No. 23-1141

IN THE
Supreme Court of the United States

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

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

1. Whether the production and sale of firearms in the United States is a "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" unlawful 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 are the named defendants in this action. Respondent Estados Unidos Mexicanos is 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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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 First Circuit entered its judgment on January 22, 2024. Petitioners filed a timely petition for certiorari on April 18. This Court granted review on October 4. It has jurisdiction 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

Mexico has sued a group of leading American firearms companies, seeking to hold them liable under Mexican tort law for harms incurred by the Mexican government as a result of Mexican drug cartels committing crimes with firearms in Mexico. The suit seeks $10 billion in damages, plus far-reaching injunctive relief that would, among other things, ban "assault rifles," limit the size of magazines, and regulate how firearms are sold in the United States.

Mexico's suit is barred by the Protection of Lawful Commerce in Arms Act. PLCAA protects firearms companies from suits seeking to hold them liable for harms "resulting from the criminal or unlawful misuse of a [firearm]" by a "third party." 15 U.S.C. § 7903(5)(A). And here, Mexico's alleged injuries all stem from the unlawful acts of foreign criminals.

It is hard to imagine a suit more clearly barred by PLCAA. But in the decision below, the First Circuit allowed this case to proceed under a narrow statutory exception, which permits suits against companies that have "knowingly violated" a firearms "statute," if "the violation was a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii). According to that court, the firearms industry has been criminally "aiding and abetting" unlawful sales by independent downstream dealers for decades—through how it manufactures, markets, and distributes firearms. And those same routine practices are supposedly a "proximate cause" of the diffuse harms that the Mexican government suffers in Mexico, because it was "foreseeable" that drug cartels would use illegally smuggled firearms to commit crimes there.

The decision below is irreconcilable with PLCAA, and with the fundamental principles of American law it incorporates. As for proximate cause, this Court has repeatedly held that it requires a *direct* connection between a defendant's conduct and the plaintiff's injury. Thus, the general rule is that a company that makes or sells a lawful product is not a proximate cause of harms resulting from the independent criminal misuse of that product.

But here, Mexico's theory is anything but direct. Its chain starts with federally licensed manufacturers (*i.e.*, Petitioners) producing firearms in America, which then are sold to federally licensed distributors, who then sell to federally licensed dealers, some of whom illegally (or negligently) sell firearms to criminals, some of which are smuggled into Mexico, where a fraction ends up with cartels, who use some to commit violent crimes, finally harming Mexico's government through increased costs. Mexico's theory thus rests upon a medley of independent criminal acts, spanning an international border. No court has ever found proximate cause on such a remote theory.

As to aiding and abetting, Mexico's theory fares no better. To be clear, Mexico's suit does not include any revelations about the firearms industry coordinating with illicit sellers, smugglers, or cartels. Instead, its suit turns wholly on the industry's routine (and highly regulated) business practices. Mexico says the industry is generally aware some dealers sell firearms illegally. And Mexico claims the industry has become complicit in those sales, because it has not changed its existing practices in ways Mexico believes would help stop them—for instance, by limiting AR-15 sales to Americans who can show a "legitimate need" for one.

That is not aiding and abetting. As this Court held just last year in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), aiding and abetting requires an affirmative act taken with intent to help a crime succeed. But where a lawful industry does nothing but engage in routine business practices, that is not the sort of misconduct that can render its participants accomplices—even if (as in *Twitter*) they are aware their products may be criminally misused downstream. That rule controls here. Mexico does not allege any Petitioner has violated a single U.S. firearms law; it does not even allege Petitioners were aware of "any particular unlawful sale." Pet.App.305a. Its charge is that Petitioners are liable for the independent unlawful sales they failed to stop. But that theory is foreclosed by *Twitter*, and the centuries of law it applied. In short, by failing to adopt Mexico's chosen gun-control agenda, Petitioners did not violate the criminal aiding-and-abetting statute.

In its zeal to attack the firearms industry, Mexico seeks to raze bedrock principles of American law that safeguard the whole economy. Indeed, on Mexico's view, any manufacturer or supplier of a lawful good could face liability over the predictable criminal misuse of its products by downstream consumers. But that is not the law. Under traditional principles of proximate cause and aiding and abetting, when an independent criminal misuses a lawful product, it is the criminal who is responsible for his actions, not the company that made or sold the product. And the *singular* purpose of PLCAA was to ensure that those principles would govern in cases like this one, in order to curtail such lawfare and the heavy tolls of litigation it inflicts. Mexico's complaint must be dismissed.

STATEMENT

A. The Protection of Lawful Commerce in Arms Act.

1. Congress enacted PLCAA in 2005. The Act recognized that the American firearms industry faced a wave of lawsuits seeking redress for "harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. § 7901(a)(3). It noted that firearms companies were already "heavily regulated by Federal, State, and local laws" governing in fine detail how firearms are manufactured, marketed, and distributed in this country. *Id.* § 7901(a)(4). And it declared that firearms companies that follow those laws "are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products . . . that function as designed and intended." *Id.* § 7901(a)(5). Suits trying to impose such liability are "an abuse of the legal system," and rest on legal theories that invite the "destabilization of other industries and economic sectors." *Id.* § 7901(a)(6).

To prevent such suits, PLCAA bars any "qualified civil liability action" from being "brought" in "any Federal or State court." *Id.* § 7902(a). The bar applies to any claim against a "manufacturer or seller" of firearms "for damages . . . resulting from the criminal or unlawful misuse of a" firearm by any "third party." *Id.* § 7903(5)(A). It contains only narrow exceptions, including one that has come to be known as the "predicate exception," which allows companies to be sued if they "knowingly" violate a firearm statute and "the violation was a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii).

2. PLCAA was enacted in response to a spate of litigation that began in the 1990s. It involved a number of plaintiffs—mostly city governments—pressing various theories seeking to hold firearms companies liable for municipal costs resulting from the criminal misuse of their products. These lawsuits aimed to transform the regulation of the firearms industry through tort, in ways that had been rejected at the ballot box. *See generally* Brian J. Siebel, *City Lawsuits Against the Gun Industry: A Roadmap for Reforming Gun Industry Misconduct*, 18 ST. LOUIS U. PUB. L. REV. 247 (1999) (senior Brady attorney detailing strategy).

For example, in a typical suit that Congress later flagged when drafting PLCAA, Boston sued a host of firearms companies in 2000 (many of whom are defendants here) on the theory that their business practices fueled unlawful firearm sales downstream, and that these companies refused to change course because they wanted to maintain profits from those illicit markets. *City of Boston v. Smith & Wesson Corp.*, 2000 WL 1473568, at *1-3 (Mass. Super. Ct. July 13, 2000). To support this charge, Boston took issue with how the industry (i) designed products (*e.g.*, failing to add "safety features"); (ii) marketed them (*e.g.*, failing to highlight dangers); and (iii) distributed them (*e.g.*, failing to impose restrictions on downstream retailers to prevent straw purchases and other sales). *Id.* Many other city governments filed parallel suits based on how the industry has long chosen to "make and sell" firearms in this country. *See* H.R. 109-124, at 11 & n.48 (2005) ("House Report") (citing examples).

Congress saw these suits as "without foundation," resting on notions of civil liability that transgressed "hundreds of years of the common law." 15 U.S.C. § 7901(a)(7). The suits turned on "tenuous claims of causality," punctuated by "many" steps: (1) Manufacturers lawfully "produce the firearms"; (2) then "sell them to federally licensed distributors"; (3) who "sell them to federally licensed dealers"; (4) after which, "some of the firearms are diverted by third parties into an illegal gun market"; (5) where "these firearms are obtained by people who are not licensed to have them"; (6) then are used "in criminal acts that do harm"; (7) that finally "the city or county must spend resources combatting." House Report, at 13.

Congress also recognized that these lawsuits were part of a coordinated strategy of lawfare designed to "circumvent the Legislative branch of government." 15 U.S.C. § 7901(a)(8). After gun-control activists had failed to persuade voters and legislatures to impose more restrictions on firearms, they turned to creative litigation that sought massive damages awards and sweeping injunctive relief. The lawsuits effectively sought to "regulate" the firearms industry "through judgments and judicial decrees," threatening "the Separation of Powers," "federalism," and "State sovereignty." *Id.*

Even if unsuccessful on the merits, the activists behind these suits understood that the litigation process was the punishment: It could inflict massive "legal fees" that "alone" would be "enough to bankrupt the industry." House Report, at 11-12. Congress thus made clear that such suits could not even be "brought," and that any existing suits had to be "immediately dismissed." 15 U.S.C. § 7902(a), (b).

B. Mexico's Lawsuit.

The Mexican government filed suit in 2021, seeking to hold Petitioners—seven major manufacturers, and one wholesaler—liable for a range of costs it has incurred as a result of Mexican drug cartels committing crimes in Mexico using allegedly smuggled firearms that were originally made and sold by Petitioners in the United States. The complaint details the many "costs" of cartel violence, as well as "resources" Mexico has devoted to address that issue. Pet.App.167a-69a (¶¶ 448-49). In particular, Mexico has had to increase spending on "health care, law enforcement and military [] services, criminal justice administration, public assistance," and similar public programs. *Id.* ¶ 447. It has also suffered economic losses, such as diminished property values and a depressed national workforce. *Id.* ¶¶ 448-49.

The complaint does not allege that Petitioners have engaged in any coordinated activity with the cartels, but instead says they have "facilitated" cartel activities through a multi-step causal chain: (1) As federally licensed manufacturers, Petitioners sell firearms to independent federally licensed distributors in the United States; (2) those distributors sell the firearms to independent federally licensed dealers in the United States; (3) some of those dealers engage in unlawful firearm sales to illicit third-party buyers in the United States; (4) some of those firearms are then illegally smuggled into Mexico; (5) some of those smuggled firearms end up with the cartels; (6) some of those cartel firearms are then used in violent crimes in Mexico; (7) which then injure people and property in Mexico; (8) thus causing harms to the Mexican government. Pet.App.79a-145a.

Although Mexico's suit admittedly seeks to recover for harms resulting from third-party criminal misuse of firearms, its primary argument in the courts below was that PLCAA did not apply at all, because applying the statute to a suit by a foreign sovereign would be impermissibly "extraterritorial[]." Pet.App.233a. As a backup, Mexico argued that its claims fit within some of PLCAA's narrow exceptions based on Petitioners' alleged violations of law. For example, it claimed that Petitioners' manufacturing of popular semi-automatic rifles violated the federal ban on machineguns—a claim it has since abandoned. *Id.* 102a (¶ 308). It also alleged Petitioners "aid and abet the killing and maiming of children, judges, journalists, police, and ordinary citizens throughout Mexico" by facilitating unlawful firearm sales in the United States. *Id.* 12a (¶ 15). The complaint alleged that Petitioners are accomplices to such sales because they sell to "any and all Federal Firearms Licensees—anyone with a U.S. federal license to sell guns"—and have failed to do enough to stop a subset of these sellers from engaging in illicit sales. *Id.* 79a (¶ 228).

The complaint acknowledges that the vast majority of firearms sales in this country are by law-abiding dealers to law-abiding Americans. *Id.* 44a (¶ 119). But it alleges that Petitioners are aware that a small fraction of the sales made by licensed dealers in the United States are unlawful. *Id.* And it says that they are further aware that an even smaller fraction of these unlawful sales end up in Mexico, where they join a sizable supply of other firearms made by other firearm companies (and in other countries) that the cartels use to commit crimes. *See id.* 44a, 158a-59a (¶¶ 119, 434-35, 438).

The complaint accepts that Petitioners are distinct from downstream retail dealers. Those dealers are independent licensed sellers at the end of a three-tier distribution chain. That chain generally runs from licensed manufacturers, who sell to independent licensed wholesalers, who sell to independent licensed dealers. *Id.* 140a (¶¶ 378-79). And again, Petitioners here are seven manufacturers, plus one wholesaler that primarily caters to law-enforcement departments. *See id.* 16a-21a (¶¶ 31-41), 120a (¶ 330).

Mexico nevertheless alleges Petitioners have failed to adopt policies that would curb unlawful firearm sales by dealers—either by dampening demand or better policing buyers. These claims all fit the same mold. For instance, Mexico faults some Petitioners for continuing to make what it calls "assault weapons," or those able to hold "large-capacity" magazines—both of which Mexico says are popular among criminals. Pet.App.93a-95a (¶¶ 280-82). Likewise, Mexico blames Petitioners for not imposing their own array of restrictions on downstream retailers or buyers—such as requiring them to show some "legitimate need" before buying an AR-15. *Id.* 104a (¶ 315).

Because Petitioners allegedly know that some downstream dealers make unlawful sales, and because they have failed to adopt measures to stop such sales, Mexico alleges that they are an "accessory" to those sales. Namely, Petitioners "continue[] to supply, support, or assist" those sales—*i.e.*, they have continued longstanding manufacturing and distribution practices—even with the "knowledge" that some criminals have been able to exploit the status quo, leading to a flow of firearms being smuggled into Mexico. *Id.* 42a (¶ 110); BIO 25-26.

Based on these allegations, Mexico asserts a wide variety of claims, primarily under Mexican tort law (which it insists should apply). *Id.* 183a-95a (¶¶ 506-60). The complaint seeks $10 billion in damages. *See id.* 195a-96a. It also requests transformative injunctive relief, *id.*—including, among much else, a ban on "assault weapons"; a ban on firearms capable of holding "large-capacity magazines"; strict limits on "multiple sales" of firearms; and far-reaching background checks, beyond what American law now requires. *See, e.g.*, *id.* 83a-84a, 132a-34a, 140a-41 (¶¶ 245, 369, 379-84).

C. The Decisions Below.

The district court dismissed Mexico's suit in full. The court first rejected Mexico's "extraterritoriality" argument, holding that PLCAA fully applies to suits brought by foreign sovereigns in American courts against American firearms companies based on their domestic operations in the United States. Pet.App.233a-239a. The district court further held that Mexico's case is "exactly" the "type of action" PLCAA was passed to prevent, and that the suit had to be "immediately" dismissed. Pet.App.232a-33a.

The First Circuit reversed. It agreed with the district court in rejecting Mexico's extraterritoriality argument. *Id.* 293a. But it agreed with Mexico's fallback argument that its claims could nevertheless proceed because they satisfied PLCAA's predicate exception. *Id.* 293a-94a.

In particular, the First Circuit held that Petitioners' alleged longstanding business practices violated the federal ban on "aiding and abetting" the unlawful sale of firearms by independent licensed

dealers. The court acknowledged that, "of course," Mexico did "not allege defendants' awareness of any particular unlawful sale." *Id.* 305a. But it noted that Petitioners "can identify" the downstream dealers that "are responsible for the illegal sales" of firearms that end up in Mexico. *Id.* 301a. And it quoted this Court's decision in *Twitter* that "a secondary defendant's role in an illicit enterprise can be so systemic that the secondary defendant is aiding and abetting every wrongful act committed by that enterprise." *Id.* 306a (quoting *Twitter*, 598 U.S. at 496). The court then held that Petitioners fit that description, because they "operate at a systemic level, allegedly designing, marketing, and distributing their guns so that demand by the cartels continues to boost sales," making them complicit in dealers' unlawful sales. *Id.*

The First Circuit also held that the complaint satisfied proximate cause because Petitioners' alleged "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," and to incur related costs. *Id.* 311a.

While the petition for certiorari was pending, the district court dismissed six of the eight defendants for lack of personal jurisdiction. Dct.Dkt.220. This Court then granted certiorari. Undeterred, Mexico moved the district court for partial final judgment under Rule 54(b) so it could appeal that personal-jurisdiction ruling. That court, however, stayed proceedings to await this Court's decision. Dct.Dkt.228.

SUMMARY OF ARGUMENT

I. To qualify for PLCAA's predicate exception, the defendant's allegedly unlawful conduct must be "a proximate cause" of the plaintiff's asserted injuries. Here, Mexico relies on an eight-step causal chain—peppered by independent criminal actors and derivative sovereign harms—to try to link the lawful production and sale of firearms within the United States to the chaos ravaging Mexico courtesy of its drug cartels. If this attenuated theory of liability satisfies proximate cause, that term has no meaning.

A. PLCAA incorporates the traditional principle that proximate cause means direct cause. And a causal chain is not direct when it is interrupted by an independent act carried out by an independent actor—much less *multiple* independent acts, and even less multiple *crimes*. Accordingly, the general rule is that a company that makes or sells a lawful product is not a proximate cause of harms resulting from third parties' independent criminal misuse of that product, because *that* independent misuse is the direct cause—not the creation and distribution of the lawful product.

B. Mexico's causal chain here is extraordinarily indirect. It rests on independent act after independent act, crime after crime, spanning an international border, all to link Petitioners' conduct in this country to the mayhem south of the border. That stretches proximate cause far beyond anything this Court has seen. Indeed, if Mexico can establish proximate cause here, it is impossible to see who cannot—to the peril of virtually every industry. But the central function of proximate cause is to maintain the floodgates of liability. Mexico's lawsuit would bomb the levees.

C. Mexico tries to salvage its complaint from its many infirmities, but it cannot escape the attenuated nature of its suit. In the main, Mexico tries to cut a few links from its causal chain by arguing that its relevant starting point is not Petitioners' own conduct, but rather the unlawful sale of firearms by downstream dealers. Yet that runs headlong into PLCAA's text, which expressly authorizes claims only when a firearm company's *own* "violation" of the law proximately harmed the plaintiff. And here, that alleged violation is aiding and abetting—not any later offense.

But even if Mexico were right—and the causal chain began at unlawful sales by independent dealers—it would still fall far short of satisfying proximate cause. Even on this framing, some of those sales would still have to get illegally smuggled into Mexico by independent criminals, where some would then illegally end up with the cartels, who then would use some to commit crimes in Mexico, which *then* would cause financial harms to Mexico's government. So even on its preferred terms, Mexico's chain must be dragged across an international border and carried by a cast of independent criminals committing a bevy of independent crimes. However one cuts it, Mexico's theory of causation is far too indirect.

II. PLCAA's predicate exception also requires that a firearms company violate a firearms-specific statute. Here, Mexico says Petitioners' longstanding and strictly regulated business practices amount to aiding and abetting every unlawful sale of their products by independent firearms dealers downstream. That theory is as wrong as it sounds.

A. Aiding-and-abetting liability requires culpable misconduct—*i.e.*, some affirmative act taken for the purpose of assisting the commission of a crime. Typically, accomplice liability is tied to a specific unlawful act. In rare cases, one can be an accomplice to an unlawful criminal enterprise—on the hook for *all* its misdoings. But for such sweeping liability to attach, the support must be pervasive and systemic.

Manufacturers and suppliers are not guilty of "aiding and abetting" downstream crimes when they do nothing but make and sell lawful products in the ordinary course. Every business knows its products may be misused—even criminally so—by customers downstream. But such knowledge has never been enough to generate criminal liability, lest the entire economy grind to a halt. Instead, courts have long held that businesses are not accomplices to the criminal misuse of their products unless they take some atypical action for the purpose of assisting a crime. And no court has ever held that the routine practices of a lawful industry can constitute the kind of pervasive and systemic aid required for a business to be categorically liable for *all* its customers' crimes.

B. Mexico has not unearthed a decades-long aiding-and-abetting scheme. To start, Mexico admits its suit is not tied to any specific unlawful sale—for example, it does not allege that any Petitioner sold a particular firearm knowing it would be unlawfully sold or otherwise misused in some specific unlawful act. Instead, Mexico's theory is premised on Petitioners assisting unlawful firearm sellers *writ large*. Mexico thus must allege *pervasive and systemic* assistance on the part of the firearms industry to substantiate its aiding-and-abetting claim.

This it cannot do. Mexico's suit rests on nothing but Petitioners' routine business practices. Indeed, that is the whole point: It is a challenge to the industry's refusal to go beyond what American firearms laws require, by adopting policies Mexico thinks would stem unlawful downstream sales. But failing to adopt measures to make *others* follow the law does not make one complicit in their illegal actions. And where, as here, a lawful industry simply continues to supply a lawful product in an ordinary manner, its decision to stay the course cannot turn it into an accomplice.

C. Mexico says that its case is different, because Petitioners know the identities of some downstream bad-actor dealers, and have chosen not to purge them from the supply chain. But that is just wrong: Again, the complaint does not allege facts showing a single Petitioner has knowingly sold a single firearm to a single dealer actually engaged in illicit sales. But even if Petitioners did know the identity of some independent federally licensed dealers who sometimes made unlawful sales, failing to take affirmative steps to purge those dealers from downstream supply chains would still not make Petitioners criminal accomplices—just as failing to cut off college-town bars does not make a felon out of Budweiser, and failing to purge ISIS-related accounts was not enough for liability in *Twitter*. When the manufacturer or supplier of a lawful product simply puts its product in the general stream of commerce, the aiding-and-abetting statute does not charge that business with broadly policing every bad actor who may pick up its products downstream.

ARGUMENT

I. AMERICAN FIREARMS COMPANIES ARE NOT A PROXIMATE CAUSE OF MEXICO'S INJURIES.

To satisfy PLCAA's predicate exception, a plaintiff must show that a firearms company's illegal conduct was "a proximate cause" of its alleged harms. 15 U.S.C. § 7903(5)(A)(iii). Mexico alleges that Petitioners' manufacturing and sale of firearms in the United States has led to violent cartel crime in Mexico, ultimately resulting in a variety of costs borne by the Mexican government.

Mexico's suit falls far short of what proximate cause demands. Proximate cause means *direct* cause. And when a causal chain depends on independent acts done by independent actors (let alone criminals), it is plainly *indirect*. The rule has thus long been that the manufacturer or distributor of a lawful product is not a proximate cause of the product's independent criminal misuse. And PLCAA incorporated that rule for the very purpose of barring suits like this one.

A. Proximate Cause Means Direct Cause.

The essential demand of proximate cause is a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). As Justice Holmes put it a century ago, the "general" rule has long been that proximate cause does not permit recovery for an injury that is "beyond the first step" of a causal chain. *Id.* at 271 (quoting *S. Pacific Co. v. Darnell-Taenzer Co.*, 245 U.S. 531, 533 (1918)). That traditional understanding controls under PLCAA. And since Mexico's attenuated theory of injury is anything but direct, it is squarely barred.

1. Proximate cause distinguishes *de facto* from legal causation. *See Pac. Ops. Offshore, LLP v. Valladolid*, 565 U.S. 207, 221-22 (2012). The law does not permit a "judicial remedy" for "every conceivable harm that can be traced to alleged wrongdoing." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014). After all, illegal acts always "cause ripples of harm [that] flow far beyond" their immediate object. *Bank of America Corp. v. City of Miami*, 581 U.S. 189, 202 (2017). But liability has never followed "wherever those ripples travel." *Id.*; *see Waters v. Merchants' Louisville Ins. Co.*, 11 Pet. 213, 223 (1837). As Justice Scalia colorfully put it, "'for want of a nail, a kingdom was lost,' is a commentary on fate, not the statement of a major cause of action against a blacksmith." *Holmes*, 503 U.S. at 287 (Scalia, J., concurring in the judgment).

From many *de facto* causes, only proximate ones count. And only "direct" causes are proximate. *Holmes*, 503 U.S. at 268; *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 732 (1995) (Scalia, J., dissenting); 1 Thomas M. Cooley, *A Treatise on the Law of Torts* § 50, at 108 (4th ed. 1932).

In policing the line between direct and indirect harm, this Court has emphasized that "foreseeability alone does not ensure the close connection that proximate cause requires." *Bank of America*, 581 U.S. at 202; *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 12 (2010). "If one takes a broad enough view, all consequences of a negligent act, no matter how far removed in time or space, may be foreseen. Conditioning liability on foreseeability, therefore, is hardly a condition at all." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 552-53 (1994).

Rather, the "general" rule is that a direct cause is limited to the "first step" in a causal chain. *Lexmark*, 572 U.S. at 139-40. If multiple steps stand in between the conduct and the harm, then the connection becomes too "remote," "contingent," and "indirect" to satisfy basic proximate cause. *Hemi*, 559 U.S. at 9-10.

2. The "central question" is thus "whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Basic Steel Supply Corp.*, 547 U.S. 451, 461 (2006). Where the causal chain rests on independent acts, the answer is almost always no. *See Assoc. Gen. Contractors of Cal., Inc. v. California State Council of Carpenters*, 459 U.S. 519, 532 n.25 (1983).

Intuitively so. Something is "direct" when it is uninterrupted; and it is "indirect" when "other, independent, factors" punctuate the chain. *Holmes*, 503 U.S. at 268-69. So when a causal chain involves "separate actions carried out by separate *parties*," it lacks continuity, and is thus typically deficient. *Hemi*, 559 U.S. at 11; *see Assoc. Gen.*, 459 U.S. at 541 n.46.

To be sure, proximate cause sometimes allows for multi-link chains where those links are uninterrupted by *independent* action. A good example is the Lanham Act, which allows a company to sue another for false advertisements, which cause reduced sales due to "consumers who are deceived by the advertising." *Lexmark*, 572 U.S. at 133. Proximate cause is still met because there is no discontinuity in the chain—*i.e.*, there is no *independent* intervening act separating the unlawful act from the victim's harms, since no consumer freely chooses to be deceived. *Cf. id.* at 139-40; *see Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 658 (2008) ("no independent factors" in chain).

But absent such direct connections, proximate cause does not allow multi-step chains. "A proximate cause of an injury is one which, in a natural and continuous sequence, without any efficient intervening cause, produces the injury." Dobbs, *The Law of Torts* § 201 (2d ed. 2024). The chain must "constitute a continuous succession of events, so linked together as to make a natural whole," free of any "new and independent cause intervening between the wrong and the injury." *Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876).

3. There is no doubt this traditional rule controls under PLCAA. *See Lexmark*, 572 U.S. at 133 (the "[p]roximate-cause analysis" is shaped by the "nature" of the statutory scheme at issue). Congress believed the problem with the suits being filed by U.S. cities and others was that they all rested on remote causal chains that were too indirect to satisfy proximate cause. 15 U.S.C. § 7901(a)(7). And it sought to adopt the "common-sense traditional rule [] that manufacturers and sellers should not be held liable for the criminal or unlawful misuse of their products." House Report, at 6-17; *see* 15 U.S.C. § 7901(b)(1).

In PLCAA's text, Congress thus made proximate cause an express requirement. For a manufacturer or seller to be sued, it must have committed a "violation" that is "a proximate cause" of the alleged harm. 15 U.S.C. § 7903(5)(A)(iii). When Congress uses a common-law term in a statute, it "brings the old soil with it." *Sekhar v. United States*, 570 U.S. 729, 733 (2013). And with PLCAA, the whole idea was to use this old soil to build up barriers against excessive liability.

Accordingly, Congress made proximate cause a threshold demand of *federal* law, in order to stop the "expansion of liability" by novel *state*-law tort suits. 15 U.S.C. § 7901(a)(7); *see id.* § 7901(b)(1), (a)(3), (a)(5), (a)(8). For any claim to advance, Congress made sure it would first have to satisfy the traditional standard for proximate cause as codified in federal law. *Cf. Lexmark*, 572 U.S. at 132 (collecting laws where this standard applies). Entrenching this fixed standard in federal law provides a bulwark against creative innovations by state courts, and ensures that liability remains limited to cases of *direct* causation, as it has for "hundreds of years of the common law." 15 U.S.C. § 7901(a)(7).

To the extent there is any doubt about how this applies in practice, recall Congress passed PLCAA not as a prophylactic measure, but as a response to real suits (quite similar to this one). 15 U.S.C. § 7902(b) (requiring existing suits be dismissed). And Congress specifically called out those that "br[o]ke from bedrock principles of tort law and expose[d] firearm manufacturers to unprecedented and unlimited liability"—suits that pressed near-identical claims as those here (but absent the *further* step of spanning an international border). House Report, at 11-12 & n.48. On the flipside, Congress also collected cases where courts properly applied proximate cause. *Id.* at 6-10 (citing *City of Philadelphia v. Beretta*, 126 F. Supp. 2d 882 (E.D. Pa. 2000)). In sum, Congress agreed that "the relationship between a tortious act and actual injury historically must be direct, not remote"—and passed PLCAA so that this traditional rule would govern as a matter of federal law. House Report, at 13-14 (relying on *Holmes*).

B. Mexico's Injuries Are Indirect.

Mexico's suit is far more attenuated than the suits that prompted PLCAA in the first place, and does not come close to satisfying traditional proximate cause.

1. The sheer number of links in Mexico's causal chain is more than enough to defeat proximate cause.

a. Mexico's causal chain has eight links, punctuated by independent acts done by independent actors. To recap: (1) Federally licensed manufacturers sell firearms to federally licensed wholesalers; (2) those wholesalers sell to federally licensed dealers; (3) a *fraction* of those dealers engage in unlawful sales; (4) a *fraction* of those illegally sold firearms are trafficked into Mexico; (5) a *fraction* of those trafficked firearms end up with the cartels; (6) a *fraction* of those firearms are used by the cartels for crimes; (7) a *fraction* of those crimes injure people and property in Mexico; and (8) Mexico's government then spends funds to respond to the fallout, causing it fiscal injuries.

Mexico does not deny this causal chain involves the free choices of many third parties: dealers, straw purchasers, traffickers, smugglers, and cartel members. Mexico also does not allege that any Petitioner controls, directs, or coordinates the conduct of these third parties. Instead, on Mexico's own account, all of these choices—the selling, buying, trafficking, crime, and more—are purely the independent choices of independent actors.

This Court has "never before stretched the causal chain" to cover such independent action—and has indeed rejected far more modest attempts to do so. *See Hemi*, 559 U.S. at 11. For instance, in *Hemi*, New York City tried to bring a RICO suit against an out-of-state

cigarette seller. Its theory: The seller failed to send reports to the state about those it had shipped to (as required by federal law), which later impaired the city's ability to collect the taxes it levied on the possession of cigarettes, costing it revenue. *Id.* at 5-6.

This Court held that proximate cause was lacking. Critically, the "conduct directly causing the harm"—the nonpayment of taxes—"was distinct from the [company's] conduct"—its failure to transmit certain reports. *Id.* at 11. And in between, "the City's theory of liability rest[ed] not just on separate *actions*, but separate actions carried out by separate *parties*." *Id.* That did not work: Since the "City's theory of liability rest[ed] on the independent actions of third and even fourth parties," it was far too attenuated. *Id.* at 15; *see Anza*, 547 U.S. at 458-61; *Assoc. Gen.*, 459 U.S. at 542.

Bank of America offers an instructive roadmap too. There, Miami sued two national banks for allegedly issuing worse mortgages to certain minority groups, which prompted greater defaults and foreclosures, which decreased property values, which all ultimately resulted in homeowners paying lower property taxes to the city's government. 581 U.S. at 193-94.

The Court reserved the proximate cause question, but Justice Thomas (along with Justices Kennedy and Alito) answered it with a resounding no. Miami's mere *four-step* chain was "exceedingly attenuated." 581 U.S. at 212 (Thomas, J., concurring and dissenting in part). It was riddled by "independent events," distinct from the defendants' conduct. *Id.* And those independent acts made Miami's financial injuries "too remote" for proximate cause. *Id.* at 213.

Applying the same principles, lower courts consistently rejected this type of suit even before PLCAA. Cert. Petn. 15-18. Most notably, the Third Circuit rejected a suit by Philadelphia alleging that the same longstanding practices by the firearms industry "create[ed] and contribut[ed] to [the] criminal use" of firearms in that city. *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 419 (3d Cir. 2002). The court dismissed, holding the causal chain "from the manufacturer to Philadelphia streets" was too "long and tortuous." *Id.* at 423.

This is a simple case under these precedents. Mexico's *eight-step* causal chain is more attenuated than anything this Court has seen. *See Hemi*, 559 U.S. at 11. It rests on independent act after independent act, spanning an international border to boot. And *every* injury alleged here is the result of one of those distinct actions against a foreign sovereign in a foreign land. Each such act alone is enough to sever the causal chain; together, they shatter it.

b. All the more so, because many of those acts are *crimes*. Again, the purpose of proximate cause is to assign "responsibility" among possible liable actors. Dobbs, *supra*, at § 198. And when an injury is the result of an independent *criminal* act, the law assigns responsibility to the criminal—not an upstream party with no control over him. *Id.* § 209; *see* Restatement (Second) Torts § 302B cmts. d-e. Thus, when a causal chain relies on an independent criminal act—let alone *multiple* ones—it virtually never satisfies proximate cause. *See Hemi*, 559 U.S. at 11 (emphasizing how intervening cause involved a breach of "legal[] obligat[ion]"); *see also, e.g.*, *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 393 (7th Cir. 2018).

To be sure, this common law rule has some narrow exceptions. When there is a "special relationship"—*e.g.*, bailor-bailee, caregiver-child, landlord-tenant—then a party may be liable for harms caused by a third party. *See* Dobbs, *supra*, at § 209. The rationale is that when a party owes a legal "duty" to another to protect it against certain harms (which may include criminal acts), proximate cause should not stand in the way of liability—and must excuse an otherwise intervening act. *Id.*; *see, e.g.*, *Moon v. First Nat'l Bank of Benson*, 135 A. 114, 115 (Pa. 1926) (bailor who placed property in insufficiently secure place liable after thief stole it).

But there is zero "special relationship" between firearms companies and sovereigns—let alone *foreign* sovereigns—that obligates the companies to protect them from third-party crimes. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 640-41 (D.C. 2005). "[G]un manufacturers are under no legal duty to protect citizens from the deliberate and unlawful use of their products." *Philadelphia*, 277 F.3d at 425; *see* House Report, at 7-9. Rightly so: As in any industry, there is no duty for a manufacturer or seller of a lawful product to protect others from its criminal misuse. *E.g.*, *Stahlecker v. Ford Motor Co.*, 667 N.W.2d 244, 254-57 (Neb. 2003).

Put together, then, the general rule is clear: The manufacturer or seller of a lawful product is not a proximate cause of its independent criminal misuse. *City of Chicago v. Beretta, U.S.A., Corp.*, 821 N.E.2d 1099, 1136-37 (Ill. 2004); *see District of Columbia*, 872 A.2d at 650-51. Absent some special relationship or legal duty, an independent criminal act breaks the causal chain. The responsible party is the criminal who inflicts the harm—not anyone else.

These principles doom Mexico's theory of causation. Mexico depends on a legion of third-party criminals: Bad-actor dealers; illicit buyers; gun traffickers; smugglers; cartel members; etc. Mexico cannot even allege the actual number of such actors involved. And once more, Mexico does not allege any Petitioner has any control, direction, or relation to these unknown and unknowable third parties. Instead, Mexico relies on crime after crime—by independent criminal after independent criminal—to try to connect Petitioners' conduct to Mexico's harms. That does not work.

2. This Court has also looked to other factors to see if a causal chain is too indirect. All cut the same way.

a. One sign that a causal chain is too attenuated is that ascertaining damages and liability would be unworkable. *Anza*, 547 U.S. at 458-60. After all, "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Holmes*, 503 U.S. at 269. When a downstream injury is the product of multiple intertwined factors, that is a telltale sign of indirectness. *See Lexmark*, 572 U.S. at 135, 140.

That is this case in spades. Mexico marshals a parade of bad actors—dealers, smugglers, cartels—who drive the bedlam south of the border. But there is no way to apportion fault among them, or to isolate the causal role Petitioners play. Mexico admits the vast majority of firearm sales in the United States are lawful; that most firearms recovered in Mexico were not made or sold by Petitioners; and that Mexico is swamped by other firearms from other companies. Pet.App.44a, 158a-59a (¶¶ 119, 434-35, 438).

The problem is compounded by the nature of Mexico's alleged injuries. Mexico's principal injuries are higher governmental expenditures—on security, healthcare, social services, and the like. BIO 6, 20-21. To determine damages, a court would need to go line-by-line through Mexico's federal budget and assess for itself which spending increases are attributable to Petitioners, versus the countless other causes that can drive governmental spending in Mexico. That is not the stuff of judicial competency. But it is a flashing indicator of a woefully indirect theory of liability.

b. Another consideration is whether the alleged injuries are direct or derivative. If derivative, there are typically "better situated plaintiffs" (direct victims) who can bring more appropriate litigation to address any allegedly wrongful action by a defendant. *Hemi*, 559 U.S. at 11-12; *Holmes*, 503 U.S. at 269-70.

And that is clearly the case here: Victims in Mexico can sue the criminals in Mexico who have actually injured them. That is what U.S. courts have said when U.S. cities filed analogous suits. *Philadelphia*, 277 F.3d at 425. And it is the basic policy judgment Congress made in PLCAA. *See* 15 U.S.C. § 7901(a)(5).

By contrast, most if not all of Mexico's alleged harms derive from violence visited *on its citizens*. But this Court has repeatedly held an "alleged harm" is "ordinarily" too attenuated "if the harm is purely derivative of misfortunes visited upon a third person by the defendant's acts." *Lexmark*, 572 U.S. at 133. That makes good sense: By definition, a derivative harm is (at least) one step removed, making it indirect.

To that end, the reason a derivative harm flunks proximate cause is *not* because it is unforeseeable. Derivative injuries are often predictable. For example, it is easy to foresee that shuttering a business through illegal action (*e.g.*, extortion) will harm its landlord, who will lose the business's rent. But it is nevertheless black-letter law that the landlord's injuries are too far removed to count—lest our tort system become one of unlimited liability. *See Apple v. Pepper*, 587 U.S. 273, 291 (2019) (Gorsuch, J., dissenting).

On Mexico's view, however, it is hard to see who *cannot* recover. There are plenty of people who suffer follow-on harms from the cartels, including in ways more direct than Mexico—companies lose employees, businesses lose customers, and yes, landlords lose rent. But there is no sound argument that any of those parties can come close to satisfying proximate cause. *See Bank of America*, 581 U.S. at 212-13 (Thomas, J., concurring and dissenting in part). And there is no reason why the Mexican government is any different.

C. Mexico's Contrary Arguments Fail.

In opposing certiorari, Mexico barely defended the First Circuit's proximate-cause analysis, which improperly conflated proximate cause and foreseeability. *See* Pet.App.309a-19a. Instead, Mexico raised three main arguments to try to salvage its complaint from its obvious proximate-cause infirmities. None persuade.

First, Mexico argues that the relevant criminal "violation" that starts the causal chain is not Petitioners' own conduct, but the "unlawful firearm sales" involving their products. BIO 15, 22. That is wrong. By its terms, PLCAA's predicate exception

allows claims "in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and *the violation* was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). This makes clear that "the" relevant "violation" is the one committed by the "manufacturer or seller" being sued—and *that* violation must be the proximate cause of the injury.

Here, Mexico claims that Petitioners violated the aiding-and-abetting statute. For purposes of the predicate exception, the analysis thus turns on whether Petitioners' *alleged violative conduct—i.e.*, their routine production and sale of firearms in this country (which are later resold by bad-actor dealers and others)—is a proximate cause of Mexico's alleged injuries. And as detailed above, the answer is no.

In any event, even if the causal chain starts with unlawful sales by dealers, those violations still are not a proximate cause of Mexico's diffuse harms. Indeed, *numerous* independent crimes continue to stand between any unlawful sales in America and Mexico's alleged injuries abroad: A fraction of those sales must first be illegally smuggled into Mexico (versus used for any other purpose in America); then a fraction of those illegally smuggled firearms must be illegally given to cartels (versus other users); then a fraction of those firearms must be used to commit violent crimes (versus other ends); and then Mexico must choose how to spend funds in response, incurring fiscal harms.

In short, even on its preferred framing, Mexico's causal chain still stretches across an international border and is punctuated by multiple independent

criminal acts carried out by a series of independent criminals, leading to follow-on injuries suffered by a foreign sovereign. No case has ever found proximate cause on such a remote chain of events.

Second, Mexico insists its multi-link chain should be excused because Petitioners' conduct is "integral" to the cartels' activity. BIO 22-23. But that conflates *de facto* causation (the fact that Petitioners are indirect suppliers) with proximate causation (whether they are directly responsible for Mexico's derivative injuries due to cartel violence). As discussed, this Court has allowed multi-link chains only where there is no "discontinuity" rendering them "indirect." *Lexmark*, 572 U.S. at 140. So in *Lexmark*, this Court allowed a direct competitor of the defendant to sue for false advertisements that caused it to "automatically" suffer a loss in sales. *Id.*; *see also Bridge* 553 U.S. at 647-48 (allowing a similar "straightforward" theory).

But as this Court has explained, the defining trait in those "relatively unique circumstances," *Lexmark*, 572 U.S. at 140, was the absence of any "independent actions" that would break the causal chain, *Hemi*, 559 U.S. at 15. Here, by contrast, Mexico's theory is saturated with such independent links.

Third, Mexico says that PLCAA demands a *looser* version of proximate cause, because Congress wanted some plaintiffs to be able "to recover for harms caused in part by third-party conduct." BIO 23. But as explained, watering down proximate cause was quite literally the opposite of what Congress sought to do with PLCAA. And in portraying Petitioners' position as foreclosing all potential liability, Mexico shoots at a strawman. Nobody is saying PLCAA cuts off liability

for a company engaged in *coordinated* criminal activity: If a convicted felon comes into a firearm store asking for the best firearm to rob a bank, and the seller recommends and furnishes one to assist in the robbery, then that third-party crime is not *independent* from the seller. The seller is criminally liable for participating in the crime and is on the hook for the direct consequences. *See* 15 U.S.C. § 7903(5)(A)(iii); 18 U.S.C. § 922(g). By contrast, Mexico's alleged causal chain here involves *independent* criminal activity in which Petitioners played no role. And *that* sort of conduct is what defeats proximate cause. Indeed, the purpose of PLCAA—and the reason it expressly added a proximate-cause requirement—was to ensure the industry would not be held liable for the independent crimes of third parties. But that is exactly what Mexico is trying to accomplish here.

II. PETITIONERS ARE NOT GUILTY OF AIDING AND ABETTING ANY FIREARMS CRIME.

To satisfy PLCAA's predicate exception, a plaintiff also must show that the defendant committed a "violation" of a firearm-specific statute. 15 U.S.C. § 7903(5)(A)(iii). For this, Mexico claims that Petitioners' ordinary business practices violate the federal criminal ban on aiding and abetting illicit firearm sales by downstream dealers. BIO 27.

Importantly, Mexico does not argue that any Petitioner has itself broken any American law, rule, or regulation specifically governing the manufacture or sale of firearms. Nor does Mexico allege that any Petitioner is even "aware" of any "particular unlawful sale." Pet.App.305a. Rather, Mexico maintains that

Petitioners are accomplices to downstream dealers who choose to sell their firearms illegally, because Petitioners are generally aware that some dealers will engage in such sales, and Petitioners have failed to go *beyond* what the American firearms laws require in order to counteract those third-party criminal acts.

That is not aiding and abetting. A business that does nothing more than make or sell a product in the ordinary course is not an accomplice to downstream actors who later sell or misuse that product illegally. And the supplier of a lawful product does not become a criminal simply because it refuses to take additional affirmative steps to stop third parties from using the product to commit a crime. This Court reaffirmed that longstanding rule in *Twitter*, and it settles this case.

A. Aiding and Abetting Requires Culpable Misconduct, Not Business As Usual.

Aiding and abetting requires culpable misconduct—*i.e.*, something done for the purpose of assisting a criminal offense. But where a business does nothing more than engage in routine business practices—like broadly putting a good to market, or offering a general service—it does not become an accomplice to independent downstream criminals who later misuse that product, even if the business is aware such criminal misuse is possible. Something more is needed, lest every industry become liable as an accomplice to the misdeeds of its customers—punishable by felony.

1. Aiding and abetting "reflects a centuries-old view of culpability: that a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission." *Rosemond v.*

United States, 572 U.S. 65, 70 (2014). Federal law incorporates that view, making accomplices and principals equally "punishable." 18 U.S.C. § 2(a).

Aiding and abetting has both an objective and a subjective component. An accomplice must take some "affirmative act" to assist a criminal offense, and also do so with the "intent of facilitating the offense's commission." *Twitter*, 598 U.S. at 490. Together, aiding-and-abetting law requires "that a defendant 'in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed.'" *Id.* (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (Hand, J.)).

But the doctrine has strict limits. As for the objective component, "the concept of 'helping' in the commission of a crime . . . has never been boundless." *Id.* at 488. The law has long distinguished between those who "incidentally facilitate a criminal venture" and those who "actively participate in it." *Rosemond*, 572 U.S. at 77 n.8. Thus, "generally"—absent some legal duty displacing the ordinary rule—the law "does not impose liability for mere omissions, inactions, or nonfeasance." *Twitter*, 598 U.S. at 489. Rather, the "conceptual core" of aiding-and-abetting liability is "conscious[] and culpable participa[tion]." *Id.* at 493.

As for its subjective component, aiding and abetting has also differentiated awareness from intent. The "mere knowledge" that one's actions may assist a criminal scheme is insufficient. *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943). A criminal accomplice must act *with the intent* of assisting a criminal offense. *Twitter*, 598 U.S. at 490.

2. The type of support required also turns on the theory of liability. "[A]iding and abetting is inherently a rule of secondary liability for *specific* wrongful acts." *Twitter*, 598 U.S. at 494 (emphasis added). Thus, the heartland case involves intentional aid to a specific crime—a particular, identified wrong. *Id.*

In rare circumstances, a "secondary defendant's role in an illicit enterprise can be so systemic that the secondary defendant is aiding and abetting every wrongful act committed by that enterprise." *Id.* at 496; *see Halberstam v. Welch*, 705 F.2d 472, 488 (D.C. Cir. 1983). But because this theory of liability effectively "blur[s]" the line between "conspiracy liability" and "aiding-and-abetting liability," it requires a markedly greater showing. *Twitter*, 598 U.S. at 496. To be on the hook for *everything* an illicit enterprise does, a defendant must provide such "pervasive, systemic, and culpable assistance," to infer a "near-common enterprise" with the primary criminal(s). *Id.* at 502.

3. The limits on aiding and abetting are especially important when it comes to manufacturers and suppliers of lawful goods. After all, almost every business knows its products may be misused—including by criminals: Beer companies know drinks will be sold to minors; car companies know their vehicles will be driven recklessly; and pharmaceutical companies know their medicines will be abused.

But "aiding-and-abetting liability" has never been extended so "far" as to make "ordinary merchants . . . liable for [the] misuse of their goods and services." *Twitter*, 598 U.S. at 489. Courts have regularly held that making or selling a lawful product—even when aware it may be criminally misused—is not sufficient.

Id. at 488, 501 & n.14. As the United States recently put it: Liability does not naturally attach where "a defendant provided only routine business services in an ordinary manner, was remote from the unlawful act that injured the plaintiff, or is accused of aiding and abetting another's conduct through inaction." *Amicus Curiae* Brief for the United States, 11-12, *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (No. 21-1496).

To prevent a pall of prosecution being draped over the economy, courts have long drawn an objective line, differentiating lawful businesses that engage in "routine" conduct from those that engage in "atypical" conduct to help a crime succeed. *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991) (cited by *Twitter*, 598 U.S. at 490-92). Only the latter is the sort of culpable misconduct that establishes accomplice liability. If a merchant is engaged "in the ordinary course of his business," it is not enough that he has a "general awareness" that his products may facilitate crimes downstream. *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 95 (5th Cir. 1975) (cited by *Twitter*, 598 U.S. at 491). Maintaining "routine" business practices is the sort of "passive" inaction that is treated as innocent rather than innately "culpable"; a business must break from the norm to become guilty as an accomplice. *Twitter*, 598 U.S. at 491.[1]

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[1] *See, e.g.*, *Amazon Servs. LLC v. U.S. Dept. of Agric.*, 109 F.4th 573, 581-83 (D.C. Cir. 2024) (providing "generally available" service in "routine" manner insufficient for liability); *United States v. Blankenship*, 970 F.2d 283, 286-89 (7th Cir. 1992) (Easterbrook, J.) (noting where "'mere' sale[s]" end and liability "begin[s]"); *SEC v. Wash. Cnty. Util. Dist.*, 676 F.2d 218, 226 (6th Cir. 1982) (contrasting "a transaction in the ordinary course of his business" and one "of an extraordinary nature").

Accordingly, when a business puts a lawful good to market, it does not become an accomplice to that product's downstream criminal misuse simply by declining to take additional affirmative steps to counteract that independent unlawful action. That is, to incur liability, it is not enough that a company chooses to stay the course and continue routine practices; it must engage in some objectively *unusual* action, directed to actually making the crime succeed.

That is already a high bar. But the bar gets even higher if the theory of liability is pegged not to aiding a specific unlawful act (*e.g.*, an illicit sale), but instead an unlawful enterprise (*e.g.*, an illicit seller). For this type of enterprise theory, a merchant must go *even further*, taking atypical steps in such a systemic and pervasive fashion that it is jointly liable for all of that enterprise's misdoings. *Twitter*, 598 U.S. at 496, 502; *see Halberstam*, 705 F.2d at 487-88. And for that sort of categorical liability to attach, the routine practices of a lawful industry—untailored to any buyer, unparticularized to any transaction—are never enough. Such overwhelming assistance must be targeted and deliberate; supplying a lawful product in a general and ordinary manner is not that. Mexico has never cited any case holding otherwise. Nor could it.

4. This Court's decision in *Direct Sales Company* illustrates these principles. That case involved a distributor that directly sold an obscenely large amount of morphine to a single rural doctor, who was obviously engaged in a criminal enterprise by re-selling the drugs illegally. 319 U.S. at 705. The distributor was charged with conspiring to violate the federal narcotics laws, and this Court affirmed the conviction. *Id.* at 714-15.

In so doing, this Court took pains to distinguish routine versus atypical business activity. It stressed that for liability to attach, it is not enough for a business to be aware that its product will be misused: There must be "more than knowledge, acquiescence, carelessness, indifference, lack of concern." *Id.* at 713. When there is "nothing more on the seller's part than indifference to the buyer's illegal purpose and passive acquiescence in his desire to purchase," that cannot be fodder for a felony. *Id.* at 712 n.8.

The reason the Direct Sales Company could be criminally liable was it strayed far beyond business as usual. The distributor sold the doctor such massive and atypical amounts of morphine—around 36,000 pills a year, when the average was about 400—that there was no conceivable lawful explanation for what was going on. *See id.* at 705-06. The distributor, moreover, also took other affirmative steps to bolster his complicity, like coordinating with the doctor as to how to avoid law enforcement, such as by changing tablet sizes. *Id.* at 707. All told, this sort of obvious, prolonged, and direct "cooperation" with a specific drug dealer was more than enough to sustain a conviction. *Id.* at 713. And as this Court has since explained, *Direct Sales* stands for the proposition that accomplice liability attaches when a "provider of routine services does so in an unusual way." *Twitter*, 598 U.S. at 502.

Rightly so. Again, the touchstone for aiding and abetting is to culpably "participate" in a wrongful act so as to help "make it succeed." *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949). In determining whether an ordinary merchant has crossed that line, it makes sense to insist on unusual and particularized

behavior to distinguish incidental facilitation from affirmative support. Absent this *objective* requirement, all-too-easy allegations of *scienter* would imperil every business that sells a lawful product that is predictably abused by criminals. By contrast, where the merchant is not engaged in business as usual, that identifiable break from the norm can furnish the misconduct needed for liability. *Halberstam*, 705 F.2d at 487-88 (attributing liability to defendant providing services "in an unusual way under unusual circumstances for a long period of time").

5. PLCAA incorporates these basic limits on aiding and abetting. After all, when the Act was passed, it was common knowledge that criminals could purchase firearms from some bad-actor dealers—indeed, that was the very premise of the lawsuits PLCAA was passed to stop.

It was Congress's judgment, however, that so long as manufacturers and sellers followed the many federal, state, and local regulations that directly apply to making and selling firearms, they "should not[] be [held] liable for the harm caused by those who criminally or unlawfully misuse [their] products." 15 U.S.C. § 7901(a)(5). There was not a whisper in Congress that the same type of plaintiffs could bring the same type of suits, just by restyling the same type of tort allegations in aiding-and-abetting garb. *See supra* pp. 6-7.

The opposite. Congress condemned the "slippery slope" these novel suits promised—*i.e.*, the legal, social, and economic chaos that would follow from imposing "liability" on every "company [that] manufactures a legitimate product that is widely and

lawfully distributed," who knows that its product may be "criminally or unlawfully misused" downstream. House Report, at 23. Countless industries "are aware that a small percentage of their products will be misused by criminals." *Id.* at 24. But that has never been enough for liability of any stripe—let alone *criminal* liability. 15 U.S.C. § 7901(a)(7), (a)(8).

These points bear out in PLCAA's text and structure. For instance, within the predicate exception, the Act provides an example of how a supplier might be liable for aiding and abetting, but only in the context of a particular transaction where the supplier knows that "the actual buyer" of "the" firearm is barred from having it. *Id.* § 7903(5)(A)(iii)(II). Likewise, PLCAA includes a separate exception allowing transferors to be sued if they are convicted of violating 18 U.S.C. § 924(h), which prohibits giving someone a firearm "knowing or having reasonable cause to believe that [it] will be used to commit a felony." 15 U.S.C. § 7903(5)(A)(i).

This all reflects the narrow range of suits that Congress contemplated: Instances where a firearm supplier knowingly makes an illegal sale to a specific criminal—*i.e.*, where a business engages in atypical conduct to assist a particular criminal offense. By contrast, nothing in PLCAA reflects the sort of systemic liability contemplated here, where the routine business practices of manufacturers and distributors would make them responsible for an entire class of criminal action. Indeed, if simply showing that a firearms company was aware that a small fraction of its products would fall into the hands of criminals was enough, then the particularized provisions above would be meaningless.

B. Mexico Targets Ordinary Business Practices, Not Culpable Misconduct.

Over the course of this litigation, Mexico has offered shifting theories of aiding and abetting. Its complaint alleged that Petitioners "aid and abet the killing and maiming" of Mexicans by the "drug cartels." Pet.App.12a (¶ 15). But in this Court, Mexico has pressed only the alternative theory embraced by the First Circuit: Petitioners' ordinary business practices are illegal because they aid and abet unlawful firearm sales by downstream independent dealers. BIO 27.

1. At the outset, it is important to identify the type of liability theory on which Mexico relies. As the First Circuit recognized, "the complaint does not allege defendants' awareness of any particular unlawful sale," much less that Petitioners did anything to help any specific illicit transaction succeed. Pet.App.305a. Mexico's case thus falls far outside the heartland of aiding and abetting, which again is "a rule of secondary liability for *specific* wrongful acts." *Twitter*, 598 U.S. at 494 (emphasis added).

Instead, Mexico's claim is that Petitioners provide such *pervasive* support to bad-actor dealers that Petitioners are responsible for *all* of their unlawful sales of Petitioners' products. This is the theory the First Circuit relied on: Petitioners "operate at a systemic level, allegedly designing, marketing, and distributing their guns so that demand by the cartels continues to boost sales," making them accomplices even though they do "not know about any particular unlawful sale." Pet.App.306a. Mexico has now adopted this theory. BIO 17, 20, 22-25, 27-28.

2. To establish such categorical liability, Mexico must allege that Petitioners have provided "pervasive, systemic, and culpable" assistance to the bad-actor dealers in the supply chain, for the specific purpose of aiding their illicit sales. *Twitter*, 598 U.S. at 502.

Critically, however, Mexico tries to get over this high bar with nothing *but* the routine "business practices" Petitioners have followed "[f]or decades." Pet.App.139a (¶ 376). Mexico concedes that these practices overwhelmingly cater to law-abiding Americans. *Id.* 44a (¶ 119). It nevertheless faults Petitioners for staying the course because, in its view, they should have taken extralegal steps to better curtail the small fraction of U.S. firearms that end up in Mexico. *E.g.*, *id.* 12a (¶ 16), 24a (¶ 50).

In particular, Mexico's complaint focuses on three broad categories—design, marketing, and distribution. It blames Petitioners for either not *affirmatively adopting* new policies to counteract illicit sales, or for not *abandoning* longstanding practices that—while designed for law-abiding Americans—criminals have been able to exploit. *See id.* 84a (¶ 246: "Defendants do not need legislation in order to make these reforms").

Design. Mexico asserts Petitioners "actively assist and facilitate" unlawful sales by continuing to "design" what Mexico calls "military-style assault weapons." *Id.* 93a. For instance, Mexico takes issue with Petitioners making and selling lawful firearms like the AR-15 rifle, and firearms capable of accepting "large-capacity" magazines—both of which Mexico says are popular among criminals. *Id.* 121a (¶ 334); 96a (¶ 288). And Mexico criticizes the industry for not

adding certain "safety features" it says will dampen criminal interest. *E.g.*, 129a (¶ 359) (calling for "smart guns"), 131a (¶ 365) (same for harder-to-defile serial numbers).

Of note, Mexico never alleges that any Petitioner affirmatively *designed* these products to aid any criminal activity. Nor would any such claim be plausible. The AR-15 is the most popular rifle in the country; and there are hundreds of millions of "large-capacity" magazines in America. Moreover, Mexico concedes that all of these arms are perfectly legal under America's extensive firearm regulations.

Mexico's charge is that in continuing to produce these firearms—despite knowing criminals desire to use them—the industry has chosen to "actively assist and facilitate" unlawful sales. *Id.* 93a. To avoid liability, Mexico says the industry "could limit their sales of these military-style assault weapons to military and perhaps some law enforcement units." *Id.* 104a (¶ 314). Or it "could restrict the sale of these weapons to purchasers with a legitimate need for them." *Id.* (¶ 315). Or it "could make guns [that do] not accept [any] high-capacity magazines." *Id.* (¶ 317).

Boiled down, Mexico faults Petitioners for "not" altering their longstanding design practices to better suppress the criminal demand for their firearms. *Id.* (¶¶ 314-18).

Marketing. Mexico says that Petitioners' longstanding marketing practices help boost unlawful firearm sales. It does not allege any Petitioner engages in any campaigns tailored to any criminal conduct—*e.g.*, touting a new inconspicuous handgun, perfect for subway muggings. Instead, Mexico alleges

Petitioners' marketing tactics showcase the "features, functions, and applications" of their firearms in ways that have appealed to criminals—such as by using images of the "military," "law enforcement," as well as "American flags." *E.g.*, *id.* 105a, 127a (¶¶ 322, 352).

Mexico implies Petitioners should have stopped advertising their firearms this way once it became clear that criminals were attracted to their potential military-like uses. In this sense, though, Mexico's marketing-related claims are just derivative of its design-related ones. As Chief Judge Saylor explained, Petitioners' firearms "do exactly what they are advertised to do": The advertisements Mexico identifies show how these products work in the real world—including how some are used by police. *Id.* 255a-59a. Mexico faults Petitioners for showing these true facts, but that gripe flows entirely from Mexico's view that firearms with these traits *should not be sold at all* (or at least, not to regular Americans).

Distribution. Finally, Mexico takes issue with the "three-tier distribution" system sanctioned by the federal government. *Id.* 140a (¶ 378). Within this system, federally licensed manufacturers sell firearms to independent federally licensed wholesalers, who then sell to independent federally licensed dealers—who then sell to the general public.

Here too, Mexico does not suggest Petitioners set up this system in order to promote unlawful sales. As Mexico admits, the overwhelming majority of U.S. firearm sales are by law-abiding dealers to law-abiding Americans. *Id.* 44a (¶ 119). And nobody even hints the industry developed its entire distribution

framework to cater to an outlier, minute fraction of unlawful sales—as opposed to its primary business.

Rather, Mexico's allegations concern a supposed failure by Petitioners to *augment* this system with "appropriate and prudent distribution practices" that Mexico thinks will help reduce unlawful firearm sales downstream. *Id.* 139a-40a (¶ 377). Among other things, Mexico insists that manufacturers and distributors should impose "mandatory background checks for secondary gun sales," require downstream dealers to "limit[] sales of multiple guns," "supervise" private "kitchen-table" sales, set up a system for mitigating lost or stolen firearms, and "restrict[]" sales of "assault weapons." *See, e.g.*, *id.* 83a-84a, 89a-90a, 132a (¶¶ 245, 264, 269, 369).

Mexico accepts that none of this is required by any American firearms law. Instead, it faults Petitioners for having "chos[en] not" to go beyond what those laws say, to "control[]" downstream dealers. *Id.* 139a-41a, 104a (¶¶ 377-79, 382, 315).

3. These allegations fall far short of aiding and abetting. Mexico's claim reduces to Petitioners engaging in routine business practices while passively declining to do more to stop independent retailers from breaking the law. But such inaction does not suffice. As this Court has emphasized, there is a core difference between "failing to stop" downstream crime, and affirmatively abetting it through active participation. *Twitter*, 598 U.S. at 503. And that fundamental distinction resolves this issue: A lawful supplier is not an accomplice to every independent seller of its good that it fails to make follow the law.

a. Mexico's complaint is foreclosed by *Twitter*. Mexico claims that 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 exactly what *Twitter* rejected. The plaintiffs alleged that the platforms knowingly hosted terrorist content for years; that they knew groups like ISIS depended upon their services for fundraising and recruiting; that they knew how their recommendation algorithms matched terrorist content with interested people; and that the platforms "failed to implement" basic detection tools that would help weed out this problematic content. *See* 598 U.S. at 480-82, 498. And the plaintiffs alleged that the platforms refused to depart from their routine practices, because they "profited" from these terrorist accounts. *Id.* at 482.

This Court unanimously held those claims fell short of aiding and abetting. Many businesses know their products will be criminally misused downstream, just as the platforms in *Twitter* knew terrorists were misusing their services. But continuing to sell a good or service is mere "passive assistance," not "active abetting." *Id.* at 499. Staying the course with routine business practices is not "affirmative misconduct." *Id.* at 500. It is instead the sort of "failure to act" that does not trigger liability. *Id.* at 500-01. Indeed, any other rule would constitute a remarkable expansion of the criminal law—and would task private companies with a roving mandate to "discover[]" and "terminate" any customers "using [their] service[s] for illicit ends," or else risk crippling liability. *Id.* at 501.

As the above makes clear, Mexico does not allege a single "affirmative act" by Petitioners, performed with the "intent of facilitating" illicit firearms sales by dealers. *Id.* at 490. Instead, Mexico's complaint rests entirely on the American firearms industry refusing to *depart* from routine, existing, and settled business practices—be it refusing to scrap certain products (like the AR-15), or declining to impose extralegal criteria on downstream retailers (such as limiting sales by "legitimate need"). But as explained, when a business refuses to depart from the ordinary course—when it declines to change its longstanding practices—that is precisely the sort of "omission[], inaction[], or nonfeasance" that has never been enough for accomplice liability. *Id.* at 489.

At worst, even in the darkest light, Petitioners are portrayed as *apathetic* to how their products will later be used just so long as they keep selling. This is false, but even if it were true, such behavior—"arm's length, passive, and largely indifferent" to whatever the actual goals of the buyer may be—is definitionally insufficient for aiding and abetting. *Id.* at 500-01.

b. If anything, Mexico's theory here is even more clearly invalid than in *Twitter*. There, the plaintiffs at least named a specific criminal enterprise (ISIS) and a specific bad act the defendants supposedly abetted (the Reina nightclub attack). *Id.* at 497-98. But here, Mexico does not even do that: Its theory is that Petitioners have aided and abetted "unlawful firearm sales" in this country, *writ large*. BIO 27. Such a sweeping claim is unprecedented. No court has ever held that an industry can aid and abet a *class of crime* without even naming the actual bad acts or actors being aided.

In addition, unlike in *Twitter*, all of the downstream "criminals" that Petitioners are supposedly aiding and abetting are *federally licensed* firearm dealers. Under federal law, the Attorney General is responsible for determining who should be licensed to sell firearms. 18 U.S.C. § 1923. If any dealer were conspicuously making unlawful sales, then it presumably would be prosecuted, or at minimum federal authorities would revoke its license. When the federal government chooses not to do so, Petitioners cannot be readily blamed for selling to those dealers licensed to buy. Indeed, it would be extraordinary to say that Petitioners can be held liable for making routine sales of lawful products to such federally approved entities.

In short, Mexico has not uncovered what every U.S. governmental agency has missed: America's firearms industry has not been criminally aiding and abetting unlawful firearms sales in broad daylight for decades.

C. Knowing Some Downstream Sellers Make Unlawful Sales Does Not Make Petitioners Criminal Accomplices.

Mexico's sole response is that its complaint can be fairly read to allege that Petitioners know the identities of some licensed dealers downstream that engage in unlawful sales—and that Petitioners are thus liable for failing to purge them from firearms distribution networks. BIO 26-30; *see* Pet.App.301a. This argument fails twice over. For one, the complaint does not plausibly allege Petitioners know specific dealers that are making unlawful sales. And regardless, such mere knowledge would not trigger liability.

First, Mexico has not alleged sufficient facts to plausibly show that any Petitioner sold firearms to any dealer that it knew would sell them unlawfully. As noted, all but one of the Petitioners are manufacturers, who *are not alleged to sell to retailers at all*. Thus, at best, Mexico's claim is that the manufacturer Petitioners should stop independent distributors from selling to some downstream dealers. And as for the one Petitioner that is a distributor, the complaint does not allege any facts showing it knowingly sold to any unlawful dealer.

Mexico points to public information about some federally licensed dealers whose firearms have been *recovered* at crime scenes—along with "trace requests" showing some sold a "disproportionat[e]" number of firearms used in crimes. BIO 5-6, 28-29. But as other courts have held, alleging that a "licensed distributor or dealer" sold firearms later used in crimes does not state a plausible claim that the distributor or dealer "has committed an illegal act." *Philadelphia*, 277 F.3d at 424 n.14 (rejecting similar argument on motion to dismiss); *see Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 237-40 & n.8 (N.Y. 2001) ("ATF emphasizes that the appearance of [a dealer] . . . in association with a crime gun or in association with multiple crime guns in no way suggests that [it] . . . has committed criminal acts"). After all, most firearms used in crimes were sold *lawfully*, and then misused *later*. *See, e.g.*, U.S. Department of Justice, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates 2016*, at 1 (2019), https://bjs.ojp.gov/document/suficspi16.pdf. And where the allegations are merely "consistent with" unlawful conduct, but there are still "more likely

explanations," the complaint does not "plausibly establish" a violation. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009).

Here, the obvious "more likely explanation" is that the identified federally licensed dealers are not knowingly engaged in unlawful sales, but simply that some firearms they sell are later misused. Otherwise, if such public information were enough to *know* they were making unlawful sales, the federal government presumably would not continue to license them.

Second, even if Petitioners did know that some licensed downstream dealers had unlawfully sold their products, that would not make them accomplices for the same reason as in *Twitter*: Petitioners are engaged in nothing more than routine business practices, and their relationship with independent dealers is, at worst, "arm's length, passive, and largely indifferent." *Twitter*, 598 U.S. at 500. If the rule were otherwise, every industry—from beer to cars to knives—would be on the hook for the predictable misuse of its product.

Indeed, *Twitter* itself was premised on the allegation the platforms *knew* terrorists were using their services. The complaints emphasized how easy it was for people to find ISIS-related content on those sites; and plaintiffs specifically alleged the platforms either knew of certain terrorist accounts, or refrained from taking simple steps to purge them. *Id.* at 481-82. Even so, accomplice liability does not follow from a business's failure to "terminate customers after discovering that the customers were using [their] service[s] for illicit ends." *Id.* at 501. For liability to attach, something more is required than "knowing

that the wrongdoers were using [one's] services and failing to stop them." *Id.* at 503. There must be some additional affirmative culpable act taken with the actual intent of facilitating *the crime* itself. *Id.* at 499-503. Routine business practices are not enough.

At bottom, when the maker or supplier of a lawful product places it into the general stream of commerce, that business is not charged with purging all criminals who may be waiting along the banks. And the passive failure to do so is "insufficient" to give rise to accomplice liability. *Id.* at 503. Responsibility for any criminal acts by those who misuse the product rests with those criminal actors themselves—not the upstream manufacturers or sellers. *Id.*

CONCLUSION

The First Circuit's decision should be reversed.

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Respectfully submitted,

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