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August 16, 2023

VIA EMAIL

Inter-American Court of Human Rights
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Re: 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

Dear Sir or Madam:

Pursuant to Article 44 of the American Convention on Human Rights and Article 73(3) of the Rules of Procedure of the Inter-American Court of Human Rights (the “Court”), the National Shooting Sports Foundation (“NSSF”), a nonprofit trade association based in the United States of America, hereby respectfully submits the enclosed amicus curiae filing in response to the Government of the United Mexican States’ Request for an Advisory Opinion, dated November 11, 2022. Please note that the undersigned legal representative is the designated recipient for all communications from the Court. Authentication of this representation, along with articles of incorporation for NSSF, are attached to the enclosed submission as Exhibit A.

Finally, as indicated in our cover email, a certified Spanish translation of the enclosed submission is forthcoming and will be provided to the Court under separate cover.

Respectfully submitted,



Andrew Lelling

Enclosures

cc: Brittany Wilhelm, Esq.
Jones Day

**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

August 16, 2023

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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.¹ 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.² 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.³ That matter is also pending.

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

² 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.

³ 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.⁴ 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;”⁵ 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.⁶

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,⁷ 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

⁴ 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 (hereinafter “*Mexico Submission*”).

⁵ *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).

⁶ *Id.* at 7, ¶ 6.

⁷ 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.⁸ 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.⁹ 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.¹⁰ It works cooperatively with the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to ensure that all industry members follow federal law.¹¹ NSSF currently has over 10,000 members, including firearm manufacturers, distributors, and retailers; public and private shooting ranges; and sportsmen’s organizations.¹²

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

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

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

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

¹¹ 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.

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

¹³ See *NSSF History*.

agencies.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷ In 2017, bipartisan federal legislation, named after NSSF’s own program, was enacted to implement further improvements to the system.¹⁸
- **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.¹⁹ 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.²⁰ 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.²¹ 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.

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

¹⁵ *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>.

¹⁶ *Id.*

¹⁷ *Id.*

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

¹⁹ *Id.*

²⁰ *Id.*

²¹ 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,²² 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.²³ 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.²⁴ 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.²⁵
- **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.²⁶
- **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.²⁷ NSSF invites presenters from across the federal

²² 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>.

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

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

²⁵ *Id.*

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

²⁷ 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

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.²⁸

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.”²⁹ 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.³⁰ The early colonial experience in North America with militias and military authority also drove the sentiment that eventually resulted in the Second

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

²⁹ 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).

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

Amendment to the U.S. Constitution.³¹ 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.”³² 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.”³³

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.³⁴ 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.”³⁵

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.’”³⁶

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.³⁷ 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.”³⁸ The courts were quick to void laws prohibiting

³¹ 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*”).

³² See *Historical Background* (citing THE FEDERALIST No. 29 (Alexander Hamilton)).

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

³⁴ *Id.*

³⁵ U.S. CONST. AMEND. II (1791).

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

³⁷ 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).

³⁸ *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.³⁹ 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.”⁴⁰

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.⁴¹ 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.⁴² 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.”⁴³

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.⁴⁴ 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.⁴⁵ 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.⁴⁶

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.

³⁹ See *Nunn*, 1 Ga. At 251.

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

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

⁴² *Id.*

⁴³ *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

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

⁴⁵ *Id.*

⁴⁶ *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.⁴⁷ 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.⁴⁸ 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.”⁴⁹ In other words, the PLCAA “limits the types of lawsuits that can be brought against gun manufacturers and distributors” in U.S. courts.⁵⁰

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.⁵¹

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.”⁵² 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

⁴⁷ 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).

⁴⁸ 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).

⁴⁹ *Id.* at § 7901(b)(1).

⁵⁰ 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>.

⁵¹ 15 U.S.C. § 7901(a)(5) (emphasis added).

⁵² *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,⁵³ which “recognizes the role that firearms play in violent crimes and pursues an integrated regulatory and enforcement strategy.”⁵⁴ 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.⁵⁵ 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.⁵⁶ 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.⁵⁷

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.⁵⁸ 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.⁵⁹ Federal firearms licensees also must certify that they have secure gun storage devices available to their customers.⁶⁰

⁵³ 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/>.

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

⁵⁵ 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/>.

⁵⁶ *Id.*

⁵⁷ 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>.

⁵⁸ 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>.

⁵⁹ See ATF Firearms Overview.

⁶⁰ *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.⁶¹ All foreign military sales are highly regulated by the State Department with input from the Department of Defense.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵

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.⁶⁶

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

⁶¹ *Id.*

⁶² *Id.*

⁶³ *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.”).

⁶⁴ 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>.

⁶⁵ See *FACT SHEET*.

⁶⁶ *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.⁶⁷

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.”⁶⁸ 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?⁶⁹

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:

⁶⁷ 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>.

⁶⁸ *Id.* at 1.

⁶⁹ *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.⁷⁰

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?⁷¹

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.⁷² 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.”⁷³ 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.”⁷⁴ There are good reasons for caution. The purpose of the advisory opinion process is to interpret international

⁷⁰ 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>.

⁷¹ *Mexico Submission* at 5.

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

⁷³ *Id.* at ¶ 1.

⁷⁴ *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.⁷⁵ Here, Mexico asks the Court to take its side in an existing case that Mexico itself filed (seeking \$10,000,000,000 in damages),⁷⁶ 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.”⁷⁷

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

⁷⁵ *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.

⁷⁶ 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>.

⁷⁷ *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.⁷⁸

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.⁷⁹ 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.⁸⁰

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.⁸¹ 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.

⁷⁸ 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>.

⁷⁹ 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>).

⁸⁰ 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.

⁸¹ 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.⁸² 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.⁸³

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.”⁸⁴

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.”⁸⁵ 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.”⁸⁶ This includes the Government of Mexico, which has often sought relief in U.S. courts.⁸⁷

⁸² *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.

⁸³ *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.”).

⁸⁴ *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).

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

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

⁸⁷ *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.⁸⁸ 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?⁸⁹

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,⁹⁰ *what kinds* of arms can be owned by private citizens,⁹¹ *where and when* arms can

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).

⁸⁸ *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.”).

⁸⁹ *Mexico Submission* at 5.

⁹⁰ *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).

⁹¹ *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,⁹² who is allowed to *sell them*,⁹³ and what steps must be followed to *sell them legally and safely*.⁹⁴ 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.⁹⁵ 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,”⁹⁶ 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.”⁹⁷

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:

⁹² 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).

⁹³ 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.”).

⁹⁴ 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).

⁹⁵ 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).

⁹⁶ *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.”).

⁹⁷ 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.*⁹⁸

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

⁹⁸ *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.⁹⁹ 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.”¹⁰⁰ It then urges the Court to *itself* decide the appropriate level of “due diligence”¹⁰¹ 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.

⁹⁹ *Mexico Submission* at 10–11.

¹⁰⁰ *Id.* at 12 (emphasis added).

¹⁰¹ *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*.¹⁰² The cartels then smuggle the fentanyl into the United States, where it is responsible for killing over 60,000 U.S. residents a year.¹⁰³ 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.¹⁰⁴ 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.”¹⁰⁵ 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.*”¹⁰⁶ 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.

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

¹⁰³ 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)).

¹⁰⁴ 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.

¹⁰⁵ 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>.

¹⁰⁶ *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,¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ Presidents Bush and Calderón “addressed very specific issues” on increasing cooperation “to combat drug trafficking, weapons trafficking and other problems along the border.”¹¹⁰

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.¹¹¹ 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

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

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

¹⁰⁹ *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>.

¹¹⁰ *Id.*

¹¹¹ *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.¹¹²

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.¹¹³ In 2020, the ATF established Operation Southbound to coordinate with other agencies to disrupt firearms trafficking to Mexico.¹¹⁴ The U.S. Immigrations and Customs Enforcement and Customs and Border Protection established a joint operation for the same purpose.¹¹⁵

More recently, the administration of President Joseph Biden announced additional joint efforts to “disrupt the trafficking of illicit fentanyl and dismantle firearms trafficking networks.”¹¹⁶ 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.”¹¹⁷ 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,¹¹⁸ 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.¹¹⁹ Finally, keeping that promise, last month both governments announced a renewed effort to electronically track firearms seized from

¹¹² *Id.*

¹¹³ *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>

¹¹⁴ *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*”).

¹¹⁵ *Id.*

¹¹⁶ See *FACT SHEET*.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

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

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.¹²² Led by fentanyl, these drugs together kill over 100,000 U.S. residents a year,¹²³ which is more than twice the homicide rate in Mexico from all causes.¹²⁴

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.”¹²⁵ 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.”¹²⁶ 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.¹²⁷ 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.

¹²⁰ 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/>.

¹²¹ *Id.*

¹²² *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%20WEB.pdf> (hereinafter “*2020 National Drug Threat Assessment*”).

¹²³ *See generally id.*

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

¹²⁵ 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/>.

¹²⁶ *Id.*

¹²⁷ *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.¹²⁸ 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.¹²⁹ 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.¹³⁰

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 2017.¹³¹ 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%,¹³² 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.¹³³ Moreover, Mexican cartels killed at least 130 candidates and politicians in the lead-up to the 2018 presidential elections in Mexico.¹³⁴ Those trends continued in future election years, with dozens of politicians killed ahead of midterm Mexican elections in 2021.¹³⁵ Many of those deaths were attributed to Mexican cartels.¹³⁶ In 2018, conservative estimates suggested that about 20% of homicides in Mexico were attributable to organized crime.¹³⁷

¹²⁸ *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.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*; see also *Criminal Violence in Mexico*.

¹³⁴ See *id.*

¹³⁵ *Mexico’s Long War*.

¹³⁶ *Id.*

¹³⁷ *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.¹³⁸ 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,¹³⁹ 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.¹⁴⁰ As noted above, before 2006, the Government of Mexico took a relatively passive approach to drug cartels and organized gangs.¹⁴¹ 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.¹⁴² 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%.¹⁴³ 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.¹⁴⁴ Since 2006, more than 79,000 people have disappeared at the hands of criminal organizations in Mexico.¹⁴⁵ 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.¹⁴⁶

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.

¹³⁸ *Mexico Submission* at 7–8.

¹³⁹ 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).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 42.

¹⁴² *Id.*

¹⁴³ *Id.* at 43.

¹⁴⁴ *Mexico’s Long War*.

¹⁴⁵ *Id.*

¹⁴⁶ 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,

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

**ESCRITO DE *AMICUS CURIAE* EN RESPUESTA A LA SOLICITUD DE OPINIÓN
CONSULTIVA PRESENTADA POR MÉXICO ANTE LA CORTE
INTERAMERICANA DE DERECHOS HUMANOS EL 11 DE NOVIEMBRE DE 2022**

**Presentado por la National Shooting Sports Foundation
(Fundación Nacional para Deportes de Tiro)**

16 de agosto de 2023

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ABREVIATURAS

En estas observaciones se utilizan las siguientes abreviaturas:

CADH	Convención Americana sobre Derechos Humanos
AFSP	Fundación Americana para la Prevención del Suicidio
ATF	Oficina de Alcohol, Tabaco, Armas de Fuego y Explosivos de los EE. UU.
Corte o CIDH	Corte Interamericana de Derechos Humanos
PIDCP	Pacto Internacional de Derechos Civiles y Políticos
DEA	Administración para el Control de Drogas de los Estados Unidos
FBI	Oficina Federal de Investigaciones de los Estados Unidos
GCA	Ley de Control de Armas
NICS	Sistema Nacional de Verificación Instantánea de Antecedentes Penales
NSSF	National Shooting Sports Foundation (Fundación Nacional para Deportes de Tiro)
México	Estados Unidos Mexicanos
OEA	Organización de los Estados Americanos
PLCAA	Ley de Protección del Comercio Legal de Armas
EE. UU.	Estados Unidos de América

PRESENTACIÓN DE LA SOLICITUD E INTERÉS DEL *AMICUS CURIAE*

De conformidad con el artículo 44 de la Convención Americana sobre Derechos Humanos (“CADH”) y el artículo 73(3) del Reglamento de la Corte Interamericana de Derechos Humanos (“CIDH” o la “Corte”), la National Shooting Sports Foundation (Fundación Nacional para Deportes de Tiro) (“NSSF”), una asociación profesional sin fines de lucro con sede en los Estados Unidos de América, presenta este escrito de *amicus curiae* en respuesta a la Solicitud de Opinión Consultiva del Gobierno de los Estados Unidos Mexicanos (“México”), de fecha 11 de noviembre de 2022.

Durante más de 60 años, la NSSF ha trabajado con la industria estadounidense de armas de fuego para promover el uso seguro de las armas de fuego y proteger el derecho fundamental a poseer y portar armas en los Estados Unidos. Como asociación profesional nacional de dicha industria, la NSSF representa los intereses económicos de los fabricantes, distribuidores y vendedores minoristas de armas de fuego afectados por la solicitud de México. La NSSF realiza este escrito porque la solicitud de México a la Corte caracteriza erróneamente a la industria de armas de fuego de los Estados Unidos, intenta utilizar a la Corte como herramienta para favorecer las probabilidades de México en el litigio en trámite contra esa industria, e ignora la propia complicidad de México en la violencia armada que denuncia.

Los miembros de la NSSF están sometidos a una fuerte regulación por parte del Gobierno de los EE. UU., los gobiernos de los 50 estados y numerosas localidades, ya que participan en el comercio relacionado con las armas de fuego que es completamente legal dentro de los Estados Unidos. Esa actividad comercial es la que permite a los ciudadanos estadounidenses ejercer su derecho a poseer y portar armas, que es un derecho garantizado por la Segunda Enmienda de la Constitución de los Estados Unidos. Cualquier decisión de esta Corte a la luz de la solicitud de México de una opinión consultiva afectará a los miembros de la NSSF y a sus capacidad para poner armas de fuego a disposición de los ciudadanos estadounidenses de conformidad con las leyes federales y estatales de los Estados Unidos.

RESUMEN EJECUTIVO

La Corte debe rechazar la invitación de México a emitir una opinión consultiva, principalmente porque se trata de una jugada internacional con intención de mejorar la posición de México en litigios internos ante los tribunales de los Estados Unidos. Dos años atrás, México presentó una demanda ante un tribunal federal estadounidense contra la mayoría de los principales fabricantes estadounidenses de armas de fuego.¹ México alegó que los fabricantes estadounidenses de armas de fuego son responsables de la violencia armada en México porque, aunque solo venden sus productos en los Estados Unidos y únicamente a quienes superan una verificación de antecedentes, algunas de esas armas de fuego se introducen de contrabando en México y son utilizadas por los carteles de la droga y otras bandas organizadas.² La demanda fue desestimada en virtud de la legislación estadounidense y ahora se encuentra en trámite de apelación. Hace

¹ Véase en general Compl., *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Expediente N.º 1:21-CV-11269 (Distrito de Massachusetts, 4 de agosto de 2021).

² El tráfico transfronterizo de armas de fuego es ilegal tanto en los Estados Unidos como en México. Véase 18 U.S.C. § 922; *Federal Law of Firearms and Explosives*, Título III, Cap. III, Art. 55.

menos de un año, México interpuso una *segunda* acción legal ante un tribunal estadounidense, esta vez contra cinco vendedores minoristas de armas de fuego cercanos a la frontera entre los Estados Unidos y México.³ Este proceso también sigue en trámite.

Los argumentos de México en esos casos son idénticos a los de su solicitud a esta Corte.⁴ Sin embargo, en ninguna parte de su escrito México menciona las demandas interpuestas en los Estados Unidos. Esto se debe a que México sabe que le está pidiendo a la Corte que interfiera en un litigio pendiente al emitir una opinión consultiva que contradiga una decisión reciente de un tribunal estadounidense, adelantándose a una apelación en trámite de esa decisión y haciendo caso omiso de 200 años de derecho constitucional y federal de los Estados Unidos. Además, para llegar a las conclusiones a las que México le pide que llegue, la Corte se vería obligada a decidir cuestiones de hecho específicas y controvertidas que no pueden resolverse en este contexto. Las cuestiones que México plantea no “no se refieren exclusivamente a cuestiones de derecho o interpretación de tratados”;⁵ por el contrario, requerirían que la Corte realizara complejas determinaciones fácticas sobre, por ejemplo, la secuencia de hechos por los que las armas de fuego que se fabrican, distribuyen y venden *legalmente* en los Estados Unidos llegan *ilegalmente* a México a través de compradores testaferros o prestanombres, contrabandistas y otros delincuentes; el alcance de los esfuerzos de la industria de las armas de fuego y del Gobierno de los Estados Unidos para disuadir esa actividad ilegal; el alcance de los esfuerzos de los Gobiernos de los Estados Unidos y México para reforzar una extensa y porosa frontera; y los esfuerzos concertados de los carteles mexicanos de la droga para subvertir esos esfuerzos. En el marco de las opiniones consultivas, la función de la Corte es interpretar el significado y la finalidad de las convenciones internacionales de derechos humanos, y no formular conclusiones fácticas sobre la responsabilidad jurídica de entidades privadas basadas en nada más que las acusaciones de una parte en una carta de diez páginas.⁶

El escrito de México también requiere que la Corte ignore las tradiciones legales y culturales profundamente arraigadas de los Estados Unidos, que se basan en los derechos de larga data a portar armas respaldados por la historia inglesa prerrevolucionaria; la Segunda Enmienda de la Constitución de los Estados Unidos (en vigor desde hace más de 230 años); decisiones de la

³ Véase Compl., *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc. et al.*, Expediente N.º 4:22-CV-00472 (Distrito de Arizona, 10 de octubre de 2022).

⁴México solicita una opinión sobre dos cuestiones principales: (1) “La responsabilidad de entidades privadas dedicadas a la manufactura, distribución y venta de armas de fuego, en relación con violaciones a la protección del derecho a la vida y a la integridad personal en virtud de la negligencia en la que incurren al desarrollar sus actividades comerciales, que pone en riesgo directo la vida de las personas bajo jurisdicción de los Estados miembros de la Organización de los Estados Americanos”; y (2) “Los esfuerzos que los Estados deben emprender para garantizar la protección judicial en favor de las víctimas de las prácticas comerciales antes descritas por parte de entidades privadas dedicadas a la manufactura, distribución y venta de armas de fuego”. *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos por los Estados Unidos Mexicanos* (11 de noviembre de 2022), https://www.corteidh.or.cr/docs/opiniones/soc_1_2022_es.pdf (en adelante “*Escrito de México*”). [Nota del traductor: Las direcciones URL incluidas en la presente traducción corresponden a las respectivas versiones en español, siempre que existan, de los citados en el escrito original en inglés.]

⁵ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 9, párr. 13 (con cita de Opinión Consultiva OC-16/99 del 1 de octubre de 1999. Serie A N° 16, párr. 46).

⁶ *Íd.*, pág. 7, párr. 6.

Corte Suprema de los Estados Unidos de fecha tan reciente como el año pasado; y un sistema de gran alcance de regulación federal, estatal y local de armas de fuego. Estas leyes y tradiciones han evolucionado a lo largo del tiempo para lograr un equilibrio entre la seguridad pública y el derecho a poseer y portar armas. Ello incluye amparar a los fabricantes frente a la responsabilidad legal cuando terceros hacen un mal uso independiente de sus productos, porque de lo contrario los fabricantes dejarían de operar en los EE. UU., las armas de fuego no estarían a la venta y los ciudadanos no podrían ejercer su derecho a portar armas. México protesta en sentido contrario,⁷ pero no hay duda de que pretende que la Corte pase por alto y desestime todas estas arraigadas tradiciones internas e imponga el modelo que México prefiere.

Por último, la ironía central de la solicitud de México es que el origen evidente de la violencia en ese país es el reinado sin control de los carteles organizados de la droga, y no la industria estadounidense de armas de fuego que vende legalmente armas de fuego a ciudadanos estadounidenses en los Estados Unidos. Durante décadas, México (a menudo con ayuda de los Estados Unidos) ha lidiado con este problema, que no solo es la causa de una parte sustancial de los homicidios en México, sino de la mayor parte de las drogas ilegales disponibles en los Estados Unidos. Recientemente, sin embargo, el Gobierno mexicano ha rechazado de manera inexplicable la ayuda de los Estados Unidos en materia de seguridad, a pesar de que el tráfico de drogas y armas de fuego sigue en aumento y los carteles amenazan el control estatal en algunas zonas de México. La incapacidad del Gobierno mexicano para abordar este problema no es culpa de una industria privada que opera en un país vecino, y la invitación de México a que la Corte decida lo contrario también invita a una peligrosa expansión de la forma en que la Corte interpreta y aplica la CADH a los Estados miembros.

Por estas razones y a la luz de las observaciones adicionales que se exponen a continuación, la Corte debe rechazar la solicitud de opinión consultiva presentada por México.

ANTECEDENTES

I. La NSSF ha trabajado con la industria y el gobierno durante más de 60 años para proteger los derechos amparados por la Segunda Enmienda y promover el uso seguro de las armas de fuego

La NSSF es la principal asociación profesional del sector de las armas de fuego de los Estados Unidos, y cuenta con una larga trayectoria de colaboración con dicho sector para proteger y promover los derechos amparados por la Segunda Enmienda de todos los ciudadanos estadounidenses.⁸ La NSSF, fundada en 1961, es una organización sin fines de lucro regida por las leyes de los Estados Unidos y dirigida por una Junta de Gobernadores que, colectivamente, cuenta con décadas de experiencia en la producción y distribución nacional de armas de fuego de uso

⁷ Véase *Escrito de México*, págs. 11–12 (“Así, el Estado mexicano desea ser enfático respecto a que la presente solicitud está orientada a explorar las implicaciones jurídicas de las prácticas negligentes por parte de actores privados, y no se enfoca en el derecho soberano que algunos Estados confieren a sus ciudadanos para la adquisición y posesión de armas de fuego con motivo de protección personal”).

⁸ *About NSSF*, NSSF (última visita el 12 de julio de 2023), <https://www.nssf.org/about-us/> (en adelante “*About NSSF*”).

legal.⁹ La NSSF promueve un mayor conocimiento de los deportes de caza y tiro y colabora con el sector en cuestiones tales como el uso seguro de las armas de fuego y el cumplimiento de las reglamentaciones gubernamentales.¹⁰ Trabaja en colaboración con la Oficina de Alcohol, Tabaco, Armas de Fuego y Explosivos de los Estados Unidos (“ATF”, por sus siglas en inglés) para garantizar que todos los miembros del sector cumplan con la legislación federal.¹¹ La NSSF cuenta actualmente con más de 10.000 miembros, entre los que se incluyen fabricantes, distribuidores y tiendas minoristas de armas de fuego, campos de tiro públicos y privados y organizaciones de deportistas.¹²

La misión principal de la NSSF es la seguridad de las armas de fuego,¹³ un objetivo compartido por los miembros de la industria y promovido a través de asociaciones con dichos miembros, el Gobierno de los Estados Unidos y las fuerzas del orden.¹⁴ Con la cooperación activa de la industria estadounidense de las armas de fuego, la NSSF ha organizado numerosas iniciativas destinadas a poner fin a la adquisición ilegal y el uso indebido de armas de fuego:

- **FixNICS®.** En colaboración con los fabricantes, distribuidores y vendedores minoristas de armas de fuego de los Estados Unidos, la NSSF participa en FixNICS, una campaña lanzada en 2013 para desalentar las compras ilegales de armas de fuego a minoristas.¹⁵ Cuando alguien intenta comprar un arma de fuego en los Estados Unidos, el vendedor –un minorista con licencia federal– está obligado por la legislación federal a consultar una base de datos denominada Sistema Nacional de Verificación Instantánea de Antecedentes Penales (“NICS”, por sus siglas en inglés) de la Oficina Federal de Investigaciones (“FBI”, por sus siglas en inglés) de los Estados Unidos. Los vendedores minoristas recurren al NICS para evitar la venta de armas de fuego a quienes tienen prohibido poseerlas legalmente, por ejemplo, cualquier persona que haya sido condenada por un delito grave con arreglo a la legislación estadounidense.¹⁶ A través

⁹ *Íd.*; véase también *NSSF Board of Governors*, NSSF (última visita el 12 de julio de 2023), <https://www.nssf.org/about-us/nssf-board-of-governors/>.

¹⁰ *NSSF History*, NSSF (última visita el 12 de julio de 2023), <https://www.nssf.org/about-us/nssf-history/> (en adelante, “*NSSF History*”).

¹¹ Véase, por ejemplo, Comunicado de prensa, *ATF Director: Firearm Industry Programs Work to Reduce Crime, Firearm Accidents*, NSSF (7 de abril de 2023), <https://www.nssf.org/articles/atf-director-firearm-industry-programs-work-to-reduce-crime-firearm-accidents/> (con cita del Director de la ATF: “Estuve en St. Louis esta semana con–participando en un evento con la National Shooting Sports Foundation, ¿correcto? Es la organización que representa a la industria de armas de fuego. Se trata de brindar información a los comerciantes de armas de fuego para que no permitan las ventas a compradores testaferreros.”); véase también *infra*, págs. 4-5.

¹² Véase *About NSSF*; véase también *National Hunting and Fishing Day*, NFH DAY (última visita el 12 de julio de 2023), <https://nhfd.org/>.

¹³ Véase *NSSF History*.

¹⁴ *Who We Are*, NSSF REAL SOLUTIONS (última visita el 12 de julio de 2023), <https://www.nssfrealolutions.org/about/>.

¹⁵ *FixNICS*, NSSF REAL SOLUTIONS (última visita el 12 de julio de 2023), <https://www.nssfrealolutions.org/programs/fixnics/>; véase también *NSSF’s FixNICS Campaign*, NSSF FAST FACTS (última visita el 31 de mayo de 2023), <https://www.nssf.org/wp-content/uploads/2021/07/NSSF-factsheet-FixNICS-Federal.pdf>.

¹⁶ *Íd.*

de FixNICS, la NSSF y el sector han reforzado y mejorado la precisión del sistema de verificación de antecedentes; por ejemplo, se ha producido un aumento del 270 % en el número de registros de inhabilitación incorporados al sistema NICS desde que se estableció FixNICS en 2013, esto significa que la base de datos contiene ahora información mucho más amplia sobre las personas que tienen prohibida la compra de armas de fuego.¹⁷ En 2017, se promulgó una legislación federal bipartidista, que lleva el nombre del propio programa de la NSSF, para aplicar nuevas mejoras al sistema.¹⁸

- **Don't Lie for the Other Guy®.** De particular relevancia para la solicitud de opinión consultiva presentada por México es la iniciativa de la NSSF “Don't Lie for the Other Guy” (No mientas por el otro), que se centra en las compras por testafierros y otras compras ilegales de armas de fuego a lo largo de la frontera entre los EE. UU. y México. El programa tiene dos facetas: en primer lugar, la NSSF ayuda a informar a los comerciantes minoristas cómo detectar y prevenir las compras por testafierros ilegales.¹⁹ En segundo lugar, la NSSF coordina una campaña de anuncios de servicio público, en mercados mediáticos elegidos por la ATF, para advertir a los potenciales compradores testafierros acerca de las penas por cometer ese delito.²⁰ Los anuncios de la NSSF hacen hincapié en que es un *delito federal* en los Estados Unidos comprar un arma de fuego para alguien que no esté legalmente autorizado a poseerla, y que existen graves consecuencias legales por hacerlo.²¹ La NSSF y la ATF proporcionan materiales de capacitación de la iniciativa Don't Lie for the Other Guy (incluida la señalización en las tiendas dirigida a los potenciales compradores testafierros) y anuncios de servicio público tanto en español como en inglés.

Las recientes noticias generalizadas sobre el aumento de la violencia de los carteles en México ilustran la importancia de los programas como Don't Lie for the Other Guy,²² y los miembros de la NSSF reconocen la necesidad de desalentar las compras ilegales independientemente del origen del arma de fuego o del lugar donde se vaya a utilizar. Desde 1999, la NSSF y la ATF han promovido Don't Lie for the Other Guy en 49 ciudades de los EE. UU. y muchas de esas ciudades –como Laredo (Texas), El Paso (Texas), Brownsville (Texas) y Las Cruces (Nuevo México)– se encuentran a lo largo de la frontera entre los EE. UU. y México. En otras palabras, durante años la NSSF y la industria de las armas de fuego han apoyado específicamente medidas para prevenir la transferencia ilegal de armas a México.

- **Operation Secure Store®.** La NSSF y sus miembros del sector reconocen que las armas de fuego robadas a comercios minoristas con licencia federal representan una

¹⁷ *Íd.*

¹⁸ Véase Consolidated Appropriations Act, 2018 firmada como Pub. L. 115-141 (23 de marzo de 2018).

¹⁹ *Íd.*

²⁰ *Íd.*

²¹ Véase 18 U.S.C. § 932 (que prohíbe la compra de armas de fuego mediante testafierros en los Estados Unidos).

²² Véase *Don't Lie for the Other Guy*, NSSF FAST FACTS (última visita el 12 de julio de 2023), <https://www3.nssf.org/share/factsheets/PDF/Don'tLieFastFacts.pdf>.

importante amenaza para la seguridad pública en los Estados Unidos y en otros países. La NSSF ha trabajado en colaboración con la ATF para crear Operation Secure Store (Operación Tienda Segura), una iniciativa conjunta para ayudar a los vendedores minoristas a mejorar la seguridad y la transferencia de armas de fuego a nivel minorista.²³ Como parte de la iniciativa, la NSSF incluso iguala las ofertas por la ATF al público de recompensas por aportar información sobre robos de armas de fuego.

- **Project ChildSafe®.** En 1999, la NSSF puso en marcha Project ChildSafe, una iniciativa de alcance nacional destinada a promover la responsabilidad por las armas de fuego y a brindar educación sobre seguridad a los propietarios de armas, a los jóvenes y a los niños.²⁴ A través de más de 15.000 asociaciones con organismos de seguridad, la NSSF ha distribuido gratuitamente más de 40 millones de kits de seguridad para armas de fuego, que incluyen candados para pistolas, entre los propietarios de armas de fuego de los 50 estados y cinco territorios de los Estados Unidos. Junto con los fabricantes de armas estadounidenses, que han proporcionado más de 70 millones de dispositivos de bloqueo gratuitos con las nuevas armas de fuego vendidas desde 1998, Project ChildSafe ayuda a prevenir accidentes, robos y usos indebidos de las armas de fuego.²⁵
- **Capacitación para el cumplimiento de la normativa.** La NSSF organiza numerosos seminarios sobre cumplimiento de la normativa para miembros de la industria de las armas de fuego, tanto por su cuenta como en colaboración con la ATF. Estos seminarios están principalmente dirigidos a los comerciantes minoristas y tratan temas como las prácticas de auditoría interna, las condiciones cambiantes del mercado, las mejores prácticas para los envíos de armas de fuego y municiones, así como el cumplimiento de las políticas y reglamentaciones de la ATF.²⁶
- **Conferencia Anual sobre Importación y Exportación.** La NSSF patrocina cada año la Conferencia Anual sobre Importación y Exportación en Washington, D.C. Se trata de la conferencia de este tipo con mayor asistencia en los Estados Unidos.²⁷ La NSSF invita a ponentes de todo el gobierno federal, incluida la ATF, la Dirección de Controles Comerciales de Defensa del Departamento de Estado de los EE. UU., la Oficina de Industria y Seguridad del Departamento de Comercio de los EE. UU., el Departamento de Seguridad Nacional de los EE. UU. y la Patrulla de Aduanas y Protección Fronteriza de los EE. UU., entre otros. La conferencia dura dos días y medio y en ella se imparte formación sobre el cumplimiento de la normativa, en la que se

²³ *Operation Secure Store*, NSSF REAL SOLUTIONS (última visita el 12 de julio de 2023), <https://www.nssfrealolutions.org/programs/operation-secure-store/>.

²⁴ *Project ChildSafe*, NSSF REAL SOLUTIONS (última visita el 12 de julio de 2023), <https://www.nssfrealolutions.org/programs/project-childsafe/>.

²⁵ *Íd.*

²⁶ Véase *2023 Firearm Industry Compliance Education Webinars*, NSSF (última visita el 12 de julio de 2023), <https://www.nssf.org/articles/2023-firearm-industry-compliance-education/>.

²⁷ Véase, por ejemplo, *2023 NSSF Annual Import/Export Conference*, NSSF (última visita el 12 de julio de 2023), <https://www.nssf.org/event/2023-nssf-annual-import-export-conference/>.

aborda *específicamente* cómo importar y exportar de forma legal armas de fuego y municiones, y se advierte a los participantes acerca de las consecuencias de transportar de forma ilegal armas de fuego a puntos situados fuera de los Estados Unidos.

Por último, la NSSF ha mantenido negociaciones directas con el Gobierno mexicano sobre las mismas cuestiones subyacentes a la solicitud de opinión consultiva presentada por México. Durante la Administración Obama, el Gobierno de México amenazó públicamente con demandar a la industria de armas de fuego estadounidense. En respuesta a ello, el Director de Asuntos Jurídicos de la NSSF, junto con un ex Director Interino de la ATF, se reunieron con el entonces embajador de México en los Estados Unidos en la Embajada de México en Washington, D.C. El grupo analizó los esfuerzos de la industria en materia de cumplimiento normativo, como la cooperación con las autoridades federales competentes y el programa “Don't Lie for the Other Guy” expuesto anteriormente. Las autoridades mexicanas no aceptaron la oferta de la NSSF de proporcionar materiales sobre el programa “Don't Lie”, pero también optaron finalmente por no iniciar acciones legales.

II. El derecho a poseer y portar armas es un componente fundamental de la historia constitucional de los EE. UU.

El derecho constitucional disfrutado por los ciudadanos estadounidenses a poseer y portar armas de fuego es lo que impulsa el trabajo de la NSSF y de los miembros de su sector.

A. La Constitución de los Estados Unidos reconoce el derecho a poseer y portar armas desde hace más de 230 años

Estados Unidos es único entre los Estados miembros de la Organización de Estados Americanos (“OEA”) en un aspecto fundamental: la Constitución de los Estados Unidos protege expresamente el derecho individual fundamental a poseer y portar armas y, en virtud de la legislación estadounidense, la Constitución prevalece sobre toda otra norma de derecho interno: cualquier legislación o decisión judicial que entre en conflicto con la Constitución es nula. En consecuencia, el derecho a portar armas es defendido y protegido sistemáticamente por los tribunales de los Estados Unidos y, desde la fundación del país, los ciudadanos estadounidenses han ejercido ese derecho a diario.²⁸

El derecho de los ciudadanos estadounidenses particulares a poseer armas se remonta al menos a la Declaración de Derechos inglesa de 1689, que establecía que “los súbditos, que son protestantes, puedan tener armas para su [defensa] adecuadas a su condición y según lo permitida la ley”.²⁹ Esta disposición fue una reacción a los esfuerzos del gobierno por utilizar “milicias leales” para “controlar y desarmar a los disidentes” y potenciar el ejército permanente de la Corona inglesa.³⁰ La temprana experiencia colonial en Norteamérica con las milicias y la autoridad militar

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

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

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

también impulsó el sentimiento que con el tiempo dio lugar a la Segunda Enmienda de la Constitución de los Estados Unidos.³¹ En los años anteriores a la fundación de los Estados Unidos, existían milicias de ciudadanos “procedentes de la comunidad local para proveer a la defensa común, y los ejércitos permanentes de soldados profesionales eran vistos por algunos con recelo”.³² A su vez, en 1776, la Declaración de Independencia de los Estados Unidos del dominio británico enumeró varios agravios contra el rey Jorge III, entre ellos que el soberano británico había “intentado que el poder militar fuera independiente y superior al poder civil” y había “mantenido entre nosotros, en tiempos de paz, ejércitos permanentes sin el consentimiento de nuestras asambleas legislativas”.³³

Como parte de la reacción a esta opresión, tras la guerra de independencia de los Estados Unidos varios estados codificaron el derecho a portar armas en sus constituciones estatales.³⁴ Varios años más tarde, la segunda de las diez enmiendas iniciales a la constitución federal, recién ratificada por los estados, consagró el derecho a poseer y portar armas para todos los ciudadanos de la nueva nación. Esa enmienda, en términos que permanecen inalterados desde 1791, dice: “Por ser necesaria para la seguridad de un Estado libre una milicia bien regulada, no se restringirá el derecho del pueblo a poseer y portar armas”.³⁵

B. Los tribunales federales de los Estados Unidos defienden de forma sistemática este derecho constitucional contra la injerencia estatal

El derecho consagrado en la Segunda Enmienda a poseer y portar armas no es latente o beneficioso: los tribunales estadounidenses lo han protegido y reafirmado sistemáticamente. A lo largo de los dos últimos siglos, la legislación estadounidense ha evolucionado para equilibrar los riesgos inherentes al hecho de que los ciudadanos ejerzan el derecho a poseer armas peligrosas, aunque los tribunales de los Estados Unidos siempre han dejado en claro que el derecho está “profundamente arraigado en la historia y la tradición [de los Estados Unidos]”.³⁶

Por ejemplo, en el siglo XIX y principios del XX, los tribunales estadounidenses protegieron sistemáticamente el derecho individual a portar armas frente a los diversos intentos del gobierno de limitarlo.³⁷ A mediados y finales del siglo XIX, los tribunales estatales de todo el país reconocieron el derecho a portar armas como un derecho “garantizado por la Constitución” y

³¹ Véase *íd.*; véase también *Historical Background of the Second Amendment*, CORNELL LAW LEGAL INFO. INST. (última visita el 12 de julio de 2023), <https://www.law.cornell.edu/constitution-conan/amendment-2/historical-background-of-the-second-amendment#fn2> (en adelante “*Historical Background*”); Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. REV. 793 (1998) (en adelante “*The Commonplace Second Amendment*”)

³² Véase *Historical Background* (con cita de THE FEDERALIST No. 29 [Alexander Hamilton]).

³³ *Íd.* (con cita de THE U.S. DECLARATION OF INDEPENDENCE, párrafos 13-14 [EE. UU. 1776]).

³⁴ *Íd.*

³⁵ U.S. CONST. AMEND. II (1791).

³⁶ *McDonald V. Chicago*, 561 U.S. 742, 767 (2010) (con cita de *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

³⁷ Véase, por ejemplo, *The Commonplace Second Amendment*; Nelson Lund, *The Past and Future of the Individual’s Right to Arms*, 31 GA. L. REV. 1 (1996).

“calculado para incitar a los hombres a una defensa varonil y noble de sí mismos, si fuera necesario, y de su país”.³⁸ Los tribunales no tardaron en declarar nulas las leyes que prohibían a los ciudadanos portar armas abiertamente.³⁹ Años más tarde, en 1939, la Corte Suprema de los EE. UU. dictó una sentencia que vinculaba el derecho consagrado en la Segunda Enmienda a la importancia de las milicias civiles, reconociendo la expectativa de que los hombres llamados al servicio “se presenten portando armas *suministradas por ellos mismos* y del tipo de uso común en ese momento”.⁴⁰

En el siglo XXI, la Corte Suprema de los Estados Unidos no ha dudado en declarar inválidas las leyes internas que limitaban el derecho de los ciudadanos estadounidenses a portar armas, entre ellas una ley de Washington D.C., capital de los Estados Unidos, que prohibía a casi todos los civiles poseer armas de fuego cortas.⁴¹ Sin embargo, la Corte Suprema reconoció los riesgos que conlleva la posesión de armas y señaló con claridad que las armas de fuego que normalmente no se poseen con fines lícitos –como las escopetas de cañón corto– no están amparadas por la Segunda Enmienda.⁴² Dos años después, la Corte Suprema reafirmó el derecho, observando que “el derecho a poseer y portar armas [es] uno de los derechos fundamentales necesarios para nuestro sistema de libertad ordenada”.⁴³

Por último, justo el año pasado, la Corte Suprema de los EE. UU. volvió a reafirmar el derecho de los ciudadanos según la Constitución de ese país a poseer y portar armas, incluso para defensa propia, y dejó sin efecto una ley estatal que restringía la portación de armas fuera del hogar.⁴⁴ La Corte Suprema sintetizó la comprensión histórica del derecho a portar armas en los Estados Unidos y la larga historia de la jurisprudencia relativa a la Segunda Enmienda.⁴⁵ Como lo había hecho en casos anteriores, la Corte Suprema reconoció la importancia del derecho amparado por la Segunda Enmienda, al tiempo que fijó límites razonables a la conducta protegida: observó que la propia Segunda Enmienda “es el *producto* mismo de un equilibrio de intereses por parte del pueblo” y que “eleva por encima de todos los demás intereses el derecho de los ciudadanos responsables y respetuosos de la ley a usar armas” con fines lícitos.⁴⁶

³⁸ *State v. Chandler*, 5 La. Ann. 489, 490 (1850); véase también, por ejemplo, *Nunn c. Estado*, 1 Ga. 243, 251 (1846) (donde se analiza el derecho “natural” a la defensa propia en virtud de la Segunda Enmienda y se ratifica la ley que prohíbe la posesión oculta de un arma de fuego, aunque se señala: “Pero que gran parte de ella, que contiene una prohibición de portar armas abiertamente, está en conflicto con la Constitución y es nula”).

³⁹ Véase *Nunn*, 1 Ga. At 251.

⁴⁰ *United States v. Miller*, 307 U.S. 174, 186 (1939) (el resaltado es nuestro); véase también *The Commonplace Second Amendment*.

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

⁴² *Íd.*

⁴³ *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

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

⁴⁵ *Íd.*

⁴⁶ *Heller*, 554 U.S., pág. 635 (resaltado en el original).

C. La Ley de Protección del Comercio Legal de Armas protege los derechos consagrados en la Segunda Enmienda al eximir a los fabricantes de armas de fuego de los Estados Unidos de toda responsabilidad por los actos ilícitos de terceros

El reconocimiento a largo plazo del derecho a poseer y portar armas conlleva el corolario del derecho a *adquirirlas*: el derecho a poseer armas de fuego carece de sentido si los ciudadanos no tienen forma de obtenerlas. Además de los requisitos regulatorios estatales, en los últimos 100 años el Gobierno de los EE. UU. ha desarrollado un complejo sistema de leyes y reglamentaciones que regulan la producción y tenencia de armas, entre las que destaca la Ley de Protección del Comercio Legal de Armas (“PLCAA”, por sus siglas en inglés), sancionada por el Congreso de los EE. UU. y promulgada por el Presidente en 2005.

A principios de la década de 2000, al igual que México en el presente caso, varias ciudades de los Estados Unidos demandaron a los fabricantes de armas de fuego por los actos de actores independientes que hicieron un uso indebido de sus productos, es decir, por los actos de delincuentes que utilizaron armas de fuego vendidas en forma legal para hacer daño a otras personas.⁴⁷ Estas demandas suponían una amenaza para la industria nacional de armas de fuego y hacían económicamente prohibitivo fabricar armas de fuego en los Estados Unidos. En respuesta a esta situación, el Congreso sancionó la PLCAA por mayoría de votos de ambas cámaras legislativas, tras lo cual fue aprobada y promulgada por el Presidente de los Estados Unidos.

El objetivo de la PLCAA es amparar a los fabricantes nacionales de armas de fuego frente a la responsabilidad legal cuando un tercero hace un uso indebido de un arma de fuego fabricada de manera correcta y vendida de forma legal; como reconoce la propia PLCAA, sin esta protección, los fabricantes quedarían indebidamente expuestos a responsabilidad legal por actos de terceros.⁴⁸ La disposición central de la ley prohíbe “las causas de acción contra los fabricantes [y] distribuidores... de armas de fuego... por daños causados exclusivamente por el uso indebido delictivo o ilícito de productos de armas de fuego... por parte de terceros cuando el producto haya funcionado de acuerdo con su diseño y destino previsto”.⁴⁹ En otras palabras, la PLCAA “limita

⁴⁷ Véase, por ejemplo, *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099 (Ill. 2004) (donde se sostuvo que los fabricantes, distribuidores y vendedores de armas de fuego no eran responsables de los gastos de los servicios médicos y policiales supuestamente ocasionados por la violencia armada); *Morial v. Smith & Wesson Corp.*, 785 So. 2d 1 (La. 2001) (donde se desestimaron las demandas de la ciudad contra el fabricante de armas); *Ganim v. Smith & Wesson Corp.*, 780 A.2d 98 (Conn. 2001) (donde se desestimaron las demandas de la ciudad y del alcalde contra los fabricantes de armas de fuego, las asociaciones profesionales y los vendedores de armas al por menor).

⁴⁸ 15 U.S.C. § 7901(b) (donde se enumeran los objetivos de la PLCAA, que incluyen, entre otros, (1) prohibir las acciones contra fabricantes, distribuidores, vendedores e importadores de armas de fuego y municiones por daños “causados exclusivamente por el uso indebido delictivo o ilegal de productos de armas de fuego o municiones” cuando el producto funcionaba de acuerdo con su diseño y destino previsto; y (2) preservar el acceso de los ciudadanos estadounidenses a las armas de fuego y los derechos amparados por la Segunda Enmienda).

⁴⁹ *Íd.*, § 7901(b)(1).

los tipos de demandas que pueden interponerse contra los fabricantes y distribuidores de armas” en los tribunales estadounidenses.⁵⁰

La ley contiene un importante preámbulo que expresa los objetivos del legislador. Al aprobar la PLCAA, el Congreso consideró, entre otras cosas, que

[l]as empresas de los Estados Unidos que se dedican al comercio interestatal y exterior mediante el diseño, la fabricación, la comercialización, la distribución, la importación o la venta lícita al público de armas de fuego o municiones que han sido enviadas o transportadas en el comercio interestatal o exterior no son, y no deben ser, responsables de los daños causados por quienes hacen un uso indebido, delictivo o ilícito, de los productos de armas de fuego o municiones que funcionan de acuerdo con su diseño y destino previsto.⁵¹

El Congreso no fue ambiguo en sus conclusiones, declarando además que “imponer responsabilidad a toda una industria por daños causados exclusivamente por terceros es un abuso del sistema legal” que “erosiona la confianza pública en las leyes de nuestra Nación” y “supone una amenaza de menoscabo de un derecho constitucional y libertad civil fundamentales”.⁵² Esta ley, y su propósito subyacente, es lo que impidió que México prosperara en su acción legal contra los fabricantes de armas estadounidenses ante los tribunales federales de los Estados Unidos. Aquí, sin embargo, México le pide a esta Corte lo que no pudo lograr en virtud de la ley de los Estados Unidos: un dictamen legal en el sentido de que los fabricantes estadounidenses que operan legalmente conforme a la legislación de los Estados Unidos para proveer armas de fuego al mercado de dicho país, están, no obstante, cometiendo actos ilícitos.

D. La industria estadounidense de las armas de fuego está además sometida a una fuerte regulación por parte del Gobierno de los Estados Unidos

Con este contexto constitucional y legislativo como telón de fondo, la industria estadounidense de las armas de fuego se encuentra entre las más reguladas de los Estados Unidos. En primer lugar, la compraventa de armas de fuego está sujeta a un riguroso control por parte de la ATF,⁵³ que “reconoce el papel que desempeñan las armas de fuego en los delitos violentos y aplica una estrategia integrada de regulación y aplicación de la ley”.⁵⁴ Las armas de fuego solo pueden ser producidas por fabricantes con licencia federal y vendidas por comercios minoristas

⁵⁰ Mem. and Order on Defs.’ Mots. to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Expediente N.º 1:21-CV-11269 (D. Mass. 30 de septiembre de 2022), pág. 20, <https://tlblog.org/wp-content/uploads/2022/09/Mexico.OpinionMTD.pdf>.

⁵¹ 15 U.S.C. § 7901(a)(5) (el resaltado es nuestro).

⁵² *Íd.*

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

⁵⁴ *Firearms Overview*, U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, (última visita el 12 de julio de 2023), <https://www.atf.gov/firearms> (en adelante “ATF Firearms Overview”).

con licencia federal, ambos sujetos a la inspección de la ATF y de las autoridades estatales.⁵⁵ Como ya se ha señalado, cuando alguien intenta comprar un arma de fuego a un minorista autorizado, este se pone en contacto con el sistema NICS del FBI para realizar las verificaciones de antecedentes exigidas por la ley.⁵⁶ El comprador también debe declarar bajo juramento que no tiene condenas penales, que está en pleno uso de sus facultades mentales y que no está comprando el arma para otra persona. La infracción de estos requisitos constituye un delito federal que el Departamento de Justicia de los EE. UU. se encarga de sancionar enérgicamente.⁵⁷

Los fabricantes, distribuidores y minoristas cumplen estrictos requisitos reglamentarios para dedicarse a la venta y distribución legal de armas de fuego. Entre otras cosas, la ATF exige a los minoristas que cumplan (1) las normas relativas al mantenimiento de registros, (2) los requisitos en materia de verificación de antecedentes mencionados anteriormente, (3) las leyes que prohíben la venta o transferencia de armas de fuego a personas prohibidas, (4) las prohibiciones relativas a la venta indebida de armas de fuego a no residentes, (5) los requisitos en materia de identificación de clientes, (6) los requisitos en materia de notificación de la venta de varias pistolas y determinados rifles, y (7) los requisitos en materia de notificación de la pérdida o robo de armas de fuego.⁵⁸ La ATF revoca las licencias de los minoristas que, a sabiendas, transfieren armas de fuego a personas prohibidas, no realizan las verificaciones de antecedentes exigidas, falsifican registros, no responden a las solicitudes de rastreo de la ATF o se niegan a permitir que la ATF lleve a cabo una inspección.⁵⁹ Los titulares de licencias federales de armas de fuego también deben certificar que cuentan con dispositivos seguros de almacenamiento de armas a disposición de sus clientes.⁶⁰

La exportación de armas de fuego de los Estados Unidos a otros países también está fuertemente regulada. Las exportaciones comerciales están sujetas al control del Departamento de Comercio de los Estados Unidos, con la colaboración de los Departamentos de Estado y Defensa de ese país.⁶¹ Todas las ventas militares al extranjero están fuertemente reguladas por el Departamento de Estado, con la colaboración del Departamento de Defensa.⁶² Este marco legal respalda numerosos esfuerzos de los Estados Unidos para detener el flujo ilegal de armas de fuego hacia México. La actual Administración de los Estados Unidos (al igual que las anteriores) está “comprometida a abordar el tráfico de armas de fuego en México que favorece la violencia y el

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

⁵⁶ *Íd.*

⁵⁷ Véase 18 U.S.C. § 922(a)(6) (que prohíbe las declaraciones falsas en relación con la adquisición de un arma de fuego); véase también, por ejemplo, *Federal Prosecutors Aggressively Pursuing Those Who Lie in Connection With Firearm Transactions*, DOJ (10 de enero de 2023), <https://www.justice.gov/usao-wdok/pr/federal-prosecutors-aggressively-pursuing-those-who-lie-connection-firearm-transactions>.

⁵⁸ Véase ATF Firearms Overview; véase también *Federal Firearms Licensee Quick Reference and Best Practices Guide*, U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES (última visita el 12 de julio de 2023), <https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide>.

⁵⁹ Véase ATF Firearms Overview.

⁶⁰ *Íd.*

⁶¹ *Íd.*

⁶² *Íd.*

tráfico ilícito de fentanilo”, en particular mediante la ampliación de las investigaciones sobre el tráfico de armas de fuego, la persecución enérgica de los traficantes, la lucha contra el aumento de las “armas fantasma” (armas de fuego ilegales de fabricación casera) y otras armas peligrosas, la contención del suministro de armas ilegales mediante la aclaración de las obligaciones de los minoristas y la profundización de la colaboración con el Gobierno de México.⁶³

México sabe todo esto. Más aún, la ATF opera en México, *en cooperación* con el Gobierno mexicano, ofreciendo servicios de rastreo de cualquier arma de fuego que las autoridades mexicanas pongan en su conocimiento.⁶⁴ El objetivo de la ATF, que comparten sus homólogos mexicanos encargados de la aplicación de la ley, es “descubrir, desarticular y desmantelar las redes de tráfico de armas de fuego” en la frontera entre México y los Estados Unidos.⁶⁵

ARGUMENTO

I. La Corte debe negarse a emitir una Opinión Consultiva en este caso

Estos extensos antecedentes, que México ignora en su escrito, confirman que las inquietudes de México no pueden resolverse a través de una opinión consultiva. La Corte tiene “amplio[s] poder[es] de apreciación” para aceptar o rechazar una solicitud de opinión de conformidad con el artículo 73 del Reglamento de la Corte y, en este caso, existen “razones determinantes” para rechazarla.⁶⁶

Principalmente, México está utilizando la Corte para mejorar su posición en las acciones legales que ha iniciado en los Estados Unidos contra los mismos fabricantes de armas de fuego contra los que se dirige aquí. Dado que México entiende que no debe utilizar a la Corte como una herramienta para obtener resoluciones prematuras e indirectas sobre cuestiones de hecho en un proceso en trámite, en ninguna parte de su escrito menciona los procesos iniciados en los Estados Unidos. México también le solicita a la Corte que ataque el sistema judicial de los Estados Unidos, pase por alto la compleja historia constitucional de los Estados Unidos resumida anteriormente, y sancione a una industria privada estadounidense de una manera prohibida por la legislación de ese país. Por último, México también busca influir en las negociaciones diplomáticas en curso con los Estados Unidos, incluida la seguridad fronteriza.

⁶³ *FACT SHEET: Biden-Harris Administration’s Ongoing Efforts to Stem Firearms Trafficking to Mexico*, THE WHITE HOUSE (14 de junio de 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/> (en adelante, “FACT SHEET”); véase también *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/> (que revitaliza la Iniciativa Mérida con nuevos objetivos y declara: “Estados Unidos y México tienen el compromiso de transformar nuestra cooperación para proteger con mayor eficacia la salud y la seguridad de nuestros ciudadanos y favorecer el desarrollo de las comunidades más vulnerables en ambos países, impedir que las organizaciones delictivas dañen a nuestros países y perseguir y llevar ante la justicia a los criminales”).

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

⁶⁵ Véase *FACT SHEET*.

⁶⁶ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 6, párr. 6.

En general, una opinión consultiva estaría fuera de las finalidades y objetivos declarados de la CIDH, y supondría una expansión sin precedentes de la interpretación que la Corte hace de la Convención y de las normas de derechos humanos conexas.

A. México se encuentra en litigio ante un tribunal estadounidense que está dirimiendo las mismas cuestiones que México plantea aquí

Como ya se ha señalado, el 4 de agosto de 2021, el Gobierno de México interpuso una demanda ante un tribunal federal estadounidense de Boston, Massachusetts, contra la mayoría de los principales fabricantes de armas de fuego con sede en los Estados Unidos. Al igual que en el presente, en ese caso México alega que los fabricantes estadounidenses de armas de fuego han comercializado deliberadamente sus productos para atraer a los carteles de la droga mexicanos, y permiten de manera temeraria que sus armas sean distribuidas por minoristas que venden las armas a compradores testaferreros, es decir, personas que compran las armas y se las entregan a terceros, quienes las introducen de contrabando en México, donde se venden a los carteles de la droga y a otros delincuentes.⁶⁷

Por ejemplo, en su demanda ante el tribunal de los Estados Unidos, México alega que los fabricantes de armas de fuego estadounidenses mencionados “sabían o decidieron ser deliberadamente ciegos al hecho de que su diseño, comercialización y distribución de armas de fuego suponía un grave riesgo de daño para las personas en México y para el Gobierno”.⁶⁸ Con una redacción casi idéntica, en su escrito ante esta Corte, México “solicita a la Corte que responda” a la siguiente pregunta:

1) Las actividades de comercialización sin el debido cuidado, negligentes y/o intencionales por parte de empresas privadas relacionadas con la industria de armas de fuego, que facilitan su tráfico ilícito, su disponibilidad indiscriminada entre la sociedad y en consecuencia, aumentan el riesgo de violencia perpetrada con las mismas, ¿pueden vulnerar los derechos a la vida y a la integridad personal? ¿Existe responsabilidad internacional de las empresas de armas por dichas actividades?⁶⁹

Del mismo modo, en el litigio de los EE. UU., la principal defensa legal de la que pueden valerse los fabricantes de armas de fuego estadounidenses es la PLCAA, que fue promulgada hace dieciocho años para proteger a los fabricantes de armas de fuego de la responsabilidad cuando alguien utiliza un arma de fuego de forma independiente para cometer un delito. El 30 de septiembre de 2022, el tribunal federal estadounidense de Boston, Massachusetts, invocando la PLCAA, desestimó la demanda de México. Como sostuvo dicho órgano jurisdiccional:

⁶⁷ Compl., *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Expediente N.º 1:21-CV-11269 (4 de agosto de 2021), <https://www.courthousenews.com/wp-content/uploads/2021/08/mexico-smith-wesson-complaint.pdf>.

⁶⁸ *Íd.* pág 1.

⁶⁹ *Escrito de México*, pág. 5.

Desafortunadamente para el Gobierno de México, todas sus demandas están vedadas por la ley federal o fracasan por otras causas. La PLCAA prohíbe inequívocamente las demandas que pretendan responsabilizar a los fabricantes de armas por los actos de las personas que utilicen las armas para su finalidad prevista. Y aunque la ley contiene varias excepciones limitadas, ninguna es aplicable en este caso.⁷⁰

El 14 de marzo de 2023, México apeló esta decisión ante el Tribunal de Apelaciones de los Estados Unidos del Primer Circuito, solicitando se declare que la decisión del tribunal inferior era errada y que la PLCAA no era aplicable a las pretensiones de México. Esta apelación está pendiente. En su escrito ante esta Corte, México no nombra a la PLCAA, pero también la ataca, solicitando una opinión consultiva en cuanto a que la PLCAA viola la Convención y el Pacto Internacional de Derechos Civiles y Políticos:

6) ¿Las leyes que otorguen inmunidad procesal a empresas relacionadas con la industria de armas frente a reclamos de estas víctimas, son compatibles con las obligaciones estatales establecidas en los artículos 8 y 25 de la CADH, así como con las descritas en el artículo 2.3 del Pacto Internacional de Derechos Civiles y Políticos?⁷¹

Mientras tanto, México ya había presentado una *segunda* demanda ante un tribunal federal estadounidense, esta vez contra cinco minoristas estadounidenses de armas de fuego cercanos a la frontera entre los Estados Unidos y México.⁷² En esa demanda, México da otro mordisco a la manzana, alegando que los cinco minoristas mencionados “saben o deberían saber que sus prácticas comerciales temerarias e ilegales (incluidas las ventas a testaferros y las ventas al por mayor y reiteradas de armas de tipo militar) abastecen a peligrosos delincuentes en México y los Estados Unidos”.⁷³ Los minoristas han solicitado la desestimación de la demanda de México –de nuevo en virtud de la PLCAA– y la petición está pendiente.

En resumen, México le solicita a la Corte que se involucre en el litigio en trámite, hasta el punto de ayudar a México a evitar el impacto de una ley específica de los Estados Unidos (la PLCAA) para que México pueda valerse de la resolución de esta Corte en su beneficio ante los tribunales de los Estados Unidos. Como ha señalado reiteradamente esta Corte al rechazar solicitudes de opiniones consultivas, se busca evitar que “[se utilicen] como un mecanismo para obtener un pronunciamiento indirecto de un asunto en litigio o en controversia a nivel interno”.⁷⁴

⁷⁰ Mem. and Order on Defs.’ Mot. to Dismiss at 3, *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Expediente N.º 1:21-CV-11269 (30 de septiembre de 2022), <https://tlblog.org/wp-content/uploads/2022/09/Mexico.OpinionMTD.pdf>.

⁷¹ *Escrito de México*, pág. 5.

⁷² Véase Compl., *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc. et al.*, Expediente N.º 4:22-CV-00472 (Distrito de Arizona, 10 de octubre de 2022).

⁷³ *Íd.*, párr. 1.

⁷⁴ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 6, párr. 6; véase también *en general Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 10 de mayo de 2005 (en la que se afirma que Costa

Existen fundados motivos para la cautela. El proceso de opinión consultiva tiene por finalidad interpretar las normas internacionales de derechos humanos y ayudar a los Estados miembros de la OEA a comprender sus obligaciones internacionales.⁷⁵ En este caso, México le pide a la Corte que se ponga de su lado en un proceso judicial en trámite iniciado por el propio México (que reclama \$10.000.000.000 en concepto de daños y perjuicios),⁷⁶ y que involucra cuestiones singulares relacionadas con el problema de cómo manejar el flujo de armas de fuego hacia el sur, y de drogas ilegales hacia el norte, a través de una frontera compartida por México y los Estados Unidos. Como ha señalado la Corte, “las consultas [de opinión consultiva] ... no deben circunscribirse a un presupuesto fáctico en extremo preciso que torne difícil desvincularla de un pronunciamiento sobre un caso específico, lo cual iría en desmedro del interés general que pudiera suscitar una consulta”.⁷⁷

B. México está utilizando a la Corte para resolver cuestiones de hecho concretas y controvertidas

La naturaleza inductiva de la solicitud de México se pone de manifiesto por aquello que omite en su escrito ante la Corte. Como ya se ha señalado, los fabricantes de armas de fuego de los Estados Unidos están sujetos a un exhaustivo régimen normativo aplicado por la ATF. Los fabricantes solo venden sus productos a compradores minoristas radicados en los Estados Unidos para su uso en los Estados Unidos. Según México, las armas de fuego fabricadas en los Estados Unidos llegan a manos de delincuentes en México de la siguiente manera:

- Los fabricantes estadounidenses venden armas de fuego a mayoristas en los Estados Unidos;
- Los mayoristas venden armas de fuego a comerciantes de armas de fuego con licencia federal;
- Los distribuidores venden armas de fuego a compradores testaferros, quien tienen la intención de pasar las armas a terceros;

Rica pretendía la revisión de la opinión de otro tribunal a través de su solicitud de opinión consultiva); *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 19 de mayo de 2016 (donde se sostuvo que la solicitud de opinión consultiva implicaba un proceso de *impeachment* en curso en Brasil presentaba una cuestión que podía ser planteada posteriormente como un proceso contencioso y requería responder a cuestiones que aún no habían sido resueltas a nivel interno); Opinión Consultiva OC-16/99 del 1 de octubre de 1999, Serie A No. 16.

⁷⁵ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 7, párr. 6.

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

⁷⁷ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 8, párr. 11.

- Los compradores testaferros transfieren ilegalmente las armas de fuego a contrabandistas, o pasan ellos mismos las armas de fuego de contrabando a través de la frontera mexicana (normalmente a través de una cadena de intermediarios);
- Los miembros de los carteles mexicanos de la droga u otros delincuentes adquieren ilegalmente las armas de fuego en México; y
- Los miembros de los carteles u otros delincuentes utilizan las armas de fuego para dañar a otras personas.

México tendría que *probar* esta larga secuencia de hechos. El uso de armas de fabricación estadounidense en México requiere una serie de actividades delictivas independientes de las que las empresas estadounidenses no son responsables, no avalan y, como se ha descrito anteriormente, toman medidas para evitar.

México también evita explicar a la Corte la complejidad de la búsqueda de las diversas armas de fuego recuperadas en escenas del crimen en México, eludiendo así el problema de que esta Corte se dedique a la investigación detallada de los hechos en el contexto de una opinión consultiva. El rastreo de armas de fuego es engañosamente difícil. Por ejemplo, como ya se ha señalado, la ATF opera en México en cooperación con el Gobierno mexicano e intenta rastrear cualquier arma de fuego que las autoridades mexicanas pongan en su conocimiento. Pero México no necesita pedirle a la ATF que rastree las armas vendidas en forma legal en México, y no le pediría a la ATF que rastreara las armas que no fueron fabricadas en los Estados Unidos, por lo que las estadísticas de la ATF están artificialmente sesgadas hacia las armas de fuego de origen estadounidense.⁷⁸

Además, aunque según datos del pasado, el propio Gobierno mexicano ha estimado que solo se puede determinar que alrededor del 18 % de las armas de fuego utilizadas para cometer delitos en México han sido fabricadas en los Estados Unidos.⁷⁹ Incluso si la cifra más actualizada fuera superior al 18 %, cabe considerar las numerosas formas en que un arma de fuego de este tipo podría llegar a México:

- Compra legalmente a un minorista estadounidense e introducida ilegalmente en la frontera a corto plazo, que es la hipótesis que presupone México;
- Compra legalmente a un minorista estadounidense, revendida legalmente una o más veces a lo largo de los años y, por último, introducida ilegalmente en México;

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

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

- Suministradas, legalmente, a combatientes en un conflicto extranjero (*por ejemplo*, Vietnam, Afganistán, Ucrania) y luego revendidas en el mercado negro internacional, llegando por último a México;
- Compradas legalmente a un minorista estadounidense, trasladadas legal o ilegalmente a un país extranjero, y llegando por último a México; o
- Vendidas, legalmente, a las fuerzas del orden o al personal militar en México, y luego revendidas en el mercado negro interno o utilizadas para actividades delictivas por personal de las fuerzas del orden o militar mexicanos que han desertado.⁸⁰

Existen otras posibilidades. Según datos de la ATF, el arma de fuego promedio de fabricación estadounidense recuperada en México tiene muchos años de antigüedad; en el período 2017-2021 *pasaron siete años* desde el punto de venta en los Estados Unidos hasta su uso en un delito en México.⁸¹ Ese lapso hace imposible demostrar que los fabricantes estadounidenses de armas de fuego o las autoridades reguladoras estadounidenses sean responsables de la presencia de esas armas en México, y mucho menos que sean “violadores de los derechos humanos” en virtud de las convenciones o normas internacionales.

En su escrito, México evita todo lo anterior, porque revela dos cosas: (a) que el daño sufrido en México es causado no por los fabricantes estadounidenses de armas de fuego, sino por malhechores en México, que utilizan armas de fuego introducidas ilegalmente en el país desde un sinnúmero de posibles procedencias; y (b) que, para emitir la opinión consultiva que México desea, la Corte debe emitir numerosos pronunciamientos sobre hechos concretos, algo que la Corte a menudo sabiamente evita.⁸² Además, los escenarios antes expuestos son extremadamente específicos de la frontera entre los Estados Unidos y México y es muy poco probable que se repitan entre otros Estados miembros de la OEA.⁸³

Los fabricantes estadounidenses de armas de fuego no comercializan sus productos para su uso en México, no quieren que sus productos sean contrabandeados a México, no se benefician de que sus productos sean utilizados de forma indebida en México y, a menudo a través de la NSSF, cooperan plenamente y de buena fe con el Gobierno de los Estados Unidos para evitar ese

⁸⁰ Un fabricante estadounidense de armas de fuego, Sig Sauer, Inc. con sede en New Hampshire, provee armas de fuego al Gobierno y al ejército mexicanos. Cabe destacar que México no incluyó a Sig Sauer como demandada en la acción legal que interpuso ante un tribunal de los Estados Unidos contra la industria estadounidense de armas de fuego.

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

⁸² *Solicitud de Opinión Consultiva Presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, págs. 6-9, párrafos 6-13.

⁸³ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 8, párr. 11 (“[L]as consultas ... no deben circunscribirse a un presupuesto fáctico en extremo preciso que torne difícil desvincularla de un pronunciamiento sobre un caso específico, lo cual iría en desmedro del interés general que pudiera suscitar una consulta.”).

resultado. Las armas de fuego fabricadas en los Estados Unidos (así como las armas de fuego de muchas otras procedencias) llegan a México porque una serie de delincuentes compran de forma independiente estos productos con engaños, los introducen de contrabando en México y los entregan a los miembros de los carteles y a otros delincuentes que los utilizan para hacer daño a los ciudadanos mexicanos. Los fabricantes estadounidenses de armas de fuego no tienen nada que ver con esto. El Gobierno de México está en rotundo desacuerdo, pero esa es precisamente la razón por la que la Corte debe evitar emitir una opinión consultiva: se trata de cuestiones de hecho que deben resolverse, y se están resolviendo, en un proceso en trámite en un foro que fue elegido por el propio México: un tribunal federal de los Estados Unidos. Las preguntas que México plantea “no se refieren exclusivamente a cuestiones de derecho o interpretación de tratados y dependen para su respuesta, de que se determinen hechos en casos específicos”.⁸⁴

C. México está utilizando a la Corte para eludir a los Poderes Legislativo, Ejecutivo y Judicial del Gobierno de los EE. UU. y sancionar a una industria privada de los EE. UU. de una manera que entra en conflicto con las leyes estadounidenses

Los países extranjeros litigan habitualmente en el sistema judicial de los Estados Unidos, donde reciben una audiencia justa con arreglo a la legislación estadounidense. La Corte Suprema de los Estados Unidos ha reconocido desde hace mucho tiempo que “no hay duda de que los Estados extranjeros pueden demandar a particulares ante los tribunales federales”.⁸⁵ De hecho, los países extranjeros tienen “derecho a entablar cualquier demanda civil ante los tribunales de los Estados Unidos en las mismas condiciones en que podría hacerlo un particular o una empresa nacional”.⁸⁶ Esto incluye al Gobierno de México, que a menudo ha recurrido a los tribunales estadounidenses.⁸⁷

En resumen, de acuerdo con principios consolidados de cortesía internacional, las naciones extranjeras pueden presentar demandas ante los tribunales estadounidenses en pie de igualdad con los ciudadanos estadounidenses, pero nada da derecho a esa nación extranjera a un tratamiento

⁸⁴ *Solicitud de Opinión Consultiva Presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 9, párrafo 13 (con cita de la Opinión Consultiva OC-16/99 de 1 de octubre de 1999, Serie A N.º 16, párr. 46).

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

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

⁸⁷ Véase, por ejemplo, *Consulate General of Mexico v. Phillips*, 17 F. Supp. 2d 1318 (S.D. Fla. 1998) (donde se sostiene que México está legitimado para solicitar reparación por las supuestas violaciones, por parte de funcionarios estatales, de las disposiciones del tratado que garantizan a los funcionarios consulares mexicanos el acceso a los nacionales mexicanos acusados de delitos en los Estados Unidos); *United Mexican States v. Nelson*, No. 22-CV-4047-CJW-KEM, 2023 WL 2616095 (N.D. Iowa, 23 de marzo de 2023) (donde se hace lugar a la petición de México de reconocer y ejecutar el laudo arbitral); *Int'l Thunderbird Gaming Corp. v. United Mexican States*, 255 Fed. Appx. 531 (D.C. Cir. 2007) (que confirma la opinión de un tribunal inferior en la que se ratifica, reconoce y ejecuta el laudo arbitral dictado a favor de México contra una empresa canadiense); véase también *Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332, 342 (1.º Circuito, 2000) (que rechaza la demanda de México por falta de legitimación, pero señala que México podría abordar los problemas apoyando económicamente a los demandantes o participando como *amicus curiae*).

especial.⁸⁸ México *optó* por demandar a la industria estadounidense de armas de fuego ante un tribunal estadounidense, y ese proceso ha recibido un trato justo con arreglo a la legislación interna y de la misma manera que si lo hubiera interpuesto un ciudadano estadounidense, incluida la aplicabilidad de leyes internas como la PLCAA que protegen a los fabricantes de armas de fuego que operan de manera lícita.

México está ahora descontento con el resultado, como se desprende de las preguntas 6 y 7 de la Sección II de su escrito, que son, esencialmente, retóricas:

6) ¿Las leyes que otorguen inmunidad procesal a empresas relacionadas con la industria de armas frente a reclamos de estas víctimas, son compatibles con las obligaciones estatales establecidas en los artículos 8 y 25 de la CADH, así como con las descritas en el artículo 2.3 del Pacto Internacional de Derechos Civiles y Políticos?

7) De existir estas leyes, ¿qué obligaciones tienen los Estados para garantizar el acceso a la justicia?⁸⁹

Sin embargo, conforme a la legislación estadounidense, ese resultado (la desestimación de la demanda de México a la luz de la PLCAA) era apropiado. La respuesta de México –solicitar a esta Corte que condene el sistema judicial de los Estados Unidos, ignore la legislación interna y desconozca 232 años de historia constitucional de los Estados Unidos– no lo es.

Como ya se ha señalado, el derecho a poseer y portar armas de fuego está codificado en la Constitución de los Estados Unidos. A menos que se introduzcan enmiendas a la Constitución, el gobierno federal, todos los gobiernos estatales dentro del sistema federal estadounidense y todos los tribunales de los EE. UU. están obligados a reconocer este derecho. Desde 1791, los tribunales y las legislaturas de los Estados Unidos se han debatido en torno a las cuestiones de *quién* puede comprar y portar armas,⁹⁰ *qué tipos* de armas pueden poseer los ciudadanos particulares,⁹¹ *dónde*

⁸⁸ Véase, por ejemplo, *Pfizer*, 434 U.S., págs. 318–19 (la Corte Suprema de los EE. UU. “ha reconocido desde hace tiempo la regla de que una nación extranjera tiene en general derecho a entablar cualquier demanda civil ante los tribunales de los Estados Unidos en las mismas condiciones en que podría hacerlo un particular o una empresa nacional”); véase también *DeCoster*, 229 F.3d, pág. 336 (“Se ha reconocido la legitimación activa de las naciones extranjeras para entablar una demanda ante los tribunales federales en los casos en que la nación extranjera ha sufrido un perjuicio directo”).

⁸⁹ *Escrito de México*, pág. 5.

⁹⁰ Véase, por ejemplo, *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (donde se señala que el derecho amparado por la Segunda Enmienda no se extiende a los delincuentes o enfermos mentales).

⁹¹ Véase *Gun Control Act*, 18 U.S.C. § 922(o) (“Será ilegal la transferencia o posesión de una ametralladora”); *Heller*, 554 U.S., pág. 624 (2008) (“[L]a Segunda Enmienda no protege las armas que los ciudadanos respetuosos de la ley normalmente no poseen con fines lícitos, como las escopetas de cañón corto”).

y cuándo se pueden portar armas,⁹² quién está autorizado a venderlas y⁹³ qué pasos deben seguirse para venderlas de forma legal y segura.⁹⁴ Una importante ley federal (la PLCAA), garantiza que las armas de fuego sigan estando a disposición del público estadounidense, una ley que, según han confirmado los tribunales estadounidenses desde entonces, constituye un ejercicio apropiado del poder del Congreso y que no viola en sí misma la Constitución de los Estados Unidos.⁹⁵ Como era de esperar, y de manera acertada, un tribunal estadounidense aplicó la PLCAA y rechazó el intento de México de atribuir a los fabricantes estadounidenses de armas de fuego responsabilidad legal por los actos delictivos de terceros, desde los compradores testaferros que compran ilegalmente armas de fuego a minoristas estadounidenses, pasando por los contrabandistas que las pasan por la frontera, hasta los delincuentes que las utilizan para hacer daño a residentes mexicanos.

Pero México ahora le pide a la Corte que pase por alto todo lo anterior y en cambio sustituya su propio criterio para declarar que una industria estadounidense totalmente interna es legalmente responsable por daños cometidos por extraños en otro país. México dice no “centrarse en el derecho soberano que algunos Estados confieren a sus ciudadanos de adquirir y poseer armas de fuego para su protección personal,”⁹⁶ pero eso es *exactamente* lo que hace. La PLCAA está arraigada en ese derecho soberano a poseer armas y, como señaló el Congreso de los Estados Unidos, la protección de ese derecho es la razón por la que se aprobó la ley desde un principio: la PLCAA establece de manera expresa que el recurso legal que México solicita que esta Corte avale “supone una amenaza de menoscabo de un derecho constitucional y libertad civil fundamentales”

⁹² Véase, por ejemplo, *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (donde se sostiene que el derecho a portar armas fuera del hogar para defensa personal es fundamental para la Segunda Enmienda); *Presser v. State of Ill.*, 116 U.S. 252 (1886) (donde se sostiene que la Segunda Enmienda no otorga a los ciudadanos el derecho a desfilar con armas en una asociación militar no autorizada).

⁹³ Véase 27 CFR § 478.47 (que exige que todos los minoristas de armas de fuego de los Estados Unidos obtengan la correspondiente licencia de la ATF); véase también *Do I Need a License to Buy and Sell Firearms?*, U.S. DOJ & ATF (última visita el 16 de junio de 2023), <https://www.atf.gov/file/100871/download> (“La Ley Federal de Control de Armas (GCA) exige que las personas que se dediquen al comercio de armas de fuego cuenten con autorización de la Oficina de Alcohol, Tabaco, Armas de Fuego y Explosivos (ATF). Los titulares de licencias federales de armas de fuego (FFL) son socios fundamentales en la promoción de la seguridad pública porque, entre otras cosas, ayudan a mantener las armas de fuego fuera del alcance de personas prohibidas mediante la verificación de los antecedentes de los potenciales compradores de armas de fuego, garantizan que se pueda seguir el rastro de las armas utilizadas para cometer delitos hasta su primer comprador minorista llevando registros de las transacciones, y facilitan el almacenamiento seguro de las armas de fuego proporcionando candados de seguridad para niños con cada arma de fuego que se transfiere y disponiendo de un lugar seguro de almacenamiento de armas o de candados de seguridad en cualquier lugar donde vendan armas de fuego”).

⁹⁴ Véase, por ejemplo, 18 U.S.C. § 932 (“Será ilegal comprar a sabiendas, o conspirar para comprar, cualquier arma de fuego en o que afecte al comercio interestatal o exterior para, en nombre de, o a solicitud o requerimiento de cualquier otra persona, sabiendo o teniendo motivos razonables para creer que esa otra persona” no la puede comprar legalmente según la legislación estadounidense).

⁹⁵ Véase, por ejemplo, *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).

⁹⁶ *Escrito de México*, págs. 12-13 (“Así, el Estado mexicano desea ser enfático respecto a que la presente solicitud está orientada a explorar las implicaciones jurídicas de las prácticas negligentes por parte de actores privados, y no se enfoca en el derecho soberano que algunos Estados confieren a sus ciudadanos para la adquisición y posesión de armas de fuego con motivo de protección personal”).

y “constituye una carga irrazonable para el comercio interestatal y exterior de los Estados Unidos”.⁹⁷

Esta Corte ha expresado reiteradamente su renuencia a emitir opiniones consultivas que le exijan “desarrollar consideraciones abstractas” sobre los sistemas constitucionales internos que se examinan y evalúan mejor a través del proceso más metódico de un caso contencioso. En un caso reciente, la Corte se negó a emitir una opinión sobre los métodos de impugnación de funcionarios gubernamentales entre los Estados miembros, concluyendo que:

En atención a lo anterior, el Tribunal estima que el responder a las preguntas de la Comisión Interamericana en los términos planteados, es decir, de realizar consideraciones en abstracto sobre la compatibilidad de un gran número de modelos de juicio políticos o procedimientos de *impeachment* [entre Estados miembros]..., no podría considerar en debida forma las particularidades del diseño institucional de los diversos mecanismos de control horizontal que existen en la región. *Estos diseños en muchas ocasiones son productos históricos, que responden a las necesidades y a la experiencia constitucional de cada sociedad y ameritan un análisis detallado y contextualizado para determinar su compatibilidad con la Convención Americana, lo que solo podría realizarse en el marco de un caso contencioso.*⁹⁸

Lo mismo ocurre en este caso: la legislación estadounidense garantiza la protección de su industria nacional de armas de fuego a través de la PLCAA, pero también la regulación de dicha industria a través de la ATF, de una serie de leyes federales y estatales, y de la autorregulación por parte de las empresas y minoristas de armas de fuego con la colaboración de la NSSF. Este estado de cosas es, en efecto, “un producto histórico”, diseñado para adaptarse a “las necesidades y la experiencia constitucional” de los Estados Unidos.

Por supuesto, el sistema es imperfecto: las armas de fuego producidas y vendidas legalmente siguen siendo utilizadas de manera indebida, tanto en los Estados Unidos como en México, y la NSSF sigue trabajando con la industria estadounidense de armas de fuego y el Gobierno estadounidense para combatir ese problema. Pero una solución adecuada no implica que esta Corte sustituya su propio criterio jurídico por el de un Estado signatario en relación con asuntos internos, y condene a toda una industria nacional (y al Gobierno de los EE. UU.) como “violadores del derecho a la vida y a la integridad personal”. Lo que debería contemplar es lo que ya está ocurriendo: una evaluación de las pretensiones legales de México por parte de un tribunal estadounidense neutral y negociaciones diplomáticas entre dos soberanos sobre la mejor manera de gestionar la frontera que comparten.

⁹⁷ 15 U.S.C. § 7901(a)(6).

⁹⁸ *Solicitud de Opinión Consultiva presentada por la Comisión Interamericana de Derechos Humanos*, Resolución de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2018, pág. 10, párr. 17 (el resaltado es nuestro); Opinión Consultiva OC-4/84 del 19 de enero de 1984. Serie A N.º 4 (en la que se afirma que las solicitudes de opiniones consultivas no deben utilizarse para dirimir debates políticos).

D. Una opinión consultiva iría más allá de los propósitos y objetivos de la Corte Interamericana de Derechos Humanos

La solicitud de México de una opinión consultiva es una invitación apenas velada para que la Corte se aparte de su rol tradicional de interpretar el significado y la finalidad de las convenciones internacionales de derechos humanos. Tal apartamiento sentaría un peligroso precedente en futuros procesos.

1. *México solicita a la Corte que aplique incorrectamente la CADH y que emita pronunciamientos sobre responsabilidad para las que no está preparada*

Como ya se ha señalado, México está confundiendo las acciones de una industria estadounidense interna regulada con los actos completamente independientes de los delincuentes que hacen un uso indebido de los productos de esa industria. Los fabricantes de armas de fuego con sede en los Estados Unidos solo comercializan y venden sus productos en ese país, y cooperan con los esfuerzos del gobierno para regular la venta y distribución de armas de fuego. Pero es imposible detener a todos los delincuentes que intentan comprar armas de fuego mediante el fraude y el engaño, o a quienes introducen armas de contrabando a través de la frontera. En resumen, las *empresas estadounidenses* no han violado ninguna disposición de la CADH ni de ninguna otra convención de derechos humanos; son las personas *particulares*, como los miembros de los muy bien organizados carteles de la droga que operan con libertad en México, quienes se han apropiado indebidamente de las armas de fuego para sus propios fines delictivos. Ninguna convención internacional autoriza a atribuir los actos independientes e ilegales de actores privados a industrias o gobiernos enteros.

En su escrito, México señala las observaciones de ciertos organismos internacionales en el sentido de que no solo los Estados, sino también las empresas privadas, pueden afectar los derechos humanos.⁹⁹ Sobre la base de esa premisa, México admite “que la presente solicitud está orientada a explorar las implicaciones jurídicas de las prácticas negligentes por parte de actores privados”.¹⁰⁰ A continuación, insta a la Corte a decidir *por sí misma* el nivel adecuado de “debida diligencia”¹⁰¹ que deben ejercer los actores empresariales privados (en este caso, la industria de armas de fuego de los Estados Unidos) y, por extensión, si el sistema normativo interno de los Estados Unidos está correctamente diseñado y aplicado. La Corte no está en condiciones de hacer nada de esto: este no es un caso contencioso (ya hay dos, presentados por México), y nada se ha presentado a la Corte que pueda sustentar el tipo de pronunciamientos de hecho detallados que México realmente pretende. Nadie cuestiona el principio básico de que las empresas privadas o los particulares pueden estar implicados en cuestiones de derechos humanos, pero en este caso México pretende algo más que la reafirmación de ese principio: en el contexto de una opinión consultiva, pretende un pronunciamiento de esta Corte en el sentido de que determinados actores han violado principios de derechos humanos a través de actos concretos que México alega.

⁹⁹ *Escrito de México*, págs. 10–11.

¹⁰⁰ *Íd.* pág. 12 (el resaltado es nuestro).

¹⁰¹ *Íd.* págs. 10 -11.

2. *México invita a la Corte a ampliar su competencia de manera peligrosa y sin precedentes*

La teoría subyacente al escrito de México también requeriría una peligrosa ampliación de la forma en que la Corte define las violaciones de la Convención y las normas de derechos humanos conexas.

Veamos lo que México solicita: un pronunciamiento público de la Corte en el sentido de que una industria privada (y no un Estado miembro) viola la Convención cuando desarrolla una conducta lícita y enteramente interna que, a través de los actos de terceros independientes, afecta a un Estado vecino. La Corte nunca antes ha emitido un pronunciamiento de este tipo, y ello tendría peligrosas consecuencias. En primer lugar, dejaría abierta la posibilidad de resoluciones adversas en virtud de la Convención *sin tener en cuenta* los actos o la posición de un Estado signatario. En este caso, el Gobierno estadounidense considera con suma seriedad la necesidad de garantizar la seguridad de las armas de fuego respetando al mismo tiempo un derecho constitucional estadounidense que no puede infringir legalmente; no se discute que, por un lado, las armas de fuego están sometidas a una fuerte regulación en los Estados Unidos pero que, por otro, redes de delincuentes introducen de forma ilegal armas de fuego de contrabando de los Estados Unidos a México. En segundo lugar, todos los días se fabrican artículos legalmente producidos en un Estado y, a través de actores privados, se trasladan a otro Estado, a menudo a granel: textiles, vehículos, productos químicos, productos agrícolas y una infinidad de otras mercaderías. Si la Corte emite una opinión a favor de México, estará anunciando que las empresas privadas pueden violar *las convenciones internacionales de derechos humanos* cuando sus productos fabricados de forma legal son utilizados indebidamente por otra persona en otro lugar. Además, estaría dictaminando que un Estado miembro viola la Convención al no interceder para detener la fabricación *lícita* de productos nacionales en esas circunstancias. Ninguna disposición de la Convención avala una lectura tan expansiva de las normas de derechos humanos.

Por último, si el Tribunal adoptara la posición de México, la consiguiente opinión consultiva comprometería mucho más a México que a la industria estadounidense de armas de fuego. Los carteles de la droga que operan con libertad en México utilizan precursores químicos importados de China para fabricar cantidades enormes de fentanilo, un opioide sintético que puede causar la muerte de los consumidores en cantidades de apenas *dos miligramos*.¹⁰² Luego, los carteles introducen el fentanilo de contrabando en los Estados Unidos, donde es responsable de la muerte de más de 60.000 residentes estadounidenses al año.¹⁰³ Esta crisis en curso (a) es causada por fabricantes de México que exportan directamente sus productos a los EE. UU. (no hay terceros independientes); (b) entre la adicción debilitante y las muertes por sobredosis, perjudica a más de 100.000 ciudadanos estadounidenses al año; y (c) eclipsa el número de muertes anuales por homicidio en México. Tal vez la Corte debería sancionar a estos carteles como “violadores de los

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

¹⁰³ 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)).

derechos humanos”, así como al Gobierno mexicano, que no solo tolera su existencia, sino que niega que el fentanilo se *fabrique* siquiera en México.

El único pronunciamiento anterior de la Corte que siquiera se aproxima a esta interpretación expansiva de la Convención es la opinión consultiva de la Corte de 2017 que establece el derecho a un medio ambiente sano.¹⁰⁴ En esa decisión, la Corte no solo reconoció el derecho ambiental, sino que la definición de la “jurisdicción” de un Estado según el artículo 1(1) de la Convención –el área dentro de la cual el Estado tiene la responsabilidad de proteger los derechos humanos de la población– incluye zonas geográficas “más allá de [los] límites territoriales [del Estado]”.¹⁰⁵ Esto, por supuesto, era necesario en el contexto ambiental, ya que la contaminación u otros daños ambientales causados por un Estado repercutirán en muchos casos en la atmósfera o las vías fluviales de otros Estados; esa opinión consultiva, por ejemplo, fue motivada por la preocupación del Gobierno de Colombia por la degradación marina en la región del Caribe causada por grandes proyectos de infraestructura en Estados vecinos.

Pero aun en el contexto ambiental, la Corte reconoció los peligros de sostener que los Estados podían violar la Convención a través de actividades internas lícitas: inmediatamente después de opinar que los Estados podían ser responsables por efectos ambientales más allá de sus límites territoriales, la Corte advirtió de manera expresa que “[e]l ejercicio de la jurisdicción en términos del art. 1.1 de la Convención Americana, fuera del territorio de un Estado, *es una situación excepcional que debe analizarse en cada caso concreto y de manera restrictiva*”.¹⁰⁶ Y así ocurre en este caso. México solicita un pronunciamiento en el sentido de que los Estados pueden violar la Convención a través de nada más que una actividad lícita, completamente interna, y en circunstancias que carecen de cualquiera de los factores que motivaron a la Corte a reconocer y proteger el derecho a un medio ambiente sano.

3. *La diferente disponibilidad de armas de fuego a lo largo de una frontera mutua y no segura es una cuestión diplomática, no una violación de los derechos humanos*

En última instancia, este asunto es una controversia entre Estados limítrofes que, debido a su diverso desarrollo social y jurídico, adoptan enfoques notablemente distintos en materia de tenencia de armas de fuego. La Constitución mexicana contempla el derecho a poseer armas de fuego en el hogar,¹⁰⁷ pero en la práctica ese derecho es mucho más débil en México que en los Estados Unidos. Por ejemplo, de acuerdo con lo que México ha señalado en sus acciones legales en los EE. UU., solo existe una tienda minorista de armas en México, y el Gobierno expide menos de 50 nuevos permisos para armas al año.¹⁰⁸ La concepción estadounidense de este derecho, tal y

¹⁰⁴ Véase CORTE INTERAMERICANA DE DERECHOS HUMANOS, Opinión Consultiva OC-23/17 (15 de noviembre de 2017), https://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_esp.pdf.

¹⁰⁵ CORTE INTERAMERICANA DE DERECHOS HUMANOS, Opinión Consultiva OC-23/17, Resumen oficial emitido por la Corte Interamericana, https://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_esp.pdf.

¹⁰⁶ *Íd.*, párr. II.d (el resaltado es nuestro).

¹⁰⁷ *Constitución Política de los Estados Unidos Mexicanos*, Art. X (1917).

¹⁰⁸ Compl., párr. 4, *Estados Unidos Mexicanos v. Smith & Wesson Brands, et al.*, Expediente N.º 1:21-CV-11269 (4 de agosto de 2021).

como se ha desarrollado a lo largo de los dos últimos siglos, es claramente muy distinta. Debido a que comparten una frontera porosa y extensa, y a pesar de los esfuerzos de buena fe de ambos Estados, las armas de fuego más fáciles de conseguir en uno de ellos pasan ilegalmente al otro con demasiada facilidad.

México preferiría que el enfoque estadounidense con respecto a la tenencia de armas de fuego fuera más parecido al mexicano y pretende la ayuda de este Tribunal para condenar a la industria estadounidense de armas de fuego (y al propio Gobierno estadounidense) por no seguirle el juego. Pero esa no es la función de este Tribunal. Este es un problema diplomático por excelencia entre Estados vecinos, y solo tiene una solución diplomática que supone la cooperación mutua para asegurar la frontera. México lo sabe, pero optó, primero, por utilizar el sistema judicial de los Estados Unidos para eludir el proceso diplomático y, en su defecto, hasta ahora, en segundo lugar, ahora está utilizando esta Corte para el mismo propósito.

La seguridad a lo largo de la frontera entre los Estados Unidos y México, incluso el tráfico ilegal de armas de fuego y drogas, no es un problema nuevo. Durante más de 20 años, el Gobierno de los Estados Unidos ha colaborado con el Gobierno de México en diversas iniciativas de seguridad. A principios de la década de 2000, el expresidente de los EE. UU. George W. Bush colaboró con el expresidente de México Felipe Calderón en cuestiones fronterizas, haciendo hincapié en que los Estados Unidos serían un “socio fuerte” de México en la aplicación del imperio de la ley contra el crimen organizado y el narcotráfico.¹⁰⁹ Los presidentes Bush y Calderón “abordaron temas muy específicos” relativos a una mayor cooperación “para combatir el narcotráfico, el tráfico de armas y otros problemas a lo largo de la frontera”.¹¹⁰

La colaboración continuó durante toda la Administración Bush y, en diciembre de 2008, los Estados Unidos y México firmaron la primera Carta de Entendimiento sobre la Iniciativa Mérida, en la que reconocían sus responsabilidades compartidas para combatir la violencia alimentada por el narcotráfico que amenaza *tanto a los* ciudadanos estadounidenses como a los mexicanos.¹¹¹ En los últimos 15 años, la Iniciativa Mérida ha financiado esfuerzos para reducir la violencia relacionada con armas de fuego y el tráfico ilegal de armas de fuego y drogas en ambos países. En 2011, México y los Estados Unidos acordaron un nuevo marco estratégico para la implementación de la Iniciativa Mérida, conocido como los “Cuatro Pilares”, que incluía (1) la desarticulación de la capacidad operativa del crimen organizado mediante la reducción sistemática de los ingresos del narcotráfico; (2) el fortalecimiento institucional de la capacidad de México para sostener el estado de derecho; (3) la creación de una estructura fronteriza moderna que facilite el comercio legítimo y la circulación de personas, al tiempo que reduzca el flujo ilícito de drogas, armas y dinero en efectivo; y (4) la construcción de comunidades fuertes y resilientes mediante la aplicación de programas destinados a reducir la demanda de drogas y la adicción, que la Iniciativa Mérida reconoce como una causa de la violencia relacionada con las armas de fuego en México.¹¹²

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

¹¹⁰ *Íd.*

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

¹¹² *Íd.*

Desde la Iniciativa Mérida, las sucesivas administraciones estadounidenses han trabajado con México para abordar este problema. Bajo el mandato del expresidente Donald Trump, los Estados Unidos brindaron una importante asistencia financiera a México para combatir la actividad de los carteles; entre 2015 y 2019, por ejemplo, el Departamento de Estado de los Estados Unidos otorgó a México \$54 millones para fortalecer la capacidad de desbaratar el tráfico ilegal de armas de fuego a través de la frontera de los Estados Unidos, incluso mediante capacitación forense, equipos de inspección y caninos entrenados para la detección de armas.¹¹³ En 2020, la ATF creó la Operación Southbound para coordinar su labor con la de otros organismos a fin de desarticular el tráfico de armas de fuego hacia México.¹¹⁴ El Servicio de Inmigración y Control de Aduanas de Estados Unidos y el Servicio de Aduanas y Protección Fronteriza crearon una operación conjunta con el mismo fin.¹¹⁵

Más recientemente, la administración del presidente Joseph Biden anunció esfuerzos conjuntos adicionales para “desarticular el tráfico de fentanilo ilícito y dismantelar las redes de tráfico de armas de fuego”.¹¹⁶ Al igual que las anteriores administraciones presidenciales estadounidenses, la Administración Biden reconoció que “[e]l suministro de armas de fuego por parte de narcotraficantes les permite hacer crecer sus empresas y trasladar drogas mortales, incluido el fentanilo ilícito, a los Estados Unidos”.¹¹⁷ En junio de 2023, altos funcionarios del gobierno de los Estados Unidos, entre ellos el Subprocurador General, el Subsecretario de Seguridad Nacional, el Embajador de los Estados Unidos en México y el Director de la ATF, se reunieron para analizar soluciones adicionales a corto plazo,¹¹⁸ entre ellas la ampliación de las investigaciones sobre tráfico de armas de fuego, el aumento de la capacidad de la ATF para rastrear armas de fuego en México y el freno al suministro de armas ilegales mediante el aumento de las medidas de seguridad de las armas. La Administración Biden anunció que profundizaría su colaboración con el Gobierno de México en cuestiones relativas a la seguridad transfronteriza.¹¹⁹ Finalmente, en cumplimiento de esa promesa, el mes pasado ambos gobiernos anunciaron un esfuerzo renovado para realizar un seguimiento electrónico de las armas de fuego incautadas a organizaciones delictivas en México.¹²⁰ Altos funcionarios mexicanos señalaron públicamente que

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

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

¹¹⁵ *Íd.*

¹¹⁶ Véase *FACT SHEET*.

¹¹⁷ *Íd.*

¹¹⁸ *Íd.*

¹¹⁹ *Íd.*

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

las propuestas adicionales para limitar la importación ilegal de armas de fuego fueron “muy bien recibidas”.¹²¹

Es fundamental que todos los esfuerzos mencionados reconozcan los daños a *ambos* lados de la frontera entre los Estados Unidos y México. Así como las armas de fuego fluyen ilegalmente de los Estados Unidos hacia México, las drogas fluyen ilegalmente de México hacia los Estados Unidos. No existe ningún debate serio sobre el hecho de que los carteles mexicanos de la droga controlan la mayor parte del mercado estadounidense de la droga y dominan la importación y distribución de fentanilo, cocaína, heroína, marihuana y metanfetamina en los Estados Unidos.¹²² Lideradas por el fentanilo, estas drogas matan en conjunto a más de 100.000 estadounidenses al año,¹²³ cifra que duplica con creces la tasa de homicidios en México por todas las causas.¹²⁴

El escrito de México ante la Corte es irónica porque la política del Gobierno mexicano se ha alejado de la cooperación con los Estados Unidos en el tráfico transfronterizo ilegal de armas y drogas. Desde que fuera elegido en 2018, el presidente Andrés Manuel López Obrador (conocido como “AMLO” en México) ha “procurado poner fin a la Iniciativa Mérida y ha eviscerado sistemáticamente la cooperación en materia de seguridad entre México y los Estados Unidos, y peor aún, los esfuerzos de México contra los grupos de narcotraficantes y la delincuencia violenta en México y contra el tráfico de drogas hacia los Estados Unidos”.¹²⁵ Con ello, el Gobierno de México está “simplemente renunciando a enfrentarse a los grupos criminales de México... al no poner en marcha ninguna estrategia eficaz para reducir los homicidios”.¹²⁶ Además, AMLO afirmó recientemente que el fentanilo *ni siquiera se produce en México* y deslindó responsabilidades por el flujo de drogas ilegales de México a los Estados Unidos.¹²⁷ Esto es evidente y demostradamente falso.

El escrito de México ignora el toma y daca transfronterizo entre soberanos, optando en cambio por una narrativa simplista que solo menciona los propios problemas de México, solo culpa a las entidades de los EE. UU. de esos problemas y solicita la intervención de la Corte. Estas cuestiones requieren una cooperación bilateral a largo plazo para resolver problemas ingentes y

¹²¹ *Íd.*

¹²² 2020 National Drug Threat Assessment, U.S. DRUG ENF. ADMIN. (marzo de 2021), <https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment%20WEB.pdf> (en adelante “2020 National Drug Threat Assessment”).

¹²³ Véase en general *íd.*

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

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

¹²⁶ *Íd.*

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

codependientes. La solución adecuada no es una opinión consultiva basada en acusaciones unilaterales de una de las partes.

II. México ignora el verdadero origen de la violencia relacionada con las armas de fuego en ese país: los carteles de la droga

Tal vez lo más alarmante del escrito de México es que ignora por completo el verdadero origen de la violencia relacionada con las armas de fuego en ese país: los carteles de la droga que fabrican cantidades ingentes de drogas ilegales en México. Cualquiera sea la procedencia de las armas utilizadas, la violencia en México es perpetrada por mexicanos que utilizan armas de fuego para hacer daño a otros mexicanos, y la mayor parte de esa violencia es cometida por los carteles de la droga que operan con libertad en suelo mexicano.

El problema se remonta a décadas atrás. En la década de 1980, bajo el liderazgo de Miguel Ángel Félix Gallardo, los grupos delictivos y narcotraficantes de México se organizaron mejor, asignando a cada grupo distintas zonas regionales de control y estableciendo rutas de tráfico.¹²⁸ Pero a medida que aumentó la producción y distribución de sustancias ilegales, estas bandas organizadas empezaron a disputarse el control territorial, lo que provocó una escalada de la violencia en todo México. Los expresidentes mexicanos Calderón y Enrique Peña Nieto tomaron medidas agresivas, sin éxito, para combatir a estas organizaciones criminales.¹²⁹ En 2006, por ejemplo, el expresidente Calderón puso en marcha una iniciativa para combatir a los carteles mediante el uso de la fuerza militar. En 2012, el expresidente Nieto revisó esa estrategia, reforzando en cambio la capacidad de las fuerzas de seguridad y apoyando la seguridad pública.¹³⁰

Estos esfuerzos resultaron infructuosos, sobre todo después de que el líder del cartel mexicano de Sinaloa, Joaquín “El Chapo” Guzmán, fuera detenido, vuelto a detener y extraditado a los Estados Unidos en 2017.¹³¹ Esto generó un “vacío de poder” en el seno del cartel de Sinaloa, con el consiguiente recrudecimiento de la violencia entre carteles rivales en territorio mexicano. Para el año 2016, los homicidios vinculados al narcotráfico en México habían aumentado en un 22 %¹³² y la tasa nacional de homicidios por cada 100.000 habitantes en México se ha elevado desde entonces. En 2018, el número de homicidios relacionados con el narcotráfico en México ascendió a 33.341, lo que refleja un aumento del 15 % con respecto al año anterior y una cifra récord.¹³³ Además, los carteles mexicanos asesinaron al menos a 130 candidatos y políticos en el período previo a las elecciones presidenciales de 2018 en México.¹³⁴ Esa tendencia continuó en

¹²⁸ *Criminal Violence in Mexico*, COUNCIL ON FOREIGN RELATIONS (6 de enero de 2023), <https://www.cfr.org/global-conflict-tracker/conflict/criminal-violence-mexico> (en adelante “*Criminal Violence in Mexico*”); véase también *Mexico’s Long War*. Gallardo cumple actualmente una condena de 40 años de prisión por ordenar la tortura y el asesinato del agente especial de la DEA Enrique “Kiki” Camarena.

¹²⁹ *Íd.*

¹³⁰ *Íd.*

¹³¹ *Íd.*

¹³² *Íd.*

¹³³ *Íd.*; véase también *Criminal Violence in Mexico*.

¹³⁴ Véase *íd.*

años electorales futuros, con decenas de políticos asesinados antes de las elecciones intermedias mexicanas de 2021.¹³⁵ Muchas de esas muertes fueron atribuidas a los carteles mexicanos.¹³⁶ En 2018, cálculos conservadores indicaban que alrededor del 20 % de los homicidios en México eran atribuibles al crimen organizado.¹³⁷

México hace mucho hincapié en el hecho de que, a partir de 2004, el aumento de los homicidios en México coincidió con la derogación de la prohibición federal de las “armas de asalto” en los Estados Unidos.¹³⁸ No existe ninguna relación causal entre estos dos hechos. Las tasas de homicidio en México *disminuyeron* en los tres años posteriores a la derogación de la prohibición de las armas de asalto,¹³⁹ y las pruebas disponibles demuestran que el posterior aumento de la violencia armada no se debió a un incremento del tráfico de armas de fuego, sino a la represión de los carteles de la droga por parte del Gobierno mexicano.¹⁴⁰ Como ya se ha señalado, antes de 2006, el Gobierno de México adoptó una postura relativamente pasiva frente a los carteles de la droga y las bandas organizadas.¹⁴¹ Pero la elección del expresidente mexicano Calderón provocó un cambio de política, ya que Calderón declaró esencialmente la guerra a los carteles y amenazó con la fuerza militar.¹⁴² Los carteles respondieron con violencia: de 2007 a 2008, los homicidios vinculados al narcotráfico en México se duplicaron con creces, y la tasa general de homicidios en México aumentó un 57 %.¹⁴³ La derogación de la prohibición de las armas de asalto no tuvo nada que ver con ese aumento.

A pesar del escrito parcial de México, son los carteles de la droga mexicanos los que se han cobrado un terrible precio en derechos humanos en México. Durante años, grupos de defensa de las libertades civiles, periodistas y funcionarios extranjeros han criticado al Gobierno mexicano por no poner freno a los carteles.¹⁴⁴ Desde 2006, más de 79.000 personas han desaparecido a manos de organizaciones delictivas en México.¹⁴⁵ A través de acciones como la Iniciativa Mérida, el Gobierno estadounidense ha trabajado con México para mitigar estas violaciones de los derechos humanos, lo cual promueve los intereses de ambos países a lo largo de una frontera compartida.

¹³⁵ *Mexico's Long War*.

¹³⁶ *Íd.*

¹³⁷ *Id.*; véase también *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>.

¹³⁸ *Escrito de México*, págs. 7-8.

¹³⁹ David B. Kopel, *Mexico's Gun-Control Laws: A Model for the United States?*, TEXAS REV. OF LAW & POLITICS, Vol. 18, págs. 42-44 (2014).

¹⁴⁰ *Íd.*

¹⁴¹ *Íd.* pág. 42.

¹⁴² *Íd.*

¹⁴³ *Íd.* pág. 43.

¹⁴⁴ *Mexico's Long War*.

¹⁴⁵ *Íd.*

Estados Unidos también ha procesado con firmeza a miembros de alto rango de los carteles mexicanos.¹⁴⁶

Los fabricantes legales de armas de fuego en los EE. UU. no son los autores de la violencia en México. Sus autores son los delincuentes mexicanos. Esos delincuentes son los “violadores de los derechos humanos” de los que México debería ocuparse.

¹⁴⁶ Véase, por ejemplo, *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 (5 de abril de 2023), <https://www.ice.gov/news/releases/sinaloa-cartel-hitman-and-el-chapos-head-security-extradited-us-drug-trafficking-and> (que brinda detalles sobre la extradición de Jorge Iván Gastelum Ávila para afrontar cargos por tráfico internacional de drogas y armas de fuego en los Estados Unidos).

CONCLUSIÓN

La industria estadounidense de las armas de fuego está minuciosamente regulada y, a través de la NSSF y otros medios, desempeña un papel fundamental para que los ciudadanos estadounidenses puedan ejercer con seguridad su derecho constitucional a poseer y portar armas. Si bien es cierto que se trasladan ilegalmente armas de fuego de fabricación estadounidense a México y se hace mal uso de ellas allí, la industria estadounidense de armas de fuego y el Gobierno de los Estados Unidos trabajan de forma activa para evitar las transferencias ilegales y, en última instancia, esa cuestión requerirá una solución diplomática entre Estados soberanos que comparten una frontera insegura. La NSSF insta a la Corte a rechazar la solicitud de opinión consultiva presentada por México.

Muy atentamente,

National Shooting Sports Foundation

A través de su representante legal:*

[firma]
Abg. Andrew E. Lelling
Abg. Brittany N. Wilhelm
JONES DAY

**Destinatario designado para todas las comunicaciones de la Corte. La certificación de esta representación, y los Estatutos de NSSF, se adjuntan como Anexo A.*

**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

August 16, 2023

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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.¹ 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.² 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.³ That matter is also pending.

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

² 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.

³ 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.⁴ 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;”⁵ 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.⁶

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,⁷ 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

⁴ 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 (hereinafter “*Mexico Submission*”).

⁵ *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).

⁶ *Id.* at 7, ¶ 6.

⁷ 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.⁸ 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.⁹ 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.¹⁰ It works cooperatively with the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to ensure that all industry members follow federal law.¹¹ NSSF currently has over 10,000 members, including firearm manufacturers, distributors, and retailers; public and private shooting ranges; and sportsmen’s organizations.¹²

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

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

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

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

¹¹ 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.

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

¹³ See *NSSF History*.

agencies.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷ In 2017, bipartisan federal legislation, named after NSSF’s own program, was enacted to implement further improvements to the system.¹⁸
- **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.¹⁹ 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.²⁰ 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.²¹ 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.

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

¹⁵ *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>.

¹⁶ *Id.*

¹⁷ *Id.*

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

¹⁹ *Id.*

²⁰ *Id.*

²¹ 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,²² 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.²³ 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.²⁴ 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.²⁵
- **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.²⁶
- **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.²⁷ NSSF invites presenters from across the federal

²² 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>.

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

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

²⁵ *Id.*

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

²⁷ 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

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.²⁸

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."²⁹ 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.³⁰ The early colonial experience in North America with militias and military authority also drove the sentiment that eventually resulted in the Second

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

²⁹ 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).

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

Amendment to the U.S. Constitution.³¹ 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.”³² 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.”³³

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.³⁴ 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.”³⁵

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.’”³⁶

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.³⁷ 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.”³⁸ The courts were quick to void laws prohibiting

³¹ 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*”).

³² See *Historical Background* (citing THE FEDERALIST No. 29 (Alexander Hamilton)).

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

³⁴ *Id.*

³⁵ U.S. CONST. AMEND. II (1791).

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

³⁷ 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).

³⁸ *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.³⁹ 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.”⁴⁰

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.⁴¹ 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.⁴² 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.”⁴³

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.⁴⁴ 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.⁴⁵ 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.⁴⁶

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.

³⁹ See *Nunn*, 1 Ga. At 251.

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

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

⁴² *Id.*

⁴³ *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

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

⁴⁵ *Id.*

⁴⁶ *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.⁴⁷ 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.⁴⁸ 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.”⁴⁹ In other words, the PLCAA “limits the types of lawsuits that can be brought against gun manufacturers and distributors” in U.S. courts.⁵⁰

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.⁵¹

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.”⁵² 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

⁴⁷ 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).

⁴⁸ 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).

⁴⁹ *Id.* at § 7901(b)(1).

⁵⁰ 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>.

⁵¹ 15 U.S.C. § 7901(a)(5) (emphasis added).

⁵² *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,⁵³ which “recognizes the role that firearms play in violent crimes and pursues an integrated regulatory and enforcement strategy.”⁵⁴ 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.⁵⁵ 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.⁵⁶ 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.⁵⁷

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.⁵⁸ 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.⁵⁹ Federal firearms licensees also must certify that they have secure gun storage devices available to their customers.⁶⁰

⁵³ 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/>.

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

⁵⁵ 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/>.

⁵⁶ *Id.*

⁵⁷ 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>.

⁵⁸ 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>.

⁵⁹ See ATF Firearms Overview.

⁶⁰ *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.⁶¹ All foreign military sales are highly regulated by the State Department with input from the Department of Defense.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵

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.⁶⁶

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

⁶¹ *Id.*

⁶² *Id.*

⁶³ *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.”).

⁶⁴ 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>.

⁶⁵ See *FACT SHEET*.

⁶⁶ *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.⁶⁷

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.”⁶⁸ 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?⁶⁹

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:

⁶⁷ 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>.

⁶⁸ *Id.* at 1.

⁶⁹ *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.⁷⁰

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?⁷¹

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.⁷² 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.”⁷³ 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.”⁷⁴ There are good reasons for caution. The purpose of the advisory opinion process is to interpret international

⁷⁰ 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>.

⁷¹ *Mexico Submission* at 5.

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

⁷³ *Id.* at ¶ 1.

⁷⁴ *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.⁷⁵ Here, Mexico asks the Court to take its side in an existing case that Mexico itself filed (seeking \$10,000,000,000 in damages),⁷⁶ 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.”⁷⁷

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

⁷⁵ *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.

⁷⁶ 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>.

⁷⁷ *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.⁷⁸

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.⁷⁹ 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.⁸⁰

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.⁸¹ 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.

⁷⁸ 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>.

⁷⁹ 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>).

⁸⁰ 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.

⁸¹ 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.⁸² 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.⁸³

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.”⁸⁴

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.”⁸⁵ 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.”⁸⁶ This includes the Government of Mexico, which has often sought relief in U.S. courts.⁸⁷

⁸² *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.

⁸³ *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.”).

⁸⁴ *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).

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

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

⁸⁷ *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.⁸⁸ 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?⁸⁹

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,⁹⁰ *what kinds* of arms can be owned by private citizens,⁹¹ *where and when* arms can

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).

⁸⁸ *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.”).

⁸⁹ *Mexico Submission* at 5.

⁹⁰ *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).

⁹¹ *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,⁹² who is allowed to *sell them*,⁹³ and what steps must be followed to *sell them legally and safely*.⁹⁴ 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.⁹⁵ 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,”⁹⁶ 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.”⁹⁷

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:

⁹² 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).

⁹³ 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.”).

⁹⁴ 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).

⁹⁵ 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).

⁹⁶ *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.”).

⁹⁷ 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.*⁹⁸

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

⁹⁸ *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.⁹⁹ 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.”¹⁰⁰ It then urges the Court to *itself* decide the appropriate level of “due diligence”¹⁰¹ 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.

⁹⁹ *Mexico Submission* at 10–11.

¹⁰⁰ *Id.* at 12 (emphasis added).

¹⁰¹ *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*.¹⁰² The cartels then smuggle the fentanyl into the United States, where it is responsible for killing over 60,000 U.S. residents a year.¹⁰³ 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.¹⁰⁴ 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.”¹⁰⁵ 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.*”¹⁰⁶ 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.

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

¹⁰³ 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)).

¹⁰⁴ 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.

¹⁰⁵ 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>.

¹⁰⁶ *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,¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ Presidents Bush and Calderón “addressed very specific issues” on increasing cooperation “to combat drug trafficking, weapons trafficking and other problems along the border.”¹¹⁰

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.¹¹¹ 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

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

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

¹⁰⁹ *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>.

¹¹⁰ *Id.*

¹¹¹ *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.¹¹²

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.¹¹³ In 2020, the ATF established Operation Southbound to coordinate with other agencies to disrupt firearms trafficking to Mexico.¹¹⁴ The U.S. Immigrations and Customs Enforcement and Customs and Border Protection established a joint operation for the same purpose.¹¹⁵

More recently, the administration of President Joseph Biden announced additional joint efforts to “disrupt the trafficking of illicit fentanyl and dismantle firearms trafficking networks.”¹¹⁶ 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.”¹¹⁷ 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,¹¹⁸ 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.¹¹⁹ Finally, keeping that promise, last month both governments announced a renewed effort to electronically track firearms seized from

¹¹² *Id.*

¹¹³ *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>

¹¹⁴ *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*”).

¹¹⁵ *Id.*

¹¹⁶ See *FACT SHEET*.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

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

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.¹²² Led by fentanyl, these drugs together kill over 100,000 U.S. residents a year,¹²³ which is more than twice the homicide rate in Mexico from all causes.¹²⁴

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.”¹²⁵ 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.”¹²⁶ 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.¹²⁷ 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.

¹²⁰ 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/>.

¹²¹ *Id.*

¹²² *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%20WEB.pdf> (hereinafter “*2020 National Drug Threat Assessment*”).

¹²³ *See generally id.*

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

¹²⁵ 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/>.

¹²⁶ *Id.*

¹²⁷ *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.¹²⁸ 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.¹²⁹ 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.¹³⁰

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 2017.¹³¹ 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%,¹³² 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.¹³³ Moreover, Mexican cartels killed at least 130 candidates and politicians in the lead-up to the 2018 presidential elections in Mexico.¹³⁴ Those trends continued in future election years, with dozens of politicians killed ahead of midterm Mexican elections in 2021.¹³⁵ Many of those deaths were attributed to Mexican cartels.¹³⁶ In 2018, conservative estimates suggested that about 20% of homicides in Mexico were attributable to organized crime.¹³⁷

¹²⁸ *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.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*; see also *Criminal Violence in Mexico*.

¹³⁴ See *id.*

¹³⁵ *Mexico’s Long War*.

¹³⁶ *Id.*

¹³⁷ *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.¹³⁸ 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,¹³⁹ 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.¹⁴⁰ As noted above, before 2006, the Government of Mexico took a relatively passive approach to drug cartels and organized gangs.¹⁴¹ 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.¹⁴² 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%.¹⁴³ 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.¹⁴⁴ Since 2006, more than 79,000 people have disappeared at the hands of criminal organizations in Mexico.¹⁴⁵ 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.¹⁴⁶

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.

¹³⁸ *Mexico Submission* at 7–8.

¹³⁹ 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).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 42.

¹⁴² *Id.*

¹⁴³ *Id.* at 43.

¹⁴⁴ *Mexico’s Long War*.

¹⁴⁵ *Id.*

¹⁴⁶ 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

Through its legal representative:*



Andrew E. Lelling, Esq.
Brittany N. Wilhelm, Esq.

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