

# Congress of the United States

Washington, DC 20515

September 6, 2023

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

Dear Secretary Raimondo:

We are writing to express our concern regarding the Commerce Department’s lackluster oversight of assault weapons exports<sup>1</sup> and its failure to release data on its approvals of these exports. In March 2020, the Trump administration transferred oversight of these weapons from the State Department to Commerce, after which the value of assault weapon export license approvals immediately shot up by roughly 30 percent,<sup>2</sup> profiting gun manufacturers while putting civilians at risk around the world. This problem may be getting worse – yet your Department has not published updated annual data<sup>3</sup>—which will soon be a full year late<sup>4</sup>—or responded to a congressional inquiry.<sup>5</sup> Meanwhile, new reporting indicates that the Department continues to serve as a “booster and concierge”<sup>6</sup> to the firearm industry – promoting exports of deadly weapons that find their way into the hands of terrorists and human rights abusers to be used in brutal killings across the globe.<sup>7</sup> We urge you to revise your approach, and ask that you promptly

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<sup>1</sup> In this letter, the term “assault weapons” refers to semiautomatic and nonautomatic weapons and their parts for which export control was transferred from the United States Munitions List (USML) to the Commerce Control List (CCL) by the March 2020 Trump administration rule. This includes, for example, any semiautomatic pistols, shotguns, and rifles defined as “semiautomatic assault weapons” in the *Assault Weapons Ban Act of 2023* that were transferred from the USML to the CCL.

<sup>2</sup> Cato Institute, “2022 Arms Sales Risk Index,” Jordan Cohen and A. Trevor Thrall, July 18, 2023, <https://www.cato.org/policy-analysis/2022-arms-sales-risk-index>.

<sup>3</sup> U.S. Department of Commerce, Bureau of Industry and Security, “USML to CCL Regulatory Changes,” <https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis>.

<sup>4</sup> Based on data captured by the Internet Archive, the Commerce Department posted March 2020-June 2021 license approval and export data for assault weapons and related articles between August 4, 2021 and October 12, 2021. U.S. Department of Commerce, Bureau of Industry and Security, “USML to CCL Regulatory Changes,” <https://web.archive.org/web/20210804182619/https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis> (accessed via the Internet Archive on August 4, 2021); U.S. Department of Commerce, Bureau of Industry and Security, “USML to CCL Regulatory Changes,” <https://web.archive.org/web/20211012213020/https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis> (accessed via the Internet Archive on October 12, 2021).

<sup>5</sup> Letter from Senator Warren and colleagues to Secretary Raimondo, September 28, 2022, <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Commerce%20re%20assault%20weapons%20exports.pdf>.

<sup>6</sup> Bloomberg, “How the US Drives Gun Exports and Fuels Violence Around the World,” Michael Riley, David Kocieniewski, and Eric Fan, July 24, 2023, <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shootings-violence-sig-sauer/>.

respond to the congressional inquiry and publish updated data on your approvals of assault weapons export licenses.

In March 2020, the Trump administration finalized a rule transferring oversight of assault weapons exports from the State Department to Commerce, “a shift that seems to have yielded financial dividends for gun exporters due to the [Commerce] department’s pro-business approach.”<sup>8</sup> The move was heralded as a boon for the gun industry: the National Rifle Association applauded the transfer and said it would make the approvals process more “business-friendly.”<sup>9</sup> During the 2020 presidential campaign, President Biden recognized the problems with the transfer of authority and promised to reverse the Trump-era rule and return oversight of these exports to State.<sup>10</sup> The State Department has the expertise in navigating foreign instability, human rights abuses, and terrorism necessary to evaluate the potential human rights impact of a weapons export license. It is also subject to the human rights provisions of the *Foreign Assistance Act*, which prohibit State from providing security assistance—including weapons on the State-supervised U.S. Munitions List (USML)<sup>11</sup>—to governments that engage in “a consistent pattern of gross violations of internationally recognized human rights,”<sup>12</sup> and the requirement to formally notify Congress of such exports greater than \$1 million, which can then act to disapprove such sales.<sup>13</sup> Critically, this provision does not apply to any semiautomatic weapons covered by the Commerce Control List (CCL), which the Commerce Department oversees.<sup>14</sup> However, Commerce does have statutory and regulatory discretion to weigh human rights, crime control, and civil disorder impacts in its evaluation of license applications.<sup>15</sup>

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<sup>7</sup> CNN, “Sold to an ally, lost to an enemy,” Nima Elbagir et al., February 2019,

<https://www.cnn.com/interactive/2019/02/middleeast/yemen-lost-us-arms/>; Bloomberg, “How the US Drives Gun Exports and Fuels Violence Around the World,” Michael Riley, David Kocieniewski, and Eric Fan, July 24, 2023, <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shootings-violence-sig-sauer/>.

<sup>8</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-notificationrequirement-for-certain-semiautomatic-firearms-exports-under>; The Guardian, “‘Even more insidious than the NRA’: US gun lobby group gains in power,” Peter Stone, August 1, 2023, <https://www.theguardian.com/us-news/2023/aug/01/gun-lobby-nra-national-shooting-sports-foundation>.

<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> Biden-Harris Democrats, “The Biden Plan to End Our Gun Violence Epidemic,” <https://web.archive.org/web/20201103070907/https://joebiden.com/gunsafety/> (accessed via the Internet Archive on November 3, 2020).

<sup>11</sup> 22 U.S.C. 2304(d)(2); Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitooiii.html>.

<sup>12</sup> 22 U.S.C. 2304(a)(2).

<sup>13</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/catitooiii.html>.

<sup>14</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-notificationrequirement-for-certain-semiautomatic-firearms-exports-under>.

<sup>15</sup> 50 U.S.C. 4811; 15 C.F.R. 742.7; The White House, “Memorandum on United States Conventional Arms Transfer Policy,” press release, February 23, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

Troublingly, Commerce appears not to be fully using that authority: since the Trump administration transferred oversight of assault weapons exports from the State Department to Commerce, license approvals have increased enormously in value. From March 9, 2020, when the Commerce Department took over approvals for these weapons, to June 30, 2021—still the most recent data available—export license approvals for the transferred items, including assault weapons, totaled \$15.7 billion.<sup>16</sup> This represents a roughly 30 percent average annualized increase compared to the State Department’s license approvals from 2013-2017.<sup>17</sup> Alarming, the State Department reviewed nearly 60,000 more license applications in that five year period than Commerce did from March 2020 to June 2021, meaning that despite reviewing fewer applications, Commerce approved billions of dollars more in exports of these weapons per year than State did.<sup>18</sup> From April to June 2021, the first full quarter after you were confirmed, Commerce denied fewer than 1 percent of license applications.<sup>19</sup> In contrast, Commerce denied 1.7 percent of applications during the last three quarters of 2020,<sup>20</sup> indicating that the Department has not increased scrutiny of license applications on your watch. Moreover, you have yet to provide updated information on the rate of Commerce Department license approvals since June 2021.<sup>21</sup> The significant increase in the value of export licenses for assault weapons approved under Commerce underscores the need for the administration to take action.

Commerce’s failure to release updated data is particularly concerning given that U.S.-made, commercially exported firearms continue to be implicated in violent crimes across the world. One major customer of U.S.-exported semiautomatic firearms is Thailand, where American-made assault weapons are purchased at a discounted price by former police officers and military officials and then funneled into a thriving black market.<sup>22</sup> The scheme has led to a surge in gun violence in Thailand, with police data and news reports revealing many crimes—such as a May 2022 drive-by shooting and the murder by a former police colonel of his wife and child—committed using pistols made by American gun manufacturer Sig Sauer.<sup>23</sup> Sig Sauer, the United

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

<sup>17</sup> Government Accountability Office, “Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms Are Finalized,” March 1, 2019, <https://www.gao.gov/products/gao-19-307>.

<sup>18</sup> While GAO’s review of the State Department’s export license approvals includes some items not transferred to the CCL by the Trump administration’s rule, a significant proportion of the items reviewed were semiautomatic and nonautomatic firearms that were subject to the transfer. See Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitooiii.html>; Cato Institute, “2022 Arms Sales Risk Index,” Jordan Cohen and A. Trevor Thrall, July 18, 2023, <https://www.cato.org/policy-analysis/2022-arms-sales-risk-index>.

<sup>19</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>20</sup> U.S. Department of Commerce, Bureau of Industry and Security, “BIS Licensing of 600-series and 9x515 Items: October 15, 2013 to December 31, 2020,” <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/2800-2020-statistics-of-bis-licensing-under-usml-to-ccl-regulatory-change-august-2021-update/file>.

<sup>21</sup> U.S. Department of Commerce, Bureau of Industry and Security, “USML to CCL Regulatory Changes,” <https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis>.

<sup>22</sup> Bloomberg, “How the US Drives Gun Exports and Fuels Violence Around the World,” Michael Riley, David Kocieniewski, and Eric Fan, July 24, 2023, <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shootings-violence-sig-sauer/>.

<sup>23</sup> *Id.*

States' number-one exporter of semiautomatic weapons, broke into the Thai market after the country's 2014 military coup, seeing it as "an opportunity," rather than "a body blow to a fragile democracy."<sup>24</sup> The company also lobbied aggressively for the Trump-era regulatory rule shifting oversight of assault weapons exports to Commerce, and has clearly benefited from it: Sig Sauer pistol exports skyrocketed from around 50,000 in 2019 to roughly 250,000 in 2020.<sup>25</sup> Steady streams of U.S.-made assault weapons also continue to pour into countries like Guatemala and El Salvador, where homicides by shooting and abuses by state security forces are rife.<sup>26</sup> March 2022 saw the highest volume of semiautomatic firearms exports from the United States to El Salvador in the previous four years.<sup>27</sup>

Meanwhile, the prevalence of U.S.-made assault weapons in the hands of criminals and human rights abusers calls into question the thoroughness of Commerce's end-use monitoring process, meant to prevent exactly such outcomes. Indeed, a 2020 report from the Department of Commerce Office of Inspector General (OIG) found Commerce's end-use check (EUC) process inadequate, concluding that Commerce is unable to even determine whether its end-use checks are meeting its performance targets, with data being inaccurate or a year or more delayed, and Commerce failing to catch clear cases of ineligible recipients making use of a license exception.<sup>28</sup> The OIG recommended that the Department "improve its efforts to effectively track and monitor EUC performance to ensure the appropriate foreign end users receive and use controlled U.S. exports."<sup>29</sup>

Assault weapons are clearly being exported with Commerce's approval and then used to murder civilians abroad, and Commerce owes the public a full accounting of its role. However, you have not responded to a September 2022 congressional letter that sought information about the increased license approvals. You have also delayed for nearly a full year Commerce's annual publication of updated export and license approval data. Commerce posted its last export and license approval data, covering the period from March 2020 to June 2021, two to four months after the end of the relevant period (between August 4 and October 12, 2021).<sup>30</sup> Yet the Department has still not posted its data for the period from June 2021 to June 2022, over a year after the close of the data reporting period. Given the increased approvals of assault weapons exports that occurred under the Commerce Department in 2020 and 2021, we are concerned that

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Just Security, "U.S. Guns Are Fueling Violence in Central America, Here's How to Help Stop the Arms Flow," Nate Smith, February 1, 2023, <https://www.justsecurity.org/84954/u-s-guns-are-fueling-violence-in-central-america-heres-how-to-help-stop-the-arms-flow/>.

<sup>27</sup> *Id.*

<sup>28</sup> U.S. Department of Commerce Office of Inspector General, "Lack of Defined Processes and Procedures Impede Efforts to Monitor End-Use Check Performance," March 2, 2020, <https://www.oig.doc.gov/OIGPublications/OIG-20-019-A.pdf>.

<sup>29</sup> *Id.*

<sup>30</sup> Based on data captured by the Internet Archive, the Commerce Department posted March 2020-June 2021 license approval and export data for assault weapons and related articles between August 4, 2021 and October 12, 2021. U.S. Department of Commerce, Bureau of Industry and Security, "USML to CCL Regulatory Changes," <https://web.archive.org/web/20210804182619/https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis> (accessed via the Internet Archive on August 4, 2021); U.S. Department of Commerce, Bureau of Industry and Security, "USML to CCL Regulatory Changes," <https://web.archive.org/web/20211012213020/https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis> (accessed via the Internet Archive on October 12, 2021).

the Department's failure to provide updated data and respond to congressional inquiry is masking a record that may have gotten even worse.

Assault weapons are deadly, military-style weapons intended for "quick, efficient killing"<sup>31</sup> that should not be available to the public at home or overseas. We appreciate that you and President Biden both support reinstating a domestic assault weapons ban,<sup>32</sup> which Democrats in Congress are fighting to pass,<sup>33</sup> and which will significantly reduce the use of these weapons in the United States.<sup>34</sup> But the administration already has the authority it needs to crack down on the proliferation of these weapons abroad.

Under the Commerce Department's watch, exports of American-made assault weapons have increased significantly, and continue to be used in violent crimes around the world. You and your Department have failed to respond to questions about this matter and to publicly post license approval and export data necessary to ensure transparency. Therefore, we urge you to promptly publish the long-delayed 2021-2022 data and reiterate the request that you respond to the following questions by no later than September 20, 2023:

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>35</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.

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<sup>31</sup> Brady, "What Are Assault Weapons And Large-Capacity Magazines?"

<https://www.bradyunited.org/fact-sheets/what-are-assault-weapons-and-high-capacity-magazines>.

<sup>32</sup> The White House, "FACT SHEET: President Biden Announces New Actions to Reduce Gun Violence and Make Our Communities Safer," press release, March 14, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/14/fact-sheet-president-biden-announces-new-actions-to-reduce-gun-violence-and-make-our-communities-safer/>; WJAR, "Raimondo announces gun control measures through legislation," February 14, 2019, <https://turnto10.com/politics/raimondo-neronha-to-announce-gun-safety-laws>.

<sup>33</sup> Assault Weapons Ban of 2023, S. 25, <https://www.congress.gov/bill/118th-congress/senate-bill/25/text>.

<sup>34</sup> Everytown, "Prohibit Assault Weapons," <https://www.everytown.org/solutions/assault-weapons/>.

<sup>35</sup> Assault Weapons Ban of 2021, S. 736, <https://www.congress.gov/bill/117th-congress/senate-bill/736/>.

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 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>36</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

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<sup>36</sup> U.S. Department of State, "Section 655 Annual Military Assistance," <https://www.state.gov/section-655-annual-military-assistance/>.

export licenses?<sup>37</sup> Does the Commerce Department deny licenses to entities whose purchased weapons are subsequently found to be in the hands of criminal organizations?

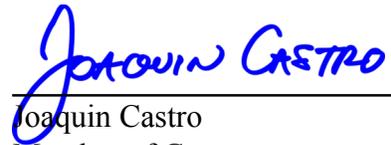
Thank you for your attention to this matter.

Sincerely,



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Elizabeth Warren  
United States Senator



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Joaquin Castro  
Member of Congress



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Norma J. Torres  
Member of Congress



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Dan Goldman  
Member of Congress

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

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<sup>37</sup> U.S. 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>.