

Congress of the United States

Washington, DC 20515

January 23, 2024

The Honorable Gina Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Secretary Raimondo:

We are writing in response to the Commerce Department’s (“Commerce”, “the Department”) decision to temporarily pause approvals of new firearms export licenses and export promotion activity while it reviews the Department’s relevant policies and procedures.¹ This is a positive development, coming after the number of firearms export license approvals skyrocketed when the Trump Administration transferred firearms export control authority from the State Department (“State”) to Commerce.² The transfer—and the resulting increase in lethal weapons exports—has driven up gun violence in foreign countries, which in turn has driven more and more migration.³ While we continue to support returning all firearms export controls to the State Department, we urge the Commerce Department to incorporate the recommendations in this letter as part of its policy review in the interim, in order to strengthen export controls and end-use checks and to crack down on unnecessary export promotion of weapons used in brutal killings abroad.

On October 27, 2023, the Commerce Department announced a 90-day pause of export approvals of certain firearms, related components, and ammunition while the Department reviews its export control policies and “determine[s] whether any changes are warranted.”⁴ The pause on exports applies to certain assault weapons and other firearms that the Trump Administration had transferred from the export jurisdiction of State to Commerce. Commerce also paused the International Trade Administration’s (ITA) activities to promote exports of those weapons. However, the pause does not apply to applications to export firearms to 44 countries, including Ukraine, Israel, and Mexico.⁵ The 90-day pause period will end on January 25, 2024.

¹ Bureau of Industry and Security, “Bureau of Industry and Security Firearms Pause & Review: Frequently Asked Questions,” October 27, 2023, <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file>.

² Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitooiii.html>.

³ Washington Post, “Why Gun Violence Has Become a Major US Export,” Francis Wilkinson, August 12, 2023, https://www.washingtonpost.com/business/2023/08/12/biden-should-return-gun-export-regulation-back-to-state-department/60d40c30-390b-11ee-ac4e-e707870e43db_story.html.

⁴ Bureau of Industry and Security, “Bureau of Industry and Security Firearms Pause & Review: Frequently Asked Questions,” October 27, 2023, <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file>.

⁵ Bureau of Industry and Security, “Bureau of Industry and Security Firearms Pause & Review: Frequently Asked Questions,” October 27, 2023, <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file>; Bureau of Industry and Security, “License Exceptions,” September 15, 2022, <https://www.bis.doc.gov/index.php/documents/regulation-docs/2255-supplement-no-1-to-part-740-country-groups-1/file>.

Commerce’s decision to initiate the pause and review process was welcome, but sorely needed. When some of us last wrote to you to raise our concerns about Commerce’s lackluster oversight of firearms exports in September 2023,⁶ the Department’s most recently published data on firearms exports and license approvals dated from June 2021. Later in the fall of 2023, the Department at long last published new data for July 2021 to June 2023 that once again showed a marked increase in license approvals.⁷ These new data show that from March 9, 2020 (the date of the Trump Administration’s transfer) to June 30, 2023, Commerce approved nearly 25,000 firearms export licenses with a total value of \$34.7 billion, or roughly \$10.5 billion per year.⁸ This represents a more than \$1 billion increase in the annual value of license approvals as compared to the time period when the State Department controlled these approvals.⁹

As more and more firearms have left American shores, their impact in other countries has worsened. Reports abound of U.S.-manufactured weapons being used in horrific killings across the globe. In Thailand in October 2022, a gunman entered a nursery school and used an American-made Sig Sauer pistol to murder 36 people, including 23 children.¹⁰ In March 2022—the month with the most semi-automatic firearms exports from the U.S. to El Salvador in the previous four years—gang violence in that country killed a record 62 people.¹¹

U.S.-manufactured weapons have also had devastating impacts in countries that are not subject to the current pause. In June 2021, gunmen using U.S.-made firearms went on an eight hour-plus killing and kidnapping spree in Mexico.¹² There is also evidence to suggest that soldiers and civilian militias in Israel are using American-made semiautomatic weapons to perpetrate shocking violence against Palestinian civilians.¹³ The risks to civilians likely only increased after the Israeli government loosened gun

⁶ Letter from Senator Warren and Reps. Castro, Torres, and Goldman to Secretary Raimondo, September 6, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.06%20Letter%20from%20Sen.%20Warren,%20Rep.%20Castro.pdf>.

⁷ Bureau of Industry and Security, “USML to CCL Regulatory Changes,” <https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis>.

⁸ Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitotiii.html>.

⁹ Government Accountability Office, “Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms Are Finalized,” March 1, 2019, <https://www.gao.gov/products/gao-19-307>. While GAO’s review of the State Department’s export license approvals includes some items not transferred to the CCL by the Trump administration’s rule, a significant proportion of the items reviewed were semiautomatic and nonautomatic firearms that were subject to the transfer. See Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitotiii.html>; Cato Institute, “2022 Arms Sales Risk Index,” Jordan Cohen and A. Trevor Thrall, July 18, 2023, <https://www.cato.org/policy-analysis/2022-arms-sales-risk-index>.

¹⁰ Bloomberg, “How the US Drives Gun Exports and Fuels Violence Around the World,” Michael Riley, David Kocieniewski and Eric Fan, July 24, 2023, <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shootings-violence-sig-sauer/>.

¹¹ Just Security, “U.S. Guns Are Fueling Violence in Central America, Here’s How to Help Stop the Arms Flow,” Nate Smith, February 1, 2023, <https://www.justsecurity.org/84954/u-s-guns-are-fueling-violence-in-central-america-heres-how-to-help-stop-the-arms-flow/>.

¹² Foreign Policy, “Are U.S. Gun-Makers Responsible for Violence in Mexico?,” Chantal Flores, October 24, 2023, <https://foreignpolicy.com/2023/10/24/mexico-united-states-guns-arms-trafficking-lawsuit/>.

¹³ American Friends Service Committee, “U.S. Gun Exports to Israel: Report to Commerce Department,” January 5, 2024, <https://afsc.org/newsroom/us-gun-exports-israel-report-commerce-department>.

ownership requirements¹⁴ and authorized “temporary licensing official[s]” with only a single day of training to approve “anywhere from hundreds to thousands of firearm licenses”¹⁵ over a few weeks.

The 90-day pause also applies to the International Trade Administration’s (ITA) export promotion activity — welcome news in light of recent reporting detailing the unnecessarily close relationship between Commerce personnel and firearms exporters and importers. Since 2014, Commerce has worked directly with the National Shooting Sports Foundation (NSSF) and other gun industry mainstays to court foreign buyers of U.S. weapons.¹⁶ Reports indicate that Commerce officials and staff coordinate closely with the domestic gun industry to attract potential foreign customers to the annual Shooting, Hunting and Outdoor Trade Show (SHOT Show), which generates 75 percent of the NSSF’s revenue.¹⁷ One foreign gun importer noted, “The assistance we get from the Commerce Department, especially at SHOT Show, is invaluable . . . You really can’t be in this business without that help.”¹⁸ Commerce classifies information about their work related to SHOT Show as “confidential commercial information,” meaning the public has little to no idea how much staff time and taxpayer dollars the Department spends on SHOT Show-related activities each year.¹⁹ Despite the Biden Administration’s efforts to stem the tide of gun violence at home, Commerce continues to actively participate in firearms export promotion activities like the SHOT Show.

Clearly, a brief 90-day pause in export license approvals and promotion is insufficient to address the breadth of the problem. Before it ends this pause, Commerce must make significant changes to its export license approval and monitoring policies. These changes include:

1. Recognizing in a formal policy statement that firearms are the only lethal weapons on the Commerce Control List²⁰ and asserting that it is a foreign policy interest of the U.S. to restrain the global proliferation of these weapons.
2. Publicly posting requirements for end-use certification of exported semi-automatic firearms and committing to pre- and post-shipment transparency and end-use monitoring. The most recent public information from Commerce on firearms exports end-use monitoring is outdated, dating back to January 2020 (with slight updates in May 2021).²¹
3. Adding “crime control” to the list of criteria systematically considered by Commerce prior to approving a firearms export license. The “crime control” factor specifically

¹⁴ Washington Post, “Israel wants civilians to arm up. Gun permit applications are soaring,” Claire Parker, Jon Gerberg, Judith Sudilovsky, and John Hudson, December 8, 2023, <https://www.washingtonpost.com/world/2023/12/08/israel-gun-carry-permits/>.

¹⁵ Haaretz, “Head of Firearm Licensing Department Resigns After Ben Gvir’s Appointees Cut Corners on Gun Permits,” Yael Freidson, December 4, 2023, <https://www.haaretz.com/israel-news/2023-12-04/ty-article/.premium/top-firearms-official-resigns-after-ben-gvirs-appointees-cut-corners-on-gun-permits/0000018c-33cb-da74-afce-b7fb542b0000>.

¹⁶ Bloomberg, “How Hundreds of US Government Employees Became Gun Industry Sales Reps,” Jessica Brice, Michael Smith, and Christopher Cannon, October 19, 2023, <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shot-show-latin-america/?sref=8p31CO8E>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Bureau of Industry and Security, “Regulations,” <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>.

²¹ Bureau of Industry and Security, “FAQs for the Commerce Categories I-III (final rule),” updated May 28, 2021, <https://www.bis.doc.gov/index.php/documents/policy-guidance/2572-faqs-for-the-commerce-category-i-iii-firearms-rule-posted-on-bis-website-7-7-20/file>.

accounts for the potential for exported firearms (including semiautomatic pistols equipping police forces) to be used by security forces for human rights violations and abuses.²²

4. Taking advantage of existing, comprehensive sources (such as the State Department's International Vetting and Security Tracking-cloud system) when reviewing license applications to identify problematic proposed end users.
5. Encouraging countries of particular concern to fully participate in the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) eTrace system to better track the use of U.S.-sourced firearms in criminal activity and facilitating programs to develop such capacities in countries of concern.
6. Reducing export license validity from four years to one year, particularly for destinations of concern.
7. Systematically reviewing licenses approved for export to countries importing very high numbers of firearms and confirming the identities of end users of these weapons. If the Department cannot verify the end user, it should consider revoking or amending the licenses.
8. Capping exports of firearms to civilian buyers, and aggressively enforcing policies prohibiting transfers to security forces with an elevated risk of human rights abuse.
9. Capping the number of exported firearms that can be covered by any single export license, particularly for destinations of concern, and distinguishing between firearms destined for security forces of trusted allies versus civilians or commercial retailers.
10. Ending Commerce's involvement in the SHOT Show and other firearms export promotion activities that can lead to, and even enable, gun violence and death abroad.
11. Using its authority under the *Export Control Reform Act* of 2018 to issue all policy changes stemming from the review process as final rules to ensure prompt implementation.²³

The Commerce Department's decision to pause new firearm export approvals and promotion is welcome news. We urge the Commerce Department to implement our recommendations in its review of its export policies, and if necessary, to extend the temporary pause as needed to reconsider its export policies as rigorously as possible. Additionally, we request responses to the following questions no later than February 7, 2024:

1. Has Commerce consulted with external non-industry stakeholders (e.g., academics, survivors of gun violence) as part of its policy review?
2. Will Commerce release the findings of its review publicly, including which specific policies will be changed and how? If not, why not?
3. How long does Commerce anticipate implementing the policy changes stemming from its review this implementation process will take?

²² 15 C.F.R. 742.7.

²³ 50 U.S.C. 4821. Commerce has previously used this authority to issue final rules amending firearms export controls: *See e.g.*, Bureau of Industry and Security, Federal Register Notice, "Amendment to Licensing Policy for Items Controlled for Crime Control Reasons," October 6, 2020, <https://www.federalregister.gov/documents/2020/10/06/2020-21815/amendment-to-licensing-policy-for-items-controlled-for-crime-control-reasons>.

4. How will Commerce engage with U.S. gun exporters to apprise them of the policy review's findings and any resulting changes exporters will need to make to their pending or future applications?

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Joaquin Castro
Member of Congress



Richard J. Durbin
United States Senator



Norma J. Torres
Member of Congress