Stories of Mexican drug cartels’ bloody and relentless efforts to flood American streets with narcotics have frequented our headlines for well over a decade, but only more recently have the larger dynamics of the trade been widely circulated. While Mexican drug trafficking organizations (DTOs) inject drugs into American communities, American criminals often supply the firepower for Mexico’s street violence. DTOs use proceeds from their estimated $19–29 billion annual profits² to arm their operations. And arm them well. Between 2009 and 2010, 34,000 firearms were seized by Mexican authorities from criminal groups.³ As a result, Mexico, which has some of the strictest gun control laws in the world, regards trafficked firearms as the number-one threat to its national security.⁴

This threat originates close to home: the U.S. Government Accountability Office reported that 87 percent of firearms seized in Mexico and successfully traced led back to the United States,⁵ resulting in what Congress has described as an “unfettered access” to American firearms.⁶ Although estimates vary, the United Nations Office on Drugs and Crime places the number of firearms trafficked across the border at 20,000 annually.⁷ This access has undoubtedly escalated the violence on both sides of the border, which in Mexico has resulted in more than 40,000 people killed since 2006.⁸

Sources of trafficked firearms
The calling card for organized firearms trafficking is generally not the clandestine midnight swap of nameless foreign freight containers at port. Instead, the firearms are often originally purchased in relatively small quantities from licensed and unlicensed gun vendors in all corners of the country,⁹ but especially within the Southwest Border states.¹⁰ Of the trafficked firearms recovered in Mexico, 39 percent originated from Texas gun dealers, 20 percent from California, and 10 percent from Arizona.¹¹

Gun shows are a significant source
abused by traffickers to acquire firearms, as unlicensed dealers are not required to perform federal background checks on prospective buyers. A City of New York undercover investigation at seven gun shows in Ohio, Tennessee, and Nevada revealed that 63 percent of unlicensed dealers sold firearms to investigators who even conceded that they “probably couldn’t pass a background check.” Perhaps not surprisingly, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) reported that approximately 30 percent of firearms involved in federal trafficking investigations are connected to gun shows.

Traffickers exploit licensed vendors as well, often by using straw purchasers. Straw purchasers are intermediaries who acquire one or more firearms from a licensed firearms dealer on behalf of another person, thus concealing the actual recipient’s identity. The ATF has previously reported that “straw purchasing” is the most common method used by traffickers to acquire firearms.

Since 2004, straw purchasers have been able to purchase military-style assault rifles from licensed vendors. In fact, purchasing multiple assault and sniper rifles is in some ways less risky than buying ordinary handguns. Since 1975, federally licensed firearm dealers must report the sale of two or more handguns to one individual within a five day period to the ATF. Only on August 14, 2011, did the ATF implement a rule requiring that such vendors report bulk transactions of certain high-powered “long-guns,” and this rule only applies to the states of California, Arizona, New Mexico, and Texas. One would expect that, provided this new rule withstands legal challenges, traffickers will increasingly look to purchase assault weapons north of these Border States.

**Indicators of trafficked firearms**

Regardless of the source, it is abundantly clear that thousands of firearms are regularly trafficked across the country and into Mexico. As such, it is important for law enforcement and prosecutors to keep in mind indicators—beyond the sheer number of firearms seized—that may identify potential high impact offenders and trafficking rings. However, none of the circumstances below, especially when viewed in isolation, is sufficient for probable cause, let alone proof beyond a reasonable doubt. Yet these circumstances may serve to elevate suspicion, and they generally warrant further investigation.

The circumstances surrounding the initial purchase can often indicate organized trafficking. The ATF has found that traffickers frequently buy a large number of the same or similar model firearms; may structure their purchases to avoid ATF reporting requirements; will avoid conversations or be evasive when confronted with questions; will not attempt to barter over the cost (money is not an issue); may pay with cash, perhaps with the same denomination; have little knowledge of the specific types of firearms they are purchasing; or may lack the physical stature to handle the firearms purchased.

The specific firearms being smuggled can also raise suspicions, as DTOs have expressed a clear preference for certain types of firearms. Among their favorites are 9mm caliber pistols, .38 super caliber pistols, 5.7mm caliber pistols (dubbed by cartels as the “mata polícía,” or “cop killer,” because of its ability to pierce certain types of body armor), .45-caliber pistols, AR-15-type rifles, AK-47-type rifles, and .50-caliber rifles. Common characteristics include a folding telescopic stock; pistol grip on a rifle; muzzle flash suppressor, or threaded barrel capable of accepting a silencer; obliterated identifying markings; and high-capacity magazines (generally 10 or more rounds). Other items that should naturally sound alarms are bullet-proof vests, armor piercing ammunition, grenades, or other military equipment.

Membership in certain gangs can be especially significant when determining DTO involvement. DTOs have long relied on American street, prison, and motorcycle gangs to facilitate mid- and retail-level distribution of their smuggled narcotics. Many such gangs use trafficked firearms as currency, trading them at or near the border for more narcotics. Some of the national-level gangs that have a significant relationship with DTOs include 18th Street, Bandidos, Barrio Azteca, Black Guerrilla Family, Bloods, Crips, Florencia 13, Gangster Disciples, Hells Angels, Hermanos de Pistoleros Latinos, Latin Kings, Mara Salvatrucha (MS-13), Mexican Mafia (La Eme), Mexikanemi, Nortenos, Sureños, Tango Blast, Texas Syn-
Red flags that apply to classic automobile interdiction and stash home searches may apply to firearms trafficking as well. For example, suspicions could be raised if the occupants in a car with suspected trafficked firearms do not know each other, were stopped along major trafficking corridors, or had multiple unexplained cell phones. If the vehicle was a rental car or moving truck, perhaps the person on the rental agreement is not in the car and the occupants claim to not know him or her, or the mileage on the rental agreement compared to the current mileage does not comport with the occupants’ story. Even if the suspects possess few firearms, suspicions should not necessarily be dismissed, as DTOs often subscribe to “hormiga” (ant) trafficking, in which a large number of smugglers drive very small batches of firearms to the border.27

Stash homes frequently present common characteristics too. The homes are often rental properties with an attached garage (for covert loading and unloading). They may abut an alleyway or have multiple exits. Neighbors may report unusual amounts of traffic around the home, often with out-of-state plates, or that the occupants rarely interact with others. And the investigation may reveal evidence of packing or shipping materials or that various people stay in the home.

**Another piece of the puzzle**

If law enforcement or a prosecutor believes that seized firearms may be connected to trafficking, there are several resources available to help confirm suspicions. The ATF will trace all recovered firearms through its eTrace (Electronic Tracing System) program, which can reveal the original purchaser’s identity and address; the firearm retailer; the time passed from the date of transaction to the crime; patterns in purchase locations, purchasers, and recovery locations; and other law enforcement agencies that have had similar trace results, which may help connect investigations.28 Law enforcement can obtain firearms trace request forms from the ATF website, at www.ATF.gov/forms/firearms.29

The El Paso Intelligence Center (EPIC), which is managed by the Drug Enforcement Administration (DEA), is a national tactical intelligence center that can provide immediate access to numerous databases for law enforcement. An EPIC query can provide detailed information on not only the suspect, but also on any associated vehicle, watercraft, aircraft, firearm, and many other items. This information can be vital in connecting a suspect to his or her larger trafficking organization. Prosecutors are also eligible for EPIC access and can request instructions directly from EPIC at 1–888–USE–EPIC, or from National District Attorneys Association’s Gun and Gang Violence Prosecution Program.

Lastly, the Financial Crimes Enforcement Network (FinCEN), maintained by the U.S. Department of the Treasury, contains a database of more than 140 million reports of large currency and suspicious transactions. If a suspected trafficker is apprehended with a significant amount of currency, FinCEN may assist by determining if transaction data exists on the suspect, identifying and tracing the currency, and assisting with the development of other financial aspects of the investigation or prosecution. For instructions on how to utilize this extensive database, contact your designated FinCEN state coordinator at 1–800–SOS–BUCK or www.fincen.gov.

**Prosecution opportunities**

Once a case is pieced together, a prosecutor will find that many more charging options exist than mere illegal possession or distribution of a firearm. Most states have enacted Racketeer Influenced and Corrupt Organizations Act (RICO) statutes, which may better reflect the extent of the defendant’s activities and solve any FRE 404(b) or joinder issues. Prosecutors should also consider adding firearm enhancements, or even charging the defendant as an accessory to any underlying crime involving the firearm. Straw purchasers can likely be charged with forgery or document fraud, based on the declaration during purchase that the defendant is the true buyer. In many jurisdictions, asset forfeiture is a valuable tool for seizing the defendant’s vehicle or even stash home and, as a secondary benefit, generating revenue for local law enforcement or other statutorily designated beneficiaries.

If the defendant is a known or suspected gang member, a prosecutor should strongly consider adding any available gang-specific charges or enhancements.
tion to providing for greater punishment, such amend-
ments increase the likelihood of a judge allowing a gang
expert to testify at trial to gang involvement in regional
trafficking patterns. Even if the defendant lacks clear ties
to a gang, prosecutors should explore whether an appro-
priate expert could testify to firearms trafficking. Such an
expert could preempt numerous defenses by explaining
the rules of DTO-involved trafficking and describing that
if one gets to play, he or she must know the rules. Since
experts are often permitted to testify to the narcotics side
of trafficking, there is little reason to believe a knowledge-
able expert could not testify to the firearms side.30

In order to understand where a gun case fits into the
trafficking network, if at all, investigators and prosecutors
must first learn how to connect the dots. Only then can
we educate judges and juries on the true impact of traf-
ficked firearms, easily masked as “garden variety” gun
cases.

1 David Pendle is a staff attorney with NDAA’s Gun and Gang ViolenceProsecu-

2 Bureau of International Narcotics and Law, U.S. Department of State, 2011

3 William Booth, Drug violence is worse, Calderon admits, THE WASHINGTON POST,

7 Office on Drugs and Crime, United Nations,

9 National Drug Intelligence Center, U.S. Department of Justice, Project Gunrunner: The Southwest Border Initiative, ATF Publication 3317.6, Mar.


11 Feinstein et al., supra note 6.


13 Felipe Calderon, President of Mexico, Address to Joint Meeting of Congress, U.S.

14 National Drug Intelligence Center, supra note 9.

15 Id. at n.11.

16 Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of the

17 The federal assault weapons ban expired in September 2004. Jill Lawrence, Fed-

18 Reporting multiple sales or other disposition of pistols and revolvers, 27 C.F.R. §

19 The rule only applies to long guns that are rifles greater than .22 caliber, have a

20 On August 3, 2011, the National Rifle Association, through two federally li-

21 Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice,

22 Statement of William Hoover, ATF Assistant Director for Field Operations, Hear-


24 The possessor of a firearm with an obliterated serial number is guilty of a felony
under federal law, 28 U.S.C. § 586(g) and (h), as well as under many states’ laws (e.g., Arizona, A.R.S. § 13-3102, and California, Pen. Code §§ 12090, 12094).

25 Drug distribution in the U.S. is “dominated by more than 900,000 criminally ac-

26 Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice,

27 See Office on Drugs and Crime, supra note 7, at p.135.

28 Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice,

29 A law enforcement agency must first sign a memorandum of understanding with

30 For a discussion regarding the proper use of a drug trafficking expert, see U.S. v

31 Klimavicius-Viloria et al. v. U.S., 144 F.3d 1249, 1259-60 (9th Cir. 1998), cert. denied, 528 U.S. 842, 120 S.Ct. 311 (1999); see also U.S. v. Kearns, 61 F.3d 1422, 1427 (9th Cir. 1995).
Introducing new staff

The Gun and Gang Violence Prosecution Program at NDAA has had some personnel changes in recent months and we would like to introduce our new members. We are all very excited to continue to expand our programs and better equip prosecutors and allied professionals with the tools necessary to combat gun and gang-orchestrated crime.

**Brent Berkley** is the Director of NDAA’s Gang and Gun Violence Prosecution Program, Southwest Border Prosecution Initiative, and National Training Courses. He is a graduate of Weber State University and the University of Utah College of Law. Brent has been involved in prosecution since 1997 and has worked at every level of prosecution, handling everything from traffic offenses, to criminal appeals, to capital homicide. He has been with NDAA since 2008 and has worked on gangs, guns, and community prosecution initiatives with a focus on innovative mechanisms of crime prevention, improving community involvement with the criminal justice system, and providing outreach and training to rural communities. Brent has provided training and technical assistance to many state and local governments as well as to international entities. He speaks frequently on issues relating to prosecution ethics and motivation, gun violence, gangs, domestic and sexual violence, copyright issues, courtroom technology, and trial advocacy skills.

**David Pendle** joined NDAA’s Gun and Gang Violence Prosecution Program and Southwest Border Prosecution Initiative as a staff attorney in June 2011. David currently focuses on responding to technical assistance requests and developing curriculum for NDAA’s upcoming Southwest Border trainings. He began working at NDAA in September 2010 with the National Center for the Prosecution of Child Abuse. Prior to joining NDAA, David served as a deputy prosecuting attorney for the King County Prosecuting Attorney’s Office in Seattle, WA. During rotations as a trial attorney in the violent crimes and juvenile units, he tried several felonies involving gang-inspired violence and firearms. David received his J.D. magna cum laude from Seattle University, where he also served as an associate editor on law review, and he earned his B.A. cum laude from the University of Washington.

**Elise Cannon** is the NDAA Project Coordinator assigned to the Gun and Gang Violence Prosecution Program, Southwest Border Prosecution Initiative, and the National Center for the Prosecution of Violence Against Women. Elise provides administrative and logistical support for the programs’ national and regional conferences and trainings. She also supports the programs in meeting federal grant deliverables as well as aids in responding to technical assistance requests from prosecutors and allied professionals. Elise received her B.A. from the University of Maryland where she studied Criminal Justice and Criminology, Psychology, and Spanish. Prior to joining NDAA, Elise worked as a Project Assistant with the Maryland Coalition Against Sexual Assault (MCASA) and as a Victim Advocate and Office Coordinator with the University of Maryland’s Office of the Victim Advocate (OVA), where she provided intervention services for members of the campus community who had experienced sexual assault, relationship violence, stalking, and sexual harassment.
We are all available to answer any questions regarding upcoming NDAA trainings, as well as provide technical assistance on issues related to gun or gang violence. We have unparalleled access to a myriad of national experts in a wide variety of disciplines, stock briefs on common legal issues, and prior transcripts of defense experts. We are happy to assist in researching novel issues as well, or will reach out to our vast network of prosecutors for assistance on your behalf.

We can also deliver one of our national gun or gang violence trainings to your jurisdiction, adapted to your needs. For example, Hitting the Mark is a training we offer in collaboration with our federal partners that covers the fundamentals of gun and gang prosecutions, including dealing with uncooperative witnesses, recent developments with Crawford, the characteristics of an armed gunman, gang interdiction strategies, and implementing a gang task force, among others. At the request of local officials, this summer we sent Hitting the Mark to New Hampshire, Maryland, and Connecticut.

In addition to our national-level courses, we can deliver trainings concerning community prosecution, civil gang injunctions, successful RICO prosecutions, NDAA’s comprehensive gang response model, graffiti abatement strategies, and other subjects related to gun and gang violence. Please contact Brent Berkley if you would be interested in bringing an NDAA course to your jurisdiction.

**Southwest Border trainings in development**

NDAA’s Southwest Border Prosecution Initiative is developing trainings tailored specifically to issues and crimes facing state and local prosecutors in the four Southwest Border States—California, Arizona, New Mexico, and Texas. These trainings will be up and running in early 2012 and will cover: narcotics and firearms trafficking; human trafficking and smuggling; kidnapping and home invasion; the cartel business model; domestic gangs and their relationship to drug trafficking organizations; money laundering; innovative prosecution techniques such as RICO, asset forfeiture, and civil gang injunctions; immigration law and procedures as they relate to victims, witnesses, and defendants; and more.