No. 23-___

IN THE

Supreme Court of the United States

SMITH & WESSON BRANDS, INC., ET AL.,

Petitioners,

v.

ESTADOS UNIDOS MEXICANOS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Mexican Government has sued leading members of the American firearms industry, seeking to hold them liable for harms inflicted by Mexican drug cartels. According to Mexico, America's firearms companies have engaged in a series of business practices for decades—from selling semi-automatic rifles, to making magazines that hold over ten rounds, to failing to impose various sales restrictions—that have created a supply of firearms later smuggled across the border and ultimately used by the cartels to commit crimes. Mexico asks for billions of dollars in damages, plus extensive injunctive relief imposing new gun-control measures in the United States.

The district court dismissed the case under the Protection of Lawful Commerce in Arms Act (PLCAA), which generally bars suits against firearms companies based on criminals misusing their products. But the First Circuit reversed. It held that PLCAA does not bar this suit because Mexico stated a claim that defendants' business practices have aided and abetted firearms trafficking to the cartels, proximately harming the Mexican government.

The questions presented are:

1. Whether the production and sale of firearms in the United States is the "proximate cause" of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico.

2. Whether the production and sale of firearms in the United States amounts to "aiding and abetting" illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.

PARTIES TO THE PROCEEDING

Petitioners Smith & Wesson Brands, Inc.; Barrett Firearms Manufacturing, Inc.; Beretta U.S.A. Corp; Glock, Inc.; Sturm, Ruger & Company, Inc.; Witmer Public Safety Group, Inc., d/b/a Interstate Arms; Century International Arms, Inc.; and Colt's Manufacturing Company, LLC, were the defendants below. Respondent Estados Unidos Mexicanos was the plaintiff.

CORPORATE DISCLOSURE STATEMENT

Smith & Wesson Brands, Inc. does not have a parent corporation, and no other publicly held corporation currently owns more than 10% of its stock. Smith & Wesson Inc. and Smith & Wesson Sales Company are wholly-owned subsidiaries of Smith & Wesson Brands, Inc.

Barrett Firearms Manufacturing, Inc. is wholly-owned by NIOA USA Firearms Inc., and no publicly held corporation currently owns more than 10% of its stock.

Beretta U.S.A. Corp. is owned 98% by Beretta Holding S.A., and no other publicly held corporation currently owns more than 10% of its stock.

Century International Arms, Inc. does not have a parent corporation, and no other publicly held corporation currently owns more than 10% of its stock.

Colt's Manufacturing Company, LLC does not have a direct parent corporation and no corporation publicly traded in the United States is a member of Colt or directly owns 10% or more of Colt. Colt states that Colt CZ Group SE, which indirectly owns 100%

of the members of Colt, is publicly traded in the Czech Republic.

Glock, Inc. is owned by Glock Ges.m.b.H. and INC Holding GmbH, and no publicly held corporation owns more than 10% of its stock.

Sturm, Ruger & Co., Inc. does not have a parent corporation. BlackRock, Inc., a publicly held corporation, owns more than 10% of Sturm, Ruger & Co., Inc.'s stock.

Witmer Public Safety Group, Inc., d/b/a Interstate Arms does not have a parent corporation, and no other publicly held corporation currently owns more than 10% of its stock.

STATEMENT OF RELATED PROCEEDINGS

United States District Court (D. Mass.):

Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., No. 21-cv-11269 (Sep. 30, 2022)

United States Court of Appeals (1st Cir.):

Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., No. 22-1823 (Jan. 22, 2024)

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OPINIONS BELOW

The opinion of the First Circuit Court of Appeals (Pet.App.265a-319a) is reported at 91 F.4th 511. The opinion of the District Court of the District of Massachusetts (Pet.App.208a-264a) is reported at 633 F. Supp. 3d 425.

JURISDICTION

The court of appeals entered its judgment on January 22, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Protection of Lawful Commerce in Arms Act is set out in the appendix (Pet.App.320a-330a).

INTRODUCTION

The government of Mexico has sued America's leading firearms companies, seeking to hold them liable for violence perpetrated in Mexico by Mexican drug cartels. It accuses the companies of aiding and abetting those cartels *for decades*—all under the nose of the U.S. government, every U.S. Attorney's office, and every state regulator. For this, the Mexican government seeks billions of dollars in damages, plus far-reaching injunctive relief that would reshape the landscape of American firearms regulation—from a ban on what it calls "assault weapons" to a court-enforced system of universal background checks.

To be clear, Mexico's complaint does not include any groundbreaking factual revelations, nor does it uncover any secret dealings between the cartels and America's firearms companies. Instead, Mexico's suit challenges how the American firearms industry has openly operated in broad daylight for years. It faults the defendants for producing common firearms like the AR-15; for allowing their products to hold more than ten rounds; for failing to restrict the purchase of firearms by regular citizens; and for refusing to go beyond what American law already requires for the safe production and sale of firearms.

In Mexico's eyes, continuing these lawful practices amounts to aiding and abetting the cartels. According to Mexico, American firearms companies are liable because they have refused to adopt policies to curtail the supply of firearms smuggled south—such as making only "sporting rifles," or cabining sales to those with a "legitimate need" for a firearm (as defined by Mexico). Pet.App.95a, 104a (¶¶ 285, 315).

Mexico's suit has no business in an American court. The federal Protection of Lawful Commerce in Arms Act (PLCAA) precludes civil suits seeking to hold firearms companies liable for harms stemming from the downstream criminal misuse of their products. And it is nearly impossible to imagine a suit that is more clearly barred by PLCAA than this one.

The district court agreed, dismissing this case in full. But the First Circuit reversed. It held that Mexico's lawsuit qualified for an exception to PLCAA, which narrowly authorizes suits alleging knowing violations of firearms laws that proximately cause a plaintiff's injuries. To fit within that exception, the First Circuit held that Mexico plausibly alleged America's firearms companies have violated the federal law against aiding and abetting firearms trafficking—and that their regular business practices are the proximate cause of the many diffuse harms and costs that Mexico incurs from cartel violence.

The First Circuit's decision cannot stand. It defies this Court's precedent and creates an admitted split with a unanimous Third Circuit decision joined by then-Judge Alito, as well as the decisions of multiple circuits and state high courts.

The courts on the other side of the split have it right. Applying long-settled principles of proximate cause, those courts have dismissed multiple suits raising similar claims filed by *domestic* governments. This suit is even more clearly foreclosed, as it was filed by a *foreign* government, resting on an even *more* attenuated causal chain, punctuated by *multiple* independent criminal acts, including third-party smuggling across an international border. The First

Circuit's contrary holding eviscerates PLCAA's express statutory requirement of proximate cause. Indeed, if proximate cause tolerates this suit—which rests on an *eight-step* Rube Goldberg, starting with the lawful production and sale of firearms in the United States, and ending with the harms that drug cartels inflict on the Mexican government—then it is hard to imagine what it would not allow.

The First Circuit's aiding-and-abetting holding fares no better. As this Court made clear last Term, aiding and abetting criminal activity must involve something more than making products generally available while knowing that criminals may misuse some of them downstream. *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023). But Mexico's complaint alleges nothing more than that. It fails to identify any product, policy, or action by the American firearms industry that is deliberately designed to facilitate the unlawful activities of Mexican drug cartels. Instead, the theory of the complaint is that the defendants make firearms available knowing that some will be unlawfully smuggled abroad and put to criminal use, and that they could be doing more to stop the problem. In allowing this type of passive aiding-and-abetting theory to proceed, the First Circuit defied this Court's unanimous decision in *Taamneh*.

This Court's review is warranted. The First Circuit's decision creates a direct and admitted split on proximate cause, and it brazenly defies this Court's precedent on aiding and abetting. Both present important questions of federal law with serious implications well beyond the firearms industry, affecting every business whose products might be criminally misused downstream.

The stakes of this case underscore why review is needed. Absent this Court's intervention, Mexico's multi-billion-dollar suit will hang over the American firearms industry for years, inflicting costly and intrusive discovery at the hands of a foreign sovereign that is trying to bully the industry into adopting a host of gun-control measures that have been repeatedly rejected by American voters. Worse, so long as the decision below remains good law, scores of similar suits are destined to follow from other governments, both foreign and domestic—all seeking to distract from their own political failings by laying the blame for criminal violence at the feet of the American firearms industry. Even if ultimately unsuccessful, the costs of that litigation will be devastating—not only for defendants, but more importantly for the millions of law-abiding Americans who rely on the firearms industry to effectively exercise their Second Amendment rights. This type of lawfare is exactly what Congress enacted PLCAA to avoid.

At bottom, this case reduces to a clash of national values: Mexico makes no secret that it abhors this country's approach to firearms, and that it wants to use the American court system to impose domestic gun controls on the United States that the American people themselves would never accept through the ordinary political process. But even though that grievance is placed under the lettering of a complaint, and was filed on a docket, it has no basis in law. This Court's review is badly needed.

STATEMENT OF THE CASE

A. The Protection of Lawful Commerce in Arms Act.

In 2005, Congress passed, and President George W. Bush signed, the Protection of Lawful Commerce in Arms Act. The law was designed to address a specific problem: Around the turn of the century, a growing number of individuals and governmental entities had sued members of America's firearms industry seeking to hold them liable for harms resulting from the criminal misuse of their products. 15 U.S.C. § 7901(a)(3). Congress sought to end this. In PLCAA, it declared that law-abiding firearm companies should not be "liable for the harm caused by those who criminally or unlawfully misuse firearm products." *Id.* § 7901(a)(5). If a manufacturer or dealer complies with the "heav[y]" array of federal, state, and local "laws" specifically regulating the sale and marketing of firearms, *id.* § 7901(a)(4), then it should not be held liable in any "civil action" based on injuries "resulting from the criminal or unlawful misuse" of its product, *id.* § 7903(5)(A). PLCAA thus creates a threshold statutory immunity: no covered action may be "brought" in "any Federal or State court." *Id.* § 7902.

To be sure, PLCAA is not a blanket shield from any and all liability. If a member of the firearms industry violates the law, the Act's shield may lift. As relevant here, PLCAA provides an exception—the "predicate exception"—for when a company (i) "knowingly" violates a state or federal firearms law, and (ii) that violation "was a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii).

Since being enacted, PLCAA has been faithfully applied to bar suits by American governmental entities, *see, e.g.*, *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 391 (2d Cir. 2008), and by American citizens, *see e.g.*, *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1130 (9th Cir. 2009), which have tried to hold law-abiding members of the firearms industry liable for the criminal misuse of their products.

B. Mexico's Lawsuit.

Mexico boasts some of the strictest gun laws in the world. *See, e.g.*, Pet.App.146a (¶ 397). The country has only one firearm store—and it is located on a military base. At the same time, Mexico is presently suffering a scourge of violence at the hands of its drug cartels. But rather than take meaningful steps to solve that problem—improving border security, rooting out public corruption, and adequately supporting its police, for starters—the country has instead turned to litigation.

In August 2021, the Mexican government, invoking 28 U.S.C. § 1332, sued seven American firearm manufacturers and one firearm distributor, seeking to hold them liable for the violence perpetrated in Mexico by Mexican drug cartels.

Of course, Mexico does not allege that any defendant works with Mexico's drug cartels; has tried to arm anyone affiliated with the cartels; or otherwise directly facilitates any of the cartels' operations. Instead, the complaint claims that the American firearms industry is aiding and abetting Mexico's cartels by continuing certain business practices, aware that the cartels have been able to obtain otherwise lawful firearms that are smuggled across

the border by third-party criminals. *See, e.g.*, Pet.App.79a (¶¶ 227-230); *see also id.* at 12a, 16a, 24a, 32a-33a, 41a-42a, 46a, 49a, 141a (¶¶ 15, 28, 50, 82, 86, 106, 108, 110, 123, 130, 383) (alleging a "see-no-evil, hear-no-evil, speak-no-evil approach"). The core of the complaint is that the firearm companies are aware that the cartels obtain these smuggled American firearms, yet have failed to take a variety of affirmative measures that would allegedly help stem the problem, because doing so would allegedly hurt the companies' balance sheets.

To support its charge that the firearms industry has "actively assisted and facilitated" terrorist groups south of the border for multiple decades, Pet.App.79a (¶ 227), Mexico points to four sets of policies. Pet.App.301a. To be clear, Mexico does not allege that any defendant adopted any one of these policies *in order to* facilitate cartel violence in Mexico; instead, Mexico alleges that the defendants have *continued* these practices so as to boost their bottom lines, indifferent to the downstream effects.

Design Decisions. Mexico foremost takes issue with defendants' decisions to keep making and selling what it calls "military-style assault weapons," Pet.App.93a-95a (¶¶ 280-82)—or as the Constitution would put it, "Arms." Among other things, Mexico faults the defendants for manufacturing America's most popular rifle, the AR-15 (¶ 282); producing what it labels "large-capacity" magazines (¶ 288) (which are in fact standard-capacity magazines); and continuing to make other firearms, like sniper rifles (¶ 292). Pet.App.94a-98a. Mexico says that it is tortious for the defendants to make these arms available to the general public, as opposed to "limit[ing] their sales" to

the military and "perhaps some law enforcement units." Pet.App.104a (¶¶ 314, 317).

Marketing Decisions. Mexico also alleges that defendants engage in "marketing techniques" that appeal to criminal groups. Mexico does not claim that defendants specifically target the cartels with advertisements (or advertise at all in Mexico); nor does Mexico dispute the district court's holding that the defendants' ads are neither false nor misleading. Rather, Mexico alleges that defendants routinely show their firearms have "military-like applications," and associate them with the "police and military." Pet.App.104a-121a (¶¶ 323, 329). And these ads—even if directed to Americans in Ohio—have allegedly driven demand in Tijuana, because cartels have gravitated to their brands. Pet.App.121a (¶ 331).

Distribution Decisions. Mexico further maintains that the defendants have aided-and-abetted the cartels by participating in the "three-tier distribution" system, presently sanctioned by the U.S. Federal Government. Pet.App.140a (¶ 378). Within this system, firearm manufacturers sell to federally licensed wholesalers, who then sell to federally licensed retail dealers, who then sell to retail customers, with each tier being heavily regulated by the Federal Government.[1] According to Mexico, it is the defendants' policy to sell to "anyone with a U.S. federal license," Pet.App.79a (¶ 228)—*i.e.*, any wholesaler or dealer approved by the United States.

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[1] All defendants except Witmer Public Safety Group, Inc., d/b/a Interstate Arms, are manufacturers; Interstate Arms is a wholesaler.

Mexico says this amounts to supporting the cartels. According to Mexico, while federal law *allows* defendants to follow this three-tier system, it does not *compel* them to do so; all the while, defendants are aware that under this three-tier system, about 2% or so of American firearms are illegally trafficked into Mexico each year. Pet.App.140a, 159a (¶¶ 378; 437). Mexico alleges that defendants have failed to go beyond what the law demands, and have refused to augment this system with "public-safety" measures that Mexico says would stem the illegal smuggling of firearms across the southern border. Pet.App.79a (¶ 229). In particular, Mexico says that defendants should be (i) requiring mandatory background checks on secondary market sales (¶ 245, 369b); (ii) banning multiple sales of firearms (¶ 245); (iii) creating a system to "supervise" the practice of "kitchen table" sales (¶ 264); and (iv) imposing unspecified "anti-theft measures" to limit the impacts of stolen guns (¶ 269). Pet.App.83a-84a, 89a-90a, 132a.

Mexico does not allege that any defendant sells directly to anyone it knows deals with the cartels. After all, most of the defendants do not sell to retailers at all. Pet.App.140a (¶ 378). Mexico also admits that a majority of illegal firearms in that country are not even made or sold by defendants. Pet.App.159a (¶ 435). Rather, Mexico's central claim is that a "small percentage" of dealers traffic "virtually all" firearms going into Mexico, and that defendants have chosen to "remain willfully blind" as to who they might be. Pet.App.44a-46a (¶¶ 119, 123).

Manufacturing Decisions. Mexico last claims the defendants have made their firearms too easy for criminals to illegally modify or use—and have failed

to make easy design changes, lest they dampen the criminal market for their products. Here too, Mexico does not allege that defendants have violated any specific law, rule, or regulation as to the design, manufacture, or production of firearms. Instead, the thrust of Mexico's allegations is that the defendants have refused to do more—*e.g.*, (i) turn their firearms into "smart guns" that can only be used by their owner; (ii) create harder-to-defile serial numbers; and (iii) make their firearms (like AR-15s) more difficult to unlawfully modify or alter into machineguns. Pet.App.98a, 129a-131a (¶¶ 291, 359, 365).[2]

All told, the upshot of Mexico's suit is simple enough: The American firearms industry should be responsible for the cartel violence plaguing Mexico. But the path it traces from the above activities to the carnage down south is anything but. In fact, Mexico's complaint relies on an *eight-step* causal-chain to support its suit:

1. The defendants sell firearms to independent federally licensed wholesale distributors.
2. Those distributors then sell those firearms to independent federally licensed retail dealers.
3. A subset of those retail dealers then sell the firearms to individuals who have illegal intentions.
4. Those individuals or their associates then illegally sell some of those firearms to smugglers, or themselves smuggle the firearms across the Mexican border.

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[2] Mexico argued some of the defendants' firearms were illegal machineguns. But the First Circuit rejected this. Pet.App.306a.

5. Cartel members in Mexico then buy or otherwise obtain the smuggled firearms.
6. Cartel members then unlawfully use the firearms in violent attacks in Mexico.
7. Those attacks injure people and property in Mexico.
8. The Mexican government suffers some derivative fiscal harms addressing the injuries inflicted and attempting to combat similar cartel violence.

As for the last item, Mexico claims the firearms industry has caused it a wide range of harms—from the "costs" of cartel violence, to the "resources" it has had to dedicate to that problem, to a good deal of related incidental harms, including "diminished property values." Pet.App.167a-169a (¶¶ 447-49).

In light of these diffuse harms, the Mexican government seeks far-reaching relief that it claims is available under Mexican tort law—which it says should apply to defendants' conduct in the United States because their firearms are ultimately used to inflict harms in Mexico. Pet.App.183a-195a (¶¶ 506-60) (raising seven claims under Mexican law). Mexico asks for $10 billion in damages. *See* Pet.App.196a. And it seeks an injunction imposing a barrage of gun-control policies, including (i) a ban on "assault weapons," (ii) a ban on "large-capacity magazines," and (iii) strict limits on "multiple sales" of firearms. Pet.App.83a-84a, 132a-134a (¶¶ 245, 369). In essence, Mexico seeks to use Mexican tort laws to regulate how firearms are made and sold in the United States.

C. Procedural History.

The district court dismissed Mexico's suit in full. Chief Judge Saylor held that PLCAA "bars exactly this type of action from being brought in [U.S.] courts," and that no exception applied here. Pet.App.233a.

The First Circuit reversed. The court rejected Mexico's primary argument that PLCAA did not apply *at all* under the extraterritoriality doctrine. Pet.App.293a. But the court nevertheless went on to hold that Mexico's complaint survived because it satisfied PLCAA's "predicate exception." In particular, the First Circuit found the complaint had plausibly alleged that the defendants were violating federal law by aiding and abetting arms trafficking to the cartels—and that their conduct was a proximate cause of the diffuse injuries Mexico allegedly suffered as a result of cartel violence. Pet.App.306a, 318a.

As for proximate cause, the First Circuit acknowledged that it was splitting from the Third Circuit and other appellate courts that have rejected similar suits filed by domestic governments. Pet.App.314a. But the court held that Mexico's harms were nonetheless a "foreseeable" consequence of defendants' actions. Pet.App.310a. For instance, it reasoned that independent third-party criminal acts did not break Mexico's causal chain, because it was "certainly foreseeable that Mexican drug cartels—armed with defendants' weapons—would use those weapons to commit violent crimes." Pet.App.313a. And the court held that nothing more was required to satisfy "traditional understandings of proximate cause." Pet.App.310a.n8.

As for aiding and abetting, the court recognized that "the complaint does not allege defendants' awareness of any particular unlawful sale." Pet.App.305a. But it held that the defendants' "role" in the cartel violence was "so systemic," that defendants could be liable for "every wrongful act" committed by the drug cartels. Pet.App.306a. Or as it put it elsewhere, it is "not implausible" that the American firearms industry has operated for decades "*in order to* maintain [an] unlawful market in Mexico." Pet.App.301a.

REASONS FOR GRANTING THE PETITION

The First Circuit's decision conflicts with multiple circuits and state high courts, defies this Court's precedent, and threatens severe consequences that reach far past the firearms industry. This Court's review is needed.

I. THE FIRST CIRCUIT'S PROXIMATE CAUSE HOLDING CREATES A SPLIT AND CONFLICTS WITH THIS COURT'S PRECEDENT.

In many ways, there is little new about Mexico's suit: Several domestic governments have tried suing the American firearms industry—raising the same sorts of allegations, against many of the same defendants—seeking to hold them liable for criminal misuse of their products. But courts have roundly rejected those gambits as too attenuated and too remote to satisfy long-established principles of proximate cause.

The fate of Mexico's suit should follow *a fortiori*: It is even *more* attenuated and *more* remote, as it relies on a chain of causation that spans an international border and involves foreign criminals committing

foreign crimes on foreign soil causing injury to a foreign government. But the First Circuit let this action proceed. And in so doing—by its own admission—it split from numerous other appellate courts.

In fact, the First Circuit's position is a total outlier. And for good reason: As this Court's precedent shows, Mexico's complaint harbors a law-school exam's worth of proximate cause infirmities. The First Circuit excused those infirmities only by adopting a long-discredited view of proximate cause that requires only "foreseeability," no matter how attenuated the causal chain may be. But that is the precise sort of analysis this Court has repeatedly rejected. It should do so again.

A. The Decision Below Conflicts With Multiple Circuits and State High Courts.

1. The First Circuit recognized that the PLCAA's explicit proximate-cause requirement incorporates "traditional understandings of proximate cause." Pet.App.310a.n8. It also recognized that other courts, including the Third Circuit and Connecticut Supreme Court, have applied traditional proximate cause doctrine to reject the exact same type of suit brought by other government entities. Pet.App.314a. But the First Circuit went ahead anyway, allowing the suit to proceed because it did not find the earlier decisions "persuasive." Pet.App.315a.

Third Circuit. In the 1990s, the City of Philadelphia sued a group of firearm manufacturers (many of whom are also defendants here), seeking to hold them liable for local criminal violence. According

to the complaint, the defendants there had engaged in certain "marketing and distribution" practices that they knew led to downstream criminal activity. *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 419 (3d Cir. 2002); *see also* 126 F. Supp. 2d 882, 888 (E.D. Pa. 2000) (noting allegations that they (i) allowed customers to purchase multiple firearms; (ii) failed to curb "straw purchas[es]"; (iii) sold to all licensed dealers; (iv) "fail[ed] to monitor and supervise" dealers; and (v) used "marketing schemes" that appealed to criminals).

Writing for a unanimous panel that included then-Judge Alito and Judge Ambro, Judge Greenberg explained that the essence of proximate cause is a "direct relation between the injury asserted and the injurious conduct alleged." 277 F.3d at 423 (quoting *Holmes v. Securities Investor Prot. Corp.*, 503 U.S. 258, 268-69 (1992)). The court held the city failed that requirement for four main reasons.

First, the city's "long and tortuous" chain of causation—where firearms went from federally licensed manufacturers, to wholesalers, to retailers, to straw buyers, to criminals, who would then use them unlawfully, ultimately imposing costs on the city—was clearly "too attenuated." 277 F.3d at 422-24.

Second, the city's injuries were entirely "derivative," as they were the byproducts of direct injuries suffered by their citizens. *Id.* at 424-25.

Third, the city's (already flawed) causal chain was punctuated by multiple "independent factors"—in particular, third-party criminal behavior. *Id.* at 425.

Fourth, apportioning damages and liability would be unworkable because the city's injuries were caused by multiple distinct causes and actors. *Id.*

For these reasons, the Third Circuit affirmed dismissal of the action. *Id.*

Connecticut Supreme Court. Around the same time, a municipality in Connecticut brought a similar suit against many of the same defendants, alleging that they had (i) made firearms too easy to alter; (ii) "knowingly sold guns in a manner that foreseeably led to "guns flowing into an illegal market," and (iii) failed to "implement sufficient controls over [their] methods of distribution." *Ganim v. Smith & Wesson Corp.*, 780 A.2d 98, 108-09 (Conn. 2001). As above, the municipality sought relief for harms incurred due to local criminal violence. *Id.* at 109. And as above, the Connecticut Supreme Court rejected the suit for lack of proximate cause. Applying this Court's cases and traditional proximate cause "principles," the court unanimously concluded this type of claim is too "indirect, remote, and derivative" to be viable—tracking the Third Circuit's reasoning. *Id.* at 123-28.

Illinois Supreme Court. The Illinois Supreme Court has followed the same path. The City of Chicago brought the same type of suit: It claimed that a host of firearm manufacturers (again, many of whom are defendants here) engaged in a series of design, distribution, and marketing practices that undermined the city's "strict" gun laws, and contributed to the city's pervasive violence. *City of Chicago v. Beretta, U.S.A. Corp.*, 821 N.E.2d 1099, 1107-08 (Ill. 2004) (detailing practices).

And again, the action was dismissed on proximate-cause grounds. The court observed that the firearms industry is "highly regulated," and that so long as the defendants there engaged in "lawful commercial activity" within that market, such activity—without more—is too "removed" from the independent criminal acts alleged by Chicago. *Id.* at 1135-37.

D.C. Court of Appeals. The highest court in D.C. also rejected a similar suit. Once more, the city alleged that although it had strict gun laws, "there nonetheless exists an unchecked illegal flow of firearms into the District to which the defendants by action and inaction have contributed." *District of Columbia v. Beretta, U.S.A. Corp.*, 872 A.2d 633, 638 (D.C. 2005) (en banc). And once more, the court found proximate cause lacking. Citing the three decisions above, the court reasoned that the "sheer number of causal links" made the claim far too attenuated to pass muster. *Id.* at 648-49. Indeed, allowing such claims would unduly "relax" the established "common-law limitations of duty, foreseeability, and direct causation." *Id.* at 650.

Other Industries. The kind of action here is not unique to the firearms industry. Scores of plaintiffs—including governments, both foreign and domestic—have targeted other industries in analogous suits, seeking damages for the distant repercussions of their products' downstream misuse. But courts have routinely rejected these sorts of claims, universally invoking proximate cause principles that conflict directly with the First Circuit's analysis.

These cases include lawsuits against various industries:

- tobacco, *Ganim*, 780 A.2d at 122 & n.11 (collecting six circuit courts that have held "the financial harms alleged by the plaintiffs"—typically, health insurers and plans—were too "remote, derivative, and indirect"); *State of Sao Paulo v. American Tobacco Co.*, 919 A.2d 1116, 1126 (Del. 2007) (rejecting similar suit by foreign government);
- finance, *City of Cincinnati v. Deutsche Bank Nat. Trust Co.*, 863 F.3d 474, 480 (6th Cir. 2017) (Sutton, J.) (post-2008 mortgages); *City of Cleveland v. AmeriQuest Mortgage Securities, Inc.*, 615 F.3d 496, 498 (6th Cir. 2010) (subprime lending);
- lead paint, *State v. Lead Industries, Ass'n, Inc.*, 951 A.2d 428, 457 (R.I. 2008);
- and pharmaceuticals, *Ashley Cnty. v. Pfizer, Inc.*, 552 F.3d 659, 667-73 (8th Cir. 2009) (products used to make methamphetamine).

There is no doubt that Mexico's complaint would be dismissed in all of the courts above. Those courts all applied traditional proximate-cause principles to reject suits far *less* attenuated and far *less* remote than this one. But again, Mexico's chain-of-causation has even *more* links, as American firearms must be smuggled across the border, purchased by foreign cartels, and then used to commit criminal acts abroad that later result in expenditures of money by a foreign government. If the above suits lack the "direct relation" needed for proximate cause, *Holmes*, 503 U.S. at 268, Mexico's is not close.

2. Yet in the decision below, the First Circuit held that proximate cause was satisfied because Mexico's

injuries were a "foreseeable" result of the defendants' actions. Pet.App.313a. The only circuit or state high court it could muster was the 4-3 decision in *Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002). Pet.App.315a. But that case is hardly a model, as Ohio's legislature promptly overturned it. *See* 2006 Ohio Laws 2278-79. The elected representatives of Ohio thus apparently agreed with the dissent that allowing this type of claim would create a new doctrinal "monster" that would "devour in one gulp the entire law of tort." *Cincinnati*, 768 N.E.2d at 1157-58 (Cook, J., dissenting).

Other than that, the First Circuit relied mostly on an unpublished trial court decision out of Boston, finding its "reasoning" more "persuasive" than the Third Circuit's. Pet.App.315a. But that decision had virtually no reasoning at all. The court there recognized that the plaintiffs' theory of liability was "extreme," but asserted (with little more) that "a motion to dismiss is not the proper vehicle to challenge [it]." *City of Boston v. Smith & Wesson Corp.*, 2000 WL 1473568, at *7 (Mass. Super. Ct. July 13, 2000). That makes little sense: "If a plaintiff's allegations, taken as true, are insufficient to establish proximate causation, then the complaint must be dismissed." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.7 (2014).

B. The Decision Below Conflicts With This Court's Precedents.

The First Circuit's decision also conflicts with this Court's precedents on proximate cause.

1. PLCAA's predicate exception allows claims only if the "violation" of a firearm statute "was a proximate

cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). And as this Court has recognized, "we assume" that Congress incorporated "the common-law rule" of proximate cause absent a reason to think otherwise. *Lexmark*, 572 U.S. at 132. Under that traditional approach to proximate cause, Mexico's complaint fails for at least four reasons.

First, the chain of causation is too attenuated. This Court has repeatedly emphasized the "general tendency of the law" is not to stretch proximate cause "beyond the first step." *Holmes*, 503 U.S. at 271. This Court has thus repeatedly rejected multi-step causal chains, even when they involved far fewer steps than the one here. *See, e.g.*, *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9-10 (2010) (six steps); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457-59 (2006) (two); *Holmes*, 503 U.S. at 262-63 (four). In this case, Mexico relies on an *eight-step* chain of causation peppered with bank shots and border crossings. If this satisfies the "direct relationship requirement," then the limit is meaningless. *Hemi*, 559 U.S. at 10.

Second, Mexico's causal chain is not only attenuated, but also broken by multiple intervening criminal acts. Typically, intervening volitional acts are superseding causes that eliminate proximate cause. *See Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 837 (1996). And intervening *criminal* acts are the paradigmatic example. *See, e.g.*, *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 393 (7th Cir. 2018). But here, apart from the *other* intervening acts that confound Mexico's chain of causation, the complaint relies on at least *four* independent, volitional criminal acts: (i) straw purchasers buying defendants' firearms in the United States; (ii) smuggling them into Mexico; (iii)

selling them to the cartels; and (iv) cartels then using them to commit murder and mayhem in Mexico. Any one of those criminal acts would break the chain of traditional proximate causation. Taken together, they shatter it.

Third, Mexico's injuries are derivative of injuries suffered by others—*i.e.*, the victims of the cartels. Proximate cause "generally bars suits for alleged harm … [when] the harm is purely derivative of misfortunes visited upon a third person by the defendant's acts." *Lexmark*, 572 U.S. at 133. But that describes Mexico's suit to a tee. Mexico's injuries all stem from costs and resources that derive from *its citizens* being targeted and harmed by its cartels. Pet.App.167a-168a (¶448). This is yet another clear reason that Mexico "stand[s] at too remote a distance to recover." *Holmes*, 503 U.S. at 268.

Fourth, apportioning damages and liability would be unworkable. This Court has explained that proximate cause fails when a claim would require attributing responsibility for diffuse wrongdoing across various "remote action[s]." *Anza*, 547 U.S. at 458-59. But that is this case. Mexico's suit involves a parade of bad actors—straw purchasers, cross-border smugglers, illegal foreign sellers, foreign cartel members, and many more. There is no sound way to apportion fault across this far-reaching chain of actors, especially since even the complaint admits that the *majority* of illegal firearms in Mexico were not made or sold by defendants. Pet.App.159a (¶ 435). If a main point of proximate cause is to "avoid[] the difficulties associated with attempting to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent,

factors," then this is a textbook application. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 654 (2008).

2. The First Circuit brushed all this aside on the ground that Mexico's alleged harms were a "foreseeable" consequence of defendants' actions—and that nothing else was required to satisfy PLCAA. Pet.App.311a ("[T]he complaint plausibly alleges that aiding and abetting the illegal sale of a large volume of assault weapons to the cartels foreseeably caused the Mexican government to shore-up its defenses."); *see also, e.g.*, *id.* at 309a-315a. But that directly contradicts this Court's teaching that "foreseeability alone does not ensure the close connection that proximate cause requires." *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202 (2017).

The First Circuit tried to get around this Court's precedent by saying that foreseeability is only insufficient in "certain contexts." Pet.App.309a. But for decades, and in many different contexts, this Court has regularly held that foreseeability is not enough. Indeed, "[c]onditioning liability on foreseeability . . . is hardly a condition at all," because with "a broad enough view" virtually anything "may be foreseen." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 552-53 (1994). Proximate cause thus generally stops at the "first step"—*not* because later steps are unforeseeable, but because they are too remote to count, lest liability attach for "every conceivable harm that can be traced to alleged wrongdoing." *Lexmark*, 572 U.S. at 132-33. This Court has applied that rule across a host of statutes—from RICO, to the federal securities laws, to the Clayton Act, to the Lanham Act. *Id.* at 132.

Even if foreseeability alone could suffice in *some* contexts, PLCAA certainly is not one of them. PLCAA's predicate exception includes an *express* proximate-cause requirement, and its statutory history and design make clear that Congress wanted to foreclose exactly this type of attenuated claim against the gun industry in particular. It specifically targeted lawsuits against the manufacturers and sellers of "firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. § 7901(a)(3). Reading in an expansive proximate-cause test here flies in the face of that text.

The First Circuit grappled with none of this. It cited *Bank of America*, Pet.App.309a, but it had no response to any of the points above except its repeated refrain that Mexico's injuries were foreseeable. Pet.App.310a-319a.

At most, the First Circuit tried condensing Mexico's chain of causation. It reasoned that the statutory trafficking "violation" was the "proximate cause" of Mexico's injuries, so the causal chain really had *six* steps, not eight. Pet.App.310a-311a. But this fails twice over. For one, the proximate-cause requirement is pegged to a *defendant's* violative conduct—here, defendants' business activities that formed the basis of aiding-and-abetting liability. After all, it is undisputed that defendants did not themselves violate the trafficking laws; instead, Mexico's allegation is that defendants' manufacturing, marketing, and sales activities constitute unlawful aiding and abetting. And that conduct occurs at least two steps before any trafficking. Regardless, *even if*

the chain was only a mere six steps, that is still several too many under this Court's precedent.

The decision below is thus deeply flawed root-to-branch. Its approach to proximate cause cannot stand.

II. THE FIRST CIRCUIT'S AIDING-AND-ABETTING HOLDING DEFIES THIS COURT'S PRECEDENT.

The First Circuit's aiding-and-abetting holding is just as bad. The court held that America's firearms industry has plausibly been aiding and abetting Mexico's cartels *for decades*—without a single U.S. governmental entity doing a thing about it in this otherwise heavily-regulated industry.

That ruling has no basis in law. Indeed, it flatly contradicts this Court's decision last Term in *Taamneh*—a decision that should have more than a one-year shelf-life in a federal court of appeals.

1. Mexico's complaint should look familiar to this Court: It is cut from the exact same cloth as the one from *Taamneh*. As here, the gravamen of that complaint was that the social media companies (i) were aware that their platforms were being used by terrorists, (ii) refused to adopt easy measures to address the problem, and (iii) were thus liable because they facilitated terrorist activity for their own profit.

Comparing the allegations here and in *Taamneh* shows the similarity:

Taamneh	***Smith & Wesson***
Twitter, Facebook, and YouTube "continued to provide [their] resources and services to ISIS," even after being put on	Defendants have "refused to monitor and discipline their distribution systems," even after having been

notice by the media, government, and others that the terror group regularly "used" their services. JA.52-53 (¶ 26).	put on "notice" by the same entities that their firearms are regularly trafficked into Mexico by criminals. Pet.App.185a, 8a (¶¶ 514, 6).
The defendants "have tools by which [they] can identify, flag, and remove ISIS accounts," but refuse to adopt a legion of easy-to-implement measures that would mitigate how terror groups use their platforms. JA.148 (¶ 463); *see also id.* at 88, 134-35 (¶¶ 197, 402-04).	The firearms industry "know[s] what reforms to their distribution systems are needed to prevent trafficking of their guns into Mexico," but have refused to adopt any public-safety measures to curb this practice. Pet.App.131a (¶ 367); *see also id.* at 79a-80a (¶¶ 227-30).
The social media giants have chosen this course, because they "routinely profit from ISIS." JA.132 (¶ 391).	Defendants "defy" certain policy "recommendations" because they "profit" from cartel sales. Pet.App.7a-8a (¶ 3).

2. This Court's reasoning in *Taamneh* squarely forecloses Mexico's aiding-and-abetting claim here.

In *Taamneh*, this Court made plain that the essence of aiding and abetting is affirmative culpable conduct—*i.e.*, a would-be accomplice must take an "affirmative act with the intent of facilitating the offense's commission." 598 U.S. at 490. There must be more than "omissions, inactions, or nonfeasance" in

the course of making a product or service available to the general public—otherwise "ordinary merchants could become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer." *Id.* at 489.

Mexico's complaint fails to allege any such affirmative culpable conduct. It is barren of *any* allegation of "abetting, inducing, encouraging, soliciting, or advising" between the American firearms industry and the Mexican drug cartels. *Taamneh*, 598 U.S. at 490. Nowhere does Mexico allege that the firearms industry has adopted any policy, or developed any practice, with the specific intent to further the drug cartels' terroristic mission.

Instead, Mexico's complaint rests entirely on how, in its view, the American firearms industry has failed to change its longstanding business practices *to counteract* the proliferation of cartel violence in Mexico. The complaint's allegations all rest on how the industry has consistently operated "for decades." *See, e.g.*, Pet.App.121a-123a, 127a-128a, 139a (¶¶ 335, 338, 353, 376). Indeed, Mexico's complaint relies most heavily on a *2003* decision from Judge Jack Weinstein, opining on then-industry practices. *See, e.g.*, Pet.App.135a-139a (¶ 374). And Mexico's repeated refrain is that during this time, the defendants have failed to go *beyond* what "legislation" requires to curtail the supply of firearms—and have failed to do so in order to boost profits. Pet.App.84a (¶ 246).

An illustrative example is Mexico's allegations about the defendants' "design decisions." Mexico claims the defendants are culpable, because they have

continued to produce "weapons of war"—*e.g.*, America's most popular rifle (the AR-15), and arms capable of holding more than ten rounds, Pet.App.94a-95a, 122a-123a (¶¶ 282, 337)—even as they have become aware that these arms are also popular among the cartels. Tellingly, Mexico does not allege that the defendants *created* the AR-15 for the purpose of aiding, assisting, or supporting the cartels; nor would any such claim be plausible. Instead, the claim—again and again—is that in *failing to stop* producing firearms like the AR-15, defendants have made a "deliberate design" decision that will continue to aid the cartels. Pet.App.272a.

The other allegations—those concerning marketing, distribution, and manufacturing practices—fit the same bill. For example, Mexico faults the defendants for using the three-tier distribution system currently sanctioned by federal law, Pet.App.140a (¶¶ 378-79), without augmenting it with various "public safety" measures—*e.g.*, requiring unlicensed sellers to conduct "background checks at gun shows," *id.* at 91a-92a (¶ 275); "attempting to control, monitor, or supervise" kitchen table sales, *id.* at 89a (¶ 264); or, most fundamental, limiting sales to only those "with a legitimate need for them," *id.* at 104a (¶ 315). Again, Mexico does not allege that the defendants *adopted* this distribution system so as to bolster the cartels. Pet.App.104a (¶¶ 314-18). Instead, Mexico charges the defendants with *failing to change* their longstanding distribution practices—that is,

failing to supplement what the American firearms laws require, so as to better combat arms trafficking.[3]

Boiled down, Mexico's theory of liability reduces to this: "A manufacturer of a dangerous product is an accessory or co-conspirator to illicit conduct by downstream actors where it continues to supply, support, or assist the downstream parties and has knowledge—*actual or constructive*—of the illicit conduct." Pet.App.42a (¶ 110).

But that is *precisely* the theory of aiding-and-abetting liability this Court rejected in *Taamneh*. Without more, continuing to sell a product while knowing that some bad actors will misuse it downstream is not the sort of "affirmative misconduct" needed to create accomplice liability. 598 U.S. at 500, 503. Any other rule would be untenable. For instance, virtually every beer and wine company knows to a certainty that some of their products are going to end up being unlawfully used by minors or

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[3] The First Circuit stated a few times the complaint alleged that defendants sold to specific dealers they knew were trafficking firearms to the cartels. *See, e.g.*, Pet.App.312a. But that is just not true; the complaint does not include a single allegation of any defendant specifically selling to someone it knew worked with the cartels or trafficked any firearms. Once more, most defendants do not sell to dealers *at all*, Pet.App.140a (¶ 378); they sell only to licensed wholesalers. Instead, the most the complaint alleges is that Petitioners *could have learned* who the illicit dealers were but chose to remain "willfully blind" (along with the United States, apparently) so that they did not have to *cut off* those lucrative sales. Pet.App.46a (¶ 123); *see also, e.g.*, *id.* at 42a, 44a-46a (¶¶ 109, 118-22). That, however, is precisely the sort of passive conduct this Court rejected in *Taamneh*. *See* 598 U.S. at 499-500 (insisting on clear line between "passive assistance" and "active abetting").

drunk drivers, and they could always take additional steps to combat those problems. But nevertheless, nobody would think that those companies are aiding and abetting any of those downstream illegal acts. The same is true for companies in many different industries. And the same principle controls here.

3. In holding otherwise, the First Circuit's decision erases the very distinction between active complicity and passive conduct that animated *Taamneh*.

The First Circuit tried to distinguish *Taamneh* by saying that defendants here are "more active participants" in the cartels' business than the social media groups were with ISIS. Pet.App.305a. That is simply wrong—and completely unsupported by the complaint's allegations. As in *Taamneh,* Mexico alleges *no connection* between Petitioners and cartels other than their sale of lawful products with, at worst, indifference to how they will later be used. But regardless, the First Circuit fails to grapple with *Taamneh*'s core rationale that making a lawful product or service available to the public is simply not enough to establish accomplice liability based on later criminal acts that may occur. 598 U.S. at 499. Even when a company is engaged in extensive commercial activity (be it running a global social-media network or producing and selling firearms to the general public), it is not an active participant in downstream criminal acts unless the company engages in some other "affirmative misconduct" for the specific purpose of promoting those acts. *Id.* at 500.

And again, nowhere does Mexico even try to make that "showing." *Id.* Mexico's theory is that the defendants have "known" that the cartels have been

able to obtain their firearms "for years," and "have failed to implement" certain practices to stem that problem. *Taamneh*, 598 U.S. at 481-82. Yet "failing to stop" a problem of downstream criminal activity is distinct from willing its existence, and that distinction is critical for aiding-and-abetting liability. *Id.* at 503.

In collapsing that distinction, the First Circuit relied on the exact same misreading of this Court's precedent that *Taamneh* rejected. According to the First Circuit, *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), means that whenever a merchant continues to sell lawful products despite knowing some may end up in the hands of criminals, that is enough to support a claim that the merchant "intended to supply the products for [those] illegal sales." Pet.App.304a.

But *Direct Sales* said no such thing. Instead, it involved a company selling morphine *directly* to a particular doctor in such absurdly large amounts that it could not possibly have been used for lawful purposes. 319 U.S. at 705. Thus, as this Court explained in *Taamneh*, *Direct Sales* stands only for the common sense (but narrow) proposition that where a "provider of routine services does so in an unusual way," it cannot escape liability just because it is an upstream seller. 598 U.S. at 502. But here, again, Mexico's complaint does not allege any "unusual" activity on the part of the American firearms industry—it asserts no change of course, no specific action, and no designed policy carried out with the specific purpose to assist the cartels. Rather, Mexico objects to how the industry has operated *for decades*; its entire complaint is premised entirely on

the *usual operations* of the American firearm industry. That is a far cry from *Direct Sales*.

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Bedrock aiding-and-abetting principles thus confirm what common sense compels: America's firearms industry is not a longstanding criminal accomplice to Mexico's drug cartels. The First Circuit reached a contrary result only by defying this Court's precedents. This Court's review is needed.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT.

This Court's review is also warranted because both questions presented are exceptionally important in two respects. First, the logic of the decision below exposes a wide swath of industry to liability for doing nothing more than making available legal and non-defective products that can be criminally misused downstream. And second, Mexico's brazen attempt to regulate the American firearms industry based on its foreign interests poses a grave threat to the sovereignty of the United States, its citizens, and their Second Amendment rights.

1. The decision below involves two important issues of federal law. One, the First Circuit split from other appellate courts as to what "traditional understandings of proximate cause" require, Pet.App.310a.n8—which has sweeping implications for any federal statute that incorporates a generic proximate-cause requirement. And two, the First Circuit's decision defies this Court's decision in *Taamneh* by allowing claims of accomplice liability against anyone who makes products available to the general public while knowing that some criminals will

misuse them downstream. The logic of that decision puts crosshairs on the backs of innocent sellers and manufacturers of all kinds.

While both issues are important alone, they are even more so in combination. Taken together, the First Circuit's twin holdings have implications far beyond the firearms industry. On their logic, any business that knows its product is being misused downstream may be held liable as an accomplice. The decision below also broadly expands the ability of *governments* to bring suit over these alleged harms—from climate change to consumer goods, and all in between. A city or state could sue the fast-food industry for facilitating childhood obesity; or a pharmaceutical company for continuing to sell cold medicines that criminals use to make illegal drugs.

No imagination is required here—once again, domestic cities and states *have tried* these sorts of suits plenty of times, against a host of other industries. *Supra* at 19. But so far, basic norms of American law have largely stopped these attenuated gambits: Proximate cause demands a direct nexus between injury and action; and aiding-and-abetting doctrine delineates what actions are sufficient for culpability.

The First Circuit's decision upends all of this. By collapsing proximate cause into foreseeability and extending accomplice liability over ordinary product sales, the decision below opens the floodgates. That is a boon for plaintiffs' lawyers and political stunt litigation, but a disaster for the rule of law. And it will only proliferate until this Court fixes the problem.

2. The decision below also has dire implications for American sovereignty, as it allows a foreign government under the guise of litigation to regulate (if not eliminate) the manufacture and sale of common firearms in the United States. Simply put, Mexico detests the American system that makes firearms readily available to law-abiding citizens in accordance with the Second Amendment. It makes no secret of its view that ordinary citizens should not be allowed to buy an AR-15 or a firearm capable of holding over ten rounds. And it finds abhorrent how law-abiding Americans have the liberty to obtain such firearms without having to beg for the government's grace.

Absent this Court's intervention, Mexico will be handed a *de facto* domestic regulatory tool as it saddles the American firearms industry with burdensome litigation, far-reaching compulsory discovery, and the specter of a multi-*billion*-dollar judgment that it can wield to bully the industry into altering its practices. And that says nothing of Mexico's proposed injunctive relief, which seeks to impose gun control regulations that Congress has repeatedly rejected.

That is not all. Even if the defendants prevail down the road in *this* suit, so long as the decision below remains good law, it invites other countries to run the exact same play with the exact same basic complaint.[4]

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[4] In fact, some countries have promised as much already. *See, e.g.*, John Cassidy, *Can the Government of Mexico Bring the U.S. Gun Industry to Book?*, THE NEW YORKER (Jan. 31, 2024), https://perma.cc/AZD8-QHJK (describing foreign interest in this case).

Giving foreign sovereigns the power to impose the burdens of such litigation gives them a Damoclean Sword to dangle over the head of the American firearms industry. Indeed, in passing PLCAA, Congress recognized that the severe costs of defending suits like this one could pressure firearms companies to curtail their business practices, jeopardizing democratic control. *See* 15 U.S.C. § 7901(a)(8) (PLCAA prohibits efforts to "use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce"); H.R. Rep. No. 109-124, at 12 (2005) ("[The industry is] in danger of being overwhelmed by the cost of defending itself against these suits."). That danger is especially acute when it comes from foreign governments, as they seek to use lawfare to suppress American firearms with no accountability to the American people.

Unless this Court intervenes, the federal courts in the American Northeast are now open to suits by every foreign government that wants to curtail the American firearms industry. That is intolerable for a country with a Second Amendment, and for the millions of law-abiding citizens who depend on the industry to exercise their constitutional rights. Simply put, Mexico's suit threatens to undermine American sovereignty and constitutional liberty, and it has no business in this country's courts.

IV. THIS CASE IS AN IDEAL VEHICLE.

This case presents an ideal vehicle to review the questions presented. It arises out of a motion to dismiss, so it is limited to the four corners of the complaint. There is no lengthy factual record that would follow any trial. The petition thus tees up two

clean legal questions, based on a discrete set of allegations that will facilitate efficient review. The complaint alleges exactly how firearms are made by defendants, sold to wholesalers, then sold to retailers, then purchased by straw purchasers, then taken over the border by smugglers, then used for criminal acts by cartels in Mexico, resulting in harm to victims, ultimately imposing costs on the Mexican government. The questions are simply whether those facts amount to aiding and abetting and satisfy proximate cause.

V. IN THE ALTERNATIVE, SUMMARY REVERSAL IS WARRANTED.

The First Circuit's decision is so egregiously wrong that summary reversal would be appropriate. This Court has summarily reversed decisions of lower courts that contradict controlling precedent. *See, e.g.*, *Moore v. Texas*, 139 S. Ct. 666 (2019) (*per curiam*); *Pavan v. Smith*, 582 U.S. 563 (2017) (*per curiam*). And as explained, the decision below conflicts directly with this Court's proximate cause cases, as well as last Term's decision in *Taamneh*.

This case is also a natural candidate for summary reversal because it involves a threshold immunity from suit. As this Court has recognized, a lower court's failure to respect a clear immunity from suit justifies summary reversal to ensure that the immunity is not undermined by costly and intrusive litigation. *See, e.g.*, *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021) (qualified immunity); *City of Tahlequah v. Bond*, 595 U.S. 9 (2021); *Kisela v. Hughes*, 584 U.S. 100 (2018). PLCAA grants exactly this type of immunity: It does not merely provide an ordinary defense to liability but

states in unmistakable terms that qualifying suits "may not be brought in any Federal or State court." 15 U.S.C. §7902(a). The statute thus "grant[s] immunity to certain parties against [the defined category] of claims." *Ileto*, 565 F.3d at 1142; *see also City of New York*, 524 F.3d at 398. And there is no suit *more* within the heartland of PLCAA than this one.

In creating this immunity from suit, Congress recognized that it was not just the risk of liability but the cost of defending against suit that needed to be foreclosed. That is why the statute says not only that covered suits must fail on the merits, but that they "may not be brought" in the first place. 15 U.S.C. §7902(a). Accordingly, the express purpose of the statute "is not served by allowing an action barred by the PLCAA to proceed to trial only to be inevitably reversed on appeal." *In re Acad., Ltd.*, 625 S.W.3d 19, 35 (Tex. 2021). This Court's intervention is accordingly warranted, whether in the form of plenary review or summary reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.

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