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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

JOHN LINDSAY-POLAND,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE; and BUREAU OF ALCOHOL,
TOBACCO, FIREARMS AND
EXPLOSIVES,

Defendants.

Case No. 22-cv-07663

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, for injunctive and other appropriate relief seeking the release of agency records improperly withheld from John Lindsay-Poland (“Mr. Lindsay-Poland” or “Plaintiff”) by the Department of Justice (“DOJ”), and its component Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF” and, together with the DOJ, “Defendants”).

1 2. On March 22, 2021, Mr. Lindsay-Poland submitted a FOIA request (the “March
2 22 Request” attached as Exhibit 1) to the ATF.

3 3. The March 22 Request stated as follows:

4 I request records based on a database query containing data on firearms recovered in
5 Mexico, Guatemala, Honduras, and El Salvador, and traced by the ATF, since Dec.
6 31, 2014. From this, I request database query results with the following data:

- 7 a) Number of firearms traced, and with the following disaggregations, for each
8 country where firearm was recovered and each year:
9 i. state of FFL where firearm was purchased
10 ii. county of FFL where firearm was purchased
11 iii. zip code of FFL where firearm was purchased
12 iv. type of firearm (rifle, shotgun, pistol, revolver, other)
13 v. caliber of firearm
14 vi. make of firearm
- 15 b) Number of buyers to which recovered firearms were traced as purchases, by year,
16 by country where firearm was recovered, and by county of purchase
- 17 c) Number of FFLs to which recovered firearms were traced as purchases, with the
18 following disaggregations for each country and year of purchase:
19 i. county and state of purchase
20 ii. type of firearm (rifle, shotgun, pistol, revolver, other)
21 iii. caliber of firearm

22 4. Defendants denied Mr. Lindsay-Poland’s request on December 14, 2021 in its
23 entirety (the “December 14 Denial” attached as Exhibit 2), despite Mr. Lindsay-Poland being
24 legally entitled to access the records.

25 5. Mr. Lindsay-Poland filed a timely administrative appeal of Defendants’ denial on
26 March 14, 2022 (the “March 14 Appeal” attached as Exhibit 3).

27 6. On October 7, 2022, Defendants denied the March 14 Appeal (the “October 7
28 Appeal Denial” attached as Exhibit 4), despite Mr. Lindsay-Poland being legally entitled to the
records sought in the March 22 Request.

 7. Mr. Lindsay-Poland now asks the Court for an injunction requiring Defendants to
release the improperly withheld records promptly.

JURISDICTION AND VENUE

 8. The Court has subject matter jurisdiction over this action and personal jurisdiction
over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). The Court also has jurisdiction over this
action pursuant to 28 U.S.C. §§ 1331.

1 15. High-powered guns made in or imported into the United States and delivered
2 across its southern border have shot down government helicopters,¹ been used to assassinate
3 journalists,² killed refugees and children, and destroyed entire communities.³

4 16. Whether wielded by cartels, domestic abusers, or corrupt officers, guns trafficked
5 from the United States to Mexico and Central America's Northern Triangle present not only a
6 humanitarian crisis, but a national security threat to all nations they reach.

7 17. Transnational criminal organizations and gangs rely on U.S. guns to protect their
8 illicit operations throughout countries including Mexico⁴ and the Northern Triangle of El
9 Salvador, Guatemala, and Honduras.⁵

10 18. In these four countries, guns kill more people than any other means of homicide.⁶
11 In 2019, excluding accidents and suicides, the gun death rate per 100,000 people was 2.23
12 globally, while it soared to 15.55 in Mexico, 21.22 in Honduras, 28.23 in Guatemala, and 35.5 in
13 El Salvador, which has the highest rate of gun deaths in the world.⁷

14 _____
15 ¹ Diego Oré & Drazen Jorgic, *'Weapon of war': the U.S. rifle loved by drug cartels and feared by*
16 *Mexican police*, REUTERS (Aug. 6, 2021), [https://www.reuters.com/world/americas/weapon-war-](https://www.reuters.com/world/americas/weapon-war-us-rifle-loved-by-drug-cartels-feared-by-mexican-police-2021-08-06/)
17 [us-rifle-loved-by-drug-cartels-feared-by-mexican-police-2021-08-06/](https://www.reuters.com/world/americas/weapon-war-us-rifle-loved-by-drug-cartels-feared-by-mexican-police-2021-08-06/).

18 ² Phineas Rueckert & Nina Lakhani, *'They're culpable': the countries supplying the guns that kill*
19 *Mexico's journalists*, THE GUARDIAN (Dec. 11, 2020),
20 [https://www.theguardian.com/world/2020/dec/09/mexico-cartel-project-weapons-import-](https://www.theguardian.com/world/2020/dec/09/mexico-cartel-project-weapons-import-trafficking)
21 [trafficking](https://www.theguardian.com/world/2020/dec/09/mexico-cartel-project-weapons-import-trafficking).

22 ³ *No Way Out: The Humanitarian Crisis for Migrants and Asylum Seekers Trapped Between the*
23 *United States, Mexico and the Northern Triangle of Central America*, DOCTORS WITHOUT
24 BORDERS 28 (Feb. 2020),
25 [https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Bo-](https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Borders_No%20Way%20Out%20Report.pdf)
26 [rders_No%20Way%20Out%20Report.pdf](https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Borders_No%20Way%20Out%20Report.pdf).

27 ⁴ U.S. Government Accountability Office, GAO-21-322, *Firearms Trafficking: U.S. Efforts to*
28 *Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis* 4 (Feb.
2021), <https://www.gao.gov/assets/gao-21-322.pdf> (report to Congressional requesters).

⁵ U.S. Government Accountability Office, GAO-22-104680, *Firearms Trafficking: More*
Information Is Needed to Inform U.S. Efforts in Central America 3 (Jan. 2022),
<https://www.gao.gov/assets/gao-22-104680.pdf> (report to Congressional requesters).

⁶ *Global Study on Homicide*, UNITED NATIONS OFFICE ON DRUGS AND CRIME 81 (July 2019),
https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_3.pdf.

⁷ *Global Burden of Disease database*, INSTITUTE FOR HEALTH METRICS AND EVALUATION,
UNIVERSITY OF WASHINGTON, [https://vizhub.healthdata.org/gbd-results?params=gbd-api-2019-](https://vizhub.healthdata.org/gbd-results?params=gbd-api-2019-permalink/24fa65025d050309542cd867de4a6308)
permalink/24fa65025d050309542cd867de4a6308 (last accessed Aug. 12, 2022); Nurith
Aizenman, *Gun Violence Deaths: How the U.S. Compares with the Rest of the World*, NPR (May
24, 2022), [https://www.npr.org/sections/goatsandsoda/2021/03/24/980838151/gun-violence-](https://www.npr.org/sections/goatsandsoda/2021/03/24/980838151/gun-violence-deaths-how-the-u-s-compares-to-the-rest-of-the-world)
deaths-how-the-u-s-compares-to-the-rest-of-the-world; see also German Lopez, *America is one of*
6 countries that make up more than half of gun deaths worldwide, VOX (Aug. 29, 2018),
<https://www.vox.com/2018/8/29/17792776/us-gun-deaths-global>.

1 19. The United States is the leading supplier of firearms globally.⁸ The Mexican
2 Government has accused U.S. gun manufacturers of “actively facilitating the unlawful trafficking
3 of their guns to drug cartels.”⁹

4 20. Criminal organizations in Mexico and the Northern Triangle use guns and the
5 threat of force to manipulate, extort, and recruit people and to protect their firearm, drug, and
6 human trafficking routes and illicit profits.¹⁰

7 21. The proliferation of guns in these countries is dramatically escalating domestic
8 violence against women; in 2018, six women were fatally shot in Mexico each day.¹¹

9 22. The level of violence in the Northern Triangle is comparable to war zones.¹²

10 23. These dangerous conditions have displaced or separated thousands of families.
11 More than two million people are estimated to have left Northern Triangle countries since 2014,
12 often to escape chronic violence.¹³ In 2020, more than half of total asylum applications filed in
13 the United States came from Northern Triangle countries and Mexico, with nearly 144,000
14 applications among the four countries.¹⁴ More than two-thirds of migrants and refugees from the
15 Northern Triangle left after their relatives were murdered, disappeared, or kidnapped, according
16
17
18

19 _____
20 ⁸ Alex Yablon, *U.S. Gun Makers Send Weapons South as Migrants Flee North*, THE TRACE
(March 8, 2019), <https://www.thetrace.org/2019/03/american-gun-exports-violence-latin-america-colt/>.

21 ⁹ Dave Graham & Laura Gottesdiener, *Mexico Sues U.S. Gun Makers, Eyes \$10 Billion in*
22 *Damages*, REUTERS (Aug. 4, 2021), <https://www.reuters.com/world/americas/mexico-sues-several-weapons-manufacturers-us-court-2021-08-04/>.

23 ¹⁰ *Supra* note 4 at 4; *supra* note 5.

24 ¹¹ Meaghan Beatley, *America’s Guns Fuel Mexico’s Domestic Violence Epidemic*, FOREIGN
POLICY (May 27, 2020), <https://foreignpolicy.com/2020/05/27/american-guns-mexico-domestic-violence-femicide/>.

25 ¹² *Supra* note 3 at 4.

26 ¹³ Amelia Cheatham & Diana Roy, *Central America’s Turbulent Northern Triangle*, COUNCIL ON
FOREIGN RELATIONS (June 22, 2022, 3:20 PM), <https://www.cfr.org/background/central-americas-turbulent-northern-triangle>

27 ¹⁴ See Ryan Baugh, *Fiscal Year 2020 Refugees and Asylees Annual Flow Report*, U.S.
DEPARTMENT OF HOMELAND SECURITY 16-17 (March 8, 2022),
28 https://www.dhs.gov/sites/default/files/2022-03/22_0308_plyc_refugees_and_asylees_fy2020_1.pdf.

1 to a 2020 Doctors Without Borders report.¹⁵ Nearly 62% were exposed to a violent situation in
2 the two years before they left their home country.¹⁶

3 24. Violence continues to threaten migrants along their journeys, with disappearances
4 and mass deaths reported along migration routes where criminal organizations are active. Over
5 1,000 migrants have been reported missing in Central America since 2019, the majority heading
6 toward the United States-Mexico border.¹⁷

7 25. Children exposed to violence are severely affected. While people traveling with
8 children are most likely to cite violence as their reason for leaving the Northern Triangle, children
9 still face violence along migration routes, accounting for more than one-fifth of sexual violence
10 cases.¹⁸ More than nine in every 10 unaccompanied children who sought asylum in the United
11 States in 2020 came from Guatemala, Honduras, or El Salvador.¹⁹

12 26. In Guatemala, El Salvador, Honduras and Belize, 4,761 of the 10,915 U.S.-sourced
13 firearms recovered and submitted for tracing from 2015 to 2019 – more than 43% – were first
14 legally exported to those countries, suggesting “that the firearms had likely been diverted from
15 legal commerce in that country rather than smuggled from another country,” according to the
16 Government Accountability Office.²⁰

17 *El Salvador*

18 27. El Salvador’s intentional homicide rate was 37 per 100,000 people in 2019, among
19 the highest in the world.²¹ Its gun homicide rate is the world’s highest.²²

20 28. Roughly 1,750 people were killed with guns in El Salvador in 2019, accounting for
21 73% of homicides.²³

22 _____
23 ¹⁵ *Supra* note 3 at 5 (among 480 people interviewed in a structured survey along the migration
route).

24 ¹⁶ *Id.*

25 ¹⁷ Migration Within the Americas, MISSING MIGRANTS PROJECT,
<https://missingmigrants.iom.int/region/americas> (last accessed Oct. 17, 2022).

26 ¹⁸ *Supra* note 3 at 5, 18.

27 ¹⁹ *Supra* note 14 at 16.

28 ²⁰ *Supra* note 5 at 17.

²¹ UN Office on Drugs and Crime’s International Homicide Statistics Database, THE WORLD
BANK, <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?locations=SV>.

²² Aizenman, *supra* note 7.

²³ *Supra* note 5 at 4.

1 32. In 2019, the intentional homicide rate was 25 per 100,000 people.³² More than
2 2,800 people were killed with guns in Guatemala in 2019, representing 79% of homicides,
3 according to Guatemala’s National Security Council.³³ A “heavily armed population” contributes
4 to Guatemala’s high murder rate, according to a 2020 U.S. State Department report.³⁴ Data from
5 Guatemala indicates that 80% of firearms seized in 2017 were linked to violent crime.³⁵

6 33. Roughly 35.7% of guns recovered in Guatemala and submitted to the ATF for
7 tracing in 2021 were either manufactured in or imported into the United States.³⁶

8 34. Guatemala has the largest arms market in Central America, with at least 1.9
9 million weapons estimated in circulation, of which only a small fraction are legally registered.³⁷
10 Guatemala’s “vibrant private security economy” spurs the movement of guns from the state to
11 private citizens.³⁸ Its government stockpiles often supply criminal groups from other countries.
12 For example, a Mexican criminal group procured thousands of weapons, including leaked
13 military arms, while using Guatemala as its “virtual bodega” for several years.³⁹ Honduran
14 traffickers also capitalize on this market.⁴⁰ Nevertheless, the U.S. Department of Commerce
15 authorized the export of 99,270 firearms to Guatemala in a 13-month period in 2020-2021,⁴¹ an
16 increase from 12,372 authorized in 2019,⁴² which in turn represented an increase from the
17 average of 4,269 actual U.S. exports of semi-automatic firearms in 2013-2018.⁴³

21 ³² *Supra* note 21.

22 ³³ *Supra* note 5 at 4.

23 ³⁴ *Supra* note 5 at 4.

24 ³⁵ *Supra* note 27 at 69.

25 ³⁶ *Supra* note 24.

26 ³⁷ *Supra* note 28 at 26 (estimates vary).

27 ³⁸ *Id.*

28 ³⁹ *Id.* at 26-27.

⁴⁰ *Id.* at 27.

⁴¹ *Supra* note 5.

⁴² U.S. Dep’t of State, *Report to Congress on Direct Commercial Sales Authorizations to Foreign Countries and International Organizations for Fiscal Year 2019*, https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=3b39303bdb1414105c3070808c9619e6.

⁴³ U.S. INT’L TRADE COMM’N, <https://datawebbeta.usitc.gov> (last accessed Nov. 8, 2022).

1 passengers' luggage on commercial airlines, though that method has been used less since the 9/11
 2 terrorist attacks.⁵⁴ Many guns smuggled into Honduras first travel from the United States to
 3 Mexico.⁵⁵

4 40. It can be very difficult to obtain any—much less, reliable—information concerning
 5 weapons trafficked to Honduras from the United States. Customs officials regularly fail to search
 6 for guns and allow many through points of entry.⁵⁶ Another concern is leakage from military
 7 stocks that include U.S. government exports, both in Honduras and neighboring countries.⁵⁷
 8 However, two major suspected sources of illegal firearms in Honduras, the police and the
 9 military, do not disclose information that is necessary to determine “leakage” and form a clear
 10 picture of the illegal arms trade in Honduras.⁵⁸ The Honduran government also lacks a
 11 centralized database for tracking firearms seizures or sales,⁵⁹ making the ATF’s trace data for
 12 guns recovered in Honduras especially valuable.

13 41. In 2021 alone, 247,000 Hondurans became internally displaced by conflict and
 14 violence.⁶⁰ From 2018-2020, 5,080 Hondurans were granted asylum in the United States out of
 15 more than 105,500 asylum seekers.⁶¹

16 *Mexico*

17 42. In 2019, the intentional homicide rate in Mexico was 29 per 100,000 people.⁶²

18 43. More than 20,000 people were shot dead in Mexico in 2018, nearly seven times as
 19 many as in 2003.⁶³ Increases in Mexico’s homicide rate have largely been attributed to
 20 heightened drug-related violence, such as control over drug routes.⁶⁴

21 _____
 22 ⁵⁴ *Supra* note 28 at 19-23.

⁵⁵ *Id.*

⁵⁶ *Id.* at 28.

⁵⁷ *Id.* at 24.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 7.

⁶⁰ *Supra* note 44.

⁶¹ *Supra* note 14.

⁶² *Supra* note 21.

⁶³ Kate Linthicum, *Mexicans are Killing Each Other at Record Rates. The U.S. Provides the Guns*, LOS ANGELES TIMES (Oct. 6, 2019), <https://www.latimes.com/world/mexico-americas/la-fg-mexico-guns-20190430-story.html>.

⁶⁴ *Mexico: Organized Crime and Drug Trafficking Organizations*, CONG. RESEARCH SERV. (June 7, 2022), <https://sgp.fas.org/crs/row/R41576.pdf>.

1 44. Most of these guns do not come from Mexico, where the only gun store is located
 2 on a military base.⁶⁵ They come from the United States, which sends so many firearms to Mexico
 3 with such consistency that many call it the iron river. More than two million guns have been
 4 smuggled over the U.S. border in the last decade,⁶⁶ and approximately 200,000 firearms are
 5 smuggled to Mexico from the United States annually, according to the Mexican government.⁶⁷

6 45. The United States also legally exports millions of dollars of guns to Mexico each
 7 year. From 2006-18, Mexican police acquired nearly 300,000 firearms from U.S. sources—more
 8 than from any other country—including 71,000 rifles.⁶⁸ Some of those guns end up in dangerous
 9 hands. Between 2006-19, 12,581 handguns and 4,104 long guns were reported stolen or lost from
 10 Mexican police.⁶⁹

11 46. From 2016-21, roughly 68% of crime guns recovered in Mexico and submitted to
 12 the ATF for tracing were either U.S.-manufactured or legally imported by a federal firearms
 13 licensee.⁷⁰ Because many firearms trace requests do not contain sufficient information, that
 14 figure may be significantly higher.⁷¹ If guns used in fatal shootings in Mexico follow that trend,
 15 that would imply that American guns kill more people in Mexico than domestically, according to
 16 Stop US Arms to Mexico.⁷²

17 47. Of guns recovered in Mexico and traced to U.S. sources in 2021, 51.1% were
 18 traced to a retail buyer in the United States, another 3% had been transferred from a U.S. FFL to a
 19

20 ⁶⁵ *Supra* note 64.

21 ⁶⁶ Ioan Grillo, *How Smugglers Flood Mexico With Cheap U.S. Guns*, VICE WORLD NEWS (March
 11, 2021), <https://www.vice.com/en/article/5dpvex/how-smugglers-flood-mexico-with-cheap-us-guns>.

22 ⁶⁷ *Supra* note 4 at 1.

23 ⁶⁸ *Firearms Sold to Policemen*, STOP US Arms to Mexico & Mexican Commission for the
 Defense and Promotion of Human Rights, <https://union-dnc.com/mapa-armas/armas-comercializadas.php?language=en>.

24 ⁶⁹ *Weapons Lost or Stolen from Police in Mexico*, STOP US ARMS TO MEXICO & MEXICAN
 COMMISSION FOR THE DEFENSE AND PROMOTION OF HUMAN RIGHTS, [https://union-dnc.com/mapa-
 25 armas/armas-extraviadas.php?language=en](https://union-dnc.com/mapa-armas/armas-extraviadas.php?language=en).

26 ⁷⁰ *Firearms Trace Data: Mexico – 2016 - 2021*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
 EXPLOSIVES, <https://www.atf.gov/resource-center/firearms-trace-data-mexico-2016-2021> (last
 27 accessed Sept. 23, 2022).

27 ⁷¹ *See Id.*

28 ⁷² John Lindsay-Poland, *How US Guns Push Central Americans to Flee*, STOP US ARMS TO
 MEXICO (Feb. 6. 2019), <https://stopusarmstomexico.org/guns-and-forced-migration/>.

1 foreign entity, and the ATF could not determine a buyer for the remaining 46%.⁷³ In 2021 alone,
 2 379,000 Mexicans became internally displaced by conflict and violence.⁷⁴ From 2018-2020,
 3 4,138 Mexicans were granted asylum in the United States out of 91,392 asylum seekers.⁷⁵

4 *American guns fuel the nation's drug epidemic*

5 48. American guns also fuel America's drug epidemic by arming drug traffickers who
 6 control the national market.⁷⁶

7 49. U.S.-sourced firearms trafficked into Mexico further contribute to violence by
 8 facilitating the illicit drug trade.⁷⁷ Heightened violence in Mexico has been tied to a transition to
 9 synthetic drug production and trafficking.⁷⁸ The U.S. Drug Enforcement Administration (the
 10 "DEA") also considers Mexico-based transnational criminal organizations the greatest drug
 11 trafficking threat to the United States.⁷⁹ These transnational criminal organizations have strong
 12 affiliations to criminal groups in the United States and control most of the nation's drug market,
 13 supplying most cocaine, methamphetamine, heroin, and fentanyl smuggled into the United
 14 States.⁸⁰ Locally, violence-prone street gangs then dominate retail sale and distribution of these
 15 narcotics.⁸¹

16 50. In 2019, 71% of fentanyl tablets analyzed by the DEA appeared consistent with
 17 manufacturing techniques used by Mexican transnational criminal organizations and 92% of
 18 heroin analyzed by the DEA came from Mexico.⁸² With more fentanyl arriving in the United

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 20 ⁷³ *Supra* note 70.

21 ⁷⁴ *Supra* note 44.

22 ⁷⁵ *Supra* note 14 at 4.

23 ⁷⁶ Br. of District Attorneys as Amici Curiae in Support of Pl.'s Opp'n to Defs.' Mot. to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 1:21-cv-11269-FDS (D. Mass Feb. 03, 2022), ECF 123 at 10-18; *see also* Press Release, Drug Enforcement Agency, *DEA Launches New Initiative to Combat Drug-Related Violence and Overdoses in Communities across America* (Feb. 7, 2022),

24 <https://www.dea.gov/press-releases/2022/02/07/dea-launches-new-initiative-combat-drug-related-violence-and-overdoses> (noting that "almost all of the identified criminal drug networks that sell . . . fentanyl or methamphetamine . . . are also engaged in violent gun crimes").

25 ⁷⁷ *Supra* note 4 at 3.

26 ⁷⁸ *Supra* note 64 at 2.

27 ⁷⁹ 2020 National Drug Threat Assessment, DRUG ENFORCEMENT ADMINISTRATION (March 2021), https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

28 ⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 13, 17.

1 States from Mexico, the proportion of fentanyl tablets containing a lethal dose has increased.⁸³
 2 More than a quarter of fentanyl tablets seized in 2019 contained potentially lethal doses,
 3 compared with 1% in 2017 and 14% in 2018.⁸⁴ As Mexico-based traffickers achieved greater
 4 control of the opioid market, more people in the United States experienced overdoses, according
 5 to CDC data. Analysts believe that Mexican transnational criminal organizations' role in opioid
 6 production and trafficking is continuing to expand.⁸⁵

7 *Semi-automatic rifles*

8 51. Firearms recovered in Mexico and traced to U.S. sources from 2014-2018 included
 9 19,000 long guns, which are most commonly recovered near the Texas border.⁸⁶ In 2020 alone
 10 and again in 2021, firearms traced from Mexico included 7,359 long guns—the most since 2015—
 11 though it is unclear how many of those long guns came from the United States because the ATF
 12 does not publish the source country for specific categories of firearms.⁸⁷ Also in 2021, the ATF
 13 traced 169 long guns from El Salvador, 448 from Guatemala, and 49 from Honduras.⁸⁸

14 52. The prevalence of high-caliber rifles is of particular concern to Mexican officials
 15 because of their powerful range and ability to pierce armored gear and trucks, despite availability
 16 for purchase in U.S. retail stores.⁸⁹ Criminal enterprises have carried out numerous attacks on
 17 Mexican security forces, increasingly using .50 caliber and modified fully automatic rifles and
 18 machine guns.⁹⁰

19 53. One study found that gunshot victims are close to five times as likely to die when
 20 they are shot with a large-caliber gun as when they are shot with a small-caliber gun.⁹¹

21 _____
 22 ⁸³ *Id.* at 17.

⁸⁴ *Id.*

⁸⁵ *Supra* note 64.

⁸⁶ Also included 36,000 handguns, which Mexican officials say are more commonly recovered
 23 near the California border. *Supra* note 4 at 14.

⁸⁷ *See supra* note 70 (long guns include 6,249 rifles and 1,110 shotguns in 2020 and 6,252 rifles
 24 and 1,107 shotguns in 2021).

⁸⁸ *Supra* note 24 (Long guns include 40 rifles and 129 shotguns from El Salvador, 157 rifles and
 25 291 shotguns from Guatemala, and 34 rifles and 15 shotguns from Honduras).

⁸⁹ *Supra* note 4 at 4.

⁹⁰ *Supra* note 4 at 4.

⁹¹ Linda Carroll, *High Caliber Guns More Deadly*, REUTERS HEALTH (July 27, 2018),
 26 [https://www.reuters.com/article/us-health-firearms-wounds/high-caliber-guns-more-deadly-
 27 idUSKBN1KH26T](https://www.reuters.com/article/us-health-firearms-wounds/high-caliber-guns-more-deadly-idUSKBN1KH26T).
 28

1 recognized expert who has published extensively on issues related to firearms trafficking in the
2 Americas. His work has been featured in publications including The Trace, Los Angeles Times,
3 The Intercept, HuffPost, and Univision. He also coordinates Stop US Arms to Mexico, a project
4 with the Global Exchange, which regularly publishes information concerning the arms flow from
5 the United States to Mexico. As stated in the March 22 Request, disclosing the aggregate trace
6 data that is currently withheld would contribute significantly to the public’s understanding of its
7 government and policies. Without the level of aggregate detail requested, it is difficult for
8 anyone—the public, the press, activists and humanitarian groups—to pinpoint problems and work
9 toward solutions.

10 60. The U.S. Government Accountability Office (“GAO”) said additional analysis of
11 ATF data could improve understanding of sources and smuggling routes over the United States-
12 Mexico border.⁹⁶ The GAO called for more information on guns traced in Mexico and other
13 Central American Countries including El Salvador, Guatemala, and Honduras.⁹⁷ Withholding
14 aggregate trace data from the public is contrary to these priorities.

15 61. Aggregate data on the counties and times in which trafficked firearms were
16 purchased will facilitate understanding of trafficking routes, the extent to which straw purchasers
17 are spreading out FFLs from which they purchase in order to evade required Multiple Sales
18 Reports, impacts of state firearms legislation, and changes over time in these patterns. Aggregate
19 data on the numbers of buyers will facilitate understanding of how trafficking is organized and
20 the role of straw buyers in such organizations. Aggregate data on types, makes and calibers of
21 trafficked firearms will facilitate understanding of preferences of criminal organizations and
22 changes or consistency in these preferences over time. These understandings and analysis are
23 likely to be useful for public policy development, private violence prevention initiatives, and law
24 enforcement strategies in the United States, Mexico and Northern Triangle countries.

25 62. According to the GAO, the ATF has trafficking data on firearms recovered in
26 Mexico from 2014-18 and traced to initial purchasers that shows “most U.S.-sourced firearms

27 ⁹⁶ *Supra* note 4 at 23.

28 ⁹⁷ *Supra* note 4; *supra* note 5.

1 acquired by [transnational criminal organizations] are (1) initially purchased in U.S. states along
 2 the U.S.–Mexican border and (2) purchased primarily through the secondary market.”⁹⁸ Of U.S.-
 3 sourced firearms recovered from 2014-18 and traced by the ATF, nearly 19% were traced to an
 4 initial buyer in Texas, 9% to California, 8% to Arizona, 12% to other states, and 2% to a foreign
 5 purchaser, while half were not traced to an initial buyer.⁹⁹ However, the ATF refuses to release
 6 even aggregate data to Mr. Lindsay-Poland.

7 63. The public cannot, and should not, rely on the government to voluntarily release
 8 what it is entitled to know or what is in its best interests, as evidenced by the ATF’s denial of the
 9 March 22 Request. Journalists and analysts such as Mr. Lindsay-Poland maintain a vital role in
 10 filling these types of information gaps and their work is critical to public understanding of gun
 11 trafficking.

12 64. Yet journalists on the ground in the Northern Triangle and Mexico have been
 13 targeted in violent attacks that have increased in recent years, making these countries among the
 14 world’s most dangerous countries to practice journalism.¹⁰⁰ Many journalists in these countries
 15 report a chilling effect and self-censorship. Since 2012, 87 journalists and media workers have
 16 been killed in Mexico, 19 in Honduras, 9 in Guatemala, and one in El Salvador, according to the
 17 Committee to Protect Journalists. Already in 2022, at least 16 media workers have been killed in
 18 these countries.¹⁰¹ Reporters who investigate narco-politics—“the web of influence and interest
 19 woven by corrupt officials and organi[z]ed crime”—are most frequently targeted.¹⁰²

20 65. Given the prevalence of American guns, journalists have undoubtedly been killed
 21 by some of the same weapons they are trying to cover. That the origin of the guns used in these
 22

23 ⁹⁸ *Supra* note 4 at 18.

24 ⁹⁹ *Supra* note 5.

24 ¹⁰⁰ *Supra* note 64.

25 ¹⁰¹ Database of attacks on the press, COMMITTEE TO PROTECT JOURNALISTS,
 26 https://cpj.org/data/killed/2022/?status=Killed&motiveConfirmed%5B%5D=Confirmed&motiveUnconfirmed%5B%5D=Unconfirmed&type%5B%5D=Journalist&type%5B%5D=Media%20Worker&cc_fips%5B%5D=ES&cc_fips%5B%5D=GT&cc_fips%5B%5D=HO&cc_fips%5B%5D=MX&start_year=2022&end_year=2022&group_by=location (last visited Nov. 9, 2022).

27 ¹⁰² Nina Lakhani, Dana Priest & Paloma Dupont, *Murder In Mexico: Journalists Caught in the*
 28 *Crosshairs*, THE GUARDIAN (Dec. 6, 2020), [theguardian.com/world/2020/dec/06/murder-in-mexico-journalists-caught-in-the-crosshairs-regina-martinez-cartel-project](https://www.theguardian.com/world/2020/dec/06/murder-in-mexico-journalists-caught-in-the-crosshairs-regina-martinez-cartel-project).

1 murders is not always publicly known only emphasizes the need for the ATF to release more
2 aggregate trace data.

3 **B. Defendants Improperly Denied Mr. Lindsay-Poland’s March 22 Request**

4 66. On March 22, 2021, Mr. Lindsay-Poland transmitted the March 22 Request to the
5 ATF by means of an online form.

6 67. By letter dated December 14, 2021 (the “December 14 Denial Letter”), Adam C.
7 Siple, Chief, Information and Privacy Governance Division, denied Mr. Lindsay-Poland access to
8 records responsive to the March 22 Request.

9 68. The December 14 Denial Letter cited Exemption 3 to the FOIA, as well as the
10 2012 Tiahrt Rider, Pub. L. No. 112–55, 125 Stat. 552, 609-10, as the basis for withholding the
11 requested records. No other basis for denial was provided.

12 69. On March 14, 2022, Mr. Lindsay-Poland appealed the December 14 Denial Letter.

13 70. On October 7, 2022, Defendants denied the March 14 Appeal. The October 7
14 Appeal Denial again cited Exemption 3 to the FOIA and the 2012 Tiahrt Rider as the sole basis
15 for denying Mr. Lindsay-Poland access to the records responsive to the March 22 Request.

16 71. Exemption 3 to the FOIA includes information that is:

17 (3) specifically exempted from disclosure by statute (other than section 552b of this title),
18 if that statute--

- 19 (A) (i) requires that the matters be withheld from the public in such a manner
20 as to leave no discretion on the issue; or
21 (ii) establishes particular criteria for withholding or refers to particular
22 types of matters to be withheld; and

23 (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009,
24 specifically cites to this paragraph.

25 72. However, both Exemption 3 and the 2012 Tiahrt Rider do not provide a lawful
26 basis for withholding responsive documents to the March 22 Request.

27 73. The Open FOIA Act of 2009, 5 U.S.C. § 552 (b)(3)(B), requires that any statute
28 cite to the Open FOIA Act in order to serve as a basis for invoking Exemption 3 to FOIA.

However, the 2012 Tiahrt Rider does not reference the Open FOIA Act of 2009. *See Ctr. for
Investigative Reporting*, 14 F.4th at 927 (“[I]t is plain that, though enacted after the OPEN FOIA
Act of 2009, [the 2012 Tiahrt Rider] makes no reference to 5 U.S.C. § 552(b)(3).”). Thus,

1 Exemption 3 is not a valid basis for denying the March 22 Request. *See id.* Moreover, even if the
 2 Tiahrt Rider met the statutory requirements of the Open FOIA Act, it does not “require[] that the
 3 matters be withheld from the public in such a manner as to leave no discretion on the issue,” thus
 4 falling outside of Exemption 3. *See* 5 U.S.C. § 552(b)(3). Indeed, the 2012 Tiahrt Rider grants
 5 broad authority to Defendants to release the data requested by Mr. Lindsay-Poland.

6 74. Additionally, the 2012 Tiahrt Rider does not independently prohibit Defendants
 7 from releasing the data requested by Mr. Lindsay-Poland separate and apart from Exemption 3.
 8 Congress made clear that the 2012 Tiahrt Rider:

9 shall not be construed to prevent [. . .] the publication of annual statistical reports on
 10 products regulated by the [ATF], including total production, importation, and exportation
 11 by each licensed importer (as so defined) and licensed manufacturer (as so defined), or
 12 statistical aggregate data regarding firearms traffickers and trafficking channels, or
 13 firearms misuse, felons, and trafficking investigations. Pub. L. No. 112–55, 125 Stat. at
 14 610.

15 The type of information requested by Mr. Lindsay-Poland squarely falls within the exemptions to
 16 the 2012 Tiahrt Rider and, thus, the 2012 Tiahrt Rider is not a valid basis for withholding the
 17 requested records. *See Ctr. for Investigative Reporting*, 14 F.4th at 933–36.

18 75. Therefore, Mr. Lindsay-Poland is legally entitled to the records responsive to the
 19 March 22 Request.

CAUSE OF ACTION

First Cause of Action:

Violation of the FOIA for Failure to Make Promptly Available the Records Sought by Plaintiffs’ March 22 Request

21 76. Mr. Lindsay-Poland repeats and realleges paragraphs 1-75.

22 77. Defendants are subject to the FOIA and are legally obligated to promptly make
 23 available all records responsive to the March 22 Request. *See* 5 U.S.C. § 552(a)(3)(A).

24 78. Defendants have no lawful basis for declining the release of the records in
 25 response to the March 22 Request.

26 79. Mr. Lindsay-Poland has not received any records from Defendants in response to
 27 the March 22 Request.
 28

1 Dated: December 5, 2022
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4

5 Respectfully submitted,

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