

SYMPOSIUM ON THE CHALLENGES AND PROSPECTS OF NOVEL TYPES OF BUSINESS AND HUMAN RIGHTS LITIGATION

PROMOTING FIREARM INDUSTRY ACCOUNTABILITY FOR CIVIL AND HUMAN RIGHTS ABUSES IN THE UNITED STATES THROUGH STRATEGIC TRANSNATIONAL LITIGATION

Arturo J. Carrillo, Jonathan Lony,** and Emily Fallin****

Introduction

The United Nations Guiding Principles on Business and Human Rights (UNGPs) have made substantial inroads across a range of industries, but the firearm industry is not one of them. The United States is the largest producer of firearms for civilian acquisition in the world, yet U.S. firearm manufacturers, sellers, and distributors remain generally impervious to regulation. Moreover, federal and state legislation provides unique legal protections for firearm industry actors, rendering them largely shielded from accountability for contributing to gun deaths and injuries. This creates a paradox that fuels the endemic gun violence crisis in the United States and throughout the region: a business sector that makes lethal products for public consumption that are easily and regularly abused, but remains largely free of regulatory restraints and legal accountability. In this essay we situate the gun violence crisis occurring within the United States and regionally, before describing the basis of the firearms industry's complicity in enabling it. Next, we detail how civil society organizations Global Action on Gun Violence (GAGV) alongside the George Washington University Law School's Civil and Human Rights Law Clinic (CHRLC) are using innovative approaches to bring about industry accountability through domestic and transnational litigation. Finally, we conclude with preliminary observations drawn from these efforts.

Why Strategic Litigation Is Needed

We have chosen to highlight two tailored approaches to firearms industry accountability that address unique challenges of the U.S. legal landscape. In states with effective accountability regimes, the alternative litigation approaches taken by GAGV and CHRLC are unnecessary. Private business actors can be held directly accountable through enforcement of government regulation or through litigation when their practices are harming communities, which in turn promotes safer business practices. In the United States however, an anemic legal framework and general lack of enforcement make it difficult, and sometimes impossible, to hold private firearm industry actors accountable for abuses. Industry-specific legal protections and weak regulations allow

* *Professor of Law and Faculty Director of the Civil and Human Rights Law Clinic at the George Washington University Law School, Washington, D.C., U.S.A.*

** *Founder and President of Global Action on Gun Violence, Washington, D.C., U.S.A.*

*** *Associate at McDermott Will & Schulte, Washington, D.C., U.S.A.*

U.S. gun companies to engage in harmful practices without the consequences that would ordinarily precipitate safer operational policies. Under the current U.S. regime, firearm industry actors have little incentive to change their harmful conduct, and profit continues to be the industry's primary motivator.

It is therefore imperative to employ innovative tactics, including litigation, to bring about industry accountability. The two cases described below parallel and reinforce one another. The first is a domestic civil action that features a foreign sovereign plaintiff alleging transnational harm caused by industry actors in an attempt to successfully navigate the legal protections that would ordinarily block such litigation. The second case denounces the U.S. government at the regional level for its failure to adequately regulate firearm industry actors and implement domestic remedies for human rights abuses committed by these actors. The strategic litigation utilized by GAGV and CHRLC represents a novel approach to promoting accountability for industry actors with U.S. operations.

Gun Violence and Inadequate Regulations

The lack of accountability that surrounds the U.S. firearm industry fuels gun violence. Firearm injury became the leading cause of mortality for U.S. children and adolescents in 2020.¹ The U.S. surgeon general recently declared firearm violence a “public health crisis.”² In 2023, an average of 128 people died from firearm violence every day and gun suicides reached an all-time high.³ In the past decade, there has been a dramatic rise in mass shootings: in 2014 there were 271; in 2023 there were 659.⁴ Throughout Latin America, the share of homicides involving firearms has increased, and the startling reality is that “[a]n American-made gun is more likely to be used in a murder in Mexico than at home.”⁵ Data from 2018 indicates that at least half of Mexico's homicide victims were killed by a gun manufactured in the United States.⁶

The firearm industry enables gun violence by facilitating the downstream distribution and diversion of firearms to criminal actors through well-known, high-risk business practices, such as engaging in large volume sales and selling to obvious straw purchasers. Weak regulations allow industry actors to persist in these harmful business practices. Federal law permits licensed dealers to sell unlimited firearms, including military-style assault rifles, to qualifying buyers over eighteen.⁷ As such, dealers can and do engage in bulk and repeat sales, known indicators of firearms trafficking.⁸ In addition, the firearm industry is permitted to aggressively market powerful

¹ OFF. OF THE SURGEON GEN., U.S. DEP'T OF HEALTH & HUM. SERVS., [FIREARM VIOLENCE: A PUBLIC HEALTH CRISIS IN AMERICA](#) 3 (2024) (under the age of nineteen).

² *Id.*

³ Kim R. Wagner et al., *Gun Violence in the United States 2023: Examining the Gun Suicide Epidemic*, Johns Hopkins Bloomberg School of Public Health (2025).

⁴ *GVA – 10 Year Review*, GUN VIOLENCE ARCHIVE (Jan. 8, 2025) (mass shooting defined as four or more people shot, excluding the shooter).

⁵ *Guns from the United States Are Flooding Latin America*, THE ECONOMIST (May 23, 2029).

⁶ *Id.*

⁷ For a more detailed discussion, see [Joint Submission of Observations on Request for Advisory Opinion by the State of Mexico Regarding the Activities of Private Companies Engaged in the Firearm Industry and Their Effects on Human Rights](#), Inter. Am. Ct. H.R. (Aug. 23, 2023).

⁸ See Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use* (2007).

semi-automatic weapons—weapons favored by criminal cartels.⁹ Even industry insiders have testified to the alarming marketing tactics used by manufacturers.¹⁰ While the 2022 Bipartisan Safer Communities Act represents the most significant gun control legislation in three decades, it fails to address many of these and other regulatory deficits.¹¹

The U.S.-based gun industry consistently evades accountability for documented, deleterious business practices, due not only to weak laws, but also to ineffective and limited enforcement by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).¹² Federal gun laws are primarily enforced by the ATF, but successful lobbying by groups such as the National Rifle Association has led to limited resources and legal restrictions, preventing the agency from fulfilling its function.¹³ The ATF has been consistently underfunded and understaffed, and at the behest of pro-gun lobbying groups, is prohibited from passing off responsibilities to other agencies and is even barred from using computerized records to carry out firearm traces.¹⁴ While the ATF aims to inspect each licensed dealer once every three years, in 2024, only about 13 percent of dealers, pawnshops, and manufacturers were inspected.¹⁵ The agency has historically favored warnings over license revocations,¹⁶ allowing dealers to continue operations despite dangerous business practices. Infrequent inspections and feeble consequences reinforce a climate of relaxed enforcement, enabling the industry's harmful business practices.

Inadequate regulations and lax enforcement create *de facto* immunity for many, if not most gun industry abuses that directly feed into domestic and regional gun violence. We turn next to how strategic litigation at the domestic and regional levels can work in consonance with the UNGPs to promote accountability, justice and, ultimately, industry reform.

Strategic Litigation and Firearm Industry Accountability

Firearm industry actors and U.S. authorities are well aware of the downstream impacts of the industry's deleterious business practices. Both could implement reforms that would save lives, but choose not to. Industry actors can immediately implement safer approaches in corporate policy and practice, while the state maintains broad powers to regulate and enforce public protections. Yet each lacks the incentives to do so. Industry actors are legally shielded from most forms of civil litigation that would ordinarily help correct harmful business practices. Meanwhile, the United States has shirked its duty to protect civil and human rights, instead acting at the behest of the powerful firearm lobby when refusing to enact effective gun control measures or civil remedies. The strategic litigation brought by GAGV and CHRLC seeks to incentivize reform by holding both state and industry actors accountable for preventable human rights abuses, in line with the UNGPs' framework. The cases outlined

⁹ Diego Oré & Drazen Jorgic, *"Weapon Of War": The U.S. Rifle Loved by Drug Cartels and Feared by Mexican Police*, REUTERS (Aug. 6, 2021). For a fuller discussion, see Arturo J. Carrillo & Jonathan Lowy, *Two Heads are Better Than One: Integrating International Law and Global Public Health Approaches to Firearm Violence to Promote Public Safety and Human Rights*, 40 EMORY J. INT'L L. (forthcoming 2026).

¹⁰ Ryan Busse, *I Testified to Congress About the Gun Industry. It Rattled Me to My Core*, THE GUARDIAN (Aug. 5, 2022).

¹¹ For a more detailed discussion, see Report Submitted to the Inter-American Commission on Human Rights for the Hearing on Human Rights Impacts of Gun Violence in the United States during the 191st Period of Sessions (Nov. 21, 2024).

¹² *Id.* at 27–28.

¹³ See Alan Berlow, *How the NRA Hobbled the ATF*, MOTHER JONES (Feb. 11, 2013).

¹⁴ *Id.*

¹⁵ Everytown Research & Policy, *Inside the Gun Shop: Firearm Dealers and Their Impact* (July 6, 2023); ATF, *Fact Sheet – Facts and Figures for Fiscal Year 2024* (Mar. 2025).

¹⁶ Champe Barton, *ATF Steps Up Policing of Lawbreaking Gun Dealers, Revoking Highest Number of Licenses in Two Decades*, THE TRACE (Oct. 23, 2024).

below exemplify the importance of addressing business sector accountability through both an industry actor-level approach as well as a top-down, state-oriented approach. We review first the legal actions brought by Mexico against gun industry actors in the United States, followed by the lawsuit brought against the United States in the Inter-American human rights system.

Government of Mexico vs. the U.S. Firearm Industry

The U.S. firearm industry receives special legal protections that add *de jure* immunity to the *de facto* protections afforded by an inadequate regulatory framework. The Protection of Lawful Commerce in Arms Act (PLCAA), enacted in 2005, requires the dismissal, and prohibits the filing, of certain lawsuits brought against manufacturers, sellers, and importers of “qualified products,” including “firearms, ammunition, or component parts of a firearm or ammunition.”¹⁷ PLCAA provides limited exceptions that allow some civil lawsuits to proceed.¹⁸ The one most invoked is the “predicate exception,” which permits a lawsuit when the defendant’s knowing violation of a statute applicable to the sale or marketing of firearms or ammunition proximately causes the plaintiff harm.¹⁹ Victims must first prove that the manufacturer or dealer committed a prior statutory offense—an additional hurdle that is often difficult to overcome, even with documented reckless industry conduct. States such as California and New York, however, illustrate the possibility of industry accountability.²⁰ These and eight other states have enacted laws that require gun manufacturers and dealers to use specified safe sales practices.²¹ PLCAA’s “predicate exception” thus permits suits against gun manufacturers or dealers who violate any of these states’ laws and cause harm.²²

Lawsuits for extraterritorial harms caused by U.S. firearm industry actors present a novel opportunity to advance industry accountability. In 2021, GAGV and private co-counsel filed a case in federal court on behalf of the Government of Mexico.²³ In *Estados Unidos Mexicanos v. Smith & Wesson, et al.*, Mexico argued that U.S. manufacturers negligently and illegally facilitate cross-border gun trafficking to Mexico. The complaint outlined how major U.S. manufacturers are on notice that their conduct fuels gun trafficking. It detailed how U.S. manufacturers facilitate trafficking by selling guns through the small percentage of dealers who sell about 90 percent of crime guns.²⁴ The complaint explained how U.S. manufacturers allow the reckless sales practices that supply traffickers, practices such as straw sales, repeat sales, and marketing military-style weapons that are known weapons of choice for criminal cartels. It also noted how manufacturers had refused the Department of Justice’s request to stop supplying these dealers and to require that their downstream sellers train employees not to engage in these high-risk business practices.

The complaint argued that PLCAA was not intended to, and should not be read to, apply to claims brought by foreign entities for extraterritorial harms. Courts rejected this argument.²⁵ But the complaint also outlined how,

¹⁷ 15 U.S.C. §§ 7901–7903; see also Everytown for Gun Safety, *Repeal Gun Industry Immunity*.

¹⁸ 15 U.S.C. § 7903(5)(A).

¹⁹ 15 U.S.C. § 7903(5)(A)(iii).

²⁰ Everytown Research & Policy, *Which States Have Expanded Legal Accountability for the Gun Industry?* (Jan. 15, 2025).

²¹ *Id.*

²² *Gun Industry Immunity in California*, GIFFORDS L. CTR. (Dec. 31, 2023).

²³ *Estados Unidos Mexicanos v. Smith & Wesson, et al.*, *Complaint* (D. Mass. 2021).

²⁴ BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *COMMERCE IN FIREARMS* (Feb. 2000).

²⁵ *Estados Unidos Mexicanos v. Smith & Wesson, et al.*, No. 21-cv-11269 (D. Mass. 2022) (granting Defendants’ motion to dismiss); *Estados Unidos Mexicanos v. Smith & Wesson, et al.*, No. 22-1823 (1st Cir. Jan. 22, 2025).

even if applied, PLCAA did not bar the case because the firearm manufacturer's practices fell within the predicate exception. The First Circuit agreed.²⁶

In 2025, the U.S. Supreme Court reversed the lower court's unanimous decision allowing Mexico's claims.²⁷ While the Court found that the case did not fall within the predicate exception to PLCAA because the allegations did not establish aiding and abetting liability, it did not accept the manufacturer defendants' arguments that U.S. firearm manufacturers could not be the proximate cause of harm in Mexico resulting from gun trafficking, refusing to address the issue. The narrow decision's rejection of the industry's call for even broader immunity illustrates PLCAA's strength in protecting firearm industry actors from domestic legal accountability, while leaving room for future liability.²⁸

GAGV and private counsel have also filed the first lawsuit using the federal Racketeer Influenced and Corrupt Organizations Act (RICO) against the gun industry. *Estados Unidos Mexicanos v. Diamondback Shooting Sports, Inc., et al.*²⁹ was filed in 2022 against five gun dealers in Arizona. The complaint details how defendant dealers knowingly participate in trafficking guns into Mexico through straw sales, and bulk and repeat sales of military-style weapons. It further outlines how, by supplying firearms to traffickers who arm cartels, these five dealers violate RICO by participating in the affairs of criminal enterprises. In 2024, the federal district court found that the claim fell within PLCAA's predicate exception. Accordingly, the lawsuit proceeded, albeit absent the RICO count.³⁰

Joaquín Oliver & Family vs. The United States

In November 2023, the CHRLC and GAGV filed the "Lawsuit for Survival" in the Inter-American system—the first case of its kind.³¹ Manny and Patricia Oliver brought the lawsuit on behalf of themselves and their son Joaquín, who was shot and killed in the 2018 Marjorie Stoneman Douglas High School massacre in Parkland, Florida. The petition argues that the United States enabled human rights abuses by firearm industry actors by failing to adequately regulate firearms in violation of the Olivers' human rights, namely, the right to life and personal security, the right to a family and protection thereof, and the right to a juridical personality and other civil rights.

The lawsuit is based on U.S. obligations within the Inter-American system, but it also shows that the path to industry accountability is not exclusively in the realm of domestic courts and against private actors. The United States has ratified the Charter of the Organization of American States and is thus bound to uphold the rights enshrined in the American Declaration on the Rights and Duties of Man. The state is further subject to the jurisdiction of the Inter-American Commission. The United States' human rights violations in this case are rooted in the Inter-American legal principle of due diligence, which obliges a state to prevent certain acts or omissions of private actors that can lead to foreseeable harm, as well as to adequately respond to such harm when it occurs.

²⁶ *Smith & Wesson*, No. 22-1823, *supra* note 25.

²⁷ *Smith & Wesson, et al. v. Estados Unidos Mexicanos*, No. 23-1141 (S. Ct. June 5, 2025).

²⁸ *Id.*

²⁹ *Estados Unidos Mexicanos v. Diamondback Shooting Sports, Inc., et al.*, Complaint (D. Ariz. 2022).

³⁰ *Estados Unidos Mexicanos v. Diamondback Incorporated, et al.*, No. CV-22-00472 (D. Ariz. 2024). The case is currently in discovery.

³¹ *Oliver v. United States*, P-2258-23, Inter-Am. Comm'n H.R. ("Lawsuit for Survival")

Due diligence requires states to adopt and enforce legal and regulatory frameworks to ensure that dangerous business practices are “adjusted to the standards recognized by international human rights law.”³² It also requires a state to offer effective remedies when abuses occur.³³ The Lawsuit for Survival demonstrates how, by not enacting an adequate regulatory framework and failing to protect Joaquin and his family from known firearm industry abuses, the United States violated the Olivers’ human rights. In addition, this case shows how the state does not provide adequate and effective remedies against all the parties responsible, in particular the industry actors who enabled the gun massacre in which Joaquin Oliver was killed.

Ordinarily, petitioners must exhaust domestic remedies prior to filing such international human rights claims. However, this requirement is excused when the state denies due process or access to remedies.³⁴ The Lawsuit for Survival describes how, for gun violence victims, the United States has denied both. It has not provided an adequate opportunity to bring civil causes of action against the harmful conduct of firearms manufacturers that enables gun violence. Rather, the United States has chosen through PLCAA and similar legislation to enact strong legal protections *for* the firearm industry, rendering any attempt at exhausting domestic remedies in this respect futile.

The difficulty of exhausting domestic remedies against complicit firearm industry actors underscores the importance of addressing industry accountability at the state actor level, in tandem with actions at the domestic level against offending companies. For example, getting the Inter-American Commission to urge the United States to remove legal barriers to civil remedies for gun violence victims such as PLCAA would allow litigation at the domestic level to act as a mechanism of accountability against the firearm industry. The Lawsuit for Survival highlights how, under regional human rights law, the United States is required to provide such domestic remedies in response to the known and foreseeable human rights abuses attributable to U.S. gun manufacturers and dealers. The state’s due diligence duty under international human rights law, enforced in the regional context, is thus a critically important mechanism for achieving firearm industry accountability.

In September 2025, the Inter-American Commission expedited the Lawsuit for Survival by joining consideration of admissibility with the merits, affirming the importance of the issues presented by the case within a broader context. Under Inter-American Commission procedure, a case may be expedited if the decision could correct structural situations that impair the enjoyment of human rights or could promote legal reforms to avoid repeat petitions on the same matter.³⁵ In expediting review in this way, the Commission recognizes that this case presents an opportunity to accomplish both goals.

Conclusion

The United States does not adequately regulate its domestic firearms industry and thus falls short of meeting its due diligence responsibility to protect civil and human rights. In its 2025 forum report, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises noted in relation to the United States (and a few other states) the “urgent need for stricter oversight and accountability in the arms sector.”³⁶ The state, however, is not the only actor that owes a duty to respect human rights. The

³² Inter-Am. Comm’n H.R., Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, Thematic Report on Business and Human Rights: Inter American Standards, para. 105, [OEA/Ser.L/V/II](#) (Nov. 2019).

³³ See generally [Lenahan v. United States](#), Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (July 21, 2011).

³⁴ See generally [Velásquez Rodríguez v. Honduras](#), [Judgment, Merits](#), Inter-Am. Ct. H.R. (Ser. C) No. 4, (July 29, 1988).

³⁵ [Rules of Procedure Inter-Am. Comm’n H.R.](#), Rule 29(2)(d)(i)–(ii).

³⁶ Thirteenth Session of the Forum on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Human Rights Council [A/HRC/59/60](#) (2025).

UNGPs recognize the “role of business enterprises . . . to comply with all applicable laws and to respect human rights.”³⁷ The business sector’s responsibility “to respect” human rights does not depend on the state’s fulfillment of its corollary duty “to protect” such rights. A business’s responsibility “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations.”³⁸ Further, the responsibility owed by a business will “vary according to . . . the severity of the enterprise’s adverse human rights impacts.”³⁹ The U.S. gun industry’s grave impact on individuals and their human rights is as widespread as it is well-documented.

Importantly, industry actor-level reforms can have direct impacts,⁴⁰ and litigation incentivizes industry reforms.⁴¹ Historically this was demonstrated in the business sectors for automobiles and tobacco,⁴² and even within the firearm industry itself. In 2000, Smith & Wesson negotiated an agreement with the United States and several municipalities that, in part, required implementation of internal procedures to discourage illegal gun trafficking and reduce gun violence.⁴³ In exchange, ongoing litigation against the manufacturer was dismissed, including suits brought by fifteen cities.⁴⁴ While industry boycotts led the manufacturer to renege on the agreement, this experience nonetheless exemplifies the positive pressure that litigation can have on firearm industry actor behavior.⁴⁵

In short, the strategic transnational litigation described in this piece offers a promising path to promoting legal reform in line with the UNGPs and fostering greater industry accountability. In the United States, PLCAA has severely hampered the effectiveness of most domestic litigation aimed at the firearm industry, thus enabling a regional human rights approach. Both strategic litigation initiatives outlined above seek to avoid the pitfalls of typical litigation which overwhelming falters under PLCAA’s strong protections. The cases brought by Mexico in U.S. federal courts use novel legal arguments presented by a uniquely situated plaintiff to navigate the narrow exceptions to PLCAA and establish potential new bases for liability. The Lawsuit for Survival before the Inter-American system attacks PLCAA directly by using arguments anchored in traditional state responsibility to pressure the United States into fulfilling its human rights due diligence duties. Each strategy reinforces the efforts and end goals of the other.

³⁷ United Nations Human Rights Office of the High Commissioner, [Guiding Principles on Business and Human Rights](#) 1 (2011).

³⁸ *Id.* at 13.

³⁹ *Id.* at 15.

⁴⁰ Daniel Webster et al., *Effects of a Gun Dealer’s Change in Sales Practices on the Supply of Guns to Criminals*, 83 J. URBAN HEALTH 778 (2006).

⁴¹ Jon S. Vernick et al., *Availability of Litigation as a Public Health Tool for Firearm Injury Prevention: Comparison of Guns, Vaccines, and Motor Vehicles*, 97 AM. J. PUBLIC HEALTH 1991, 1992–93 (2007).

⁴² Robert S. Peck et al., *Civil Litigation as a Tool in a Public Health Approach to Gun Violence*, CIVIL JUST. RSCH. INITIATIVE (2023).

⁴³ James Dao, *Under Legal Siege, Gun Maker Agrees to Accept Curbs*, N.Y. TIMES (Mar. 18, 2000).

⁴⁴ *Id.*

⁴⁵ Stephen D. Sugarman, *Torts and Guns*, 10 J. TORT L. 3, 9–10 (2017).