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**Before the Committee on Oversight and Government Reform,
U.S. House of Representatives**

**Hearing on
Firearms Trafficking on the U.S.—Mexico Border**

June 30, 2011

Thank you Representative Cummings and members of the Committee for inviting me to present the views of the Violence Policy Center on this important topic. Founded in 1988, the Violence Policy Center is a national non-profit 501(c)(3) tax-exempt educational organization that works to reduce gun violence. The VPC has conducted several major research projects examining the problem of firearms trafficking from the United States to Mexico.

The U.S. Civilian Gun Market—An Ideal System for Smuggling

It is beyond question that firearms from the U.S. civilian gun market are fueling drug-related violence in Mexico—

- According to Mexican President Felipe Calderón, Mexico has seized 100,000 guns in the last four years and 84 percent of them came from the United States.
- New Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) data show that of 29,284 firearms recovered in Mexico in 2009 and 2010 and traced, 20,504 or 70 percent were manufactured in the U.S. or first imported into the U.S. from third countries before being trafficked to Mexico.

This is hardly surprising since if one set out to design a “legal” market that encourages the funneling of guns to criminals and traffickers, one would be hard-pressed to come up with a “better” system than the U.S. civilian gun market—short of simply and openly selling guns directly from manufacturer and importer inventories. The U.S. civilian gun market has become a

beacon for gun traffickers, criminal organizations, and even terrorists.¹ There is simply no other place in the world where firepower sufficient to outfit an army can be purchased right off the shelves.



The U.S. gun market not only makes gun trafficking in military-style weapons easy, it practically compels that traffic because of the gun industry's increasingly ruthless design choices over the last several decades combined with the market's loose regulation.

Military-Style Weapons: Traffickers' Weapons of Choice

Military-style weapons are unquestionably the "weapons of choice" of Mexican Drug Trafficking Organizations (DTOs). This fact is confirmed by information regarding gun seizures in Mexico, available trace data, information contained in federal court documents, and news reports. The civilian firearms market in the U.S. caters to the needs of traffickers with a militarized product line that emphasizes firepower and lethality. As the Violence Policy Center documents in a recent report, *The Militarization of the U.S. Civilian Firearms Market*, the U.S. gun industry has become increasingly

¹ See: "How Can I Train Myself for Jihad," found in a safe house in Afghanistan soon after September 11, 2001 (in the files of the Violence Policy Center); and, a recently released video featuring Adam Gadahn, an American-born member of the terrorist group, urging followers to immediately launch violent acts of jihad by exploiting the firepower available on the U.S. civilian gun market and the weaknesses in U.S. gun laws and the background check system (<http://www.youtube.com/watch?v=EpRQzTP8H1o>).

focused on producing militarized firearms over the last 30 years as it struggles to maintain demand for its products. Today, the civilian gun market is defined by the following trends that are clearly reflected in the arsenals assembled by Mexican DTOs—

● **Guns that are identical to those used by the Armed Forces of the United States and other countries.** These firearms include such sophisticated weapons as the Barrett 50 caliber anti-armor sniper rifle and the FN Herstal Five-seveN 5.7mm pistol. The Barrett 50 caliber sniper rifle (below) is specifically designed to engage and destroy materiel targets on the battlefield at long range. These anti-armor rifles combine range and striking power that is far beyond that of any hunting rifle. Armored personnel carriers, aircraft, rail tank cars, bulk fuel storage, and concrete bunkers are vulnerable to 50 caliber rifle fire at distances of 1,000 to 2,000 yards.



The FN Five-seveN (below) is a 5.7mm pistol manufactured by the Belgian company Fabrique Nationale, certain ammunition for which is capable of piercing body armor.



• **Variants of military firearms that would otherwise be illegal to sell on the civilian market.** These are principally semiautomatic versions of military assault weapons. They include: many variants of the AR-15 (the civilian version of the U.S. military M-16 assault rifle); numerous semiautomatic versions of the Kalashnikov assault rifle, popularly known as the AK-47; and, the FN PS90, a futuristic-looking rifle in a bullpup configuration. Assault weapons are favored by traffickers because they incorporate specific design characteristics that make them more lethal—that is, more effective killing machines—than standard sporting firearms. Unlike true military weapons, they are semiautomatic (firing one bullet per trigger pull), not fully automatic (firing bullets as long as the trigger is depressed). Military and civilian assault weapons, however, share key design features, including: pistol grips or barrel shrouds that allow the weapon to be “spray-fired” from the hip; and, the ability to accept detachable, high-capacity ammunition magazines holding from 10 to 100 rounds of ammunition. These features make it possible for the shooter to quickly fire across a relatively wide area with a lethal spray of bullets. This increased lethality makes assault weapons particularly dangerous in civilian use and explains their appeal to traffickers. It also distinguishes them from true hunting or target weapons.



WASR AK-47 Variant



FN PS90

- **Pistol versions of popular assault rifles.** Relatively new on the market, these guns combine the firepower of a rifle with the concealability of a handgun. Popular models of this new breed of assault pistol include the Bushmaster Carbon 15 pistol and the Romanian Draco AK-47 pistol (pictured below).



New VPC Research Sheds Light on Traffickers' Weapons of Choice

Insight into the makes and models of firearms most preferred by traffickers can be gained from examining information contained in federal indictments involving plots and conspiracies to traffic guns to Mexico. In 2009, the Violence Policy Center began a project of tracking and analyzing federal indictments and other court documents alleging gun trafficking to Mexico in which the guns were specifically identified, often including serial number information.² We have analyzed documents in 62 cases filed since 2006 involving more than 3,000 firearms and approximately 100,000 rounds of ammunition. The patterns are striking.

Our analysis confirms that traffickers have become focused on certain "weapons of choice": AK-47 variant rifles, with the most popular being the Romanian WASR; AR-15 variant rifles including those manufactured by Bushmaster and DPMS; FN Five-seveN handguns; 50 caliber sniper rifles and 50 BMG belt-fed rifles; and, most recently, Draco AK-47 pistols like the ones used in the attack on ICE agent Jaime Zapata.

² *Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents*, Violence Policy Center, April 2009.

These patterns are entirely consistent with analyses recently performed by news organizations.³

The ready availability of military-style firearms combined with extremely weak regulation of gun dealers and gun transfers, particularly in some border states, simply make illegal gunrunning too easy.

The advertisement features four different models of Romanian AK-47 variants, each with a photograph and a detailed description. The models and their prices are:

- Romanian AK-47 WASR10/63SFP**: 7.62x39 semi-auto, Tapco polymer side-folding stock, black synthetic forend and pistol grip, slant cut muzzle brake, bayonet lug, bayonet, high capacity magazine. .15-1811 **\$409.95**
Two or more each **\$399.95**
- Romanian AK-47 WASR10C**: 7.62x39 semi-auto with Tapco AR style collapsible stock, black synthetic pistol grip, slant cut muzzle brake, bayonet, bayonet lug and high capacity mag15-1217 **\$409.95** - **Two or more** . . each **\$399.95**
- Romanian AK-47 WASR10CG**: 7.62x39mm semi-auto with Tapco AR style collapsible stock, Tapco Galil style forend, black synthetic pistol grip, slant cut muzzle brake, bayonet, bayonet lug and high capacity mag 15-1744 **\$439.95**
Two or more each **\$429.95**
- Romanian AK-47 WASR10UF**: 7.62x39mm semi-auto with underfolding stock, wood or synthetic forend, slant cut muzzle brake, bayonet lug and high capacity mag.15-1851 **\$429.95**
Two or more . . each **\$419.95** - **Five or more** . . each **\$399.95**

Shotgun News ad for Arizona-based J&G Sales features WASR AK-47 variants

³ Dan Freedman, "Smuggled weapons: Bigger the better—Mexican gangs opt for assault rifles, study finds," *Houston Chronicle*, May 29, 2011 (<http://www.chron.com/dispatch/story.mpl/topstory/7586144.html#ixzz1QaBGAHTz>); "Romanian weapons modified in the U.S. become scourge of Mexican drug war," Center for Public Integrity, February 3, 2011 (<http://www.iwatchnews.org/2011/02/03/2158/romanian-weapons-modified-us-become-scourge-mexican-drug-war>).

Gun Manufacturers are Free to Make and Distribute Excessive Firepower

Although the gun lobby often maintains that the firearms industry is heavily regulated, in fact the industry is lightly regulated. The structure of the gun industry is relatively simple. Domestic and foreign manufacturers make the firearms. There are very few restrictions on what they can make. Any gun that is 50 caliber or less and not fully automatic (capable of firing more than round with one pull of the trigger) is perfectly legal to manufacture. Foreign-made firearms are brought into the country through importers and then enter the same channels of commerce as domestically produced guns.

In theory, firearms that are not “particularly suitable” for, or “readily adaptable” to, “sporting purposes” are excluded from import into the United States under 18 USC §925(d)(3) (a provision of the 1968 Gun Control Act). In practice, however, the “sporting purposes” test is subject to administrative interpretation as to its definition and its application in specific cases. A ban on imported assault rifles has technically been in place since 1989, a product of the George H.W. Bush administration. The “import ban” was the direct result of the federal government’s efforts to crack down on the weapons favored by U.S. drug cartels. In fact, a primary proponent of the 1989 ban was then-“Drug Czar” William Bennett.⁴ The ban was strengthened by the Clinton administration in 1998 to exclude from import any assault rifle with the “ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon.” The Clinton administration acted in response to gun industry efforts to evade the import restrictions, including slight cosmetic modifications to gun designs.

Under the George W. Bush administration, enforcement of the import ban was abandoned and unfortunately the Obama administration has not stepped up enforcement despite encouragement to do so by many members of Congress.⁵ This lack of enforcement allows the continuing importation into the United States of many of traffickers’ most powerful “weapons of choice,” including the Romanian WASR assault rifle, the FN Herstal PS90

⁴ “Bennett feels the heat over stand on guns,” *Chicago Tribune Wires*, March 18, 1989.

⁵ See, for example, February 12, 2009, letter to President Obama from 53 Members of Congress urging return to enforcement of the ban on imported assault weapons; and, *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, One Hundred Twelfth Congress, First Session, June 2011.

assault rifle, the FN Five-seven, known in Mexico as the *matapolicia*, or “cop-killer,” and the newly popular Draco assault pistol.

The ready availability of extreme firepower combines with light regulation of gun dealers to create a system that facilitates illegal gun trafficking.

Modest Controls on Gun Transfers Contribute to Gun Trafficking

Domestic firearm manufacturers, importers, dealers, and ammunition manufacturers are required to obtain Federal Firearms Licenses (FFLs). This licensing regimen effects the central purpose of the Gun Control Act of 1968, the core federal gun law, of supporting state control of firearms by basically forbidding interstate commerce in guns except through federally licensed dealers. However, Federal Firearms Licenses are issued on a virtually *pro forma* basis. Anyone who is at least 21 years old, has a clean arrest record, nominal business premises, and agrees to follow all applicable laws can obtain a license valid for three years upon paying a fee and submitting a set of fingerprints with an application form. The result is that there are almost 8,500 FFLs operating in the border states of Arizona, California, Texas, and New Mexico. By contrast, ATF’s authority and available resources to oversee these dealers is quite limited. For example, the agency can only inspect a dealer once a year, yet because of a lack of resources the agency cannot meet even that modest enforcement goal. In 2009, ATF inspected only 21 percent of firearms dealers. And the number of compliance inspections dipped in 2010 according to information from ATF. Dealer inspections have also turned up some extremely troubling information. For example, for the three-year period of 2008 through 2010, an astounding 62,134 firearms were determined to be missing from the inventories of dealers that were inspected. The agency is further hamstrung by a lack of flexibility to sanction corrupt dealers. License revocation is the sole option and existing law imposes an excessively difficult standard in order to revoke the license of law-breaking dealers. Thus, the agency rarely exercises its revocation power, even for dealers who repeatedly break the law. In 2009, it revoked only 64 licenses.

The situation is further complicated by the fact that in most states, transfers in the “secondary market,”—that is, not through a federally licensed dealer—are not subject to the Brady background check, so long as the sale is conducted intrastate and there is no state background check requirement. “Secondary market” sales include classified advertisements and newsletters, Internet exchanges, and informal sales between individuals at “flea markets” and “gun shows.” Most states do not regulate such sales—although a few, like California, do regulate all firearms transfers. About 40 percent of all gun transfers are made through this secondary market according to a 1994 national survey.

The consequences of this weak system have long been apparent in the patterns of *domestic* gun trafficking. U.S. street gangs and other criminal organizations have demonstrated conclusively over the last 25 years that weak U.S. gun control laws do not prevent their acquiring as many of the increasingly lethal products of the gun industry as they desire. Every day within the United States organized interstate smuggling pipelines continue to move guns from states with virtually nonexistent gun regulations to the few primarily urban centers that have tried to stem the flow of guns. “States that have high crime gun export rates—i.e., states that are top sources of guns recovered in crimes across state lines—tend to have comparatively weak gun laws.”⁶

Individuals and groups seeking to traffic U.S. firearms to Mexico have merely taken a page out of a manual that has been used for decades by domestic street gangs and drug traffickers. They very often employ “straw purchasers”⁷ to buy firearms from licensed dealers to supply to traffickers. Traffickers often solicit numerous straw buyers to acquire guns from a variety of outlets and increasingly tend to acquire preferred firearms in bulk, buying two, or even 10 or 20, at one time. The traffickers also seem to rely heavily on licensed dealers as opposed to private sellers most likely because dealers have a greater volume of the desired firearms in stock.

Current law creates barriers for law-enforcement efforts to identify suspicious sales patterns that may indicate trafficking. For example, although federal law requires gun dealers to report to ATF the sale of two or more *handguns* within five business days to the same individual who is not a licensed dealer, there is no such requirement for long guns. The lack of such a reporting requirement at least for the assault rifles that are the primary weapons of choice of traffickers hobbles the ability of ATF to identify suspicious purchase patterns that may indicate trafficking.

The practice of “straw buying” is very difficult to interrupt. This is primarily because—as pointed out to this Committee in testimony from ATF agents—there is no federal firearms trafficking statute or anti-straw purchasing law.⁸ As a result, ATF must use a wide variety of other statutes to combat firearms trafficking. However, cases brought under these statutes are difficult to prove and do not carry stringent penalties—particularly for

⁶ Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking*, December 2008, 9.

⁷ Straw purchasers are persons who are able to pass a background check who purchase guns on behalf of traffickers who are often prohibited persons who would not pass a background check because they are, for example, convicted felons or not U.S. citizens or legal residents.

⁸ Statement of Peter J. Forcelli, Supervisory Special Agent, Bureau of Alcohol, Tobacco, Firearms and Explosives, before the House Committee on Oversight and Government Reform, June 15, 2011.

straw purchasers of guns. As a result, United States Attorneys are less likely to accept and prosecute such cases. And when these cases are prosecuted and convictions obtained, Federal Sentencing Guidelines categorize straw purchase-related offenses as lesser crimes.

All of the factors described above converge to create a situation where federal law enforcement agencies are forced into almost total reliance on after-the-fact investigation and prosecution instead of having the tools to construct effective prophylactic measures to prevent guns from getting into the hands of traffickers. To date, most attention has been paid to trying to apprehend and prosecute traffickers after the damage has been done and the guns are in criminal hands.

Although law enforcement efforts are an important and necessary part of a total package against gun trafficking—and gun violence generally—a more powerful solution would be to complement law enforcement with “upstream” regulatory measures designed to reduce the opportunity for gun trafficking.

Conclusion and Recommendations

Until the gun industry is treated in the same as every other product manufacturer in America and some reasonable limits are put on what manufacturers can produce and sell, it will be difficult to make the United States a less attractive destination for international gun traffickers. Likewise, federal law enforcement agencies must have greater regulatory authority if they are to be expected to construct an effective strategy to prevent the gun trafficking that is flooding not only Mexico and other Latin American countries with firearms acquired in the U.S., but also putting guns into the hands of criminals and gang members in our own nation. Until these issues are addressed it should surprise no one that gun traffickers have the upper hand.

Many of the recommendations that the Violence Policy Center makes to address the problem of cross-border gun trafficking mirror those made by Senators Feinstein, Schumer, and Whitehouse in their June 2011 report to the Senate Caucus on International Narcotics Control. Some of these recommendations could immediately be implemented through administrative action while others will require legislation.

Measures That Can be Implemented Without Legislation

ATF could immediately begin to strictly enforce the existing ban on the importation of semiautomatic assault weapons. ATF can fully exercise its existing statutory authority to exclude from importation all semiautomatic assault rifles as “non-sporting” weapons pursuant to 18 USC §925(d)(3)

(a provision of the 1968 Gun Control Act) and also exclude the importation of assault weapon kits and parts sets. A strict import policy would capture the vast majority of AK-type rifles as well as the PS90 assault rifle.

Expand import restrictions to include other dangerous “non-sporting” firearms. The same provisions of existing law could be used by ATF to restrict other “non-sporting” firearms that are currently being imported into the U.S. and trafficked to Mexico including the FN Five-sevenN handgun and new AK-type pistols.

Implement the pending proposal to require FFLs operating in border states to report the sale of two or more assault rifles to the same buyer in a five-day period. Current law requires gun dealers to report to ATF the sale of two or more handguns within five business days to the same individual who is not a licensed dealer. This information can help ATF identify suspicious purchase patterns that may indicate trafficking.

Encourage expanded access to eTrace by Mexican authorities. There is a backlog of weapons recovered by Mexican authorities that have not been traced. From January 1, 2010 to October 5, 2010, ATF traced only 5,329 of the 16,000 weapons recovered throughout Mexico. Expanding access to eTrace can help in identifying investigative leads, source patterns, and trafficking routes.

ATF could be more aggressive in identifying and sanctioning FFLs revealed to be high-volume sources of guns trafficked to Mexico. For example:

- **Be more aggressive in revoking the licenses of dealers found to be knowingly supplying Mexican traffickers.** Although federal law allows a license to be revoked for a single violation—provided ATF can show it was “willful”—ATF usually does not seek revocation unless a dealer has had numerous problems over years of inspections.
- **Require licensees who conduct business at gun shows to notify the Attorney General of such activity.** ATF has acknowledged that gun shows in border states are a significant source of guns trafficked to Mexico. The law allows the Attorney General to prescribe the rules for dealers operating at gun shows. ATF could focus targeted oversight and regulation on FFLs who sell at gun shows in border states and sanction dealers identified as actively supplying those trafficking firearms to drug gangs in Mexico.

Measures That Would Require Legislation

Pass a federal statute with tough penalties that specifically outlaws gun trafficking and straw purchases. Currently, there is no federal firearms trafficking statute or anti-straw purchasing law. As a result, ATF must use a wide variety of other statutes to combat firearms trafficking. However, cases brought under these statutes are difficult to prove and do not carry stringent penalties—particularly for straw purchasers of guns.

Repeal the current restrictions on release of ATF crime gun trace data (“Tiahrt amendment”). For several years the legislation making appropriations for the Bureau of Alcohol, Tobacco, Firearms and Explosives has included severe restrictions on the public release of data contained in the crime gun trace database. Previously, the data was publicly available under the Freedom of Information Act (FOIA). Access to this database is critical to a full understanding of the gun trafficking problem, e.g. most problematic makes/models, source states and dealers, etc. Making this data publicly available will help clarify some of the confusion concerning how many guns seized in Mexico are of U.S origin.

Implement an effective federal assault weapons ban. The federal ban on new assault weapons that expired in 2004 was one “brake” on the gun industry’s ability to churn out gun traffickers’ “weapons of choice.” Unfortunately, the now-expired ban contained deficiencies that allowed gun manufacturers to continue selling new assault weapons virtually identical to banned models by making minor, cosmetic changes in gun design. For example, the domestically manufactured AR-type rifles that are currently a huge part of the problem in Mexico were sold by manufacturers Bushmaster, Colt, DPMS, and others in “post-ban” configurations that complied with the letter of the 1994 law but violated its spirit. To be effective, a new federal law should be modeled on California’s existing comprehensive and effective ban.

Ban high-capacity ammunition magazines. Virtually all of the guns terrorizing Mexico utilize high-capacity ammunition magazines that enable shooters to fire non-stop 20, 30, 50, or even 100 rounds of ammunition while allowing for quick reloading. A federal ban on the manufacture of new high-capacity ammunition magazines holding more than 10 rounds was contained in the federal assault weapons ban which expired in 2004. Legislation to ban high-capacity ammunition magazines is pending in the House and Senate (H.R. 308, S. 32).

Implement restrictions on 50 caliber sniper rifles. A bill to regulate 50 caliber sniper rifles under the strict licensing, background check, and taxation system of the National Firearms Act has previously been proposed by Senator Dianne Feinstein (D-CA).