

# OUTGUNNED

Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking



Barrett .50 Caliber Rifle

Minority Staff Report  
Prepared for Ranking Member Elijah E. Cummings  
Committee on Oversight and Government Reform  
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*Lawmakers should give the ATF the tools it needs to fight illegal gun trafficking. They should enact stronger penalties for straw purchases and craft a federal gun-smuggling statute; close the gun-show loophole, which allows buyers under certain circumstances to purchase weapons without a background check; resuscitate the ban on assault weapons; and give the ATF the authority to collect data on multiple sales of long guns in border states. The Senate should move quickly to confirm a director for the long-leaderless bureau.*

*We may never know whether the bureau would have launched the Fast and Furious operation had it had other, more effective tools at its disposal. Those who would clobber the bureau for possible mistakes should look in the mirror and accept some responsibility for its failings.*

— Editorial, *How Congress Can Empower the ATF*, Washington Post (June 27, 2011)

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*Congress needs to be candid about how loophole-ridden laws have created a huge market for assault weapons, which end up in Mexico. At a hearing, Mr. Issa insisted, “We’re not here to talk about proposed gun legislation.” Federal officials in February sought authority to require gun dealers to report bulk sales of assault rifles only to have it blocked by a provision in the Republican budget. A responsible Congress would re-enact the assault weapons ban, outlaw uncontrolled gun-show sales and reform regulations that allow corrupt dealers to stay in business.*

— Editorial, *Hypocrisy, Locked and Loaded*, New York Times (June 20, 2011)

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*Congress is rightfully angry that the operation went awry, and it should demand an explanation. The ATF must be held accountable and must provide answers.*

*But it is worth noting that the ATF is charged with an impossible mission: enforcing weak laws in a nation awash in firearms, where even the most modest attempts to regulate or prevent mass straw purchases invite accusations of infringements on 2nd Amendment rights from the gun lobby.*

— Editorial, *ATF and Congress Under the Gun*, Los Angeles Times (June 27, 2011)

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## I. EXECUTIVE SUMMARY

On March 16, 2011, Oversight Committee Chairman Darrell E. Issa launched an investigation into allegations that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), as part of an effort known as Operation Fast and Furious, failed to properly monitor hundreds of firearms acquired by suspected straw purchasers and destined for drug cartels in Mexico. The Committee has issued 11 subpoenas as part of this investigation, and Committee staff have conducted transcribed interviews with multiple officials from ATF, the Department of Justice, and private parties.

On June 15, 2011, Chairman Issa held a hearing relating to this investigation and called three ATF field agents to testify about their complaints regarding the mismanagement of Operation Fast and Furious. At the hearing, Ranking Member Elijah E. Cummings voiced significant concern, stating: “The allegations that have been made are very troubling, and new information we have obtained raises additional concerns about the role of various actors involved in these incidents.”

Ranking Member Cummings also explained that one of the Committee’s goals should be to provide law enforcement agents on the ground with the tools they need to effectively combat the broader problems of international drug cartel violence and illegal firearms trafficking. He stated:

No legitimate examination of this issue will be complete without analyzing our nation’s gun laws, which allow tens of thousands of assault weapons to flood into Mexico from the United States every year, including fifty caliber sniper rifles, multiple AK variants, and scores of others. When Mexican President Calderón addressed Congress in May, he pleaded for us to stop fueling a full-scale drug war with military-grade assault weapons.

This report provides new information obtained during the Committee’s investigation, including excerpts from transcribed interviews with multiple law enforcement agents that have not been made public to date. These agents—including the same agents called by Chairman Issa to testify at the Committee’s hearing on June 15, 2011—repeatedly warned about the increasingly dire problem of U.S. firearms flooding into Mexico, including tens of thousands of military-grade assault weapons illegally trafficked each year.

During the Committee’s investigation, law enforcement agents identified at least three specific improvements to current law that would allow them to more effectively counter firearms trafficking by Mexican drug cartels.

### ***Stronger Criminal Penalties for Illegal Straw Purchasers***

Multiple law enforcement agents who appeared before the Committee warned that current penalties for illegal straw purchases are completely inadequate either to deter illegal purchases before they occur or to encourage suspects to cooperate with law enforcement

investigations after the fact. They warned that U.S. Attorneys' offices often decline to prosecute illegal straw purchasing cases because of inadequate penalties and the high burden of proof.

In a transcribed interview with Committee staff, Special Agent Peter Forcelli, a senior ATF group supervisor in the Phoenix Field Division, stated that the typical sentence for illegal straw purchases is probation. He also stated that suspects have little incentive to cooperate with investigators or "flip" on higher-level cartel members. In contrast, he stated, "if the option were doing some jail time, you might get some cooperation, so the guy would come in and proffer and [we would] be able to develop intelligence to build a case."

When he was called by Chairman Issa to appear at the June 15 hearing, Special Agent Forcelli testified that existing laws were "toothless." He added: "Some people view this as no more consequential than doing 65 in a 55." He added: "for somebody to testify against members of a cartel where the alternative is seeing a probation officer once a month, they're going to opt toward, you know, not cooperating with the law enforcement authorities."

During a transcribed interview with Committee staff, Special Agent Lee Casa, an ATF field agent with over 20 years of experience, stated that the current practice of charging straw purchases for merely lying on purchase forms was ineffective: "I would say generally speaking there is not a lot of bite in the 924(a)(1)(A) statute as far as penalties and time, time that would be served."

Agents reported that, as a result of these weak penalties, U.S. Attorneys' offices often decline to prosecute illegal straw purchasers. During a transcribed interview, Special Agent Larry Alt, an attorney and senior ATF field agent, stated with respect to firearms prosecutions: "We don't get traction with the U.S. Attorney's office, they don't follow through, they don't want to prosecute cases."

Special Agent Forcelli agreed, stating that "this situation, wherein the United States Attorney's Office for Arizona in Phoenix declined most of our firearm cases, was at least one factor which led to the debacle of 'Operation Fast and Furious.'" He added: "we have gone from a 'D-minus' to maybe a 'D.' It is still far from, again, effective or from what, you know, the taxpayers deserve. But it is still very bad. I mean I wouldn't say it is effective. ... Guns in the hands of gang members or cartel traffickers, that's pretty concerning."

### ***Enactment of Illegal Firearms Trafficking Statute***

Multiple law enforcement agents who appeared before the Committee stated that their efforts to combat international drug cartels would be strengthened through the enactment of a federal statute specifically designed to criminalize the trafficking of firearms. Currently, there is no federal statute that specifically prohibits firearms trafficking. Instead, prosecutors attempt to charge traffickers with "paperwork violations," such as dealing in firearms without a license.

Special Agent Carlos Canino, the acting ATF attaché to Mexico, stated during his transcribed interview that there is an "epidemic" of illegal firearms trafficking to Mexico, and a "trafficking statute would be helpful." He added: "What we want to do is we want to stop

otherwise legal guns from getting into an illegal secondary market. You know, we want to stop these guys, violent criminals, from hurting people.”

Committee staff also conducted a transcribed interview of William Newell, the former Special Agent-in-Charge of the Phoenix Field Division. He stated: “not having a statute that would address a pattern of activity by a group of individuals that are engaged in some form of diversion of firearms from legal to illegal creates a situation for us where we have to go and look at each individual transaction.”

Special Agent Casa reiterated this view during his transcribed interview. He stated: “There is really no trafficking, firearms trafficking statute, per se. It would be nice to have a trafficking statute per se or to enhance some of the penalties on even, on the straw purchasers, just to be a deterrent effect ... so we can really hammer these people and just put them in jail.”

### ***Requiring Reports of Multiple Long Gun Purchases***

Numerous law enforcement agents also stated that reports regarding multiple sales of long guns would be a critical law enforcement tool to counter firearm trafficking networks. Under current law, federally licensed dealers are required to report multiple purchases of handguns, but not long guns, including .50 caliber semiautomatic rifles and multiple AK-variants that are now the “weapons of choice” for international drug cartels.

In his transcribed interview with Committee staff, Special Agent Canino explained this problem. He stated:

[R]ight now the problem we’re having is the long rifles. A guy goes out and buys X number of 7.62 rifles, whatever, 8, 10, 12, 100. You don’t know that that guy—unless an FFL calls you and says, hey, this guy just bought this quantity, you’re not going to know until one of those guns ends up at a crime scene.

When he was called by Chairman Issa to testify before the Committee on June 15, Special Agent Forcelli explained that monitoring the sale of multiple long guns would be no different than monitoring the sale of cold medicine in pharmacies. He stated: “we monitor how much Sudafed somebody buys in a pharmacy nowadays because that’s what utilized to make methamphetamine.”

### ***Congressional Delegation to Mexico City***

On June 24 and 25, 2011, Chairman Issa and Ranking Member Cummings traveled to Mexico City as part of a delegation of seven Members of Congress to meet with Mexican and U.S. officials. The delegation was briefed by numerous officials who warned that Mexican drug cartels are arming themselves with military-grade weapons purchased in the United States and illegally trafficked to Mexico.

For example, authorities from the Mexican Federal Police reported that the overwhelming number of weapons recovered at Mexican crime scenes are coming from the United States, and

that drug cartels are increasingly turning to the United States for firepower in their war against the Mexican government.

John Feeley, the U.S. chargé d'affaires in Mexico, also warned the delegation that weapons trafficking from the United States is fueling “war-like activities” by the drug cartels and that the United States needs to stop weapons trafficking before the firearms get to Mexico. He stated: “By the time they get here, the horse is already out of the barn.”

ATF’s chief intelligence analyst in Mexico, Dennis Fasciani, confirmed for the delegation that “the vast majority of weapons recovered at crime scenes in Mexico do come from the United States.” He estimated that roughly 75% of all traced weapons were originally purchased in the four border states of Texas, New Mexico, Arizona, and California, and he stated that ATF needs the ability to monitor long gun sales in real-time in order to stop trafficking networks.

Prior to traveling on the delegation, Committee staff conducted several transcribed interviews with ATF officials who further buttressed these reports. For example, the former ATF attaché to Mexico, Darren Gil, stated during his interview: “without a doubt, the majority of weapons that we’re recovering ... come from the U.S., there’s no doubt all right.”

### ***Conclusion and Recommendations***

During the Committee’s hearing on June 15, Chairman Issa interrupted Committee Members who were asking questions of the law enforcement agents that he invited to testify. In particular, Chairman Issa objected to any questions about whether the nation’s gun laws could be improved to assist these law enforcement agents in their efforts to counter drug violence and firearms trafficking by Mexican drug cartels.

Chairman Issa stated: “we’re not here to talk about proposed gun legislation. It would be outside the scope of this hearing.” He instructed the witnesses that “the scope of this, your testimony here, is limited, and that it’s not about proposed legislation.”

Despite the Chairman’s efforts to wall off any discussion of the nation’s gun laws, the record compiled during the Committee’s investigation documents clearly that these same law enforcement agents believe that their efforts to combat international drug cartels would be enhanced significantly with common-sense improvements in several key areas.

For these reasons, based on multiple transcribed interviews, hearing testimony, and briefings to Committee Members by both U.S. and Mexican law enforcement officials, this report recommends that: (1) Congress increase criminal penalties for illegal straw purchases; (2) Congress enact a dedicated firearms trafficking statute; and (3) ATF obtain reports from gun dealers on purchases of multiple long guns that are now the weapons of choice for Mexican drug cartels.

## II. FINDINGS

### A. Law Enforcement Agents Have Warned Congress about the Need for Stronger Firearms Laws to Counter Drug Cartel Violence

#### 1. Stronger Penalties for Illegal Straw Purchases

Multiple law enforcement officials who appeared before the Committee warned that current penalties for illegal straw purchases are completely inadequate either to deter illegal purchases before they occur or to encourage suspects to cooperate with law enforcement investigations after the fact. They also warned that, as a result of these inadequate penalties, U.S. Attorneys' offices often decline to prosecute illegal straw purchasing cases.

Under current law, a "straw purchase" occurs when a buyer, or "straw purchaser," buys a gun for another person, but falsely indicates on a Form 4473, the form that purchasers must complete when buying from a federal firearms licensee, that the firearm is for his or her personal use.

As part of its investigation, Committee staff conducted a transcribed interview of Special Agent Peter Forcelli, a senior ATF group supervisor in the Phoenix Field Division. During his interview, he was asked about the penalties for illegal straw purchases:

COUNSEL: In your experience with the ATF in Phoenix, for a typical straw purchaser where there is a prosecution and there is a conviction, you said there is very low, the punishment is pretty weak. What is the typical punishment?

FORCELLI: Probation.

COUNSEL: What is the sentence?

FORCELLI: Probation, generally. And again, to get somebody to cooperate against the cartel member when the option is be free and see you guys once a month, generally speaking they are going to take the see-a-guy-once-a-month. I think if the option were to doing some jail time, you might get some cooperation, so the guy would come in and proffer and [we would] be able to develop intelligence to build a case.<sup>1</sup>

When he was called by Chairman Issa to appear at the Committee's hearing on June 15, 2011, Special Agent Forcelli testified in detail about this problem. He had the following exchange with Representative Carolyn Maloney:

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<sup>1</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Peter Forcelli, at 97-98 (Apr. 28, 2011).



MALONEY: [W]hat is the false statement that they would make on such a form that they could use in prosecutions? Are you aware?

FORCELLI: It—it—well, the most blatant one is that there's a box that you check whether or not you're purchasing the firearm for yourself. A straw purchaser clearly is not. They're buying that gun merely to deliver it to another person. ...

MALONEY: And getting back to your statement on the prosecutions, the border state U.S. attorneys have complained that district court judges view these prosecutions as mere paper violations. And have you heard this criticism before?

FORCELLI: I have, and I agree with it. I think perhaps a mandatory minimum one year sentence might deter an individual from buying a gun. Some people view this as no more consequential than doing 65 in a 55.<sup>2</sup>

Later in the hearing, Special Agent Forcelli explained how inadequate penalties discourage straw purchasers from cooperating with law enforcement officials:

MALONEY: One of you in your testimonies called these laws to prosecute “toothless.” And could you explain to me, why are existing straw purchase laws toothless?

FORCELLI: My opinion, ma'am, is that with these types of cases, for somebody to testify against members of a cartel where the alternative is seeing a probation officer once a month, they're going to opt toward, you know, not cooperating with the law enforcement authorities.<sup>3</sup>

Other ATF officials agreed with Special Agent Forcelli's statements. For example, Committee staff conducted a transcribed interview with ATF Special Agent Lee Casa. During his interview, he stated that the existing “lying and buying” statute is ineffective: “I would say generally speaking there is not a lot of bite in the 924(a)(1)(A) statute as far as penalties and time, time that would be served.”<sup>4</sup>

In November 2010, the Department of Justice Inspector General issued a report describing how, as a result of relatively weak penalties for illegal straw purchases, prosecutors

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<sup>2</sup> House Committee on Oversight and Government Reform, *Hearing on Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*, 112th Cong. (June 15, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Olindo “Lee” Casa, at 68 (Apr. 28, 2011).

had little incentive to bring such cases. The report stated that 40% of all defendants who were convicted of “knowingly making a false statement in connection with [a] firearm purchase” received only probation.<sup>5</sup> The report also stated:

[A]lthough straw purchasing is one of the most frequent methods used to divert guns out of lawful commerce according to ATF, we found defendants convicted of offenses related to only this criminal activity are generally sentenced to less than 1 year in prison.<sup>6</sup>

According to the IG report, U.S. Attorneys’ offices declined one-third of all “lying and buying” cases. By contrast, U.S. Attorneys’ offices declined only 7% of drug possession cases. One Assistant United States Attorney told the IG that he declines straw purchasing cases because they lack “jury appeal” and result in light sentences. Another prosecutor said, “If there were more penalties for firearms trafficking cases, you would see a lot more interest in pursuing [those cases].”<sup>7</sup>

Committee staff also conducted a transcribed interview with Special Agent Larry Alt, an attorney and senior ATF field agent with over 20 years of law enforcement experience. Special Agent Alt confirmed the IG’s conclusions with respect to firearms prosecutions. He stated: “We don’t get traction with the U.S. Attorney’s office, they don’t follow through, they don’t want to prosecute cases.”<sup>8</sup>

In his June 15 testimony before the Committee, Special Agent Forcelli stated that “this situation wherein the United States Attorney’s Office for Arizona in Phoenix declined most of our firearm cases, was at least one factor which led to the debacle that’s now known as ‘Operation Fast and Furious.’”<sup>9</sup> He added that little improvement has been made to date:

I would say, if anything, we have gone from a ‘D-minus’ to maybe a ‘D.’ It is still far from, again, effective or from what, you know, the taxpayers deserve. But it is still very bad. I mean I wouldn’t say it is effective. ... Guns in the hands of gang members or cartel traffickers, that’s pretty concerning.<sup>10</sup>

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<sup>5</sup> Department of Justice, Office of the Inspector General, *Review of ATF’s Project Gunrunner* (Nov. 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Lawrence Alt, at 89 (Apr. 27, 2011).

<sup>9</sup> House Committee on Oversight and Government Reform, *Hearing on Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*, 112th Cong. (June 15, 2011).

<sup>10</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Peter Forcelli, at 151 (Apr. 28, 2011).

## 2. Enactment of Illegal Firearms Trafficking Statute

Multiple law enforcement officials who appeared before the Committee stated that their efforts to combat international drug cartels would be strengthened through the enactment of a federal statute specifically designed to criminalize the trafficking of firearms.

There is currently no federal statute that criminalizes firearms trafficking. Instead, traffickers are often prosecuted under 18 U.S.C. § 922, which prohibits “engaging in a firearms business without a license.”<sup>11</sup>

As part of its investigation, Committee staff conducted a transcribed interview of Special Agent Carlos Canino, the acting ATF attaché to Mexico and a senior trainer for ATF field operations. Special Agent Canino stated that law enforcement efforts would be greatly assisted by a statute specifically dedicated to countering the trafficking of firearms:

COUNSEL: What about a trafficking statute?

CANINO: A trafficking statute would be helpful, too. You know, our agency is, I don’t know what the word is, misunderstood, you know. We don’t want to impede in the legal commerce of firearms. Firearms are a legal commodity in the United States, and people have a constitutional right to own guns, you know, and I agree with that. And most ATF agents do, you know.

What we want to do is we want to stop otherwise legal guns from getting into an illegal secondary market. You know, we want to stop these guys, violent criminals, from hurting people, that’s all.<sup>12</sup>

Committee staff also conducted a transcribed interview of Special Agent Lee Casa, an ATF field agent with over 20 years of law enforcement experience. In response to questions, he emphasized how important a dedicated anti-trafficking statute would be to ongoing law enforcement efforts:

There is really no trafficking, firearms trafficking statute, per se. It would be nice to have a trafficking statute per se or to enhance some of the penalties on even, on the straw purchasers, just to be a deterrent effect. ... At the same time it would be

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<sup>11</sup> 18 U.S.C. § 922(a)(1) states: “It shall be unlawful for any person except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce.”

<sup>12</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Carlos Canino, at 59-60 (June 16, 2011).

nice to have a statute, a statute that's applicable to what is going on down here, or having some enhancements so we can really hammer these people and just put them in jail and make the deterrent effect so other people don't do it.<sup>13</sup>

Committee staff also conducted a transcribed interview of William Newell, the former Special Agent-in-Charge of the Phoenix Field Division. When asked how the lack of a firearms-trafficking statute impacts his work, he stated:

So when you have a firearm that's taken from lawful commerce into unlawful commerce, that technically is the definition of firearms trafficking, by my understanding or under our definition. So, not having a statute that would address a pattern of activity by a group of individuals that are engaged in some form of diversion of firearms from legal to illegal creates a situation for us where we have to go and look at each individual transaction by a particular purchaser.<sup>14</sup>

In November 2010, the Department of Justice Inspector General issued a report describing the reluctance of U.S. Attorneys' offices to prosecute firearms cases based only on the theory that sellers are engaging in a business without a license. The report stated that, from FY 2004 through FY 2009, U.S. Attorneys' offices declined one-quarter of all ATF cases based on "engaging in a firearms business without a license." In comparison, the report stated that only 9% of drug conspiracy cases were declined.<sup>15</sup> The IG report found: "Some ATF agents are reluctant to refer cases because they believe the cases will not be accepted for prosecution."<sup>16</sup> The IG report concluded:

ATF agents in Southwest border field divisions also told us that the lesser penalties and infrequent prosecution of trafficking offenses reduce their ability to use prosecution as a lever to obtain cooperation from defendants when they are arrested, which is important in investigating firearms trafficking rings.<sup>17</sup>

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<sup>13</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Olindo "Lee" Casa, at 81-82 (Apr. 28, 2011).

<sup>14</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Newell, at 52 (June 8, 2011).

<sup>15</sup> Department of Justice, Office of the Inspector General, Review of ATF's Project Gunrunner (Nov. 2010).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

### 3. Requiring Reports of Multiple Long Gun Purchases

Numerous law enforcement officials who appeared before the Committee stated that obtaining reports regarding multiple sales of long guns would be a critical law enforcement tool to counter firearm trafficking networks.

Under current law, federally licensed firearms dealers (FFLs) are required to report to ATF multiple purchases of handguns, but they are not required to report multiple purchases of long guns.<sup>18</sup> As discussed below in Section B, international drug cartels are increasingly seeking out military-grade assault weapons, including .50 caliber semi-automatic rifles and multiple AK-variants.

In his transcribed interview with Committee staff, Special Agent Canino, the acting ATF attaché to Mexico and senior trainer for field agents and undercover operations, explained how obtaining reports on multiple long gun purchases would assist law enforcement efforts to identify straw purchasers and trafficking networks:

CANINO: The guys who jump out at you as a trafficker are the guys that you look at the multiple sales reports, and this guy bought nine Berettas, you know, he's bought nine Berettas here, and he's a one shot at a time, or he's bought nine Berettas in a month and a half, you know. What's one guy going to do with nine Berettas? He only has two hands.

COUNSEL: So are the multiple sales reports, are those useful as an investigative technique?

CANINO: Yes, absolutely.

COUNSEL: But a Beretta is a handgun?

CANINO: Right.

COUNSEL: Because the multiple sales reports only apply to handguns?

CANINO: Right.

COUNSEL: If it did apply to long guns, would that also be useful?

CANINO: Oh, absolutely, that would be very useful, yeah, because now you're onto the guy before—you know, right now the problem we're having is the long rifles. A guy goes out and buys X number of 7.62 rifles, whatever, 8, 10, 12, 100. You don't know that that guy—unless an FFL calls you and says, hey, this guy just bought

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<sup>18</sup> 18 U.S.C. § 923(g)(3)(A); 27 CFR 478.126a (2003).

this quantity, you're not going to know until one of those guns ends up at a crime scene, and then you go backtrack and you say, holy cow, this guy bought—you know, look at all these rifles this guy bought. So now you're playing—you're trying to play catch-up. Do you follow what I'm saying?

COUNSEL: But if you had a multiple gun sales report ...

CANINO: Yeah. Because right in 2 days—you know, in 2 days, I think it is in, what, in 48 hours or something that the FFL has got to notify ATF of a multiple purchase. So, I mean, you would know. You know, you would be looking for it. Oh, this guy bought 10; let's go out and talk to him. You know, who is he; let's find out something about him, what's he doing, you know; let's follow him for a while.

COUNSEL: And the weapon of choice now for the cartels is the long guns; is that right?

CANINO: Yes.<sup>19</sup>

During the Committee's transcribed interview of William Newell, the former ATF Special Agent-in-Charge in Phoenix, he stated that "there is no way for us to know," in the normal course of business, if multiple long gun sales occur unless a cooperating gun dealer decides to report the sale as suspicious.<sup>20</sup>

On June 15, 2011, Special Agent Peter Forcelli, the senior ATF group supervisor in the Phoenix Field Division, was called by Chairman Issa to testify before the Committee. He had the following exchange with Representative John Tierney:

TIERNEY: So if a person goes into a store, a gun store, and buys two or three or four hand guns, does federal law require them to report that?

FORCELLI: Yes, sir.

TIERNEY: And if I were a person who went into a store, and I bought four or five long guns?

FORCELLI: No such requirement, sir.

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<sup>19</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Carlos Canino, at 61-62 (June 16, 2011).

<sup>20</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Newell, at 121 (June 8, 2011).

TIERNEY: What if I went in, and you're familiar with the—the Romanian AKs?

FORCELLI: Yes.

TIERNEY: All right. And it's fair to say there's a high amount or a large proportion of the guns that are going to Mexico constitute AKs, the Romanian AKs?

FORCELLI: Absolutely.

TIERNEY: So they're coming from Romania to this country. They get doctored up and changed, and then they move on down to Mexico?

FORCELLI: Yes, sir.

TIERNEY: All right. So if I went into a store and bought any number of those, the store owner doesn't have to report that?

FORCELLI: No.

TIERNEY: If it was reported to you, would that give you some indication that here's something you ought to investigate?

FORCELLI: Sir, it's my opinion, just like we monitor monies wired to the Middle East and we monitor how much Sudafed somebody buys in a pharmacy nowadays because that's what utilized to make methamphetamine, it would be similar to that.

Not everybody who buys more than one gun is a criminal, but it would give us an indicator that, hey, why is this person buying seven AKs? Maybe that's somebody we want to speak to.

Now, we're not aware of those multiple sales, unless one of two things happens. 'A' is we have a cooperative gun dealer who calls us and says, "Hey, something's not right here," or 'B', that weapon is—one of those weapons is found at a—at a crime scene and traced back to that individual and then we go pull the paperwork manually from the gun dealer.

TIERNEY: Is there any law enforcement reason or rationale you can think of why we would not want to have that information reported? Multiple sales of long arms like Romanian AKs or something?

FORCELLI: I can only give you my personal opinion, sir. It would be a good indicator for us, a good starting point, much like it is with handguns.<sup>21</sup>

The November 2010 Department of Justice IG report recommended that ATF “work with the Department to explore options for seeking a requirement for reporting multiple sales of long guns.”<sup>22</sup> According to the IG report, these reports would provide “timely, actionable leads that can enable [ATF] to more quickly identify suspected firearms traffickers and disrupt their operations.”<sup>23</sup> The IG report concluded:

[B]ecause long guns have become the Mexican cartels’ weapons of choice, we believe that the reporting of multiple sales of long guns would assist ATF in identifying firearms trafficking suspects. Our analysis shows that many long guns seized in Mexico have a short time-to-crime and were often a part of a multiple purchase. We therefore believe that mandatory reporting of long gun multiple sales could help ATF identify, investigate, and refer for prosecution individuals who illegally traffic long guns into Mexico.<sup>24</sup>

In December 2010, ATF issued a draft requirement for federal firearms dealers in four southwest border states to report multiple sales of long guns to individuals in a five-day period. In response to comments on the proposed requirement, ATF stated:

According to ATF trace data, investigative experience, and Mexican law enforcement officials, a large number of rifles that originated from FFLs in the U.S. are being used to commit violent crimes in Mexico and along the U.S. border. This collection is focused on obtaining potentially useful information about the initial sale of specified rifles by a limited number of FFLs. This information will enhance ATF’s ability to identify and disrupt illegal firearms trafficking schemes. ... [R]equiring southwest border FFLs to report certain rifle transactions is a tool that will provide actionable law enforcement intelligence that, when acted upon, will reduce illegal firearms trafficking and gun violence along the southwest border.<sup>25</sup>

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<sup>21</sup> House Committee on Oversight and Government Reform, *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*, 112th Cong. (June 15, 2011).

<sup>22</sup> Department of Justice, Office of the Inspector General, *Review of ATF’s Project Gunrunner* (Nov. 2010).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Analysis of Comments to Proposed Multiple-sale Reporting Requirement* (May 17, 2011) (online at [www.atf.gov/firearms/industry/051711-comment-analysis-60-day-notice.pdf](http://www.atf.gov/firearms/industry/051711-comment-analysis-60-day-notice.pdf)).



On February 18, 2011, the House passed H.R. 1, the Full-Year Continuing Appropriations Act, which prohibited ATF from expending funds to implement this requirement. This provision was not passed by the Senate or signed into law.

**B. Without Improvements, the Flood of U.S. Guns Will Continue to Fuel Violence in Mexico and the United States**

**1. Congressional Delegation Told That U.S. Military-Grade Firearms Are Arming Mexican Drug Cartels**

On June 24 and 25, 2011, Chairman Issa and Ranking Member Cummings traveled to Mexico City as part of a delegation of seven Members of Congress to meet with Mexican and U.S. officials. The delegation was briefed by numerous officials who warned that Mexican drug cartels are arming themselves with military-grade weapons that are purchased in the United States and illegally trafficked to Mexico.

Authorities from the Mexican Federal Police reported to the delegation that the overwhelming number of weapons being recovered at crime scenes in Mexico are coming from the United States. Because gun ownership in Mexico is generally prohibited, they reported that drug cartels are increasingly turning to the United States for firepower in their war against the Mexican government.<sup>26</sup>

These accounts are similar to reports from the highest levels of the Mexican government. In May 2010, Mexican President Felipe Calderón addressed a joint session of Congress and stated:

We have seized 75,000 guns and assault weapons in Mexico in the past three years, and more than 80 percent of those we have been able to trace came from the United States.<sup>27</sup>

Similarly, the Mexican Ambassador to the United States, Arturo Sarukhan, stated that U.S. firearms are “feeding the violence and overwhelming firepower being unleashed by drug traffickers.”<sup>28</sup>

U.S. officials in the American Embassy in Mexico provided the congressional delegation with similar reports. For example, John Feeley, the U.S. chargé d’affaires in Mexico, told the delegation that weapons trafficking from the United States is a major problem that is fueling

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<sup>26</sup> Briefing by Mexican Federal Police Officials to Members of House Committee on Oversight and Government Reform (June 25, 2011).

<sup>27</sup> *Calderon Calls for Restoring Assault Weapons Ban*, New York Times (May 20, 2010). See also *Calderon Blames Violence on End of U.S. Gun Ban*, Bloomberg (May 10, 2011).

<sup>28</sup> *As Mexico Drug Violence Runs Rampant, U.S. Guns Tied to Crime South of Border*, Washington Post (Dec. 15, 2010). See also *Mexico: U.S. Supplies 90% Of Cartel’s Guns*, CBS News (Apr. 12, 2009).

“war-like activities” by the drug cartels against each other and against Mexican authorities. He told the delegation that the United States needs to stop weapons trafficking before the firearms get to Mexico. He stated: “By the time they get here, the horse is already out of the barn.”<sup>29</sup>

Similarly, ATF’s chief intelligence analyst in Mexico, Dennis Fasciani, confirmed for the delegation that “the vast majority of weapons recovered at crime scenes in Mexico do come from the United States.” Of those weapons recovered and traced back to the United States, he estimated that roughly 75% were purchased originally in the four border states of Texas, New Mexico, Arizona, and California. He stated that ATF needs the ability to monitor long gun sales in real-time in order to stop the trafficking networks.<sup>30</sup>

Prior to traveling on the delegation, Committee staff conducted several transcribed interviews with ATF officials who further buttressed these reports. For example, in a transcribed interview with Committee staff, ATF’s acting attaché to Mexico, Carlos Canino, stated that there is an “epidemic” of illegal firearms trafficking from the United States to Mexico. He also stated:

[I]n my 2 years there, and in seeing seizure reports and going to seizures and inspecting these weapons, you know, the overwhelming majority of the guns being recovered in Mexico are U.S.-sourced, either manufactured or imported through the United States, which makes sense. We share a common border.

There is, I don’t know, 5,000, 6,000, I don’t know how many FFLs are along within 100 miles of the border, legitimate gun dealers, you know, in the business of selling guns legally. Some of those guns, unfortunately, a lot of those guns are ending up in the black market.<sup>31</sup>

Committee staff also conducted a transcribed interview with his predecessor, the former ATF attaché to Mexico, Darren Gil. He stated that, in Mexico, “[t]he majority of the weapons that were recovered from crime scenes are U.S.-sourced.”<sup>32</sup> He added: “without a doubt, the majority of weapons that we’re recovering—authorized by the Government of Mexico—come from the U.S., there’s no doubt all right.”<sup>33</sup>

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<sup>29</sup> Briefing by John Feeley to Members of House Committee on Oversight and Government Reform (June 25, 2011).

<sup>30</sup> Briefing by Dennis Fasciani to Members of House Committee on Oversight and Government Reform (June 25, 2011).

<sup>31</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Carlos Canino at 72, 75 (June 16, 2011).

<sup>32</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Darren Gil, at 90 (May 12, 2011).

<sup>33</sup> *Id.* at 95.

## 2. Trace Data Confirms U.S. as Principal Source of Cartel Firearms

ATF tracing data indicates that the number of U.S. firearms seized in Mexico is increasing dramatically.

In June 2009, the Government Accountability Office issued a report describing trace data collected by ATF from 2004 to 2008. According to this data, approximately 20,060 firearms recovered in Mexico were traced back to the United States over this five-year period. Approximately 68% of these firearms were manufactured in the United States, and approximately 19% were imported into the United States before illegally crossing the border into Mexico.<sup>34</sup> Based on this data, GAO concluded:

Available evidence indicates many of the firearms fueling Mexican drug violence have come from the United States, including a growing number of increasingly lethal weapons.<sup>35</sup>

ATF recently provided to Senator Dianne Feinstein updated trace data on firearms recovered in Mexico in 2009 and 2010. This data indicates that in 2009 and 2010, 20,504 firearms submitted by Mexican authorities to ATF were traced to the United States.<sup>36</sup> This is more than the previous five years combined.

Based on this data, Senator Feinstein, joined by Senator Chuck Schumer and Senator Sheldon Whitehouse, issued a report on June 13, 2011. The report concluded:

Military-style weapons are readily available for civilian purchase in the United States. Many of these are imported from former Eastern bloc countries and then can be bought by straw purchasers and transported to Mexico. In addition, some importers bring rifle parts into the United States and reassemble them into military-style firearms using a small number of domestically manufactured components.<sup>37</sup>

It is likely that ATF data understates the actual number of U.S. firearms recovered in Mexico. According to a report issued by the Department of Justice Inspector General in November 2010, many firearm trace requests from Mexico are not successful. ATF data shows

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<sup>34</sup> Government Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* (June 2009) (GAO-09-709).

<sup>35</sup> *Id.*

<sup>36</sup> Letter from Acting Director Kenneth E. Melson to Senator Dianne Feinstein (June 9, 2011).

<sup>37</sup> Halting U.S. Firearms Trafficking to Mexico: A Report by Senators Dianne Feinstein, Charles Schumer and Sheldon Whitehouse to the United States Senate Caucus on International Narcotics Control (June 2011).

that an invalid serial number is the most common reason for unsuccessful traces from Mexico.<sup>38</sup> Firearms traffickers are increasingly obliterating the serial numbers on the firearms.<sup>39</sup>

### 3. Drug Cartel “Weapons of Choice” Originate in the United States

Law enforcement officials report that, over the past several years, Mexican drug cartels have been shifting their “weapons of choice” from handguns to semi-automatic rifles and other military-grade long guns purchased in the United States. On March 17, 2009, William Hoover, then ATF’s Assistant Director for Field Operations, testified before the Senate Judiciary Committee, stating:

Until recently drug traffickers’ “weapon of choice” had been .38 caliber handguns. However, they now have developed a preference for higher quality, more powerful weapons, such as .223 and 7.62 x 39mm caliber rifles, 5.7x28 caliber rifles and pistols, and .50 caliber rifles; each of these types of weapons has been seized by ATF in route to Mexico.<sup>40</sup>

Similarly, in December 2010, ATF stated:

According to ATF trace data, investigative experience, and Mexican law enforcement officials, a large number of rifles that originated from FFLs in the U.S. are being used to commit violent crimes in Mexico and along the U.S. border.<sup>41</sup>

Military-grade firearms are superior to the typical firearms used by local and municipal police in Mexico and make confrontations with drug cartel members much more dangerous. In one 2009 attack, Mexican soldiers were wounded while raiding a two-story house in Tijuana owned by a cartel kingpin. Mexican law enforcement seized 14 assault weapons from the scene,

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<sup>38</sup> Department of Justice, Office of the Inspector General, *Review of ATF’s Project Gunrunner* (Nov. 2010).

<sup>39</sup> Woodrow Wilson Center for International Scholars, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges* (April 2011).

<sup>40</sup> Testimony of William Hoover, Assistant Director for Field Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives, Senate Committee on the Judiciary, Subcommittee on Crime and Drugs, *Hearing on “Law Enforcement Responses to Mexican Drug Cartels* (Mar. 17, 2009). See also Department of Justice, Office of the Inspector General, *Review of ATF’s Project Gunrunner* (Nov. 2010) (“long guns have become the Mexican cartels’ weapons of choice”).

<sup>41</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Analysis of Comments to Proposed Multiple-sale Reporting Requirement* (May 17, 2011) (online at <http://www.atf.gov/firearms/industry/051711-comment-analysis-60-day-notice.pdf>) (accessed June 28, 2011). See also Violence Policy Center, *Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents* (April 2009).

including five traced to Juan Valdez, a California resident who had acquired them in Las Vegas, Nevada.<sup>42</sup> Valdez purchased all five guns—a .223 caliber assault rifle, three .308 caliber assault rifles, and a .50 caliber sniper rifle—in a single week in 2009.<sup>43</sup> Over a four-month period, Valdez purchased 28 weapons for the cartels.<sup>44</sup> Another trafficker identified as “Zorra” arranged the drops and provided Valdez with more than \$100,000 in cash.<sup>45</sup> ATF agents were able to track down Valdez, who pled guilty to charges of dealing in firearms without a license and was sentenced to 36 months of probation. None of the straw purchasers Valdez commissioned were prosecuted.<sup>46</sup>

## CURRENT WEAPONS OF CHOICE



### Primary Weapons of Choice

Bushmaster XM15 Rifles  
 Romarm Cugir 7.62 x 39mm rifles  
 FN 5.7 x 28mm pistols  
 .50 caliber rifles (Barrett, Beowulf)  
 DPMS .223 rifles  
 Beretta Model 92 pistols  
 Taurus PT 9mm pistols  
 Colt .38 Super pistols

### Secondary Market Inspection Weapons of Choice

Colt AR15 Sporter & Bushmaster XM15 rifles  
 Romarm 7.62 x 39mm rifles  
 DPMS and Olympic Arms .223 rifles  
 Norinco, Polytech, and Maadii AKS rifles  
 Alexander Arms Beowulf .50 rifles  
 Beretta and Taurus 9mm pistols  
 Colt .38 Super & .45 Pistols

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives, Weapons of Choice Presentation (2008).

<sup>42</sup> *Cartels’ Guns Flow From U.S.*, San Diego Union-Tribune (Mar. 25, 2009).

<sup>43</sup> Criminal Complaint, *United States v. Salazar-Lopez*, D. Nev. (No. 2:09-mj-00002), at 3 (Jan. 5, 2009).

<sup>44</sup> *Cartels’ Guns Flow From U.S.*, San Diego Union-Tribune (Mar. 25, 2009).

<sup>45</sup> *Blocking Guns’ Path to Mexico*, Las Vegas Sun (Oct. 28, 2009).

<sup>46</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *Las Vegas Field Office: Juan Valdez and Associates* (provided to Members of House Committee on Oversight and Government Reform on June 25, 2011).

An investigation conducted by Hearst Newspapers of 1,600 firearms purchased in Texas and Arizona that were interdicted before they got to Mexico also found that the overwhelming number of firearms were the cartels' "weapons of choice." The most popular firearm identified in the investigation was the AK-47 variant sold by Century International Arms of Florida. Ranked second was the Bushmaster .223 AR-15, which was used by John Allen Muhammad, the D.C. sniper, and his accomplice, Lee Boyd Malvo, in nine murders that terrorized the Washington area in 2002. Also among the top interdicted weapons were the Belgian-made FN Herstal Five-SeveN (often referred to as "mata policia," or cop killer, because it can penetrate bulletproof vests), the FN Herstal PS90 rifle, the Colt Super .38 pistol, the Beretta 9mm, and the Century Arms Draco 7.62 x 39mm pistol.<sup>47</sup>

#### 4. U.S. Firearms Fueling a Torrent of Violence in Mexico

The Mexican Ministry of Health has reviewed detailed data on the number of drug-related and firearms-related homicides in Mexico over the past ten years. On April 28 and 29, 2011, Dr. Arturo Cervantes Trejo, who heads the National Council for Injury Prevention at the Mexican Health Ministry, provided a presentation at the Institute of Medicine in Washington, D.C. setting forth some of this data.

According to Dr. Cervantes' presentation, there have been at least 34,550 homicides in Mexico from 2006 to 2010. The number of homicides has increased dramatically, from 8,868 in 2007, to 14,007 in 2008, to 19,804 in 2009, to an estimated 15,000 for the part of 2010 included in the data. According to his report, the number of drug-related killings has also increased during this time, from 2,773 in 2007, to 5,661 in 2008, to 8,281 in 2009.<sup>48</sup>

Dr. Cervantes' presentation indicates that the homicide rate in Mexico has increased from 8.4 to 18.4 per 100,000 people since 2007. In Ciudad Juarez, the rate has increased from 14.1 to 170.4 per 100,000 people. Nationally, the leading cause of death for Mexicans between the ages of 15 and 44 is homicide.<sup>49</sup>

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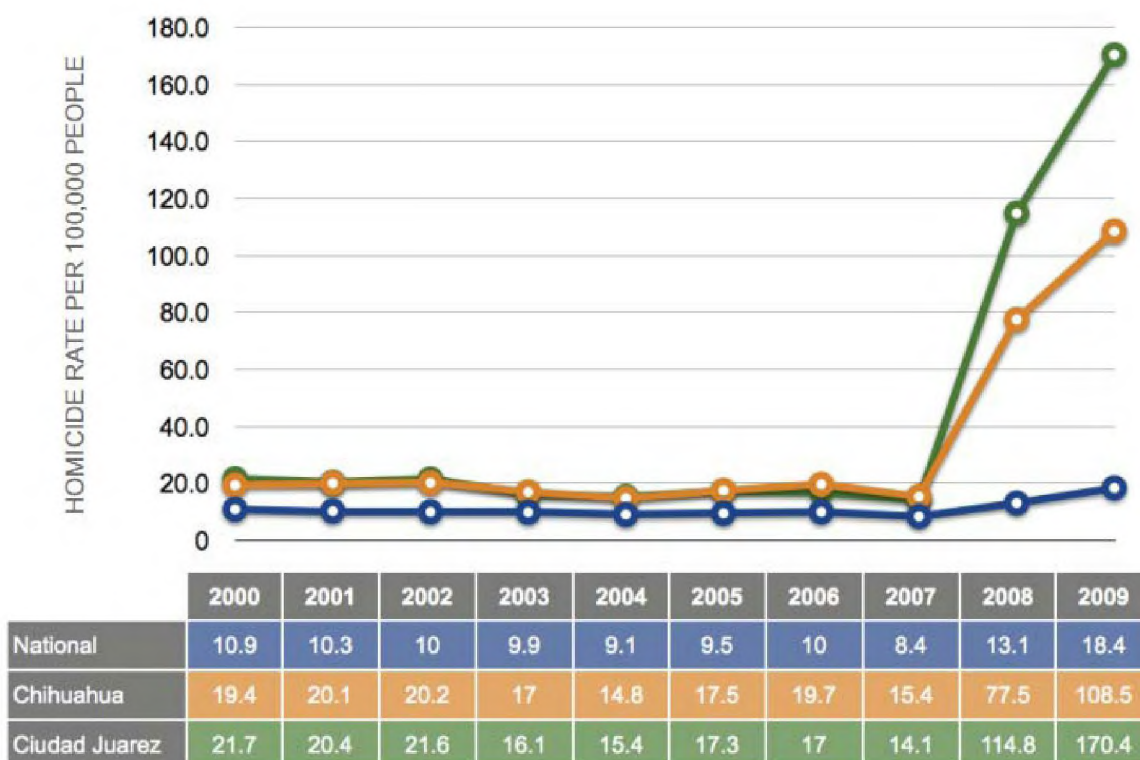
<sup>47</sup> *Smuggled Weapons: Bigger the Better*, Houston Chronicle (May 29, 2011).

<sup>48</sup> National Council for Injury Prevention, Federal Ministry of Health, Mexico, *Presentation by Arturo Cervantes Trejo MD, MPH, DPH* (Apr. 2011) (citing Viridiana Rios and David A. Shirk, *Drug Violence in Mexico, Data and Analysis Through 2010*, University of San Diego (Feb. 2011)). See also *How Many Have Died in Mexico's Drug War?*, Los Angeles Times (June 7, 2011) (online at <http://latimesblogs.latimes.com/laplaza/2011/06/mexico-war-dead-update-figures-40000.html>)

<sup>49</sup> *Id.*



## MEXICAN HOMICIDE RATES, 2008 - 2009



Source: National Council for Injury Prevention, Federal Ministry of Health, Mexico, Presentation by Arturo Cervantes Trejo MD, MPH, DPH (Apr. 2011).

As the number of homicides has increased, an increasing percentage of those homicides have been committed with firearms. According to Dr. Cervantes' presentation, the percentage of homicides committed with firearms between 2000 and 2009 increased from 51% to 65%. In addition, over 70% of homicides of Mexican men between 20 and 44 result from gun violence.<sup>50</sup>

### 5. Cartels Using U.S. Firearms to Kill Mexican and American Citizens

Mexican drug cartels are using firearms illegally trafficked from the United States against both Mexican and American citizens.

As the war between the Mexican government and the drug cartels dramatically escalated, the cartels increasingly began targeting the Mexican military to defend their territory. In 2009,

<sup>50</sup> National Council for Injury Prevention, Federal Ministry of Health, Mexico, Presentation by Arturo Cervantes Trejo MD, MPH, DPH (Apr. 2011).

President Calderón stated: “it’s either the narcos, or the state.”<sup>51</sup> According to the Mexican Ministry of Defense, between December 2006 and August 2010, 191 Mexican soldiers were killed fighting the cartels.<sup>52</sup> In June 2010, a leading Mexican gubernatorial candidate, Rodolfo Torre Cantu, was killed by gunfire in Tamaulipas, several days before the election.<sup>53</sup> In 2010 alone, 14 mayors were assassinated.<sup>54</sup> Statistics maintained by the Committee to Protect Journalists show that, since the beginning of 2007, 32 journalists have been killed in Mexico, the majority of whom covered crime or corruption and were most likely killed by an organized criminal group.<sup>55</sup> Mexico is among the deadliest countries in the world in which to work as a journalist, and many media companies refuse to cover organized crime or corruption.<sup>56</sup>

Drug cartel violence is not limited to Mexican citizens. In 2010, 111 U.S. citizens were murdered in Mexico, a 70% increase from four years earlier. On April 22, 2011, the Department of State issued an expanded travel warning for Mexico, stating:

Due to ongoing violence and persistent security concerns, you are urged to defer non-essential travel to the states of Tamaulipas and Michoacán, and to parts of the states of Sonora, Chihuahua, Coahuila, Sinaloa, Durango, Zacatecas, San Luis Potosi and Jalisco.<sup>57</sup>

Earlier this month, the Director of the Texas Department of Public Safety issued a report describing 22 homicides, 24 assaults, 15 shootings, and 5 kidnappings in Texas over the previous 16 months “directly” linked to the Mexican cartels.<sup>58</sup>

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<sup>51</sup> *Mexican Leader Prepares for Bloodier Drug Wars*, Wall Street Journal (Feb. 28, 2009).

<sup>52</sup> *Otorga SEP Becas a Hijos de Militares Caídos*, Excelsior (Oct. 5, 2010) (online at [www.excelsior.com.mx/index.php?m=nota&id\\_nota=669398](http://www.excelsior.com.mx/index.php?m=nota&id_nota=669398)).

<sup>53</sup> Woodrow Wilson Center for International Scholars, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges* (April 2011); *Rodolfo Cantu Assassinated: Drug Cartels Suspected, Say Reports*, CBS News (June 28, 2010).

<sup>54</sup> Trans-Border Institute, Joan B. Kroc School of Peace Studies, University of San Diego, *Drug Violence in Mexico: Data and Analysis Through 2010* (February 2011).

<sup>55</sup> Committee to Protect Journalists, *Journalists Killed by Country: Mexico* (online at [www.cpj.org/killed/americas/mexico/](http://www.cpj.org/killed/americas/mexico/)) (accessed June 29, 2011).

<sup>56</sup> Woodrow Wilson Center for International Scholars, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges* (April 2011).

<sup>57</sup> Department of State, Travel Warning for Mexico (online at [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5440.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5440.html)) (accessed on June 28, 2011).

<sup>58</sup> *Hard to Draw Line on Mexico Border Drug Violence*, Houston Chronicle (June 7, 2011).





On February 15, 2011, U.S. Immigration and Customs Enforcement (ICE) agent Jaime Zapata and his partner Victor Avila were driving from Mexico City to Monterrey when gunmen pulled alongside their vehicle. In an attempt to reason with them, the agents opened the window to explain, “We’re Americans, we’re diplomats.” One gunman responded in Spanish, “I don’t give a \*\*\*\*,” and shot through the window. Agent Zapata was shot three times, and Agent Avila was shot twice. By the time Mexican authorities arrived, Agent Zapata had died.<sup>59</sup>

At the scene, investigators found 83 shell casings and three firearms. Law enforcement agents traced the purchase of one firearm, a Romarm-Cugir Draco 7.62 x 39mm pistol, to Otilio Osorio, who purchased it from a gun dealer in Texas on October 10, 2010.<sup>60</sup> The Draco has the same firing capacity as a full-sized AK-47, can hold a 75-round drum magazine, and is capable of penetrating protective vests.<sup>61</sup> Osorio reportedly was in the business of buying weapons for Mexican drug cartels and in one case provided 40 firearms at one time.<sup>62</sup> On March 23, 2011, Osorio was indicted on charges of illegal possession of a firearm and possession of a firearm bearing a removed or obliterated serial number.<sup>63</sup>

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<sup>59</sup> *Details of Deadly Assault on ICE Agents Emerge*, Houston Chronicle (Feb. 17, 2011); *Cartel Hit Possibly Behind US Agent Killing, Congressman Says*, CNN (Feb. 17, 2011).

<sup>60</sup> Affidavit, 5 (Feb. 27, 2011) *United States v. Osorio*, N.D. Tex., (No. 3:11-mj-00067).

<sup>61</sup> *The Murder of an ICE Agent*, Public Broadcasting Service, Frontline (online at [www.pbs.org/wgbh/pages/frontline/gunrunners-mexico/updates/2011/03/romanian-ak-47-pistol-used-in-slaying-of-ice-agent.html](http://www.pbs.org/wgbh/pages/frontline/gunrunners-mexico/updates/2011/03/romanian-ak-47-pistol-used-in-slaying-of-ice-agent.html)) (accessed June 29, 2011).

<sup>62</sup> Affidavit, *United States v. Osorio*, N.D. Tex., (No. 3:11-mj-00067), at 11-16 (Feb. 27, 2011).

<sup>63</sup> Indictment, *United States v. Osorio*, N.D. Tex., (3:11-cr-00084), at 11-16 (Mar. 23, 2011).

### III. RECOMMENDATIONS

Based on multiple transcribed interviews, hearing testimony, and briefings to Committee Members by both U.S. and Mexican law enforcement officials, this report makes the following recommendations:

- 1. Congress Should Increase the Criminal Penalties for Illegal Straw Purchases.**  
Straw purchasers are the principal source of firearms acquired in the United States and illegally trafficked to Mexico. Multiple law enforcement officials told the Committee that existing penalties for illegal straw purchases are too weak. They do not adequately deter drug cartel members from engaging in illegal straw purchasing, and they do not provide law enforcement officials with sufficient leverage to “flip” low-level cartel members or encourage their cooperation in ongoing investigations. U.S. Attorneys’ offices frequently decline to prosecute these cases. Stronger sentences for illegal straw purchasers would help law enforcement officials build better cases against firearms trafficking networks.
- 2. Congress Should Enact a Dedicated Firearms Trafficking Statute.**  
Multiple law enforcement agents told the Committee that there is currently no federal statute that specifically prohibits firearms trafficking, and as a result prosecutors often charge traffickers with “paperwork violations” such as dealing in firearms without a license. The agents testified that these cases are difficult to prove and that U.S. Attorneys’ offices frequently decline to prosecute them because they lack jury appeal. They stated that a federal statute specifically dedicated to prohibiting firearms trafficking would help them disrupt, defeat, and dismantle firearms trafficking organizations.
- 3. ATF Should Implement a Multiple Long Gun Sales Reporting Requirement.**  
Law enforcement agents told the Committee that obtaining reports on multiple purchases of long guns, including AK-47 variant assault weapons and .50 caliber semi-automatic sniper rifles, would provide them with timely and actionable intelligence to help identify firearm trafficking rings. They testified that these long guns are the “weapons of choice” for Mexican drug cartels and, unlike for handguns, they have no regular way to proactively track large-scale purchases of these weapons until they end up at crime scenes. Real-time reporting on multiple long gun sales would be a crucial tool to enable law enforcement to identify trafficking rings early.