



Written by [Bob Adelman](#) on May 22, 2023

## 20 State Attorneys General Urge Court to Dismiss Mexico's Lawsuit Against U.S. Gun-makers

A lawsuit [filed by Mexico back in August 2021](#) claimed that crimes committed with American-made firearms in Mexico fell outside the protection granted to gun-makers by Congress against frivolous lawsuits. When a U.S. court tossed it, Mexico, along with some Democrat-led states, appealed.

Last Thursday 20 state attorneys general, headed by Montana's Attorney General Austin Knudsen, filed a ["friend of the court" rebuttal](#) to that appeal. (The states submitting the amicus curiae brief are Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Hampshire, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wyoming.)



Stag1500/Wikipedia

The claims Mexico made back in 2021 sounded ominous:

[The Mexican government] brings this action to put an end to the massive damage that the Defendants [Smith & Wesson, Glock, etc.] caused by actively facilitating the unlawful trafficking of their guns to drug cartels and other criminals in Mexico.

Almost all guns recovered at crime scenes in Mexico - 70% to 90% of them - were trafficked from the U.S.

Innocent Mexican citizens were supposedly the victims of American gun-makers eager to sell their products anywhere there was a demand:

For decades the Government and its citizens have been victimized by a deadly flood of military-style and other particularly lethal guns that flows from the U.S. across the border, into criminal hands in Mexico.

This flood is not a natural phenomenon or an inevitable consequence of the gun business or of U.S. gun laws. It is the foreseeable result of the Defendants' deliberate actions and business practices.

Defendants design, market, distribute, and sell guns in ways they know routinely arm the drug cartels in Mexico. Defendants use reckless and corrupt gun dealers and dangerous and illegal sales practices that the cartels rely on to get their guns.



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Last September, the U.S. District Court in Massachusetts where the complaint was filed dismissed the lawsuit: “Unfortunately for the government of Mexico, all of its claims are either barred by federal law or fail for other reasons. The PLCAA [Protection of Lawful Commerce in Arms Act] 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.”

The PLCAA was passed by Congress in 2005 following a spate of frivolous lawsuits that had already bankrupted one gun-maker and, at the peak of those lawsuits, was costing the gun industry a million dollars a day in legal fees to defend.

The strategy adopted by the anti-Second Amendment movement was simplicity itself: kill the industry through a thousand paper cuts that would cause it to bleed to death.

Now comes Mexico, a tyranny with no Second Amendment, to threaten America’s gun industry — but with a twist: Since those alleged crimes happened outside the United States, and because the PLCAA applies only to U.S. citizens, then the PLCAA doesn’t protect those gun-makers.

The strategy is clear. In an email to [The Epoch Times](#), Arkansas Attorney General Tim Griffin, one of the 20, said:

This lawsuit is part of a broad strategy by anti-gun activists to try and shut down firearms manufacturing.

Congress passed the Protection of Lawful Commerce in Arms Act to protect American businesses from these kinds of frivolous lawsuits.

The brief filed by those 20 state attorneys general is a work of art:

Mexico advances a legal theory that is unsupported by fact or law.

On the facts, American gun manufacturers are not responsible for gun violence in Mexico. Rather, policy choices by the Mexican government, policy failures in the United States, and independent criminal actions by third parties are alone responsible for gun violence in Mexico....

The available evidence suggests that gun violence in Mexico increased ... because of the Mexican government’s crackdown on the cartels.

Contrary to Mexico’s claims that American guns are “among the deadliest and most often recovered at crime scenes in Mexico,” only a minority of guns recovered at crime scenes in Mexico can be traced back to the United States.

Among the American guns recovered at crime scenes in Mexico, many were sold wholesale to the Mexican military and law enforcement and only ended up in cartel hands after soldiers or policemen deserted....

From 2003 to 2009, around 150,000 Mexican troops defected to the cartels—taking their American-made rifles with them....

And the age of the few American retail guns that do end up in cartel hands suggests that these weapons were stolen, or sold on the black market, years after their legal sale in the United States and [thus] were not intentionally trafficked to Mexico through straw



purchases.

The friendly brief added that many of the firearms being used to kill Mexican citizens “originate in China or Eastern Europe ... [and] many more were left behind in Vietnam.” In addition, wrote the state AGs:

In the future, it’s likely (and unfortunate) that American guns abandoned in Afghanistan will also find their way to Mexican drug cartels....

This is hardly the fault of American gun manufacturers. That some of their guns made it into the hands of Mexican cartels is the result of American foreign policy failures, [and] not decisions by American gun manufacturers.

The brief reminded the court of appeals that the ATF must also be held responsible for some of those guns showing up in Mexico:

Take, for example, William Newell.

In 2007, Newell served as the Special Agent in Charge of the ATF’s Phoenix Field Office. While there, Newell initiated a program called “Wide Receiver.” The program encouraged gun dealers to sell firearms to individuals they knew to be straw purchasers for the cartels.

Newell and the ATF told gun store owners that they would track the firearms after their sale, trace them back to the cartels, and intercept them before they could be used in a crime.

But when officials in the Bush Administration began asking about the program, the Phoenix ATF office immediately shut it down.

Newell failed to deliver on his promise to track the guns, and instead put 300 firearms into cartel hands.

Newell tried again under the Obama Administration in a program called “Fast & Furious.” This time, the ATF and Department of Justice enthusiastically endorsed the program, which again encouraged gun dealers to sell firearms to straw purchasers for the cartels.

Once again, ATF failed to track the guns after they left gun stores.

After more than a year of facilitating gun sales to Mexico, Newell orchestrated the delivery of over 2,000 weapons to the cartels that were used in over 200 homicides—including the murder of a U.S. Border Patrol Agent.

ATF has never offered a viable explanation for how they planned to prevent the guns from being used by the cartels and the incompetence on display in Fast & Furious has been widely ridiculed.

The Mexican government has stated that it wishes to extradite the ringleaders of Fast & Furious for trial in Mexico. But so far, the United States has declined to do so or to bring charges against them in the United States.

In fact, the United States has promoted many of these individuals—including Newell—within the ATF.



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The amicus brief concluded that “Mexico’s lawsuit rests on a legal theory that is unsupported by fact or law. This Court should affirm the [lower court’s decision] and dismiss all claims against Defendants.”

This article could, and should, end here.

But anti-gun, anti-Second Amendment lawyers are considering the case as an opportunity to “clarify” the situation through international law that would override Congress. William S. Dodge, a Martin Luther King, Jr. professor of law at the University of California at Davis, editor of the Transnational Litigation Blog, and former counselor to the U.S. Department of State on international law, wrote: “Nothing in U.S. or international law prevents foreign plaintiffs (including foreign governments) from suing U.S. defendants in U.S. courts, even for harm that occurred abroad.”

Another, Leila Nadya Sadat, a professor of international law at Washington University, opined: “It is perhaps not impossible to hope that some combination of state, federal, foreign, and international law will permit some regulation of the gun violence epidemic at home and abroad.”

So, the war against guns and their private ownership by sovereign citizens of the United States, as guaranteed by the Second Amendment to the U.S. Constitution, remains under attack. If the appeals court affirms the lower court’s decision to dismiss Mexico’s frivolous but dangerous lawsuit against U.S. gun-makers, there will be another one right behind it, limited only by the imagination of anti-gun lawyers seeking not justice or a reduction in gun violence — but the elimination of firearms privately held by American citizens.



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