

# FUELING VIOLENCE ALONG THE SOUTHWEST BORDER: WHAT MORE CAN BE DONE TO PROTECT THE CITIZENS OF THE UNITED STATES AND MEXICO FROM FIREARMS TRAFFICKING

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## I. INTRODUCTION

Violence is increasing along the southwest border between Mexico and the United States.<sup>1</sup> One reason for the elevated violence is high levels of firearms trafficking combined with rival drug cartels and gangs competing for prime trade routes between our two countries.<sup>2</sup> This is a complex issue that not only involves firearms and narcotics, but also illegal immigration.<sup>3</sup> Any hope for a solution will require the cooperation and involvement of all levels of government on both sides of the border.<sup>4</sup> This Comment addresses the inadequacy of current bilateral measures and proposes solutions that will attack the problem from the perspective of stopping the flow of illegal firearms from the United States into Mexico.

Section II focuses on the current state of affairs in border towns in both countries and addresses the major factors that led to the increase in violence. Section III introduces and compares the theories of incrementalism and comprehensive rationality as they relate to legislative reform and addresses how both Mexico and the United States are responding to these issues.<sup>5</sup> More specifically, this section discusses recent attempts at cooperation

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1. See Richard A. Serrano, *Drug War Fuels Border Violence – Close Up*, SEATTLE TIMES, Aug. 20, 2007, at A3 (citing an explosion of border town violence which is spreading deeper into the U.S.); David McLemore, *Mexico Is Praised for Anti-Drug Work*, DALLAS MORNING NEWS, Aug. 11, 2008, available at 2008 WL 15021983 (noting concern over the level of violence).

2. McLemore, *supra* note 1; see Serrano, *supra* note 1, at A3 (noting the 71% increase in marijuana seizures over the past year in Tucson and the fact that 80% of the methamphetamine in the U.S. is now coming from labs in Mexico).

3. Ruben Navarrette, Editorial, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, ALAMEDA TIMES-STAR, Mar. 31, 2008, available at 2008 WL 6122879; Ruben Navarrette, *Why the U.S., Mexico Can't Get Along*, TULSA WORLD, June 29, 2008, at G5.

4. Navarrette, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, *supra* note 3; see also Navarrette, *Why the U.S., Mexico Can't Get Along*, *supra* note 3, at G5 (“[The U.S. and Mexico], ‘We’re always going to be neighbors,’ . . . ‘We’re going to live together forever’”).

5. Incrementalism is the process by which policy emerges gradually in small incremental steps through a continual cycle of experimentation, reaction, and adjustment. See *infra* Section III, Part A.

by the governments of the two countries, responses to these issues by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and proposed U.S. legislation in both the House of Representatives and the Senate. Finally, Section III offers ideas at how the United States can improve its efforts at reducing firearms trafficking to Mexico. The last section proposes legislative reforms along with expanding the options that the ATF has at its disposal. The end result will be to cut firearms trafficking off at the source.

## II. BACKGROUND INFORMATION

[In Miguel Aleman, Mexico]—Hit men, [with] pistols tucked in their pants and walkie-talkies strapped to their belts, move freely in this city of sorghum farmers and cattle ranchers, dropping off their ostrich-skin boots with shoeshine boys in the city's plaza and stopping at local bars for a beer . . . In this city of 35,000 across from Roma, Texas, hit men are easily identified by their bulletproof pickup trucks and sport utility vehicles.

The traffickers have lookouts at every entrance to the city and informants on bicycles looking for anyone suspicious, townspeople say. They will photograph newcomers, including reporters, and question strangers.

The traffickers “speed through the street, drive against traffic and run red lights. But here, no one says anything to them,” said a businessman who requested anonymity for fear of reprisals. “Here, they are the law.”<sup>6</sup>

Over 9,000 people have been killed in the drug wars along the southwest border of the U.S. and Mexico between 2007 and 2009, with at least 1,000 of the deaths occurring in 2009 alone.<sup>7</sup>

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6. Olga R. Rodriguez, *Mexican Cartels Have Risen to Dominate the Drug World*, DESERET MORNING NEWS, Nov. 6, 2005, at A13.

7. Dudley Althaus, *Mexico Drug Crimes Leave Border at Odds*, HOUS. CHRON., Feb. 28, 2009, at A1 (noting that U.S. and Mexican officials estimate that more than 1,000 people have been killed in drug violence in the first two months of 2009); see Press Release, Senator Jeff Bingaman, Bingaman and Hutchison Renew Effort To Enact

No one in a Texas, Arizona, or California border town is safe from the widespread violence.<sup>8</sup> The increase in violence is a direct result of rival drug cartels competing for dominance of valuable smuggling routes into the United States.<sup>9</sup> Drug cartel hit men assassinate members of Mexico's elite state police force, kidnap large groups of people for ransom money, and rape and beat women at will.<sup>10</sup>

Illegal immigration and drug trafficking across the U.S.-Mexico border should not be news to anyone.<sup>11</sup> However, what is new along the border is the increasing violence on both sides and the flow of firearms into Mexico.<sup>12</sup> The United States sustains a demand for narcotics and labor to which Mexico responds, supplying both workers and drugs.<sup>13</sup> This influx of narcotics and

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Southwest Border Violence Reduction Act (Jan. 12, 2009) (on file with author) (citing more than 5,300 deaths in 2008, which was double the number in 2007).

8. See generally Manuel Roig-Franzia, *U.S. Guns Behind Drug Cartel Killings in Mexico*, WASH. POST, Oct. 29, 2007, at A1 (listing the Texas, Mexico and Arizona border towns as having large amounts of weapon smuggling); Sara Miller Llana, *U.S. Guns Arm Mexico's Drug Wars*, CHRISTIAN SCI. MONITOR, July 19, 2007, at 1 (describing victim accounts in Texas and Arizona).

9. Serrano, *supra* note 1, at A3; see also Llana, *supra* note 8, at 1 (linking the current competition to former Mexican President Fox's arrests of high ranking leaders of the Gulf, Juarez, and Tijuana cartels).

10. Llana, *supra* note 8, at 1 (detailing the death of Marcelo Garza y Garza-Mexico's top police investigator-who was shot twice in the head as he exited his church); Roig-Franzia, *supra* note 8, at A1 (noting that after killing Ricardo Rosas Alvarado, the cartel hit men opened fire on a federal police office); Serrano, *supra* note 1, at A3 (noting that in Phoenix, AZ, groups as large as 100 immigrants have been kidnapped and held for ransom, and in McAllen, TX, two women smuggled from Central America were found raped, beaten, and left on the side of the road).

11. See generally Serrano, *supra* note 1, at A3 (illustrating numerous instances of illegal immigration and drug trafficking along the border); Navarrette, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, *supra* note 3 (detailing a discussion with a Mexican official on violence along the border, the drug war, and immigration).

12. See Serrano, *supra* note 1, at A3 (noting that the violence along the border is spilling out of control); Navarrette, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, *supra* note 3, (citing that Mexican officials desperately want to stop the shipment of illegal arms flooding the country from the U.S.).

13. Navarrette, *Why the U.S., Mexico Can't Get Along*, *supra* note 3, at G5 (noting there is a market not only for the drugs and illegal immigrants exported to the U.S., but the illegal guns exported to Mexico as well); see also Navarrette, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, *supra* note 3 (illustrating that because drug cartels demand guns, both countries need to work together because Mexico must be willing to help curb

immigrants across the border has created opportunities for organized crime as well as a demand for firearms that the United States is more than willing to satisfy.<sup>14</sup>

#### A. *Victim accounts*

Border violence spans all levels of socioeconomic status.<sup>15</sup> In the summer of 2008, Alexia Moreno, her cousin, and a friend were walking near Alexia's home in Ciudad Juarez, Mexico, when several men forced them into an SUV.<sup>16</sup> The men who picked them up were on their way to a gun battle with a rival trafficking gang and needed the girls to use as leverage and as human shields.<sup>17</sup> Almost immediately after kidnapping them, the gun battle began.<sup>18</sup> Alexia was shot in the head within minutes as she attempted to seek cover in the back seat of the vehicle, while the other two girls were lucky enough to survive by escaping when the vehicle crashed.<sup>19</sup> Not only does Alexia's family have to accept the prospect of living without her, but at her funeral, her father had to publicly state that he was in no way involved with the drug cartels.<sup>20</sup> In Mexico, people assume that when you are victimized by cartel violence you are involved in some way.<sup>21</sup> This widely held view is fueled by the common

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the flow of immigrants if the U.S. is going to step up efforts to combat the gun trafficking).

14. McLemore, *supra* note 1 (noting that drug smuggling, human smuggling, and gang activity generates the border violence to which the ATF estimates the U.S. is supplying between 90–95% of the firearms used in these activities); Roig-Franzia, *supra* note 8, at A1 (highlighting that Mexican police estimate that 100% of the firearms used in drug-related killings were imported illegally from the U.S.).

15. See Tracy Wilkinson, *Mexico Under Siege: Citizens in Cross Hairs of Drug War Mayhem*, L.A. TIMES, July 16, 2008, at A1 (stating that innocent bystanders are increasingly the victims of border violence); Hector Tobar, *An Open Secret War*, L.A. TIMES, Apr. 23, 2006, at A29 (noting journalists mention very few details in reporting on attacks due to cartels targeting them); Alfredo Corchado, *Cartels Grip a Border City*, MIAMI HERALD, Feb. 24, 2007, at A12 (describing the assassination of the Laredo police chief within hours of taking the job and the ambush of a federal congressman).

16. Wilkinson, *supra* note 15, at A1.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Tobar, *supra* note 15, at A29 (explaining that views in Mexico range from ones

practice of reporters and media sources refusing to explain why a person was victimized or who the probable suspects are.<sup>22</sup>

The majority of Mexican news sources only publish the most basic facts of crimes.<sup>23</sup> “The journalists who ordinarily would report on such violence have been silenced by cartel operatives who kidnap reporters and repeatedly phone in threats to newsrooms.”<sup>24</sup> For example, in 2004, the editor of *El Mañana* newspaper was murdered.<sup>25</sup> The newspaper responded by ceasing its reporting of drug cartel crimes in the hopes that no other attacks would occur.<sup>26</sup> Unfortunately, cartel enforcers armed with assault rifles and grenades ambushed its newspaper offices despite the newspaper’s decision to forego reporting on the cartels.<sup>27</sup>

Furthermore, the general public is not only kept in the dark about the true nature of innocent victims of cartel violence, but also is unaware that journalists are being kidnapped and media stations threatened to keep them from reporting on incidents.<sup>28</sup> This further fuels speculation about victims being involved in organized crime.<sup>29</sup> This speculation reinforces the power and control that the cartels have over the communities for which they are competing.<sup>30</sup>

The cartels and their enforcer gangs dominate local communities by controlling media outlets and by threatening

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stating that no innocent person is ever killed and that the victim must have been involved with the cartels in some way, to Tamaulipas Governor Flores proclaiming to citizens that those who “behave themselves have nothing to fear” because those caught up in the violence “are in some way involved with organized crime.”)

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Tobar, *supra* note 15, at A29.

27. *Id.*

28. *Id.*; Alfredo Corchado, *Mexican Travel Advisory Issued: Drug-Related Deaths Prompt U.S. Warning; Border States Included*, DALLAS MORNING NEWS, Apr. 21, 2007, at 1A (pointing out that since 2000, over thirty journalists have been murdered or have disappeared in Mexico).

29. Tobar, *supra* note 15, at A29.

30. *Id.*

and assassinating law enforcement officials.<sup>31</sup> The most infamous killing to date occurred in 2005 in Nuevo Laredo, Mexico, where the Gulf Cartel and its enforcers, the Zetas, have current dominance.<sup>32</sup> The murder was that of the Nuevo Laredo police chief, Alejandro Dominguez.<sup>33</sup> Mr. Dominguez was gunned down in broad daylight, only a few hours after he had taken office.<sup>34</sup> Dominguez' successor subsequently resigned—citing stress—leaving the city without a police chief for almost one year.<sup>35</sup>

In Juarez, the top police commander resigned and fled after high-ranking police officers and a dozen regular officers under him were murdered after being placed on a cartel hit list.<sup>36</sup> The Juarez Cartel, which controls one of the primary drug trafficking routes into the United States via El Paso, publicly posts its hit list in an effort to intimidate police officers to quit.<sup>37</sup>

Unfortunately, these law enforcement killings are not unique to Texas.<sup>38</sup> The Sinaloa and Juarez Cartels are competing for trade routes that stretch from El Paso, TX to Nogales, AZ.<sup>39</sup> During the early months of summer 2008, four Mexican police officers were killed just south of the Arizona border.<sup>40</sup> Shortly after these killings, a high-ranking police commander of the *Policía Estatal Investigadora* was murdered in the same area.<sup>41</sup> The police officials were attacked with AK-

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31. *Id.* (noting the assassination of Nuevo Laredo police chief Alejandro Dominguez); Jerry Seper, *Mexican Drug Wars Threaten U.S.; 'Deadly Force' Spills Over Border*, WASH. TIMES, Sept. 3, 2008, at A1 (noting the commander of *Policía Estatal Investigadora* was murdered, and four Mexican police officers were killed in southern Arizona).

32. *See* Tobar, *supra* note 15, at A29 (detailing the Nuevo Laredo killing); Corchado, *supra* note 15, at A12 (noting the Zetas control of that area).

33. Tobar, *supra* note 15, at A29.

34. *Id.*

35. Corchado, *supra* note 15, at A12.

36. Wilkinson, *supra* note 15, at A1.

37. Seper, *supra* note 31, at A1.

38. *See id.* (citing drug cartel related murders that have occurred in Arizona and the Mexican border states of Chihuahua and Sonora).

39. *Id.*

40. *Id.*

41. *Id.*

47 assault rifles and several of them were ultimately decapitated.<sup>42</sup>

U.S. Border Patrol agents are likewise seeing an increase in attacks, with incidents rising to nearly three a day in 2008.<sup>43</sup> More specifically, the total number of Border Patrol agents attacked in a ten month period in 2008 was over two hundred more than the same ten month period in 2006.<sup>44</sup> Border Patrol agents are being attacked with assault rifles, Molotov cocktails, concrete slabs, bottles, and rocks.<sup>45</sup>

Along with bystanders, police, and government officials, some members of the cartels or their enforcer gangs can also be characterized as victims.<sup>46</sup> Rosalio Reta, a Houston native, began traveling to Nuevo Laredo when he was thirteen to partake in the nightclub scene where entrance and drinking age limits are either nonexistent or unenforced.<sup>47</sup> Reta was impressed by youth his own age throwing money around and driving expensive cars.<sup>48</sup>

Reta began moving weapons across the border, and after helping to break a cartel leader out of a Mexican prison, he was promoted to hit man.<sup>49</sup> At age eighteen, Reta pleaded guilty to murder for hire and received a forty-year sentence.<sup>50</sup> Reta is awaiting a second trial where he is accused of slaying a man in his car while the victim's family watched nearby.<sup>51</sup>

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42. Seper, *supra* note 31, at A1.

43. *Id.*

44. *Id.* (892 agents were assaulted along the southwest border between October and July 2008, compared with 638 being assaulted during the same months in 2006); *see also* Dave Montgomery, *Homeland Chief Condemns Attacks on Border Agents*, HOUS. CHRON., Jan. 23, 2008, at A6 (citing a 688% increase in attacks on U.S. Border Patrol agents along California's southern border in 2006–2007).

45. Seper, *supra* note 31, at A1.

46. Corchado, *supra* note 15, at A12 (detailing victim accounts of bystanders, police officers, and a Mexican Congressman); Serrano, *supra* note 1, at A3 (noting a Gulf Cartel hit man joined at age thirteen).

47. Serrano, *supra* note 1, at A3.

48. *Id.*

49. *Id.*

50. *Id.* (stating that Reta faced up to ninety-nine years).

51. *Id.*

Notwithstanding the volume of victims that are choosing to live along the border, a great many of the victims are Mexican immigrants in search of jobs and greater opportunity in the United States.<sup>52</sup> FBI Director Robert Mueller has even suggested that “human smuggling” is one of the primary factors that are generating violence along the borders.<sup>53</sup> Hundreds of Mexicans have been kidnapped from the Nuevo Laredo area alone in the last few years as cartels find new ways to finance their illicit activities.<sup>54</sup> Since controlling a smuggling route includes both the right to traffic narcotics and humans, rival cartels are hijacking vehicles carrying both drugs and immigrants to assert their dominance and claim to a territory.<sup>55</sup>

In Phoenix, AZ, thirteen illegal immigrants were recently kidnapped and executed in the desert for unknown reasons.<sup>56</sup> Cartel members are becoming increasingly reckless and have on several occasions kidnapped between 50–100 immigrants and held them until their family members paid the ransoms demanded.<sup>57</sup> Similarly, in Laredo, cartel members kidnapped fifty-six immigrants and left them locked in a refrigerated trailer.<sup>58</sup> When confronted, the human smugglers are increasingly willing to shoot back at the police or flee.<sup>59</sup> However tragic, there is no indication that the apex of the violence has been reached.<sup>60</sup>

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52. Navarrette, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, *supra* note 3.

53. McLemore, *supra* note 1 (stating that Mueller said drug smuggling, human smuggling, and gang activity are responsible for generating the high levels of border violence).

54. Corchado, *supra* note 15, at A12 (noting that because of the increase in kidnappings of both Mexicans and Americans, traffickers have earned the nickname “*narco secuestradores*,” or narco kidnapers).

55. Serrano, *supra* note 1, at A3.

56. *Id.* (stating that this case was unsolved as of 2007).

57. *Id.* (detailing that while holding the hostages in the Phoenix area, some were raped, one had her face burned by a cigarette, and others had their fingers cut off and sent to their families with the ransom demand).

58. *Id.* (stating that the group included eleven women and two children, and when Webb County Sheriff’s deputies found them, many were nearly dead as a result of being in the trailer for six hours).

59. *Id.* (stating that the human smugglers are commonly referred to as “coyotes”).

60. *See generally id.* (explaining how there has been an explosion of violence among rival drug networks that has law enforcement officials wary).

*B. Where does the blame fall?*

Depending on whom you ask, the blame falls on either the United States or on Mexico.<sup>61</sup> History is partly to blame for the animosity between the two countries.<sup>62</sup> The United States claimed half of Mexico in 1848 under the guise of “manifest destiny,” and Mexico has been weary of the United States ever since.<sup>63</sup> Currently, when discussing immigration or drugs, Mexicans can blame the United States for the demand side of the market, whereas Americans can shift the blame to Mexico for the supply of workforce and narcotics.<sup>64</sup>

The truth of the matter is that both sides are to blame.<sup>65</sup> The appetite for drugs in the United States is voracious.<sup>66</sup> Illicit drug use and related deaths have reached unprecedented levels.<sup>67</sup> Bad parenting is one factor that has led to the demand for drugs in the United States, while lack of opportunities in Mexico is one factor that has led to forced illegal immigration.<sup>68</sup> Similarly, when discussing firearms trafficking, Mexicans can blame the United States for the supply of firearms flooding their country.<sup>69</sup> On the other hand, Americans can blame Mexico for creating the demand for firearms through their lax law enforcement and corruption, both of which have enabled the

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61. Navarrette, *Why the U.S., Mexico Can't Get Along*, *supra* note 3, at G5.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. See generally Mike Males, *This is Your Brain on Drugs, Dad*, N.Y. TIMES, Jan. 3, 2007, at A1 (noting the skyrocketing drug abuse problem); Kate Zernike, *Drug Survey of Students Finds Picture Very Mixed*, N.Y. TIMES, Dec. 20, 2005, at A20 (noting an all-time high in student-aged prescription drug abuse).

67. Males, *supra* note 66, at A1. Forty-eight percent of high school seniors used illegal drugs in 2005, compared with 22% in 1972. *Id.* Drug related deaths of adults in their 40s and 50s have risen by 800% since 1980, while the number of drug related deaths of all Americans has risen 400% in the last twenty years. *Id.* Approximately 7% of high school seniors have used illicit prescription sedatives in 2005, compared with approximately 3% in 1992. Zernike, *supra* note 66, at A20.

68. See Mark Fraser, *Family, School, and Peer Correlates of Adolescent Drug Abuse*, 58 SOC. SERV. REV. 434, 436 (1984). See generally Navarrette, *Why the U.S., Mexico Can't Get Along*, *supra* note 3, at G5; Navarrette, *Mexico Wants U.S. to Stem Flow of Illegal Guns*, *supra* note 3.

69. Navarrette, *Why the U.S., Mexico Can't Get Along*, *supra* note 3, at G5.

drug cartels' rise to power.<sup>70</sup>

Instead of pointing fingers, a more productive approach would be to view both sides of the border as being “joined at the hip.”<sup>71</sup> Since the United States and Mexico are perpetual neighbors, we must focus on finding solutions to these issues that are plaguing both countries.<sup>72</sup> Indeed, some residents of the border towns take the view that the Rio Grande River is not a dividing line, but a uniting force.<sup>73</sup> Some residents also describe the border as “ground zero,” with the further notion that they are one community, “for good or bad.”<sup>74</sup>

Both the U.S. and Mexican governments seem to realize that the problems are escalating in both countries.<sup>75</sup> The reality of the situation is that people and drugs have always gone north, while firearms have always gone south.<sup>76</sup> Firearms are not easy to obtain in Mexico because you have to petition the government, and the only valid reasons are self-protection and hunting.<sup>77</sup> If you are able to obtain a firearm legally, it cannot be moved and must stay at the owner's home.<sup>78</sup> There are no gun stores in Mexico.<sup>79</sup> Conversely, some have called the U.S. policies on firearms “absurd.”<sup>80</sup> In the United States, it is legal for an unlicensed seller to sell firearms from his or her own personal collection.<sup>81</sup> This trend occurs in large numbers at weekend gun shows without background checks.<sup>82</sup> This allows

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70. *Id.*

71. Dudley Althaus, *Bloodbath of Juarez Rarely Spills Into El Paso*, HOUS. CHRON., Oct. 5, 2008, at A1.

72. Navarrette, *Why the U.S., Mexico Can't Get Along*, *supra* note 3, at G5.

73. Serrano, *supra* note 1, at A3.

74. *Id.*

75. Gary Martin, *Mexico Gunrunning to Be Probed*, SAN ANTONIO EXPRESS-NEWS, Feb. 8, 2008, at 13A (Congressman Eliot Engel stated, “As long as the narco-traffickers are armed with guns from the United States, the brutal violence of the drug gangs will continue unabated.”).

76. Llana, *supra* note 8, at 1.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* (quoting Mexico's Attorney General Eduardo Medina Mora in 2007).

81. Roig-Franzia, *supra* note 8, at A1.

82. *Id.*

the firearms to be introduced into Mexico in what is described as an “ant trail” system.<sup>83</sup> The “ant trail” system is so successful and hard to combat that as many as 2,000 firearms are believed to enter Mexico illegally from the United States on a daily basis.<sup>84</sup>

Both the United States and Mexico recognize the severity and complexity of the issue as their level of cooperation has reached unprecedented levels.<sup>85</sup> For the first time ever, Mexico and U.S. law enforcement agencies are opening up their investigative files to each other.<sup>86</sup> Former President George W. Bush and Mexican President Felipe Calderón worked closely together on an aid package and further measures to combat these issues from both sides of the border.<sup>87</sup> Furthermore, President Barack Obama has acknowledged the responsibility of the United States due to its high demand of drugs and pledged a “new era of cooperation and partnership” between the two countries.<sup>88</sup>

*C. Factors that led to the U.S.-Mexico border becoming a war zone*

The U.S.-Mexico border did not become a war zone overnight. Many factors have led to its transformation. Likewise, several proposals are needed to stabilize it.

*1. Mexican drug cartels rise to power*

In 1993, Pablo Escobar, head of the Colombian Medellín Drug Cartel—the most powerful and notorious drug organization in the world—was fatally wounded as he fired his Sig-Sauer Model 226 9mm at the police.<sup>89</sup> This firearm was later

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83. *Id.* (explaining how this refers to the process of a steady stream of people, each carrying several firearms and entering Mexico each day).

84. *Id.*

85. Llana, *supra* note 8, at 1.

86. *Id.* (stating that other cooperative measures include firearms tracing, training, extraditions, equipment, and the establishment of joint task forces).

87. Martin, *supra* note 75, at 13A.

88. Sheryl Gay Stolberg, *In Mexico, Obama Seeks Curbs on Arms Sales to Thwart Drug Cartels*, N.Y. TIMES, Apr. 17, 2009, at A8.

89. Charles J. Hanley, *Weapons Unlimited*, MEMPHIS COM. APPEAL, Mar. 27, 1994,

traced to a Florida dealer who had sold the firearm, along with eighteen others like it, to one man in the span of a week.<sup>90</sup> Prior to the death of Escobar, Mexican traffickers were primarily middlemen, providing the means for the Colombian cartels to get their narcotics into the United States.<sup>91</sup> The Mexican traffickers were paid in cocaine instead of cash, which protected the Colombian cartels by decreasing vulnerable shipments of bulk cash.<sup>92</sup> Decreased money laundering was another benefit.<sup>93</sup> Furthermore, this allowed the Mexican traffickers to strengthen their business by selling the cocaine in the United States.<sup>94</sup>

In the 1990s, the Colombian National Police toppled both the Medellín and Cali Cartels, the two biggest suppliers of cocaine to the United States.<sup>95</sup> This, combined with the U.S. focus of its anti-drug trafficking efforts on Florida and the Caribbean, where most of the narcotics entered the country, allowed the Mexican traffickers to gain power and rise to dominance.<sup>96</sup> The Mexican drug cartels have been difficult for law enforcement to combat for two reasons.<sup>97</sup> First, the cartels are “poly-drug” traffickers, meaning they traffic multiple drugs, as opposed to the Colombian cartels that focus primarily on cocaine.<sup>98</sup> Second, the Mexican cartels have multiple regional cartels, as opposed to the two dominant cartels in Colombia.<sup>99</sup>

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at B3.

90. *Id.*

91. J. Patrick LaRue, *The “Ill-Icit” Effects of NAFTA: Increased Drug Trafficking Into the United States Through the Southwest Border*, 9 CURRENTS: INT’L TRADE L.J. 38, 40 (Summer 2000).

92. *Id.* at 40.

93. *See id.* (explaining how the payment scheme minimized shipments of cash that was vulnerable to law enforcement seizure).

94. *Id.*

95. *Id.* at 39. *See generally* James Brooke, *Crackdown Has Cali Drug Cartel on the Run*, N.Y. TIMES, June 27, 1995, at A1; Michael Cooper, *For Medellín Assassin, 10 Life Sentences*, N.Y. TIMES, May 6, 1995, at 23.

96. LaRue, *supra* note 91, at 39.

97. *Id.*

98. *Id.* (stating that the Mexican cartels are currently trafficking in marijuana, cocaine, heroin, methamphetamine, and prescription drugs).

99. *Id.*

Mexican cartels supply the majority of the cocaine, heroin, methamphetamine, and marijuana that enters the United States.<sup>100</sup> The United States sustains a drug habit that costs approximately \$65 billion per year.<sup>101</sup> Even though Colombia remains the world's largest producer of cocaine, the Mexican cartels have risen to become the most powerful in the world.<sup>102</sup>

2. *Government corruption has crippled Mexico's efforts to clean up the southwest border*

Another factor that enables the Mexican cartels to maintain a powerful grip over the drug and arms trade is corruption within the Mexican government.<sup>103</sup> The cartels are proving to be very effective in corrupting high-ranking Mexican officials.<sup>104</sup> Furthermore, judicial corruption and the failure of the Mexican prosecutorial system have led to Mexico's decision to extradite drug cartel leaders for prosecution in the United States.<sup>105</sup> Likewise, at lower levels of Mexican government, customs officials have been bribed with large sums of money to allow weapons shipments into Mexico.<sup>106</sup> Finally, extremely low salaries make Mexican police officers highly susceptible to bribes.<sup>107</sup> In 2008, the city of Juarez dismissed 400 members of their 1,400-member police force after those members failed a federally administered "trustworthiness" test.<sup>108</sup> This corruption

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100. Rodriguez, *supra* note 6, at A13 (providing that more marijuana enters the U.S. from Mexico than any other country and that over 90% of the cocaine, over 50% of the methamphetamine, and nearly 50% of the heroin that enters the U.S. originates in Mexico).

101. *Id.*

102. *Id.*

103. See Pamela K. Starr, *Challenges for a Postelection Mexico Issues for U.S. Policy*, 13 L. & BUS. REV. AM. 799, 814–15 (2006).

104. LaRue, *supra* note 91, at 45. For example, former Mexican Attorney General, Mexican drug czar, and brother of former Mexican President Raul Salinas, have all been arrested for links to the cartels. *Id.*

105. Starr, *supra* note 103, at 819; Llana, *supra* note 8, at 1.

106. Roig-Franzia, *supra* note 8, at A1 (providing that some customs officials have earned up to \$1 million for allowing very large shipments to pass through customs).

107. Althaus, *supra* note 71, at A1 (providing that starting pay for a Juarez police officer is \$1,000/month, and a Juarez police captain with twenty years experience earns a mere \$20,000/year).

108. *Id.*

in Mexico has led to many areas being patrolled by the Mexican Army, aiming to fill the void left by understaffed local police forces.<sup>109</sup>

3. *NAFTA opened the borders and increased options that traffickers had at their disposal*

The North American Free Trade Agreement (NAFTA) has contributed to the dire circumstances along the southwest border.<sup>110</sup> The free-market principles embodied in NAFTA have undermined efforts to keep the border closed to illegal immigration and illicit trafficking.<sup>111</sup> Prior to its passage, NAFTA promised an increase in the standard of living of Mexican citizens.<sup>112</sup> The actual result has been a glut of U.S. companies moving their operations to Mexico, where some Mexican workers earn less than Mexico's legal minimum wage.<sup>113</sup> NAFTA has empowered the American companies to do this because it lacks provisions to ensure that Mexican workers are paid wages that rise to and meet the U.S. minimum wage.<sup>114</sup> This shrunken wage scale has resulted in increased poverty, a smaller middle class, and a decreased standard of living, which, in turn, have led to the high illegal immigration rates.<sup>115</sup>

NAFTA also has had profound effects on the U.S. and Mexico's fight against illicit firearms and narcotics trafficking.<sup>116</sup> Since the passage of NAFTA, trade between Mexico and the United States has grown at extreme rates.<sup>117</sup> Traffickers have unlimited choices of methods with which to

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109. *Id.* (explaining that more than 2,000 troops are in Juarez driving Humvees mounted with heavy artillery); Llana, *supra* note 8, at 12.

110. LaRue, *supra* note 91, at 38.

111. *Id.* (pointing out that the former Texas Attorney General Dan Morales at one time referred to NAFTA as the North American Free Trafficking Agreement).

112. *Id.* at 44.

113. *Id.*

114. *Id.*

115. *Id.* at 39, 44.

116. *Id.* at 38.

117. LaRue, *supra* note 91, at 41 (stating that the annual rate of trade between the U.S. and Mexico has grown at 16.1% annually between 1993 and 2000, whereas the annual growth rate of the continental U.S. trade during the same time frame was only 4%).

smuggle their cargo into either country.<sup>118</sup> Of the several million cargo trucks that pass through the U.S.-Mexico border on a daily basis, only an estimated 1% are inspected.<sup>119</sup> NAFTA has also led to a steady growth of the railway system between the two countries.<sup>120</sup> Just like cargo trucks, very few rail cars are inspected.<sup>121</sup> Since rail is cheaper than truck cargo, traffickers have increased their usage of the NAFTA-sanctioned railway systems.<sup>122</sup> Finally, in addition to cargo trucks and rail cars, NAFTA has led to increased use of pedestrians to transport both firearms into Mexico and narcotics into the United States.<sup>123</sup> NAFTA has resulted in both an increase of Mexican workers and an increase in general trade, which has provided greater opportunities for smugglers to get their contraband into either country without detection.<sup>124</sup> Law enforcement officials on both sides of the border have proven to be inadequate in combating the traffickers due to the volume of trade occurring on a daily basis.<sup>125</sup>

### III. ANALYSIS

In reaction to the increased border violence and gun trafficking that flows from the drug trade, both Mexico and the United States have responded with new initiatives and increased cooperation. However, the boldness and greed of the Mexican drug cartels, combined with the high demand for drugs in the United States, thwart the governments' initiatives.

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118. *Id.* at 40–42 (listing potential smuggling options, such as cargo trucks, freight trains, or human smugglers).

119. *Id.* at 40.

120. *Id.* at 42.

121. *Id.*

122. *Id.*

123. *See* Roig-Franzia, *supra* note 8, at A1 (stating that pedestrians smuggle in what is known as an “ant trail,” consisting of two or three firearms at a time, which can total approximately 2,000 firearms per day); LaRue, *supra* note 91, at 42 (providing that pedestrians known as “mules” carry between one and two kilograms of drugs at a time to minimize seizures when crossing the border).

124. LaRue, *supra* note 91, at 42.

125. *See id.* at 42 (noting that a large part of the smuggling problem occurs at border checkpoints).

A. *Why the policy method of incrementalism is the best approach for firearms trafficking laws*

There are two basic methods by which policy is created, incrementalism and comprehensive rationality.<sup>126</sup> Incrementalism is the process by which “policy emerg[es] gradually in small, incremental steps through a continual cycle of experimentation, reaction, and adjustment.”<sup>127</sup> Comprehensive rationality is the process by which “[p]olicy makers should identify objectives, imagine all possible means of pursuing those goals, consider the effectiveness of each alternative approach, and then adopt the set of policies that will produce the best results.”<sup>128</sup>

Both incrementalism and comprehensive rationality have advantages and disadvantages.<sup>129</sup> More specifically, an advantage of incrementalism is its ability to break down a complex problem into smaller, more manageable parts.<sup>130</sup> Another advantage of incrementalism is that it allows for gradual change, which makes it less risky for policy makers since any mistakes can be corrected “through the continual cycle of experimentation, feedback, and adjustment.”<sup>131</sup> The main disadvantage to incrementalism is that it often results in a patchwork of provisions; with new restrictions piled on top of old ones.<sup>132</sup> This can impede progress because it leads to gaps in the law and to policy makers drawing arbitrary lines when making distinctions.<sup>133</sup>

The advantage of comprehensive rationality is that it allows policy makers to implement the most complete resolution to an

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126. Allen Rostron, *Incrementalism, Comprehensive Rationality, and the Future of Gun Control*, 67 MD. L. REV. 511, 512 (2008) (stating that these models come from decision and organization theorists, and while there may be others, these are the main models used by our policy makers).

127. *Id.*

128. *Id.*

129. *Id.* at 512–20.

130. *Id.* at 516.

131. *Id.*

132. Rostron, *supra* note 126, at 513.

133. *Id.*

issue at one time.<sup>134</sup> On the other hand, comprehensive rationality is not as pragmatic because policy makers must compromise in order to pass any measures.<sup>135</sup> Moreover, most issues are too complex for policy makers to adequately address at one time.<sup>136</sup> Ultimately, the disadvantages of comprehensive rationality dictate that policy makers will utilize incrementalism or else risk little to no change to the status quo.<sup>137</sup> Therefore, policy does not change drastically or comprehensively, but rather through increments that are perpetually adjusted.<sup>138</sup>

In addition to the advantages and disadvantages of the two methods, gun control is fiercely debated and is an extremely divisive issue in political, legislative, and social arenas.<sup>139</sup> This lack of consensus surrounding gun control has crippled many efforts to decrease firearms trafficking and border violence.<sup>140</sup> Policy makers must continue to compromise, cooperate, and add new measures on top of the existing ones to combat this continuing and extremely complex issue.

*B. How are Mexico and the United States currently responding to these issues?*

There are differing opinions on how best to combat the firearms trafficking and border violence that plagues Mexico and the United States.<sup>141</sup> But one thing Mexico and the United States seem to agree on is that cooperation between the two countries is essential to any solution.<sup>142</sup>

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134. *Id.* at 515.

135. *See id.* (stating that due to the complexity of issues decision makers may not be able to come to a collaborative solution).

136. *Id.*

137. *Id.* at 515–16.

138. Rostron, *supra* note 126, at 516.

139. *Id.* at 512.

140. *Id.*

141. *Compare* Martin, *supra* note 75, at 13A (quoting Congressman Eliot Engel who stated that the U.S. needs to do more to stop the flow of weapons and decrease the American demand for drugs), *with* Llana, *supra* note 8, at 1 (quoting Mexican Congressman Cuauhtémoc Sandoval, who said that the main problem is the corruption of Mexican customs and the inability of Mexico to control it).

142. McLemore, *supra* note 1 (quoting FBI Director Robert Mueller, who stated

### 1. *Current cooperative measures*

The most widely discussed cooperative measure between Mexico and the United States to date is the Mérida Initiative.<sup>143</sup> The Mérida Initiative is an American foreign aid package that includes equipment, training, and funds that will be disbursed to Mexico and Central America.<sup>144</sup> The main objectives of the package are to combat trafficking and border violence by increasing border security, counter-narcotics tactics, and counterterrorism efforts.<sup>145</sup> The initiative includes inspection equipment (i.e., ion scanners, canine units, and surveillance aircraft), training for the Mexican police force, and funding for security cooperation with Central America.<sup>146</sup>

To quell critics, the Mérida Initiative provides for the vetting of current Mexican police officers and future recruits in order to minimize corruption, minimize cash transfers to Mexico and Central America, and secure communications so law enforcement agencies can share data without the risk of criminals eavesdropping.<sup>147</sup> Despite these protective measures, critics of the Mérida Initiative remain.<sup>148</sup> Congressman Eliot Engel of New York criticized the Bush Administration for announcing the package prior to consulting with or briefing Congress.<sup>149</sup> Congressman Robert Menendez of New Jersey

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that the challenges must be met with a joint effort, and Manuel Suárez-Mier, legal advisor to the Mexican Attorney General, who stated cooperation is needed to help Mexico get the technology it lacks); Stolberg, *supra* note 88, at A8 (discussing President Obama's meeting with Mexican President Calderón in Mexico City in April 2009 to discuss shared responsibility regarding firearms trafficking, drug trafficking, and border violence).

143. See Steven E. Hendrix, *The Mérida Initiative for Mexico and Central America: The New Paradigm for Security Cooperation, Attacking Organized Crime, Corruption and Violence*, 5 LOY. U. CHI. INT'L L. REV. 107 (2008) (providing an overview of the Mérida Initiative).

144. *Id.* at 112. The agreement was named after the Mexican city where the deal was negotiated. Martin, *supra* note 75, at 13A.

145. Hendrix, *supra* note 143, at 112.

146. *Id.* at 114.

147. *Id.* at 115. Vetting will occur primarily through the use of lie detector machines. *Id.*

148. Martin, *supra* note 75, at 13A.

149. *Id.*

expressed disappointment with the Mérida Initiative, stating that it focused too much on law enforcement and not enough on development funds for Mexico.<sup>150</sup> Notwithstanding the critics, most lawmakers agree that the aid package will help stop the violence that threatens citizens on both sides of the border.<sup>151</sup>

In addition to the Mérida Initiative, state politicians from both sides of the border have met to brainstorm and cooperate with one another on a local level.<sup>152</sup> In the summer of 2007, Arizona Governor Janet Napolitano and Sonoran Governor Eduardo Boors met and pledged assistance to each other in an informal agreement.<sup>153</sup> Governor Napolitano agreed to provide training to Sonoran police officers while Governor Boors agreed to improve communication with Arizona law enforcement officials.<sup>154</sup>

In 2008, U.S. and Mexican law enforcement agencies designed and developed a cooperative plan in addition to the Mérida Initiative.<sup>155</sup> The plan is called *Armas Cruzadas* (Crossed Arms) and is specifically designed to prevent firearms trafficking.<sup>156</sup> The plan will combat firearm trafficking through the sharing of databases and increased monitoring of illegal sales at gun shows in the United States.<sup>157</sup> Gun shows in the United States continue to be a major source of firearms being smuggled into Mexico.<sup>158</sup> Current firearms laws allow unlicensed sellers to sell firearms from their “personal collection” without performing a background check on the buyer.<sup>159</sup> Some unlicensed sellers claim to be selling personal collection firearms when in fact they are really engaged in the business of selling firearms.<sup>160</sup> Thus, the illicit sales occurring at

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150. *Id.*

151. *Id.*

152. Serrano, *supra* note 1, at A3.

153. *Id.*

154. *Id.*

155. McLemore, *supra* note 1.

156. *Id.*

157. *Id.*

158. Roig-Franzia, *supra* note 8, at A1.

159. *Id.*

160. *Id.*

gun shows are very difficult to trace.<sup>161</sup> *Armas Cruzadas* was designed to fill in these gaps in the current firearms legislation.<sup>162</sup>

The Mérida Initiative, local border agreements, and *Armas Cruzadas* are prime examples of incrementalism at work in both the federal and state levels of U.S. and Mexican governments. The Mérida Initiative was designed to combat the complex problem because traditional border law enforcement tactics were proving to be incapable of success on their own.<sup>163</sup> Similarly, local border agreements are designed to supplement the federal plans because not every area of the southwest border can be treated exactly the same.<sup>164</sup> Finally, *Armas Cruzadas* is being used to fill in regulatory and legislative gaps that are enabling firearms traffickers to exploit the system and increase their access to and acquisition of firearms.<sup>165</sup> These measures are relatively new, and it is too soon to determine their effectiveness. However, the complexities involved along the border may demand more to supplement the measures already taken.<sup>166</sup>

## 2. ATF responses

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has recently responded to the issues of firearms trafficking and border violence with two programs called Project Gunrunner and eTrace.<sup>167</sup> ATF Acting Director Michael J. Sullivan recognized the role that the ATF must take “[a]s the primary federal law enforcement agency that investigates

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161. *Id.*

162. McLemore, *supra* note 1. In addition to the firearms smuggling measures, the FBI, in conjunction with the Mexican police, is involved in task force investigations aimed at drug smuggling, gang activity, and kidnappings. *Id.*

163. Hendrix, *supra* note 143, at 110.

164. *See id.* at 120.

165. McLemore, *supra* note 1.

166. *See infra* Section III, Part C.

167. Press Release, Bureau of Alcohol, Tobacco, Firearms & Explosives, Formal Declaration Between U.S., Mexico Governors to Use ATF Project Gunrunner, eTrace Investigative Tool (Aug. 15, 2008) [hereinafter Press Release, U.S.-Mexico Governors] (on file with author).

violent crime and regulates commerce in firearms and explosives.”<sup>168</sup> Sullivan went on to say that Project Gunrunner is specifically designed to stop firearms trafficking and to reduce gun-related violence on the U.S.-Mexico border.<sup>169</sup>

Project Gunrunner plans to add additional ATF staff members, including thirty-five special agents, fifteen industry operations investigators, three intelligence research specialists, and one investigative analyst, to the southwest border to focus exclusively on firearms trafficking to Mexico.<sup>170</sup> The additional special agents are direly needed because there are currently only 100 special agents investigating firearms trafficking cases compared with 6,700 licensed gun dealers located along the southwest border.<sup>171</sup> Along with the additions in personnel, the ATF is donating dogs and X-ray scanning equipment to assist Mexico with vehicle inspections at the border.<sup>172</sup> Finally, Project Gunrunner provides for both ATF training of Mexican law enforcement officials on how to use inspection equipment and the training of federal firearms licensees along the border on spotting firearms traffickers.<sup>173</sup>

The second program the ATF has developed to address firearms trafficking and border violence is eTrace.<sup>174</sup> eTrace technology is designed to trace firearms to their legally

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168. *Id.*

169. *Id.*

170. Press Release, Bureau of Alcohol, Tobacco, Firearms & Explosives, ATF Expands Efforts to Combat Illegal Flow of Firearms Into Mexico (Jan. 16, 2008) [hereinafter Press Release, ATF Expands Efforts] (on file with author).

171. Martin, *supra* note 75, at 13A. Similar shortages are present in the Drug Enforcement Agency, which experienced a hiring freeze in 2007. Serrano, *supra* note 1, at A3. Johnny Sutton, a U.S. Attorney in West Texas, estimates that the U.S. Border Patrol needs an additional 20,000 agents in El Paso alone in order to protect the border. *Id.*

172. Llana, *supra* note 8, at 1.

173. Press Release, ATF Expands Efforts, *supra* note 170. Key indicators of firearms traffickers include buying large numbers of the same firearm, possessing little or no knowledge of the firearms being purchased, paying in cash, and being evasive in questions posed to them. U.S. DEPT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, FIREARMS TRAFFICKING, PROJECT GUNRUNNER: THE SOUTHWEST BORDER INITIATIVE 4 (2009), available at [http://www.atf.gov/pub/fire-explo\\_pub/p3317\\_6rev2.pdf](http://www.atf.gov/pub/fire-explo_pub/p3317_6rev2.pdf). [hereinafter THE SOUTHWEST BORDER INITIATIVE].

174. Press Release, U.S.-Mexico Governors, *supra* note 167.

purchased source and allow law enforcement agencies to identify trafficking patterns of criminal organizations smuggling firearms into Mexico from the United States.<sup>175</sup> eTrace also enables various law enforcement investigators to develop leads in order to apprehend firearms traffickers and straw purchasers prior to the firearms successfully crossing the border.<sup>176</sup> The identification of firearms traffickers often leads to the gun dealers themselves because as more firearms are traced back to the same dealer, the legitimacy of their business and methods are called into question.<sup>177</sup>

eTrace was desperately needed because prior to its design, Mexican law enforcement officers were only able to perform traces on firearms through the federal police headquarters in Mexico City.<sup>178</sup> This process was riddled with bureaucratic delays to the point that many Mexican police chiefs did not even attempt to trace recovered firearms.<sup>179</sup> Now, eTrace can be utilized to trace each firearm that is recovered in Mexico and can identify trends in firearms popular among cartels, gangs, and common criminals.<sup>180</sup> The most common firearms are called “weapons of choice” and currently include 9mm pistols, .38 Super pistols, 5.7mm pistols, .45-caliber pistols, AR-15 type rifles, and AK-47 type rifles.<sup>181</sup> In 2007 and 2008, the ATF seized thousands of firearms that were being trafficked to Mexico, and based on those seizures, the current trends indicate that the “weapons of choice” are becoming more powerful.<sup>182</sup>

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175. Press Release, ATF Expands Efforts, *supra* note 170.

176. *Id.* (defining a straw purchaser as a person who acts as a middleman and knowingly purchases firearms for a prohibited person).

177. See Roig-Franzia, *supra* note 8, at A1.

178. *Id.*

179. *Id.*

180. U.S. DEPT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, ETRACE: INTERNET-BASED FIREARMS TRACING AND ANALYSIS 2 (2005), [http://www.atf.gov/pub/fire-explo\\_pub/p33129.pdf](http://www.atf.gov/pub/fire-explo_pub/p33129.pdf).

181. *Id.*; Press Release, Bureau of Alcohol, Tobacco, Firearms & Explosives, Project Gunrunner (Sept. 2008) [hereinafter Press Release, Project Gunrunner] (on file with author) (defining AR-15 as the civilian version of the military assault rifle M-4).

182. Press Release, Project Gunrunner, *supra* note 181.

In 2008, the ATF delivered the eTrace technology to all U.S. consulates in Mexico.<sup>183</sup> The ATF has developed a Spanish-language version of eTrace and has discussed the possibility of Mexico providing it to additional Mexican agencies.<sup>184</sup> The ATF's actions demonstrate its belief that this is essential to Mexico's decentralization of its firearms tracing process.<sup>185</sup> Along with providing the eTrace technology, the ATF is training Mexican federal, state, and customs officials to properly use the equipment.<sup>186</sup> The ATF hopes that the training, the development of the Spanish-language version of eTrace, and the decentralization of the tracing process will allow for a smaller margin of error.<sup>187</sup>

In August 2008, the ten border governors from the United States and Mexico met at The Border Governors Conference to discuss gun trafficking and violent crime along the southwest border.<sup>188</sup> All of the governors agreed to support the ATF's Project Gunrunner and eTrace programs as legally and practically as possible in order to reduce border violence.<sup>189</sup> With this widespread cooperation and acceptance of the ATF's programs, the governors have acknowledged the importance of involvement at the federal and state levels in combating these issues.<sup>190</sup> ATF Acting Director Michael J. Sullivan welcomed the new partnership with the governors but stressed that the principal partnership was with Mexican Attorney General Medina Mora.<sup>191</sup> Furthermore, Sullivan stated that the partnership with Mora was an effort to stop the border violence and illegal flow of firearms and narcotics between the United States and Mexico.<sup>192</sup>

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183. *Id.*

184. *Id.*

185. *See id.*

186. Llana, *supra* note 8, at 1.

187. *Id.*

188. Press Release, U.S.-Mexico Governors, *supra* note 167.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

Project Gunrunner and eTrace are incrementalist responses to firearms trafficking and border violence. The ATF seems to be recognizing its inherent role in these issues and is taking it upon itself to fill the gaps in border protection. Just like the cooperative measures, the ATF programs are new and their effectiveness remains to be seen. Even though more can be done and more is needed, the ATF measures are a welcome and necessary piece of the solution.

### 3. Proposed legislation

In addition to the cooperative measures and ATF responses, incrementalist legislation has been introduced in both the Senate and the House of Representatives.<sup>193</sup> The legislation aims to reduce border violence by specifically addressing the illegal trafficking of firearms.<sup>194</sup> Senator Jeff Bingaman of New Mexico has recognized that Mexico is unable to stop drug cartels unless firearms trafficking is reduced or eliminated.<sup>195</sup> The firearm trafficking that is occurring “ensure[s] that the drug gangs are better armed than Mexican police departments.”<sup>196</sup> The drug cartels depend on firearms from the United States because the weapons carried by Mexican law enforcement are of low caliber.<sup>197</sup> In order for successful drug smuggling to occur, the cartels are arming their smugglers with bazookas, grenades, assault rifles with silencers and sniper scopes, high-powered binoculars, and encrypted radios.<sup>198</sup> These high-grade weapons are not legally available in Mexico.<sup>199</sup> The cartels rely on smuggling the weapons from the United States.<sup>200</sup>

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193. Press Release, Sen. Jeff Bingaman, Bingaman Urges President Bush to Support His Plan to Make Border Region Safer (Apr. 21, 2008) [hereinafter Press Release, Senator Bingaman’s Plan] (on file with author); Press Release, Rep. Ciro D. Rodriguez, Bipartisan Rodriguez Bill Takes Aim at Illegal Gun Smuggling [hereinafter Press Release, Aim at Illegal Gun Smuggling] (Apr. 22, 2008) (on file with author).

194. Press Release, Senator Bingaman’s Plan, *supra* note 193; Press Release, Aim at Illegal Gun Smuggling, *supra* note 193.

195. Press Release, Senator Bingaman’s Plan, *supra* note 193.

196. *Id.*

197. Llana, *supra* note 8, at 1.

198. Serrano, *supra* note 1, at A3.

199. See Llana, *supra* note 8, at 1.

200. See *id.*

Senator Bingaman's legislation authorizes \$15 million in fiscal years 2009 and 2010 to expand the ATF's Project Gunrunner.<sup>201</sup> This would allow the ATF to hire, train, and deploy seven more Project Gunrunner teams to the southwest border to fight firearms trafficking.<sup>202</sup> The legislation also authorizes \$9.5 million in fiscal years 2009 and 2010 to foster and promote cooperation between the United States and Mexico.<sup>203</sup> This part of the funding will place ATF agents in consulates in Mexico to assist and train Mexican law enforcement agents in tracing and anti-trafficking techniques.<sup>204</sup> Senator Bingaman introduced the legislation to supplement measures sought by the Bush Administration.<sup>205</sup> President Bush sought \$100 million for a new "Southwest Border Initiative," but the senator criticized it because only \$948,000 of the funding was allocated to the ATF.<sup>206</sup> Senator Bingaman is using incrementalism to fill in what he perceives to be a gap in the legislation that President Bush introduced.<sup>207</sup> He seems to recognize that this incrementalist approach is more desirable and realistic than combining their goals and creating a comprehensive solution.

Representative Ciro D. Rodriguez of Texas has introduced legislation in the House that is similar to Senator Bingaman's proposed legislation.<sup>208</sup> Rodriguez's legislation specifically aims to stop firearms trafficking and reduce border violence by adding eighty new ATF agents and placing twelve ATF agents in consulates in Mexico.<sup>209</sup> Like Senator Bingaman, Representative Rodriguez has introduced this to supplement legislation

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201. Press Release, Senator Bingaman's Plan, *supra* note 193 (Bingaman's legislation, "Southwest Border Violence Reduction Act of 2008 (S.2867)," is co-sponsored by Senator Kay Bailey Hutchinson).

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *See id.*

208. Press Release, Aim at Illegal Gun Smuggling, *supra* note 193.

209. *Id.*

introduced by the Bush Administration.<sup>210</sup> Representative Rodriguez is likewise using incrementalism to fill in gaps left by President Bush's legislation because a comprehensive plan and solution is not realistic given the time and effort it would require.

C. *What more can be done?*

Even with the incrementalist approaches of cooperation, ATF responses, and proposed legislation, there are other options that should be added to the arsenal that Mexico and the United States have at their disposal. The complex issues of firearms trafficking and border violence will not be solved with one idea. It must be attacked from multiple angles to give the United States and Mexico the greatest chance at success. The proposals listed below are incrementalist for the same reasons that the already implemented solutions have been incremental. Namely, a comprehensive solution would take too long and is not politically viable given the complexity of this issue.

1. *“Lying and Buying”*

As it stands today, the ATF is the “federal law enforcement agency that investigates violent crime and regulates commerce in firearms and explosives.”<sup>211</sup> Because of this, the ATF must be central to any proposed solution to combat firearms trafficking and end border violence. Two statutes that are violated in firearms trafficking cases are 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A).<sup>212</sup> There are three main differences between the two statutes:

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210. Press Release, Senator Bingaman's Plan, *supra* note 193.

211. Press Release, U.S.-Mexico Governors, *supra* note 167 (quoting ATF Acting Director Michael J. Sullivan).

212. See generally 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A) (2006) (these are both part of The Gun Control Act of 1968 (GCA)). The Gun Control Act of 1968 was an incrementalist measure that was passed in response to the assassinations of Reverend Martin Luther King, Jr. and Senator Robert Francis Kennedy. Rostron, *supra* note 126, at 562. The GCA covers semiautomatic handguns, conventional rifles, and conventional shotguns, whereas The National Firearms Act (NFA) covers automatic firearms, machineguns, short-barreled shotguns, and short-barreled rifles. 18 U.S.C. § 921 (2006); I.R.C. § 5845 (2006). Even though the NFA is part of the Internal Revenue Code, it is still enforced by the ATF. See *York v. Secretary of Treasury*, 774 F.2d 417, 419 (10th Cir. 1985).

- § 922(a)(6) carries a maximum penalty of ten years while § 924(a)(1)(A) carries a maximum penalty of five years;<sup>213</sup>
- § 922(a)(6) requires any false statement made during the acquisition of a firearm intended to or likely to deceive the seller, whereas § 924(a)(1)(A) requires only that the false information be kept in the records of the seller;<sup>214</sup> and
- § 922(a)(6) requires the false statement to be “material” to the lawfulness of the sale, but § 924(a)(1)(A) does not require the false statement to be material.<sup>215</sup>

Section 924(a)(1)(A) is violated more often because the false statement does not have to be intended to or likely to deceive the seller and does not have to be material to the sale.<sup>216</sup> This statute is informally referred to as the “lying and buying statute,” and violators of it are most commonly called “straw purchasers.”<sup>217</sup> A “straw purchaser” is a person who knowingly purchases a firearm for a prohibited person.<sup>218</sup> Persons prohibited from purchasing a firearm include, but are not limited to, convicted felons, illicit drug users, and aliens illegally in the United States.<sup>219</sup>

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213. 18 U.S.C. § 924(a)(1)(A), (a)(2).

214. 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A).

215. 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A). 18 U.S.C. § 922(a)(6) states in full, “for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.” 18 U.S.C. § 924(a)(1)(A) states in full, “knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter.”

216. *See* 18 U.S.C. § 924(a)(1)(A).

217. *See* STAFF OF R. COMM. ON GOVERNMENT REFORM, 107TH CONG., REPORT ON SPECIAL INVESTIGATIONS DIVISION 5 (Comm. Print 2001).

218. Press Release, ATF Expands Efforts, *supra* note 170.

219. U.S. DEPT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS &

Violations of § 924(a)(1)(A) can occur by both the purchaser and the seller of the firearm.<sup>220</sup> In *United States v. Nelson*, Nelson was convicted of violating § 924(a)(1)(A) for recruiting five Georgia residents to purchase over thirty firearms on his behalf.<sup>221</sup> Nelson supplied the money to make the purchases, compensated the straw purchasers in cash and controlled substances, and intended to possess the firearms subsequent to their purchase.<sup>222</sup> In *United States v. Abfalter*, Abfalter was convicted of violating § 924(a)(1)(A) for purchasing multiple firearms for her boyfriend, who was a convicted felon and thus a prohibited person.<sup>223</sup> Abfalter filled out the ATF Form 4473 while her boyfriend picked the firearms, negotiated the price, and later sold the firearms for profit.<sup>224</sup> Finally, in *United States v. Straach*, the firearms seller was convicted of violating § 924(a)(1)(A) for knowingly selling firearms to prohibited persons.<sup>225</sup> Straach sold firearms to customers who openly admitted they were not Texas residents and who told Straach the firearms they previously purchased from him sold well out-of-state.<sup>226</sup> Unfortunately, these convictions carried only a maximum five-year sentence.<sup>227</sup> If the convictions allowed for longer prison sentences, the ATF would have more bargaining power in its investigations and thus greater ability to stop firearms trafficking.

Violating 18 U.S.C. § 924(a)(1)(A) should be added to the list

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EXPLOSIVES, FIREARMS TRANSACTION RECORD PART I—OVER-THE-COUNTER, ATF FORM 4473 (5300.9) (2007) (other prohibited persons include, but are not limited to, persons adjudicated as mentally defective, persons dishonorably discharged from the Armed Forces, persons subject to restraining orders, and persons who have renounced their U.S. citizenship) (on file with author).

220. See, e.g., *United States v. Carney*, 387 F.3d 436 (6th Cir. 2004) (seller violation); *United States v. Abfalter*, 340 F.3d 646 (8th Cir. 2003) (buyer violation); *United States v. Nelson*, 221 F.3d 1206 (11th Cir. 2000) (buyer violation); *United States v. Straach*, 987 F.2d 232 (5th Cir. 1993) (seller violation).

221. *Nelson*, 221 F.3d at 1208.

222. *Id.*

223. *Abfalter*, 340 F.3d at 650.

224. *Id.*

225. *Straach*, 987 F.2d at 233.

226. *Id.* at 235.

227. 18 U.S.C. § 924(a)(1)(A) (2006).

of Specified Unlawful Activities enumerated in 18 U.S.C. § 1956.<sup>228</sup> Firearms trafficking and money laundering are two crimes that typically go hand-in-hand. Traffickers purchase firearms primarily using cash to minimize both the tracing and paper trail left by credit purchases.<sup>229</sup> Because of this, firearms traffickers are typically caught with large sums of money. Adding a crime to the list of Specified Unlawful Activities allows the government to confiscate bulk cash that is presumed to be involved in money laundering without necessarily tracing it to a specific offense.<sup>230</sup>

In *United States v. Jackson*, Jackson purchased three cars within the span of nineteen months and paid for each of them in cash.<sup>231</sup> Jackson was under suspicion of selling cocaine and was convicted of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B).<sup>232</sup> The conviction was upheld on appeal despite the fact that the government failed to connect the cash used to purchase the vehicles to cocaine activities.<sup>233</sup> Furthermore, in *United States v. Hardwell*, the 10th Circuit Court of Appeals noted that because Hardwell had insufficient legitimate income to support his expenditures, evidence that he was engaged in drug trafficking was sufficient to establish that his money was derived from the illicit activities.<sup>234</sup> The federal money laundering statutes are slighted in favor of the government and could be readily used in conjunction with firearms trafficking violations in ATF cases.

As of right now, the only Specified Unlawful Activity listed in 18 U.S.C. § 1956 related to firearms trafficking is 22 U.S.C. § 2776.<sup>235</sup> 22 U.S.C. § 2776 is the Arms Export Control Act.<sup>236</sup>

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228. See generally 18 U.S.C. § 1956 (2006) (federal money laundering statute).

229. THE SOUTHWEST BORDER INITIATIVE, *supra* note 173.

230. See generally *United States v. Hetherington*, 256 F.3d 788 (8th Cir. 2001); *United States v. Jackson*, 983 F.2d 757 (7th Cir. 1993) (demonstrating the proposition that the government need not trace money to a specific offense in order to convict for money laundering in violation of 18 U.S.C. § 1956).

231. *Jackson*, 983 F.2d at 764.

232. *Id.* at 760, 766.

233. *Id.* at 766.

234. *United States v. Hardwell*, 80 F.3d 1471, 1486 (10th Cir. 1996).

235. See generally 18 U.S.C. § 1956 (2006) (federal money laundering statute); 22 U.S.C. § 2776 (2006) (portion of the Arms Export Control Act).

Congress can add crimes to the list of Specified Unlawful Activities to enable money-laundering charges to be brought in conjunction with the other crimes. The Arms Export Control Act does not assist the ATF in stopping firearms trafficking at the source when the firearms are actually purchased.<sup>237</sup> Since a violation of 18 U.S.C. § 924(a)(1)(A) occurs at the point of sale, this would allow the ATF to combat firearms trafficking at the earliest possible point, prior to the firearms beginning their journey to the southwest border.

The addition of 18 U.S.C. § 924(a)(1)(A) to the list of Specified Unlawful Activities will also result in ATF cases becoming more attractive for prosecution by the U.S. Attorneys because money laundering is an additional charge that can be added to increase possible penalties. This incrementalist proposal would give the ATF greater weight in southwest border communities where the majority of trafficked firearms originate. Ultimately, increased prosecutions should be a greater deterrence to firearms traffickers and thus reduce border violence.

## 2. NICS improvements

Another incrementalist proposal that will attack firearms trafficking at ground zero, or the point of sale, is improving the National Instant Criminal Background Check System (NICS).<sup>238</sup> NICS is designed to prevent a prohibited person from purchasing a firearm.<sup>239</sup> NICS does this by alerting the seller that the buyer is a prohibited person prior to completing the sale.<sup>240</sup> People that are prohibited from buying or possessing firearms are convicted felons, unlawful users of controlled substances, people adjudicated as mentally defective, and aliens illegally in the United States.<sup>241</sup>

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236. 22 U.S.C. § 2776.

237. *See generally id.*

238. Rostron, *supra* note 126, at 552 (explaining that even though NICS is maintained by the FBI, it has more relevance to the ATF because the primary purpose of NICS is to prevent prohibited persons from acquiring firearms).

239. *Id.* at 554.

240. 18 U.S.C. § 922(t) (2006).

241. 18 U.S.C. § 922(g) (specifying that other prohibited persons are those that

A major flaw in NICS is that it does not save and compare submitted background checks against those that the system has run in the recent past.<sup>242</sup> Each firearms seller is required to prepare and submit reports to the ATF when he sells multiple handguns to one individual.<sup>243</sup> The multiple handgun sale reports assist the ATF in identifying people that are possibly involved in firearms trafficking. The ATF follows up on these reports by comparing the names against its database of suspected traffickers and often questions these individuals about their purpose and need for multiple handguns.<sup>244</sup> To avoid sellers filling out the multiple handgun sale reports, traffickers can purchase firearms in large stores where their chance of being recognized decreases and the probability that different sales representatives will be helping increases. Since NICS does not compare current background checks with recently performed ones,<sup>245</sup> NICS will not alert a store or sales representative that the buyer has already purchased a handgun within the last five days.

Furthermore, NICS will not alert a store that the buyer has

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denounce their citizenship, people dishonorably discharged from the Armed Forces, and people subject to restraining orders).

242. Another flaw in NICS is it is dependent on the states to submit information to it to update the NICS database. *See* Rostron, *supra* note 126, at 552–53. Prior to the Virginia Tech shootings which occurred in April 2007, only four states were regularly reporting their state mental health adjudications to NICS. *Id.* Sixteen months before the tragedy, Seung-Hui Cho—the gunman—“had been adjudicated as a mental defective.” *Id.* at 551. Cho was nevertheless able to purchase a firearm and passed the NICS background check because Virginia had not submitted Cho’s name to NICS to update its system. *Id.* at 551–52. Cho was in fact a prohibited person and NICS should have denied him the ability to purchase a firearm. *Id.* at 551. Subsequent to this tragedy, the NICS Improvement Act, an incrementalist measure, was passed and signed into law in 2008. *Id.* at 553–54. The NICS Improvement Act requires states to provide information to NICS about prohibited persons and makes federal grant money available to states to ensure they are able to meet the Act’s requirements. *Id.* at 554.

243. 18 U.S.C. § 923(g)(3)(A) (2006) (specifying that the reports are to be compiled when the licensee sells two or more handguns to the same individual within a five day period).

244. *See generally* WILLIAM J. KROUSE, GUN CONTROL: STATUTORY DISCLOSURE LIMITATIONS OF ATF FIREARMS TRACE DATA AND MULTIPLE HANDGUN SALES REPORTS, RS22458 Cong. Research Serv. (2009).

245. *See* 18 U.S.C. § 922(t)(2)(C) (2006) (requiring the record of the background check to be destroyed).

recently purchased a firearm at a different store. This enables a trafficker to buy a firearm from Gun Store A, then Gun Store B, and then Gun Store C, without NICS raising any red flags. This makes it extremely difficult for the ATF to promptly identify individuals who are trafficking firearms.

Improving NICS is an incrementalist approach to fix gaps in the way it currently operates. Improving NICS is vital to ATF identification of patterns in firearms purchasing habits in order to single out traffickers. Improving NICS attacks the problem at the source—when firearms are purchased. Keeping traffickers from ever acquiring firearms will reduce the amount of firearms crossing into Mexico, which, in turn, will result in reduced border violence.

### 3. *Increased regulation of gun shows*

Due to the severity and complexity of the issue, the Specified Unlawful Activity approach and NICS improvement may not be adequate. The final incrementalist approach that I am proposing to stop firearms trafficking and end border violence is the increased regulation of gun shows. Traffickers illegally acquire firearms at gun shows from unlicensed sellers, corrupt licensed sellers, and straw purchasers.<sup>246</sup> The increased regulation will involve increased ATF presence at gun shows and further changes to NICS in addition to the ones listed above.<sup>247</sup>

Over 4,000 gun shows are held annually in the United States.<sup>248</sup> The sale of firearms at gun shows includes federally licensed sellers, non-licensed sellers, primary market firearms, and secondary market firearms.<sup>249</sup> Gun shows provide a large venue for the sale of secondary market firearms by non-licensed

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246. Anthony A. Braga & David M. Kennedy, *Gunshows and the Illegal Diversion of Firearms*, 6 GEO. PUB. POL'Y REV. 7, 7 (2000).

247. *See id.* at 19–20 (stating that a change in policy will be a larger law enforcement presence at gun shows).

248. *Id.* at 7 (defining “gun show” as a show that is dedicated primarily to the sale or exchange of firearms).

249. *Id.* (defining primary market firearms as “new firearms first sold at retail” and secondary market firearms as “firearms resold as ‘second-hand guns’ by unlicensed dealers”).

sellers.<sup>250</sup> The majority of gun shows occur over the course of weekends, with attendance averaging between 2,500 to 5,000 people per show, and have up to 2,000 vendor tables.<sup>251</sup>

Gun shows, as a whole, are not regulated by federal law.<sup>252</sup> However, firearms sales by licensed firearms dealers are regulated.<sup>253</sup> Under the Gun Control Act of 1968, a person “engaging in the business” of selling firearms must obtain a Federal Firearms License (FFL).<sup>254</sup> The acquisition of an FFL brings with it requirements such as maintaining records of sales, identifying all buyers, and running a NICS check prior to completing the sale.<sup>255</sup> Licensed firearms dealers do not have to contact NICS when selling firearms from their personal collection.<sup>256</sup>

The Gun Control Act of 1968 does not seriously regulate non-licensed sellers.<sup>257</sup> Non-licensed sellers are allowed to sell firearms from their personal collection without performing a NICS check, without checking the identification of the buyer, and without keeping a record of any kind of the sale.<sup>258</sup> Lacking these checks and records prevents a firearm that is recovered in the commission of a crime from being traced to the last purchaser.<sup>259</sup> Non-licensed sellers are still prohibited from knowingly selling a firearm to a prohibited person, like a felon

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250. *Id.* at 10. Many non-licensed sellers at gun shows are former Federal Firearm License (FFL) holders that had their licenses revoked in the 1990s when the ATF increased licensing fees and began requiring fingerprints from applicants. *Id.* at 8.

251. *Id.* at 10.

252. Braga & Kennedy, *supra* note 246, at 8.

253. *Id.*

254. *Id.* at 8–9.

255. *Id.* at 9 (FFLs must also comply with all state and local firearm laws, as well as complete multiple sales records when selling more than one handgun to the same individual within a five day period).

256. *Id.*

257. *Id.*

258. *Id.* The federal laws allowing non-licensed sellers to sell firearms from their personal collection originated to allow widows of gun collectors to sell off the collection without having to navigate a costly and time-consuming licensing procedure. Roig-Franzia, *supra* note 8, at A1.

259. Braga & Kennedy, *supra* note 246, at 9.

or a minor.<sup>260</sup> However, since non-licensed sellers are not required to check a person's identification or conduct a background check, they seldom know if the person they are selling the firearm to is a prohibited person.<sup>261</sup>

Although non-licensed sellers are allowed to sell firearms at gun shows, they are not allowed to “engage in the business” of dealing in firearms.<sup>262</sup> “Engaged in the business” means a person who devotes time, attention, and labor to repetitively selling firearms with the principal objective of making a profit.<sup>263</sup> Proof of actual profit is not required for the definition of “engaged in the business” to be met.<sup>264</sup> Furthermore, occasional sales and acquisitions are not included in this definition so long as they are for the enhancement of a personal collection or for hobby.<sup>265</sup> These laws have made it extremely difficult to prosecute suspected firearms traffickers.<sup>266</sup> The investigations of unregulated transactions lack the paperwork required to secure convictions, and unscrupulous sellers can easily claim they were only selling a few firearms from their personal collection.<sup>267</sup>

There are three main ways in which prohibited persons illegally obtain firearms at gun shows.<sup>268</sup> The first avenue is from non-licensed sellers who knowingly sell firearms to prohibited persons.<sup>269</sup> The next is from corrupt licensed sellers who knowingly or willfully violate federal firearms laws by selling firearms under the pretext they are part of their personal collection.<sup>270</sup> The last is by using straw purchasers to act as middlemen by purchasing the firearms for the prohibited

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260. *Id.* The firearms used to kill fifteen people at Columbine High School in Colorado were obtained by the teenage gunmen at gun shows. *Id.* at 7.

261. *Id.* at 9.

262. *Id.*

263. 18 U.S.C. § 921(a)(21)(C) (2006).

264. 18 U.S.C. § 921(a)(21), (22).

265. 18 U.S.C. § 921(a)(21)(C).

266. Anthony A. Braga, Philip J. Cook, David M. Kennedy, & Mark H. Moore, *The Illegal Supply of Firearms*, 29 CRIME & JUST. 319, 347 (2002).

267. *Id.* at 347.

268. Braga & Kennedy, *supra* note 246, at 19.

269. *Id.*

270. *Id.*

persons.<sup>271</sup>

Three incrementalist approaches can be implemented to decrease the number of illegal sales of firearms occurring at gun shows.<sup>272</sup> First, the number of ATF agents and local law enforcement officers that investigate activities occurring at gun shows should be increased.<sup>273</sup> Furthermore, more undercover operations would be a greater deterrence to both illicit buyers and sellers of firearms.<sup>274</sup> Second, the gaps in federal firearms laws that enable illicit sales to occur at gun shows should be filled in.<sup>275</sup> If the laws required all sales, whether or not from a personal collection, to include NICS checks, proper identification, and paper trails, it would help the ATF to investigate activities occurring at gun shows.<sup>276</sup> This, in turn, would allow the ATF to identify firearms traffickers faster.<sup>277</sup> Finally, new laws could be written that specifically address firearm sales that occur at gun shows.<sup>278</sup> This would allow legislators to focus on the inherent problems that occur at gun shows in order to specifically combat firearms trafficking.<sup>279</sup>

Gun shows are an integral part of the secondary market of firearms sales.<sup>280</sup> If a purchaser fails the NICS check with a licensed dealer, they can then go and find any person to sell them a personal collection firearm.<sup>281</sup> It is estimated that as many as half of all gun sales in the United States occur on the

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271. *Id.*

272. *Id.*

273. *Id.*

274. *See* Braga & Kennedy, *supra* note 246, at 19–20 (noting that a large amount of firearms are diverted through gunshows).

275. *Id.* at 19.

276. *See id.* (noting that this type of policy change would help fill in the gap of gun shows under current law).

277. *See id.* (explaining that there is no special gun show “loophole,” but that gun shows are a “hot spot” of activity).

278. *Id.*

279. *Id.*

280. Rostron, *supra* note 126, at 556.

281. *Id.*

secondary market.<sup>282</sup> Gun shows must be subjected to more regulations if gun trafficking is going to be reduced and border violence stopped.

#### IV. CONCLUSION

Southwest border violence can be reduced if gun trafficking is eliminated. Gun trafficking is one of the central elements of this complex issue.<sup>283</sup> Cutting off the supply of guns to the Mexican drug cartels will level the playing field and enable law enforcement to bring them to justice.

Comprehensive rationality, while seemingly logical in its approach, is not feasible in American politics and policymaking. An incrementalist approach allows for greater compromise, can be implemented faster, and attacks gun trafficking from many angles. The complexity of the issues surrounding border violence and gun trafficking requires many approaches for a successful solution.

The proposed incrementalist measures combat the issues from a prosecutorial angle, a law enforcement investigative standpoint, and a legislative perspective. It is essential that many different measures be implemented as soon as possible to quell increases in border violence. The proposed measures attack the issue at the point of purchase, thereby preventing traffickers from acquiring the firearms in the first place. This common “nip it in the bud” theme is imperative to the success of decreasing gun trafficking and ending border violence.

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282. *Id.* (indicating that the unregulated secondary market also includes purchasing a gun from a friend, a stranger on the street, a gun show, or through the classifieds of a newspaper).

283. Another central element is the high demand for illegal drugs in the U.S. See *supra* Section II.