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Carlos Navarro

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U.S. Supreme Court Decision on Straw Purchases Is Victory for Mexico’s Efforts to Control Flow of Weapons South of the Border

by Carlos Navarro
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In mid-June, the US Supreme Court issued a ruling that could have some implications for Mexico’s efforts to control the flow of illegal arms to criminal organizations. In a 5-4 decision, the US court upheld rulings by two lower courts that requires gun buyers to report when they are buying firearms for other people. The practice of acquiring weapons for a third party is known as a straw purchase, and criminal organizations in Mexico have used the tactic to acquire firearms in the US (SourceMex, April 1, 2009, Feb. 2, 2011, and March 20, 2013).

The US Supreme Court’s decision comes at a time when civil society in Mexico is trying to organize another campaign to halt gun-related violence. Several campaigns have been organized by the relatives of victims, including Alto al Secuestro, México SOS, Causa en Común, and México Unido Contra la Delincuencia, as well as Movimiento por la Paz con Justicia y Dignidad (MPJD), led by poet Javier Sicilia (SourceMex, Jan. 16, 2013, and Jan. 29, 2014). The latest effort, entitled DesArma México, intends to create awareness in Mexico about the correlation between arms smuggling and the explosion of violence in the country and to demand actions from the US and Mexico. Among those involved in the campaign are prominent academics and writers like Denise Dresser and Sergio Aguayo.

The campaign's emergence also coincided with the publication of the report on violence in Mexico by Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. Heyns, who spent time in Mexico in 2013, issued a scathing report in mid-June 2014, suggesting that violence in Mexico is unlike that in any other country he has visited. The report indicated that more than 100,000 homicides had taken place in Mexico since ex-President Felipe Calderón (2006-2012) launched his drug-interdiction campaign (SourceMex, Jan. 24, 2007). The report also pointed out, however, that President Enrique Peña Nieto has been unable to halt the violence.

US court prohibits purchases for anonymous third parties

The US Supreme Court decision sends a strong signal that the US is at least attempting to bring straw purchases under control. Writing for the court in a 5-4 majority opinion, Justice Elena Kagan said the law helps keep guns out of the hands of those not legally able to buy them, including those with mental illness or previous felony convictions. "No piece of information is more important under federal firearms law than the identity of a gun's purchaser—the person who acquires a gun as a result of a transaction with a licensed dealer," Kagan said.

Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor also supported the decision, while Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito dissented.
The decision could slow the flow of weapons south of the border, but criminal organizations are expected to find other means to smuggle arms into Mexico. The measure does give US authorities another legal tool to attempt to halt the flow of illegal arms.

There was no immediate reaction from Mexican officials to the US court's decision, although the government has frequently condemned the lack of US controls on the flow of weapons into Mexico. The Spanish-language daily La Opinión, based in Los Angeles, California, published an editorial praising the decision "What we find amazing about this decision is the disdain expressed by the four conservative justices for the very laws that they are trying to protect," said the newspaper.

"Even more difficult to swallow is that these four Supreme Court justices accept the trafficking of weapons in defiance of a modest federal law," said La Opinión. "The good thing is that they weren't the majority."

Responsibility on the Mexican side

Academics and victims-rights organizations have long clamored for the US government to take more decisive actions beyond the token efforts that have taken place thus far (SourceMex, Nov. 28, 2007).

While the actual number of weapons that has filtered through the border is impossible to quantify, a joint task force created by the US-based Fellowship of Reconciliation (FOR) and Mexico's MPJD has documented more than 2,900 cases between 2006 and 2010 where arms were sold in the US and seized by Mexican authorities. The report says that more than half the weapons were sold in Texas, and almost one-third in Arizona. Nearly half the weapons were confiscated in the northern states of Tamaulipas, Sonora, and Nuevo León, the strongholds of the Zetas and Sinaloa cartels.

Some academics believe that the level of corruption in Mexico has made the contraband of arms south of the border much easier. "How is it possible that the US continues to introduce firearms, and we are not doing anything at the border to prevent their entry?" said Pablo Monsalvo, an expert on security at the Universidad Iberoamericana in Mexico City. "I believe that there are two factors at work here, the irresponsible inefficiency [by our government] and corruption."

Monsalvo, one of the speakers at a conference on security in January of this year, said the US government has little incentive to cooperate in halting the flow of arms south of the border because of ideology and economics. "The US is a militarized country and is not interested in placing controls on an industry that is one of the principal supports for its economy," said the academic.

A recent study from the University of San Diego indicated that the US firearms industry has earned about US$127 million annually during the past several years from the sale of arms smuggled into Mexico. The report says that at least 235,000 weapons have crossed into Mexico illegally since 2010.

Political analyst Lorenzo Meyer, in an interview on MVS Noticias in mid-June, agreed that Mexico bears some responsibility for the easy influx of weapons across a porous border. While Meyer acknowledged that the US role in allowing the weapons to move freely was an important contributor to the extreme violence in Mexico, he also cited ingrained corruption, an inefficient law-enforcement system, and an ineffective judicial structure in Mexico as contributors to the problem.

"To single out the US as the source of firearms is easy," Meyer said on the MVS show hosted by journalist Carmen Aristegui. "The point is that we have a problem at home, namely the inability of our institutions to halt the flow."
"We have a system of justice in which criminal organizations are so involved that we do not know where criminal activity begins and where governmental roles start and end," added Meyer. "Frankly, they often look the same."

Aristegui interviewed Dresser and Aguayo in the same MVS program, asking them to describe the problem from their point of view and to talk about the DesArma México campaign. The campaign argues that the formula is simple: the more weapons that flow into Mexico, the more homicides occur. "This is a very simple equation," says DesArma México on its Web site. "When the US lifted a ban on the sale of assault weapons to the public in 2004, homicides in Mexico grew exponentially. Between 2004 and 2012, the number of deaths related to firearms tripled."

Dresser mentioned misguided efforts in the US to address the problem, such as the botched Fast and Furious campaign, in which agents from the US Bureau of Alcohol, Tobacco and Firearms (ATF) purposely allowed the introduction of about 2,000 high-caliber weapons into Mexico in order to trace their path. The operation backfired, as some of those weapons were used to kill several Mexicans as well as a couple of US officials in Mexico (SourceMex, March 23, 2011, and Dec. 14, 2011).

Like Monsalvo and Meyer, Dresser argues that the Mexican government has remained entirely too passive regarding the problem, including the relatively mild response to the Fast and Furious fiasco. Citing a quote attributed to Italian poet Dante Alighieri, author of The Divine Comedy, Dresser noted that "the hottest place in hell is reserved for those who remain neutral." The quote is also prominent on the DesArma México Web site.

"The famous phrase from Dante Alighieri illustrates what is happening and not happening to us," said Dresser, who teaches political science at the Instituto Tecnológico Autónomo de México (ITAM) and writes occasional columns in publications like the weekly news magazine Proceso. "Mexico is paralyzed in the face of a conflict that involves everyone, that touches all of us. The undisputable fact is that the more weapons that enter our country, the more homicides occur. And since 2004, when the US lifted its ban on the sale of assault weapons to the public, the deaths have increased. Exponentially. Brutally. Tragically."

Most analysts rightfully ascribe much of the blame for the violence on the Calderón administration, which launched the high-profile drug-interdiction campaign in 2006 and then showed an inability to control the violence that ensued. Aguayo and Dresser argue that the Peña Nieto government has been similarly ineffective in addressing the problem.

Citing a report from the Wilson Center, based in Washington, DC, Dresser pointed out that the Peña Nieto administration has reduced cooperation with the US regarding efforts to control the flow of arms into Mexico and Guatemala. "[We have] a Mexican administration that is apparently not concerned with halting the influx of AK-47 rifles into our country, an influx that is growing day by day," said Dresser.

Aguayo offered a similar assessment. "We have eight years of bloodshed and suffering, and it is obvious that the governments of [US President Barack] Obama and Peña Nieto are pretending not to notice," said the journalist, whose columns appear in the Mexico City daily newspaper Reforma. "What is required as a first step is increased pressure from the societies in the two countries."

Aguayo noted that the US has consistently disregarded the impact of its policies on Mexico and that operations such as Fast and Furious preceded the Obama government. "The administration
of [President George W. Bush] put together a program called Operation Wide Receiver, which involved the purchase of hundreds of firearms by intermediaries, who later circulated those arms in Mexico.

In the radio interview, Aristegui also alluded to Christof Heyns’ report, which is based on data collected in Mexico in 2013. The report, released in June 2014, raised concerns about the ongoing levels of violence even with the change of administration. "The special rapporteur is worried that Mexico is continuing to experience alarming levels of violence," said the report. "There are extremely violent and life-threatening incidents that continue to occur at an intolerable level."

Heyns, who met with 120 municipal, state, and federal officials—including Interior Secretary Miguel Ángel Osorio Chong and Foreign Relations Secretary José Antonio Meade—agreed that controlling the inflow of firearms into Mexico would be an important step to control the violence that has enveloped the country. But he also questioned some aspects of Mexico’s legal system, which allow perpetrators to escape prosecution. For example, the rapporteur questioned why the crime of homicide was left out of the federal law governing organized crime (Ley Federal Contra la Delincuencia Organizada), enacted in 1996 during the administration of ex-President Ernesto Zedillo (1994-2000). The absence of homicide from the law means that federal authorities are not required to investigate homicides in cases that involve organized crime.

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