

April 15, 2009

U.S. Stymied as Guns Flow to Mexican Cartels

By JAMES C. MCKINLEY Jr.

HOUSTON — John Phillip Hernandez, a 24-year-old unemployed machinist who lived with his parents, walked into a giant sporting goods store here in July 2006, and plunked \$2,600 in cash on a glass display counter. A few minutes later, Mr. Hernandez walked out with three military-style rifles.

One of those rifles was recovered seven months later in Acapulco, Mexico, where it had been used by drug cartel gunmen to attack the offices of the Guerrero State attorney general, court documents say. Four police officers and three secretaries were killed.

Although Mr. Hernandez was arrested last year as part of a gun-smuggling ring, most of the 22 others in the ring are still at large. Before their operation was discovered, the smugglers had transported what court documents described as at least 339 high-powered weapons to Mexico over a year and a half, federal agents said.

“There is no telling how long that group was operating before we caught on to them,” said J. Dewey Webb, the agent in charge of the Houston division of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Noting there are about 1,500 licensed gun dealers in the Houston area, Mr. Webb added, “You can come to Houston and go to a different gun store every day for several months and never alert any one.”

The case highlights a major obstacle facing the United States as it tries to meet a demand from Mexico to curb the flow of arms from the states to drug cartels. The federal system for tracking gun sales, crafted over the years to avoid infringements on Second Amendment rights, makes it difficult to spot suspicious trends quickly and to identify people buying for smugglers, law enforcement officials say.

As a result, in some states along the Southwest border where firearms are lightly regulated, gun smugglers can evade detection for months or years. In Texas, New Mexico and Arizona, dealers can sell an unlimited number of rifles to anyone with a driver’s

license and a clean criminal record without reporting the sales to the government.

At gun shows in these states, there is even less regulation. Private sellers, unlike licensed dealers, are not obligated to record the buyer's name, much less report the sale to the A.T.F.

Mexican officials have repeatedly asked the United States to clamp down on the flow of weapons and are likely to bring it up again with President Obama when he visits Mexico on Thursday.

Sending straw buyers into American stores, cartels have stocked up on semiautomatic AK-47 and AR-15 rifles, converting some to machine guns, investigators in both countries say. They have also bought .50 caliber rifles capable of stopping a car and Belgian pistols able to fire rifle rounds that will penetrate body armor.

Federal agents say about 90 percent of the 12,000 pistols and rifles the Mexican authorities recovered from drug dealers last year and asked to be traced came from dealers in the United States, most of them in Texas and Arizona.

The Mexican foreign minister, Patricia Espinosa, in talking with reporters recently, accused the United States of violating its international treaty obligations by allowing guns to flow into the hands of organized crime groups in Mexico.

But law enforcement officials on this side of the border say the legal hurdles to making cases against smugglers remain high.

"Guns are legal to possess in this country," said William J. Hoover, the assistant director for operations of the federal firearms agency. "If you stop me between the dealer and the border, I am still legal, because I can possess those guns."

To be sure, the A.T.F. and Immigration and Customs Enforcement have stepped up their efforts to stop smuggling over the last two years. Last year, some 200 indictments were handed up against straw buyers and gun smugglers, breaking up at least a dozen trafficking rings.

In the last six months, federal agents have also begun stopping more cars they have reason to believe are carrying guns before they cross into Mexico, seizing about 1,000 weapons.

A review of cases over the last two years shows a pattern: the drug cartels hire people in need of cash with no criminal records to buy guns from legal sources, often just one or two at a time.

Once the smugglers have amassed a cache of weapons, they drive them across the border in small batches, stuffed inside spare tires, fastened to undercarriages with zip ties or bubble-wrapped and tucked into vehicle panels. In some cases, the drug traffickers and gun smugglers are linked.

On a recent evening in Reynosa, a border town, a Mexican army patrol found an abandoned farmhouse that had been used by drug traffickers. Hidden deep in the brush outside was a plastic barrel filled with guns. The authorities believe that the traffickers were taking drugs to the United States and using the money to return with guns.

The cartels also employ spies to keep track of the sporadic efforts of the Mexican military to search cars, law enforcement authorities say. Because there is no computerized national gun registry, agents say, tracking guns relies on a paper trail. Agents must contact the manufacturer or importer with a make and a serial number and work their way down the supply chain by telephone or on foot.

At the retail level, records of gun sales remain in the hands of the dealers. Agents can request to see them only if a gun is recovered in a crime or during periodic audits. By law, those audits can be done only once a year, and, in practice, most dealers face such a review once every three to six years, because auditors are stretched thin.

The record keeping is not always perfect. In trying to track guns confiscated in Mexico last year, agents found that one in five of the guns could not be traced because the dealers had no record of the sale or had gone out of business and the records had been lost.

Even when the original legal buyer is located, a gun owner in many states, can legally say "I lost it" or "I sold it to someone I do not know."

Dealers are not obligated to tell the authorities about multiple sales of rifles like the AK-47, as they must do with pistols.

In Texas and Arizona, where most of the guns recovered in Mexico come from, there is even less regulation on private sales. Individuals may sell guns at gun shows or even through classified advertisements without running a criminal background check or even recording the buyer's name. "If you wanted to create a system that is basically legal but

designed to facilitate gun trafficking, you couldn't have a better system than you have here," said Tom Diaz, a researcher with the Violence Policy Center in Washington.

But Wayne LaPierre, executive vice president and chief executive of the National Rifle Association, said tightening gun laws in the United States would penalize only people who enjoy marksmanship and hunting, or who buy firearms for self-defense, without solving Mexico's problem.

With billions in profits from illegal drugs, the cartels can easily obtain weapons on the black market in other countries, Mr. LaPierre and many gun dealers argue. "The cartels have the money to get guns wherever they want," said Charles Fredien, the owner of Chuck's Gun in Brownsville, Tex., on the border "They have grenades, don't they? They don't buy grenades here." No one knows how large the cross-border trade in arms is. In 2008, the Mexican government seized more than 20,000 weapons from suspected drug dealers.

Since Congress lifted the ban on assault rifles in 2004, more and more of the weapons recovered in Mexico have been military-style rifles like the AK-47s or the AR-15, the authorities in both countries say.

Some local law enforcement officials argue that the A.T.F., which has about 2,500 special agents watching 78,000 gun dealers nationwide, is overwhelmed.

"The gun issue is the single one thing we can address, and we are not seeing it," said Victor Rodriguez, the chief of police in McAllen, Tex., a border town that has 19 gun dealers.

Although some investigations, like that of the Hernandez ring, spring from gun traces and audits, investigators say the system is set up in such a way that they must rely heavily on tips from gun dealers about suspicious sales.

Mr. Hernandez, who pleaded guilty in the case, is to be sentenced this week.

Lawrence Keane, the general counsel of the National Shooting Sports Foundation, said most gun dealers were law-abiding and reported suspicious sales to the authorities.

"The dealers are an important source of information to them and very cooperative with the A.T.F.," Mr. Keane said.

The gun industry has joined with federal authorities to educate dealers about how to spot buyers who might be making illegal purchases for someone else, mounting a public relations campaign to warn people that they could face up to 10 years in prison if they bought a firearm for someone illegally.

Jim Pruett, the owner of Guns and Ammo in Houston, said that every month or two he spotted a suspicious buyer.

Recently, employees said, a young woman came in and tried to buy an AK-47, in cash, and knew nothing about the weapon. Mr. Pruett read her the riot act, they said, informing her she faced 10 years in prison if she was buying for someone else. She left quickly.

“We hammer them,” Mr. Pruett said. “We are not obligated to do that, but if you suspect it, you can.”

Still, federal investigators say some dealers are tempted to look the other way when given a strong financial incentive. Others have been intimidated by drug dealers.

When dealers do tip off the authorities to suspicious sales, they often call the A.T.F. after a sale has been made, federal agents say. Take the case of the owner of a small company in Tucson that specializes in military-style rifles. The owner, who spoke on the condition of anonymity because he feared reprisals from drug gangs, mostly sells the semiautomatic .223 caliber rifles known as AR-15s, a civilian rifle similar to the military M-16.

On May 18, 2008, a man bought two military-style rifles from him at a gun show on the Arizona State Fairgrounds. Two days later, the man showed up at the dealer’s home with a friend and bought eight more rifles for more than \$5,000 in cash.

“When somebody walks in and says, ‘I need eight of these,’ it becomes apparent what’s happening,” the dealer said.

Despite the dealer’s help, members of the ring managed to smuggle at least 112 weapons, bought at a half dozen locations, into Mexico before they were arrested in February, A.T.F. agents said.

But much of the smuggling is not so obvious, dealers said. In Brownsville, for instance, one convicted smuggler, Emmanuel Ramirez, recruited 10 people with no criminal records, including young women, then sent them into big-box sporting goods stores to buy two pistols each.

Although federal agents say licensed dealers are the source of most guns going to Mexico, some come from private sellers at gun shows, where even noncitizens can buy guns. Dozens of shows are held each year across Texas, New Mexico and Arizona.

At a recent show in Pharr, Tex., another border town, a college freshman with a wispy beard arrived with two AR-15 rifles strapped to his body, spidery black guns designed for combat, tricked out with features that soldiers prize: collapsible stocks, pistol grips, extra long magazines.

The student, who asked to be identified only as Shane, was asking \$1,900 for one of his rifles. As for paper work, he wanted only a handwritten receipt with the buyer's name and address. He was not worried, he said, about the gun's falling into the hands of drug cartels in Mexico.

"They are going to get their guns either way," he said. "The only thing that a ban is going to stop is good people being able to get a gun."

At the show, hundreds of people wandered among booths that displayed antique revolvers, bolt-action deer rifles and ornate shotguns side by side with military-style rifles and magazines for AK-47s, laser sights and scopes.

Bruce A. Schluderman from Round Rock, Tex., was doing a brisk business in Russian rifles from World War II as well as brand-new AR-15s.

As a licensed dealer, Mr. Schluderman had to call the F.B.I. to run a criminal background check on every buyer. But nearby people were selling their private collections.

"I have had people that failed background checks, and yet they are carrying guns out of here that they bought from someone else," Mr. Schluderman said.

New U.S. Border Official

WASHINGTON — The United States is going to have a "border czar" again.

Janet Napolitano, secretary of homeland security, will announce on Wednesday in El Paso that the job will go to Alan D. Bersin, a former federal prosecutor who held a similar position in the administration of former President Bill Clinton, according to a senior official in the Department of Homeland Security.

The Obama administration has pledged to crack down on violence linked to drug cartels

along the United States-Mexico border. Mr. Bersin will focus on that effort and on illegal immigration.

On her El Paso trip, Ms. Napolitano will also discuss stepped-up inspections to keep weapons from crossing into Mexico and the use of federal stimulus money to thwart smugglers' bringing immigrants into the country illegally.

This article has been revised to reflect the following correction:

Correction: April 16, 2009

An article on Wednesday about the flow of guns from the United States to Mexico misidentified, in some editions, the professional affiliation of Tom Diaz, who said that the system to regulate gun sales facilitates gun trafficking. He is a researcher with the Violence Policy Center, not the Violence Project.