

# Combating U.S. Gun Trafficking to Mexico

A STUDY CONDUCTED FOR THE BRADY CAMPAIGN TO PREVENT GUN VIOLENCE

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## Part One: Understanding the Problem:

### ***I. Guns in Mexico: Quantities, Sources of Origin, and Final Destinations***

*There is an alarmingly high, continuous flow of guns being trafficked from the United States to Mexico, most notably from the border states of Texas, Arizona, New Mexico, and California.*

As shown by the most recent analysis of guns that were recovered and traced at crime scenes in Mexico, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) found that among the 98,650 guns seized in the last five years, 70 percent were sourced from the U.S.<sup>i</sup> Since the number of guns captured and investigated by the Mexican authorities very likely underrepresents the total quantity of illegal guns across the country<sup>j</sup>, it's been estimated that around 253,000 firearms are transported from the U.S. to Mexico per year — which is about 693 firearms per day<sup>2</sup>. While Mexico does allow the sale and ownership of guns for select citizens who pass the cumbersome background-check requirements<sup>ii</sup>, there is only a single licensed gun-store in the entire country, located in Mexico City<sup>3</sup>. The total number of legally owned, registered guns in Mexico is a little over 3 million, approximately 2.6 guns per 100 people. However, the total number of unregistered, unlawfully held guns is estimated to be around 13 million — placing around 12.9 guns in the hands of every 100 people<sup>4</sup>.

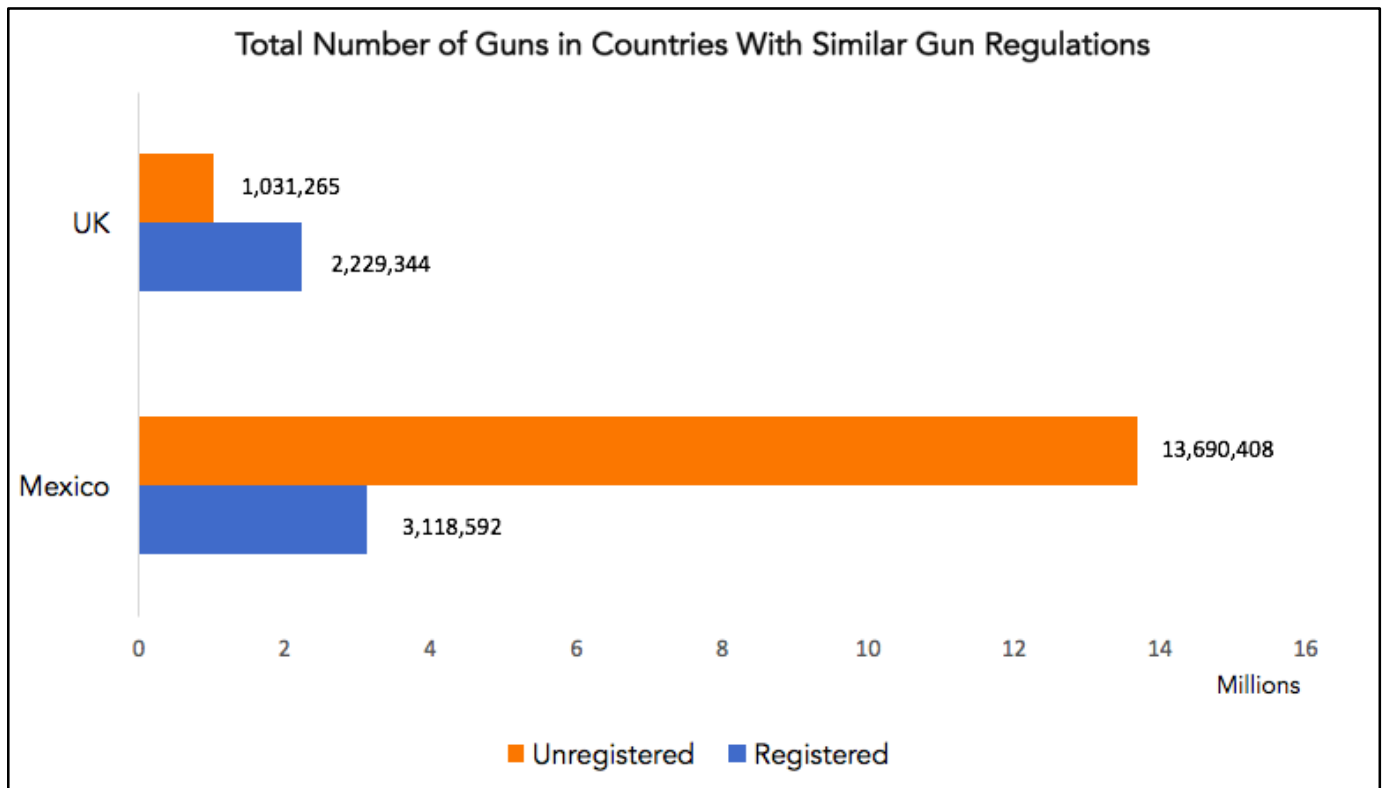
While no two countries have the exact same gun laws or background check requirements, one country that comes close to demanding similar burdens of proof for

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<sup>i</sup> The sample of guns seized in Mexico suffers from selection bias given that 1) most homicides in Mexico are never investigated, so very few crime guns are actually collected, 2) not all guns recovered from crimes are submitted for tracing - either for confidentiality reasons, or because police and military forces often collude with organized crime, and 3) not all guns can be traced successfully due to the tampering of serial numbers. It is therefore likely that current counts of guns being traced to the U.S. severely underestimate the total number of U.S. guns being illegally trafficked across the border to Mexico. See Eby, Jessica A. "Fast and Furious, or Slow and Steady? The Flow of Guns from the United States to Mexico" UCLA Law Review 61, 2014. Pg. 1101; Lindsay-Poland, John. April 26th 2018. "How U.S. Guns Sold to Mexico End Up with Security Forces Accused of Crime and Human Rights Abuses" The Intercept. <https://theintercept.com/2018/04/26/mexico-arms-trade-us-gun-sales/>

<sup>ii</sup> These regulations will be elaborated on later in the paper.

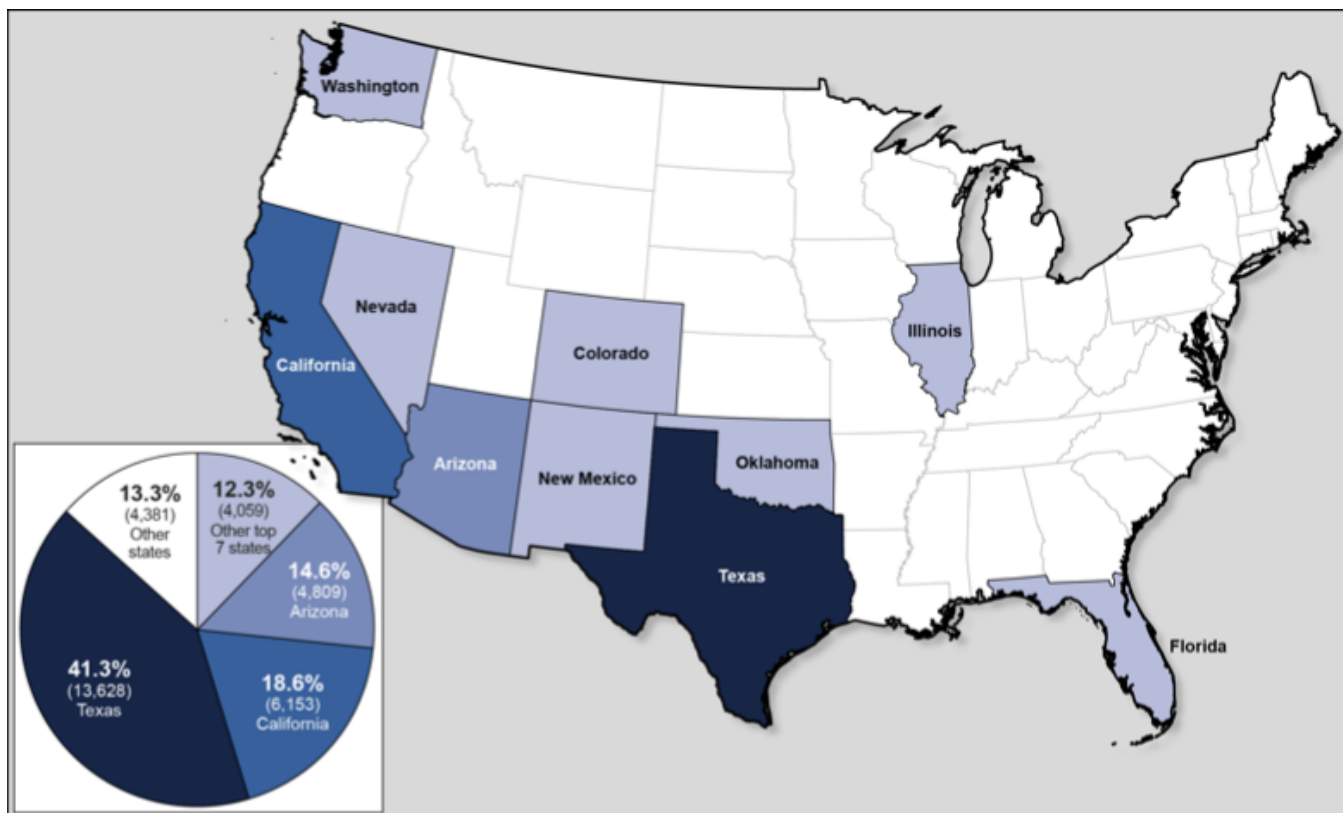
gun-ownership is the United Kingdom. Both countries require tedious paperwork such as character references, both countries require some interaction with the police while attempting to buy a firearm, and both countries keep centralized records of firearms owners<sup>5</sup>. When analyzing the number of registered and unregistered guns across both Mexico and the UK, we see the vast disparity in their illegal gun-markets. Unequal gun ownership rates might be explained by a range of variables including local gun-culture and geopolitical conflict — however the exorbitant number of illegal guns across Mexico points towards the relative ease and availability of trafficked firearms.



**Figure 1.** Source: Author with data from the Graduate Institute of International and Development Studies, Geneva<sup>6</sup>

*Roughly half of the guns traced to the U.S. have an identifiable Federal Firearms Licensee (FFL), and the majority of these FFL's are located across the four bordering states to Mexico: Texas, Arizona, New Mexico, and California.*

*In the last five years, about 40% of the crime guns traced to the U.S. were sourced from Texas, and about 19% from California<sup>7</sup>. Variation in state-laws aside<sup>iii</sup>, this trend exists because the distance to Mexico functions as a proxy for transportation costs. As this distance increases, we are unlikely to see a strong correlation between guns being sourced and trafficked across the border<sup>8</sup>. Similarly, on the Mexican side, nearly half of all seized guns have been recovered from the bordering states of Tamaulipas, Sonora, and Nuevo Leon - the states which also have the highest rates of gun homicides<sup>9</sup>.*



**Figure 2: Percentage of Guns Seized in Mexico Sourced from U.S. States. Source: The United States Government Accountability Office (GAO)<sup>10</sup>**

<sup>iii</sup> These state laws will be covered in detail later in the paper. Also, see Appendix for differences in firearms regulations across the four border states.



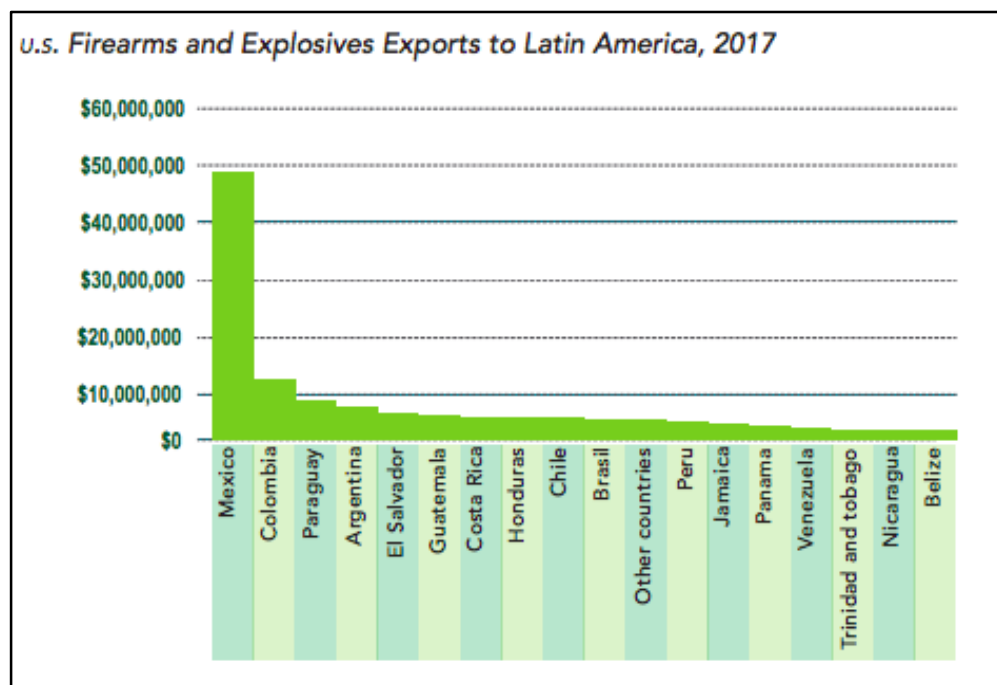
Figure 3. Source: United Nations Office on Drugs and Crime (UNODC)<sup>11</sup>

According to the United Nations Office on Drugs and Crime, the majority of firearms trafficking is done through “hormigas” (ants) — large numbers of firearms purchasers who drive across the border with small batches of concealed weapons. This makes the trade particularly difficult to surveil and control, given the swaths of people transporting guns each day. Moreover, if any element of this chain were to be broken, all stakeholders are easily replaceable — weakening the impact of prosecution and jail-time<sup>12</sup>.

**One of the most concerning aspects of this problem is the general proliferation of gun-violence across Mexico given the thriving illegal market, and the deadly arms-race being waged by the military in their efforts to control this market.**

Today in Mexico, at least one in ten people possess a firearm. Given the escalation of gang violence and drug trafficking, the country has seen its highest homicide rates in decades, taking more than 100,000 lives since 2007<sup>13</sup>. Just last year, over 30,000 homicides were reported, which is roughly 82 murders per day, excluding the number

of homicides that went unreported<sup>14</sup>. In order to curtail these astonishing rates of violence, the Mexican military has been replenishing their supply of firearms at unprecedented rates. Recent Census Bureau data shows that the legal export of weapons and explosives from the United States to Mexico is at its highest in years - reaching nearly \$122 million between 2015 and 2017. This is more than 12 times the amount being exported between 2002 and 2004<sup>15</sup>.



**Figure 4. Source: Mexican Commission for the Defense and Promotion of Human Rights; Stop US Arms to Mexico**

While security measures being taken by the Mexican government seem wise and necessary, in reality, more than 20,000 firearms purchased by government authorities have been reported as missing or stolen since 2006. According to the Mexican Secretariat of National Defense (SEDENA), the state of Guerrero has lost approximately one fifth of the total guns imported between 2010 and 2016<sup>16</sup>. Various studies have shown how the deployment of Mexican military forces has led to increases in homicides and human rights infractions, and this interplay between the legal and illegal gun-market has resulted in further socio-political instability across the country<sup>17</sup>.



## II. The Case for U.S. Government Action

Mexico has been experiencing its highest levels of homicides since 1997, with an average rate of 20.5 homicides per 100,000 people. As a point of comparison, the national homicide rate across the U.S. in 2017 was just 5.3 per 100,000 people<sup>18</sup>. Mexico's homicide rate is still significantly below that of Brazil's (27), Columbia's (27), Venezuela (57) or El Salvador (60.8), but these reports per-100,000 are typically based on the number of reported crimes rather than individual deaths<sup>19</sup>. Mexican security analysts have suggested that the total homicide rate is likely much higher than the numbers being reported by the news. Moreover, while only 15% of Mexico's homicides were gun crimes in 1997, today roughly 66% of all homicides are gun crimes<sup>20</sup>.

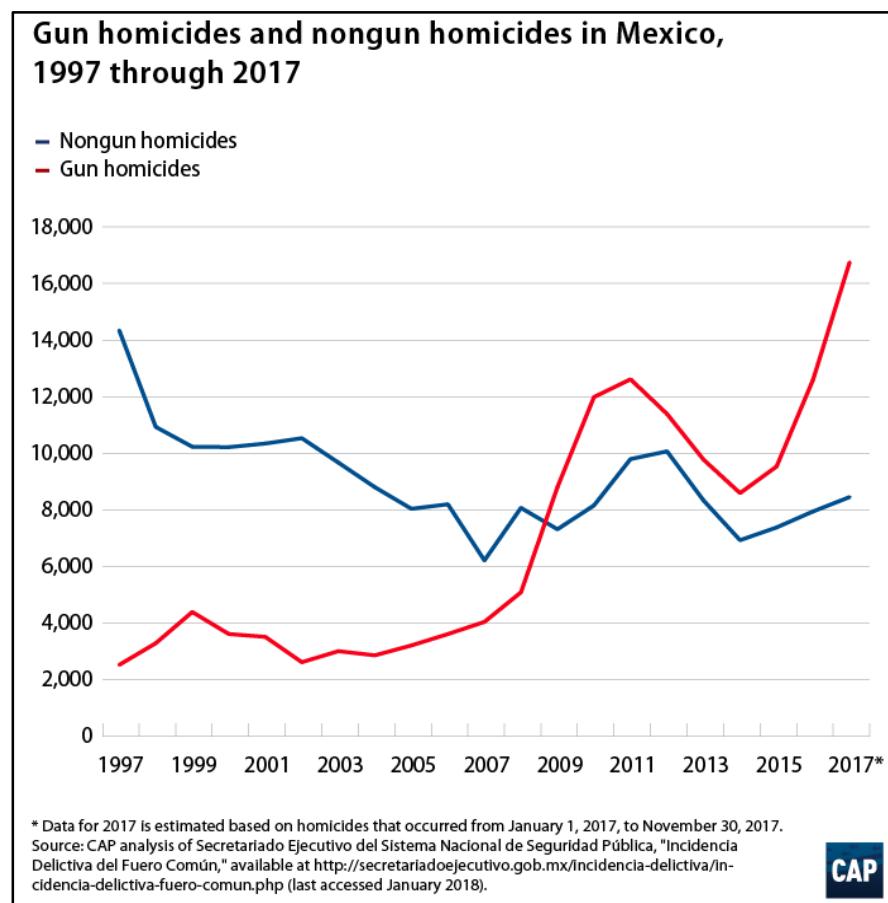


Figure 5. Source: Center for American Progress<sup>21</sup>

***The gun-related homicides in Mexico, increasing year by year, represent the consequences of widespread illegal gun ownership, at the hands of the U.S. government.***

Within U.S. borders, not only are firearms available for legal sale in every state, but three of the four bordering states to Mexico have some of the most lax gun regulations in the country<sup>iv</sup>. Meanwhile, across the border, the Mexican government prohibits the sale of firearms from all but one dealer in the country, and prohibits the transfer of guns without a special permit which is granted only in “extraordinary” cases. The U.S. has no explicit regulations for private firearms sales, while Mexico specifically outlaws the secondary market. Moreover, the variety of weapons banned in Mexico are abundantly available in the U.S., sometimes even easier to procure than typical handguns<sup>22</sup>. All this, coupled with the percentage of guns traced back to the U.S., presents an irrefutable case for how the U.S. supply of guns has directly impacted Mexican gun-violence rates.

***This proliferation of violence can be linked to the growing number of Mexican and Central American migrants seeking asylum in the United States.*** A survey conducted by the United Nations in 2014 found that almost half the children fleeing from Mexico, Honduras, Guatemala and El Salvador cited threats of “serious harm from organized armed groups, including police” as a reason for leaving their countries<sup>23</sup>. In fact, the movement of guns is not restricted to Mexico, and almost 45% of all guns seized in Central America can be traced to the United States as well<sup>24</sup>.

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<sup>iv</sup> See appendix for border-states’ gun laws. Also cited in: Eby, Jessica A. “Fast and Furious, or Slow and Steady? The Flow of Guns from the United States to Mexico” UCLA Law Review 61, 2014. Pg. 1085.

### Qualitative Analysis of 2018 Immigration Crisis at U.S.-Mexico Border:

*An analysis of 25 articles published on the Central American caravan of 2018 reveals that the most common sentiments for seeking asylum in the U.S. was to evade domestic threats of gang and gun-related violence, economic instability, and gender-based violence. In fact, a significant majority of the sample interviewees from Honduras, El Salvador, and Guatemala consider Mexico too crime-ridden for seeking asylum, which is what led them to move north towards the U.S. Many articles cited the perils of the “dangerous journey” through Mexico given the state of organized crime.*

Methodology: *Using a key-search of the terms “caravan, Central America, Mexico, asylum,” the first 25 articles that appeared on Google News were analyzed and coded for all possible motivations provided by migrants for fleeing their countries. Each bubble includes the number of articles citing that specific cause for seeking asylum - although within each article the sentiment was likely expressed more than one time. The main limitations of this process include the non-random set of articles provided by Google based on their machine learning algorithms, and the subjectivity involved in coding and categorizing motivations as “gang related” versus “drug conflict related”. Ultimately however, these categorical differences are trivial given their inter-relatedness and contribution to the proliferation of a larger sense of physical insecurity - often stemming from gun violence.*

### Most Commonly Cited Reasons for Central American Migrants to Flee Home Country and Seek U.S. Asylum

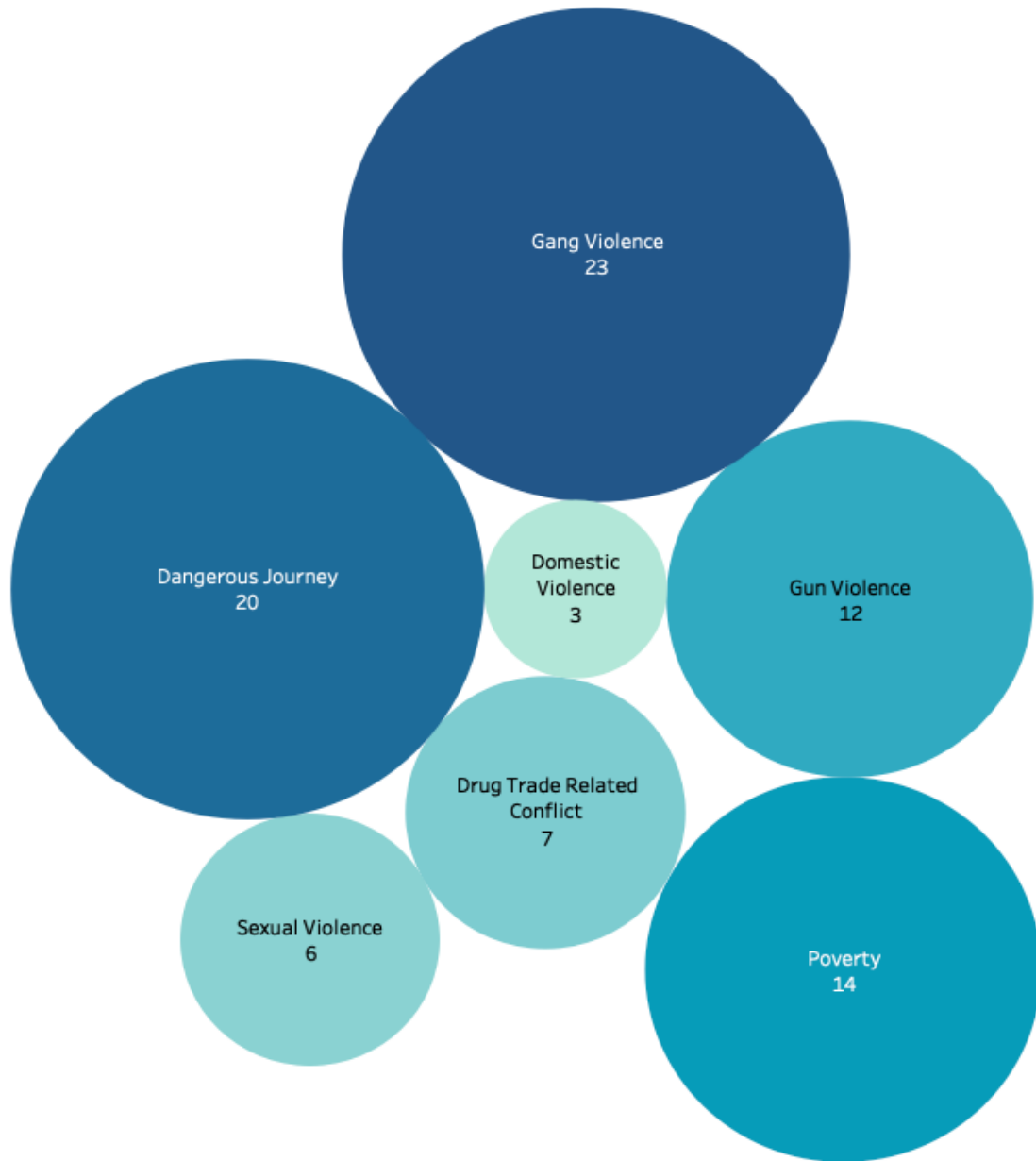


Figure 6. Source: Author

***Given the dangers of gun violence across Mexico, Central American communities insist on moving beyond Mexico towards the United States for their asylum applications.***

The journey through Mexico is considered so unsafe as to warrant a large caravan of people to risk-pool and increase their chances of survival. More than two thirds of Central American migrants report being victims of violence in Mexico - with an estimated 35,000 who have gone missing<sup>25</sup>.

***Lenient U.S. gun policies have contributed to the destabilization of Mexico and other parts of Central America, prompting entire communities to flee their countries and seek refuge at the U.S. border.*** Government action would be beneficial to all U.S. citizens - beyond those who frequently travel to Mexico and risk injury from gun violence. ***By addressing the illegal flow of guns from our country, we might also address the immigration emergency at the U.S.-Mexico border.***

### **III. Diagnosis of the Problem: Main Causal Factors of U.S. Gun Trafficking to Mexico**

#### **1. Weak U.S. Federal Gun Laws:**

Current United States gun laws are dangerously weak in terms of curbing the supply of guns to the general public, preventing gun trafficking, and providing accountability mechanisms through tracing. While some states can and do mandate more stringent regulations over and above these federal laws - below is a list of some federal-level standards that often undermine the strongest state laws:

##### **A. Many U.S. Residents Can Buy Guns (And Easily):**

There are no federal requirements for gun-users to be licensed. There are no mandatory federal waiting periods. The only federal-level prohibitions on who can purchase guns are: persons under the age of eighteen for long guns and under the age of twenty-one for handguns; out-of-state purchasers of handguns; undocumented "aliens"; drug users or addicts; persons convicted of domestic violence offenses, persons subject to a court order restraining him or her from harassing, stalking or threatening an intimate partner, his or her child or a child of a partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; persons adjudicated as mentally defective or committed to a mental institution; persons who have been dishonorably discharged from the military; persons who have unlawfully entered the U.S. or entered under a nonimmigrant visa; persons who have renounced their citizenship; and persons convicted of offenses "punishable by imprisonment for a term exceeding one year." Convicted felons whose civil rights have been restored or whose convictions have been pardoned, set aside, or expunged are allowed to purchase firearms<sup>26</sup>. Each gun purchaser must present proof of identity when applying to purchase a firearm, but federal law does not provide a mechanism for dealers to ensure that these identification documents are valid. This gap in the federal background check system allows prohibited individuals to purchase firearms using fake or forged identification documents.

B. Almost Anyone Can Be a Dealer (Including Anonymous People on the Internet):

The only dealers that need to be licensed are those who are “engaged in the business” of dealing arms, completely excluding people who engage in making occasional sales, exchanges, or purchases of firearms “for the enhancement of a personal collection or for a hobby”<sup>27</sup>. According to the ATF’s complaints from 1999, this current definition of “engaged in the business” often frustrates the prosecution of “unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.”<sup>28</sup> **In fact, the largest gap within this federal law is that unlicensed, private sellers are not required to conduct background checks of their customers.** Unless state laws require this, convicted felons, domestic abusers, and a range of ineligible people can easily buy guns from private dealers — like at gun-shows or the internet. Dozens of websites to advertise private gun-purchasing meetings have emerged in recent years - where firearms transactions are arranged online but actually conducted in person. Echoing the technological interface of Craigslist.com, a website called Armslist.com has emerged as the most prominent platform for the private sale of firearms — where users can anonymously sift through thousands of ads for guns across the country. Perhaps even more dangerous than gun-shows, online forums like Armslist are available 24x7; maintain zero inventory of ads or users - thereby allowing the proliferation of multiple sales; and deliberately disavow any responsibility to ensure that sales follow federal laws, as evident from their FAQ statement that “it is the sole responsibility of the buyer and seller to conduct safe and legal transactions.”<sup>2930</sup> A 2011 study of private gun transactions made online found that 62 percent of the sellers contacted through Armslist and similar websites agreed to continue with the sale even when undercover buyers explicitly expressed concerns about not being able to pass a background check. Social media platforms like Reddit and Facebook are often used for similar purposes - but as of 2016, Facebook no longer allows users to arrange such transactions. Fortunately, 20 states (and Washington D.C.) have closed this specific federal loophole that allows for these unregulated private sales. Meanwhile, Texas, the largest exporter of illegal firearms to Mexico, has not closed the private-seller loophole.

### C. Ineffective Laws on Gun-Trafficking:

No clear and effective federal statute makes gun trafficking a federal crime. However, the law does regulate “straw-purchasing” - the illegal practice of buying a gun for someone who can’t legally purchase one themselves. By criminalizing the act of lying on your federal background check form about your identity, straw purchases are typically treated as mere paperwork violations and often left unchecked<sup>31</sup>. Also, as mentioned above, there exists no mechanism for dealers to identify the accuracy of legal documents that prove the identity of their customers. **Moreover, the private seller loophole further problematizes the ability to hold gun trafficking agents accountable. Since it’s perfectly legal to buy guns at FFL’s and then sell them privately without conducting background checks, law enforcement agents often struggle to find evidence of how individuals whose guns were seized in Mexico actually knowingly sold their guns to prohibited purchasers in the secondary market.** Finally, gifting a gun to someone else is completely legal, and reporting a gun (that’s intended for trafficking) as lost or stolen is another way to bypass the laws on straw purchasing. Some states try to mandate reporting stolen or missing guns by prosecuting them if their guns are found at a crime-scene. However, even holding gun-owners liable in this way can just encourage them to report their guns as stolen the day after they’re purchased. An anonymous survey of inmates in Cook County, Illinois, showed that many inmates reported obtaining guns from friends who had bought them legally and then reported them stolen<sup>32</sup>.

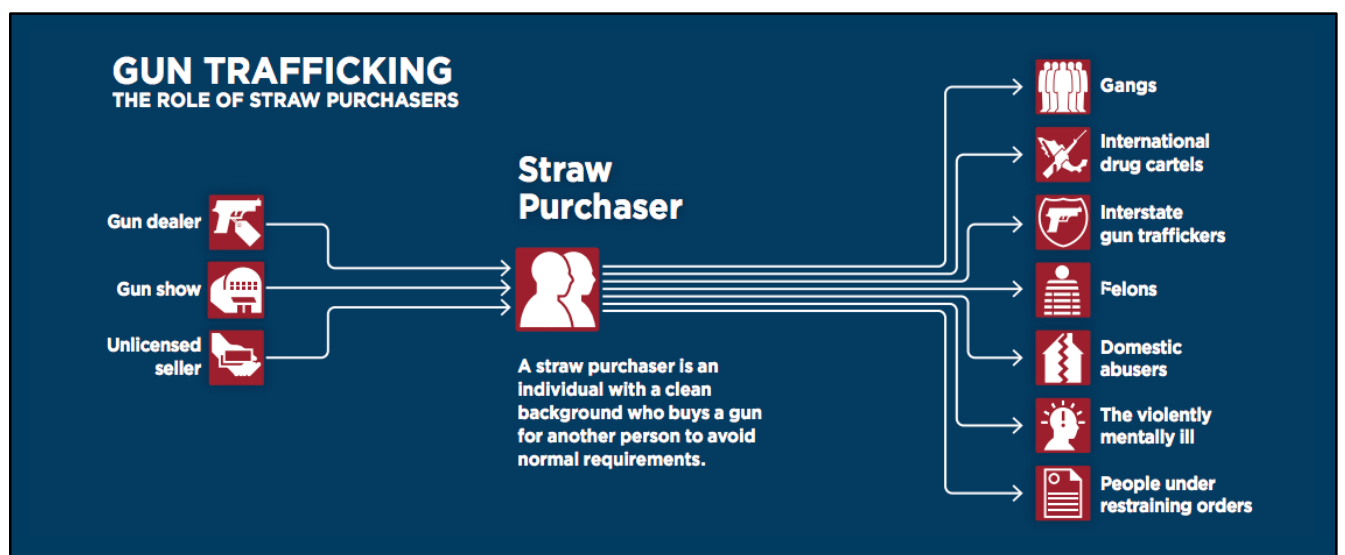


Figure 7. Source: Giffords Law Center to Prevent Gun Violence<sup>33</sup>



#### D. Availability of Semi-Automatic Assault Weapons:

In 1994, Congress made it illegal for anyone (other than the military) to manufacture, transfer, or possess semi-automatic assault weapons. This law came inbuilt with a “sunset clause” or expiration date in 2004, after which point semi-automatic weapons became completely legal, unless banned by state law. Assault weapons are widely known as the Mexican cartels’ weapon of choice, and many studies have shown the growth in Mexican homicides and drug-trafficking related gun-violence as strongly correlated with the expiration of the federal assault weapons ban in 2004<sup>34</sup>.

#### E. Availability of Ammunition:

Given the durability of firearms, even if (hypothetically) the entire flow of new guns from the U.S. to Mexico were to stop forever: Mexican gun-violence would still be rampant with the easy access to ammunition across the United States. Sold in bulk online or at Walmart with absolutely no questions asked, the federal regulation of ammunition does not face many of the same standards as the regulation of firearms. Ammunition dealers do not have to be licensed dealers, prospective buyers do not have to present identification or pass a background check, ammunition dealers do not have to retain records of ammunition sales, and the volume of ammunition being sold is entirely unregulated unless constrained by individual state laws<sup>35</sup>. This is why ammunition is frequently available in vending machines in Pennsylvania, feed depots in Nevada, pharmacies in Georgia and jewelry stores in Texas - as one author notes - “ammunition is in many states easier to buy than cold medicine.”<sup>36</sup> With many scholars finding that ammunition is the “actual agent of harm” in gun violence, it must be a top priority for any government to ensure that international traffickers cannot continue to access this low-cost, replenishable tool for the guns they already have.

#### F. Only Surveilling (But Not Preventing) the Sale of Multiple Guns:

There’s no federal limit on the number of guns a person can buy in any given time-period. However, there are reporting requirements - where FFL’s must report the sale of two or more handguns within a five day period to the ATF. Since the newfound availability of semi-automatic assault weapons, and the fact that these assault weapons have become the Mexican cartels’ “weapons of choice”, the ATF has now mandated FFL’s along the border states to report multiple sales of semi-automatic rifles with a

caliber greater than 0.22 within five consecutive business days<sup>37</sup>. Mandatory reporting requirements have the potential to seriously dent the incidents of gun-violence, as studies have found that “handguns sold in multiple sales were up to 64% more likely to be used in crime than handguns sold in single sales”<sup>38</sup>. Moreover, just 8 months after the ATF mandated the border states to report the multiple sale of semiautomatic assault weapons, the ATF used those reports to initiate 120 investigations and recommended the prosecution of more than 100 defendants in 25 separate cases. However, a major limitation remains that individuals can evade this surveillance by simply timing their purchases to circumvent the five-day reporting requirement, or by purchasing guns from multiple FFL’s who have no centralized record to track how many guns they’ve already purchased<sup>39</sup>. In addition, there is no federal requirement that the ATF actually investigate any of the multiple sale reports - providing them little incentive to pursue potential trafficking agents, particularly when facing budget cuts and resource constraints to focus on the work that is required of them.

#### G. Inefficient Background-Check System:

Due to the lobbying efforts of gun-rights activists and the NRA, The Firearms Owners’ Protection Act of 1986 explicitly prohibits the establishment of any system of registering firearms, firearms owners, or firearms transactions. This means that the ATF and other relevant law-enforcement agencies cannot directly store information on gun-ownership, background check requests, or background check results - and all personally identifiable information collected must be destroyed within 24 hours<sup>40</sup>. The absence of a centralized database severely prohibits any agency’s ability to detect patterns of multiple gun purchases, which is the most obvious avenue for gun-traffickers to rapidly replenish their supply of guns being directed to Mexico<sup>41</sup>.

One notable limitation of the National Instant Criminal Background Check System (NICS) is the fact that states may withhold valuable information on their citizens’ state-level convictions or mental health adjudications; information which might detect a wider-pool of potentially prohibited purchasers. Moreover, the FBI’s obligation to provide a well substantiated decision within just three days - after which the sale is automatic - is another unreasonable hurdle within the design of the system. FBI workers have found that about twice as many background checks land in the NICS “delay” queue as they did a decade ago, allowing hundreds of thousands of

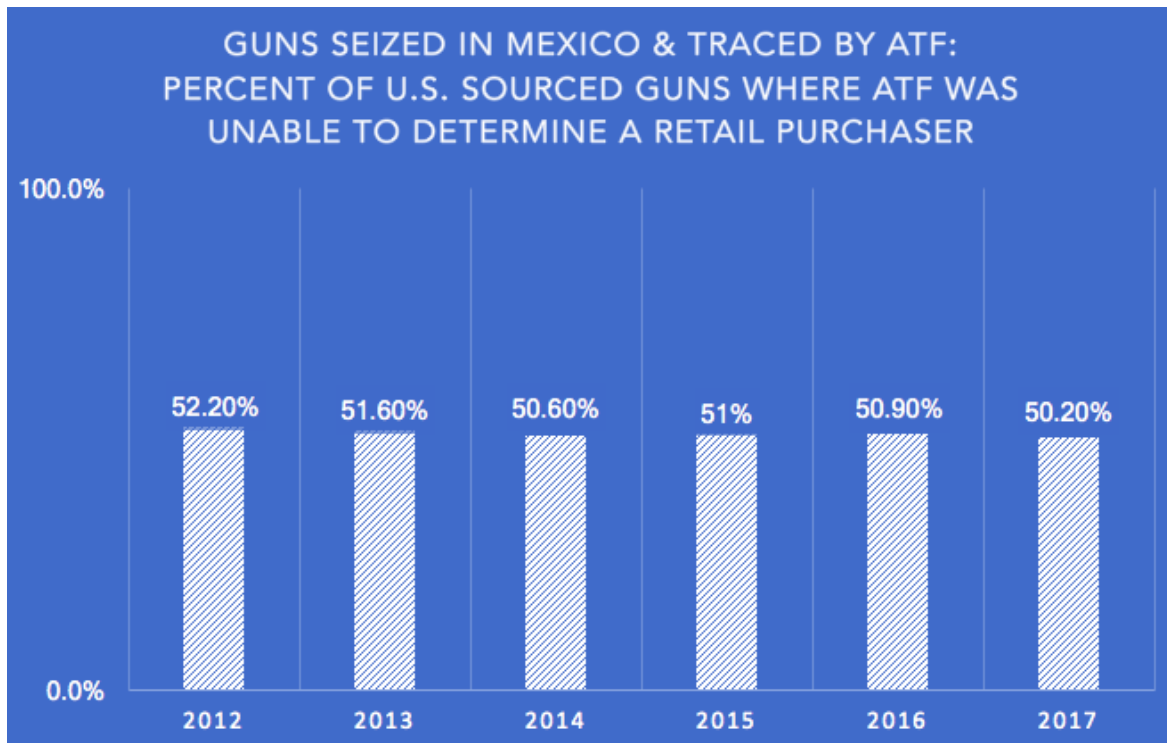
background checks to extend beyond the three-day window that investigators have to complete them. According to recent budget requests, the Department of Justice claims that “The federal gun background check system is suffering from a critical staffing shortage, increasing the risk that people prohibited from buying weapons will slip through the cracks at gun stores” and has “requested Congress for 85 new investigators — a roughly 14 percent staffing increase — at a cost of \$8.9 million.”<sup>42</sup>

The overall process of the National Instant Criminal Background Check System (NICS) seems to be embedded with inefficiencies and loopholes that continue to allow dangerous individuals relatively easy access to multiple firearms. Please see Appendix for a comprehensive map of the failures of the background check system.

#### H. Inefficient Tracing Practices:

Gun tracing is the process of mapping guns from their initial manufacturers, to wholesalers, to licensed gun dealers, and finally to retail purchasers. This information can reveal a few things: for one, it might point towards the FFL’s that sell the highest volume of crime-guns, thereby allowing the ATF to identify which dealers might be relaxing their adherence to the law. A trace also shows us the total time between a gun’s retail sale and its eventual recovery in crime, also known as the Time-to-Crime index<sup>43</sup> (or TTC). In the context of tracing guns from Mexico, the lower the TTC, the more likely for the gun to be part of an illegal trafficking market that flows directly from the U.S. to Mexico. The older the TTC, the more likely for the gun to have passed through the secondary market. Finally, a trace can reveal the initial purchaser who might have lost, sold, lent, or trafficked the gun to Mexico. Unfortunately, since background checks are not mandated for private firearms sales, there is little else that can be revealed from tracing. Guns might be passed along a number of hands before eventually being recovered through crime. Please see Appendix for a comprehensive map of the gun tracing system.

According to the most recent data, the ATF has consistently been struggling to complete successful trace requests. On average, since 2012, at least 50 percent of all crime guns recovered in Mexico and traced to the U.S. have an unidentifiable purchaser:



**Figure 8. Source: Author with data from The Bureau of Alcohol, Firearms, and Tobacco (ATF)<sup>44</sup>**

As might be evident by the system's flaws in the Appendix, the ATF says they cannot complete all trace requests because of: 1) altered or obliterated firearm serial numbers, 2) incomplete firearms identifying data on the trace request form, 3) incomplete or never received out-of-business FFL records, 4) the FFL was unresponsive to ATF's request for trace information, or 5) the firearm is considered to be too old to trace<sup>45</sup>.

According to an investigative journalist who visited the ATF headquarters to better understand their infrastructural constraints:

*"In contrast with such state-of-the-art, 21st-century crime-fighting techniques as DNA matching and digital fingerprint analysis, gun tracing is an antiquated, laborious process done mostly by hand... ATF employees, many of them hunkered over folding tables, go through a tedious process of sorting, stacking, cataloguing and deciphering. From the boxes, they pull out gun-sales records on ink-smeared, yellowed index cards and dog-eared ledger books filled with faded pencil. If they are lucky, they find 4473s written in clear, legible handwriting. Inside the dealer's boxes,*

*workers sometimes find ammunition, the odd gun part - or rat feces. Some records have languished in attics for decades. Others have been underwater.<sup>46</sup>*

Ultimately, the mammoth amount of paperwork that needs to be analyzed to solve a single crime has placed an enormous strain on ATF staff members and their resources - drawing them away from other responsibilities like investigating multiple sales reports.

## **2. Inconsistent State Laws:**

A 2014 analysis that examined the crime-gun export rate to Mexico by each of the U.S. border states found a statistically significant connection between strong gun-laws and lower rates of guns being trafficked across the border. Controlling for distance and demographic make-up, the study examined the effect of four gun control laws: (1) limiting multiple sales, (2) requiring background checks for secondary transfers, (3) prosecuting straw purchasers, and (4) restricting the sale of assault weapons. They found that the distance from Mexico being equal, states without multiple sales restrictions exported crime guns to Mexico at a rate 292 percent greater than states that do restrict multiple sales; states without background check requirements for secondary transfers exported crime guns at a rate 195 percent greater than states that do require background checks; states that fail to prosecute straw purchasers exported crime guns at a rate 227 percent greater than states that do; and states that do not restrict the sale of assault weapons exported crime guns at a rate 210 percent greater than states that do. When taken all together, states that had none of these gun control measures had a crime gun export rate 655 percent greater than states that had all four of these gun control measures in place<sup>47</sup>.

While this report finds a strong correlation between the existence of gun laws and the reduction in crime-guns - what's even more alarming is the conclusion that the effect of strong gun laws in some states becomes significantly diluted by the lax laws in others. When gun-laws across states are inconsistent, there becomes a significant incentive for rent-seekers to seize profits by buying firearms in states with lax laws and trafficking them to states with stricter ones. Inconsistencies in state laws actually breed more trafficking, as guns from unregulated states are lucratively sold for profits in California - which has the most regulations of all the border states. Former traffickers have attested to the ease with which this can be executed - simply by shipping guns in

the mail, or hiding them in microwaves or other household equipment while transporting them across state lines<sup>48</sup>. A general list of how the gun-laws across the four border states vary can be found in the Appendix.

### **3. Low Accountability: Missing Incentives**

In most cases, the ATF and state governments have failed to provide either the carrot or the stick to gun dealers, police officers, or gun-traffickers. For example, a 2003 study on federal law enforcement finds that among the 300,000 clear, telltale cases of gun trafficking, only 25,002 cases were filed, and only 515 (or 2%) of those were prosecuted<sup>49</sup>. While anyone who lies on their background check forms about their criminal or mental health records could be federally prosecuted as a felon (punishable by upto 10 years in prison and a \$250,000 fine) hundreds of thousands of people have been caught giving false information on their forms without any legal recourse. The Government Accountability Office finds that background check falsifications are rarely prosecuted due to District Attorney's "resource constraints" and "competing resource demands". The National Instant Criminal Background Checks System (NICS) found about 112,000 denied transactions in fiscal year 2017, of which the ATF referred about 12,700 to its field divisions for further investigation, and the U.S. Attorney's Offices only prosecuted 12 of these cases as of June 2018<sup>50</sup>. In other words, only one of every 9,333 background check falsifications were prosecuted - sending a clear message to potential criminals that they might as well "lie and try"<sup>51</sup>.

The failure to hold individuals involved in gun-trafficking responsible for their crimes can be seen as an infrastructural issue. After various interviews with local law enforcement agencies, officials from the Executive Office for United States Attorneys said that "prosecuting denial cases can require significant effort and may offer little value to public safety compared to other cases involving gun violence", while selected state prosecutors pointed out that "gathering evidence to prove individuals knew they were prohibited was a challenge" and that "denial investigations can take law enforcement officials away from their core duties."

In the same vein, while there aren't concrete disincentives to dissuade active and potential gun-trafficking bodies, there aren't any positive incentives for law-enforcement agencies to focus their time and resources on apprehending them. While such programs are challenging to learn about given state and local variations, there

seem to exist no grants or conditional cash transfers in exchange for more apprehensions by local officials. Similarly, there seem to be no financial or otherwise positive incentives for FFL dealers to help law-enforcement officials in their objectives.

#### **4. Logistical Issues & The Clandestine Movement of Guns:**

One of the most glaring challenges to addressing the problem of gun-trafficking is the issue of overcoming logistical barriers such as budgetary constraints, the concealability of guns, and the legal transportation of gun-parts. Firstly, there appears to be no legal measure to prevent the movement of guns procured from low-restriction states, like Texas, to high-restriction states, like California. As a result, even if California gun laws are better at reducing gun-trafficking overall, there is little that can be done to prevent the movement of guns to Mexico **through** California. Without any regulatory mechanism to surveil goods being transported by road, California might serve as a “gateway state” for the Mexican gun-market.

Other logistical issues include the ability for trafficking agents to simply erase serial numbers from their guns, which is the most common way to prevent crime guns from being traced<sup>52</sup>; or mailing guns through services such as FedEx (though this happens less in Mexico, and more across U.S. territories such as Puerto Rico). The U.S. Postal Service finds that actually stopping such smuggling is financially infeasible, and “it would bring the economy to a halt.”<sup>53</sup>

The Government Accountability Office finds the newest wrinkle in the illegal gun trade to be the movement of unassembled parts of firearms - also known as “ghost guns” - which have no serial numbers and are therefore completely untraceable. According to the ATF, firearm parts include unfinished receivers, barrels, triggers and hammers, bumpstocks, pistol grips, pins, bolts, springs, and other items - yet none of these individual parts are classified as actual firearms under the Gun Control Act or the National Firearms Act, which typically requires all weapons to be imprinted with serial numbers. FFL’s and other retailers are not required to report on the acquisition and disposition of firearm parts as they must for firearms. More concerning still,

**“Any individual in the United States may legally acquire and possess certain firearm parts that are not otherwise prescribed by law, including persons prohibited from possessing firearms and ammunition, such as convicted felons.”**

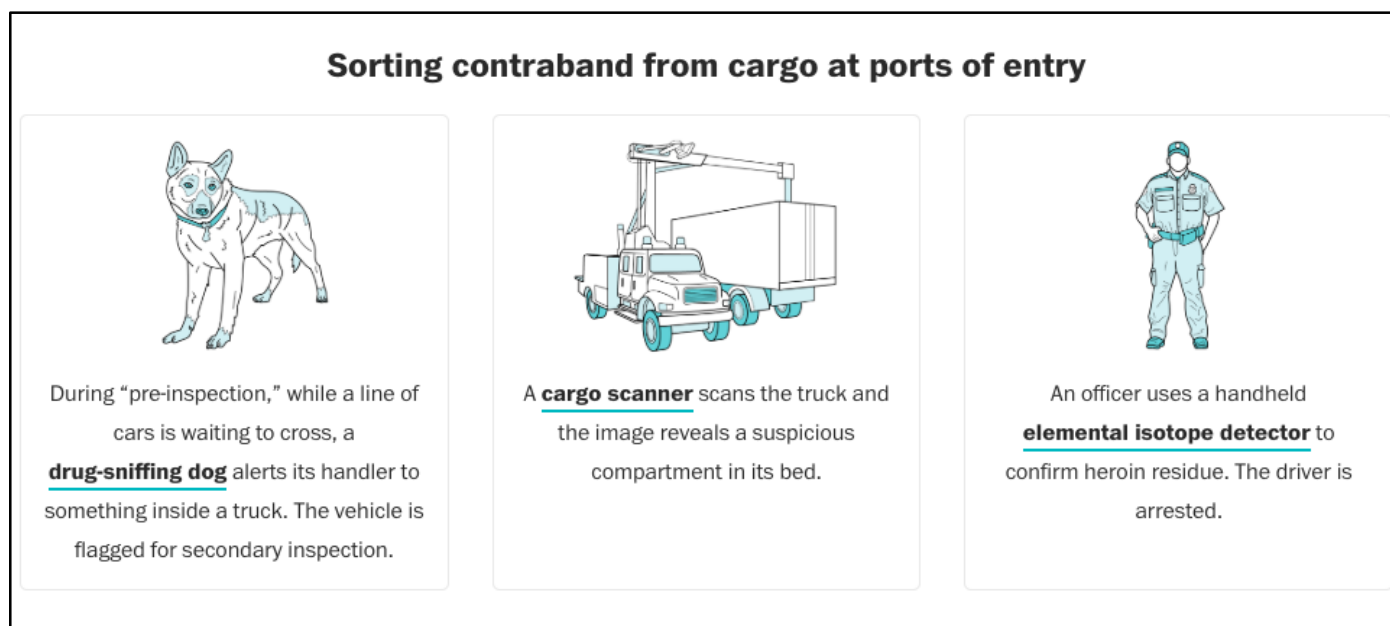


The ATF and ICE have expressed the practical impossibility of actually confiscating firearm parts at the border, which can be concealed quite easily given their size and general appearance<sup>54</sup>. Unfortunately, due to budgetary constraints and governmental priorities, even the confiscation of larger, more visible firearms such as fully-assembled handguns and assault weapons has been mostly uneventful. A 2013 study estimates that only 14.7% of the total arms being trafficked across the border have been intercepted, with Mexican authorities seizing at least 12.7% of all trafficked guns, and the U.S. authorities seizing just 2.0% of them<sup>55</sup>. The ATF faces a particular infrastructural challenge in the regulation of firearms trafficking with their insufficient quantities of personnel. The ATF has consistently had only 2,500 agents since 1972, while most other government agencies have seen dramatic increases in their human resources<sup>56</sup>.

## **5. U.S. Border Security Challenges:**

Across the 52 legal ports of entry at the U.S.-Mexico border, millions of people, cars, and trucks are processed and searched weekly. According to the Brookings Institute, "Traffickers hide their illicit cargo in hidden and increasingly sophisticated special compartments in cars or under legal goods in trailer trucks, of which 5,042,062 have crossed the U.S.-Mexico border annually since 2006, in other words some 13,800 daily."<sup>57</sup> Given the sheer quantity of movement across the border, there simply isn't enough time for law-enforcement agents to be thoroughly searching every vehicle for firearms or firearm parts that have been creatively concealed. U.S. personnel across the border have employed a wide range of tools and tactics to identify and seize trafficked materials, but they are generally more concerned with what's coming **into** the country, rather than what's going out.





**Figure 9. Source: The Washington Post<sup>58</sup>**

Even with high-technology being used at legal ports of entry, the U.S.-Mexico border faces significant vulnerabilities given the growing number of illegal ports of entry. Underground tunnels that connect buildings in border cities have long been used to transfer drugs into the United States. The longest tunnel discovered ran from Tijuana to San Diego, fully equipped with ventilation vents, rails, and electricity. Between 1990 and 2016, 224 tunnels were discovered at the U.S.-Mexico border<sup>59</sup>. While these tunnels are primarily used for the drug-trade, it’s extremely likely that they’re also being used to smuggle firearms given the drug cartels’ dependence on guns for the protection of their territory.

Under the Bush and Obama administrations, the U.S. and Mexican governments collaborated on a variety of levels to stymie the illegal flow of firearms and other contraband across the border. The Mérida Initiative and Project Gunrunner were two such collaborative programs, the latter of which is now the target of congressional investigation. According to the GAO’s analysis of these efforts across the border, there is a serious lack of cooperation between officials on both sides, with persistent gaps in information-sharing between the various stakeholders involved<sup>60</sup>. In fact, the number of relevant stakeholders (the ATF, ICE, the Mexican military, U.S. Homeland Security) creates confusion about their roles, thereby allowing each body to point at the other when it comes to questions of accountability.

## 6. Positive Incentives for Gun-Traffickers:

While the incentive structures within the United States are misaligned with the goal of curbing gun-trafficking, the incentive structures in Mexico seem to be facilitating this illicit trade. According to journalistic evidence, the gun-price markup can result in significant profits for gun-traffickers, with an AR-platform firearm that sells for \$1,000 inside the U.S. fetching more than \$4,000 in Mexico. A box of ammunition that might be less than \$200 in the U.S. might command \$3,000 across the border<sup>61</sup>.

Moreover, the growth of FFL's along the border states might indicate the profits being made from the guns that are destined for Mexico. In 2010 - there were only 8,534 primary dealers and pawn-shop FFL's across California, Texas, New Mexico and Arizona - out of a nation-wide total of 61,918. Today, the same border states have seen an increase of 1,569 new FFL's, while the total number of primary dealers and pawn-shops across non-border states has actually reduced by over half that amount.

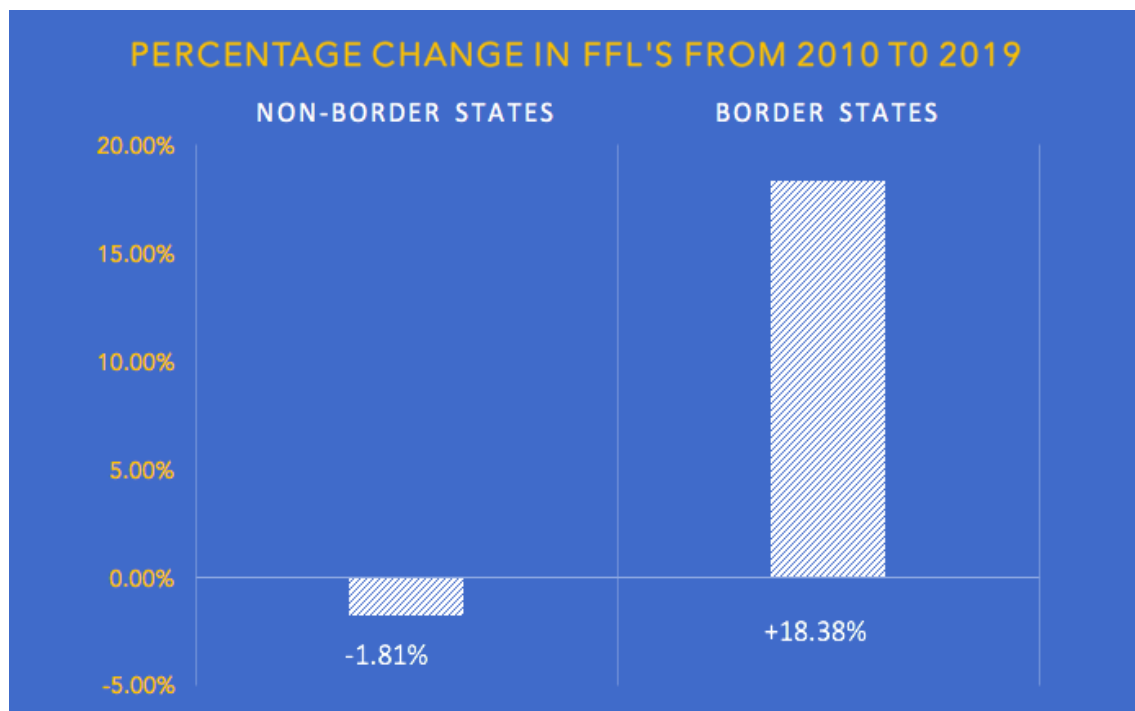
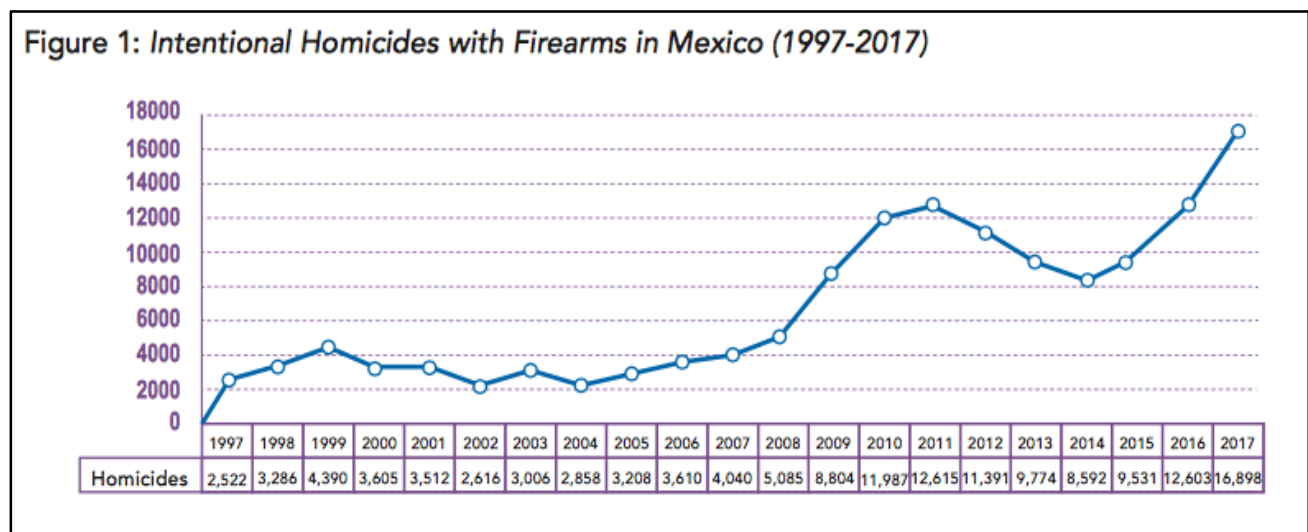


Figure 10. Source: Author with data from ATF

## 7. Impunity Across Mexico

An important consideration in the proliferation of the international illegal gun trade is the fact that there are several push-factors for violence within Mexico. Not all of Mexico's crime rates can be attributed to the availability of U.S. guns. While the effortless supply of guns certainly facilitates Mexican crimes, the Mexican geopolitical context is an important explanatory variable. More specifically, the fact that Mexico's impunity rates are at an all-time high - with about 2% of all crimes being prosecuted - indicates the lack of accountability for violent crimes, and the continued, unbridled demand for illegal guns<sup>62</sup>.



**Figure 11. Source: Mexican Commission for the Defense and Promotion of Human Rights; Stop US Arms to Mexico**

While the number of gun-related homicides have increased dramatically in the last twenty years (by about 570%) the vast majority of these homicides were never investigated. In 2017 alone, about 46 people were murdered with guns each day, and yet most of those cases have never seen a trial<sup>63</sup>. People involved in violent crime rarely face the consequences of their brutality, and the government's current efforts to curtail this problem via the importation of more weapons has reinforced a devastating cycle of violence.

The Mexican Commission for the Defense and Promotion of Human Rights finds that military and police forces are similarly given few incentives to actually respect

procedural justice - with the growing crime rates, threats made upon their families, and intermingling of cartels and regulatory agencies, Mexican law-enforcement officers rarely recover weapons used in gun-related crimes<sup>64</sup>.

As shown in the graph below, the number of firearms recovered by Mexican authorities has fallen steeply since 2012, even though the number of crimes involving guns as dramatically increased:

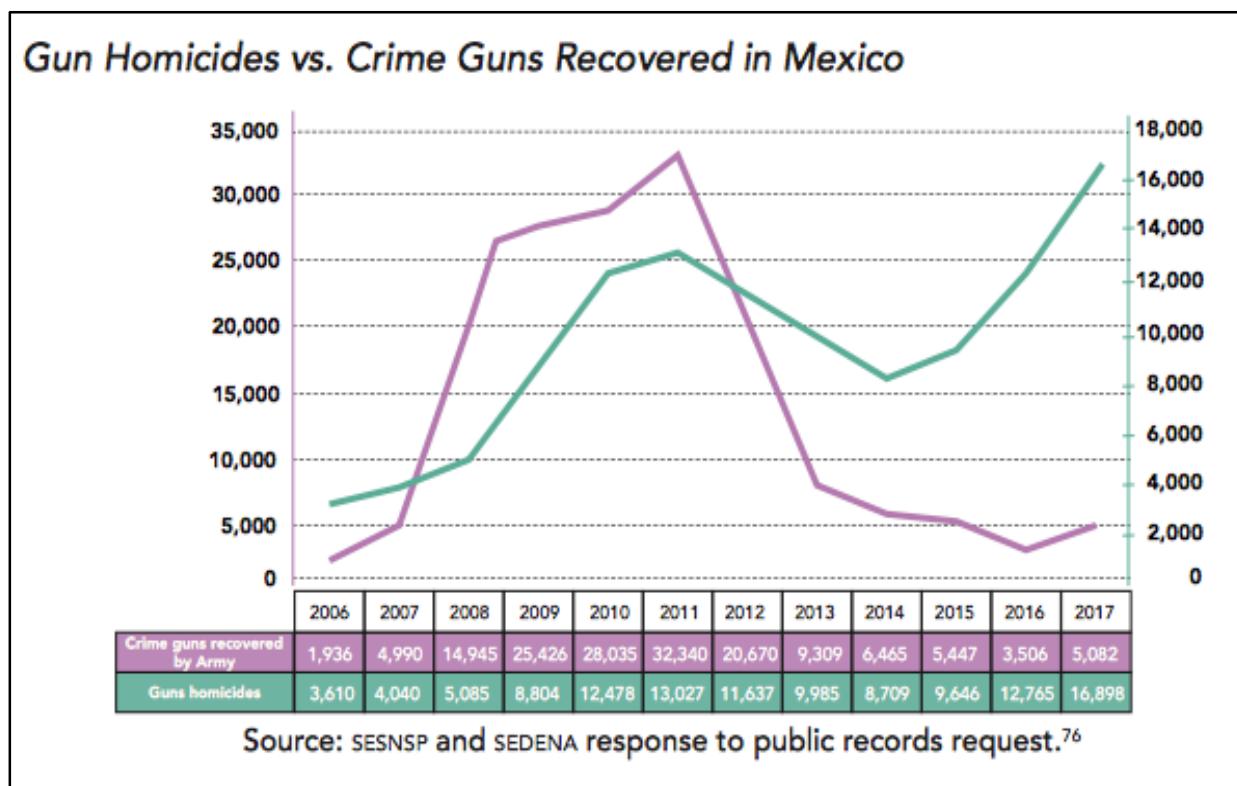


Figure 12. Source: Mexican Commission for the Defense and Promotion of Human Rights; Stop US Arms to Mexico<sup>65</sup>

## 8. Political Lobbying by the NRA

Historically, the National Rifle Association (NRA) was actively supportive of regulations since its initial founding in 1871. There was a widespread understanding that guns, particularly in the wrong hands, were extremely dangerous and therefore needed to be properly handled and regulated. The NRA often backed gun regulations - such as the National Firearms Act of 1934, and the Federal Firearms Act of 1938 - and

frequently supported a host of state-level laws that increased licensing requirements or levied taxes on various types of firearms<sup>66</sup>. However the organizational support for government oversight eventually began dwindling as the overall demand for guns started dwindling. According to experts who've been tracking NRA activities for the last decade, "The industry is constantly trying to find the next big thing to sell to this traditional cohort of gun owners who are aging white males who are dying off," and as their main market segment is reducing in size, so are their profits and overhead costs<sup>67</sup>. Increased regulation therefore represents more obstacles in the way of their already shrinking demand - raising the age for purchase adds three more years to the timeframe before a young person can buy a gun, increasing the waiting period for background-check decisions reduces the likelihood of gaining profits from persons who might be denied. The political representation of the NRA is therefore an elaborate tool to maximize profits for the gun industry at large, which is an important incentive for policymakers to understand and grapple with - particularly in context of the Mexican gun-market.

A study has found that "A significant proportion of U.S. firearm dealers are dependent on Mexican demand: 46.7% of FFL's during 2010-2012 depended for their economic existence on some amount of demand from the U.S.-Mexico firearms trade to stay in business.<sup>68</sup>" In fact, the value of firearms destined for Mexico are growing significantly - where the trade represented annual revenues of \$127.2 million for the U.S. firearms industry between 2010-2012, more than 12 times the amount between 2002-2004<sup>69</sup>. Limiting the ability for guns to reach Mexico therefore limits the size of the market at large. While restrictions over the gun industry were initially placed to monitor the market failure of citizen unsafety - the proliferation of mass-shootings and the immigration emergency at the border indicates that the negative externalities of deregulation are being felt across the nation.

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## Part Two: Solving the Problem Through Policy:

***The objectives of any policy solution should be to reduce the overall number of guns moving illegally from the U.S. to Mexico, and thereby reduce the overall rates of gun-related violence in Mexico.***

*This section of the study will focus on the range of policies that can be implemented to achieve these objectives. Robust policies often target the causes of the problem, or aim to ameliorate the conditions created by those contributing factors. No two solutions should be seen as mutually exclusive, and a wide number of them can (and should) be used in tandem. In order to understand which solutions to prioritize, policy alternatives will be evaluated using a set of criteria (next page):*

<b>Criterion</b>	<b>Description</b>	<b>Measure</b>
<b>1) Effectiveness</b>	An effective solution would achieve the objectives of reducing the overall number of guns moving illegally from the U.S. to Mexico, and thereby reducing the overall rates of gun-related violence in Mexico.	This can be measured through an increase in the number of guns being intercepted at the border, a reduction in the number of guns being seized in Mexico that are traced back to the U.S., an increase in the Time-to-Crime index, a reduction in the number of straw-purchasers who “lie and try” to get guns across the border states, and a reduction in the gun-related homicide rates in Mexico.
<b>2) Political Feasibility</b>	A politically feasible solution would be constitutionally legal, gain bipartisan support, and be popular among the majority of American voters. The solution must be supported in the long-term, without facing fluctuations that are dependent on election cycles.	This can be measured through a close-reading of public affairs, an analysis of funding by interest groups on either side of the gun debate, statements made by politicians in the Congress and Senate, and representative polls that ask U.S. citizens about their support of gun rights.
<b>3) Equity</b>	An equitable solution would create fair distributional outcomes across different demographics of humans. Specific racial, gender, citizenship, and economic groups would not be impacted adversely by the policy.	This can be measured by projecting the outcomes and assessing the likelihood of discrimination based on group identities, or exclusionary policies that prevent certain groups from sharing the benefits.

**Methodology for Analysis:** A complete list of policy alternatives has been provided in the following page. Policies have been divided under categories that require different forms of action, beckoning the attention of different stakeholders. These categories are: 1) *legal overhauls* which require state and federal amendments to the law, 2) *policies that create disincentives* for trafficking-agents to commit crimes, 3) *international cooperation policies* which require alliance-building with multiple partners, and 4) *policies that garner public support* for this problem by providing society with more information. A brief projection of future outcomes, as they relate to the criteria outlined above, will produce the final recommendation.

### Policy Alternatives:

<i>Legal Overhauls</i>	<i>Disincentivizing Crime</i>	<i>International Cooperation</i>	<i>Garnering Public Support</i>
<ul style="list-style-type: none"> <li>· Mandate all private purchases to use background checks (i.e. universal background checks)</li> <li>· Federal level ban on multiple sales (like CA)</li> <li>· Federal regulation of ammunition should be the same as CA's regulation of ammunition</li> <li>· Ban assault weapons</li> <li>· Classify gun-parts as firearms to regulate ghost-guns and real guns equally</li> </ul>	<ul style="list-style-type: none"> <li>· Prosecute more cases of straw-purchasing and smuggling at the border</li> <li>· Prioritize searching vehicles leaving the U.S. to Mexico</li> <li>· Provide greater resources for U.S. Customs and Border Patrol officials, coupling such resources with diligent and extensive training throughout their careers</li> <li>· Gun buyback program at the border to allow</li> </ul>	<ul style="list-style-type: none"> <li>· Collaborate with the UN or NGO's to further research the magnitude of the immigration crisis at the U.S.-Mexico border, and specifically the magnitude of "U.S.-Exported Gun Violence Refugees" from Central America</li> <li>· Reduce the legal export of firearms and ammunition to Mexican authorities</li> <li>· Alliance building with Mexican authorities at the U.S.-Mexico border via the transparent</li> </ul>	<ul style="list-style-type: none"> <li>· Raising awareness among U.S. citizens through an information campaign</li> <li>· Funding documentaries, films, or TV shows that expand on this issue and its contribution to the immigration crisis</li> <li>· Requesting famous news anchors (such as John Oliver or Trevor Noah) to cover this topic in a segment of their show – thereby reaching millennial voters</li> </ul>



<ul style="list-style-type: none"> <li>· Allow the centralized data collection of firearm purchaser information</li> <li>· Reform the NICS background-check system by collaborating with app developers like Google</li> <li>· Strengthen state laws in Texas, Arizona, and New Mexico to be at the same level of oversight as California</li> <li>· Expand the federal waiting period from 3 days to 10 days</li> <li>· Fine people for every second gun that is reported as lost or stolen</li> <li>· Overturn Tiahrt Amendments and mandate the ATF to release data on Time-to-Crime statistics for guns seized in Mexico and traced to the U.S.</li> </ul>	<p>traffickers the chance to renounce crime</p> <ul style="list-style-type: none"> <li>· Mandate FFL's to place audio and video recording devices in stores</li> <li>· Provide ATF more funding and trained personnel to carry out annual FFL inspections, multiple-sale inspections, and investigations of trafficking rings</li> <li>· Build U.S.-Mexico off-border inspection sites that specifically target vehicles to be searched for firearms, ammunition, and firearm parts</li> </ul>	<p>exchange of information and targeted efforts to stop firearms trafficking</p> <ul style="list-style-type: none"> <li>· Alliance building with advocacy groups and immigrants-rights groups to put pressure on U.S. and Mexican policymakers</li> <li>· Increase funding to Mexico for development projects – boosting the Mexican economy to decrease an overall reliance on criminal trade and gang violence</li> <li>· Funding research and programs on professional training for Mexican police forces – encouraging procedural justice and reducing corruption</li> </ul>	<ul style="list-style-type: none"> <li>· Lobbying select lawmakers to prioritize the legal changes required on the federal and state level</li> </ul>
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## Analysis by Criteria:

### I. Effectiveness

The policies that are likely to seriously minimize the flow of guns from the U.S. to Mexico are those which target the widest loopholes exploited by gun trafficking agents:

#### 1) Mandating Universal Background Checks (With a Few Adjustments):

Closing the private-seller loophole has emerged as one of the top priorities across politicians running in the 2020 presidential elections<sup>70</sup>, likely because of its dominant role in the creation of today's exorbitant gun violence rates. Mandating all gun sellers, licensed or unlicensed, to run background checks on their customers will improve the overall accountability over gun-trafficking by leaving a physical papertrail of every hand that guns have legally passed through. Mandating each private seller to require and store ATF form 4473 will create a physical record for law enforcement agents to better trace crime-guns, and to hold straw-purchasers accountable for their role in trafficking through the secondary market. Closing this loophole will also significantly impact the effortless exchanges made at gun shows or through online platforms like Armslist. Given the successes of the implementation of this law across California, which saw 195% fewer crime guns being exported to Mexico than other border states<sup>71</sup>, we can predict a sizable reduction in the overall number of guns being illegally smuggled to Mexico with the expansion of a system that enhances its oversight of the primary and secondary markets. Moreover, studies have found statistically significant correlations with the regulation of private sales and lower-levels of intra-state gun trafficking<sup>72</sup>, indicating the overwhelming domestic benefits of this policy as well.

It's worth mentioning that universal background checks are only as effective as they are enforceable. Studies have found that huge numbers of private sellers in California simply disregard background check requirements, even three decades after the policy was implemented<sup>73</sup>. In its current form, the system relies on the integrity of all members participating in the exchange of firearms, and gun owners wishing to make an illegal sale can simply provide the identity of someone they are sure will pass the background check, or simply report their guns as lost or stolen. These gaps in enforceability reveal the importance of implementing this policy in tandem with other

reforms to the NICS background check system. Employing fingerprinting technology to confirm actual purchaser identity, or requiring a firearms license from local police offices might be robust measures to increase the overall transparency of the system. Fining individuals for every second gun reported as lost or stolen might also encourage more people to use the NICS system during private sales. Such reforms will doubtless be met with strong political opposition<sup>v</sup>, which is why it's also recommended to collaborate with mobile-app developers like Google who might find workable solutions around keeping the background check system enforceable and within the limits of the law.

## 2) Multiple Sales Ban (With a Centralized Database)

The fact that there exists no federal limit on the number of firearms an individual can purchase in a given period is one of the most significant enablers of gun trafficking to Mexico. Even if there were a federal restriction on multiple sales, the fact that there is no centralized data on firearms purchasers seriously inhibits law enforcement agents from accurately finding out when multiple sales take place. Potential trafficking agents can simply buy multiple guns from a variety of different stores to evade any surveillance. California currently requires all dealers to report the information from ATF form 4473 - also known as the Dealer Record of Sale (DROS) - to the California Department of Justice electronically<sup>74</sup>. The Attorney General is required to keep a permanent record of all sales reported by dealers, which allows them to track and enforce their multiple sales ban even when purchasers shop at multiple different FFL's. In fact, California dealers are also required to obtain the right thumbprint of a purchaser or transferee before completing any transaction - which indicates some legal precedent for centralized data collection and identity verification to be implemented nationwide. As to how California was able to successfully create this database should be investigated in the future, to better advocate for similar policies on a national level.

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<sup>v</sup> I will elaborate on this in the analysis of the next criterion, political feasibility.

### 3) Regulate Ammunition the Same Way as Firearms:

*Easily replenishable and available in bulk, U.S. ammunition is mostly unregulated across the country. Historically lax laws have allowed drug cartels and other criminal groups in Mexico to continuously refresh their inventory of bullets. Studies have cited U.S. ammunition as the most dangerous threat to Mexican authorities and civilians<sup>75</sup>, thereby placing strong emphasis on regulating this market that often goes unnoticed within popular political discourse. Regulating ammunition very similarly to firearms, California's new ammunition law (Proposition 63) comes into effect on the 1st of July. Alongside the nationwide expansion of this law, it is recommended to carry out a statistical analysis of the impacts of Prop 63 on international trafficking and Mexican homicide rates.*

### 4) Re-launching the Federal Assault Weapons Ban:

*The periods during and after the Federal Assault Weapons Ban (FAWB) provide the perfect makings for a statistical analysis of homicide rates in Mexico, particularly homicide rates as caused by assault weapons. After 2004, the sale of these lethal firearms became legal in three of the four border states - Texas, Arizona, and New Mexico. A study finds that the Mexican municipios (counties) around the borders of these three states experienced homicide rates around 60 percent higher than municipios just 100 miles away<sup>76</sup>. Moreover, the analysis finds that the FAWB expiration accounts for 21 percent of all homicides in these municipios. The most significant finding is that these homicide rates were nowhere similar across municipios bordering California, where assault weapons are still illegal. Knowing that assault weapons are emerging as cartels' "weapons of choice", there is substantial reason to believe that the resurgence of the Federal Assault Weapons ban would have a significant impact on the reduction of homicides across Mexico.*



### **Red-flag Policy!**

#### Prioritize Searching Vehicles Leaving the U.S. to Mexico and Increase Prosecutions of Criminals Involved in Trafficking:

While this policy might create significant disincentives to commit crimes by increasing the enforcement of trafficking laws, the demand for guns from Mexico will only be marginally impacted given the various ways that that smugglers can circumvent border inspections. The cartels have an enormous reliance on U.S. guns, and their monopoly over trafficked goods has enabled them to concoct increasingly creative methods for smuggling that completely sidestep the scrutiny of border security agents. For example, El Chapo Guzman's recent trial reveals that the Sinaloa cartel has constantly evolved its drug trafficking methods, depending on U.S. border security strategies<sup>77</sup>. Drug-filled plastic bananas that look startlingly real, or trucks of jalapeño cans that have drugs inside them (placed in the very center of the truck, around actual cans of jalapeños), or cars that have been cleverly engineered with secret compartments have been some of their most recent methods. They've opened various fake companies to smuggle their goods under the guise of agricultural trade, and have dug dozens of tunnels connecting border cities, complete with ventilation, electricity, and rails. Prosecution therefore has proven to be a minor hindrance in their relentless, profitable commerce. Policies that aim to improve prosecution rates might also prove to be cost ineffective given the low potential to significantly influence Mexican demand.

## **II. Political Feasibility:**

Unfortunately, the majority of the most effective policy solutions are totally infeasible in today's political climate, given the widespread lobbying efforts of gun-rights advocates. For the last few decades, the NRA has been able to influence crucial political decisions surrounding firearm regulations, which is why we have these wide legal loopholes to begin with. One of the clearest examples of the NRA's political bargaining power dates back to 1996, following the publication of an academic article that concluded a strong connection between gun ownership and U.S. homicides<sup>78</sup>. After this article was widely disseminated, Republican Congressmen managed to

successfully ban all government funding for public health research on gun violence. Since then, the Center for Diseases Control and Prevention (CDC) has completely halted all public health related research to firearms, and nationwide research on gun violence remains sorely underfunded unless backed by private parties. More recently, the NRA has also been able to curtail the investigatory powers of the ATF via the 2003 Tiahrt Amendments<sup>79</sup>. These regulations over the government prohibit the ATF from disclosing firearm trace data to law enforcement agencies (unless pertaining to a specific crime investigation), researchers, or the public. They also mandate the ATF and FBI destroy all gun purchase records within 24 hours, sorely preventing policymakers from understanding patterns of multiple sales and trafficking pathways.

Paradoxically, while the NRA poses a significant institutional barrier to key legal changes, there appears to be no concrete social opposition to these policies. The vast majority of U.S. citizens actually offer bipartisan support for a range of gun control measures<sup>80</sup>, so policies that are politically feasible from the standpoint of social satisfaction are ultimately politically infeasible from the standpoint of institutional power. Today, 52 senators in the U.S. senate have an NRA rating of A- or higher<sup>81</sup>; a score that's given by the NRA to discern the policymakers who have a steadfast commitment to protecting the second amendment. The institutional advantage of gun-rights advocates disallows many of the most effective policies to be considered as feasible in the near-future.

That being said, the seemingly less-effective, easy-to-implement solutions actually enable us to change this political landscape. Policies outlined in the buckets of "Garnering Public Support" and "International Cooperation," such as raising awareness of this issue through an information campaign, might seem the least politically threatening and most cost-effective solutions. Their short-term implementation will likely have no impact on the numbers of guns being trafficked across the U.S.-Mexico border, nor will there be a sizable reduction in Mexican homicide rates. But it's worth noting that these "easy fixes" will generate broad public support for swift government action, thereby making these much needed legal overhauls more politically feasible in the long-run.

An important window of opportunity to shift the public's perception of U.S. gun laws is to collaborate with the UN or NGO's to further research the magnitude of the

*immigration crisis at the U.S.-Mexico border, and specifically the magnitude of “U.S.-Exported Gun Violence Refugees” from Central America. By finding a statistically significant connection between lenient U.S. gun laws and the influx of immigrants at the U.S.-Mexico border, we might be able to change the current narrative about why these immigrants seek U.S. asylum, and how we can better prevent them from migrating to the U.S.. By showing an irrefutable scientific connection between U.S. gun laws and Central American violence, we might be able to invest a range of politicians across the political spectrum who have concerns over the immigration crisis. To strengthen this connection in the public’s consciousness, crafting a title similar to “Climate Refugees” for migrants fleeing gun violence is recommended.*

### **III. Equity:**

*The policies that pose the greatest equity concerns are those which might create disproportionately harmful outcomes for certain groups based on their race, ethnicity, gender, nationality, or income. Below are a list of potential red-flags for policymakers who prioritize equity:*



### Red Flag Policies!

#### 1. Build U.S.-Mexico Off-border Inspection Sites that Specifically Target Vehicles to be Searched for Firearms, Ammunition, and Firearm Parts; and/or Prioritize Searching Vehicles Leaving the U.S. to Mexico

Both these proposed policies might effectively seize more guns leaving the U.S. to Mexico, and will likely lead to many more prosecutions of firearms trafficking cases. But aside from creating disincentives for trafficking agents, these policies come with the strong possibility of exacerbating racial profiling by law-enforcement agents. Knowing that the illegal smuggling of guns leads to tremendous profits on the Mexican side of the border, U.S. law-enforcement agents (who already have a history of procedural injustice against specific racial groups) are likely to stop only Mexican drivers during their border and off-border inspections. Not only will this allow non-Mexican smugglers to successfully escape surveillance and prosecution, but it might also lead to escalated tension and the disproportionate use of force against a certain ethnic or national group. The American Civil Liberties Union has found that U.S. Customs and Border Protection (CBP) agents have engaged in rampant abuses ranging from racial profiling to excessive force; imposing heavy social costs such as tearing families apart and undermining the community's trust in law-enforcement<sup>82</sup>. Since 2010, at least 83 people have died as the result of an encounter with U.S. border agents, the vast majority of which are Mexicans or Central Americans<sup>83</sup>. Any solution that enhances U.S. border security oversight should also emphasize the importance of procedural justice training for U.S. CBP and ICE departments.

#### 2. Gun Buyback Program to Allow Traffickers the Chance to Renounce Crime:

Gun buyback programs have been employed across the world as an incentive for criminals to surrender their supply of firearms in exchange for money, without any fear of prosecution. By promising to ask zero questions, and providing a significant financial remuneration, policymakers might successfully redirect potential criminals or trafficking agents away from the illegal use and transport of firearms. However, gun buybacks have been lauded as ineffective, expensive, and often unfair to local taxpayers. By offering money without questions, buybacks generally attract low-



quality, junk guns from people who aren't likely to use them in crime. In 2006, the Boston buyback attracted a handful of out-of-state gun dealers who were looking to offload their old inventory for profit<sup>84</sup>. Rather than attracting the assault weapons or semiautomatic handguns used by Mexican cartels, it's likely that a U.S.-Mexico gun buyback will attract plenty of old (perhaps even homemade) guns, at the cost of federal taxpayers. Oakland's 2008 buyback promised \$250 per gun, and thereby attracted so many eager sellers that they started issuing IOUs for future buybacks<sup>85</sup>. Today, Oakland is left with a debt of over \$170,000 for the program, which implies the heavy budget and careful pricing needed to implement this on an international scale. Moreover, since the cost of this program will likely be financed through federal taxes, the fact that it is considered widely ineffective only harms citizens at the lower quintiles of the American economy, who bear the highest burden of U.S. federal taxes<sup>86</sup>. Another important equity concern is what might be done with the guns after their purchase from the government. Some buybacks have taken the pile of guns, processed them in machines, and dumped in the Atlantic Ocean<sup>87</sup>. If complicit in the deterioration of our marine ecology, the program would be widely opposed.

Among the more equitable policies, the solutions under "International Cooperation" and "Garnering Public Support" actually pose the least amount of risk in terms of perpetuating discrimination of any kind. In fact, some policies actively work to unravel traditional patterns of harm being inflicted upon select groups of individuals. For example: Reducing the Legal Export of Firearms to Mexico. The Mexican military has been accused of countless human rights violations with the use of U.S. imported weapons, calling for the U.S. to seriously reconsider their trade relationship with Mexico. Stories documenting similar transgressions, including weapons being illegally trafficked from the military to gangs, are commonplace in the region. In 2017, with the use of U.S. imported arms, the Honduran military police opened fire on local demonstrators, killing more than 30 people and wounding hundreds<sup>88</sup>. A 2017 report investigating corruption among Latin American law-enforcement finds that legally imported weapons often land up in the hands of criminals, indicating the thriving black market being facilitated by the purported protectors of the nation<sup>89</sup>. "There's no

*illusion of a difference between the state and organized crime,” notes Mark Ungar, a political scientist studying organized arms trafficking in Central America<sup>90</sup>. Given all this data, it seems crucial to regulate U.S. international trade of firearms depending on the human rights implications of our exports. In 2010, after the continuous appearance of German imported arms at Mexican crime-scenes, Germany decided to discontinue the export of small arms and lethal weapons (SALW) to Mexico. With the acknowledgement that the Mexican police were unable to maintain or safely deploy their arms inventory, German policymakers decided to end their complicity in the human rights violations across the country. The U.S. has received plenty of local and international pressure to follow in Germany’s footsteps -- and Trump’s most recent dismissal of the Arms Trade Treaty (ATT) shows us that no such measures will be taken in the near future. The ATT calls for international standards to reduce the illicit arms trade and to improve regional security. In fact, the treaty specifically requires “states to assess the potential that the arms exported would contribute to or undermine peace and security, or could be used to commit or facilitate serious violations of international humanitarian or human rights law, acts of terrorism, or transnational organized crime; to consider measures to mitigate the risk of these violations; and, if there still remains an overriding risk of negative consequences, to not authorize the export.”<sup>91</sup>”*

*Reducing the Mexican military’s supply of weapons raises a fundamental conflict. Without military force, how should Mexico curb organized crime and keep their civilians safe? Given the nationwide distrust over Mexican law-enforcement officials, another recommended solution might be to help support the Mexican authorities by funding research on sources of corruption among Mexican authorities and devising solutions accordingly; investing in training programs that curb military and police corruption; and funding long-term economic development projects that might disincentivize criminals who are motivated by profit.*

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## Final Recommendations:

*Ruling out the inequitable solutions, the following policies are recommended based on their effectiveness and political feasibility, presented in the order of their recommended implementation:*

### Step 1: Research and Invest

- *Collaborate with the UN or NGO's to further research the magnitude of the immigration crisis at the U.S.-Mexico border, and specifically the magnitude of "U.S.-Exported Gun Violence Refugees" from Central America*
- *Conduct further research on how CA successfully implemented its centralized data collection system of firearms purchaser information. Use information collected to inform the national pitch for a centralized database*
- *Conduct qualitative research on "What informs the widespread fear of a centralized database of gun owners?" This will allow lawmakers to meaningfully engage with gun-rights advocates and to find workable compromises*
- *Fund research on sources of corruption among Mexican authorities and devise solutions accordingly*
- *Invest in training programs that curb Mexican military and police corruption*
- *Fund long-term economic development projects that might disincentivize crime in Mexico*

### Step 2: Generate Political Support

- *Raise awareness among U.S. citizens through an information campaign (for example: college talks and school workshops)*
- *Request famous news anchors (such as John Oliver or Trevor Noah) to cover this topic in a segment of their show – thereby reaching millennial voters*
- *Fund documentaries, films, or TV shows that expand on this issue and its contribution to the immigration crisis*





### **Step 3: Change U.S. Laws and Policies**







- *Mandate universal background checks*
  - *Reform the NICS background check system, with the help of app-developers like Google*
  - *Provide the ATF more funding and trained personnel to carry out annual FFL inspections, multiple-sale inspections, and investigations of trafficking rings*
  - *Federal level ban on multiple sales (like CA)*
  - *Federal regulation of ammunition should be the same as CA's regulation of ammunition*
  - *Ban assault weapons*
  - *Classify gun-parts as firearms to regulate ghost-guns and real guns equally*
  - *Allow the centralized data collection of firearm purchaser information*
  - *Strengthen state laws in Texas, Arizona, and New Mexico to be at the same level of oversight as California*
  - *Expand the federal waiting period from 3 days to 10 days*
  - *Fine people for every second gun that is reported as lost or stolen*
  - *Overturn Tiahrt Amendments and mandate the ATF to release data on Time-to-Crime statistics for guns seized in Mexico and traced to the U.S.*
  - *Reduce the legal export of firearms and ammunition to Mexico*
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## Appendix

### 1. **Differences in Gun Laws Across Border States:**

This list provides a general overview of the variation in gun laws regarding the most common loopholes exploited by gun-trafficking agents. This list is not a comprehensive set of laws on each category, and has been abridged to include only the most important regulations or lack thereof. Symbols have been used to indicate whether or not states have robust regulations for each category of firearms transactions. **Source: All laws have been taken from the Giffords Law Center to Prevent Gun Violence database.**

	Private Sales	Assault Weapons	Ammunition	Ghost guns	Bulk Purchases
<b>California</b>	<p>All firearms transactions must be completed through a licensed California FFL - including internet sales (barring certain, narrow exceptions such as infrequent transfers between family members, or government run firearms programs)</p> 	<p>Everyone is prohibited from possessing an assault weapon unless it was already in possession prior to the CA "assault weapon" definition being ratified into law. The manufacture, distribution, sale, transport, and lending of assault weapons is prohibited. CA does not ban kits that allow the conversion of firearms into assault weapons.</p> 	<p>As of July 2019, dealers selling more than 500 rounds of ammunition a month must be licensed. The sale of ammunition by unlicensed vendors must be processed through licensed vendors (including online sales). Background checks are required for purchasers, and the minimum age to purchase is 18. A record of all sales must be maintained. Personal exchanges between family members and close friends are allowed without</p>	<p>As of July 2018, any person that wishes to assemble or manufacture a firearm is required to apply to the DOJ for a unique serial number first. If the firearm is made from plastic, the serial number must be engraved or affixed on a piece of metal large enough to be detected by metal detectors and embedded within the plastic.</p> 	<p>California restricts purchasers to only one handgun transfer per month. Private sales are not subject to this restriction. FFL's must post conspicuously in their premises a warning in block letters that notifies purchasers of prohibitions on multiple sales.</p> 

			licensed vendors. 		
<u>Texas</u>	Background checks are not required for purchases through unlicensed dealers. 	There is no law restricting the sale of assault weapons. The minimum age to purchase an assault weapon is 18, while the minimum age to purchase a handgun is 21. 	There is no minimum age requirement for the purchase or possession of ammunition. There is no requirement to record sales. There are no background check requirements for purchasers or license requirements for vendors. 	Follows the federal law which does not require serial numbers for unassembled guns. Requires that all firearms be detectable by metal detectors after removal of grips, stocks, and magazines. Requires that all major parts of firearms be detectable by X-ray machines. Law does not specify what portion of the firearm must be detectable by a metal detector, which could allow people to create a mostly plastic but technically compliant firearms using a 3D printer or other technology, containing metal in an extraneous part of the firearm that could be removed prior to entering a security area. 	There are no laws restricting the same or purchase of multiple firearms. FFL's must report the sale of two or more handguns within a five day period to the ATF, but the ATF is not required to investigate these reports. 
<u>Arizona</u>	Same as Texas.	Same as Texas.	Same as Texas, but with a minimum	Same as Texas.	Same as Texas.

			<p>age requirement of 18 (unless the juvenile purchaser can provide written consent of a parent or guardian).</p> 		
<u>New Mexico</u>	<p>Same as Texas.</p> 	<p>Same as Texas.</p> 	<p>Same as Texas, but with regulations on where the ammunition can be taken. Ammunition is not allowed in state correctional institutions, jails, penitentiaries, or juvenile detention centers.</p> 	<p>Same as Texas.</p> 	<p>Same as Texas.</p> 

# FEDERAL BACKGROUND CHECKS

The System from Start to End

## CUSTOMERS FILL OUT A FORM

Individuals seeking to buy, gift, lease or loan a firearm enter an FFL and fill out ATF Form 4473 - recording their name, address, height & weight, date of birth, and responding to questions that might rule them out as "prohibited purchasers"



## DEALERS CONTACT THE FBI SYSTEM ONLINE OR VIA PHONE



Dealers then repeat the information that their customer has just provided them. Dealers may attempt to increase sales by providing the name of someone with a clean record. There is no mechanism for the FBI to ensure that the dealer is providing accurate information.



## THE NICS DATA IS SEARCHED

The FBI searches the system to determine whether the purchaser matches any records in the databases that make up NICS. Sometimes this data is incomplete - states can submit information on state-level convictions and mental health adjudications on a voluntary basis.



## FBI GIVES A DECISION

The FBI might tell the dealer to **proceed** with the transfer, **delay** the transfer until they can find more thorough information, or **deny** the transfer. If the dealer is told to delay, and has not been notified within three business days, the sale may proceed by default. Many ineligible people (such as the 2015 assassin that killed nine people in Charleston, South Carolina) continue to access firearms because the FBI is not able to complete the background check within this time frame.

Dealers must keep forms 4473 for at least 20 years for completed transactions and for at least five years for incomplete transactions - each in their individual locations across the country.

**FEDERAL LAW REQUIRES THE FBI TO DESTROY THE RECORD OF THE BACKGROUND CHECK WITHIN 24 HOURS**

# TRACING GUNS IN THE UNITED STATES OF AMERICA



HOW DO WE MAP THE JOURNEY OF CRIME GUNS? WHO ARE THE STAKEHOLDERS, AND WHAT ARE THE LIMITATIONS OF THIS PROCESS?

## LAW ENFORCEMENT SUBMITS A TRACE REQUEST

When crime guns are seized by the police, they can submit a trace request (by email, fax, or through an online eTrace system) to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center in Martinsburg, West Virginia. A complete request discloses the weapon's serial number, model, caliber, and manufacturer.



## CONTACTING THE CHAIN OF DISTRIBUTION



The ATF uses this information to source the manufacturer of the gun. The manufacturer checks its records and identifies the wholesaler who bought the firearm. The wholesaler checks its records and identifies the Federal Firearms Licensee (FFL) who purchased the firearm. This process requires several phone-calls.

## DEALERS SIFT THROUGH THEIR PURCHASER INFORMATION

Upon the request of the ATF, the identified FFL goes through all their records of form 4473 filled out by purchasers. The FFL identifies the buyer and sends the ATF a copy of the sale.



## TEDIOUS PAPERWORK



For about a third of all traces, the FFL, wholesaler, or manufacturer has gone out of business. Dealers who close shop must ship all their gun purchase documents to the National Tracing Center. This happens so often that about 2 million documents flood the office every month. Sometimes the paperwork has undergone damage from water, pests, or poor documentation practices. Agents comb through page after page of records upon a trace request.

## NO CENTRAIZED DATABASE

There is no searchable, central database. The Firearms Protection Act of 1986 prohibits the ATF from creating a registry of guns, gun owners or gun sales. Dealer records are required to be “non-searchable” under federal law. Moreover, The ATF can only trace the gun to the purchaser listed by the FFL. The gun could have traded hands many more times after the original sale – through private transfers or theft.



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