or at a gun show in San Antonio.¹⁷⁹

Testifying before the U.S. House Subcommittee on Border, Maritime, and Global Counterterrorism on July 16, 2009, ATF stated that the grenades and other military-grade weaponry were coming into Mexico via the southern border with Guatemala.¹⁸⁰ After investigating the Mexican black market in arms, reporters William La Jeunesse and Maxim Lott summarized some sources of drug cartel weapons:

The Black Market. Mexico is a virtual arms bazaar, with fragmentation grenades from South Korea, AK-47s from China, and shoulder-fired rocket launchers from Spain, Israel and former Soviet bloc manufacturers.

Russian crime organizations. Interpol says Russian Mafia groups such as Poldolskaya and Moscow-based Solntsevskaya are actively trafficking drugs and arms in Mexico.

South America. During the late 1990s, the Revolutionary Armed Forces of Colombia (FARC) established a clandestine arms smuggling and drug trafficking partnership with the Tijuana cartel, according to the Federal Research Division report from the Library of Congress.

Asia. According to a 2006 Amnesty International Report, China has provided arms to countries in Asia, Africa, and Latin America. Chinese assault weapons and Korean explosives have been recovered in Mexico.

The Mexican Army. More than 150,000 soldiers deserted in the last six years, according to Mexican Congressman Robert Badillo. Many took their weapons with them, including the

177. PROCURADURÍA GENERAL DE LA REPÚBLICA, *supra* note 176.

178. *Id.*

179. 18 U.S.C. § 922(b)(4) (2012).

180. *Combating Border Violence: The Role of Interagency Coordination in Investigations: Hearing Before the Subcomm. on Border, Mar., and Global Counterterrorism of the H. Comm. on Homeland Sec.*, 111th Cong. 28 (2009) (statement of Bill McMahon, Deputy Assistant Dir., Bureau of Alcohol, Tobacco, Firearms and Explosives, Dep't of Justice).

standard issue M-16 assault rifle made in Belgium.

Guatemala. U.S. intelligence agencies say traffickers move immigrants, stolen cars, guns, and drugs, including most of America's cocaine, along the porous Mexican-Guatemalan border. On March 27, *La Hora*, a Guatemalan newspaper, reported that police seized 500 grenades and a load of AK-47s on the border. Police say the cache was transported by a Mexican drug cartel operating out of Ixcán, a border town.¹⁸¹

“Professor George W. Grayson, author of [the book] ‘*Mexico’s Struggle with “Drugs and Thugs,”*’ calls the 90 percent factoid a ‘wildly exaggerated percentage,’” which was being pushed by President Calderón for purposes of domestic Mexican politics.¹⁸²

In any case, the profits of the Mexican drug cartels are estimated to be between \$15 and \$25 billion a year—or about 2% of Mexico's gross domestic product.¹⁸³ The Mexican government estimates that the gross revenues of weapons trafficking into Mexico are \$22 million per year.¹⁸⁴ In other words, weapon acquisitions cost the drug cartels only about 1% of annual profits and a tiny fraction of gross revenues. Accordingly, the cartels appear to have substantial extra revenue to spend on weapons should law enforcement successes result in an increase in the black-market price of weapons.

D. American Efforts to Thwart Trafficking to Mexico

The first attempt to ban arms exports to Mexico took place during the Mexican-American War. On March 30, 1847, the U.S. Treasury Department forbade the export to Mexico of “cannon[s], swords, dirks, lances, spears, bowie knives, rifles,

181. La Jeunesse & Lott, *supra* note 131.

182. Seth McLaughlin, *Mexico Wages All-Out War On Drugs, Flu, Misperceptions*, WASH. DIPLOMAT, June 2009, http://www.washdiplomat.com/index.php?option=com_content&view=article&id=6211:mexico-wages-all-out-war-on-drugs-flu-misperceptions-&catid=978:june-2009&Itemid=255 [<http://perma.cc/0HjcAc9jTx5>]. A report by the U.S. Government Accountability Office suggested that the 90% figure might be correct. GAO FIREARMS TRAFFICKING, *supra* note 143, at 16. However, the report simply theorized that because most gun seizures take place in northern Mexico, most of the guns must come from the United States. *Id.* The hypothesis overlooks the possibility that the gangsters moved the guns, coming from a variety of sources, to northern Mexico because they are very active in this region and it is the launching point for the trafficking of drugs and persons into the United States.

183. WOODROW WILSON CENTER, MEXICO INSTITUTE, THE UNITED STATES AND MEXICO: TOWARDS A STRATEGIC PARTNERSHIP 11 (2009).

184. Dudley Althaus, *Obama to Help Mexico Cut Drug Violence*, SAN ANTONIO EXPRESS-NEWS, Jan. 13, 2009, <http://www.freerepublic.com/focus/f-news/2163877/posts> [<http://perma.cc/0VvKt6GuYWN>].

muskets, sidearms, and firearms and all other arms and munitions of war.”¹⁸⁵ During the George H.W. Bush administration, the U.S. Bureau of Alcohol, Tobacco and Firearms initiated a program called Operation Forward Trace.¹⁸⁶ U.S. law requires that licensed firearms dealers keep registration forms (Federal Form 4473) about their customers.¹⁸⁷ Especially targeting gun buyers with Hispanic names, ATF examined the 4473 forms for federally-licensed firearms dealers in southwestern states and then investigated the customers.¹⁸⁸ In July 2011, ATF issued “demand letters” to all licensed firearms dealers in the four southwest border states.¹⁸⁹ The letters ordered the dealers to report the names and purchases of all customers who purchase more than two semi-automatic rifles (including .22 caliber) within a five-day period.¹⁹⁰

ATF and the Mexican government initiated Project Gunrunner in 2005.¹⁹¹ It allows Mexican law enforcement officials to ask ATF to conduct computerized traces of guns that have been seized by Mexican law enforcement.¹⁹² Project Gunrunner is operated by American law enforcement officials in Mexico and in American border states.¹⁹³ Project Gunrunner became part of the Mérida Initiative, by which the U.S. government provides extensive financial support to law enforcement organizations in Central America, with the bulk of the funds going to Mexico.¹⁹⁴ Most of the Mérida money is used

185. NORM FLAYDERMAN, *THE BOWIE KNIFE: UNSHEATHING AN AMERICAN LEGEND* 82 (2004).

186. See *Open Letter To Licensed Firearms Dealers*, AM. RIFLEMAN, Dec. 1991, at 43; Dick Riley, *When Rights Are Wronged*, AM. RIFLEMAN, Nov. 1991, at 64. For a case challenging the program, see *Carney v. Magaw*, No. C-3-89-446 (S.D. Ohio Feb. 8, 2000) (dismissing case because plaintiff was no longer engaged in the business of selling firearms). In 2003, ATF moved from the Department of the Treasury to the Department of Justice. *ATF's History*, *supra* note 121.

187. 27 C.F.R. § 478.129 (2013).

188. See James Jay Baker, *Clinton–Gore 2000 Legacy: Abuse & Corruption*, AM. RIFLEMAN, Nov. 2000, at 50 (“Edgar Morales, owner of Mirage 2000, a small Houston gun shop, says he was called by a compliance inspector who asked for the names of any Hispanic customers who were buying .38 Super ammo.”).

189. See *10 Ring Precision, Inc. v. Jones*, 722 F.3d 711, 714 (5th Cir. 2013); *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 202 (D.C. Cir. 2013) (both cases upholding ATF's demands).

190. See *10 Ring Precision*, 722 F.3d at 716; *Nat'l Shooting Sports Found.*, 716 F.3d at 202.

191. GAO FIREARMS TRAFFICKING, *supra* note 143, at 11.

192. *Id.*

193. *Id.*

194. CLARE RIBANDO SEELKE & KRISTIN M. FINKLEA, CONG. RESEARCH SERV., R41349, U.S.–MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND 6 (2013).

to purchase equipment.¹⁹⁵

Another joint Mexican-American project is Operation *Armas Cruzadas*, in which several American law enforcement agencies work with their Mexican counterparts to thwart arms smugglers.¹⁹⁶ In addition, U.S. anti-drug programs are also tasked with preventing gunrunning into Mexico.¹⁹⁷

One more program is a joint project of the federal ATF and the National Shooting Sports Foundation—the trade association for the American firearms industry.¹⁹⁸ “Don’t Lie for the Other Guy” trains firearms store owners and employees how to spot “straw purchasers.”¹⁹⁹ A straw purchaser is someone with a clean record who can legally buy guns but is illegally buying the gun on behalf of an ineligible person, such as a boyfriend with a felony conviction, or an arms smuggler.²⁰⁰

E. American Efforts to Promote Gun Trafficking

From 2006 to 2007, the Phoenix ATF office operated a program called “Wide Receiver,” which supplied more than 300 guns to Mexican drug trafficking organizations.²⁰¹ Firearms dealers in Arizona were told to sell guns to people who were obviously straw purchasers.²⁰² ATF agents assured the gun stores that undercover agents would follow the guns once they left the

195. *Id.* at 8–9.

196. *Border Enforcement Security Task Force: Hearing Before the Subcomm. On Homeland Sec. of the H. Appropriations Comm.*, 111th Cong. 4–6 (2009) (statement of Marcy Forman, Dir. of Investigations, U.S. Immigrations and Customs Enforcement Dep’t of Homeland Sec.) (noting that Immigration and Customs Enforcement initiated a joint project of Customs and Border Protection, ATF, and the Drug Enforcement Administration).

197. Press Release, Office of the U.S. Dep’t of State Spokesman, Joint Statement on the Mérida Initiative: A New Paradigm for Security Cooperation (Oct. 22, 2007), available at <http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/93817.htm> [<http://perma.cc/0X4PgpqVETw>] (including the 2007 Southwest Border Counternarcotics Strategy, the 2008 National Drug Control Strategy, and the 2007 U.S. Strategy for Combating Criminal Gangs from Central America and Mexico).

198. “Don’t Lie for the Other Guy” Campaign, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, <http://www.atf.gov/publications/factsheets/factsheet-dont-lie-campaign.html> [<http://perma.cc/0vEjyvmzNXi>] (last visited Jan. 7, 2014).

199. *Id.*

200. *Id.*; see also 18 U.S.C. § 922(d) (2012).

201. STAFF OF H. COMM. ON OVERSIGHT & GOV’T REFORM & S. COMM. ON THE JUDICIARY, 112TH CONG., FAST AND FURIOUS: ANATOMY OF A FAILED OPERATION: PART II OF III 26–29 (2012). See also MIKE DETTY, GUNS ACROSS THE BORDER: HOW AND WHY THE U.S. GOVERNMENT SMUGGLED GUNS INTO MEXICO (2013) (telling the story of one licensed gun dealer and his participation in Wide Receiver).

202. STAFF OF H. COMM. ON OVERSIGHT & GOV’T REFORM & S. COMM. ON THE JUDICIARY, 112TH CONG., FAST AND FURIOUS: ANATOMY OF A FAILED OPERATION: PART I OF III 92 (2012).

store so that they would never be used in crime.²⁰³ This was a flat-out lie. ATF headquarters in Washington, D.C., eventually got wind of what was going on and began asking questions.²⁰⁴ The Phoenix ATF office immediately shut down Wide Receiver.²⁰⁵

William Newell, a gun-control enthusiast and the ATF Special Agent in Charge of the Phoenix office, orchestrated Wide Receiver.²⁰⁶ After President Obama took office and the administration began using Mexican gun crime as an argument for American gun control, Newell initiated a new, much larger version of Wide Receiver.²⁰⁷ This operation's name was "Fast & Furious," and this time the operation received enthusiastic support from ATF headquarters and many other parts of the U.S. Department of Justice.²⁰⁸

From late 2009 until early 2011, Fast & Furious orchestrated the delivery of more than 2,000 firearms to Mexican drug cartels.²⁰⁹ According to Mexico's attorney general, those firearms have been used in 200 homicides in Mexico.²¹⁰ One victim was U.S. Border Patrol Agent Brian Terry, killed in December 2010.²¹¹ In 2013, a Mexican police chief was also murdered with a Fast & Furious gun.²¹²

After Fast & Furious was exposed, some ATF employees received lateral transfers and demotions.²¹³ The U.S. Attorney for

203. *Id.*

204. Jason Ryan, *Documents Highlight Bush-Era Incident Pre-Dating 'Fast and Furious,'* ABC NEWS (Oct. 14, 2011, 7:18 PM), <http://abcnews.go.com/blogs/politics/2011/10/new-documents-reveal-previous-problems-with-atf-phoenix-cases/> [<http://perma.cc/0ZEtKPKhTs1>].

205. *Id.*

206. Sharyl Attkisson, *A Primer on the "Fast and Furious" Scandal*, CBS NEWS, June 26, 2012, http://www.cbsnews.com/8301-31727_162-57461204-10391695/a-primer-on-the-fast-and-furious-scandal/ [<http://perma.cc/04qXjhxZHva>].

207. Sari Horwitz, *ATF Agent Who Started 'Fast and Furious' Defends Operation*, SEATTLE TIMES, June 28, 2012, http://seattletimes.com/html/nationworld/2018545824_guns28.html [<http://perma.cc/0Hcj5wqtGGH>].

208. *Id.*

209. OFFICE OF THE INSPECTOR GEN., A REVIEW OF ATF'S OPERATION FAST AND FURIOUS AND RELATED MATTERS I (2012). See generally JOHN DODSON, THE UNARMED TRUTH: MY FIGHT TO BLOW THE WHISTLE AND EXPOSE FAST AND FURIOUS (2013) (autobiography of the ATF whistleblower who participated in Fast & Furious).

210. Katie Pavlich, *Attorney General in Mexico: 200 Murders Result of Operation Fast and Furious*, TOWNHALL.COM, Sept. 20, 2011, http://townhall.com/tipsheet/katiepavlich/2011/09/20/attorney_general_in_mexico_200_murders_result_of_operation_fast_and_furious [<http://perma.cc/0ZapKrxovx>].

211. OFFICE OF THE INSPECTOR GEN., *supra* note 209, at 2.

212. Richard A. Serrano, *Police Chief Killed With Rifle Lost in ATF Gun-Tracking Program*, L.A. TIMES, July 5, 2013, <http://articles.latimes.com/2013/jul/05/nation/la-na-nn-atf-fast-furious-20130705> [<http://perma.cc/0EwoBcYPjka>].

213. See, e.g., Laura Prabucki, *ATF Director Reassigned; U.S. Attorney Out Amid 'Fast and*

Arizona (who, like Newell, was a gun-control supporter) resigned,²¹⁴ as did the Assistant U.S. Attorney who had been the line attorney working on *Fast & Furious*.²¹⁵

Assuming that Wide Receiver and *Fast & Furious* did not have written authorization from the U.S. State Department (and there is no evidence that they did), the participants in those operations perpetrated numerous felony violations of the federal Arms Control & Export Act (ACEA).²¹⁶ However, no prosecutions for these violations have been initiated.

F. A Mexican Lawsuit Against the United States

From a purely legal standpoint, the most intriguing legal issue of the cross-border trade is a possible lawsuit against the United States by the government of Mexico. On November 2, 2010, the Mexican government retained the law firm of Reid, Collins & Tsai.²¹⁷ Based in New York City and Austin, the boutique firm specializes in innovative cases.²¹⁸

Some cases that would not require any legal innovation could be based on *Fast & Furious*. The United States has the legal authority to bring cases against people in foreign countries who organize conspiracies to smuggle illegal weapons into the United States with the intent that those weapons end up in the hands of gangsters.²¹⁹ Likewise, Mexico has the legal authority to file lawsuits—or even criminal charges—against Americans who intentionally conspire to promote illegal gun smuggling into

Furious' Uproar, FOXNEWS.COM, Aug. 30, 2011, <http://www.foxnews.com/politics/2011/08/30/sources-atf-director-to-be-reassigned-amid-fast-and-furious-uproar/> [<http://perma.cc/0ULFadjfwfH>].

214. Robert Anglen, *U.S. Attorney for Arizona Dennis Burke Resigns*, ARIZ. REPUBLIC, Aug. 31, 2011, <http://www.azcentral.com/news/articles/2011/08/30/20110830us-attorney-arizona-burke-resigns30-ON.html> [<http://perma.cc/08ozENa2R8Z>]; Dennis Wagner, *Burke of Fast and Furious Had Anti-gun History*, ARIZ. REPUBLIC, Jan. 28, 2012, <http://www.azcentral.com/arizonarepublic/news/articles/2012/01/27/20120127dennis-burke-fast-furious-scandal-career.html> [<http://perma.cc/0zhFqiLobGj>].

215. Prabucki, *supra* note 213.

216. See 22 U.S.C. § 2778(b)(2) (2012). The ACEA is currently used by federal prosecutors in serious cases of international arms smuggling because of the severity of the penalties. GOODMAN, *supra* note 130, at 10.

217. *Mexico Wants to Sue U.S. Gun Makers*, CBS NEWS, Apr. 21, 2011, http://www.cbsnews.com/8301-31727_162-20056210-10391695.html [<http://perma.cc/0uGauwkPCSd>].

218. *We Bring Cases Others Cannot*, REID, COLLINS & TSAI, <http://www.rctlegal.com/why-us/we-bring-cases-others-cannot/> [<http://perma.cc/0p8zzAwmuaQ>] (last visited Jan. 7, 2014).

219. 18 U.S.C. § 922(a)(1) (2012).

Mexico.²²⁰

Of course, getting jurisdiction over persons in a foreign country is not easy. The United States has sometimes seized Mexican drug lords to bring them to trial in the United States.²²¹ Although the Mexican government has said that it wants to extradite the *Fast & Furious* perpetrators to Mexico for criminal trial,²²² the U.S. government has not turned any of the perpetrators over to Mexican authorities. Presumably, the U.S. government also will not grant permission to Mexican law enforcement to seize the perpetrators in the United States. The posting of ATF agent William Newell (ringleader of *Fast & Furious*) as ATF attaché to Mexico was cancelled for fear that, if he entered Mexico, he might be arrested and prosecuted for *Fast & Furious*.²²³

What about a case other than *Fast & Furious*? Could Mexico bring a civil suit against U.S. gun manufacturers or retailers? Mexico itself is one potential venue for such a suit. Some American gun manufacturers have voluntarily done business in Mexico by selling guns there, either to licensed Mexicans (via the one gun store in Mexico), or to various governmental entities there.²²⁴ As for the American gun manufacturers who do not sell to Mexico, the Mexican government could allege that the American manufacturers knew, or should have known, that the manner in which they sell guns in the United States would inevitably have consequences in Mexico.

Following a (hypothetical) victory in a Mexican court—likely including an award of millions of dollars in damages—the Mexican government could then ask an American court to seize

220. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, art. 84(I), Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.).

221. *E.g.*, United States v. Verdugo-Urquidez, 494 U.S. 259 (1990).

222. William La Jeunesse, *U.S. Officials Behind 'Fast and Furious' Gun Sales Should Be Tried in Mexico, Lawmaker Says*, FOXNEWS.COM, July 5, 2011, <http://www.foxnews.com/world/2011/07/05/mexican-lawmakers-want-extradition-for-us-officials-responsible-for-botched/> [<http://perma.cc/0eeWjdLu3qm>].

223. Allan Lengel, *Fast and Furious Official No Longer Going to Mexico as Attache; Mexican Govt. Asks for Transcripts of His Testimony*, TICKLE THE WIRE (Aug. 4, 2011, 4:13 PM), <http://www.ticklethewire.com/2011/08/04/fast-and-furious-official-no-longer-going-to-mexico-as-attache-mexican-govt-asks-for-transcripts-of-his-testimony/> [<http://perma.cc/0P8gKJqYbuM>].

224. *E.g.*, William Booth, *In Mexico, Only One Gun Store but No Dearth of Violence*, WASH. POST, Dec. 29, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/12/28/AR2010122803644_2.html [<http://perma.cc/03kSveVAm4E>] (explaining that guns from American manufacturer Smith and Wesson are sold in the one store).

the money in the American gun manufacturers' bank accounts, or to seize their other assets, such as manufacturing equipment, buildings, or land. American courts are usually willing to enforce judgments from foreign courts unless there was some procedural irregularity in the foreign court.²²⁵

Another potential venue is the International Court of Justice (ICJ). Informally known as the "World Court," the ICJ is located in The Hague, Netherlands.²²⁶ Although the Court long predates the United Nations, the Court is currently part of the United Nations system.²²⁷ In April 2010, Chicago's then-Mayor Richard Daley held the sixth annual "Richard J. Daley Global Cities Forum" with mayors from around the world.²²⁸ At the event, Daley announced the idea of suing American gun manufacturers in the World Court.²²⁹ Philadelphia Mayor Michael Nutter and Mexico City Mayor Marcelo Ebrard Casaubón also endorsed the idea.²³⁰

The World Court can only issue binding decisions in nation-versus-nation suits.²³¹ Thus, a World Court case would have to be *United Mexican States v. United States of America*. Unlike some nations, the United States has not given blanket consent to World Court jurisdiction, so the World Court could only hear the case if the U.S. Presidential Administration allowed it.²³²

Perhaps the Administration might welcome such a suit, consent to jurisdiction, and put up a less than full-hearted defense in the World Court. The result could be a World Court order that the U.S. government impose major new restrictions on gun manufacturers and gun owners. Although World Court judgments are not self-executing in the United States,²³³ such a judgment could be a powerful argument to aid an

225. RONALD A. BRAND, *RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS* 1 (2012).

226. *The Court*, INT'L COURT OF JUSTICE, <http://www.icj-cij.org/court/index.php?p1=1> [<http://perma.cc/0q4uBMvVZk9>] (last visited Jan. 7, 2014).

227. *Id.*

228. Neal Pierce, *Could Mayors' Fervor for Gun Curbs Trigger Global Legal Action?*, NATION'S CITIES WKLY., May 10, 2010, at 2.

229. *Id.*

230. *Id.*

231. Statute of the Int'l Court of Justice art. 34, para. 1, June 26, 1945, 59 Stat. 1031, 3 Bevans 1179.

232. U.S. DEP'T OF STATE, UNITED STATES: DEPARTMENT OF STATE LETTER AND STATEMENT CONCERNING TERMINATION OF ACCEPTANCE OF I.C.J. COMPULSORY JURISDICTION, 24 I.L.M. 1742, 1743 (1985).

233. *See, e.g., Medellín v. Texas*, 552 U.S. 491 (2008).

Administration's push for gun control as being necessary to comply with international legal obligations.

The other possible international court for a Mexican government case would be the Inter-American Court of Human Rights located in Costa Rica.²³⁴ This court is part of the Organization of American States (OAS), a group which is quite hostile to gun ownership.²³⁵ In recent years, the OAS has veered sharply into the Chavezista camp, supporting rather than criticizing repressive governments in the Western Hemisphere.²³⁶

Again, the Obama Administration would have to cooperate in order for the Inter-American Court to hear the case.²³⁷ The result could be the same as from the World Court: a non-binding international obligation for the U.S. federal government to impose severe regulations on gun owners and gun manufacturers.²³⁸

The Obama Administration has been attempting—so far unsuccessfully—to convince the Senate to adopt the OAS gun-control convention, known as CIFTA.²³⁹ The Convention would obligate the U.S. government to impose drastic new gun controls.²⁴⁰

The final possibility for the Mexican suit is in an American federal court. The Mexican government could cherry-pick a court with the friendliest judges. The government could also follow the strategy of the anti-gun lawsuits that the Brady Center masterminded in 1998 and 1999: sue in many courts all over the United States to force the gun manufacturers to defend a

234. INTER-AMERICAN COURT OF HUMAN RIGHTS, <http://www.corteidh.or.cr> [<http://perma.cc/0j6d4V2gsEr>] (last visited Jan. 7, 2014).

235. See Inter-Am. Comm'n H.R. [IACHR], Annual Report of the IACHR 2006, OEA/Ser.L/V/II.127, doc. 4, rev. 1, ch. 4 ¶ 113 (2007) (discussing a program to round up guns in Haiti).

236. See Josh Rogin, *House Panel Votes to Defund the OAS*, THE CABLE (July 20, 2011, 12:17 PM), http://thecable.foreignpolicy.com/posts/2011/07/20/house_panel_votes_to_defund_the_oas [<http://perma.cc/0JoPiXRZ5t>].

237. Organization of American States, American Convention on Human Rights art. 62(3), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

238. See, e.g., Flores-Nova v. United States, 652 F.3d 488, 493 (3d Cir. 2011).

239. Mary Beth Sheridan, *Despite Obama Pledge, Democrats Show Little Enthusiasm for CIFTA Treaty on Gun Trafficking*, WASH. POST, Oct. 21, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/21/AR2010102107266.html> [<http://perma.cc/0fqtdHwD3gG>].

240. THEODORE R. BROMUND, RAY WALSER & DAVID B. KOPEL, THE HERITAGE FOUND., THE OAS FIREARMS CONVENTION IS INCOMPATIBLE WITH AMERICAN LIBERTIES (2010), available at <http://www.heritage.org/research/reports/2010/05/the-oas-firearms-convention-is-incompatible-with-american-liberties> [<http://perma.cc/0eftcv6CB9Z>].

plethora of suits all at once.²⁴¹

A Mexican lawsuit, however, would face a serious obstacle. The 2005 Protection of Lawful Commerce in Arms Act (PLCAA) prohibits nearly all anti-gun suits except those arising from criminal conduct on the part of a gun manufacturer or gun seller.²⁴² Mexico would have to successfully attack the constitutionality of the PLCAA before any civil suit could succeed.

Lower courts have turned aside challenges to the PLCAA,²⁴³ but the U.S. Supreme Court has never ruled on it, other than to deny certiorari.²⁴⁴ If the Mexican government were willing to accept some defeats in lower courts while moving the case toward the Supreme Court, a case with Mexico as a petitioner might be especially likely to capture the Court's attention. If the litigation process took several years, President Obama might have the opportunity, in the interim, to appoint several new Justices. There is no guarantee how an Obama-dominated Court would rule, but it would be foolish to presume that the Court would definitely uphold the PLCAA *in toto*. After all, *District of Columbia v. Heller*²⁴⁵ and *McDonald v. City of Chicago*²⁴⁶ were hotly disputed 5–4 decisions.

V. CONCLUSION

In a nation where the constitution guarantees the right to arms, the laws ought to provide a practical, functional system for law-abiding persons to acquire arms. In practice, the Mexican system fails to do so. Law-abiding citizens are often forced to resort to extra-legal means to obtain arms for lawful self-defense. Meanwhile, the pervasive corruption of Mexican law enforcement, which is substantially worsened by drug prohibition, ensures a ready supply of the most dangerous arms for the most dangerous criminals. The Mexican gun-control system is a failure that harms public safety. Given the systemic

241. Peter J. Boyer, *A Reporter at Large: Big Guns*, THE NEW YORKER, May 17, 1999, at 61.

242. 15 U.S.C. §§ 7901–7903 (2012).

243. *See, e.g.*, *Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F. Supp. 2d 174, 185–86 (D.D.C. 2009).

244. *See, e.g.*, *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008), *cert. denied*, 556 U.S. 1104 (2009).

245. 554 U.S. 570 (2008).

246. 130 S. Ct. 3020 (2010).

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state failure that exposes Mexican citizens to the depredations of criminals, the Mexican gun-control statute ought to be reformed so that average, law-abiding Mexicans can lawfully acquire ordinary means of lawful self-defense. Mexico's current gun-control laws are not a model for the United States.

APPENDIX: THE MEXICAN GUN CONTROL STATUTE

This is not an official translation. It is not the official product of the Mexican government. Do not rely on this unofficial document for legal advice. If you have questions about the law—such as those about transporting a gun into Mexico—consult a Mexican government official.

This translation is based on the 2004 Mexican government text.²⁴⁷ In the translation, punctuation follows the Spanish text, even when the punctuation does not comply with modern English usage; for example, commas are kept in places where modern English would not use a comma. I did not attempt to rewrite the Mexican statute as if it were an American statute. Instead, I translated the Mexican statute into English. For example, *la portación de armas* is often rendered by other translators as “bearing arms” or “carrying arms” to match modern English usage. However, I rendered the term as “the carrying of arms,” which is a more literal translation and preserves more of the flavor of the Mexican text. Likewise, *requisites* is generally translated as “requirements.” I instead render it as “requisites,” which, again, adheres more closely to the Mexican text.

247. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], *as amended*, Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/102.pdf> [<http://perma.cc/0fZA5kS6xnW>]. For reference, see the prior law as enacted in 1972. Ley Federal de Armas de Fuego y Explosivos [LFAFE] [Federal Firearms and Explosives Law], Diario Oficial de la Federación [DO], 11 de Enero de 1972 (Mex.), available at http://www.diputados.gob.mx/LeyesBiblio/ref/lfafe/LFAFE_orig_11ene72_ima.pdf [<http://perma.cc/0WVJpXp1PPW>].

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Federal law of firearms and explosives²⁴⁸
Chamber of Deputies of House of Congress
General Secretariat January 23, 2004
Ministry of Parliamentary Services

FEDERAL LAW OF FIREARMS AND EXPLOSIVES

**New Law published in the Official Gazette on
January 11, 1972
EXISTING TEXT**

Last reform published January 23, 2004

In accordance with the National government, which is to say:
United States of Mexico. President of the Republic
LUIS ECHEVERRIA ÁLVAREZ, Constitutional President of the
United States of Mexico, to his constituents, know:

That the Congress has directed me to execute the following

DECREE

The Congress of the United States of Mexico, decreed:

FEDERAL LAW OF FIREARMS AND EXPLOSIVES**FIRST TITLE****ONLY CHAPTER****General rules****Article 1st**

The provisions of this Act are of public interest.

Article 2nd

The application of this Law corresponds to:

- I. The President of the Republic;
- II. The Secretary of Government;²⁴⁹

248. Translation assistance by Angelica Tovar-Hastings, Denver University, Sturm College of Law, J.D. 2010, LL.M. 2001.

249. The Secretary of Government is the second-highest official in the executive branch of the Mexican government, after the President. EMILY EDMONDS-POLI & DAVID A.

III. The Secretary of the National Defense, and

IV. To the other federal authorities in the cases of their competence.

Article 3rd

The authorities of the States, Federal Districts, and the Municipalities, in their corresponding scopes of competence, will have the intervention that this Law and its Regulations indicate.

Article 4th

It is the Executive of the Union through the Secretaries of Government and of the National Defense, according to the attributions that this Law and its Regulations indicate, to control all of the arms in the country, for which there shall be a Federal Registry of Arms.

Article 5th

The Federal Executive, the Governments of the States, of the Federal District and the City Councils, will make permanent educational campaigns that induce the reduction of the possession, the carrying and the use of arms of any type.

For reasons of public interest, only the advertising of sporting arms, for hunting or sporting purposes, is allowed, within the boundaries of this Law.

Article 6th

The federal Laws or regulations on connected matters are supplementary to this Law.

SHIRK, CONTEMPORARY MEXICAN POLITICS 108 (2d ed. 2012). The Secretary is responsible for almost all domestic affairs. *Historical Overview*, SECRETARÍA DE GOBERNACIÓN, http://www.segob.gob.mx/en_mx/SEGOB/Antecedentes_historicos [<http://perma.cc/0TYK9NXFtaY>] (last visited Jan. 7, 2014). The post is approximately similar to the Home Minister in the United Kingdom. See *Secretary of State for the Home Department*, GOV.UK, <https://www.gov.uk/government/ministers/secretary-of-state-for-the-home-department#responsibilities> [<http://perma.cc/0eiZVKSrMw>] (last visited Jan. 7, 2014).

SECOND TITLE
Possession and Carrying

CHAPTER I
Preliminary provisions

Article 7th

The possession of any firearm shall be registered to the Ministry of Defense, by the effect of its inscription in the Federal Registry of Arms.

Article 8th

Not permitted is the carrying or possession of arms prohibited by the Law or reserved for the exclusive use of the Army, Navy and Air Force, save only in cases of exception mentioned in this Law.

Article 9th

People are allowed the possession or carrying, under the terms with the limitations established by this Law, arms of the following characteristics:

I. Pistols of semiautomatic operation of caliber not superior to .380 (9mm), however excepting pistol calibers .38 Super, .38 Commando, and also in 9 mm calibers the Mauser, Luger, Parabellum and Commando, as well as similar models of the same caliber of the excepted ones, of other brands.

II. Revolvers in calibers not superior to .38 Special, with the exception of the caliber .357 Magnum.

The farmers in cooperatives, *cumuneros*,²⁵⁰ and day laborers of the field, outside the urban zones, may possess and carry, with a single declaration, one of the above-mentioned arms, or rifle of .22 caliber, or a shotgun of whichever caliber, except of those of barrel length shorter than 635 mm (25), and those of higher caliber than 12 (.729 or 18.5 mm).

III. Those mentioned in article 10 of this Law.

250. After the 1917 revolution, many large land-holdings were broken up, and the land was given to small farmers. MEXICO: A COUNTRY STUDY 112-13 (Tim L. Merrill & Ramón Miró eds., 4th ed. 1998). These *cumuneros* hold title to the land, and can transfer it by inheritance, but cannot sell it. *Id.*

IV. Those that are integrated in collections of arms, by the terms of articles 21 and 22.

Article 10²⁵¹

The arms that can be authorized to sportsmen for shooting or hunting, to possess in the home and to carry with a license, are the following:

I. Pistols, revolvers and .22 caliber rimfire rifles.

II. Pistols of .38 caliber for the purpose of Olympics shooting or competition.

III. Shotguns in all calibers and models, except those of barrel length shorter than 635 mm (25), and those of caliber superior to 12 (.729 or 18.5 mm).

IV. Shotguns of 3 barrels in the calibers authorized in the previous section, with a barrel for metallic cartridges of distinct caliber.

V. High-powered rifles, repeating or semiautomatic, not convertible to automatic, excluding .30 caliber carbines and rifles, muskets and carbines of caliber .223, 7 and 7.62 mm and Garand rifles in .30 caliber.

VI. High power rifles of calibers superior to those indicated in the previous section, with special permission for use abroad, in hunting of big game not existing in the national fauna.

VII. The other arms of sporting characteristics in agreement with the legal norms of hunting, applied by the Secretaries of State or Organizations involved, as well as the national and international regulation of shooting sports.

The persons who practice the sport of *Charrería*²⁵² hunting can be authorized to have revolvers of greater caliber than the ones indicated in the 9th article of this Law, solely to complete their *Charrería* attire, and having to carry them unloaded.

251. In the original text, only Articles 1st through 9th are ordinal. Articles 10 and above are cardinal.

252. *Charrería* is the name for a Mexican sport of horsemanship. Paulina Kababie, Tracy Everbach, Steven Elliott & Lisa Button, *Family Carries Charrería Tradition Through Generations*, NBC LATINO, June 7, 2012, <http://nbclatino.com/2013/06/07/family-carries-charrería-tradition-through-seven-generations/> [http://perma.cc/0gtmeCLrH9W]. It is somewhat similar to American rodeo. *Id.* Participants wear costumes, which include guns. KATHLEEN M. SANDS, CHARRERÍA: AN EQUESTRIAN FOLK TRADITION 283 (1993).

Article 10 Second

The possession of cartridges corresponding to the arms that can be possessed or carried is limited to the quantities that are established in article 50 of this Law, for each arm registered in the Federal Registry of Arms.

Article 11

The arms, munitions and material for the sole uses of the Army, Navy and Air Force are the following:

- a) Revolvers in .357 Magnum and those superior to .38 Special.
- b) Pistols in the calibers 9 mm Parabellum, Luger and similar, the .38 Super and Commando, and the superior calibers.
- c) Rifles, *mosquetones*,²⁵³ carbines, and *tercerolas*,²⁵⁴ in calibers .223, 7 mm, 7.62 mm and .30 caliber carbines in all models.
- d) Pistols, carbines and rifles with burst-fire systems, sub-machine guns, and machine guns in all calibers.
- e) Shotguns with barrel of length less than 635 mm (25), those of caliber superior to 12 (.729 or 18.5 mm) and teargas launchers,²⁵⁵ with exception of those for industrial use.
- f) The ammunition for the previous arms and cartridges with special artifices like tracers, incendiaries, armor-piercing, smoke-producing, *expansivos de gases*²⁵⁶ and shells with loads superior to 00 (.84 cms. diameter) for shotguns.
- g) Cannons, artillery pieces, mortars and tanks with their attachments, accessories, projectiles and ammunition.

253. A *mosquetone* is a rifled long gun shorter than a standard rifle. *Mosquetones*, WORD REFERENCE, <http://www.wordreference.com/definicion/mosquetones> [http://perma.cc/0fjmNLzYeT] (last visited Jan. 7, 2014). An example of a mosquetone is the 1916 Mauser. See *Fusiles Mauser*, SOCIEDAD BENÉFICA DE HISTORIADORES AFICIONADOS Y CREADORES, <http://www.sbhac.net/Republica/Fuerzas/Armas/Infanteria/Fusiles/Fusiles.htm> [http://perma.cc/0YtK948FCeM] (last visited Jan. 7, 2014).

254. A *tercerola* is a firearm shorter than a carbine, used by cavalry. *Tercerola*, WORD REFERENCE, <http://www.wordreference.com/definicion/tercerola> [http://perma.cc/09Vmb25f4Vi] (last visited Jan. 7, 2014). Examples of *tercerolas* include the 1871 Remington and the 1879 Remington. See *Tercerola de Retrocarga, de Repetición*, ARMAGINTZAREN MUSEOA MUSEO DE LA INDUSTRIA ARMERA, http://www.armia-eibar.net/armas/arma_larga/EA330 [http://perma.cc/0QAo7Fmo1ym] (last visited Jan. 7, 2014); TERCEROLA REMINGTON-MODELO 1871, <http://home.coqui.net/sarrasin/tercerola.htm> [http://perma.cc/0J8eSCsWavL] (last visited Jan. 7, 2014).

255. "Lanzagases."

256. The statutory text may be in error. The phrase "expansivos de gases" may be missing a comma after "expansivos." If a comma were inserted, the statute would ban expanding bullets and bullets containing gas.

h) Projectile-rockets, torpedoes, grenades, pumps, mines, depth charges, flame throwers and the like, as well as the apparatuses, artifices and machines for their launching.

i) Bayonets, sabers and lances.

j) Ships, submarines, boats and seaplanes for naval warfare and their armament.

k) Aircraft of war and their armament.

l) Devices of war, gases and chemical substances of exclusively military application, and diverse inventions for use by the armed forces.

In general, all the arms, the ammunition and materials destined exclusively for the war.

Those of this function, by means of the justification of necessity, will be able to be authorized by the Secretary of the National Defense, individually or to corporations, to those who hold jobs or positions for the Federation, for the Federal District, for the States or the Municipalities.

Article 12

The prohibited arms, by effect of this Law, are those listed in the Penal Code for the Federal District in the Subject of the general jurisdiction and for all the Republic in the Subject of Federal jurisdiction.

Article 13

Not considered as prohibited arms are utensils, tools or instruments for working in the field or any occupation, art, profession or sport that have well-known application for such, but their use is limited to the premises or site in which the work or sport practice takes place.

When those instruments are carried by necessities of work or for the exercise of a sport, it is necessary to demonstrate, according to the case, these circumstances.

Article 14

The loss, theft, destruction, seizure or securing of the weapon that is possessed or carried, must be disclosed to the Secretary of the National Defense, in the terms and through the channels established by the Regulations of this Law.

CHAPTER II
Possession of arms in the place of residence

Article 15

In the home it is allowed to possess arms for security and legitimate defense of residents. The possession imposes the duty to show them to the Secretary of the National Defense, to be registered.

For each arm there must be a record of its registration.

Article 16

For the purposes of control and possession of arms, an individual must declare a sole address of permanent residence for himself and his family.

Article 17

Any person who acquires one or more arms, is obliged to register it with the Secretary of the National Defense within thirty days. The registration will be made in writing, indicating brand, caliber, model and serial number if any.

Article 18

The public servants and chiefs of police federal, of the Federal District, of the States and the Municipalities, are required to make the registration referred to in the previous article.

Article 19

The Secretary of the National Defense will have the authority to determine in each case, what arms for shooting or hunting of the listed ones in article 10, by their characteristics, can be possessed, as well as the corresponding ammunition allowances. With respect to the hunting arms, it will be required to have previously the opinion of the Secretaries of State or Agencies that have authority.

The authorization requests should be made directly or by the conduit of the Club or Association.

Article 20

The Clubs and Associations of the sports of shooting and

hunting must be registered by the Secretaries of the Government and of National Defense, and must comply with the requisites listed in the Regulations.

Article 21

Natural persons or legal entities, public or private, may possess collections or museums of antique or modern arms, or both, according to permission of the Secretary of the National Defense.

Also they will be able to have, with the same requisites, arms that are prohibited by this Law, when they have cultural, scientific, artistic or historical value or significance.

When in a collection or museum not assigned to a military institution of the Nation, arms exist which are reserved for the exclusive use of the Army, Navy and Air Force, there is required further authorization in writing, of the respective department.

Article 22

Individuals who have collections of weapons must ask permission for acquisition and possession of new arms destined to the enrichment of the collection or of the museum, and register them.

Article 23

The weapons which form part of a collection may be sold altogether, or individually, according to the terms of the dispositions of this Law and with prior written permission of the Secretary of the National Defense and the other competent authorities.

CHAPTER III**Cases, conditions, requirements and places for the carrying of arms****Article 24**

In order to carry arms the respective license is required.

The members of the Army, Navy and Air Force are excepted from the previous item, in cases and conditions listed in the applicable laws and regulations.

The members of the institutions of police, federal, state,

Federal District and municipalities, as well as private security services, may carry weapons according to the cases, conditions and requirements established by the present law and other applicable laws.

Article 25

The licenses for carrying of arms will be of two classes:

- I. Particular; which must be revalidated every two years, and
- II. Official, which will remain valid for the duration of the office or employment on which the license is based.

Article 26

The specific license for the carrying of arms will be individual for private individuals, or collective for legal entities, and may be issued when the compliance with the following requirements is met:

- I. In the case of private individuals:
 - A. Have an honest living;
 - B. Have completed, for those who are obligated, the National Military Service requirement;
 - C. Not have physical or mental impairment for the use of arms;
 - D. Not have been convicted of crimes committed with arms;
 - E. Do not use drugs, enervating or psychotropic, and
 - F. Prove, at the discretion of the Secretary of the National Defense, the need to carry arms for:
 - a) The nature of his occupation or employment, or
 - b) Special circumstances of the place where he lives, or
 - c) Any other justifiable reason.

There may also be issued particular licenses, for one or several arms, for sporting activities, either shooting or hunting, only if those involved are members of some registered club or association and meet the requirements set out in the first five paragraphs of this section.

- II. In the case of legal entities:
 - A. Being constituted in accordance with Mexican laws.
 - B. For private security services:

a) Have authorization to function as a private security service, and

b) Have the favorable opinion of the Secretary of Government of justification of the need for the carrying of arms, and limits of number and characteristics of the arms, as well as places of utilization.

C. As for other legal entities, when the circumstances warrant, in the judgment of the Secretary of the National Defense, for internal security services and the protection of his installations; according to the prescriptions, controls and supervision determined by the Secretary.

D. Prove that those who carry weapons comply with the provisions of the first five points of section I above.

With prior authorization from the Ministry of National Defense, the title-holders of collective licenses, will issue numbered personal identification credentials, which contain the dates on the collective license and shall be renewed biennially.

The time limit for issuing individual and collective licenses will be fifty working days, counted from the filing of the formal application.

Article 27

Foreigners may only be authorized to carry arms when, in addition to satisfying the requirements listed in the previous article, they prove their status of immigration, except in cases of temporary licenses for tourists for sporting purposes.

Article 28

(repealed).

Article 29

The official licenses for the carrying of arms can be collective or individual.

I. The collective licenses can be issued to:

A. The government entities and public agencies in charge of guarding strategic facilities in the country.

The holders of collective licenses will be issued personal numbered identification credentials, which contain the dates on

the collective license and shall be renewed biennially.

B. Police institutions. These licenses will be subject to the following guidelines:

a) The institutions must comply with the applicable federal or local laws;

b) The Secretary of Government will ask the Secretary of the National Defense to issue collective licenses to police institutions, which will only be requested for people who are part of the operational organization and are listed on the payroll; the Secretary should be notified of any change in its workforce. The competent authorities will resolve the application within the sixty days following the filing of the application before the Secretary of Government, and

c) The heads of police institutions, shall issue to the operational staff, written in the registry established by the relevant law, the personal numbered identification credentials, for periods of six months, which during their period shall be treated as individual licenses.

C. The holders of collective licenses shall regularly send to the Secretary of the National Defense and the Secretary of Interior, a report of the weapons in their possession, duly correlated with their structure and operational organization, listing the numbered credentials and the information of the persons who carry arms.

D. The competent authorities shall coordinate with the governments of the States to obtain, with timeliness and accuracy, information necessary for compliance with this law.

E. The Secretary of the National Defense shall regularly inspect the weapons, only for verification, without having any authority over personnel.

II. Individual licenses shall be issued to those who hold office or employment in the Federation or Federal Entities, for the implementation of their required obligations, in the opinion of the competent authority, to carry weapons.

III. The public servants referred to in this article shall also meet the requirements in the first five paragraphs of section I of article 26 of this law.

Article 30

The Secretary of the National Defense, with the exceptions

noted in article 32 of this Law, shall be responsible for the issuance, suspension and cancellation of the licenses for carrying of arms, as well as his registry, control and surveillance.

The Secretary will timely notify the Interior of the licenses which are authorized, suspended or canceled.

Article 31

The licenses for carrying arms may be canceled, without affecting the application of resultant sanctions, in the following cases:

- I. When their possessors have misused the arms or the licenses;
- II. When their possessors have altered the licenses;
- III. When arms have been used outside of authorized places;
- IV. When an arm has been carried other than that covered by the license;
- V. When the licensed arms have been modified from its original characteristics;
- VI. When the issuance of the license was based on deception, or when in the opinion of the Secretary of the National Defense the reasons that were taken into account in awarding the license no longer exist or for supervening causes the issuance requirements are no longer met;
- VII. By order of competent authority;
- VIII. When the possessors change their domiciles without notifying the Secretary of the National Defense;
- IX. For noncompliance with the provisions of this Law, its Regulations or those of the Secretary of the National Defense which are issued based on this Legislation.

The suspension of licenses to carry arms, shall proceed only if in the opinion of the Secretary of Government it is needed to maintain or restore the peace of people or regions.

Article 32

The Secretary of Government shall have the power for the issuance, suspension and cancellation of individual licenses to carry arms of the federal employees, of which he shall notify the Secretary of the National Defense for the purposes of inscribing

the arms in the Federal Register of Arms.

The Secretary of Government also has the power for the suspension and cancellation of the credentials of identification issued by the officials of police institutions, under the protection of an official collective license for the carrying of arms and which are similar to individual licenses.

Article 33

The credentials of honorary agents or police or informers and similar others do not empower them to carry arms, without the corresponding license.

Article 34

The licenses to carry arms shall state the territorial limits in which they have validity. In the cases in which they are limited to security guards for certain areas or determinate zones, they shall specify the area in which they shall be valid.

Article 35

The licenses authorize only the carrying of arms listed by the person for whose name it is issued.

Article 36

It is prohibited to armed individuals to assist demonstrations and public celebrations, deliberative assemblies, meetings to discuss controverted interests, any meeting that, for their purposes, has predictable opposition tendencies, and, in general, any act which seeks results obtained by the threat or use of weapons; with the exception of the parades and meetings for the sporting purposes of *Charrería*, shooting or hunting.

THIRD TITLE

Manufacture, Trade, Import, Export and Related Activities.

CHAPTER I

Preliminary provisions

Article 37

It is exclusively the authority of the President of the Republic to authorize the establishment of manufacturers and sellers of

arms.

The control and monitoring of the activities and industrial and commercial operations carried out with arms, munitions, explosives, devices and chemical substances, will be made by the Secretary of the National Defense.

The specific permits that are required for these activities will be awarded by the Secretary of the National Defense by notifying the Secretary of Government and without affecting the powers falling within the remit of other authorities.

Public federal departments and agencies carrying out these activities, are subject to the laws that regulate them.

Article 38

The permits referred to in the previous article, do not relieve those concerned from following the requirements laid down in other laws, according to the nature of the activities.

Article 39

In the cases referenced in articles 37 and 38 of this Law, it is required to conform to the local and municipal authorities respecting the safety and location of the establishments concerned.

Article 40

Industrial and commercial activities related to arms, munitions, explosives and to other objects regulated by this Law, are subject to rules made by the Secretary of the National Defense. When the material is for the exclusive uses of the Mexican Navy, the activities will be subject to the provisions of the Secretary of the Navy.

Article 41

The provisions of this title are applicable to all activities related to arms, items and materials listed below:

I. ARMS

- a) All the permitted firearms, contained in articles 9 and 10 of this Law;
- b) Gas Weapons;
- c) Industrial Cannons, and

- d) The constituent parts of the previous arms.

II. MUNITIONS

a) Ammunition and its constituent parts for the weapons mentioned in the previous section;

b) The cartridges used in the tools setting anchors in the construction industry and those whose functions use gunpowder.

III. GUNPOWDER AND EXPLOSIVES

a) Gunpowder in all its compositions;

b) Picric acid;

c) Dinitrotoluene;

d) Nitrostarch;

e) Nitroglycerin;

f) Nitrocellulose: Fibrous type, moistened in alcohol, with a maximum concentration of 12.2% nitrogen, with a minimum of 30% solvent. Cubic type (dense-paste), with a maximum concentration of 12.2% nitrogen and having a minimum of 25% solvent;

g) Nitroguanidine;

h) Tetryl;

i) Pentrite (P.E.T.N.) or Pentaerythritol tetranitrate;

j) Trinitrotoluene;

k) Fulminates of mercury;

l) Nitrides of lead, silver and copper;

m) Dynamites and amatoles;

n) Lead styphnate;

o) Nitro carbonites (explosives with ammonium nitrate);

p) cyclonite (R.D.X.).

q) In general, any substance, mixes or compound with explosive properties.

IV. DEVICES

a) Initiators;

b) Detonators;

c) Safety fuses;

d) Detonating cords;

e) Pyrotechnics.

f) Any instrument, machine or invention applied to the uses of explosives.

V. CHEMICAL SUBSTANCES ASSOCIATED WITH EXPLOSIVES

- a) Chlorates;
- b) Perchlorates;
- c) Sodium metal;
- d) Magnesium powder;
- e) Phosphorus.
- f) All those that alone or in combination are liable to be employed as explosives.

Article 42

The specific permits referred to in article 37 of this Law, may be:

- I. General, those awarded to businessmen or persons who work for a living in these activities permanently;
- II. Ordinary, which is issued in each case for the conduct of mercantile transactions domestically or with foreign commercial businesses, to the businesses with a current general permit in force, and
- III. Extraordinary, which is awarded to those who eventually have need to effectuate any transaction to which this Title relates.

Article 43

The Secretary of the National Defense may deny, suspend or cancel at his discretion the permits referred to in the preceding article, when the activities protected involve danger to the security of persons, facilities, or may disrupt the public tranquility or order.

Article 44

- The permits are nontransferable.
- The general permits will have validity during the year in which they are issued, and can be revalidated at the judgment of the Secretary of the National Defense.
- The ordinary and extraordinary permits will have validity

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which is indicated concretely in each case.

Article 45

The factories, industrial plants, workshops, shops and other establishments that engage in activities regulated under this Title, must meet the conditions of safety, technical operation, location and production which are determined in the Regulations.

Article 46

(Repealed).

Article 47

(Repealed).

CHAPTER II

Of commercial and industrial activities and operations

Article 48

The general permits for the production, organization, repair and connected activities with respect to arms, objects and materials that this Title covers, include the authorization of the purchase of parts or elements that are required.

Article 49

To sell to individuals more than one gun, dealers must have received special permission in advance.

Article 50

The dealers may sell to individuals only:

- a) Up to 500 cartridges in .22 caliber.
- b) Up to 1,000 cartridges for shotguns or others that are loaded with ammunition, new or reloaded, although they are of different calibers.
- c) Up to five kilograms of sport gunpowder for reloading, canned or in containers, and 1,000 pieces each of the constituent parts of shotgun cartridges, or 100 bullets or constituent elements for cartridges for other permitted arms.
- d) Up to a maximum of 200 cartridges, for other permitted

arms.

The Regulations of this Law, shall identify timelines for carrying out new sales to the same person.

Article 51

The dealing of arms and cartridges for the exclusive use of the Army, Navy and Air Force will be conducted by the official institution which is indicated by the President of the Republic, and will be carried out in the terms and conditions which are indicated by orders issued by the Secretary of the National Defense or the Secretary of the Navy, as appropriate.

Article 52

The Secretary of the National Defense has the power to establish, by means of general administrative arrangements, terms and conditions regarding the acquisition of arms and ammunition for branches and organizations of the Federal Executive, of the states, of the Federal District and of the municipalities, as well as for the individuals of authorized security services or for sport activities of shooting and hunting.

Article 53

The dealing, donation or exchange of arms, ammunition and explosives between individuals, require extraordinary permission.

Article 54

Those who lack permits under article 42 of this Law and who need to purchase quantities in excess of: five kilograms of gunpowder in cans or containers, a thousand primers, or any quantity of explosives and *artificios*²⁵⁷ must obtain authorization under the terms of this Law.

257. The term *artificios* includes fireworks, but permit certificates refer to fireworks as *artificios pirotecnicos* (pyrotechnic artifices). See *Requisitos*, AYUNTAMIENTO DE MÉRIDA, <http://isla.merida.gob.mx/serviciosinternet/tramites/php/phpInfoTramitesWEB004.php?idTramite=201#> [<http://perma.cc/0K6uHzxPMAT>] (last updated Jan. 24, 2013). Accordingly, the legal meaning of *artificios* appears to include but not be limited to fireworks.

CHAPTER III
Of import and export

Article 55

The weapons, items and materials referred to in this Act which are imported under permits ordinary or extraordinary, shall be put precisely to the use stated in the said permit. Any amendment, change or transformation that seeks to introduce a different use requires a new license.

Article 56

For the issuing of export permits for the arms, items or materials mentioned, the interested party must certify to the Secretary of the National Defense, that he holds an import permit from the government of the destination country.

Article 57

When the arms, items and materials of commercial import or export business come under the control of the respective customs offices, the interested parties will inform the Secretary of the National Defense who will designate a representative to be involved in the customs office concerned, without which condition it is not permitted to take them back from government seizure or to leave the country.

Article 58

Individuals who acquire weapons or ammunition abroad, must apply for extraordinary permission to take them back from government possession.

Article 59

Temporary imports and exports of arms and ammunition from hunting tourists and shooting sportsmen, must be covered by the corresponding extraordinary permit, which sets out the conditions that must be complied with in accordance to the Regulations of this Law.

CHAPTER IV Of Transport

Article 60

General permits for any regulated activities in this title, include the authorization for the transportation within the national territory, of the arms, items and materials which are covered, but their holders are subject to the related laws, regulations, and orders.

Article 61

Transportation which is based on permits issued by the Secretary of the National Defense to persons or merchants, to carry out one or several of the activities listed in this title, shall comport with the safety measures which are specified in the permits.

Article 62

The person or business that owns general permits for the special transport of arms, items and materials contained in this title shall require from its senders, a certified copy of the permit they have been granted.

Article 63

The persons who enter the country in transit, may not carry or acquire arms, items and materials mentioned in this title, without the corresponding license or permit.

Article 64

When the Mexican Postal Service accepts shipments of arms, objects and materials mentioned in this title, it must demand the corresponding permit.

CHAPTER V Of storage

Article 65

The storage of the arms, objects and materials referred to in this title, may be authorized as a complementary activity of the general permission granted, or as specific for persons or

businesses.

Article 66

The arms, objects and materials that are protected by the permits, can only be stored in the quantities and premises authorized.

Article 67

The storage of arms, objects and materials referred to in this Title, must be subject to the requirements, tables of compatibility and distance-quantity indicated by the Secretary of the National Defense.

CHAPTER VI

Of control and monitoring

Article 68

Whoever has a general permit, will have to render to the Secretary of the National Defense, within the first five days of every month, a detailed report of their activities, in which is specified the turnover which occurred in the previous month.

Article 69

The businesses dedicated to the regulated activities in this Law, have the obligation to give the facilities necessary to the Secretary of the National Defense to practice inspection visits.

Article 70

In cases of disturbance of the public tranquility, the correspondent authorities for the application of this Law, will dictate within their scopes of competence, the measures necessary to assure the strict fulfillment of the orders of suspension or cancellation of the permits.

Article 71

In cases of war or disturbance of the public order, the factories, industrial plants, workshops, warehouses and establishments that make, produce, organize, repair, store or sell whatever arms, objects and materials referred to in this Law, under previous agreement of the President of the Republic, will

come under the direction and control of the Secretary of the National Defense, in accordance with the legal orders that are issued.

Article 72

The Secretary of the National Defense, when he estimates it necessary, will inspect the security conditions of factories, industrial plants, workshops, warehouses, munitions dumps and vehicles assigned to the activities referred to in this title.

Article 73

The permittees referred to in this Title are obliged to comply with the measures of information, control and security that are established by the Secretary of the National Defense, subject to this Law.

Article 74

The auctioning of the arms, objects and materials mentioned in this Law is prohibited. Excepted are administrative and judicial auctions, in which case, the respective authorities will have to communicate it to the Secretary of the National Defense, so that they can designate a representative who attends the act. The only bidders are the persons or business who have permission of the Secretary of the National Defense.

Article 75

In the case of judicial or administrative awarding of the arms, objects and materials referred to in this Law, the awardee, within the fifteen following days, will have to ask for the corresponding permission to have such, indicating the purpose that he intends for them.

Article 76

The holders of general permits are obliged to conserve, for a term of five years, all the documentation related to these permissions.

FOURTH TITLE²⁵⁸**Sanctions****ONLY CHAPTER****Article 77**

There will be fines of ten to one hundred days for:

I. Whoever possesses arms without having made the declarations of the same to the Secretary of the National Defense;

II. Whoever possesses arms, cartridges or the ammunition in a non-authorized place;

III. Whoever infringes arrangements in article 36 of this Law. In this case, in addition to the sanction, the weapon will be secured, and

IV. Whoever has cartridges in superior amounts to those which article 50 of this Law refers.

To effectuate the imposition of the administrative sanctions referred to in this article, the case will be referred to notify the local administrative authority which has the competence to impose police punishments.

Article 78

The Secretary of the National Defense, as well as the rest of authorities federal, state, of the Federal District or municipal that perform security functions, will gather the arms, prior to obligatory issuance of the corresponding receipt, from all those persons who carry them without having a license, without carrying the license with themselves or from anyone who, while having the license, has badly made use of the arms.

The confiscated weapon will not be given to the interest holder, but only after previous payment of ten days of fines and the exhibition of the license. The term to exhibit the license will be of fifteen days.

258. This chapter makes frequent reference to "days of fines." This is a civil law practice in which a fine is assessed as a fraction of a person's annual income. So if one person makes income X, and a second person earns income 2X, and both persons are penalized "three days of fines," the second person will pay twice as much as the first person. Article 91 provides the cross-reference for how "days of fines" are calculated in Mexico.

To effectuate the payment of the fine above-mentioned, the infraction will be transferred, as soon as possible, to the corresponding federal fiscal authority.

Article 79

When an arm is secured or taken under the terms of the previous article, the civil employee that takes it will have to inform his superior immediately, who will inform the Federal Registry of Arms of the Secretary of the National Defense, as well as the other authorities established by applicable legal orders, about the results that follow. If information is not provided, the person in charge will have to cover the amount with ten days fines.

It is comparable to the crime of robbery described in article 367 of the Penal Code for the Federal District in the subject of general jurisdiction and for all the Republic in the subject of federal jurisdiction, and the same penalties will be applied, when the public servant who secures or gathers a weapon does not give it to his superior or, as the case may be, to the competent authority.

Article 80

There will be cancelation of the registration of the Club or Association of shooting or hunting, that stops fulfilling the obligations imposed by this Law and its Regulations.

There will be suspension of the license of carrying arms for the sport of shooting or hunting, when the registration of the Club or Association to which the license pertains has been cancelled, until the interested party files another registration with the Secretaries of Government and of the National Defense, in agreement with article 20 and the last paragraph of article 26 of this Law.

The license will be cancelled when the holder infringes the duties that are indicated by this Law and its Regulations for him, or when he no longer belongs to the Club or Association of which he was a member.

Article 81

There will be sanctions of two to seven years of prison and of fifty to two hundred days of fines, for whoever carries an arm

included in articles 9 and 10 of this Law without having been issued the corresponding license.

In cases involving the carrying of two or more arms, the corresponding penalty will be increased up to two-thirds.

Article 82

There will be imposed from one to six years of prison and from one hundred to five hundred days of fines, on those who transfer the ownership of an arm without the corresponding permission.

The transmission of ownership of two or more arms, without permission, or the recidivism in the conduct indicated in the previous paragraph, will be sanctioned according to article 85 Second of this Law.

Article 83

Whoever without the corresponding permission carries an arm of exclusive use of the Army, Navy or Air Force, will be sanctioned:

I. With prison of three months to a year and one to ten days of fines, when it concerns one of arms covered in subsection i) of article 11 of this Law;

II. With prison of three to ten years and fifty to two hundred days of fines, when concerning arms covered in subsections a) and b) of article 11 of this Law, and

III. With prison of four to fifteen years and one hundred to five hundred days of fines, when concerning the other arms covered in article 11 of this Law.

In cases involving the carrying of two or more arms, the corresponding penalty will be increased up to two-thirds.

When three or more people, members of a group, carry arms covered by section III of the present article, the penalty corresponding to each one of them will be increased to double.

Article 83 Second

Whoever without the corresponding permission stockpiles arms, will be sanctioned:

I. With prison of two to nine years and ten to three hundred days of fines, if the arms are covered in subsections a) or b) of article 11, of this Law. In the case of subsection i) of the same article, there will be imposed one to three years of prison and five to fifteen days of fines, and

II. With prison of five to thirty years and one hundred to five hundred days of fines, when the arms are any other covered in article 11 of this Law.

By stockpiling must be understood the possession of more than five arms of those of exclusive use of the Army, Navy and Air Force.

For the application of the sanction by crimes of carrying or stockpiling arms, the Judge will have to take into account the activity to which the author was dedicated, its antecedents and the circumstances in which he was stopped.

Article 83 Third

Whoever without the corresponding permission possesses a weapon of exclusive use of the Army, Navy or Air Force, will be sanctioned:

I. With prison of three months to a year and one to ten days of fines, when the arms are covered in subsection i) of article 11 of this Law;

II. With prison of one to seven years and twenty to one hundred days of fines, when the arms are covered by subsections a) and b) of article 11 of this Law, and

III. With prison of two to twelve years and fifty to two hundred days of fines, when the arms are any other covered in article 11 of this Law.

Article 83 Fourth

Whoever possesses cartridges in greater amounts than allowed, will be sanctioned:

I. With prison of one to four years and ten to fifty days of fines, if they are for the arms that are covered in articles 9, 10 and 11, subsections a) and b), of this Law, and

II. With prison of two to six years and twenty-five to one

hundred days of fines, if they are for the arms that are covered in the remaining subsections of article 11 of this Law.

Article 84

There will be imposed five to thirty years of prison and of twenty to five hundred days of fines:

I. To whoever participates in the introduction to the national territory, in clandestine form, of arms, ammunition, cartridges, explosives and materials of exclusive use of the Army, Navy and Air Force or subject to control, in accordance with this Law;

II. To the public servant, who being required by his functions to prevent this introduction, does not do it. In addition, there will be imposed the forfeiture of the job or position and incapacitation to carry out any public job or commission, and

III. To whoever acquires the objects referred to in subsection I for mercantile aims.

Article 84 Second

Whoever introduces to the national territory in clandestine form firearms that are not reserved for the use of the Army, Navy and Air Force, there will be imposed three to ten years of prison.

The resident abroad who for the first time introduces a single arm of those referenced in the previous paragraph, will have only administrative sanction of two hundred days of fines, his arm will be confiscated, and he will be given a receipt for the arm. When the person leaves the country, the arm will be given back to him upon presentation of the receipt.

Article 84 Third

The penalties referred to in articles 82, 83, 83 Second, 83 Third, 83 Fourth, 84 and 84 Second of this Law will be increased up to half when the responsible person is or has been a government employee of any police corporation, member of any private security service or member of the Army, Navy or Air Force in retirement, reserve, or in active-duty.

Article 85

There will be imposed two to ten years of prison and twenty to five hundred days of fines on retailers of arms, ammunition and

explosives, who acquire them without verifying the legal origin of such.

Article 85 Second

There will be imposed five to fifteen years of prison and one hundred to five hundred days of fines:

I. To those who make or export arms, ammunition, cartridges and explosives without the corresponding permit;

II. To the retailers in arms that without permission transfer the property of the objects that subsection I refers to, and

III. To those who have arms illegally which have been equipment for the federal bodies of police, state or municipal or of the Army, Navy or Air Force.

Article 86

There will be imposed three months to three years of prison and two to two hundred days of fines, to those who without the respective permission:

I. Buy explosives, and

II. Transport, organize, repair, transform or store the objects referred to in this Law.

The prison sentence anticipated by this article will be increased to double when the transport referred to in subsection II is of the arms covered by subsections a) or b) of article 11 of this Law.

If the transport is of the arms covered in article 11 of this Law, except the ones mentioned in subsection a), b) and i), the penalty will be of five to thirty years of prison and twenty to five hundred days of fines.

Article 87

There will be imposed a month to two years of prison and two to one hundred days of fines, to those who:

I. Manage industrial factories, plants, workshops, warehouses and other establishments that are dedicated to the activities regulated by this Law, without adjusting to the security

conditions that are obligatory;

II. Send the objects material to this Law, if the transport takes place by conduit of non-authorized companies;

III. Make the transportation that the previous section mentions, and

IV. Alienate explosives, artifices and chemical substances related to explosives, to businesses or people who do not have the corresponding permission of the Secretary of the National Defense.

Article 88

The arms material to the crimes indicated in this chapter, will be seized to be destroyed. Excepted are, those of exclusive use of the Army, Navy and Air Force that will be sent to these institutions, and those of historical, cultural, scientific or artistic value that will be sent to the Museum of Arms of the Secretary of the National Defense. The seized objects, explosives and other materials will be applied to works of social benefit.

Article 89

For the infraction of any of the norms of the present Law, independently of the sanctions established in this Chapter, the Secretary of the National Defense will be able, in the terms that the Regulation indicates, to suspend or to cancel the permits that have been granted.

Article 90

Other infractions to the present Law or its Regulations, not specifically anticipated, will be able to be sanctioned with the penalty of one to two hundred days of fines.

Article 91

For the application of the pecuniary sanction of days of fines, it will be arranged according to article 29 of the Penal Code of the Federal District in the Subject of general jurisdiction and to all the Republic in the Subject of Federal jurisdiction.

TRANSITIONS

Article the First

This Law will take effect fifteen days after its publication in the Official Newspaper of the Federation.

Article the Second

Once the regulations of this Law are issued, the related dispositions of the regulations in force will apply, as long as they are not opposite to the provisions established in this Law.

Article the Third

At the 90th day of the use of the present Law, the previous licenses of carrying arms will be without effect. But if within that term, the interested parties adjust to the arrangements of this Law, their licenses will be revalidated.

Article the Fourth

The societies existing and in operation at the date of the present Law, will not be affected in their constitution by the dispositions of the same law; but if they wish to acquire other businesses or to install new industrial units of those mentioned in article 46, they will require the permission of the Secretary of Foreign Relations that, in cases which are resolved to grant it, will only be able to be granted by means of the fulfillment of the requirements provided for the new societies.

Article the Fifth

Within the 90 days following the effective date of this Law, commerce and industries will have to adjust to the precepts of the same.

Article the Sixth

All persons who have one or more arms in their domicile, are obliged to show it to the Secretary of the National Defense, within a term of ninety days as of the effective date of this Law.

Article the Seventh

The corresponding Regulations will indicate the form and terms in which the individuals will have to turn over the arms

that, having been allowed and already registered as of the date of the publication of this Law, are now reserved for exclusive use of the Army, Navy and Air Force.

Article the Eighth

All orders contrary to the present Law are repealed.

Mexico, DF, the 29th of December of 1971. - Victor Manzanilla Schaffer, S.P.-Juan Moisés Calleja, D.P.-Juan Sabines Gutiérrez, S.S.-Mark Antonio Espinosa P, D.S.-Titles.

In fulfillment of the arrangement of section I of article 89 of the Political Constitution of the Mexican United States and for their due publication and observance, I issue the present Decree in the residence of the Federal Executive authority, in the city of Mexico, Federal District, on the thirtieth day of the month of December one thousand nine hundred seventy-one. - Luis Echeverría Alvarez. - Title. - The Secretary of the National Defense, Hermenegildo Cuenca Diaz. - Title. - The Secretary of Government, Mario Moya Palencia. - Title. - The Secretary of Foreign Relations, Emilio O. Rabasa. - Title. - The Secretary of Navy, Luis M. Bravo Carrera. - Title. - The Secretary of Treasury and Public Credit, Hugo B. Margáin. - Title. - The Secretary of the National Patrimony, Horacio Flores de la Peña. - Title. - The Secretary of Industry and Commerce, Carlos Torres Manzo. - Title. - The Secretary of Agriculture and Cattle Raising, Manuel Bernardo Aguirre. - Title. - The Secretary of Communication and Transport, Eugenio Méndez Docurro. - Title. - The Public Work Secretary, Luis Enrique Bracamontes. - Title. - The Secretary of Hydraulic Resources, Leandro Roviroso Wade. - Title. - The Secretary of Public Education, Victor Bravo Ahuja. - Title. - The Secretary of Health and Assistance, Jorge Jiménez Cantú. - Title. - The Secretary of the Labor and Social Welfare, Rafael Hernández Ochoa. - Title. - The Secretary of the Presidency, Hugo Cervantes del Río. - Title. - The Head of the Department of Agrarian Subjects and Colonization, Augusto Gómez Villanueva. - Title. - The Head of the Department of Tourism, Agustín Olancha Borbón. - Title. - The Head of the Department of the Federal District, Octavio Sentíes Gómez. - Title.