



# **Update on U.S. Firearms Trafficking to Mexico Report**

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**April 2011**

## **Brief Project Description**

This Paper is the product of the U.S.-Mexico Security Cooperation project coordinated by the Mexico Institute at the Woodrow Wilson Center. As part of this project, a number of research papers have been commissioned that provide background on organized crime in Mexico, the United States, and Central America, and the specific challenges these governments confront as they attempt to address the violence and corruption that have resulted. This paper is being released in preliminary form to inform the public about one key element in the strategy to address the underlying factors contributing to the violence and threats from organized. All papers that make up this Security Cooperation series, along with other background information and analysis, can be accessed online at the [Mexico Institute](#) web page, Materials can be used for attribution and are copyrighted to the author and the Mexico Institute.

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## Introduction

Since the Mexico Institute published its report entitled “U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges” in September 2010, there is new information on the use of weapons, government actions, and challenges related to the issue, but there has been little or no movement on some of the key underlining problems.<sup>1</sup> Among the diverse ways in which Mexican Organized Crime Groups (OCG) misuse arms, the most worrying new trend is the reported increase in attacks on young children. According to a Washington Post article earlier this month, children have recently been “shot in a car seat, dumped in a field with a bullet in the head, [and] killed as their grandmothers cradled them.”<sup>2</sup> While OCGs are not only using children in their criminal operations, they are reportedly targeting innocent children, including 2 year olds, in their firearms attacks.<sup>3</sup> After the first car bombing in Mexico last July, which killed two people and a Mexican police officer and was within walking distance to the U.S. border, there has also been a concern about Mexican OCGs use of such attacks.<sup>4</sup> And in the last few months, two U.S. law enforcement officials, one with the U.S. Customs Border Patrol (CBP) and the other with the U.S. Immigration, Customs, and Enforcement (ICE), have been shot with firearms in Mexico.<sup>5</sup>

In connection with the serious concerns about arms reaching brutal Mexican OCGs, including increasing the lethality of such groups with larger quantities and more sophisticated arms and ammunition, the U.S. and Mexican governments have continued to take actions to stem U.S. firearms trafficking to Mexico. The Mexican government, for instance, apparently seized over 30,000 firearms from Mexican OCGs from January 2010 to March 2011, and it is sharing data with U.S. authorities on its own investigations and prosecutions related to U.S. firearms trafficking.<sup>6</sup> The Government of Mexico also submitted tens of thousands of firearm trace requests to the U.S. Department of Justice’s Bureau of Alcohol, Firearms, Tobacco and Explosives (ATF) and signed a Memorandum of Understanding (MOU) with U.S. authorities in an attempt to improve firearms tracing efforts.<sup>7</sup> In connection with ATF’s Project

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<sup>1</sup> Colby Goodman and Michael Marizco, “U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges,” Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime, Mexico Institute of the Woodrow Wilson International Center for Scholars and the Trans-Border Institute of the University of San Diego, September 2010, online at <http://wilsoncenter.org/topics/pubs/Goodman%20and%20Marizco.pdf>.

<sup>2</sup> Anne-Marie O’Connor and William Booth, “Mexican drug cartels are targeting and killing children,” The Washington Post, April 9, 2011, online at [http://www.washingtonpost.com/world/mexican-drug-cartels-targeting-and-killing-children/2011/04/07/AFwkFb9C\\_story.html](http://www.washingtonpost.com/world/mexican-drug-cartels-targeting-and-killing-children/2011/04/07/AFwkFb9C_story.html).

<sup>3</sup> Ibid.

<sup>4</sup> Kevin Johnson, “Mexican cartels rely more on explosives in drug war,” USA Today, July 22, 2010, online at [http://www.usatoday.com/news/world/2010-07-22-cartel22\\_ST\\_N.htm](http://www.usatoday.com/news/world/2010-07-22-cartel22_ST_N.htm). Scott Stewart, “How to Perceive the Bomb Threat South of the Border,” STATFOR, April 18, 2011, online at <http://www.thecuttingedgenews.com/index.php?article=51810>

<sup>5</sup> ABC World News, “Agent Brian Terry Shot in Back with AK-47 During Gunfight, Family Says,” online at <http://abcnews.go.com/US/border-patrol-agent-shot-killed-us-mexico-border/story?id=12401948>. Tracy Wilkinson, “U.S. agent shot to death in Mexico is identified,” Los Angeles Times, February 16, 2011, online at <http://articles.latimes.com/2011/feb/16/world/la-fg-mexico-agent-killed-20110217>.

<sup>6</sup> In the Universal Newspaper on April 4, 2011, the Mexican government indicated they have seized 102,600 rifles and handguns from December 2006 to March 2011. Last year, the Mexican government provided information to the author that they had seized 71,709 arms from 2007 to 2009. Subtracting 102,600 from 71,709 one gets 30,891.

<sup>7</sup> U.S. Department of State Embassy in Mexico, “Fact Sheet: Combating Arms Trafficking,” April 2011, online at <http://photos.state.gov/libraries/mexico/310329/7abril/Arms%20Trafficking%20April%202011%20Final.pdf>

Gunrunner, designed to disrupt the illegal flow of U.S. firearms to Mexico, ATF initiated a new Gun Runner Impact Team (GRIT) in Arizona and New Mexico in mid 2010 in which 96 defendants have been arrested, charged, convicted, or sentenced on firearms related charges.<sup>8</sup> ATF has also responded to OCGs increasing use of explosives by creating the Combined Explosives Investigation Team (CEIT), which responded to 33 incidents in Mexico, and ICE has provided training to the Mexican military on a program to track firearms trafficking cases.<sup>9</sup>

Despite an increase in brutal OCG tactics and some new efforts by the U.S. and Mexican government, both governments have either moved slowly or failed to act on key previously identified challenges to more effectively address U.S. firearms trafficking to Mexico. The Mexican government, for example, has yet to significantly improve the quality, quantity, and timeliness of its firearm trace requests to the United States, which are key to helping ATF develop firearms trafficking trends and discover individuals involved in such trafficking. While ATF has some information on firearms recovered in Mexico, a total of 69,808 firearms as of May 2010, ATF agents say they can use only about eight percent of Mexico's firearm trace requests to initiate investigations, in part because many of the trace requests lack basic identification data and were purchased in the United States more than five years ago.<sup>10</sup> The U.S. government also faces substantial challenges, particularly in identifying firearms traffickers and persuading U.S. Attorneys to accept more criminal cases related to firearms trafficking to Mexico. Perhaps the most worrying from the Mexican government's point of view, however, is ATF's Fast and Furious Operation based out of Phoenix, Arizona, which reportedly allowed hundreds of firearms to be sold to potentially known traffickers as a way to build more attractive cases for U.S. Attorneys and ATF did not notify Mexican authorities.<sup>11</sup>

## **Government Actions**

### ***Mexico***

Over the last year, the Mexican government continued to successfully seize arms and ammunition and has continued to work with the U.S. government to submit firearm trace requests. According to the latest figures from the Mexican government, Mexico has confiscated 102,600 handguns and rifles from the start of President Calderon's Administration in December 2006 to March 10, 2011.<sup>12</sup> During the same time frame, Mexican security forces also seized 11,849 grenades and 10.6 million rounds of ammunition.<sup>13</sup> Most striking is the apparently huge increase in the capture of rounds of ammunition in the later part of 2010 and early 2011 as the Calderon Administration reported it had captured 5 million rounds of ammunition as of May 2010.<sup>14</sup> While the number of firearms Mexico confiscates per year sometimes changes depending on which Mexican government entity is providing the statistics, it

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<sup>8</sup> ATF Press Release, "ATF Announces 7 New Gunrunner Groups and Phoenix Gun Runner Impact Teams' Successes," September 17, 2010, online at <http://www.atf.gov/press/releases/2010/09/091710-atf-announces-seven-new-gunrunner-groups.html>.

<sup>9</sup> Ibid.

<sup>10</sup> Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010. Author phone interview with ATF Agent in April 2011.

<sup>11</sup> John Solomon, David Heath, and Gordon Witkin, "ATF let hundreds of weapons fall into the hands of suspected Mexican gunrunners," March 4, 2011, online at <http://www.iwatchnews.org/2011/03/03/2095/atf-let-hundreds-us-weapons-fall-hands-suspected-mexican-gunrunners>.

<sup>12</sup> Universal Newspaper, April 4, 2011.

<sup>13</sup> Ibid.

<sup>14</sup> Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010.

appears the Mexican government seized more than 30,000 arms from early 2010 to March 2011.<sup>15</sup> Similar to previous years, Mexican security forces continue to find illegally held arms during raids on houses and through vehicle inspection points inside Mexico.<sup>16</sup> For example, earlier this month the Mexican military seized at a house in Matamoros, Mexico scores of assault-type rifles, handguns, several machine guns, 412 hydrogel industrial explosives, one rocket launcher, grenades, among other items.<sup>17</sup>

With assistance from ATF and ICE in Mexico City, the Mexico Attorney General's Office (PGR) has also increased the number of firearm trace requests to ATF. According to a recently updated U.S. Embassy fact sheet, Mexico sent 39,369 firearm trace requests to the U.S. government in FY 2010, which was 10,900 more requests than in FY 2009.<sup>18</sup> As of May 2010, ATF said they had inputted some information on 69,808 firearms recovered in Mexico from 2007 to 2009, and it appeared a majority of these firearms have a nexus to the United States.<sup>19</sup> In addition, the U.S. government reports that a very small number of U.S. origin firearms found with Mexican OGC's were transferred through official U.S. government programs such as the Foreign Military Sales or Direct Commercial Sales programs. This information is consistent with what the GAO reported in June 2009.<sup>20</sup> U.S. military officials also report that more than 50 percent of the military-type arms such as mortars, hand grenades, and grenade launchers discovered in OGCs caches have crossed into Mexico most recently from Central America.<sup>21</sup>

In connection with the U.S. government's urgent need to have more accurate and timely trace requests of firearms seized in Mexico and to improve prosecutions of firearms traffickers, the Mexican Attorney General's office also signed a MOU with ATF in October 2010.<sup>22</sup> The MOU officially establishes the relationship between the United States and Mexico on firearms tracing using the Spanish e-Trace system, and ATF has already started to train about 300 Mexican Attorney General staff in 32 Mexican cities.<sup>23</sup> Mexico is also planning to expand e-Trace access in Mexico beyond the Attorney General's Office to include the Federal Police (SSP), which has the potential to greatly improve the timeliness of

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<sup>15</sup> In the Universal Newspaper on April 4, 2011, the Mexican government indicated they have seized 102,600 rifles and handguns from December 2006 to March 2011. Last year, the Mexican government provided information to the author that they had seized 71,709 arms from 2007 to 2009. Subtracting 102,600 from 71,709 one gets 30,891.

<sup>16</sup> Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010.

<sup>17</sup> The Brownsville Herald, "Large cache of weapons seized in Matamoros," April 2, 2011, online at <http://www.brownvilleherald.com/news/one-124724-weapons-seized.html>

<sup>18</sup> U.S. Department of State Embassy in Mexico, "Fact Sheet: Combating Arms Trafficking," April 2011.

<sup>19</sup> Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexico Security Cooperation: The Merida Initiative and Beyond," July 29, 2010, Congressional Research Service, page 34-35, online at <http://www.wilsoncenter.org/topics/docs/CRS%20Report%20US%20Mexico%20Security%20Cooperation%20July%2029%202010.pdf>. Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010.

<sup>20</sup> Author phone and in person interviews with U.S. government officials from ATF and the U.S. Department of State in March and April 2011. Government Accountability Office (GAO), "U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges," GAO-09-709, June 2009, online at <http://www.gao.gov/new.items/d09709.pdf>.

<sup>21</sup> Elyssa Pachico, "How Much is Guatemala Arming the Zetas?" In Sight: Organized Crime in the Americas, April 8, 2011, online at <http://www.insightcrime.org/insight-latest-news/item/755-how-much-is-guatemala-arming-the-zetas>. U.S. Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Project Gunrunner: A Cartel Focused Strategy," September 2010, page 19, online at [http://msnbcmedia.msn.com/i/msnbc/sections/news/Cartel\\_Strategy.pdf](http://msnbcmedia.msn.com/i/msnbc/sections/news/Cartel_Strategy.pdf).

<sup>22</sup> U.S. Department of State Embassy in Mexico, "Fact Sheet: Combating Arms Trafficking," April 2011.

<sup>23</sup> U.S. Department of Justice Inspector General, "Review of ATF's Project Gunrunner," November 2010, I-2011-001, page 75, online at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

the Mexico's firearm trace requests as the requests can be done in the same city the firearms are seized instead of in Mexico City as it is currently done.<sup>24</sup> Mexico and ATF also have a plan in place to "significantly improve judicial cooperation, intelligence sharing, and the detection of weapons movement" and are working to create protocols to ensure evidence in firearms trafficking cases is admissible in both U.S. and Mexican courts.<sup>25</sup>

### **United States**

The U.S. government, particularly ATF, ICE, and CBP, has continued to be engaged in stemming U.S. firearms trafficking to Mexico at heightened levels by, for example, pursuing investigations and prosecutions at home and helping Mexico with their own investigations and prosecutions. On September 17, 2010, ATF announced the formation of seven new Project Gunrunner firearms trafficking groups to be placed in Atlanta, Dallas, Brownsville, Las Vegas, Miami, Oklahoma City, and Sierra Vista, all of which are hubs or common firearms trafficking routes to Mexico.<sup>26</sup> Following the success of ATF's GRIT initiative in Houston, Texas in mid 2009 in which ATF significantly increased the number of criminal cases related to firearms trafficking to Mexico it referred to U.S. Attorney Offices, ATF initiated another GRIT effort in Phoenix, Arizona lasting 100 days in mid 2010. As a result, ATF agents "initiated 174 firearms trafficking-related criminal investigations and seized approximately 1,300 illegally-trafficked firearms and 71,000 rounds of ammunition, along with drugs and currency. ATF's industry operations investigators [also] conducted more than 800 federal firearms licensee compliance inspections."<sup>27</sup> As of September 2010, 96 defendants had been arrested, charged, convicted, or sentenced on firearms related charges. The most popular firearm associated with these cases was an AK-47 type rifle.

The U.S. government has also increased training to the Mexican government on a number of issues, including on investigations and prosecutions. As in previous years, ATF has continued to train Mexican officials in firearms identification.<sup>28</sup> While ATF would like to use the training to also submit actual firearms traces, so far only five of the eight planned trainings on e-Trace have taken place.<sup>29</sup> Responding to a request by the Mexican military, ICE also trained 18 Mexican military officials on a program to help them track firearms trafficking cases in Mexico in March 2010. ATF also provided courses on explosives and evidence collection to various Mexican government agencies and gave three post-blast explosive investigation techniques courses to Mexican federal and state agencies.<sup>30</sup> A key tool in detecting firearms and ammunition at vehicle checkpoints, ATF also continues to provide assistance to the Mexican Customs agency on using K-9s. ICE, ATF, the Federal Bureau of Investigation (FBI), and the U.S. Department of Justice (DOJ) have also assisted the Mexican Attorney General's office with best practices on prosecutions and much more U.S. government training is planned to increase the number of firearms trafficking cases prosecuted on both sides of the border.

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<sup>24</sup> U.S. Department of State Embassy in Mexico, "Fact Sheet: Combating Arms Trafficking," April 2011.

<sup>25</sup> Ibid.

<sup>26</sup> ATF Press Release, "ATF Announces 7 New Gunrunner Groups and Phoenix Gun Runner Impact Teams' Successes," September 17, 2010.

<sup>27</sup> Ibid.

<sup>28</sup> U.S. Department of State Embassy in Mexico, "Fact Sheet: Combating Arms Trafficking," April 2011.

<sup>29</sup> Ibid. Author phone interview with ATF Agent in April 2011.

<sup>30</sup> U.S. Department of State Embassy in Mexico, "Fact Sheet: Combating Arms Trafficking," April 2011.

## Government Challenges

### *Mexico*

While the Mexican government has been successful at seizing large numbers of firearms and ammunition from OCGs, the key challenge that Mexico has yet to effectively address is providing quality information on firearms seized in Mexico to the U.S. government. ATF has said that information from firearm trace requests is the single most important data to stopping U.S. firearms traffickers. After the Mexican government handed ATF a list of tens of thousands of firearms in late 2009, there was hope that this list would provide the U.S. government with much needed information on U.S. buyers and lead to improved firearm trace request submissions by Mexico.<sup>31</sup> Although the list did provide ATF with helpful information, it turned out to be of much less value than originally thought, and many of the problems ATF faced with the list has continued with Mexico's firearm trace requests last year.<sup>32</sup> In particular, Mexican authorities are not providing information on enough of the firearms they seize, with enough detail, and in a timely basis. For these reasons and the fact that most of the firearms ATF has information on were purchased more than five years ago, ATF officials have said they have only been able to use about eight percent of Mexico's firearm trace requests to initiative investigations in the United States.<sup>33</sup>

Since the publication of the Mexico Institute's first report on the issue, there is some new data and information on the specific problems. According to new statistics provided by the U.S. and Mexican governments, Mexico has submitted a total of 78,194 firearm trace requests to the United States from FY 2007 to FY 2010.<sup>34</sup> During approximately the same time frame, President Calderon said Mexico had seized about 90,000 arms.<sup>35</sup> Looking at these numbers, it may appear Mexico is providing ATF with information on a large number of the firearms it has seized since the start of the Calderon Administration, but ATF now reports that tens of thousands of the trace requests are duplicates.<sup>36</sup> In some cases, ATF has received information on the same firearm up to five times as Mexican police, a crime lab, the military, and the Attorney General's office all write down information on the same firearm, and the individual in the Attorney General's office in Mexico City submits trace requests on all of them.<sup>37</sup>

Of the remaining firearms, the Mexican government has also failed to sometimes include basic information about the firearms such as the manufacture's serial number or the import number on many these firearms. According to a detailed U.S. DOJ Inspector General report released in November 2010, about 26 percent of Mexico's trace requests to the U.S. government for FY 2009 were untraceable because of serial number errors.<sup>38</sup> ATF officials have also said Mexico has submitted thousands of trace requests on firearms likely imported into the United States without import numbers, at least in part

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<sup>31</sup> Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010.

<sup>32</sup> Author phone interview with ATF agent in April 2011.

<sup>33</sup> Ibid.

<sup>34</sup> U.S. Department of State Embassy in Mexico, "Fact Sheet: Combating Arms Trafficking," April 2011.

<sup>35</sup> CBS News Investigates, "Mexico wants to sue U.S. gun makers," April 21, 2001, online at [http://www.cbsnews.com/8301-31727\\_162-20056210-10391695.html](http://www.cbsnews.com/8301-31727_162-20056210-10391695.html).

<sup>36</sup> Author phone interview with ATF Agent in April 2011.

<sup>37</sup> Ibid.

<sup>38</sup> U.S. Department of Justice Inspector General, "Review of ATF's Project Gunrunner," November 2010.

because it is not Mexican practice to include such information for Mexican judicial proceedings.<sup>39</sup> While firearms that they cannot be traced to the first purchaser in the United States are still useful to ATF, tracing the firearm to the first person to purchase or own the firearm in the United States is helpful in identifying trafficking patterns, determining the origin of a firearm, and starting a criminal investigation.<sup>40</sup> In total, ATF has said they were able to trace to the first purchaser in the United States about 25 percent of the firearm trace requests submitted by Mexico as of August 2010.<sup>41</sup>

With the firearms ATF was able to trace to the first purchaser in the United States, a necessary component for ATF to start an investigation, ATF has experienced challenges with the time between when the firearm was purchased in the United States and when Mexico submits the request. Mexico, for example, submits firearm trace requests to ATF on average about one year to one year and half after the firearm has been seized in Mexico, in some cases up to three years, making it much more difficult for ATF to discover how the firearm reached the illegal trade in the United States.<sup>42</sup> In addition, according to the same Inspector General's report, 75 percent of the firearms ATF was able to trace to the first purchaser in the United States were purchased more than five years ago. The report further says that only about 18 percent of the firearms were purchased less than three years ago. To improve the timeliness and accuracy of the trace requests, ATF officials stationed in Mexico or along the U.S. southwest border have sought to physically inspect firearms at crime scenes or at Mexican military storage facilities, but have had limited success, mostly because Mexican officials or the Mexican Attorney General's office prevented such access, due in part to national sensitivities and lack of trust.<sup>43</sup>

### ***United States***

Although the U.S. government has continued to take action at a heightened level to stem U.S. firearms trafficking to Mexico, it has been slow or failed to act to address key issues that would significantly help U.S. law enforcement better identify firearms traffickers to Mexico and increase the number and severity of U.S. prosecutions. In an effort to gain valuable information on individuals involved in schemes to traffic multiple firearms to Mexico, ATF proposed a new rule in December 2010. The rule would require all U.S. gun stores in U.S. states along the southwest border to submit a report to ATF when an individual purchases two or more assault-type rifles within five business days.<sup>44</sup> Although ATF expected the new rule to be approved by the White House in January 2011, it has yet to be approved. In addition, the U.S. House of Representatives approved an amendment to a Republican budget bill by 227

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<sup>39</sup> Author interview with ATF Agent in April 2011. Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010.

<sup>40</sup> ATF does not need to trace the firearm to the first purchaser in the United States to determine whether it came from the United States or use it to determine firearms trafficking to Mexico trends. For example, ATF may be able to just trace the firearm to the manufacturer or distributor or they can use deductive reasoning by knowing the make, model, and year of the firearm.

<sup>41</sup> Author phone interview with ATF Agent in August 2010.

<sup>42</sup> Author phone interview with ATF Agent in April 2011. U.S. Department of Justice Inspector General, "Review of ATF's Project Gunrunner," November 2010.

<sup>43</sup> Author phone interview with ATF Agent in August 2010.

<sup>44</sup> ATF Transcript of Acting Director Melson, "Acting Director Announces Demand Letters for Multiple Sales of Specific Long Guns in Four Border States," December 20, 2010, online at <http://www.atf.gov/press/releases/2010/12/122010-hdqrts-melson-webcast.html>.



to 149 to block ATF's proposed rule.<sup>45</sup> While this amendment was stripped out of a later budget bill, it may be part of the reason why the Obama Administration has not issued the final rule.<sup>46</sup>

According to the U.S. DOJ's Inspector General report in November 2010, one of the top reasons U.S. Attorneys have reportedly rejected or failed to act on more than 300 ATF's Project Gunrunner referred cases is the low penalties associated with the crimes ATF officials most often use.<sup>47</sup> For example, ATF agents frequently use the act of illegally buying a firearm for someone else, otherwise known as straw purchasing, in seeking to stop firearms trafficking to Mexico, but the overwhelming majority of the defendants convicted of this crime have received less than one year in prison.<sup>48</sup> The average prison sentences for two other crimes ATF most often uses to stop firearms trafficking – knowingly making a false statement and willfully engaging in a firearms business without a license – were also just over a one year.<sup>49</sup> By comparison, drug conspiracy charges averaged 10 year sentences. As a result, ATF officials have said there is often an unwritten, minimum threshold of 10 to 20 illegal trafficked firearms and one firearm used in a crime before a U.S. Attorney will accept the case, which appears to have led to the problems with ATF's Fast and Furious Operation.<sup>50</sup> U.S. Attorneys also stated that they decided to reject ATF referred cases related to Project Gunrunner because the cases sometimes lacked evidence of criminal intent or had insufficient evidence.<sup>51</sup> Some U.S. Attorney's have also indicated that proving a case has a nexus with Mexico and pursuing charges against individuals that are organizing the firearms trafficking to Mexico would help in accepting a case.<sup>52</sup>

There is also some new information about challenges ATF is facing on the U.S.-Mexican border. In order to build a stronger connection with Mexico and establish stronger evidence for criminal prosecutions, some ATF agents have tried to build cases around the illegal crossing of the U.S.-Mexican border with arms, otherwise known as smuggling, but they have continued to experience problems in this area. For example, ATF officials have said even when they call ahead to CBP officials to give them the details on a vehicle with illegal firearms heading to the border, CBP has not always been able to stop them, particularly at busy U.S.-Mexico borders with multiple outbound car lanes, because of a lack of license plate readers.<sup>53</sup> ATF officials have also said license plate readers are essential in helping establish evidence of vehicles crossing in and out of the United States for criminal prosecutions.<sup>54</sup> While the U.S. Department of Homeland Security has said at least since April 2009 that they intended to update the number and quality of license plate readers stationed on U.S. highways heading to Mexico, there are now four fewer license plate readers.<sup>55</sup> Of the license plate readers that do exist on 48 of the 118 total

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<sup>45</sup> Homeland Security Newswire, "ATF pushes for power to track bulk assault rifle sales," March 2, 2011, online at <http://homelandsecuritynewswire.com/atf-pushes-power-track-bulk-assault-rifle-sales>.

<sup>46</sup> Mike Lillis, "Dem bill aims to curb gun trafficking," April 21, 2011, The Hill, online at <http://thehill.com/homenews/senate/157265-new-bill-aims-to-curb-gun-trafficking?page=2#comments>.

<sup>47</sup> U.S. Department of Justice Inspector General, "Review of ATF's Project Gunrunner," November 2010.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010, page 197.

<sup>51</sup> U.S. Department of Justice Inspector General, "Review of ATF's Project Gunrunner," November 2010.

<sup>52</sup> Ibid.

<sup>53</sup> Colby Goodman and Michael Marizco, "U.S. Firearms Trafficking to Mexico," September 2010.

<sup>54</sup> Author phone interview with ATF Agent in April 2011.

<sup>55</sup> According to a April 2009 DHS Fact Sheet, there were license plate readers on 52 of the 118 U.S. southbound highway lanes, see [http://www.dhs.gov/ynews/releases/pr\\_1239821496723.shtm](http://www.dhs.gov/ynews/releases/pr_1239821496723.shtm). In March 2011, the Government Accountability Office reported that there are now license plate readers on 48 of the 118 U.S. southbound highway lanes, see <http://www.gao.gov/new.items/d11407t.pdf>.

U.S. outbound lanes, many of them are older and sometimes confuse “8s” with “Bs” and are not networked to computer work stations.<sup>56</sup> Similarly, ATF officials have had difficulties proving that individuals were walking in and out of U.S. border entry points hours after they purchased firearms at U.S. gun stores because of the limited amount of time CBP stores data about such traffic.<sup>57</sup>

Lastly, although ATF could increase the penalties firearms traffickers face by engaging in joint investigations with ICE on criminal cases related to smuggling and arms export controls, it has continued to largely avoid working with ICE, which has the most experience on these types of violations.<sup>58</sup> For example, the DOJ Inspector General found that charges related to smuggling on average resulted in five year prison sentences, which are much longer than the crimes ATF often pursues.<sup>59</sup> However, the Inspector General found that from “FY 2004 through FY 2009, only seven defendants in Project Gunrunner cases were convicted of smuggling.”<sup>60</sup> In other cases, U.S. Attorneys have preferred to use violations of the U.S. Arms Export Control Act (AECA) for criminal prosecutions over ATF common charges because of the stiffer penalties associated with AECA violations, and the U.S. government could use violations of the AECA to potentially catch brokers involved in trafficking U.S. firearms to Mexico.<sup>61</sup> Despite increased penalties with these types of crimes, ATF was reportedly involved in only 35 joint operations with ICE related to firearms trafficking to Mexico in FY 2009, down from 53 joint operations in FY 2008, and it appears ATF continues to refrain from regularly participating in joint investigations with ICE.<sup>62</sup>

## Conclusion

As the Mexican OCGs continue to increase their brutal attacks with firearms, including increasingly targeting innocent young children, with devastating impacts, the U.S. and Mexican governments must consider addressing key previously identified challenges. In order to help ATF and ICE identify firearms traffickers in the United States and build strong prosecution cases against such traffickers, the Mexican Attorney General’s office should consider urgently improving the quantity, quality, and timeliness of its firearm trace requests to the U.S. government. The MOU signed by the Mexican Attorney General’s office and ATF late last year, which calls for Attorney General offices in many Mexican cities to start inputting firearms trace data through e-Trace could be a positive step. This is especially so if the Mexican Federal Police are also provided with such abilities and training, but it will only work if the above issues are addressed. Given the need to obtain this information quickly, Mexico might want to hire private contractors or a specific group of individuals, as the U.S. government has done in the past, to conduct a detailed examination of the more than 102,600 firearms Mexico currently has in its storage

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<sup>56</sup> Colby Goodman and Michael Marizco, “U.S. Firearms Trafficking to Mexico,” September 2010. Government Accountability Office, “Moving Illegal Proceeds: Challenges Exist in the Federal Government’s to Stem Cross-Border Currency Smuggling,” October 2010, GAO 11-73, online at <http://www.gao.gov/new.items/d1173.pdf>.

<sup>57</sup> Author phone interview with ATF Agent in April 2011.

<sup>58</sup> U.S. Department of Justice Inspector General, “Review of ATF’s Project Gunrunner,” November 2010.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Author phone interview with U.S. Department of State official in April 2011.

<sup>62</sup> U.S. Department of Justice Inspector General, “Review of ATF’s Project Gunrunner,” November 2010.

facilities and provide such details to the United States.<sup>63</sup> In addition, allowing ATF to formally inspect firearms seized at crime scenes in Mexico and at Mexican military storage facilities would also improve trace requests and U.S. prosecutions. As ATF continues to provide training to Mexican Attorney General office staff and hopefully Federal Police officials, it also would be helpful if ATF was at the same time allowed to do actual firearm trace requests.

As Mexico is rightly concerned about the level of cooperation the U.S. government is providing to Mexico in light of the ATF Fast and Furious Operation, the U.S. government could make important moves to increase that cooperation and collaboration. For example, as the DOJ Inspector General points out, the United States could do a better job of providing strategic information on OCGS activities such as “trends and patterns in their operations, where they are operating, and the composition of their membership and associates to Mexican officials.”<sup>64</sup> ATF and ICE could also give Mexican government officials updated information on firearms trafficking to Mexico from new and improved firearm trace requests to the United States. Adding the full number of ATF officials stationed in Mexico as ATF originally planned a couple of years ago would also help with these information sharing issues. ATF may also want to consider providing information to Mexican Customs officials in some cases in which CBP officials may not catch individuals traveling with suspected illegal firearms in vehicles attempting to cross the border as it may be easier for Mexican officials to stop the vehicle.

The U.S. government must also consider doing a better job of addressing several key previously identified challenges in the United States. First, the Obama Administration could finally approve ATF’s recommended rule change that would greatly help them identify traffickers of large quantities of assault-type rifles to Mexico. Second, ATF could work to establish methods of improving the number of joint investigations it pursues with ICE on criminal violations related to smuggling and arms export control violations, which have longer prison sentences. While pursuing investigations using these laws also has its challenges, it would likely improve efforts to show a Mexico connection and charge the brokers. After ATF and ICE have further explored using these laws to prosecute firearms traffickers to Mexico, the U.S. Congress may need to step in with some minor changes to these laws as it relates to Mexico since it is a unique situation. Third, the U.S. Congress could also increase the penalties for straw purchasers in the United States, which could have the positive effect of dissuading individuals from being a straw purchaser and improving U.S. law enforcement’s ability to encourage caught straw purchasers to cooperate with U.S. investigations of the brokers. Fourth, in order to improve the above efforts, the U.S. Department of Homeland Security should also consider urgently adding higher quality license plate readers to more of the U.S. outbound highways and improving the data storage capabilities for individuals walking across the border. Without such improvements by both the Mexican and U.S. governments, it is likely that the same challenges will exist a year from now, and we may be talking about the use of even more brutal tactics by OCGs.

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<sup>63</sup> Some time ago, U.S. Police Stations were not regularly submitting firearms trace requests to ATF. In order to solve the situation, ATF hired several private consultants to catalog information on the firearms and submit the trace requests to ATF. Now, U.S. Police Stations more regularly submit firearms trace requests.

<sup>64</sup> U.S. Department of Justice Inspector General, “Review of ATF’s Project Gunrunner,” November 2010.

## **About the Author**

Colby Goodman is an independent consultant engaged in research and advocacy on arms export control issues. For five years, Mr. Goodman led Amnesty International USA's (AIUSA) research and advocacy on issues related to conventional arms control. Most recently, he investigated the Pentagon's use of arms intermediaries with problematic records to ship weapons abroad for an in-depth report on the regulatory gaps in the U.S. Department of Defense's arms export controls for private contractors. In 2007, Mr. Goodman wrote a book chapter that covered U.S. arms trafficking to Mexico for Facultad Latinoamericana de Ciencias (FLACSO). Before joining AIUSA, Mr. Goodman was a Research Assistant with the Arms Division at Human Rights Watch where he researched cases of arms trafficking by sea vessels for a study on the nature and scope of this problem. He holds a Master's degree in International Policy Studies with a focus on security and development from the Monterey Institute of International Studies and currently lives in Washington, DC. He can be reached at [colbygoodman@msn.com](mailto:colbygoodman@msn.com).

**The Wilson Center's Mexico Institute wishes to thank our project intern, Dana Deaton, for her invaluable assistance in reviewing and formatting this Working Paper.**