

## **U.S. Firearms Trafficking to Guatemala and Mexico**

*A Working Paper*

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### **Introduction**

Following an 18-month joint investigation between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Immigration and Customs Enforcement (ICE), U.S. authorities arrested Joel Linares Soberanis, a Guatemalan national, Fernando Argenis Huezo, and Fernando's common-law wife, Jenni Otilia Cortez, on March 11, 2010 in Conroe, Texas on alleged drug and firearms related crimes.<sup>1</sup> From September 2008 to early 2010, both Huezo and Cortez allegedly purchased scores of firearms at U.S. gun stores in Texas, including Glock semi-automatic pistols and AR-15 assault-type rifles, with the intention of sending them across the U.S. border.<sup>2</sup> At least 15 of these firearms were recovered by law enforcement authorities in both Mexico and in Guatemala. Three of these firearms were found in Guatemala within two weeks of their purchase.<sup>3</sup> Customs and Border Protection (CBP) officers discovered these activities when they noticed heroin in the drive shaft of a dodge pick-up truck owned by Huezo attempting to enter the United States. In July 2010, Cortez was sentenced to 45 months in prison for falsifying forms to buy a firearm.<sup>4</sup>

Although the above case highlights yet another example of U.S. firearms trafficking<sup>5</sup> to Mexico, it also provides a glimpse into a relatively unknown phenomenon: the illicit movement of U.S.-origin firearms to Guatemala. While U.S. public attention has focused on arms, particularly hand and rocket propelled grenades, moving from Guatemala or El Salvador to Mexico, there has been little research into U.S. firearms flowing into Central America, particularly the northern triangle countries of Guatemala, El Salvador, and Honduras. Based largely on an ATF examination of just one Guatemalan military bunker with firearms recovered from FY 2006 to FY 2009, ATF determined that 2,687 of the 6,000 firearms (40 percent) had a nexus with the United States (either

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<sup>1</sup> U.S. Attorney's Office Southern District of Texas, "Joint ATF-ICE Investigation Leads to Arrest of Three", Press Release, March 16, 2011, online at [http://www.justice.gov/usao/txs/1News/Releases/2010%20March/031610%20Soberanis%20and%20Huezo\\_print.htm](http://www.justice.gov/usao/txs/1News/Releases/2010%20March/031610%20Soberanis%20and%20Huezo_print.htm).

<sup>2</sup> U.S. District Court Southern District of Texas Brownsville Division, United States vs. Fernando Argenis-Huezo and Jenni Otilia Cortez, Criminal No. B- 10-332, Indictment, filed on March 30, 2010, accessed through PACER on March 10, 2013.

<sup>3</sup> U.S. District Court Southern District of Texas Brownsville Division, United States vs. Jenni Otilia Cortez, Criminal No. B-10-289-MJ, Criminal Complaint, filed on March 9, 2010, accessed through PACER on March 10, 2013.

<sup>4</sup> U.S. District Court Southern District of Texas Brownsville Division, United States vs. Jenni Otilia Cortez, Judgement in Criminal Case, filed on April 1, 2011, accessed through PACER on March 10, 2013

<sup>5</sup> Although the word "trafficking" can be used to mean both licit and illicit movement, I use the more commonly used sense of the word meaning only illicit movement.

because the firearms were U.S. manufactured or U.S. imported).<sup>6</sup> In the last few years, there have also been at least 34 U.S. prosecutions related to firearms trafficking to Guatemala involving a total of 604 U.S.-origin firearms trafficked.<sup>7</sup>

At the same time, U.S. firearms trafficking to Mexico appears to continue to flow at significant levels. According to a recent report based on a statistical analysis of the demand for firearms at U.S. gun stores along the U.S. southwest border, between 106,700 and 426,729 firearms were purchased annually to be trafficked to Mexico from 2010 to 2012.<sup>8</sup> Furthermore, assault type firearms, particularly the AK-47 and AR-15 variants account for the majority of firearms in U.S. prosecutions related to U.S. firearms trafficking to Mexico.<sup>9</sup> While the Mexican government has assisted U.S. efforts to curb U.S. firearms trafficking to Mexico by providing tens of thousands of firearms trace requests in the last few years, the new Mexican Administration of President of Enrique Peña Nieto appears to have slowed cooperation with U.S. authorities on many cross-border firearms trafficking issues.

In response to U.S. government concerns about transnational organized and local gang crime in the northern triangle countries and their connection with Mexico, the United States has been supporting efforts to curb arms trafficking to these groups. Following the introduction of e-Trace (an Internet-based software to help trace the provenance and last purchaser of U.S. firearms) in Guatemala in 2008, ATF placed an ATF Central American Regional Firearms Advisor at the U.S. Embassy in San Salvador, El Salvador to specifically address illicit arms trafficking in Guatemala and the sub-region. The ATF Advisor has helped support the training of security service officials to identify firearms and explosives as well as trace firearms, including on e-Trace, throughout the sub-region. In 2010, ATF also conducted assessments of many of these countries firearm laws and regulations and national crime laboratories.<sup>10</sup> While all these efforts help the U.S. government gain a better picture of U.S. firearms trafficking in the sub-region, the relatively low number of trace requests sent by countries in the sub-region, particularly Honduras, has obscured the larger picture.<sup>11</sup> Nevertheless, despite the relatively low number of traced firearms, related U.S. prosecutions reveal the use of straw purchasers as a major tactic used in illegal firearms purchasing at U.S. gun stores.

Although many arms are trafficked into Guatemala from non-U.S. sources, this working brief aims to shine a spotlight on what is currently known about the illicit movement of U.S. origin firearms into Guatemala and provide a short update on U.S. firearms trafficking to Mexico. The first section describes the nature and magnitude of armed violence in Guatemala in order to provide an overview into how firearms are being used in crimes across Guatemala. Based largely on ATF trace data emerging from ATF's examination of firearms in 2009, U.S. prosecution records, and interviews with U.S. and Guatemalan officials, the second section gives details on the types of U.S.-origin arms found in Guatemala as well as analysis on purchasing and smuggling patterns. The third section gives an overview and update of U.S. firearms trafficking to Mexico. The final section

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<sup>6</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "A Review of Firearms Traced that Indicated the Guatemala Trace Project," VCAB #096490, September 2, 2009.

<sup>7</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "South American Firearms Trafficking Cases," Unpublished, 2011.

<sup>8</sup> Tophier McDougal, David A. Shirk, Robert Muggah and John H. Patterson, "Estimating Firearms Traffic Across the U.S.-Mexico Border," Igarape Insitute and the University of San Diego Trans-Border Institute, March 2013.

<sup>9</sup> Violence Policy Center, "Cross-Border Trafficking," online at <http://www.vpc.org/indicted.htm>.

<sup>10</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Guatemala Small Arms Assessment: After-Action Report," August 2010.

<sup>11</sup> Author phone conversation with ATF agent covering Guatemala in March 2013.

provides some initial conclusions and recommendations. A future study will explore in more depth U.S. and Guatemalan government challenges related to arms trafficking.

## **Overview of Armed Violence in Guatemala**

Although Guatemala ended its civil war in 1996, the country has continued to suffer high rates of armed violence, often surpassing rates during the civil war. According to the latest available figures, there were 5,681 homicides recorded in Guatemala in 2011.<sup>12</sup> This overall total is slightly lower than the previous year and close to 15 percent lower than 2009 when Guatemala recorded its highest level of homicides. Despite this reduction, recent studies indicate that Guatemala continues to have one of the highest homicide levels in Central America and the world.<sup>13</sup> For instance, Guatemala's homicide rate for 2011 of 39 per 100,000 inhabitants is still above the Central American sub-region's average of 29 violent deaths per 100,000 inhabitants and nearly three times higher than Mexico.<sup>14</sup> Furthermore, from 2004 to 2010, firearms were used to commit homicides in 81.7 percent of the cases, placing Guatemala with the highest average number of homicides with firearms in the sub-region. By comparison, firearms are used on average only 19 percent of the time in Western Europe.<sup>15</sup>

The main types of actors engaged in firearms related violence in Guatemala as well as the widespread availability of arms, particularly illicitly held arms, could help explain why firearms feature so prominently in Guatemalan homicides.<sup>16</sup> According to an ATF assessment report related to arms trafficking in Guatemala completed in late 2010, Guatemalan authorities told ATF there were 13 major drug organizations operating in Guatemala, including three Mexican organized crime groups.<sup>17</sup> In early 2009, former Guatemalan President Alvaro Colom reportedly told journalists that an estimated 40 percent of Guatemala's 2008 homicides were related to drugs. He went on to state that 26 percent of the drug violence (of the 40 percent) occurred because of confrontations between organized crime groups for control of land routes and the remaining 14 percent because of drug dealing in Guatemala.<sup>18</sup>

As the northernmost country of Central America, Guatemala has been a transit route for drug smuggling from the Andes for many years. Guatemalan organized crime groups such as the Mendoza, Lorenzana, and Leon families have long been heavily involved in using Guatemala as a channel to smuggle contraband to Mexico. These trafficking routes were further strengthened as interdiction of drug smuggling through the Caribbean increased in the 1990s, contributing to a shift

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<sup>12</sup> Jorge A. Restrepo and Alonso Tobon Garcia, "Guatemala en la Encrucijada: Panorama de una violencia transformada," Geneva Declaration on Armed Violence, Executive Summary, Updated July 2012, online at <http://www.genevadeclaration.org/measurability/country-level-assessments/guatemala-armed-violence-assessment.html>.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid. International Crisis Group, "Guatemala: Drug Trafficking and Violence," Latin American Report No. 39, October 11, 2011, available online at <http://www.crisisgroup.org/en/regions/latin-america-caribbean/guatemala/139-guatemala-drug-trafficking-and-violence.aspx>.

<sup>15</sup> Restrepo and Garcia, Executive Summary.

<sup>16</sup> Elisabeth Gilgen, "A Fatal Relationship: Guns and Deaths in Latin America and the Caribbean," Small Arms Survey 2012: Moving Targets, Small Arms Survey, pages 32-43.

<sup>17</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Guatemala Small Arms Assessment: After-Action Report," August 2010, page 27.

<sup>18</sup> Jorge A. Restrepo and Alonso Tobon Garcia, "Guatemala en la Encrucijada: Panorama de una violencia transformada," Geneva Declaration on Armed Violence, Full Report, in Spanish, 2011, online at <http://www.genevadeclaration.org/measurability/country-level-assessments/guatemala-armed-violence-assessment.html>.

in the flow of illicit drugs into Mexico and through Central America and strengthening Mexican organized crime's grip on drug distribution in the United States. During this period, illicit drugs were often transported directly to Mexican territory via air and sea.

More recently, trafficking routes began to shift again towards Central America. Instead of large air shipments of illicit drugs to Mexico, cocaine is increasingly flown in small loads on private planes to remote areas of Honduras and Guatemala or up the Caribbean or Pacific coasts of Central America in small sea vessels that are often reloaded onto other trafficking vessels to continue moving towards the United States. The crackdown on traffickers by former Mexican President Felipe Calderón was a second factor contributing to the increased use of Central American as a trafficking route from the Andes. Additionally, the breakdown of a criminal alliance between Mexico's Gulf Cartel and the Zetas meant the Zetas needed to develop their own trafficking networks from the Andes, through Central America and into the United States. To do so, the Zetas became particularly active in Guatemala where they developed ties to existing groups, and in some important instances pursued deadly operations against rival groups.

Known for extremely violent tactics in Mexico, the Zetas appear to have exported some of their methods to Guatemala. In May 2011, for instance, Zetas reportedly killed 27 farm workers, including two women and three teenagers, in Los Cocos, Peten, Guatemala.<sup>19</sup> The attack against the farmers, who all came from the Guatemalan state of Izabal where a competing Guatemalan smuggling group is based, appeared to be in some type of retaliation.<sup>20</sup> Additionally, Guatemalan authorities have confiscated a wide array of military and military-type weaponry, including 40mm grenades, AR-15s, and AK-47s, associated with Zetas in Guatemala.<sup>21</sup> In another apparent Zeta attack, armed individuals reportedly killed 11 members of the Leon organization on March 25, 2008 in Zacapa, Guatemala. U.S. authorities traced two Beretta 92FS 9mm pistols found at that crime scene or with the perpetrators to a McAllen, Texas gun store.<sup>22</sup> It appears there is also a connection between known drug trafficking routes and high homicide rates in Guatemala. In 2011, for instance, the homicide rates for Guatemala's southwestern border state of Zacapa, a key contraband route from Honduras to Guatemala, rose to 93 per 100,000 inhabitants, now the highest in the country.<sup>23</sup>

While major organized crime organizations contribute to a significant number of crimes, gang related armed violence, sometimes connected with major organized crime groups, is also very high. According to Guatemala's President Otto Perez Molina in February 2012, the main source of violence in Guatemala is gangs.<sup>24</sup> In 2007, the United Nations reportedly indicated that there were 432 gangs with 14,000 gang members in the country.<sup>25</sup> Most of these gangs are locally based with memberships ranging from 20 to 100 of mostly young men.<sup>26</sup> With roots in Los Angeles,

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<sup>19</sup> International Crisis Group, "Guatemala: Drug Trafficking and Violence".

<sup>20</sup> International Crisis Group, "Guatemala: Drug Trafficking and Violence".

<sup>21</sup> Julie Lopez, "Investigacion Sobre Trafico Ilicito de Armas de Fuego Y Municiones en Guatemala," September 2012, page 2.

<sup>22</sup> U.S. Department of Justice, "Mission, Texas Man Sentenced to Federal Prison for Possession of Machine Gun," Press Release, May 14, 2010, online at <http://www.atf.gov/press/releases/2010/05/051410-hou-mission-man-sentenced-on-firearms-possession.html>. Julie Lopez, "The Zeta's Bad Omen," Organized Crime: Beyond Drug Trafficking, ReVista Harvard Review of Law America, online at <http://www.drclas.harvard.edu/publications/revistaonline/winter-2012/zetas%E2%80%99bad-omen>.

<sup>23</sup> Restrepo and Garcia, Executive Summary.

<sup>24</sup> Lopez, "Investigacion Sobre Trafico Ilicito de Armas de Fuego Y Municiones en Guatemala," page 5.

<sup>25</sup> Restrepo and Garcia, Full Report, pages 94-95.

<sup>26</sup> Ibid.

transnational gangs such as the *Mara Salvatrucha 13* (MS-13) and the 18<sup>th</sup> Street Gang have grown in Guatemala with estimates of thousands of members. Local and transnational gangs reportedly engage in armed violence for various reasons ranging from clashes for control of territory to disputes over micro-trafficking of narcotics and other contraband to extortion, kidnapping, and intimidation. The MS-13 and 18<sup>th</sup> Street Gang have also acted as hit-men for Mexican organized crime groups and been involved in arms trafficking.<sup>27</sup> Although assault-type rifles have been seized from various types of gang members, it appears they prefer to use pistols, which is also the most common type of firearm seized in Guatemala.<sup>28</sup>

Finally, the activities of various criminal networks in Guatemala appear to be a large factor in the armed violence in Guatemala which in turn is taking a toll on the country's national security and development. A recent study indicated that in 2008 "the costs of violence in Guatemala reached 7.3 percent of the gross national product (GNP)."<sup>29</sup> Depending on the specific Guatemalan state, the greatest economic burden related to armed violence ranged from health expenses to a loss of financial investment. According to the same study, a high percentage of Guatemalans expressed feelings of insecurity in their country. Despite this perception, however, 74.5 percent of respondents indicated they felt firearm ownership did not protect them or their families.<sup>30</sup> This finding may be result from a realization that although many people in Guatemala have a firearm, many people continue to see armed violence against their neighbors and community members.

## **U.S. Firearms Trafficking to Guatemala**

### *Analysis of ATF Trace Data and Assessments*

While illicitly held arms in Guatemala come from many sources, including Guatemala's closest neighbors and Guatemala's own arms stockpiles, U.S. origin firearms appear to account for a significant part of this source. In June and July 2009, ATF sent two teams of experts to review and trace two separate military bunkers in Guatemala, one with firearms and the other with explosives and military ordnance. According to the ATF, the military bunker they reviewed included guns recovered by Guatemalan law enforcement from Fiscal Year 2006 to Fiscal Year 2009 and connected to crimes such as homicides and illegal possession of a firearm (often an unregistered gun) as well as guns slated for destruction.<sup>31</sup> The bunker also represented a small percentage of the total number of firearms Guatemala had seized at that time.<sup>32</sup> In September 2009, ATF compiled a report on firearm traces associated with Guatemala and based on ATF's Firearm Tracing System. The report also included a few previous firearm trace requests submitted by Guatemala, as well as, ATF's own analysis of firearms found at the Guatemalan military bunker. This report concluded that 2,687 of the 6,000 firearms (40 percent) associated with firearm traces from Guatemala had a

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<sup>27</sup> ATF, "Guatemala Small Arms Assessment: After-Action Report".

<sup>28</sup> Julie Lopez, *Investigacion Sobre Trafico Ilicito de Armas de Fuego Y Municiones en Guatemala*, page 5. United Nations Office of Drugs and Crime, "Firearms within Central America," in *Transnational Organized Crime in Central America and the Caribbean*, September 2012.

<sup>29</sup> Restrepo and Garcia, Executive Summary.

<sup>30</sup> Restrepo and Garcia, Full Report, page 78.

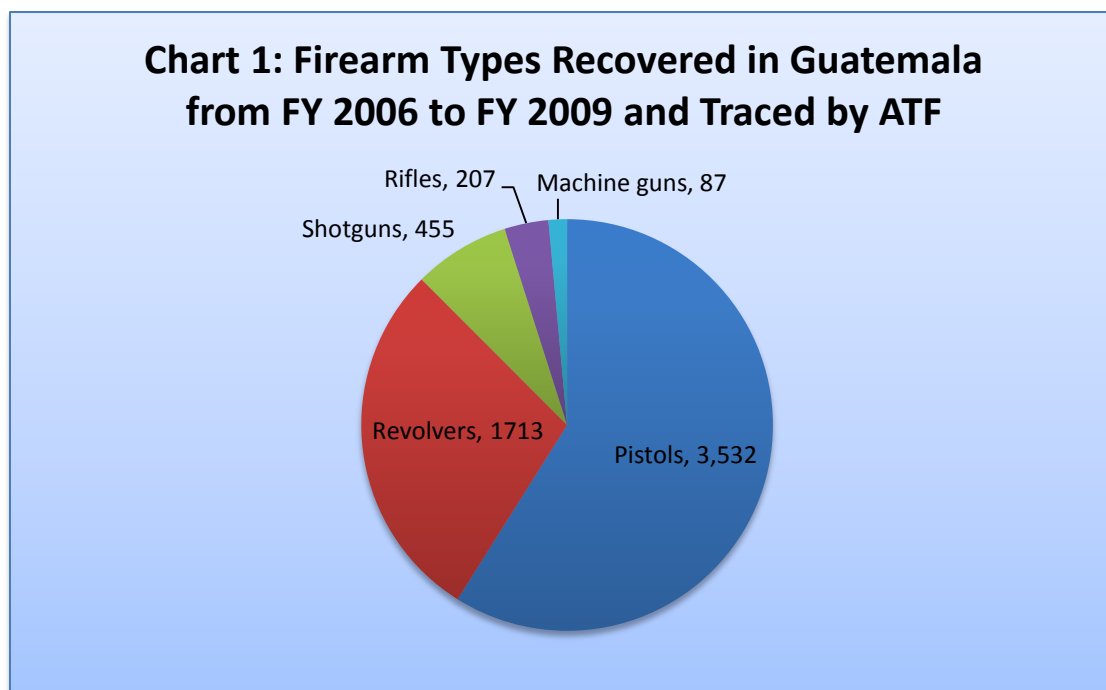
<sup>31</sup> Author conversation with ATF Agent covering Guatemala issues in March 2013.

<sup>32</sup> According to the ATF Guatemala Small Arms Assessment After-Action report, in 2010 Guatemala had 39,372 firearms undergoing civil and criminal proceedings. While this is not the figure of total firearms seized, it helps indicate that the 6,000 firearms is a small percentage of the overall number of firearms Guatemala has seized over the years. ATF, "Guatemala Small Arms Assessment: After-Action Report", page 15.

nexus with the United States.<sup>33</sup> U.S. imported firearms accounted for 1,179 of the 2,687 guns. A total of 2,512 firearms were of foreign manufacture without a connection to the United States.<sup>34</sup>

Similar to other studies conducted on the main types of firearms seized in Guatemala, pistols were the most popular type of the 6,000 firearms recovered in Guatemala and traced by ATF (see Chart 1 below). The top three manufacturers of all of the pistols associated with Guatemala traces included Ceska Zbrojovka, Israel Military Industries (IMI), and Daewoo whereas the top three revolvers were Smith & Wesson, Taurus, and Armscor of the Philippines respectively.

Narrowing the data analysis to firearms with a time-to-crime<sup>35</sup> of six years and less and with a U.S. nexus, the Glock pistol of various calibers imported by Glock, Inc. of Smyrna, Georgia was the most popular pistol and firearm type.<sup>36</sup> Also popular with Mexican organized crime, the FN Herstal's Five-SeveN semi-automatic pistol was found in several cases. Among the much smaller percentage of rifles recovered and traced with a time-to-crime of six years and less and with a U.S. nexus, the AR-15 type rifle was the most popular, particularly the Bushmaster XM15 and the DoubleStar Inc., Star 15 model versions. ATF also discovered 18 U.S.-origin firearms that were originally part of U.S. military stocks.<sup>37</sup>



Based on a much smaller set of data because it relies on ATF being able to trace the firearm to a first purchaser in the United States, ATF trace data from September 2009 showed Texas, California, and

<sup>33</sup> ATF, "A Review of Firearms Traced that Indicated the Guatemala Trace Project," page 3 and 15.

<sup>34</sup> Ibid, page 15.

<sup>35</sup> Time-to-crime refers to the time when the firearm was first purchased in the United States until it was recovered in Guatemala. As such, the data only relates to firearms in which ATF was able to identify the first purchaser in the United States.

<sup>36</sup> Based on an analysis of the raw ATF data of firearms recovered in Guatemala and traced by ATF as of September 2009.

<sup>37</sup> ATF, "A Review of Firearms Traced that Indicated the Guatemala Trace Project," page 11.



Florida were the top three U.S. source states (see Table 1 below).<sup>38</sup> U.S. gun stores such as Backman Pawn and Guns in Dallas, Texas; Miami Police Supply in Miami, Florida; and U.S. gun shows have been specific sources within these states. While the low data set of 595 firearms makes it hard to determine with any accuracy the relative percentage of firearms purchased at various U.S. states that were recovered in Guatemala, ATF has indicated that this representation is similar to more recent analysis.<sup>39</sup> As a result, Texas, Florida, California, Georgia, Kansas, Missouri, and Washington have been sources for firearms recovered in Guatemala. Many of these U.S. states have a large agriculture economy or a large Guatemala-origin community. This pattern differs from the trace data of U.S. firearms trafficked to Mexico where the majority of purchases occur along the U.S. southern border.

<b>Table 1: Top 10 U.S. Source States for Firearms Recovered in Guatemala and Traced by ATF</b>	
<b><u>U.S. State</u></b>	<b><u>Number of Firearms Purchased</u></b>
Texas	192
California	94
Florida	92
Georgia	23
Arizona	17
Illinois	13
Alabama	12
Louisiana	12
Virginia	12
Oklahoma	10

According to interviews with former and current ATF agents, many individuals involved in smuggling U.S. firearms to Guatemala appear to have some type of Guatemalan connection beyond the firearms.<sup>40</sup> This could include Guatemalan nationals in the United States working in the U.S. agriculture sector as migrant workers, U.S. residents or citizens with friends or relatives in Guatemala, or Mexicans that live near the Guatemalan border. While there have been several U.S. prosecutions of individuals associated with firearms trafficking to Guatemala with no other apparent Guatemalan connection, ATF has indicated they have received thousands of notices about Central American citizens attempting to purchase arms in the United States who were stopped because of the FBI's 24 hour background checks at U.S. gun stores.<sup>41</sup> Some of the individuals with a Guatemalan connection buy firearms in the United States for their own use in Guatemala while others buy firearms to sell on the black market in Guatemala, Mexico, or to supply criminal networks.<sup>42</sup>

As mentioned previously, Mexican criminal organizations such as the Zetas have used various types of military ordnance in both Guatemala and Mexico, which has raised questions about their source. Invited by the Guatemalan National Police to review military ordnance stored in their evidence bunker confiscated from 1997 to 2009, ATF conducted an assessment of these items in June 2009.

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<sup>38</sup> Ibid, page 23.

<sup>39</sup> Author phone conversation with ATF Agent covering Guatemalan issues in March 2013.

<sup>40</sup> Author phone conversation with former ATF Agent covering Guatemala issues in March 2013. Author phone conversation with current ATF Agent covering Guatemala in March 2013.

<sup>41</sup> Author phone conversation with former ATF Agent covering Guatemala issues in March 2013 in March 2013.

<sup>42</sup> Ibid. Author phone conversation with current ATF Agent covering Guatemalan issues in March 2013.

Of the 762 grenades and military ordnance ATF reviewed, nearly 85 percent can be traced back to the Guatemalan military's own stockpiles.<sup>43</sup> Based on ATF's analysis of the lot numbers of several of the grenades, they determined that the Guatemalan military was likely the source for the South Korean, Austrian, and the Israeli made M26A2 grenades seized in Mexico.<sup>44</sup> Forty-six of the 762 ordnance found were of U.S. origin ranging from M26A2 and M67 hand grenades to M406 40mm grenades for grenade launchers to a M72 Light Anti-Tank Weapon rocket. Except for the M72 rocket, which the United States sent to Colombia, all of the U.S.-origin items were part of a U.S. Foreign Military Sale (FMS) to El Salvador in the late 1980s and early 1990s. According to ATF, MS-13 gang members have been smuggling in these types of ordnance from El Salvador to Guatemala for Mexican organized crime.<sup>45</sup>

### *Arms Trafficking Routes and Tactics*

Based on a review of related literature, U.S. prosecutions, and interviews with U.S. and Guatemalan government officials, there are some identifiable routes and tactics for U.S. firearms trafficking to Guatemala. Similar to U.S. firearms trafficking to Mexico, the recruitment of individuals to buy firearms on behalf of others, otherwise known as straw purchasing, is a common tactic. In other cases, the purchasers have bought firearms for themselves legally, but engaged in trafficking by crossing U.S. borders with the firearm without proper authorization. Two main smuggling routes have emerged: 1) crossing U.S., Mexican, and Guatemalan borders by land; and, 2) carrying firearms in checked luggage on commercial civilian passenger airplanes flying from the United States to Guatemala. Similar to U.S. origin ordnance, the majority of the U.S. military arms such as M-16s showing up in Guatemala's seized arms appear to be related to U.S. arms transfers to Central American governments and U.S. backed Contras during the 1980s.

In order to avoid detection, individuals hid firearms in various shipments of merchandise over land to Guatemala through Mexico. After a weather-related truck accident in January 2009 near the U.S. border with Mexico, for instance, U.S. authorities discovered that one of the boxes in the debris heading to Guatemala contained seven U.S. origin firearms, including five Glock pistols, hidden in speakers.<sup>46</sup> The shipping company Transporte Zuletas, Inc. had leased the truck.<sup>47</sup> In a similar case in 2008, Marvin Acevedo allegedly smuggled FN Hertsal and Glock pistols to Guatemala after purchasing firearms at gun shows and gun stores by hiding them in shipping boxes with computers and clothes.<sup>48</sup> In a case investigated by ICE in 2009, Julio Cesar Rojas-Lopez, a Guatemalan national, recruited several people, including a Nashville Police Officer, to buy firearms for him at Tennessee gun stores after receiving details from the Lorenzana and Mendoza organized crime groups in Guatemala about the specific weapons to purchase.<sup>49</sup> Rojas-Lopez had previously smuggled U.S.

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<sup>43</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, "Trip Report Guatemalan Bunker Inventory," Explosives Technology Branch, July 2009, page 11-14.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> United States District Court for the District of Colorado, Application for Search Warrant, Case: 1:10-sw-05482-KLM, November 9, 2010, accessed through PACER.

<sup>47</sup> Ibid.

<sup>48</sup> United States District Court for the Northern District of Texas, Factual Resume, United States vs. Marvin O. Acevedo, Case 3:08-cr-00097-K, November 4, 2008, accessed through PACER.

<sup>49</sup> U.S. Department of Justice, "Federal Authorities Announce The Indictment Of Four Guatemalan Nationals And A Former Metro Nashville Police Officer On Charges Of Smuggling Firearms To Guatemala," U.S. Attorney Middle District of Tennessee, Press Release, October 27, 2009, online at <http://www.atf.gov/press/releases/2009/09/092909-nash-four-indicted-on-smuggling.html>. United States District



firearms and ammunition out of the United States by concealing them in vehicles he drove or towed to Guatemala through Mexico.<sup>50</sup>

Although details are limited about these cases, ATF has indicated that individuals are smuggling firearms in their checked luggage aboard commercial airplanes flying between the United States and Guatemala.<sup>51</sup> There is also one known case of U.S. firearms smuggling by sea. Regarding firearms smuggling by air, these individuals chose U.S. airports where the examination of checked luggage is less tight.<sup>52</sup> Once they land in Guatemala, they may either find a way to continue to smuggle the firearms into the country or they may legally register the firearm.<sup>53</sup> In August 2012, Guatemalan authorities discovered at the Port of Quetzal a container from the United States with no content description. When Guatemalan authorities opened the container, they found more than a dozen boxes of ammunition, mostly .357 Magnum caliber ammunition, as well as drums and barrels of black powder and an ammunition reloading machine.<sup>54</sup>

U.S. firearms trafficking to Guatemala has also been linked to irresponsible U.S. gun store owners. In response to a tip from a confidential informant about Victor Needleman's, the owner of American Range and Gun Shop in Pembroke Park, Florida, use of straw purchasers, ATF began an investigation into his activities in 2008.<sup>55</sup> ATF discovered that Needleman encouraged purchasers that had failed a background check to find a relative to buy the weapon for them. U.S. authorities also learned that several firearms originating from the American Range and Gun Shop were used in a shootout between drug-related criminal networks in Guatemala in which several people were killed.<sup>56</sup>

## **U.S. Firearms Trafficking to Mexico**

In the last few years, there have been several in-depth studies of U.S. firearms trafficking to Mexico, including by this author in June 2010 and April 2011. While there have been some minor changes, the nature of firearms trafficking has remained relatively constant. Mexico continues to see high levels of violence and crime with firearms. The total number of individuals killed in connection with organized crime ranges from 47,000 to more than 70,000 people with thousands more disappeared from 2006 to 2012.<sup>57</sup> While the national homicide rate is considerably lower in Mexico compared to Guatemala, the rate in some specific Mexican states shows a different story. In Chihuahua, for instance, close to the U.S. border, the homicide rate rose more than fivefold from 2007 to 2010.<sup>58</sup> In the last two years, it is clear violence has remained at high levels throughout

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Court Middle District of Tennessee, United States vs. Julio Cesar Rojas-Lopez, Judgment, Case 3:09-00226-01, May 10, 2011, accessed through PACER

<sup>50</sup> <http://www.atf.gov/press/releases/2009/09/092909-nash-four-indicted-on-smuggling.html>

<sup>51</sup> Phone conversation with former ATF Agent covering Guatemalan issues in March 2013. Phone conversation with current ATF Agent covering Guatemalan issues in March 2013.

<sup>52</sup> Ibid.

<sup>53</sup> Phone conversation with ATF Agent covering Guatemala issues in March and April 2013.

<sup>54</sup> Julie Lopez, *Investigacion Sobre Trafico Ilicito de Armas de Fuego Y Municiones en Guatemala*, page 135-136.

<sup>55</sup> United States District Court Southern District of Florida, United States vs. Victor Needleman, Complaint, Case 0:08-cr-60144-WPD, April 4, 2008, accessed through PACER.

<sup>56</sup> Ibid.

<sup>57</sup> International Crisis Group, "Peña Nieto's Challenge: Criminal Cartels and Rule of Law in Mexico," Latin American Report No. 48, March 19, 2013, page 1, online at <http://www.crisisgroup.org/en/regions/latin-america-caribbean/mexico/048-pena-nietos-challenge-criminal-cartels-and-rule-of-law-in-mexico.aspx>.

<sup>58</sup> Elisabeth Gilgen, "A Fatal Relationship: Guns and Deaths in Latin America and the Caribbean," pages 16-17.

Mexico with 22,480 homicides in 2011 and 20,560 in 2012. A relatively high percentage of these homicides are committed with firearms.<sup>59</sup>

Thanks to a relatively large share of firearm trace requests sent to ATF by the Mexican government in the last few years, the United States has received information critical to curbing U.S. firearms trafficking to Mexico. In particular, timely trace requests sent to ATF provide them with the intelligence needed to halt criminal networks involved in firearms smuggling to Mexico. Based on the most recently available data, ATF determined that 68,000 U.S.-origin firearms were recovered at crime scenes in Mexico from 2007 to 2011.<sup>60</sup> Despite the strong past cooperation between U.S. and Mexican authorities on firearms tracing, the new Mexican administration has been slow to submit firearm trace requests to ATF. While this may simply be the result of new leadership personnel familiarizing themselves with ongoing government projects, U.S. officials have indicated that they have seen a worrisome lack of action on tracing and other law enforcement matters related to firearms trafficking.

New data analysis on firearm-types and U.S. source states reinforces earlier accounts. According to a study by the Violence Policy Center that keeps a running tab on the types of firearms involved in U.S. prosecutions related to U.S. firearms trafficked to Mexico since 2006, 2,518 of the total 4,813 firearms were assault-type rifles.<sup>61</sup> The AK-47 variant was the most popular with 1,602 firearms. The second and third largest categories were pistols (830) and other rifles (495) respectively. Often receiving little attention, U.S. prosecutions related to U.S. firearms trafficking to Mexico also include 225,423 rounds of firearms ammunition. For more details on other popular types of firearms in U.S. prosecutions, see Chart 2 below. Other researchers have also reportedly found that the U.S. border states with the highest per capita exporting of crime guns to Mexico (e.g. Arizona, New Mexico, and Texas) had export rates four times that of California.<sup>62</sup>

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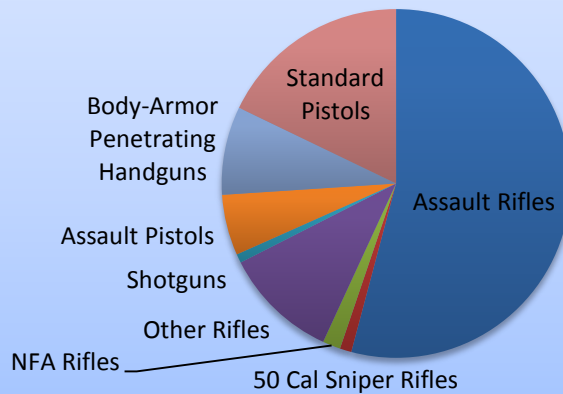
<sup>59</sup> International Crisis Group, “Peña Nieto’s Challenge: Criminal Cartels and Rule of Law in Mexico.”

<sup>60</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, “ATF Releases Government of Mexico Firearms Trace Data,” Press Release, April 2012, online at <http://www.atf.gov/press/releases/2012/04/042612-atf-atf-releases-government-of-mexico-firearms-trace-data.html>.

<sup>61</sup> Violence Policy Center, “Cross-Border Trafficking,” online at <http://www.vpc.org/indicted.htm>.

<sup>62</sup> Ibid.

**Chart 2: Types and Quantities of U.S. Firearms in U.S. Prosecutions related to U.S. Firearms Trafficking to Mexico**



In another more recent U.S. prosecution involving allegations against a licensed U.S. gun store owner, the U.S. Department of Justice filed an indictment against Robert Jacaman Sr., owner of Jacaman Guns and Ammo in Laredo, Texas as well as several other defendants on August 14, 2012. The indictment alleges that Jacaman and other individuals conspired to acquire and illegally export thousands of rounds of ammunition and high capacity magazines to Mexico from January to July 2012.<sup>63</sup> While the case against Jacaman is still pending, several alleged co-conspirators of Jacaman Sr. pleaded guilty to straw purchasing.<sup>64</sup>

Responding to a need to address challenges in identifying potential firearms traffickers and in U.S. prosecutions of straw purchasers, the U.S. government made two positive changes in 2011. Starting on July 11, 2011, for instance, U.S. gun stores and other licensed dealers operating in U.S. states along the U.S.-Mexican border must now report to ATF whenever they make multiple sales of more than one rifle within five consecutive business days to an unlicensed person.<sup>65</sup> Gun stores must only report on firearms that are (1) semiautomatic, (2) chambered for ammunition of greater than .22 caliber, and (3) capable of accepting a detachable magazine. It appears ATF is already receiving these helpful reports. As of October 2011, it collected 502 multiple rifle sales reports involving 1,276 firearms from U.S. gun stores in California, Arizona, New Mexico, or Texas.<sup>66</sup>

In recognition that the overwhelming majority of defendants convicted of straw purchasing received less than one year in prison, and that these relatively light sentences were a disincentive to prosecute cases involving firearms trafficking to Mexico, the U.S. Sentencing Commission took

<sup>63</sup> United States District Court Southern District of Texas Laredo Division, United States vs. Robert Jacaman Sr. and other defendants, Indictment, Case L-12-0750, August 14, 2012, access online using PACER.

<sup>64</sup> United States District Court Southern District of Texas Laredo Division, "Five Plead Guilty to Federal Firearms Charges," Press Release, online at <http://www.atf.gov/press/releases/2013/03/030613-hou-five-plead-guilty-to-federal-firearms-charges.html>.

<sup>65</sup> William J. Krouse, "Gun Control Policy," Congressional Research Service, RL32842, November 14, 2012, pages 48-52.

<sup>66</sup> Ibid. page 51.

action in 2011.<sup>67</sup> According a U.S. Attorney General Memorandum, the U.S. Sentencing Commission in 2011 increased the “base offense level from 12 to 14 so that straw purchasers have the same base offense level as a straw purchaser convicted of knowingly distributing a firearm or ammunition to a prohibited person.”<sup>68</sup> While ATF officials working on U.S. firearms trafficking to Mexico say this was a welcome sign, they have also indicated that the increase was relatively minor.<sup>69</sup> As a result, they are still experiencing significant challenges in curbing straw purchasing and other related crimes.

## **Conclusion and Recommendations**

As the above cases and analysis on U.S. firearms trafficking to Guatemala and Mexico make evident, both countries share many similar challenges in tackling the vexing problem of firearms trafficking. A key challenge for Guatemala is increasing the number of trace requests sent to ATF. After ATF trained 56 Guatemalan national crime laboratory staff in February 2013, Guatemalan authorities are sending over 100 firearm trace requests a month to ATF.<sup>70</sup> This is a promising development. It is hoped that Guatemala will also begin to trace some of the firearms it has seized in 2010 and 2011.

To continue to assist Guatemala with tracing and other aspects related to arms trafficking, ATF should consider continuing to fund the current ATF post of the Regional Firearms Advisor in El Salvador and fund a new permanent ATF post in Guatemala. The Regional Advisor plays an important role in collecting information and helping address the many country specific and cross-border arms trafficking issues in the sub-region. Adding a new ATF post to the U.S. Embassy in Guatemala could also provide needed technical assistance to Guatemalan authorities to solve gun crimes and tracing, including recovering defaced serial numbers on firearms.

Meanwhile, the Mexican government has provided the U.S. with large numbers of helpful trace requests in the last few years, but recent signs of inaction on tracing are of concern

Similar to U.S. firearm trafficking to many destinations in the United States and across U.S. borders, the use of straw purchasers has been a important tactic used in U.S. firearms trafficking to Guatemala and Mexico. In several of the above U.S. prosecutions related to U.S. firearms trafficking to Guatemala, straw purchasers received very low sentences such as probation or no more than five months in prison. While the U.S. Sentencing Commission made a small increase in penalties for straw purchasing, these have proven to be insufficient incentive for U.S. Attorneys to accept more cases and to use these increased sentences as leverage with criminals to encourage greater cooperation and seek plea bargain agreements that result in additional convictions. As such, the U.S. government should consider legislation to increase penalties for straw purchasing and decrease some of the unnecessary burdens in proving such crimes. There are several proposals currently being discussed in the U.S. Congress that seek to address this challenge.

Although there are relatively few known cases in which individuals attempting to smuggle arms to Guatemala have purchased their arms at U.S. gun shows instead of U.S. gun stores, this loophole

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<sup>67</sup> U.S. Department of Justice Inspector General, Review of ATF’s Project Gunrunner, November 2010, online at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

<sup>68</sup> Eric H. Holder Jr., “Memorandum to all United States Attorneys,” Office of the U.S. Attorney General, June 13, 2011.

<sup>69</sup> Author interview with ATF officials in Washington, DC in February 2013.

<sup>70</sup> Author conversation with ATF Agent covering Guatemala issues in March 2013.

poses a challenge to curbing arms trafficking to Guatemala. As indicated above, ATF agents stationed in the northern triangle countries have received thousands of reports of Central American nationals attempting to buy firearms from U.S. gun stores, but were denied because they failed a background check. In many U.S. states, including those popular with U.S. firearms trafficking to Guatemala, individuals do not have to pass a background check to buy arms with private sellers at gun stores.

In addition to U.S. funding for an ATF post in Guatemala, the U.S. government should also consider continuing to fund arms destruction activities in Guatemala through the U.S. Department of State's Weapons Removal and Abatement (WRA) office. This would help mitigate opportunities for diversion of U.S. arms among Guatemala's military stockpiles. According to one estimate in 2010, at least 27,000 arms have leaked from Guatemala's military stockpiles to criminal networks in Guatemala and Mexico.<sup>71</sup> Reducing the number of Guatemala's surplus firearms, at seven firearms per soldier in 2010, would significantly assist in this effort. Recognizing this fact, the Department of State's WRA has supported arms destruction activities in Guatemala; however, this funding has only been used so far to destroy munitions and propellants that pose an urgent safety risk. Additional funding is needed to destroy the surplus firearms.

As the U.S. government and U.S. policy community is still in the relatively early stages of understanding U.S. firearms trafficking to Mexico and Central America, there are several areas that the above brief has highlighted that could benefit from further research. In particular, it would be helpful to conduct more research on U.S. firearms trafficking to Guatemala using shipping and freight forwarding companies by land and sea. Furthermore, additional research on trafficking dynamics in and between the U.S., Mexico and the rest of Central America would be useful.

In particular, there may be ways of assessing maritime trafficking by targeting suspicious shipping companies with questionable deliveries to Central America. Likewise, the use of commercial civilian aircraft to smuggle firearms from the United States to Mexico and the ability to register the firearm in Guatemala without showing proof of purchase in the United States is another area that would benefit from further research.

As the tracing data comes in from Guatemala, ATF will likely have more details in the near future about many of the aspects of U.S. firearms trafficking to Guatemala that are currently unknown. Further research on this issue should be conducted after this data is collected. However, action to curb U.S. firearms trafficking to Guatemala should not wait to tackle the problem of straw purchases and the gun show "loophole" as the above report only provides another reason to immediately improve regulatory efforts in these areas.

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<sup>71</sup> Nick Miroff and William Booth, "Mexican Drug Cartel's Newest Weapons: Cold-War era Grenades Made in US," Washington Post, July 17, 2010, online at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/16/AR2010071606252.html>.