

**AMICUS CURIAE SUBMISSION IN RESPONSE TO THE REQUEST FOR ADVISORY  
OPINION SUBMITTED BY MEXICO TO THE INTER-AMERICAN COURT OF  
HUMAN RIGHTS ON NOVEMBER 11, 2022**

**Submitted by the National Shooting Sports Foundation**

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## **ABBREVIATIONS**

*The following abbreviations are used in these observations:*

ACHR	American Convention on Human Rights
AFSP	American Foundation for Suicide Prevention
ATF	U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives
Court, or IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
DEA	U.S. Drug Enforcement Administration
FBI	U.S. Federal Bureau of Investigation
GCA	Gun Control Act
NICS	National Instant Criminal Background Check System
NSSF	National Shooting Sports Foundation
Mexico	The United Mexican States
OAS	Organization of American States
PLCAA	Protection of Lawful Commerce in Arms Act
U.S.	United States of America

## PRESENTATION OF THE REQUEST AND INTEREST OF AMICUS CURIAE

Pursuant to Article 44 of the American Convention on Human Rights (“ACHR”) and Article 73(3) of the Rules of Procedure of the Inter-American Court of Human Rights (“IACHR” or the “Court”), the National Shooting Sports Foundation (“NSSF”), a nonprofit trade association based in the United States of America, hereby respectfully submits this amicus curiae filing in response to the Government of the United Mexican States’ (“Mexico”) Request for an Advisory Opinion, dated November 11, 2022.

For over 60 years, NSSF has worked with the U.S. firearm industry to promote the safe use of firearms and protect the fundamental right to keep and bear arms in the United States. As the national trade association for that industry, NSSF represents the economic interests of the firearm manufacturers, distributors, and retailers implicated by Mexico’s request. NSSF makes this submission because Mexico’s request to the Court mischaracterizes the U.S. firearm industry, seeks to use the Court as a tool to further Mexico’s prospects in ongoing litigation against that industry, and ignores Mexico’s own complicity in the gun violence about which it complains.

NSSF’s members are heavily regulated by the U.S. government, all 50 state governments, and numerous localities as they engage in firearm-related commerce that is entirely lawful within the United States. That business activity is what allows U.S. citizens to exercise their right to keep and bear arms, a right guaranteed by the Second Amendment to the U.S. Constitution. Any determination by this Court in light of Mexico’s request for an advisory opinion will impact NSSF’s members and their ability to make firearms available to U.S. citizens under U.S. federal and state laws.

### EXECUTIVE SUMMARY

The Court should decline Mexico’s invitation to issue an advisory opinion, primarily because it is an exercise in international gamesmanship intended to improve Mexico’s position in domestic litigation in U.S. courts. Two years ago, Mexico filed suit in U.S. federal court against most major U.S. firearm manufacturers.<sup>1</sup> Mexico claimed that U.S. firearm manufacturers are responsible for gun violence in Mexico because, even though they only sell their products in the United States and only to those who pass a background check, some of those firearms are smuggled into Mexico and used by drug cartels and other organized gangs.<sup>2</sup> The case was dismissed under U.S. law and is now on appeal. Less than a year ago, Mexico then filed a *second* legal action in U.S. court, this time against five firearm retailers near the U.S./Mexico border.<sup>3</sup> That matter is also pending.

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<sup>1</sup> See generally Compl., *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Case No. 1:21-CV-11269 (D. Mass. Aug. 4, 2021).

<sup>2</sup> Cross-border firearm trafficking is illegal in both the United States and Mexico. See 18 U.S.C. § 922; *Federal Law of Firearms and Explosives*, Title III, Ch. III, Art. 55.

<sup>3</sup> See Compl., *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc. et al.*, Case No. 4:22-CV-00472 (D. Ariz. Oct. 10, 2022).

Mexico’s allegations in those cases are identical to those in its request to this Court.<sup>4</sup> Yet, nowhere in its submission does Mexico mention the U.S. lawsuits. That is because Mexico knows it is asking the Court to interfere in ongoing litigation by issuing an advisory opinion contradicting a recent U.S. court decision, preempting a pending appeal of that decision, and ignoring 200 years of U.S. constitutional and federal law. Moreover, to reach the conclusions Mexico asks it to reach, the Court would be forced to decide specific, disputed factual questions that cannot be resolved in this context. The questions Mexico poses do not “turn solely on legal issues or treaty interpretation;”<sup>5</sup> instead, they would require the Court to make complex factual determinations about, for example, the sequence of events by which firearms that are *legally* manufactured, distributed, and sold in the United States *illegally* arrive in Mexico through straw purchasers, smugglers, and other criminals; the extent of efforts by the firearm industry and U.S. government to deter that illegal activity; the extent of U.S. and Mexican government efforts to secure a long, porous border; and the concerted efforts of Mexican drug cartels to subvert those efforts. In the context of advisory opinions, the Court’s role is to interpret the meaning and purpose of international human rights conventions, not to make factual findings about the legal liability of private entities based on nothing more than one party’s allegations in a ten-page letter.<sup>6</sup>

Mexico’s submission also requires the Court to ignore the deeply held legal and cultural traditions of the United States, which are founded on a long-standing right to bear arms that is backstopped by pre-revolutionary English history; the Second Amendment of the U.S. Constitution (in effect for over 230 years); decisions of the U.S. Supreme Court as recently as last year; and a far-reaching system of federal, state, and local firearm regulation. These laws and traditions have evolved over time to balance public safety with the right to keep and bear arms. This includes protecting manufacturers from legal liability when others independently misuse their products, because otherwise manufacturers would cease operations in the U.S., firearms would not be available for purchase, and citizens could not exercise their right to bear arms. Mexico protests otherwise,<sup>7</sup> but there is no real question that it wants the Court to bypass and dismiss all of these long-standing domestic traditions and impose the model Mexico prefers.

Finally, the central irony of Mexico’s request is that the obvious source of violence in that country is the unchecked reign of organized drug cartels, not the U.S. firearm industry lawfully

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<sup>4</sup> Mexico asks for an opinion on two primary questions: (1) “The responsibility of private entities engaged in the manufacture, distribution, and sale of firearms, in relation to violations of the protection of the rights to life and humane treatment arising from their negligence when developing their commercial activities, which directly threatens the lives of persons under the jurisdiction of the Member States of the Organization of American States”; and (2) “The efforts that States must undertake to ensure a fair trial for the victims of the above-mentioned commercial practices, which are carried out by private entities engaged in the manufacture, distribution, and sale of firearms.” *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights by the United Mexican States* (Nov. 11, 2022), [https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2022\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2022_en.pdf) (hereinafter “*Mexico Submission*”).

<sup>5</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 9, ¶ 13 (citing Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 46).

<sup>6</sup> *Id.* at 7, ¶ 6.

<sup>7</sup> See *Mexico Submission* at 11–12 (“Thus, the Mexican State emphasizes that the present request is aimed at exploring the legal implications of negligent practices on the part of private actors, and does not focus on the sovereign right that some States confer on their citizens to acquire and possess firearms for personal protection.”).

selling firearms to U.S. citizens in the United States. For decades, Mexico – often with U.S. assistance – has grappled with this problem, which accounts not only for a significant portion of Mexico’s homicides but for most of the illegal drugs available in the United States. Recently, however, the Mexican government has inexplicably refused U.S. assistance on security issues, even as drug and firearms trafficking continues to rise and cartels threaten government control in portions of Mexico. The Mexican government’s inability to address this problem is not the fault of a private industry operating in a neighboring country, and Mexico’s invitation that the Court decide otherwise also invites a dangerous expansion of how the Court interprets and applies the ACHR to member States.

For these reasons and in light of the further observations discussed below, the Court should reject Mexico’s request for an advisory opinion.

## BACKGROUND

### **I. NSSF Has Worked with Industry and Government for Over 60 Years to Protect Second Amendment Rights and Promote the Safe Use of Firearms**

NSSF is the primary trade association for the firearm industry in the United States, and it has a long history of working with that industry to protect and promote the Second Amendment rights of all U.S. citizens.<sup>8</sup> Established in 1961, NSSF is a non-profit organization under U.S. law, directed by a Board of Governors that, collectively, has decades of experience in the domestic production and distribution of firearms for legal use.<sup>9</sup> NSSF promotes a greater understanding of hunting and shooting sports and helps the industry address issues such as safe firearm use and compliance with government regulations.<sup>10</sup> It works cooperatively with the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to ensure that all industry members follow federal law.<sup>11</sup> NSSF currently has over 10,000 members, including firearm manufacturers, distributors, and retailers; public and private shooting ranges; and sportsmen’s organizations.<sup>12</sup>

NSSF’s core mission is firearm safety,<sup>13</sup> a goal shared by its industry members and promoted through partnerships with those members, the U.S. government, and law enforcement

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<sup>8</sup> *About NSSF*, NSSF (last visited July 12, 2023), <https://www.nssf.org/about-us/> (hereinafter “*About NSSF*”).

<sup>9</sup> *Id.*; see also *NSSF Board of Governors*, NSSF (last visited July 12, 2023), <https://www.nssf.org/about-us/nssf-board-of-governors/>.

<sup>10</sup> *NSSF History*, NSSF (last visited July 12, 2023), <https://www.nssf.org/about-us/nssf-history/> (hereinafter “*NSSF History*”).

<sup>11</sup> See, e.g., Press Release, *ATF Director: Firearm Industry Programs Work to Reduce Crime, Firearm Accidents*, NSSF (Apr. 7, 2023), <https://www.nssf.org/articles/atf-director-firearm-industry-programs-work-to-reduce-crime-firearm-accidents/> (quoting ATF Director as noting, “I was in St. Louis this week with—doing an event with the National Shooting Sports Foundation, right? That’s the organization that represents the gun industry. It’s about educating firearms dealers to not allow straw purchases to happen.”); see also *infra* at 4-5.

<sup>12</sup> See *About NSSF*; see also *National Hunting and Fishing Day*, NFH DAY (last visited July 12, 2023), <https://nhfd.org/>.

<sup>13</sup> See *NSSF History*.

agencies.<sup>14</sup> With the active cooperation of the U.S. firearm industry, NSSF has organized numerous initiatives intended to stop the illegal acquisition and misuse of firearms:

- **FixNICS®.** Partnering with U.S. gun manufacturer, distributor, and retailer members, NSSF participates in FixNICS, a campaign launched in 2013 to help deter illegal firearm purchases from retailers.<sup>15</sup> When someone tries to buy a firearm in the United States, the seller – a federally-licensed retailer – is required by federal law to check a database called the U.S. Federal Bureau of Investigation’s (“FBI”) National Instant Criminal Background Check System (“NICS”). Retailers rely on NICS to avoid selling firearms to those legally barred from having them – for example, anyone previously convicted of a felony under U.S. law.<sup>16</sup> Through FixNICS, NSSF and the industry have strengthened and improved the accuracy of the background check system; for example, there has been a 270% increase in the number of disqualifying records added to NICS since FixNICS was established in 2013, meaning, the database now contains far broader information on persons who are barred from firearm purchases.<sup>17</sup> In 2017, bipartisan federal legislation, named after NSSF’s own program, was enacted to implement further improvements to the system.<sup>18</sup>
- **Don’t Lie for the Other Guy®.** Particularly relevant to Mexico’s request for an advisory opinion is NSSF’s “Don’t Lie for the Other Guy” initiative, which targets straw purchases and other illegal firearm purchases along the U.S./Mexico border. The program has two prongs: first, NSSF helps educate retailers on how to detect and prevent illegal straw purchases.<sup>19</sup> Second, NSSF coordinates a campaign of public service announcements, in media markets chosen by ATF, to warn would-be straw purchasers of the penalties for committing that offense.<sup>20</sup> NSSF’s announcements emphasize that it is a *federal crime* in the United States to buy a firearm for someone who is not legally allowed to possess it, and that there are serious legal consequences for doing so.<sup>21</sup> NSSF and ATF provide Don’t Lie for the Other Guy training materials (including in-store signage aimed at would-be straw purchasers) and public service announcements in both Spanish and English.

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<sup>14</sup> *Who We Are*, NSSF REAL SOLUTIONS (last visited July 12, 2023), <https://www.nssfrealolutions.org/about/>.

<sup>15</sup> *FixNICS*, NSSF REAL SOLUTIONS (last visited July 12, 2023), <https://www.nssfrealolutions.org/programs/fixnics/>; see also *NSSF’s FixNICS Campaign*, NSSF FAST FACTS (last visited May 31, 2023), <https://www.nssf.org/wp-content/uploads/2021/07/NSSF-factsheet-FixNICS-Federal.pdf>.

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

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

<sup>18</sup> See Consolidated Appropriations Act, 2018 signed as Pub. L. 115-141 (Mar. 23, 2018).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See 18 U.S.C. § 932 (prohibiting straw purchases of firearms in the United States).

Recent, widespread reports of increasing cartel violence in Mexico illustrate the importance of programs like Don't Lie for the Other Guy,<sup>22</sup> and NSSF's members recognize the need to deter illegal purchases regardless of the firearm's origin or where it will be used. Since 1999, NSSF and ATF have promoted Don't Lie for the Other Guy in 49 U.S. cities, and many of those cities – like Laredo (Texas), El Paso (Texas), Brownsville (Texas), and Las Cruces (New Mexico) – are along the U.S./Mexico border. In other words, for years NSSF and the firearm industry have specifically supported measures to prevent the illegal transfer of guns to Mexico.

- **Operation Secure Store®.** NSSF and its industry members recognize that firearms stolen from federally licensed retailers are a significant threat to public safety in the United States and elsewhere. NSSF worked with ATF to create Operation Secure Store, a joint initiative to help retailers better secure and transfer firearms at the retail level.<sup>23</sup> As one part of the initiative, NSSF even matches ATF offers of rewards to the public for information about firearm thefts.
- **Project ChildSafe®.** In 1999, NSSF launched Project ChildSafe, a nationwide initiative to promote firearms responsibility and provide safety education to gun owners, young adults, and children.<sup>24</sup> Through over 15,000 partnerships with law enforcement agencies, NSSF has distributed over 40 million free firearm safety kits, including gun locks, to gun owners in all 50 U.S. states and five U.S. territories. Together with U.S. gun manufacturers, which have provided over 70 million free locking devices with new firearm sales since 1998, Project ChildSafe helps prevent accidents, theft, and misuse of firearms.<sup>25</sup>
- **Compliance Training.** NSSF leads numerous compliance seminars for firearm industry members, both on its own and with the ATF. These seminars are largely directed at retailers and cover topics such as internal auditing practices, changing market conditions, best practices for firearm and ammunition shipments, and compliance with ATF policies and regulations.<sup>26</sup>
- **Annual Import/Export Conference.** NSSF sponsors the Annual Import/Export Conference in Washington, D.C., each year – the most widely attended conference of its kind in the United States.<sup>27</sup> NSSF invites presenters from across the federal

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<sup>22</sup> See *Don't Lie for the Other Guy*, NSSF FAST FACTS (last visited July 12, 2023), <https://www3.nssf.org/share/factsheets/PDF/Don'tLieFastFacts.pdf>.

<sup>23</sup> *Operation Secure Store*, NSSF REAL SOLUTIONS (last visited July 12, 2023), <https://www.nssfrealolutions.org/programs/operation-secure-store/>.

<sup>24</sup> *Project ChildSafe*, NSSF REAL SOLUTIONS (last visited July 12, 2023), <https://www.nssfrealolutions.org/programs/project-childsafe/>.

<sup>25</sup> *Id.*

<sup>26</sup> See *2023 Firearm Industry Compliance Education Webinars*, NSSF (last visited July 12, 2023), <https://www.nssf.org/articles/2023-firearm-industry-compliance-education/>.

<sup>27</sup> See, e.g., *2023 NSSF Annual Import/Export Conference*, NSSF (last visited July 12, 2023), <https://www.nssf.org/event/2023-nssf-annual-import-export-conference/>.



government, including ATF, U.S. Department of State Directorate of Defense Trade Controls, U.S. Department of Commerce Bureau of Industry and Security, U.S. Department of Homeland Security, and U.S. Customs and Border Patrol, among others. The conference lasts two-and-a-half days and provides compliance training *specifically* addressing how to legally import and export firearms and ammunition, including warning participants of the consequences of illegally transporting firearms to points outside the United States.

Finally, NSSF has directly negotiated with the Mexican government about the same issues underlying Mexico’s request for an advisory opinion. During the Obama Administration, the Government of Mexico publicly threatened to sue the U.S. firearm industry. In response, the General Counsel for NSSF, along with a former Acting Director of ATF, met with the then-Mexican Ambassador to the United States at the Mexican Embassy in Washington, D.C. The group discussed industry compliance efforts, including cooperation with federal law enforcement authorities and the “Don’t Lie for the Other Guy” program described above. Mexican officials did not accept NSSF’s offer to provide materials about the “Don’t Lie” program, but also ultimately chose not to pursue litigation.

## **II. The Right to Keep and Bear Arms is a Fundamental Component of U.S. Constitutional History**

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The constitutional right enjoyed by all U.S. citizens to keep and bear firearms is what drives the work of NSSF and its industry members.

### **A. The United States Constitution Has Recognized a Right to Keep and Bear Arms for Over 230 Years**

The United States is unique among Organization of American States (“OAS”) Member States in a critical respect: the U.S. Constitution expressly protects the fundamental, individual right to keep and bear arms and, under U.S. law, the Constitution preempts all other forms of domestic law – any legislation or judicial decisions that conflict with the Constitution are void. Consequently, the right to bear arms is routinely upheld and protected by U.S. courts and, since the founding of the country, U.S. citizens have exercised that right on a daily basis.<sup>28</sup>

The right of private, individual U.S. citizens to keep arms dates back at least to the English Bill of Rights of 1689, which declared that “subjects, which are protestants, may have arms for their [defense] suitable to their condition, and as allowed by law.”<sup>29</sup> This provision was a reaction to government efforts to use “loyal militias” to “control and disarm dissidents” and enhance the standing army of the English Crown.<sup>30</sup> The early colonial experience in North America with militias and military authority also drove the sentiment that eventually resulted in the Second

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<sup>28</sup> See U.S. CONST. AMEND. II; *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010).

<sup>29</sup> 3 Joseph Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1891 (1833); see also Robert J. Cottrol & Raymond T. Diamond, *The Fifth Auxiliary Right*, 104 YALE L. J. 995 (1995).

<sup>30</sup> *Joyce Lee Malcolm*, TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT 115–16 (1994).

Amendment to the U.S. Constitution.<sup>31</sup> In the years before the founding of the United States, citizen militias “drawn from the local community existed to provide for the common defense, and standing armies of professional soldiers were viewed by some with suspicion.”<sup>32</sup> In turn, in 1776, the United States’ Declaration of Independence from Britain control listed various grievances against King George III, among them that the British sovereign had “affected to render the Military independent of and superior to the Civil power” and had “kept among us, in times of peace, Standing Armies without the Consent of our legislatures.”<sup>33</sup>

As part of the reaction to this oppression, after the war of U.S. independence several U.S. states codified the right to bear arms in their state constitutions.<sup>34</sup> Several years later, the second of ten initial amendments to the federal constitution, newly ratified by the states, established the right to keep and bear arms for all citizens of the new nation. That amendment, in terms unchanged since 1791, says, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>35</sup>

## **B. Federal Courts in the United States Routinely Uphold this Constitutional Right Against Government Encroachment**

The Second Amendment right to keep and bear arms is not dormant or salutary – U.S. courts have consistently protected and re-affirmed it. Over the past two centuries, U.S. law has evolved to balance the risks inherent in citizens exercising a right to possess dangerous weapons, but U.S. courts have consistently made clear that the right is “‘deeply rooted in [America’s] history and tradition.’”<sup>36</sup>

For example, in the nineteenth and early twentieth centuries, U.S. courts consistently protected the individual right to bear arms from various government efforts to limit it.<sup>37</sup> In the mid-to-late 1800s, state courts across the United States recognized the right to bear arms as one “‘guaranteed by the Constitution” and “‘calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country.”<sup>38</sup> The courts were quick to void laws prohibiting

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<sup>31</sup> See *id.*; see also *Historical Background of the Second Amendment*, CORNELL LAW LEGAL INFO. INST. (last visited July 12, 2023), <https://www.law.cornell.edu/constitution-conan/amendment-2/historical-background-of-the-second-amendment#fn2> (hereinafter “*Historical Background*”); Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. REV. 793 (1998) (hereinafter “*The Commonplace Second Amendment*”).

<sup>32</sup> See *Historical Background* (citing THE FEDERALIST No. 29 (Alexander Hamilton)).

<sup>33</sup> *Id.* (citing The U.S. DECLARATION OF INDEPENDENCE ¶¶ 13–14 (U.S. 1776)).

<sup>34</sup> *Id.*

<sup>35</sup> U.S. CONST. AMEND. II (1791).

<sup>36</sup> *McDonald v. Chicago*, 561 U.S. 742, 767 (2010) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

<sup>37</sup> See, e.g., *The Commonplace Second Amendment*; Nelson Lund, *The Past and Future of the Individual’s Right to Arms*, 31 GA. L. REV. 1 (1996).

<sup>38</sup> *State v. Chandler*, 5 La. Ann. 489, 490 (1850); see also, e.g., *Nunn v. State*, 1 Ga. 243, 251 (1846) (discussing the “natural” right of self-defense under the Second Amendment and upholding law prohibiting *concealed* possession of a firearm but noting, “But that so much of it, as contains a prohibition against bearing arms openly, is in conflict with the Constitution, and void”).

citizens from openly bearing arms.<sup>39</sup> Years later, in 1939, the U.S. Supreme Court issued a decision tying the Second Amendment right to the importance of civilian militias, recognizing an expectation that men called for service “appear bearing arms *supplied by themselves* and of the kind in common use at the time.”<sup>40</sup>

In the twenty-first century, the U.S. Supreme Court has not hesitated to invalidate domestic laws limiting the right of U.S. citizens to bear arms, including a law in the U.S. capitol city of Washington, D.C., that prohibited nearly all civilians from possessing handguns.<sup>41</sup> The Supreme Court, however, recognized the risks associated with gun ownership, and made clear that firearms not typically possessed for lawful purposes – like short-barreled shotguns – are not protected by the Second Amendment.<sup>42</sup> The Supreme Court re-affirmed the right two years later, observing that “the right to keep and bear arms [is] among those fundamental rights necessary to our system of ordered liberty.”<sup>43</sup>

Finally, just last year, the U.S. Supreme Court again re-affirmed the right of citizens under the U.S. Constitution to keep and bear arms, including for self-defense, and invalidated a state law that restricted carrying arms outside the home.<sup>44</sup> The Supreme Court summarized the historical understanding of the right to bear arms in the United States and the long history of Second Amendment jurisprudence.<sup>45</sup> As it had in earlier cases, the Supreme Court recognized the importance of the Second Amendment right while placing reasonable bounds on protected conduct – it observed that the Second Amendment itself “is the very *product* of an interest balancing by the people” and that it “elevates above all other interests the right of law-abiding, responsible citizens to use arms” for lawful purposes.<sup>46</sup>

### **C. The Protection of Lawful Commerce in Arms Act Preserves Second Amendment Rights by Protecting U.S. Firearm Manufacturers from Liability for the Illegal Actions of Others**

Long-term recognition of a right to keep and bear arms brings with it the corollary right to *acquire* them: the right to keep firearms is meaningless if citizens have no way to obtain them. In addition to state regulatory requirements, over the last 100 years the U.S. government has developed a complex system of statutes and regulations governing gun production and ownership, and chief among these is the Protection of Lawful Commerce in Arms Act (“PLCAA”) passed by the U.S. Congress and signed by the President in 2005.

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<sup>39</sup> See *Nunn*, 1 Ga. At 251.

<sup>40</sup> *United States v. Miller*, 307 U.S. 174, 186 (1939) (emphasis added); see also *The Commonplace Second Amendment*.

<sup>41</sup> *District of Columbia v. Heller*, 554 U.S. 570, 577 (2008).

<sup>42</sup> *Id.*

<sup>43</sup> *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

<sup>44</sup> *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2129–30 (2022).

<sup>45</sup> *Id.*

<sup>46</sup> *Heller*, 554 U.S. at 635 (emphasis in original).

In the early 2000s, like Mexico here, several cities in the United States sued firearm manufacturers for the actions of independent actors who misused their products – that is, for the actions of criminals who used lawfully sold firearms to hurt others.<sup>47</sup> These lawsuits threatened to swamp the domestic firearm industry and make it financially prohibitive to manufacture firearms in the United States. In response, Congress enacted the PLCAA by majority vote of both legislative houses, after which it was approved and signed by the President of the United States.

The purpose of the PLCAA is to protect domestic firearm manufacturers from legal liability when a third party misuses a properly manufactured, legally sold firearm; as the PLCAA itself recognizes, without this protection, manufacturers would be improperly subject to legal responsibility for the actions of others.<sup>48</sup> The law’s central provision prohibits “causes of action against manufacturers [and] distributors . . . of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm products . . . by others when the product functioned as designed and intended.”<sup>49</sup> In other words, the PLCAA “limits the types of lawsuits that can be brought against gun manufacturers and distributors” in U.S. courts.<sup>50</sup>

The law contains a significant preamble that expresses the goals of the legislature. In passing the PLCAA, Congress found, among other things, that

[b]usinesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.<sup>51</sup>

Congress was not ambiguous in its findings, further declaring that “imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system” that “erodes public confidence in our Nation’s laws” and “threatens the diminution of a basic constitutional right and civil liberty.”<sup>52</sup> This law – and its underlying purpose – is what prevented Mexico from succeeding in its legal action against U.S. gun manufacturers in U.S. federal court. Here, however, Mexico

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<sup>47</sup> See, e.g., *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099 (Ill. 2004) (holding that firearm manufacturers, distributors, and dealers, were not liable for law enforcement and medical services expenditures allegedly incurred as a result of gun violence); *Morial v. Smith & Wesson Corp.*, 785 So. 2d 1 (La. 2001) (dismissing city’s claims against gun manufacturer); *Ganim v. Smith & Wesson Corp.*, 780 A.2d 98 (Conn. 2001) (dismissing claims by city and mayor against handgun manufacturers, trade associations, and retail gun sellers).

<sup>48</sup> 15 U.S.C. § 7901(b) (listing purposes of the PLCAA, including, *inter alia*, (1) prohibiting causes of action against manufacturers, distributors, dealers, and importers of firearms and ammunition products for harm “solely caused by the criminal or unlawful misuse of firearm products or ammunition products” when the product functioned as designed and intended; and (2) preserving U.S. citizens’ access to firearms and Second Amendment rights).

<sup>49</sup> *Id.* at § 7901(b)(1).

<sup>50</sup> Mem. and Order on Defs.’ Mots. to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Case No. 1:21-CV-11269 (D. Mass. Sept. 30, 2022) at 20, <https://tlblog.org/wp-content/uploads/2022/09/Mexico.OpinionMTD.pdf>.

<sup>51</sup> 15 U.S.C. § 7901(a)(5) (emphasis added).

<sup>52</sup> *Id.*

asks this Court for what it could not achieve under U.S. law: a legal finding that U.S. manufacturers, operating legally under U.S. law to provide firearms to the U.S. market, are nonetheless engaged in wrongdoing.

#### **D. The U.S. Firearm Industry is Also Heavily Regulated by the U.S. Government**

Against this constitutional and legislative backdrop, the U.S. firearms industry is among the most highly regulated in the United States. First, the purchase and sale of firearms is strictly controlled by ATF,<sup>53</sup> which “recognizes the role that firearms play in violent crimes and pursues an integrated regulatory and enforcement strategy.”<sup>54</sup> Firearms may be produced only by federally-licensed manufacturers, and sold by federally-licensed retailers, both of which are subject to inspection by ATF and state authorities.<sup>55</sup> As noted above, when someone tries to buy a firearm from a licensed retailer, the retailer contacts the FBI NICS system for legally required background checks.<sup>56</sup> The buyer must also certify under oath that he or she has no criminal convictions, is of sound mind, and is not buying the firearm for another person. Violating these requirements is a federal crime, one aggressively enforced by the U.S. Department of Justice.<sup>57</sup>

Manufacturers, distributors, and retailers meet stringent regulatory requirements to engage in the lawful sale and distribution of guns. Among other things, ATF requires retailers to comply with (1) recordkeeping standards, (2) the background check requirements noted above, (3) laws banning the sale or transfer of firearms to prohibited persons, (4) prohibitions on improper sales of firearms to non-residents, (5) customer identification requirements, (6) reporting requirements for the sale of multiple handguns and certain rifles, and (7) reporting requirements regarding lost or stolen firearms.<sup>58</sup> ATF revokes the licenses of retailers that knowingly transfer firearms to prohibited persons, fail to run required background checks, falsify records, fail to respond to ATF tracing requests, or refuse to permit ATF to conduct an inspection.<sup>59</sup> Federal firearms licensees also must certify that they have secure gun storage devices available to their customers.<sup>60</sup>

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<sup>53</sup> See *Mexico Smears U.S. Firearm Manufacturers at U.N. Forum*, NSSF (Feb. 21, 2023), <https://www.nssf.org/articles/mexico-smears-u-s-firearm-manufacturers-at-u-n-forum/>.

<sup>54</sup> *Firearms Overview*, U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES (last visited July 12, 2023), <https://www.atf.gov/firearms> (hereinafter “ATF Firearms Overview”).

<sup>55</sup> See *Mexico Smears U.S. Firearm Manufacturers at U.N. Forum*, NSSF (Feb. 21, 2023), <https://www.nssf.org/articles/mexico-smears-u-s-firearm-manufacturers-at-u-n-forum/>.

<sup>56</sup> *Id.*

<sup>57</sup> See 18 U.S.C. § 922(a)(6) (prohibiting false statements in connection with acquiring a firearm); see also, e.g., *Federal Prosecutors Aggressively Pursuing Those Who Lie in Connection With Firearm Transactions*, DOJ (Jan. 10, 2023), <https://www.justice.gov/usao-wdok/pr/federal-prosecutors-aggressively-pursuing-those-who-lie-connection-firearm-transactions>.

<sup>58</sup> See ATF Firearms Overview; see also *Federal Firearms Licensee Quick Reference and Best Practices Guide*, U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES (last visited July 12, 2023), <https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide>.

<sup>59</sup> See ATF Firearms Overview.

<sup>60</sup> *Id.*

The export of firearms from the United States to foreign countries is also heavily regulated. Commercial exports are controlled by the U.S. Department of Commerce, with input from the U.S. Departments of State and Defense.<sup>61</sup> All foreign military sales are highly regulated by the State Department with input from the Department of Defense.<sup>62</sup> This legal framework backstops numerous efforts by the United States to stem the illegal flow of firearms into Mexico. The current U.S. Administration – like those before it – is “committed to address firearms trafficking into Mexico that contributes to violence and the trafficking of illicit fentanyl,” including by expanding firearms trafficking investigations, aggressively prosecuting traffickers, countering the rise of “ghost guns” (privately-made, illegal firearms) and other dangerous weapons, stemming the supply of illegal guns by clarifying retailer obligations, and deepening collaboration with the Government of Mexico.<sup>63</sup>

Mexico knows all of this. Moreover, ATF operates *in* Mexico, in cooperation with the Mexican government, offering tracing services for any firearm Mexican authorities bring to its attention.<sup>64</sup> ATF’s goal, which is shared by Mexican law enforcement counterparts, is “discovering, disrupting, and dismantling firearms trafficking networks” at the U.S./Mexico border.<sup>65</sup>

## ARGUMENT

### I. The Court Should Decline to Issue an Advisory Opinion in this Instance

This extensive background, which Mexico ignores in its submission, confirms that Mexico’s concerns cannot be resolved through an advisory opinion. The Court has “broad discretionary powers” to accept or decline a request for an opinion pursuant to Article 73 of the Court’s Rules of Procedure and, in this instance, there are “compelling reasons” to decline.<sup>66</sup>

Principally, Mexico is using the Court to improve its position in legal actions it has filed in the United States against the same firearm manufacturers it targets here. Because Mexico understands that it should not use the Court as a tool for obtaining premature, indirect rulings on

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *FACT SHEET: Biden-Harris Administration’s Ongoing Efforts to Stem Firearms Trafficking to Mexico*, THE WHITE HOUSE (June 14, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/14/fact-sheet-biden-harris-administrations-ongoing-efforts-to-stem-firearms-trafficking-to-mexico/> (hereinafter “*FACT SHEET*”); see also *FACT SHEET: U.S.-Mexico High-Level Security Dialogue*, THE WHITE HOUSE (Oct. 8, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/fact-sheet-u-s-mexico-high-level-security-dialogue/> (revitalizing the Merida Initiative with new goals and stating, “The United States and Mexico are committed to transforming our cooperation to better protect the health and safety of our citizens and promote the development of the most vulnerable communities in both countries, prevent criminal organizations from harming our countries, and pursue and bring criminals to justice.”).

<sup>64</sup> Scott Stewart & Fred Burton, *Mexico: Economics and the Arms Trade*, STRATFOR GLOBAL INTELLIGENCE (July 9, 2009), <https://worldview.stratfor.com/article/mexico-economics-and-arms-trade>.

<sup>65</sup> See *FACT SHEET*.

<sup>66</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 6, ¶ 6.

factual matters in a pending case, nowhere in its submission does it mention the U.S. cases. Mexico also asks the Court to attack the U.S. judicial system, bypass the complex U.S. constitutional history summarized above, and sanction a private U.S. industry in a manner prohibited under U.S. law. Finally, Mexico also seeks leverage in ongoing diplomatic negotiations with the United States, including border security.

Overall, an advisory opinion would be outside the stated purposes and goals of the IACHR, and an unprecedented expansion of the Court’s interpretation of the Convention and related human rights norms.

**A. Mexico is Engaged in Litigation in a U.S. Court that is Deciding the Same Issues Mexico Raises Here**

As noted above, on August 4, 2021, the Government of Mexico filed suit in U.S. federal court in Boston, Massachusetts, against most major firearm manufacturers based in the United States. As it does here, in that case Mexico claims that U.S. firearm manufacturers have intentionally marketed their products to appeal to Mexican drug cartels, and recklessly allow their weapons to be distributed by retailers who sell the guns to straw purchasers – people who buy the weapons and give them to others, who smuggle the guns into Mexico, where they are sold to drug cartels and other criminals.<sup>67</sup>

For example, in its complaint in U.S. court, Mexico alleges that the named U.S. firearm manufacturers “knew or chose to be willfully blind to the fact that their design, marketing, and distribution of guns posed a serious risk of harm to people in Mexico and to the Government.”<sup>68</sup> Using nearly identical language, in its submission to this Court, Mexico “requests the Court to answer” the following question:

1) Can careless, negligent and/or intentional marketing activities by private companies related to the firearm industry, which facilitate their illicit trafficking, their indiscriminate disposal among society, and consequently increase the risk of violence perpetrated with firearms, undermine the rights to life and humane treatment? Is there international responsibility of firearm companies for such activities?<sup>69</sup>

Similarly, in the U.S. litigation, the primary legal defense available to the U.S. firearm manufacturers is the PLCAA, which was enacted eighteen years ago to protect firearm manufacturers from liability when someone independently uses a firearm to commit a crime. On September 30, 2022, the U.S. federal court in Boston, Massachusetts, relying on the PLCAA, dismissed Mexico’s complaint. As that court held:

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<sup>67</sup> Compl., *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Case No. 1:21-CV-11269 (Aug. 4, 2021), <https://www.courthousenews.com/wp-content/uploads/2021/08/mexico-smith-wesson-complaint.pdf>.

<sup>68</sup> *Id.* at 1.

<sup>69</sup> *Mexico Submission* at 5.

Unfortunately for the government of Mexico, all of its claims are either barred by federal law or fail for other reasons. The PLCAA unequivocally bars lawsuits seeking to hold gun manufacturers responsible for the acts of individuals using guns for their intended purpose. And while the statute contains several narrow exceptions, none are applicable here.<sup>70</sup>

On March 14, 2023, Mexico appealed this decision to the U.S. Court of Appeals for the First Circuit, seeking a ruling that the lower court was wrong and the PLCAA does not apply to Mexico's claims. That appeal is pending. In its submission to this Court, Mexico does not name the PLCAA, but targets it as well, asking for an advisory opinion that the PLCAA violates the Convention and the International Covenant on Civil and Political Rights:

6) Are laws that grant procedural immunity to companies engaged in the arms industry against claims by victims compatible with the State's obligations under Articles 8 and 25 of the ACHR, as well as those described in Article 2.3 of the International Covenant on Civil and Political Rights?<sup>71</sup>

In the meantime, Mexico had already filed a *second* lawsuit in U.S. federal court – this time against five U.S. firearm retailers near the U.S./Mexico border.<sup>72</sup> In that lawsuit, Mexico takes another bite at the apple, claiming that the five named retailers “know or should know that their reckless and unlawful business practices – including straw sales, and bulk and repeat sales of military-style weapons – supply dangerous criminals in Mexico and the U.S.”<sup>73</sup> The retailers have moved to dismiss Mexico's lawsuit – again under the PLCAA – and the motion is pending.

In short, Mexico asks the Court to insert itself in ongoing litigation, even to the point of helping Mexico avoid the impact of a specific U.S. statute (the PLCAA), so that Mexico can use this Court's ruling to its advantage before U.S. courts. As this Court has repeatedly noted when rejecting requests for advisory opinions, it seeks to avoid “being used as a mechanism to obtain an indirect ruling on a matter that is in dispute or being litigated at the domestic level.”<sup>74</sup> There are good reasons for caution. The purpose of the advisory opinion process is to interpret international

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<sup>70</sup> Mem. and Order on Defs.' Mot. to Dismiss at 3, *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Case No. 1:21-CV-11269 (Sept. 30, 2022), <https://tlblog.org/wp-content/uploads/2022/09/Mexico.OpinionMTD.pdf>.

<sup>71</sup> *Mexico Submission* at 5.

<sup>72</sup> See Compl., *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc. et al.*, Case No. 4:22-CV-00472 (D. Ariz. Oct. 10, 2022).

<sup>73</sup> *Id.* at ¶ 1.

<sup>74</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 6, ¶ 6; see also generally *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 10, 2005 (finding that Costa Rica was attempting to revise the opinion of another court through its request for an advisory opinion); *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 19, 2016 (finding that the request for an advisory opinion implicated an ongoing impeachment proceeding in Brazil, presented an issue that could be brought later as a contentious case, and required answering questions that had not yet been resolved at an internal level); Advisory Opinion OC-16/99 of Oct. 1, 1999, Series A No. 16.



human rights provisions and help OAS Member States understand their international obligations.<sup>75</sup> Here, Mexico asks the Court to take its side in an existing case that Mexico itself filed (seeking \$10,000,000,000 in damages),<sup>76</sup> and that involves issues unique to the problem of how to manage the flow of firearms south, and of illegal drugs north, over a border shared by Mexico and the United States. As the Court has noted, “a request [for an advisory opinion] should not be limited to an extremely precise factual situation that would make it difficult to disassociate the response from a ruling on a specific case, which would not be in the general interest that a request is intended to serve.”<sup>77</sup>

## **B. Mexico is Using the Court to Resolve Specific, Disputed Factual Matters**

The inductive nature of Mexico’s request is highlighted by what it omits from its submission to the Court. As noted above, firearm manufacturers in the United States are subject to an extensive regulatory scheme enforced by ATF. Manufacturers only sell their products to retail buyers based in the United States for use in the United States. According to Mexico, U.S.-made firearms reach the hands of criminals in Mexico in the following manner:

- U.S. manufacturers sell firearms to wholesalers in the United States;
- Wholesalers sell firearms to federally licensed firearm dealers;
- Dealers sell firearms to straw purchasers, who intend to pass the weapons to others;
- The straw purchasers illegally transfer the firearms to smugglers, or themselves smuggle the firearms across the Mexican border (usually through a string of intermediaries);
- Mexican drug cartel members or other criminals illegally acquire the firearms in Mexico; and
- Cartel members or other criminals use the firearms to harm other people.

Mexico would need to *prove* this lengthy factual sequence. The use of U.S.-made weapons in Mexico requires a series of independent, criminal activities that U.S. companies are not responsible for, do not endorse and, as described above, take steps to prevent.

Mexico also avoids educating the Court about the complexity of sourcing the various firearms recovered at crime scenes in Mexico, thus skirting the problem of this Court engaging in

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<sup>75</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 7, ¶ 6.

<sup>76</sup> Kimberlee Speakman, *Mexico Sues U.S. Gun Manufacturers, Seeks \$10 Billion*, FORBES (Aug. 4, 2021), <https://www.forbes.com/sites/kimberleespeakman/2021/08/04/mexico-sues-us-gun-manufacturers-seeks-10-billion/?sh=2e42a0e87336>.

<sup>77</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 8, ¶ 11.

detailed fact-finding in the context of an advisory opinion. Firearm tracing is deceptively difficult. For example, as noted above, ATF operates in Mexico in cooperation with the Mexican government and tries to trace any firearm Mexican authorities bring to its attention. But Mexico does not need to ask ATF to trace guns legally sold in Mexico, and would not ask ATF to trace guns that were not made in the United States, so ATF statistics are artificially skewed toward firearms of U.S. origin.<sup>78</sup>

Moreover, though dated, Mexico's own government has estimated that only about 18% of firearms used for crime in Mexico can be determined to have been made in the United States.<sup>79</sup> Even if the most current figure is higher than 18%, consider the numerous ways such a firearm could arrive in Mexico:

- Purchased legally at a U.S. retailer and illegally smuggled over the border in the near term, which is the scenario Mexico assumes;
- Purchased legally from a U.S. retailer, resold legally one or more times over the course of years, and eventually illegally smuggled into Mexico;
- Provided, legally, to combatants in a foreign conflict (*e.g.*, Vietnam, Afghanistan, Ukraine) and then resold on the international black market, eventually arriving in Mexico;
- Purchased legally from a U.S. retailer, legally or illegally transferred to a foreign country, and eventually arriving in Mexico; or
- Sold, legally, to law enforcement or military personnel in Mexico, and then resold into the domestic black market or used for criminal activity by Mexican law enforcement or military personnel who have defected.<sup>80</sup>

There are other possibilities. According to ATF data, the average U.S.-made firearm recovered in Mexico is many years old; in the 2017–2021 time frame it was *seven years* from point of sale in the U.S. to use in a crime in Mexico.<sup>81</sup> That span makes it impossible to show that U.S. firearm manufacturers or U.S. regulatory authorities are responsible for these weapons' presence in Mexico, much less that they are "human rights violators" under international conventions or norms.

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<sup>78</sup> Scott Stewart & Fred Burton, *Mexico: Economics and the Arms Trade*, STRATFOR GLOBAL INTELLIGENCE (July 9, 2009), <https://worldview.stratfor.com/article/mexico-economics-and-arms-trade>.

<sup>79</sup> David B. Kopel, *Mexico's Gun-Control Laws: A Model for the United States?*, TEXAS REV. OF LAW & POLITICS, Vol. 18, at 27, 48 (2014) (citing RUBEN AGUILAR V. & JORGE G. CASTANEDA, EL NARCO: LA GUERRA FALLIDA 68 (2009), <https://davekopel.org/2A/Foreign/Mexico-gun-control-laws.pdf>).

<sup>80</sup> A U.S. firearm manufacturer, Sig Sauer, Inc., based in New Hampshire, supplies firearms to the Mexican government and military. Notably, Mexico did not include Sig Sauer as a defendant in the legal action it filed in U.S. court against the U.S. firearm industry.

<sup>81</sup> U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, NAT'L FIREARMS COMMERCE AND TRAFFICKING ASSESSMENT, Vol. II, Part IV, at 15 (2023), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iv-crime-guns-recovered-outside-us-and-traced-le>.

In its submission, Mexico avoids all of the above, because it reveals two things: (a) that the harm suffered in Mexico is caused not by U.S. firearm manufacturers, but by bad actors in Mexico, using firearms illegally smuggled into the country from any number of possible sources; and (b) that, to issue the advisory opinion Mexico desires, the Court must make numerous specific factual findings, which is something the Court often wisely avoids.<sup>82</sup> Moreover, the scenarios described above are extremely specific to the U.S./Mexico border and are highly unlikely to be repeated among other OAS Member States.<sup>83</sup>

U.S. firearm manufacturers do not market their products for use in Mexico, do not want their products smuggled to Mexico, enjoy no benefit from their products being misused in Mexico and, often through NSSF, cooperate fully and in good faith with the U.S. government to avoid that result. Firearms made in the United States – along with firearms from many other sources – arrive in Mexico because a series of criminals independently buy these products under false pretenses, smuggle them into Mexico, and convey them to cartel members and other criminals who use them to harm Mexican citizens. U.S. firearm manufacturers have nothing to do with this. The Government of Mexico firmly disagrees, but that is precisely why the Court should avoid issuing an advisory opinion: these are factual questions that must be resolved, and are being resolved, in ongoing litigation in a forum Mexico itself chose – U.S. federal court. The questions Mexico poses “do not turn solely on legal issues or treaty interpretation [and . . . ] a response to the request requires that facts in specific cases be determined.”<sup>84</sup>

### **C. Mexico is Using the Court to Bypass the Legislative, Executive and Judicial Branches of the U.S. Government and Sanction a Private U.S. Industry in a Manner That Conflicts With U.S. Law**

Foreign countries routinely litigate in the U.S. court system, where they receive a fair hearing under U.S. law. The U.S. Supreme Court has long recognized that there is “no question but that foreign States may sue private parties in the federal courts.”<sup>85</sup> Indeed, foreign countries are “entitled to prosecute any civil claim in the courts of the United States upon the same basis as a domestic corporation or individual might do.”<sup>86</sup> This includes the Government of Mexico, which has often sought relief in U.S. courts.<sup>87</sup>

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<sup>82</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 6-9, ¶¶ 6-13.

<sup>83</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 8, ¶ 11 (“[A] request should not be limited to an extremely precise factual situation that would make it difficult to disassociate the response from a ruling on a specific case, which would not be in the general interest that a request is intended to serve.”).

<sup>84</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 9, ¶ 13 (citing Advisory Opinion OC-16/99 of Oct. 1, 1999, Series A No. 16, ¶ 46).

<sup>85</sup> *Principality of Monaco v. Mississippi*, 292 U.S. 313, 323 n.2 (1934).

<sup>86</sup> *Pfizer, Inc. v. Govt. of India*, 434 U.S. 308, 318–19 (1978).

<sup>87</sup> See, e.g., *Consulate General of Mexico v. Phillips*, 17 F. Supp. 2d 1318 (S.D. Fla. 1998) (holding that Mexico has standing to seek redress for state officials’ alleged violations of treaty provisions guaranteeing Mexican consular officials access to Mexican nationals accused of crimes in the United States); *United Mexican States v.*

In short, following well-established principles of international comity, foreign nations can pursue claims in U.S. courts on a basis equal to that of U.S. citizens, but nothing entitles that foreign nation to *special* treatment.<sup>88</sup> Mexico *chose* to sue the U.S. firearm industry in a U.S. court, and that case has been fairly treated under domestic law and in the same manner as if it had been brought by a U.S. citizen, including the applicability of domestic laws like PLCAA that protect lawfully-operating firearm manufacturers.

Mexico is now unhappy with the result, as is clear from Questions 6 and 7 in Section II of its submission, which are, essentially, rhetorical:

6) Are laws that grant procedural immunity to companies engaged in the arms industry against claims by victims compatible with the State's obligations under Articles 8 and 25 of the ACHR, as well as those described in Article 2.3 of the International Covenant on Civil and Political Rights?

7) If these laws exist, which obligations do States have to guarantee access to justice?<sup>89</sup>

But under U.S. law, that result – dismissal of Mexico's case in light of the PLCAA – was appropriate. Mexico's response – asking this Court to condemn the U.S. court system, ignore domestic legislation, and dismiss 232 years of U.S. constitutional history – is not.

As noted above, the right to keep and bear firearms is codified in the U.S. Constitution. Barring amendments to the Constitution, the federal government, all state governments within the U.S. federal system, and all courts in the U.S. are required to recognize this right. Since 1791, courts and legislatures in the United States have wrestled with the questions of *who* can purchase and bear arms,<sup>90</sup> *what kinds* of arms can be owned by private citizens,<sup>91</sup> *where and when* arms can

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*Nelson*, No. 22-CV-4047-CJW-KEM, 2023 WL 2616095 (N.D. Iowa Mar. 23, 2023) (granting Mexico's petition to recognize and enforce arbitration award); *Int'l Thunderbird Gaming Corp. v. United Mexican States*, 255 Fed. Appx. 531 (D.C. Cir. 2007) (affirming lower court opinion confirming, recognizing, and enforcing arbitration award for Mexico against Canadian company); *see also Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332, 342 (1st Cir. 2000) (denying Mexico's suit for lack of standing but finding that Mexico could address concerns by financially supporting the plaintiffs or participating as amicus).

<sup>88</sup> *See, e.g., Pfizer*, 434 U.S. at 318–19 (the U.S. Supreme Court “has long recognized the rule that a foreign nation is generally entitled to prosecute any civil claim in the courts of the United States upon the same basis as a domestic corporation or individual might do.”); *see also DeCoster*, 229 F.3d at 336 (“Standing of foreign nations to bring suit in the federal courts has been recognized in cases in which the foreign nation has suffered a direct injury.”).

<sup>89</sup> *Mexico Submission* at 5.

<sup>90</sup> *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (noting that the Second Amendment right does not extend to felons or the mentally ill).

<sup>91</sup> *See Gun Control Act*, 18 U.S.C. § 922(o) (“[I]t shall be unlawful for any person to transfer or possess a machinegun.”); *Heller*, 554 U.S. at 624 (2008) (“[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.”).

be carried,<sup>92</sup> who is allowed to *sell them*,<sup>93</sup> and what steps must be followed to *sell them legally and safely*.<sup>94</sup> A major federal law – the PLCAA – ensures that firearms remain available to the U.S. public, a law that U.S. courts have since confirmed is a proper exercise of congressional power and does not itself violate the U.S. Constitution.<sup>95</sup> Predictably, and correctly, a U.S. court followed PLCAA and rejected Mexico’s effort to hold U.S. firearm manufacturers legally responsible for the criminal acts of others, from the “straw purchasers” illegally buying firearms at U.S. retailers, to the smugglers taking them over the border, to the criminals who use them to harm Mexican residents.

But Mexico now asks the Court to bypass all of the above and instead substitute its own judgment to declare a wholly domestic U.S. industry legally responsible for harm committed by strangers in another country. Mexico disclaims a “focus on the sovereign right that some States confer on their citizens to acquire and possess firearms for personal protection,”<sup>96</sup> but that is *exactly* what Mexico is doing. PLCAA is rooted in that sovereign right to possess arms and, as the U.S. Congress noted, protecting that right is why the law was passed in the first place: the PLCAA expressly states that the legal remedy Mexico asks this Court to endorse “threatens the diminution of a basic constitutional right and civil liberty,” and “constitutes an unreasonable burden on interstate and foreign commerce of the United States.”<sup>97</sup>

This Court has repeatedly expressed reluctance to issue advisory opinions requiring it to “develop abstract considerations” about domestic constitutional systems that are better scrutinized and assessed through the more methodical process of a contentious case. In one recent matter, the Court declined to issue an opinion about the methods of impeaching government officials among member states, concluding:

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<sup>92</sup> See, e.g., *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (holding that right to bear arms outside home for self-defense is fundamental to Second Amendment); *Presser v. State of Ill.*, 116 U.S. 252 (1886) (holding that Second Amendment does not afford citizens right to parade with arms in unauthorized military association).

<sup>93</sup> See 27 CFR § 478.47 (requiring all firearms retailers in the United State to obtain a proper license from the ATF); see also *Do I Need a License to Buy and Sell Firearms?*, U.S. DOJ & ATF (last visited June 16, 2023), <https://www.atf.gov/file/100871/download> (“The federal Gun Control Act (GCA) requires that persons who are engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Federal firearms licensees (FFL) are critical partners in promoting public safety because—among other things—they help keep firearms out of the hands of prohibited persons by running background checks on potential firearms purchasers, ensure that crime guns can be traced back to their first retail purchaser by keeping records of transactions, and facilitate safe storage of firearms by providing child safety locks with every transferred handgun and having secure gun storage or safety locks available any place where they sell firearms.”).

<sup>94</sup> See, e.g., 18 U.S.C. § 932 (“It shall be unlawful for any person to knowingly purchase, or conspire to purchase, any firearm in or otherwise affecting interstate or foreign commerce for, on behalf of, or at the request or demand of any other person, knowing or having reasonable cause to believe that such other person” cannot legally purchase one under U.S. law).

<sup>95</sup> See, e.g., *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008); *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009); *Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F. Supp. 2d 174 (D.D.C. 2009).

<sup>96</sup> *Mexico Submission* at 12–13 (“Thus, the Mexican State emphasizes that the present request is aimed at exploring the legal implications of negligent practices on the part of private actors, and does not focus on the sovereign right that some States confer on their citizens to acquire and possess firearms for personal protection.”).

<sup>97</sup> 15 U.S.C. § 7901(a)(6).

Based on the above, the Court finds that, by responding to the Inter-American Commission’s questions as they are worded—that is, developing abstract considerations on the compatibility of the numerous models of impeachment [among member states] . . . it could not sufficiently examine the particularities of the institutional design of the different horizontal control mechanisms that exist in the region. *In many cases, these designs are the product of history; they respond to the needs and the constitutional experience of each society and warrant the detailed and contextualized analysis that can only be made in the context of a contentious case to determine their compatibility with the American Convention.*<sup>98</sup>

So it is here: U.S. law ensures the protection of its domestic firearm industry through PLCAA, but also regulation of that industry through ATF, any number of federal and state laws, and self-regulation by firearm companies and retailers with input from NSSF. This state of affairs is indeed “the product of history,” designed to accommodate “the needs and constitutional experience” of the United States.

Of course the system is imperfect – legally-produced, legally-sold firearms continue to be misused, both in the United States and Mexico, and NSSF continues to work with the U.S. firearm industry and the U.S. government to combat that problem. But a proper solution does not include this Court substituting its own legal judgment for that of a signatory State concerning domestic affairs, and condemning an entire domestic industry (and the U.S. government) as “violators of the rights of life and humane treatment.” What it should include is what is already happening: an assessment of Mexico’s legal claims by a neutral U.S. court and diplomatic negotiations between two sovereigns over how best to manage the border they share.

#### **D. An Advisory Opinion Would Be Beyond the Purposes and Goals of the Inter-American Court of Human Rights**

Mexico’s request for an advisory opinion is a thinly veiled invitation for the Court to depart from its traditional role of interpreting the meaning and purpose of international human rights conventions. Such a departure would set a dangerous precedent in future proceedings.

##### **1. Mexico Asks the Court to Misapply the ACHR and Make Liability Findings it is Not Equipped to Make**

As noted above, Mexico is confusing the actions of a domestic, regulated U.S. industry with the entirely independent actions of criminals who misuse that industry’s products. U.S.-based firearm manufacturers only market and sell their products in the United States, and cooperate with government efforts to regulate sale and distribution of firearms. But it is impossible to stop all criminal actors intent on buying firearms through fraud and deception, or those who smuggle arms over the border. In short, *U.S. companies* have violated no provision of the ACHR or any other

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<sup>98</sup> *Request for an Advisory Opinion Presented by the Inter-American Commission on Human Rights*, Order of the Inter-American Court of Human Rights of May 29, 2018, at 10, ¶ 17 (emphasis added); Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4 (stating that requests for advisory opinion should not be used to settle political debates).

human rights convention; it is *individuals* – including members of the well-organized drug cartels freely operating in Mexico – who have misappropriated firearms for their own criminal ends. No international convention authorizes attributing the independent, illegal acts of private actors to whole industries or governments.

In its submission, Mexico notes the observations of certain international bodies that not only States, but private businesses, can impact human rights.<sup>99</sup> Based on that premise, Mexico then admits “that the present request is aimed *at exploring the legal implications of negligent practices* on the part of private actors.”<sup>100</sup> It then urges the Court to *itself* decide the appropriate level of “due diligence”<sup>101</sup> to be exercised by private corporate actors – here, the U.S. firearm industry – and, by extension, whether the domestic regulatory system in the United States is properly designed and implemented. The Court is not in a position to do any of this: this is not a contentious case (there are already two, filed by Mexico), and nothing has been provided to the Court that could support the kind of detailed factual findings Mexico really seeks. No one disputes the basic principle that private businesses or individuals can be implicated in human rights concerns, but here Mexico seeks something more than re-affirmance of that principle: in the context of an advisory opinion, it seeks a ruling from this Court that specific actors have violated human rights principles through specific acts alleged by Mexico.

## **2. *Mexico Invites the Court to Expand Its Jurisdiction in Unprecedented and Dangerous Ways***

The theory underlying Mexico’s submission would also require a dangerous expansion of how the Court defines violations of the Convention and related human rights norms.

Consider what Mexico is asking for: a public ruling from the Court that a private industry – not a member State – violates the Convention when it engages in lawful, entirely domestic conduct that, through the actions of independent third parties, affects a neighboring State. The Court has never before rendered such a ruling, and it would have dangerous implications. First, it would create the prospect of adverse rulings under the Convention *without regard* to the actions or position of a signatory State. Here, the U.S. government takes very seriously the need to ensure firearm safety while respecting a U.S. constitutional right that it cannot legally infringe; there is no debate that, on one hand, firearms are heavily regulated in the United States but that, on the other hand, networks of criminals illegally smuggle firearms from the U.S. to Mexico. Second, every day, lawfully-produced items are manufactured in one State and, through private actors, transferred to another State, often in bulk – textiles, vehicles, chemicals, agricultural products, and any number of other commodities. If the Court issues an opinion in Mexico’s favor, it is announcing that private businesses can violate *international human rights conventions* when their lawfully-made products are misused by someone else in some other place. It would, moreover, be ruling that a member State violates the Convention by not interceding to stop the *lawful* manufacture of domestic products in those circumstances. Nothing in the Convention supports such an expansive reading of human rights norms.

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<sup>99</sup> *Mexico Submission* at 10–11.

<sup>100</sup> *Id.* at 12 (emphasis added).

<sup>101</sup> *Id.* at 10–11.

Finally, if the Court adopted Mexico’s position, the resulting advisory opinion would implicate Mexico far more than it would the U.S. firearm industry. The drug cartels freely operating in Mexico use precursor chemicals imported from China to manufacture massive amounts of fentanyl, a synthetic opioid that can kill users in amounts as small as *two milligrams*.<sup>102</sup> The cartels then smuggle the fentanyl into the United States, where it is responsible for killing over 60,000 U.S. residents a year.<sup>103</sup> This ongoing crisis (a) is caused by manufacturers in Mexico directly exporting their products to the U.S. – there are no independent third parties; (b) between debilitating addiction and overdose deaths, harms over 100,000 U.S. citizens a year; and (c) dwarfs the number of annual homicide deaths in Mexico. Perhaps the Court should sanction these cartels as “human rights violators,” as well as the Mexican Government, which not only tolerates their existence but denies that fentanyl is even *manufactured* in Mexico.

The Court’s only prior ruling that even approaches this expansive interpretation of the Convention is the Court’s advisory opinion in 2017 establishing a right to a healthy environment.<sup>104</sup> In that decision, the Court not only recognized the environmental right, but that the definition of a State’s “jurisdiction” under Article 1(1) of the Convention – the area within which the State has a responsibility to protect the human rights of residents – includes geographic areas “beyond [the State’s] territorial limits.”<sup>105</sup> This of course was necessary in the environmental context, since pollution or other environmental harm caused by one State will often impact the atmosphere or waterways of other States; that advisory opinion, for example, was prompted by the Government of Colombia’s concerns about marine degradation in the Caribbean region caused by large infrastructure projects in neighboring States.

But even in the environmental context the Court recognized the dangers in holding that States could violate the Convention through lawful domestic activities: immediately after finding that States could be responsible for environmental effects beyond their borders, the Court specifically cautioned that “[t]he exercise of jurisdiction under Article 1(1) of the American Convention outside the territory of a State *is an exceptional situation that must be examined restrictively in each specific case.*”<sup>106</sup> And so it is here. Mexico asks for a ruling that States can violate the Convention through nothing more than lawful, entirely domestic activity, and in circumstances lacking any of the factors that motivated the Court to find and protect a right to a healthy environment.

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<sup>102</sup> See U.S. DRUG ENFORCEMENT ADMINISTRATION, *Facts About Fentanyl*, <https://www.dea.gov/resources/facts-about-fentanyl>.

<sup>103</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *Illicitly Manufactured Fentanyl-Involved Overdose Deaths with Detected Xylazine – United States, January 2019 – June 2022*, [https://www.cdc.gov/mmwr/volumes/72/wr/mm7226a4.htm#:~:text=In%202022%2C%20provisional%20data%20indicated,\(IMFs\)%20\(1\)](https://www.cdc.gov/mmwr/volumes/72/wr/mm7226a4.htm#:~:text=In%202022%2C%20provisional%20data%20indicated,(IMFs)%20(1)).

<sup>104</sup> See INTER-AMERICAN COURT OF HUMAN RIGHTS, Advisory Opinion OC-23/17 (Nov. 15, 2017), [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>105</sup> INTER-AMERICAN COURT OF HUMAN RIGHTS, Advisory Opinion OC-23/17, Official Summary Issued by the Inter-American Court (English Translation), <https://www.corteidh.or.cr/overview.cfm?doc=1886&lang=en>.

<sup>106</sup> *Id.* at ¶ II.d (emphasis added).



### 3. *The Differing Availability of Firearms Along a Mutual, Unsecured Border is a Diplomatic Issue, not a Human Rights Violation*

Ultimately, this matter is a dispute between adjacent States that, because of their differing social and legal development, take substantially different approaches to firearm ownership. The Mexican Constitution does include a right to possess firearms in the home,<sup>107</sup> but in practice that right is much weaker in Mexico than it is in the United States. For example, as Mexico has noted in its U.S. legal actions, there is only one retail gun store in Mexico and the government issues fewer than 50 new gun permits per year.<sup>108</sup> The U.S. conception of this right, as developed over the last two centuries, is obviously much different. Because they share a porous and lengthy border, and despite the good-faith efforts of both States, the firearms more readily available in one of them are too easily illegally transferred to the other.

Mexico would prefer that the U.S. approach to firearm ownership be more like the Mexican one and wants this Court's help in condemning the U.S. firearm industry (and the U.S. government itself) for not playing along. But that is not this Court's role. This is a quintessential diplomatic problem between neighboring States, and it has only a diplomatic solution involving mutual cooperation to secure the border. Mexico knows this but chose, first, to use the U.S. court system to circumvent the diplomatic process and, failing that so far, second, is now using this Court for the same purpose.

Security along the U.S./Mexico border, including the illegal transfer of firearms and drugs, is not a new issue. For over 20 years, the U.S. government has collaborated with the Government of Mexico on various security initiatives. In the early 2000s, former U.S. President George W. Bush worked with former Mexican President Felipe Calderón on border issues, emphasizing that the United States would be a “strong partner” to Mexico in enforcing the rule of law against organized crime and drug trafficking.<sup>109</sup> Presidents Bush and Calderón “addressed very specific issues” on increasing cooperation “to combat drug trafficking, weapons trafficking and other problems along the border.”<sup>110</sup>

Collaboration continued throughout the Bush Administration and, in December 2008, the United States and Mexico signed the first Letter of Agreement for the Merida Initiative, which acknowledged their shared responsibilities to counter drug-fueled violence threatening *both* U.S. and Mexican citizens.<sup>111</sup> Over the past 15 years, the Merida Initiative has funded efforts to reduce gun-related violence and illegal trafficking of firearms and drugs in both countries. In 2011, Mexico and the United States agreed to a new strategic framework for implementing the Merida Initiative, known as the “Four Pillars,” which included (1) disrupting the capacity of organized

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<sup>107</sup> *Constitucion Politica de los Estados Unidos Mexicanos*, Art. X (1917).

<sup>108</sup> Compl. at ¶ 4, *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Case No. 1:21-CV-11269 (Aug. 4, 2021).

<sup>109</sup> *President Bush and President Calderón of Mexico Exchange Dinner Toasts*, THE WHITE HOUSE (Mar. 13, 2007), <https://georgewbush-whitehouse.archives.gov/news/releases/2007/03/20070313-9.html>.

<sup>110</sup> *Id.*

<sup>111</sup> *Merida Initiative*, U.S. EMBASSY & CONSULATES IN MEXICO (Sept. 7, 2021), <https://mx.usembassy.gov/the-merida-initiative/>.

crime to operate by systematically reducing drug trade revenues; (2) institutionalizing Mexico's capacity to sustain the rule of law; (3) creating a modern border structure that facilitates legitimate commerce and movement of people while curtailing the illicit flow of drugs, arms, and cash; and (4) building strong and resilient communities by implementing programs to reduce drug demand and addiction, which the Merida Initiative recognizes as a source of gun-related violence in Mexico.<sup>112</sup>

Since the Merida Initiative, successive U.S. administrations have worked with Mexico to address this problem. Under former President Donald Trump, the United States gave significant financial assistance to Mexico in combatting cartel activity; from 2015 to 2019, for instance, the U.S. Department of State gave Mexico \$54 million to help build capacity to disrupt the illegal trafficking of firearms across the U.S. border, including through forensics training, inspection equipment, and canines trained for weapons detection.<sup>113</sup> In 2020, the ATF established Operation Southbound to coordinate with other agencies to disrupt firearms trafficking to Mexico.<sup>114</sup> The U.S. Immigrations and Customs Enforcement and Customs and Border Protection established a joint operation for the same purpose.<sup>115</sup>

More recently, the administration of President Joseph Biden announced additional joint efforts to “disrupt the trafficking of illicit fentanyl and dismantle firearms trafficking networks.”<sup>116</sup> Like past U.S. presidential administrations, the Biden Administration recognized that “[d]rug traffickers’ supply of firearms enables them to grow their enterprises and move deadly drugs, including illicit fentanyl, into the United States.”<sup>117</sup> In June 2023, senior U.S. government officials, including the Deputy Attorney General, Deputy Homeland Security Secretary, U.S. Ambassador to Mexico, and ATF Director, met to discuss additional near-term solutions,<sup>118</sup> including expanding firearms trafficking investigations, increasing the ATF’s ability to trace firearms in Mexico, and stemming the supply of illegal guns through increased gun safety measures. The Biden Administration announced that it would deepen its collaboration with the Government of Mexico on cross-border security issues.<sup>119</sup> Finally, keeping that promise, last month both governments announced a renewed effort to electronically track firearms seized from

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<sup>112</sup> *Id.*

<sup>113</sup> *Firearms Trafficking, U.S. Efforts to Disrupt Gun Smuggling Into Mexico Would Benefit from Additional Data and Analysis*, U.S. GOV'T ACCOUNTABILITY OFFICE (Feb. 2021), <https://www.gao.gov/assets/gao-21-322.pdf>

<sup>114</sup> *Mexico's Long War: Drugs, Crime, and the Cartels*, COUNCIL ON FOREIGN RELATIONS (Sept. 7, 2022), <https://www.cfr.org/backgrounder/mexicos-long-war-drugs-crime-and-cartels> (hereinafter “*Mexico's Long War*”).

<sup>115</sup> *Id.*

<sup>116</sup> See *FACT SHEET*.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

criminal organizations in Mexico.<sup>120</sup> Senior Mexican officials publicly noted that additional proposals for limiting the illegal importation of firearms were “very well received.”<sup>121</sup>

Critically, all of the above efforts recognize harms on *both* sides of the U.S./Mexico border. As firearms illegally flow from the United States to Mexico, drugs illegally flow from Mexico to the United States. There is no serious debate that Mexican drug cartels control most of the U.S. drug market and dominate the import and distribution of fentanyl, cocaine, heroin, marijuana, and methamphetamine in the United States.<sup>122</sup> Led by fentanyl, these drugs together kill over 100,000 U.S. residents a year,<sup>123</sup> which is more than twice the homicide rate in Mexico from all causes.<sup>124</sup>

Mexico’s submission to the Court is ironic because Mexican government policy has moved away from cooperating with the U.S. on illegal cross-border gun and drug trafficking. Since he was elected in 2018, President Andrés Manuel López Obrador (known as “AMLO” within Mexico) has “sought to end the Merida Initiative and has systematically eviscerated U.S.-Mexico security cooperation, and worse yet, Mexico’s efforts against drug trafficking groups and violent criminality in Mexico and against drug trafficking to the United States.”<sup>125</sup> In doing so, the Government of Mexico is “simply giving up on confronting Mexico’s criminal groups. . . . failing to mount any effective strategy for reducing homicides.”<sup>126</sup> Moreover, AMLO recently claimed that fentanyl *is not even produced in Mexico* and disclaimed responsibility for the flow of illegal drugs from Mexico to the United States.<sup>127</sup> This is obviously, demonstrably false.

Mexico’s submission ignores the cross-border give-and-take between sovereigns, opting instead for a simplistic narrative that only mentions Mexico’s own problems, only blames entities in the U.S. for those problems, and asks the Court to intervene. These issues require long-term bilateral cooperation to resolve massive, co-dependent concerns. The appropriate solution is not an advisory opinion based on one-sided allegations by one party.

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<sup>120</sup> Raul Cortes et al., *Mexico Announces Plan with US to Boost Firearm Tracing*, REUTERS (July 26, 2023), <https://www.reuters.com/world/americas/mexico-announces-plan-with-us-boost-firearm-tracing-2023-07-26/>.

<sup>121</sup> *Id.*

<sup>122</sup> *2020 National Drug Threat Assessment*, U.S. DRUG ENF. ADMIN. (Mar. 2021), [https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment\\_WEB.pdf](https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf) (hereinafter “*2020 National Drug Threat Assessment*”).

<sup>123</sup> *See generally id.*

<sup>124</sup> *Number of Homicides in Mexico, 2015–2021*, STATISTICA, <https://www.statista.com/statistics/959787/mexico-number-homicides/>.

<sup>125</sup> Vanda Felbab-Brown, *U.S.-Mexico Security Collaboration Won’t Be Easily Restructured*, THE BROOKINGS INST. (July 30, 2021), <https://www.brookings.edu/articles/us-mexico-security-collaboration-wont-be-easily-resurrected/>.

<sup>126</sup> *Id.*

<sup>127</sup> *Mexican Officials to Hold Talks in U.S. on Fentanyl Smuggling – President*, REUTERS (Apr. 10, 2023), <https://www.reuters.com/world/americas/mexican-officials-hold-talks-us-fentanyl-smuggling-president-2023-04-10/>.

## II. Mexico Ignores the True Source of Firearm-Related Violence in That Country – the Drug Cartels

Perhaps most alarming about Mexico’s submission is that it completely ignores the actual source of firearm-related violence in that country: drug cartels manufacturing massive quantities of illegal drugs in Mexico. Regardless of the provenance of the weapons used, violence in Mexico is perpetrated by Mexicans using firearms to harm other Mexicans, and the bulk of that violence is committed by the drug cartels operating freely on Mexican soil.

The problem dates back decades. In the 1980s, under the leadership of Miguel Angel Felix Gallardo, crime groups and drug traffickers in Mexico became better organized, assigning distinct regional areas of control for each group and establishing trafficking routes.<sup>128</sup> But as production and distribution of illegal substances increased, these organized gangs began fighting for territorial control, leading to an increase in violence across Mexico. Former Mexican Presidents Calderón and Enrique Peña Nieto took aggressive steps, unsuccessfully, to combat these criminal organizations.<sup>129</sup> In 2006, for example, former President Calderón launched an initiative to combat cartels using military force. In 2012, former President Nieto revisited that strategy, instead building law enforcement capacity and supporting public safety.<sup>130</sup>

These efforts proved fruitless – particularly after the Mexican Sinaloa Cartel leader Joaquin “El Chapo” Guzman was arrested, re-arrested, and extradited to the United States in 2017.<sup>131</sup> That created a “power vacuum” within the Sinaloa Cartel, increasing violence between rival cartels on Mexican soil. By 2016, drug-related homicides in Mexico had increased by 22%,<sup>132</sup> and the national homicide rate per 100,000 people in Mexico has increased since. In 2018, the number of drug-related homicides in Mexico rose to 33,341, reflecting a 15% increase from the previous year and a record high.<sup>133</sup> Moreover, Mexican cartels killed at least 130 candidates and politicians in the lead-up to the 2018 presidential elections in Mexico.<sup>134</sup> Those trends continued in future election years, with dozens of politicians killed ahead of midterm Mexican elections in 2021.<sup>135</sup> Many of those deaths were attributed to Mexican cartels.<sup>136</sup> In 2018, conservative estimates suggested that about 20% of homicides in Mexico were attributable to organized crime.<sup>137</sup>

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<sup>128</sup> *Criminal Violence in Mexico*, COUNCIL ON FOREIGN RELATIONS (Jan. 6, 2023), <https://www.cfr.org/global-conflict-tracker/conflict/criminal-violence-mexico> (hereinafter “*Criminal Violence in Mexico*”); see also *Mexico’s Long War*. Gallardo is currently serving a 40-year prison term for ordering the torture and murder of U.S. DEA Special Agent Enrique “Kiki” Camarena.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*; see also *Criminal Violence in Mexico*.

<sup>134</sup> See *id.*

<sup>135</sup> *Mexico’s Long War*.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*; see also *Organized Crime and Violence in Mexico, 2020 Special Report*, UNIV. OF SAN DIEGO DEP’T OF POLITICAL SCI. & INT’L REL. (2020), <https://justiceinmexico.org/wp-content/uploads/2020/07/OCVM-2020.pdf>.

Mexico makes much of the fact that, starting in 2004, an increase in homicides in Mexico coincided with the repeal of the federal “assault weapons ban” in the United States.<sup>138</sup> There is no causal connection between these two events. Homicide rates in Mexico *decreased* in the three years after the assault weapons ban was repealed,<sup>139</sup> and the available evidence shows that the eventual increase in gun violence resulted, not from an increase in firearm trafficking, but from the Mexican government’s crackdown on drug cartels.<sup>140</sup> As noted above, before 2006, the Government of Mexico took a relatively passive approach to drug cartels and organized gangs.<sup>141</sup> But the election of former Mexican President Calderón prompted a change in policy, as Calderón essentially declared war on the cartels and threatened military force.<sup>142</sup> The cartels responded with violence: from 2007 to 2008, drug-related homicides in Mexico more than doubled, and Mexico’s overall homicide rate rose 57%.<sup>143</sup> The repeal of the assault weapons ban had nothing to do with that surge.

Despite Mexico’s one-sided submission, it is Mexico’s drug cartels that have exacted a horrible toll on human rights in Mexico. For years, civil liberties groups, journalists, and foreign officials have criticized the Mexican government for failing to rein in the cartels.<sup>144</sup> Since 2006, more than 79,000 people have disappeared at the hands of criminal organizations in Mexico.<sup>145</sup> Through efforts like the Merida Initiative, the U.S. government has worked with Mexico to mitigate these human rights violations, which promotes the interests of both countries along a shared border. The U.S. has also aggressively prosecuted senior members of Mexican cartels.<sup>146</sup>

Lawful firearms manufacturers in the U.S. are not the perpetrators of violence in Mexico. Mexican criminals are. Those criminals are the “human rights violators” Mexico should address.

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<sup>138</sup> *Mexico Submission* at 7–8.

<sup>139</sup> David B. Kopel, *Mexico’s Gun-Control Laws: A Model for the United States?*, TEXAS REV. OF LAW & POLITICS, Vol. 18, at 42–44 (2014).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 42.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 43.

<sup>144</sup> *Mexico’s Long War*.

<sup>145</sup> *Id.*

<sup>146</sup> See, e.g., *Sinaloa Cartel Hitman and El Chapo’s Head of Security Extradited to U.S. on Drug Trafficking and Firearm Charges*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (Apr. 5, 2023), <https://www.ice.gov/news/releases/sinaloa-cartel-hitman-and-el-chapos-head-security-extradited-us-drug-trafficking-and> (detailing extradition of Jorge Ivan Gastelum Avila to face international drug trafficking and firearms charges in the United States).


## CONCLUSION

The U.S. firearm industry is carefully regulated and, through NSSF and other means, plays a central role in allowing U.S. citizens to safely exercise their constitutional right to keep and bear arms. While U.S.-made firearms are illegally transferred to Mexico and misused there, the U.S. firearm industry and U.S. government actively work to prevent illegal transfers and, ultimately, that issue will require a diplomatic solution between sovereign states sharing an unsecured border. NSSF urges the Court to reject Mexico's request for an advisory opinion.

Respectfully submitted,

National Shooting Sports Foundation  
6 Corporate Drive, Suite 650  
Shelton, Connecticut 06484  
Tel: 203-426-1320  
Fax: 203-426-1087

Through its legal representative:\*



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Andrew E. Lelling, Esq.  
Brittany N. Wilhelm, Esq.  
JONES DAY  
100 High Street  
Boston, Massachusetts 02110  
Tel: 1-617-449-6856  
Fax: 1-617-449-6999  
Email: [alelling@jonesday.com](mailto:alelling@jonesday.com)

*\*Designated recipient for all communications from the Court. Authentication of this representation, and NSSF's Articles of Incorporation, are attached as Exhibit A.*

**EXHIBIT A**  
*to Amicus Curae Submission*

**Affidavit of Lawrence G. Keane**

**AFFIDAVIT OF LAWRENCE G. KEANE**

I, Lawrence G. Keane, being first duly sworn, state and depose as follows:

1. I am Senior Vice President for Government & Public Affairs, Assistant Secretary & General Counsel at the National Shooting Sports Foundation (“NSSF”). NSSF, a nonprofit trade association based in the United States of America, is the primary trade association for the U.S. firearm industry.

2. Attached as Exhibit A is a true and correct copy of NSSF’s Amended and Restated Certificate of Incorporation. NSSF is incorporated in the State of Connecticut, and its headquarters address, telephone number, and facsimile number are:

National Shooting Sports Foundation  
6 Corporate Drive, Suite 650  
Shelton, Connecticut 06484  
Tel: 1-203-426-1320  
Fax: 1-203-426-1087

3. I submit this Affidavit in Support of NSSF’s Amicus Curiae Submission in Response to the Request for Advisory Opinion Submitted by Mexico to the Inter-American Court of Human Rights (“IACHR”) on November 11, 2022. I make this Affidavit based upon my personal knowledge, as informed by the documents attached hereto and my involvement in this matter.

4. Andrew E. Lelling, a Partner at the law firm of Jones Day, is NSSF’s legal representative in this matter. All official communications and notifications sent by the Court or otherwise related to the proceedings on the requested Advisory Opinion should be directed to Mr. Lelling at Jones Day. Mr. Lelling’s address, email address, telephone number, and facsimile number are:



Andrew E. Lelling, Esq.  
JONES DAY  
100 High Street  
Boston, Massachusetts 02110  
Tel: 1-617-449-6856  
Fax: 1-617-449-6999  
Email: [alelling@jonesday.com](mailto:alelling@jonesday.com)

I declare under penalty of perjury that everything I have stated in this Affidavit is true and correct.

Dated: July 10, 2023

*July 7, 2023*



Lawrence G. Keane  
Senior Vice President for Government & Public  
Affairs, Assistant Secretary and General Counsel  
National Shooting Sports Foundation

Sworn to before me  
this 7<sup>th</sup> day of July 2023.



Notary Public

**Beth A Zullo**  
**NOTARY PUBLIC**  
State of New Hampshire  
My Commission Expires 10/19/2027

**EXHIBIT A**  
*to Affidavit of Lawrence G. Keane*

**NSSF Articles of Incorporation**

# CERTIFICATE OF AMENDMENT NONSTOCK CORPORATION

Office of the Secretary of the State

**MAILING ADDRESS:**  
Commercial Recording Division  
Connecticut Secretary of the State  
P.O. Box 150470  
Hartford, CT 06115-0470  
860-509-6003

**DELIVERY ADDRESS:**  
Commercial Recording Division  
Connecticut Secretary of the State  
30 Trinity Street  
Hartford, CT 06106  
860-509-6003

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Filing Fee: \$10.00

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FILED 03/10/2008 08:30 AM PAGE 02555  
SECRETARY OF THE STATE  
CONNECTICUT SECRETARY OF THE STATE

## 1. NAME OF CORPORATION

NATIONAL SHOOTING SPORTS FOUNDATION, INC.

## 2. THE CERTIFICATE OF INCORPORATION IS (check A, B or C)

A. AMENDED

B. RESTATED

C. AMENDED AND RESTATED

The restated certificate consolidates all amendments into a single document.

## 3. TEXT OF EACH AMENDMENT / RESTATEMENT

SEE ATTACHED AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF THE NATIONAL SHOOTING SPORTS FOUNDATION, INC.

(Please reference an 8 1/2 X 11 attachment if additional space is needed)

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SECRETARY OF THE STATE  
CONNECTICUT SECRETARY OF THE STATE

4. VOTE INFORMATION (check A, B or C.)

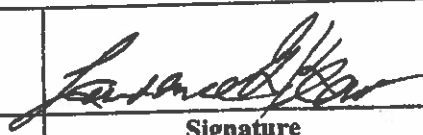
A. The Amendment was duly approved by the members in the manner required by sections 33-1140 to 33-1147 of the Connecticut General Statutes, and by the Certificate of Incorporation.

B. The Amendment was duly approved by the incorporators and member approval was not required.

C. The Amendment was duly approved by the board of directors and member approval was not required.

5. EXECUTION

Dated this 7<sup>th</sup> day of March, 2008.

LAWRENCE G. KEANE	ASST. SECY: SVP & General counsel	
Print or type name of signatory	Capacity of signatory	Signature

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**NATIONAL SHOOTING SPORTS FOUNDATION, INC.**  
**(A Connecticut Nonstock Corporation)**

National Shooting Sports Foundation, Inc., a corporation organized and existing under the laws of the State of Connecticut, does hereby certify:

A. The name of the corporation is "National Shooting Sports Foundation, Inc." The original Certificate of Incorporation of the National Shooting Sports Foundation, Inc. was filed with the Secretary of State of the State of Connecticut on October 27, 1969.

B. This Amended and Restated Certificate of Incorporation restates and amends the original Certificate of Incorporation of the National Shooting Sports Foundation, Inc. to read in its entirety as follows:

1. The name of the corporation is National Shooting Sports Foundation, Inc. (the "Corporation").

2. The Corporation shall be a nonprofit and shall not have or issue shares of stock, pay dividends or make distributions.

3. The Corporation shall be organized to operate as a business league within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986 (the "Code"), as amended, or the corresponding provision of any future United States tax code.

The specific objects and purposes to be promoted or carried out by the

Corporation include:

- a. Protect and advance the general welfare of the hunting and recreational shooting sports industry, including promoting a better understanding of and more active participation in hunting and the shooting sports, improving public perception and attitudes towards the industry, and promoting a political climate supportive of America's traditional firearms rights;
- b. Represent and promote the common interests of and improve business conditions for firearms and ammunition member companies, including delivering programs and services to meet the identified needs of these members;
- c. Inform and educate hunting and recreational shooting sports industry stakeholders about issues and challenges affecting their interests;
- d. Inform and educate the public about the safe and responsible use of member products and the various means in which they can be properly employed;
- e. Support and participate in worthy conservation programs that may be related to hunting and the recreational shooting sports, and to promote public interest therein;
- f. Work with existing groups, associations and government agencies in the interests of advancing hunting and the recreational shooting sports;
- g. Engage in any and all other lawful acts or activities as may be necessary, advisable, proper or incidental in and to the realization of the objectives and purposes listed above, including any lawful act or activity for which corporations may be formed and organized under the Connecticut Revised Nonstock

Corporation Act or any applicable successor act thereto, as the same may be amended from time to time.

Notwithstanding any provision to the contrary herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status as a corporation exempt from federal income taxation as an organization described in Section 501(c)(6) of the Code.

4. No part of the income or net earnings of the Corporation shall inure to the benefit of or be distributable to any director or officer of the Corporation or any company or private individual, except as permitted by law.

5. No substantial part of the activities of the Corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

6. The Corporation is a membership corporation. There shall be two types of membership, one of which shall be voting membership and the other shall be supporting membership. The manner of election or appointment and the qualifications for and privileges of membership in the Corporation shall be those provided in the Bylaws of the Corporation.

7. The activities, property and affairs of the Corporation shall be managed by and under the supervision, control and direction of its Board of Governors. The Governors of the Corporation shall be elected or appointed as provided in the Bylaws of the Corporation.

IN WITNESS WHEREOF, the National Shooting Sports Foundation, Inc. has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this 25<sup>th</sup> day of February, 2008.

NATIONAL SHOOTING SPORTS  
FOUNDATION, INC.



Lawrence G. Keane  
Assistant Secretary; Senior Vice President &  
General Counsel

