

# Congress of the United States

Washington, DC 20515

September 28, 2022

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

Dear Secretary Raimondo:

We are writing with grave concern about Commerce Department actions that have weakened oversight of assault weapon and high-capacity magazine exports, padding the gun industry's profits while putting deadly weapons in the hands of corrupt actors around the world. As Democrats in Congress work to crack down on the deadly use of these weapons on our streets,<sup>1</sup> your agency approved nearly \$16 billion in firearms export licenses in the first 16 months after it took over authority over small arms exports from the State Department – a roughly 30 percent increase from the State Department's rate of approval – while denying only 0.4 percent of applications.<sup>2</sup> This increase started during the Trump Administration and continued under your watch. We seek further information about your approvals of assault weapons exports, and urge you to revise your approach to align with President Biden's gun safety agenda in prioritizing national security and human lives over gun industry profits.

Assault weapons are semi-automatic firearms designed for offensive combat operations, not self-defense, and are intended for "quick, efficient killing."<sup>3</sup> Mass shooters have used these weapons to inflict staggering death and destruction in horrific episodes of domestic terrorism in Uvalde, Orlando, at Sandy Hook Elementary School, and too many more.<sup>4</sup> In 1994, Congress recognized the danger of these weapons and instituted a federal ban prohibiting the "manufacture, transfer, or possession" of assault weapons.<sup>5</sup> The ban was effective, and the gun lobby's successful campaign against its renewal has been deadly: in the decade after the ban expired, the number of assault weapon fatalities shot up by 239 percent and massacres increased by 183 percent.<sup>6</sup> We

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<sup>1</sup> Assault Weapons Ban of 2021, S. 736, <https://www.congress.gov/bill/117th-congress/senate-bill/736>.

<sup>2</sup> U.S. Department of Commerce, Bureau of Industry and Security, "The Eighth USML to CCL Regulatory Change Firearms," July 2021, <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/2836-2021-june-statistics-of-8th-of-usml-to-ccl-regulatory-changes/file>; U.S. Department of Commerce, Bureau of Industry and Security, "BIS Licensing of 600-series, 9x515 and Firearms Items," June 2021, <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/2809-2021-june-statistics-of-bis-licensing-under-usml-to-ccl-regulatory-changes/file>.

<sup>3</sup> Brady, "What Are Assault Weapons And High-Capacity Magazines?," <https://www.bradyunited.org/fact-sheets/what-are-assault-weapons-and-high-capacity-magazines>.

<sup>4</sup> Everytown for Gun Safety, "Mass Shootings in America," <https://everytownresearch.org/maps/mass-shootings-in-america/>.

<sup>5</sup> Axios, "Everything you need to know about a federal assault weapons ban," Herb Scribner, June 3, 2022, <https://www.axios.com/2022/06/03/federal-assault-weapons-ban-explainer>.

<sup>6</sup> Brady, "What Are Assault Weapons And High-Capacity Magazines?," <https://www.bradyunited.org/fact-sheets/what-are-assault-weapons-and-high-capacity-magazines>.

know that you join us and President Biden in supporting the reinstatement of an assault weapons ban to prevent these atrocities from happening again in the United States.<sup>7</sup>

While Republicans in Congress continue to block efforts that would reinstate the assault weapons ban and get dangerous weapons off our streets,<sup>8</sup> the executive branch has authority to crack down on their sale abroad – but is not using it. Weapons manufacturers need an export license from the federal government to sell assault weapons and high-capacity magazines overseas. In 2020, the Trump Administration transferred licensing authority from the State Department to the Commerce Department,<sup>9</sup> making it easier to get export licenses – a move heralded by the National Rifle Association as making the approval process more “business friendly.”<sup>10</sup>

Specifically, the Trump Administration transferred these weapons, their ammunition, and their accessories from the United States Munitions List (USML), which is overseen by the State Department, to the Commerce Control List (CCL), overseen by the Commerce Department.<sup>11</sup> The State Department has deep expertise in navigating foreign instability, human rights abuses, and terrorism, and also has a stricter regulatory regime, including “laws that require human rights scrutiny of proposed transfers, a multi-step registration and licensing procedure for commercial exporters that provides several opportunities to detect irregular aspects of an application, ... tough controls on brokering, and limitations on the way that weapons can be used and to whom they can be transferred.”<sup>12</sup> Meanwhile, the Commerce Department specializes in promoting U.S. industry overseas<sup>13</sup> – even the gun industry – and is required by law to strongly weigh the effects on the American gun industry when considering an export license for approval, but not to monitor carefully where these weapons end up when sold abroad.<sup>14</sup> These concerns are why, during the 2020 presidential campaign, President Biden promised to “ensure that the authority for firearms exports stays with the State Department” and “reverse [the] proposed rule by President Trump”<sup>15</sup> – although as of today, that has not happened.

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<sup>7</sup> See e.g., Tweet from then-Governor of Rhode Island Gina Raimondo, March 19, 2019, <https://twitter.com/govraimondo/status/1108115996706029575>.

<sup>8</sup> NBC News, “House passes assault weapons ban that’s doomed in the Senate,” Sahil Kapur, July 29, 2022, <https://www.nbcnews.com/politics/congress/house-will-vote-ban-assault-weapons-friday-rcna40644>.

<sup>9</sup> National Rifle Association Institute for Legislative Action, “Export Reform Rules Take Effect After Anti-Gun States (Mostly) Strike Out in Court,” March 16, 2020, <https://www.nraila.org/articles/20200316/export-reform-rules-take-effect-after-anti-gun-states-mostly-strike-out-in-court>.

<sup>10</sup> National Rifle Association Institute for Legislative Action, “Export Reform Rules Take Effect After Anti-Gun States (Mostly) Strike Out in Court,” March 16, 2020, <https://www.nraila.org/articles/20200316/export-reform-rules-take-effect-after-anti-gun-states-mostly-strike-out-in-court>.

<sup>11</sup> U.S. Department of Commerce, Federal Register Notice, “Adoption of Congressional Notification Requirement for Certain Semiautomatic Firearms Exports Under the Export Administration Regulations (EAR),” June 1, 2022, <https://www.federalregister.gov/documents/2022/06/01/2022-11761/adoption-of-congressional-notification-requirement-for-certain-semiautomatic-firearms-exports-under>.

<sup>12</sup> Defense One, “Loosening Firearms Exports Will Tear at a Larger Arms-Control Fabric,” Susan Waltz, November 25, 2019, <https://www.defenseone.com/ideas/2019/11/loosening-firearms-exports-will-tear-larger-arms-control-fabric/161533/>.

<sup>13</sup> U.S. Department of Commerce, “About Commerce,” <https://www.commerce.gov/about>.

<sup>14</sup> 50 USC 4815(d)(3).

<sup>15</sup> Biden-Harris Democrats, “The Biden Plan to End Our Gun Violence Epidemic,” <https://joebiden.com/gunsafety/>.

The shift of licensing authority from the State Department to the Commerce Department has also weakened congressional oversight over arms exports. The State Department is required to notify Congress of export license approvals for firearms, including assault weapons, on the USML that are valued at more than \$1 million, and Congress can also vote to disapprove licenses.<sup>16</sup> These reporting requirements do not exist for the Commerce Department licensing process. We welcome the Commerce Department’s recent voluntary reinstatement of Congressional notification in some cases of large firearms export licenses,<sup>17</sup> but the ongoing lack of Congressional authority to disapprove licenses, the limited scope of the new notification requirements, and Commerce granting licenses on a general basis rather than reviewing each purchase order, as State would, remain serious concerns, especially in light of high approval rates under the Commerce Department.

Approvals of firearm export licenses have soared under the Commerce Department – which has served as a huge benefit for the gun industry. Between March 9, 2020, when the Commerce Department took over approvals for these weapons, and June 30, 2021 (the latest data available), Commerce approved a total of 11,322 small arms export license applications with a total value of \$15.7 billion across a range of weapon categories, which would represent an average of about \$11.8 billion per year.<sup>18</sup> In contrast, the Government Accountability office (GAO) found in 2019 that the State Department approved an average of \$9 billion in export licenses per year.<sup>19</sup> In other words, the average annual dollar value of approved exports appears to have gone up by at least 30 percent under the Commerce Department, though it is difficult to know the true figure given the lack of detailed data.

The law gives the Commerce Department broad authority to block export licenses, allowing you to weigh benefits for industry against threats to “national security and foreign policy of the United States ... including the protection of human rights.”<sup>20</sup> Commerce is also required by regulation to consider “crime control” in its licensing process, allowing it to deny licenses if “there is civil disorder in the country or region or ... a risk that the items will be used to violate or abuse human rights.”<sup>21</sup> Nonetheless, the Commerce Department denied just 0.4 percent of applications for firearm-related export licenses during this period, and approved nearly 95 percent,<sup>22</sup> including to countries like Mexico, where corruption puts these weapons in the hands of criminals and identified violators of human rights,<sup>23</sup> Guatemala, where the State Department

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<sup>16</sup> 22 CFR 123.15(a)(3); Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitoiii.html>.

<sup>17</sup> U.S. Department of Commerce, Federal Register Notice, “Adoption of Congressional Notification Requirement for Certain Semiautomatic Firearms Exports Under the Export Administration Regulations (EAR),” June 1, 2022, <https://www.federalregister.gov/documents/2022/06/01/2022-11761/adoption-of-congressional-notification-requirement-for-certain-semiautomatic-firearms-exports-under>.

<sup>18</sup> Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitoiii.html>.

<sup>19</sup> *Id.*

<sup>20</sup> 50 USC 4811.

<sup>21</sup> 15 CFR 742.7.

<sup>22</sup> U.S. Department of Commerce, Bureau of Industry and Security, “BIS Licensing of 600-series, 9x515 and Firearms Items,” June 2021, <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/2809-2021-june-statistics-of-bis-licensing-under-usml-to-ccl-regulatory-changes/file>.

<sup>23</sup> The Harvard Gazette, “Stopping toxic flow of guns from U.S. to Mexico,” Liz Mineo, February 18, 2022, <https://news.harvard.edu/gazette/story/2022/02/stopping-toxic-flow-of-gun-traffic-from-u-s-to-mexico/>; U.S. Department of State, “2021 Country Reports on Human Rights Practices: Mexico,”

has recognized widespread corruption, impunity for violent crimes, and repression of journalists and free expression;<sup>24</sup> and the Philippines, where there are multiple reports of security forces shooting civilians.<sup>25</sup> And there is little evidence that Commerce has imposed tougher standards for export approvals since you were confirmed as Secretary: from April through June 2021, the first full quarter after you were confirmed, the Department denied fewer than 1 percent of license applications.<sup>26</sup>

These statistics on firearm export license approvals raise serious concerns, and we urge you to modify your approach to align with President Biden’s gun safety agenda and commitment to reversing the Trump Administration policy. These actions would put national security and human lives over gun industry profits. We also request more recent and detailed data so that Congress and the public can accurately and completely assess the problem. Thus, we ask that you respond to the following questions by no later than October 28, 2022:

1. Which of the 17 Export Control Classification Numbers (ECCNs) that were created to control items moved from the United States Munitions List (USML) Categories I-III to the Commerce Control List (CCL) are assigned to assault weapons and large-capacity ammunition feeding devices as defined in the Assault Weapons Ban of 2021?<sup>27</sup>
2. What processes does the Commerce Department have in place to prevent assault weapons from ending up in the hands of governments, security forces, armed militias, terrorist groups, or other actors who have committed serious and recorded human rights abuses and/or pose a threat to the national security of the United States?
3. For each period listed below, how many licenses for the export of assault weapons and large-capacity ammunition feeding devices (as defined under question 1) has the Commerce Department approved? What is the dollar value of the export licenses for assault weapons and large-capacity ammunition feeding devices that the Commerce Department has approved during each period? What is the Commerce Department’s approval rate on export license applications for assault weapons and large-capacity ammunition feeding devices during each period?
  - a. March 9, 2020 to January 20, 2021; and
  - b. January 21, 2021 to June 30, 2022.
4. For each period listed below, how many licenses for the export of assault weapons and large-capacity ammunition feeding devices (as defined under question 1) has the Commerce Department disapproved? What is the dollar value of the export licenses for

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<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/mexico/>.

<sup>24</sup> U.S. Department of State, “2021 Country Reports on Human Rights Practices: Guatemala,”

<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/guatemala/>.

<sup>25</sup> U.S. Department of State, “2021 Country Reports on Human Rights Practices: Philippines,” <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/philippines/>.

<sup>26</sup> U.S. Department of Commerce, Bureau of Industry and Security, “The Eighth USML to CCL Regulatory Change Firearms,” July 2021, <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/2836-2021-june-statistics-of-8th-of-usml-to-ccl-regulatory-changes/file>.

<sup>27</sup> Assault Weapons Ban of 2021, S. 736, <https://www.congress.gov/bill/117th-congress/senate-bill/736/>.

assault weapons and large-capacity ammunition feeding devices that the Commerce Department has disapproved during each period? What is the Commerce Department's disapproval rate on export license applications for assault weapons and large-capacity ammunition feeding devices during each period?

- a. March 9, 2020 to January 20, 2021; and
  - b. January 21, 2021 to June 30, 2022.
5. Has the Commerce Department disapproved any assault weapons export license applications due to human rights concerns? If so, please provide the details of those license applications, including amounts, destinations, and reasons for disapproval.
  6. Does the Commerce Department plan to restart reporting on the dollar value and quantity of assault weapons licensed for export, in the manner of the State Department's annual 655 reports?<sup>28</sup> If so, will such reports be made for 2022?
  7. To which countries, and in what quantities (dollar value and license number), has the Commerce Department approved exports of assault weapons since March 2020? To which countries, and in what quantities (dollar value and license number), have these weapons actually been exported since March 2020?
  8. For each country listed in the answer to the previous question, what percentage of exports went to government agencies as end users? What percentage of exports went to end users that were non-government entities and individuals? For any government purchases, please list the government entities that purchased the weapons and whether and how the Commerce Department incorporated information regarding human rights abuses by those government entities into its decision.
  9. How does the Commerce Department verify the status of the assault weapons and large-capacity ammunition feeding devices (as defined under question 1) that have been exported to foreign countries? How many Export Control Officers does the Commerce Department have in countries abroad that are top importers of the described weapons to monitor the use of these items and investigate possible illegal misdirection of those items?
  10. How does the Commerce Department use information provided by foreign governments and by the Bureau of Alcohol, Tobacco, and Firearms (ATF) that tracks the seizures from foreign criminal organizations of U.S.-origin firearms to determine whether to approve export licenses?<sup>29</sup> Does the Commerce Department deny licenses to entities whose purchased weapons are subsequently found to be in the hands of criminal organizations?


Thank you for your attention to this matter.


Sincerely,


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<sup>28</sup> U.S. Department of State, "Section 655 Annual Military Assistance," <https://www.state.gov/section-655-annual-military-assistance/>.

<sup>29</sup> Government Accountability Office, "Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis," February 2021, <https://www.gao.gov/assets/gao-21-322.pdf>.

  
Elizabeth Warren  
United States Senator

  
Joaquin Castro  
Member of Congress

  
Christopher S. Murphy  
United States Senator

  
Norma J. Torres  
Member of Congress

CC: The Honorable Alan Estevez, Under Secretary for Industry and Security