

Legal Sidebar

When Is Running Gun From the Philippines to Mexico a Federal Crime?

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In [United States v. Ubaldo](#), the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) suggested that it is a federal crime when the guns are smuggled through the United States in transit. In a case with more than one interesting feature, the Ninth Circuit upheld the convictions of Philippine gun runners as accomplices to a crime that technically never occurred. In addition, the Ninth Circuit recognized federal smuggling statutes as exceptions to the general presumption that United States laws apply only within the United States.

Ubaldo and his co-conspirators were caught up in a Federal Bureau of Investigation (FBI) sting. An FBI undercover agent in the Philippines indicated that he wanted to buy high-powered weapons for the Mexican drug cartels. He told Ubaldo and his confederates that he could store the weapons in the Philippines and could arrange for them to be smuggled to Mexico by way of the U.S., but that he needed help to move the weapons through Philippine customs. The conspirators sold the agent a mortar launcher, a grenade launcher, ten grenades, ten AK-47 assault rifles, plastic explosives, and four bullet-proof vests, and they arranged for the shipment to clear Philippine customs. FBI agents then removed the explosives, grenades, and the rifles' firing pins before they shipped them to the United States. The FBI cleared the shipment with United States customs officials in California as well.

Ubaldo and his co-defendants were convicted of [conspiracy](#) and of [causing](#) the importation of the weapons in violation of the Arms Export Control [Act](#) and the [ban](#) on importing military firearms. On appeal, they argued that the federal anti-smuggling statutes did not apply to the conduct of foreign nationals abroad. They also questioned whether they could be convicted for aiding and abetting importation into the United States by federal authorities. The Ninth Circuit was unconvinced.

The Supreme Court recently emphasized the limited circumstances under which United States law applies abroad. In [RJR Nabisco, Inc. v. European Community](#), it declared that, “[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application.” The [Ninth Circuit](#) concluded, however, that the smuggling statutes evidenced just such a clear intent to reach misconduct occurring outside U.S. territory. It observed that Congress was most certainly aware that “illegally importing weapons into the United States by its very nature targets conduct that almost always originates outside the United States.” The court found further evidence in the legislative history of the Arms Export Control [Act](#) and the [ban](#) of importing military firearms that Congress intended the statutes to have extraterritorial application.

As for accomplice liability, conviction for aiding and abetting under the applicable statute does [require](#) that someone else committed the assisted offense. The [statute](#), however, has a second subsection that covers “whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the U.S.” The [Ninth Circuit](#) found that the defendants caused the guns to be brought into the United States, an act which would have been a crime had they done it themselves. It noted that the “result does not change because the FBI handled the shipping, because [the] Defendants did not direct the agents to ship the weapons to the United States, or because, as a matter of law, FBI agents cannot violate the substantive statutes.”

The outcome in [Ubaldo](#) is a matter of statutory construction, one that Congress is free to change, although the outcome

is one that Congress may not find troubling.

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