

United States Senate

WASHINGTON, DC 20510

September 14, 2021

The Honorable Antony Blinken
Secretary of State
Department of State
Washington, DC 20520

Dear Secretary Blinken,

Thank you for the Department's April 22, 2021 response to our letter of March 12, 2021 regarding U.S. exports of firearms, particularly firearms exported to Mexico for use by police forces.

We remain concerned to learn from your response that the U.S. Embassy has not been consulted about instances regarding Mexican police forces as end users of U.S. exported firearms, either before or after the transfer of firearms exports oversight to the Commerce Department. We are also concerned about a proposed license to export \$5.5 million worth of Sig Sauer automatic rifles to the Mexican Navy, whose units are implicated in forced disappearances and torture, without adequate end user controls.

Given the extensive documentation of widespread infiltration of Mexican police forces by criminal organizations, and police and military participation in atrocities, we expected the Departments of State and Commerce to establish mechanisms to ensure that U.S. firearms do not contribute to these crimes.

We are also concerned by evidence that U.S.-exported firearms continued to be transferred to state police forces in the Mexican states of Guerrero and Tamaulipas after those forces were credibly implicated in forced disappearances and massacres. Your response clarified how licenses for firearms exports to Mexico should identify end users, but did not state whether this was the case for the firearms transferred in 2015 to state police in Guerrero and in 2019 to state police in Tamaulipas.

It is our understanding that the Bureau of Political-Military Affairs was informed in 2017 that U.S.-origin firearms were in the possession of police forces at the time of the Ayotzinapa, Guerrero disappearances of 43 students. We are therefore concerned that the State Department failed to notify Congress of a potential end use violation. If use by Guerrero police of U.S. exported firearms constituted an end use violation, further transfers to Mexico would have required a presidential waiver under Section 3 of the Arms Export Control Act (22 U.S.C. Sec. 2753)

You informed us that the “Watch List” of suspect and sanctioned end users maintained by DDTC has been shared with the Department of Commerce as an internal screening tool. However, it is our understanding that this tool lists *private* entities, *not* government security force units, and that the relevant list of security force units and individuals in those units alleged to have committed human rights abuses is the International Vetting and Security Tracking (INVEST) database used for Leahy vetting purposes.

The lack of authorized or prohibited end users in licenses for export of firearms to the Mexican military is of particular concern with regard to the currently proposed export of automatic rifles to the Mexican Navy.¹ In a 2019 study, more than 65% of detainees over a ten-year period said that they suffered torture while in Navy custody, including asphyxia, electric shocks, burns, and rape.² Mexico's official National Human Rights Commission last year issued a finding of the Navy's responsibility for 27 forced disappearances in 2018.³

We also understand from your response that, after approval of a license for U.S. exported firearms that remain on the U.S. Munitions List (such as fully automatic machineguns), the State Department does not receive notification of shipments of such firearms. If a license issued years before named police units as end users that were subsequently implicated in human rights violations, it would require affirmative action by the State Department to intervene and prevent shipments of such weapons to the implicated units.

In the midst of these concerns about firearms exports to Mexico, the Commerce Department issued a rule change in December 2020, without public comment, that *eases* firearms exports to Mexico. The rule change grants to Mexico a License Exception Strategic Trade Authorization (STA) that raises Mexico's status as a trading partner in sensitive goods, and may exempt Mexico from identifying consignees for licensed firearms shipments.

We understand from your response that the Blue Lantern program continues to function for post-shipment only for items on Category I of the U.S. Munitions List, which excludes semi-automatic and non-automatic firearms. As a result, Blue Lantern checks apparently have been terminated for assault rifles that are not fully automatic and other semi-automatic and non-automatic firearms.

¹ DDTC-20-072, Congressional Notification, July 29, 2021.

² Carlos Silva Forné and Sergio Padilla Oñate, “Tortura en la Guerra contra el narcotráfico en México, entre la militarización, el control político y el nuevo sistema de justiciar penal,” *Latin America Law Review*, no. 04 (2020): 107-128, doi: <https://doi.org/10.29263/lar04.2020.05>

³ Comisión Nacional de Derechos Humanos, Recomendación No. 36VG-2020, https://www.cndh.org.mx/sites/default/files/documentos/2020-07/RecVG_036.pdf

We urge you to immediately begin a review of all existing licenses for exports of firearms to Mexico for use by the Mexican police and Navy, issued by the Directorate of Defense Trade Controls (DDTC) before and since March 2020, and to suspend licenses that either (1) identify as end users police or naval forces that have been credibly implicated in the INVEST database in serious human rights abuses or as colluding with criminal organizations, or (2) do not accurately identify end users. This should include but not be limited to the license for export of more than \$1 million in automatic rifle kits notified to Congress in late December 2020, and automatic rifles for use by the Mexican Navy and Marines notified to Congress in July 2021.

We are further concerned by the fact that firearms transferred to Commerce Department jurisdiction are not regulated as crime control equipment, even if they are exported to foreign police units. The lack of regulation conflicts with the Congress' intent in Section 502B of the Foreign Assistance Act to subject such highly lethal and fungible items to the more rigorous controls of the Foreign Assistance Act. This is especially troubling in light of the fact that, due to their transfer off the U.S. Munitions List, these items are no longer subject to statutorily-mandated congressional reporting requirements in the event of an end use violation. We therefore request you to direct the Assistant Secretary of State for Democracy, Human Rights, and Labor to report to the relevant congressional committees whether the Commerce Department has exported firearms to foreign police units that would otherwise be ineligible for such exports if they were properly categorized as crime control equipment.

In addition, we would appreciate your answers to the following questions:

1. Has the Department of State issued any pre- or post-licensing communication, either to U.S. exporters or to SEDENA or the Mexican Navy, informing or reminding them of restrictions on police and military unit end users or on the re-transfer of firearms? If so, when did such communications occur and what limitations did they set?
2. When were U.S. Embassy staff or other U.S. officials first aware that U.S. firearms were sold for use by police forces in Guerrero and Tamaulipas? What actions were taken, if any, to prevent further U.S.-exported firearms from ending up in the hands of these police forces? If no action was taken, why not? We asked these questions in our March letter, and ask them again.
3. Please advise us of your final determination regarding whether end use violations were committed by police officers in either state.
4. Your response stated that U.S. Embassy staff were not consulted regarding Mexican police forces as end users of U.S. firearms. Have any other State Department officials, besides U.S. Embassy staff, been consulted before or since March 2020 about Mexican police forces as end users of U.S. firearms? If so, which bureaus, offices or other State Department entities were consulted, during what time period?
5. When did the State Department begin implementation of its policy requiring identification of state and local police forces in Mexico, if any, as potential end-users of U.S. Munitions List firearms exports?
6. What specific types of data does DDTC maintain on firearms transferred to Mexican police and military forces, including end user units, number of items, and manufacturers and serial numbers of firearms?

7. Is the INVEST database incorporated into the watch lists consulted by State and Commerce as license applications for firearms exports are being reviewed? If INVEST data on alleged security force violations has not been incorporated into the watch lists, why not?
8. If the Department of State were to learn that U.S.-exported defense articles had been transferred in-country to police units not named as end users in the corresponding export license, what steps would the Department take?

We look forward to your response.

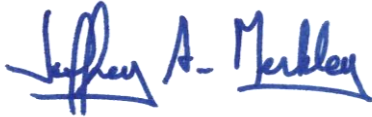
Sincerely,



PATRICK LEAHY
United States Senator



CORY A. BOOKER
United States Senator



JEFFREY A. MERKLEY
United States Senator



RICHARD J. DURBIN
United States Senator