



1           IN THE SUPREME COURT OF THE UNITED STATES  
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3   SMITH & WESSON BRANDS, INC.,           )  
4   ET AL.,                                    )  
5                                    Petitioners,            )  
6                                    v.                                ) No. 23-1141  
7   ESTADOS UNIDOS MEXICANOS,            )  
8                                    Respondent.            )  
9   - - - - -  
10  
11                                    Washington, D.C.  
12                                    Tuesday, March 4, 2025  
13  
14           The above-entitled matter came on for  
15   oral argument before the Supreme Court of the  
16   United States at 10:05 a.m.  
17  
18   APPEARANCES:  
19   NOEL J. FRANCISCO, ESQUIRE, Washington, D.C.; on  
20           behalf of the Petitioners.  
21   CATHERINE E. STETSON, ESQUIRE, Washington, D.C.; on  
22           behalf of the Respondent.  
23  
24  
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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 23-1141, Smith & Wesson Brands versus Estados Unidos Mexicanos.

Mr. Francisco.

ORAL ARGUMENT OF NOEL J. FRANCISCO

ON BEHALF OF THE PETITIONERS

MR. FRANCISCO: Mr. Chief Justice, and may it please the Court:

Mexico asserts that American firearms companies are responsible for cartel violence ravaging Mexico. Its theory is that federally licensed manufacturers sell firearms to licensed distributors, who sell to licensed retailers, a small percentage of whom sell to straw purchasers, some of whom transfer to smugglers, who then smuggle them into Mexico, hand them over to cartels, who in turn use them to commit murder and mayhem, all of which requires the government of Mexico to spend money.

Needless to say, no case in American history supports that theory, and it's squarely foreclosed by the Protection of Lawful Commerce in Arms Act. As to proximate cause, this Court

1 has repeatedly said there must be a direct  
2 relationship between the defendant's conduct and  
3 the plaintiff's injury. But no such  
4 relationship exists if plaintiff's injury is  
5 caused by multiple intervening independent  
6 crimes committed by foreign criminals on foreign  
7 soil to inflict harm on a foreign sovereign.

8 As to aiding and abetting, Mexico  
9 doesn't identify a specific crime, criminal, or  
10 criminal enterprise that defendants supposedly  
11 helped. Instead, it asserts that defendants are  
12 liable for every illegal sale by every retailer  
13 in America because they know that a small  
14 percentage of firearms are sold illegally and  
15 don't do more to stop it.

16 Again, no case in history supports  
17 that theory. Indeed, if Mexico is right, then  
18 every law enforcement organization in America  
19 has missed the largest criminal conspiracy in  
20 history operating right under their nose, and  
21 Budweiser is liable for every accident caused by  
22 underage drinkers since it knows that teenagers  
23 will buy beer, drive drunk, and crash. The  
24 First Circuit gravely erred in embracing that  
25 implausible theory and should be reversed.

1 I welcome your questions.

2 JUSTICE THOMAS: Mr. Francisco, as to  
3 the predicate exception, which federal or state  
4 law is your -- is Petitioner reputed to have  
5 violated?

6 MR. FRANCISCO: So my understanding,  
7 Your Honor, is that they're invoking the federal  
8 aiding-and-abetting statute to argue that we  
9 have aided and abetted the federal statutes that  
10 govern the sale of firearms, and they're  
11 alleging that retailers have knowingly sold  
12 firearms to straw purchasers and that we aided  
13 and abetted that knowing sale.

14 That actually raises a very important  
15 question about their allegation of knowing. I  
16 don't think it's relevant because I'm willing to  
17 even assume a certain level of knowledge. I  
18 don't think it matters. But their theory of  
19 knowledge is that we actually know that  
20 retailers are selling illegally.

21 I'd actually urge you to look at that  
22 2010 Washington Post article that they  
23 incorporate into their complaint. That article  
24 talks about a particular retailer called Lone  
25 Wolf. In 2010, it was the number one seller of

1 firearms that were found in Mexican crime gun  
2 scenes. And, in that article, you actually have  
3 a quote from ATF that says that ATF has no --  
4 has no basis to believe that Lone Wolf is doing  
5 anything illegal or wrong.

6 Well, if the government doesn't know,  
7 how are we supposed to know? It reflects this  
8 convoluted theory that -- that simply because  
9 the gun is found in Mexico, can be traced back  
10 to a retailer, that means the retailer  
11 necessarily sold it illegally and that we know  
12 that the retailer sold it illegally.

13 JUSTICE THOMAS: Would -- would this  
14 be a different case if there was a specific  
15 federal or state statute that was -- that you  
16 were known to have violated?

17 MR. FRANCISCO: Your Honor, it would  
18 be a different case. I would want to know more  
19 because I still think that, depending on what  
20 they alleged, I would have very strong arguments  
21 on proximate cause and aiding-and-abetting  
22 liability, but it would certainly be a different  
23 case.

24 JUSTICE THOMAS: Well, the -- the --  
25 the reason I ask is because the exception is for

1 knowingly violating a state or federal statute,  
2 and it would seem helpful in determining aiding  
3 and abetting and then eventually proximate cause  
4 if that comes up if you knew which statute we  
5 were dealing with.

6 MR. FRANCISCO: So the complaint is a  
7 little bit vague on this. To the extent I  
8 understand it, they're looking at federal  
9 statutes that restrict the knowing sale of  
10 firearms to people who aren't authorized to  
11 purchase them, and then they're invoking the  
12 criminal federal aiding-and-abetting statute to  
13 claim that we're then liable for those illegal  
14 sales.

15 I'm willing to assume for the sake of  
16 argument that that's valid because I don't think  
17 they come anywhere close to establishing  
18 aiding-and-abetting liability, and even if they  
19 did, I don't think they come anywhere close to  
20 establishing proximate cause. I --

21 CHIEF JUSTICE ROBERTS: I -- I'm  
22 sorry, counsel, but exactly what role -- I had  
23 difficulty telling from your brief -- does  
24 foreseeability play in your proximate cause  
25 analysis?

1                   MR. FRANCISCO: So, as -- as this  
2 Court has made clear in a number of cases, it's  
3 not that foreseeability is irrelevant. It's  
4 that foreseeability alone is not the standard.  
5 So it's necessary but not sufficient. In  
6 addition, there has to be a direct relationship  
7 between the defendant's conduct and the  
8 plaintiff's injury.

9                   And, Your Honor, I think that the  
10 plurality opinion you authored in the Hemi Group  
11 is directly on point. That is where a case -- a  
12 case where the plurality held that the City of  
13 New York couldn't sue a cigarette retailer for  
14 not filing the tax reports in -- in order for  
15 the city to recover its last -- lost tax revenue  
16 because in between the city's injury of lost tax  
17 revenue and the retailer's failure to file the  
18 reports stood the citizens of New York who  
19 illegally failed to pay their taxes, and that  
20 broke the chain.

21                   This is a much easier case. Here, we  
22 don't have just one intervening independent  
23 crime. We have a multitude of intervening  
24 independent crimes. So, even if they could  
25 establish aiding-and-abetting liability -- and I

1 don't think they come even close under  
2 Twitter -- they couldn't establish proximate  
3 cause, which is the --

4 JUSTICE SOTOMAYOR: I --

5 MR. FRANCISCO: -- other requirement  
6 here.

7 JUSTICE SOTOMAYOR: Counselor, it  
8 seems to me that the cases are a mess on  
9 proximate cause, and you're asking us in this  
10 case to choose among a variety of different  
11 explanations of it.

12 I think, however -- I try to break  
13 this down -- I think their complaint is saying  
14 that the violation is selling to straw  
15 purchasers, and I think the risk in selling to a  
16 straw purchaser -- and that's the known risk of  
17 that violation -- is that that straw purchaser  
18 is giving or selling the gun to someone who  
19 can't possess it because the likelihood is that  
20 they're going to use that gun illegally.

21 And that's the risk of the violation.  
22 And I think that that's what their complaint  
23 says, which is -- now I'm going to put aside the  
24 lack of -- the conclusory allegations, and I  
25 agree with your point that they don't really

1 tell us which dealers are doing this, who  
2 they're aiding and abetting. There may be a lot  
3 of conclusory allegations, but the theory, I  
4 think, that they're advocating is, if you're  
5 selling to a straw purchaser --

6 MR. FRANCISCO: Mm-hmm.

7 JUSTICE SOTOMAYOR: -- that's -- you  
8 know that the risk is that they're giving it or  
9 selling it to people who are going to commit  
10 crimes, here, the Mexican cartel.

11 So I don't know if this is a proximate  
12 cause case or it really is what you say it's not  
13 or that the allegations are insufficient for  
14 aiding and abetting. I think for us to go into  
15 proximate cause opens up a pan -- Pandora's box.

16 MR. FRANCISCO: So I want to take one  
17 step back, Your Honor, because they're not  
18 alleging that my clients engaged in any illegal  
19 retail sale. None of my clients actually --

20 JUSTICE SOTOMAYOR: They aided -- no.

21 MR. FRANCISCO: -- sell to consumers.

22 JUSTICE SOTOMAYOR: The -- the  
23 complaint says they aided --

24 MR. FRANCISCO: Exactly.

25 JUSTICE SOTOMAYOR: -- aided and

1 abetted. Justice Thomas asked you what  
2 violation. I believe the violation they claim  
3 is that the dealers are selling to straw buyers.

4 MR. FRANCISCO: Sure. And I just  
5 wanted to be clear that I think that the chain  
6 of causation -- I think it's relevant both to  
7 proximate cause and aiding and abetting.

8 I think that the chain of causation  
9 under the statute doesn't start at the illegal  
10 sale because we aren't alleged to have engaged  
11 in an illegal sale. It starts with the conduct  
12 that they allege constitutes aiding and abetting  
13 the illegal sale, which is the -- the -- the --  
14 the -- the way that we manufacture and  
15 distribute our firearms.

16 But I also think that's relevant to  
17 aiding-and-abetting liability because we're not  
18 alleged to have aided and abetted any cartels or  
19 any illegal purchaser. We're alleged in this  
20 case at least as they presented it here to have  
21 aided and abetted the retailers.

22 And so they have to carry the argument  
23 that somehow we're liable for every illegal  
24 retail sale in America because we know that some  
25 small percentage of retailers may sell the

1 firearms illegally and don't do more.

2 Now I dispute that --

3 JUSTICE GORSUCH: Now -- now,  
4 Mr. Francisco, I -- I just want to pause there  
5 for a second. Sorry to interrupt you, but just  
6 to follow up on Justice Sotomayor's question.

7 Assume -- put aside aiding and  
8 abetting. Assume for the moment that you --  
9 you -- you did aid and abet the -- the sale --  
10 your clients aided and abetted --

11 MR. FRANCISCO: Mm-hmm.

12 JUSTICE GORSUCH: -- the sale of -- of  
13 guns to bad apple dealers, ones they knew or  
14 intended even for them to sell on to people in  
15 Mexico doing bad things. They knew that. They  
16 knew all of that.

17 How would you not have proximate cause  
18 in -- in that hypothetical?

19 MR. FRANCISCO: So, sure, Your Honor.  
20 And that is a huge assumption. But --

21 JUSTICE GORSUCH: It is.

22 MR. FRANCISCO: -- even accepting that  
23 assumption, for the same reason there was no  
24 proximate cause in Hemi Group. Even if you  
25 assume that we're on the hook for that illegal

1 retail sale, you still have a multitude of  
2 independent crimes in between that sale and  
3 injury to Mexico.

4 You have the straw purchaser that  
5 gives it to the actual purchaser. You have a  
6 smuggle across an international border.

7 JUSTICE GORSUCH: I understand, but my  
8 hypothetical assumes that you know all that,  
9 your clients know all that, maybe even intend  
10 it.

11 Now whether the -- there --

12 MR. FRANCISCO: Mm-hmm.

13 JUSTICE GORSUCH: -- are allegations  
14 in this complaint sufficient, put that aside.  
15 But, if you know or intend all of that, then  
16 what?

17 MR. FRANCISCO: I still don't think  
18 that establishes proximate cause when you have  
19 an intervening independent crime. And I'll  
20 point you to Hemi Group, Your Honor.

21 JUSTICE GORSUCH: Yeah -- appreciate  
22 that.

23 MR. FRANCISCO: In Hemi Group, the  
24 underlying statute was the filing of the tax  
25 reports. The entire purpose of the tax reports

1 was to allow governmental entities to collect  
2 tax revenue from cigarette sales online that  
3 weren't otherwise subject to sales taxes.

4 But the plurality held that that  
5 independent intervening act still broke  
6 proximate cause. I think it goes back to the  
7 Court's 1876 decision in the St. Paul Railway  
8 case, where you made clear that if there is a  
9 sufficient and independent cause --

10 JUSTICE GORSUCH: It wasn't me.

11 (Laughter.)

12 MR. FRANCISCO: Your Honor, I -- I --  
13 I think of the Court as a collective body that  
14 operates across time.

15 (Laughter.)

16 MR. FRANCISCO: And -- and it made  
17 clear -- it made --

18 JUSTICE SOTOMAYOR: Justice Gorsuch  
19 doesn't believe that.

20 (Laughter.)

21 JUSTICE GORSUCH: Yes, I do.

22 MR. FRANCISCO: And it made quite  
23 clear way back in 1876 when you do have that,  
24 and I'm quoting, a sufficient and independent  
25 cause operating between the wrong and the

1 injury, that does break the chain of causation  
2 even if it's eminently foreseeable, just like  
3 many, many, many years later in -- in the Hemi  
4 Group case, the Court concluded the same even  
5 though it was eminently foreseeable that the  
6 retailer's failure to file the tax reports could  
7 lead to lost tax revenue.

8 JUSTICE BARRETT: Mr. Francisco, can I  
9 just put a point on this? Because I want to  
10 make sure I understand the -- the line of  
11 questions you've been asked.

12 So it seems to me as Justice Thomas  
13 began that when we're talking about the statute  
14 that was the violation at the beginning, for the  
15 predicate, it has to be a statute that was  
16 specifically applicable to the sale or marketing  
17 of the product, the gun.

18 MR. FRANCISCO: Yes.

19 JUSTICE BARRETT: Justice Sotomayor  
20 asked you. So that's the retailer selling it to  
21 the bad guy, right?

22 MR. FRANCISCO: Yes.

23 JUSTICE BARRETT: Okay. That's where  
24 the proximate cause inquiry comes in. Your  
25 client -- the theory, right?

1 MR. FRANCISCO: Mm-hmm.

2 JUSTICE BARRETT: The theory is that  
3 your client under 2, under Example 2, is -- has  
4 aided and abetted as the manufacturer.  
5 Proximate cause doesn't appear in that portion  
6 of the statute. It's only in the predicate  
7 portion.

8 So, if we accept that framing of the  
9 theory, the framing of the complaint, we're  
10 really only asking about proximate cause, as  
11 Justice Gorsuch was asking you, between the  
12 retail --

13 MR. FRANCISCO: Mm-hmm.

14 JUSTICE BARRETT: -- retailer, the  
15 sale, and the harm ultimately caused to Mexico.

16 And then we're looking at the chain of  
17 events that you're talking at right now: sale  
18 to the bad guy, smuggled across the border,  
19 misuse.

20 MR. FRANCISCO: Mm-hmm. So I think I  
21 have two responses, Your Honor.

22 The first is I -- I actually disagree  
23 with how you framed it.

24 JUSTICE BARRETT: Okay.

25 MR. FRANCISCO: But the second is,

1 even if I accept how you framed it, I still  
2 think there's no proximate cause.

3 The statute says that there has to be  
4 proximate cause between our violation and  
5 Mexico's injury. Our violation is not the  
6 illegal sale itself. It's the actions that we  
7 undertake to aid and abet it, the violative  
8 aiding and abetting conduct. So --

9 JUSTICE BARRETT: How does that fit in  
10 the statute, though?

11 MR. FRANCISCO: Your Honor, because I  
12 think the statute says it's a -- the statute  
13 requires that -- sets forth the exception where  
14 a seller has knowingly violated an applicable  
15 statute and the violation, referring to the  
16 seller's violation --

17 JUSTICE BARRETT: But it's not just  
18 applicable statute. It's statute applicable to  
19 the sale or marketing of the product. So that  
20 seems to me to refer to a specific statute  
21 relating to this manufacture, sale, distribution  
22 of guns, not the aiding-and-abetting statute,  
23 right?

24 MR. FRANCISCO: Well, I think it's got  
25 to refer to our violation. It refers back to

1 the seller's violation. And, here, the seller  
2 hasn't specifically -- and this maybe goes to  
3 the confusion that Justice Thomas pointed out.  
4 But the seller's violation is not the actual  
5 retail sale. We're not retail sellers.

6 JUSTICE BARRETT: Right.

7 MR. FRANCISCO: The seller's violation  
8 here is the aiding and abetting of that retail  
9 sale. And I presume what they are invoking is  
10 the federal aiding-and-abetting statute, and  
11 they're trying to combine that with the actual  
12 specific sale.

13 So I think there are all kinds of  
14 problems with their theory --

15 JUSTICE KAGAN: I guess I don't get  
16 that, Mr. -- Mr. Francisco. I mean, aiding and  
17 abetting is a form of vicarious liability. Why  
18 wouldn't you just say the aiding-and-abetting  
19 violation is the violation that is aided and  
20 abetted, which, here, as Justice Barrett said,  
21 is the retail sale, say the sale to a straw  
22 purchaser?

23 MR. FRANCISCO: Mm-hmm. Sure, Your  
24 Honor. I think it's -- I'm just trying to  
25 construct the statute properly, and I think, as

1 a matter of proper statutory construction,  
2 that's where you begin the proximate cause, with  
3 our violation.

4 But I don't really want to fight about  
5 it because --

6 JUSTICE KAGAN: Well, your violation,  
7 as a matter of vicarious liability, is the  
8 violation that the retail seller, you know,  
9 sells to the straw purchaser.

10 MR. FRANCISCO: Your Honor, I'm not  
11 sure that's right, but -- but, again, I'm  
12 willing to assume for the sake of argument that  
13 it is right because I still think that there's  
14 no proximate cause in between -- for -- for --  
15 between the illegal retail sale and Mexico's  
16 injury off in Mexico. And I sure don't think  
17 that they've come anywhere close to establishing  
18 aiding-and-abetting liability.

19 I've already explained why I think  
20 there are multiple independent crimes after the  
21 retail sale, in addition to the smuggle across  
22 an international border and the murder and  
23 mayhem committed independently by cartels in  
24 Mexico. To me, that is more than sufficient to  
25 break that chain.

1                   But, in any event, I think that their  
2 theory of aiding-and-abetting liability is  
3 equally farfetched. I think this is --

4                   JUSTICE KAGAN: So, with reference to  
5 aiding and abetting, could you just explain to  
6 me the sort of structure of this industry? Who  
7 are these distributors? Are they pass-through  
8 entities? Are they completely independent?  
9 Might they be both?

10                   What -- what -- what's -- what's  
11 the --

12                   MR. FRANCISCO: The -- they're  
13 independent entities, Your Honor. It's possible  
14 that there might be some internal distribution,  
15 but, by and large, a manufacturer makes the  
16 firearms. Then there are distributors who  
17 purchase the firearms from different  
18 manufacturers. Those distributors then sell  
19 firearms to retailers. Everyone in this chain  
20 is fully licensed. The retailers then are fully  
21 licensed and they sell to purchasers. The  
22 allegation is some small percentage of those  
23 sales are illegal and we know it.

24                   JUSTICE KAGAN: Is your representation  
25 that the manufacturers really only deal with the

1 distributors, or do you understand the  
2 manufacturers to be looking at and paying  
3 attention to the dealers too?

4 MR. FRANCISCO: Well, Your Honor,  
5 we're here on the complaint. And, as far as the  
6 complaint alleges, it's simply the manufacturers  
7 going to the distributors, the distributors  
8 going to the retailers and so on.

9 JUSTICE KAGAN: Right. I'm asking,  
10 from what you know of the industry and your  
11 client, is -- is -- is -- is -- is the  
12 manufacturer essentially dealing with the  
13 dealers, or is there, like, a big roadblock --

14 MR. FRANCISCO: All right. So  
15 we're --

16 JUSTICE KAGAN: -- which is in the --  
17 in the form of the distributors?

18 MR. FRANCISCO: We're outside of the  
19 complaint now, so I want to be very careful  
20 because I don't a hundred percent know the  
21 answer to all of your question. But my  
22 understanding is that the manufacturers are not  
23 generally dealing with the retailers. You do  
24 have this tiered distribution chain where  
25 they're principally dealing with the

1 distributors, the distributors to the retailers,  
2 and so on.

3 I think that the reason this is such  
4 an implausible aiding-and-abetting theory is  
5 because I actually think this case is a lot  
6 easier than the Twitter case in a number of  
7 different respects.

8 First of all, Twitter, you actually  
9 had a specific criminal, ISIS; you had a  
10 specific crime, the Reina nightclub attack; and  
11 the defendants were actually providing that  
12 product to that criminal.

13 You don't have any of that here.  
14 Instead, their theory is that by simply knowing  
15 that some percentage of retailers may be doing  
16 something illegal, that somehow puts us on the  
17 hook for everything that the retailers are  
18 doing.

19 This is kind of a common law area.  
20 You'd think that they could cite one case that  
21 comes anywhere close to that.

22 JUSTICE JACKSON: So --

23 MR. FRANCISCO: But they don't cite a  
24 single case.

25 JUSTICE JACKSON: -- Mr. Francisco,

1 I -- that -- that's sort of what I'm a little  
2 confused about and I wanted to focus on, which  
3 is it seems to me that the core of your argument  
4 both here and in your brief has been that  
5 there's an implausible theory of abating -- of  
6 aiding-and-abetting liability based on what  
7 they've alleged and no case in American history  
8 supports this theory of liability, as if the  
9 question before us is evaluating the viability  
10 of Mexico's theory.

11 And what I'm looking at is a statute  
12 that I think really makes this case about the  
13 scope of the predicate exception, that it's not  
14 really, you know, an invitation to assess as a  
15 common law matter whether or not we think these  
16 facts allege aiding-and-abetting liability.

17 Would you agree with me that the PLCAA  
18 statute takes off the table theories of tort  
19 with respect to these kinds of manufacturers  
20 and, really, the only question is whether the  
21 statutory exception applies in this situation?

22 MR. FRANCISCO: Well, I -- yeah, I  
23 think I would agree that we're -- we're -- we're  
24 arguing about what the meaning of the statute  
25 is. But the statute can only be triggered if

1 they find a violation that's the proximate  
2 cause. Here, the violation that they've  
3 identified --

4 JUSTICE JACKSON: No, I understand.

5 MR. FRANCISCO: -- is aiding and  
6 abetting.

7 JUSTICE JACKSON: But that proximate  
8 cause analysis is coming up in the context of an  
9 exception to the immunity that Congress has set  
10 forth, is that right?

11 MR. FRANCISCO: Sure. Yeah.

12 JUSTICE JACKSON: And I think that's  
13 important because the scope of that exception  
14 may not be coterminous with our understanding of  
15 aiding-and-abetting liability as a common law  
16 principle.

17 In other words, you look at Twitter,  
18 for example, and you say: Okay, is this -- are  
19 what -- is what is being alleged here the same  
20 as aiding and -- aiding-and-abetting liability  
21 as it was set forth in that statute? That was a  
22 totally different statutory scheme. That  
23 statute, JASTA in the Twitter case, was about  
24 allowing for these kinds of claims.

25 And so what counts for aiding-and --

1 and-abetting liability in Twitter may not be  
2 what Congress intended for this exception. I  
3 feel like we have to focus on where we actually  
4 are in this context in making this  
5 determination.

6 MR. FRANCISCO: Well, Your Honor, I  
7 think that's where I might very much disagree  
8 with the theory that you're articulating. I  
9 think that they do have to show a violation.  
10 They've alleged it's aiding and abetting.  
11 There's no aiding and abetting in the air. What  
12 Twitter purported to do was look at traditional  
13 aiding-and-abetting principles --

14 JUSTICE JACKSON: Well, I understand,  
15 but Twitter --

16 MR. FRANCISCO: -- and apply them.

17 JUSTICE JACKSON: -- was a different  
18 kind of statute. We have said that, you know,  
19 when we're doing statutory interpretation, when  
20 we're thinking about aiding-and-abetting  
21 liability, it may not be the same in every  
22 statutory scheme.

23 And I guess what I'm just trying to --  
24 I mean, this is not supposed to be like a --  
25 a --

1 MR. FRANCISCO: Sure. Yeah.

2 JUSTICE JACKSON: -- a statement that  
3 is necessarily against your position.

4 MR. FRANCISCO: Mm-hmm.

5 JUSTICE JACKSON: I'm just trying to  
6 understand the framing of this.

7 It seems to me this is a statutory  
8 interpretation question about the meaning of  
9 what the predicate exception says, knowingly  
10 violated a state or federal statute. Aiding and  
11 abetting is in the examples. It's not even in  
12 the actual core statutory statement of what  
13 would qualify.

14 So shouldn't we be focused more on  
15 trying to understand what Congress meant when it  
16 was excepting -- you say narrowly --

17 MR. FRANCISCO: Mm-hmm.

18 JUSTICE JACKSON: -- a certain kind of  
19 claim?

20 MR. FRANCISCO: Well, Your Honor, to  
21 the extent I understand what you're getting at,  
22 first, I do think that you really do have to  
23 grapple with the aiding-and-abetting liability  
24 issue and Twitter sets out the framework.

25 But, even if you want to take a step

1 back and look at what Congress was getting at  
2 more broadly, Congress's entire purpose was to  
3 prohibit lawsuits just like this one. It was  
4 trying to prohibit lawsuits that had been  
5 brought by the City of Chicago, the City of  
6 Cincinnati, the City of Boston, on theories and  
7 seeking relief exactly like this one.

8 So, if you adopt my friend's position  
9 on the other side, you have essentially gutted  
10 PLCAA. And remember what the larger purpose of  
11 PLCAA was. It was actually to ultimately  
12 protect Second Amendment rights by preventing  
13 plaintiffs from bankrupting the industry through  
14 frivolous lawsuits. After all, the Second  
15 Amendment doesn't really mean anything if  
16 there's no -- nobody from whom you can buy a  
17 firearm.

18 JUSTICE GORSUCH: So -- so, Mr.  
19 Francisco --

20 MR. FRANCISCO: So I'm willing to  
21 take --

22 JUSTICE GORSUCH: -- just to follow up  
23 on this, PLCAA, as you call it, says that --  
24 that you've got to show a violation of a state  
25 or federal statute. And we -- Justice Thomas

1 asked you, and I -- I still am not sure we  
2 completely identified what that statute is. I  
3 think it's 18 U.S.C. 922, maybe 923. Do you  
4 agree with that?

5 MR. FRANCISCO: What's that? Your  
6 Honor, I --

7 JUSTICE GORSUCH: We don't know?  
8 Okay.

9 MR. FRANCISCO: -- I -- I don't think  
10 the complaint was clear on it.

11 JUSTICE GORSUCH: That's -- that's  
12 what they cited in --

13 MR. FRANCISCO: We did speculate about  
14 that. We speculated about it in our brief.  
15 I -- I think that might be the statute we cited.

16 JUSTICE GORSUCH: Okay. And -- and  
17 then, for aiding and abetting, it would be 18  
18 U.S.C. Section 2, I think.

19 MR. FRANCISCO: I think that's right,  
20 yeah.

21 JUSTICE GORSUCH: Okay. All right. I  
22 just want to be clear on what -- what is being  
23 alleged.

24 And then your friends on the other  
25 side make a good point about our precedent in

1 Direct Sales, which I did not write either and  
2 is about 80 years old too. I want to give you  
3 an opportunity to respond to Direct -- that.

4 MR. FRANCISCO: Sure. I -- I will  
5 agree with them on one point, that Direct Sales  
6 is their single best case.

7 And Direct Sales isn't even close. In  
8 Direct Sales, you had a manufacturer that was  
9 selling to a specific doctor in such massive  
10 quantities that there was no possible lawful  
11 explanation. And, in addition, the manufacturer  
12 then further encouraged that doctor to buy more  
13 by offering it massive discounts on bulk  
14 purchases.

15 So, to use the language of Twitter,  
16 you had both a very high degree of scienter and  
17 a very high degree of conduct and encouragement.

18 JUSTICE GORSUCH: Well --

19 MR. FRANCISCO: Nothing like that  
20 here.

21 JUSTICE GORSUCH: -- that -- that  
22 raises another question I had, and I'll -- then  
23 I'll stop.

24 But, in terms of aiding and abetting  
25 under Section 2 for 922 if that's what we're

1 talking about, those are criminal statutes. And  
2 Rosemond says that aiding and abetting in the  
3 criminal arena generally requires intent, not  
4 knowledge. But you didn't make anything of  
5 that. Can you just --

6 MR. FRANCISCO: Well, Your Honor, I  
7 think that because they don't come anywhere  
8 close on any standard, whether you call it  
9 knowledge, whether you call it intent --  
10 remember, in Rosemond, the defendant was  
11 actually part of the drug transaction. The  
12 question was, did Rosemond, in participating in  
13 that drug transaction, also know that one of his  
14 collaborators was going to shoot somebody? You  
15 don't have anything like that here.

16 The other respect in which this is far  
17 different from Twitter in a way that also  
18 highlights Direct Sales is that in Twitter, the  
19 defendants there were far more active. We were  
20 here just a few weeks ago talking about  
21 algorithms. The way that algorithms work is  
22 that they match up the creator's content with  
23 the user's interests. So it starts out with  
24 ISIS's vile content. It surveys the billions of  
25 users on the platform, figures out which ones

1 are actually interested in that content, and  
2 puts the two together.

3 We're not doing anything even like  
4 that. This is an a fortiori case after Twitter.

5 JUSTICE GORSUCH: Thank you. Thank  
6 you.

7 CHIEF JUSTICE ROBERTS: Counsel, the  
8 complaint says that 2 percent of the guns  
9 manufactured in the United States find their way  
10 into Mexico, and I know you dispute that, but is  
11 there a number where your legal analysis might  
12 have to be altered? If it's 10 percent, if it's  
13 20 percent? At some point, the proximate cause  
14 lines that you draw really can't bear the weight  
15 of the ultimate result.

16 MR. FRANCISCO: So, Your Honor, if  
17 we're -- I -- I take their complaint as it  
18 comes. If we're talking about proximate cause,  
19 I don't think that the percentage would actually  
20 matter when you have a multitude of intervening  
21 independent crimes.

22 In Hemi, for example, I don't think it  
23 matter -- would matter whether the city was  
24 losing -- whether everybody was not paying their  
25 taxes in New York City or just a small

1 percentage were not paying their taxes in New  
2 York City. What mattered is that you had the  
3 independent decision of the New York City  
4 taxpayers not to pay their taxes that broke that  
5 chain.

6 Here, you have a multitude of  
7 intervening independent crimes. So I don't  
8 think that percentage would matter at all on my  
9 proximate cause analysis.

10 CHIEF JUSTICE ROBERTS: Well, I mean,  
11 at some -- at some point, it must matter. I  
12 mean, I understand you don't want to -- your  
13 theory about the different steps, but if it ends  
14 up that most of your product or whatever number  
15 you want to get to a -- a -- a change in your  
16 view ends up there, you've got to know that.  
17 And if you know that, do you still have to go  
18 through the intricate step-by-step-by-step --

19 MR. FRANCISCO: I --

20 CHIEF JUSTICE ROBERTS: -- or can you  
21 just say this is what they make --

22 MR. FRANCISCO: Mm-hmm.

23 CHIEF JUSTICE ROBERTS: -- and pick  
24 whatever number you want, 70 percent of it ends  
25 up in Mexico?

1           MR. FRANCISCO: I -- I still think you  
2 do have to go through that analysis, Your Honor.  
3 But, even if you disagree with me, I'm willing  
4 to accept the allegations in their complaint and  
5 the number of 2 percent and to be quite  
6 confident that that is not enough for proximate  
7 cause, particularly when their theory is that  
8 simply because a firearm was found in Mexico at  
9 a crime scene and can ultimately trace -- be  
10 traced back to a particular retailer that sold  
11 it in the first instance, that means that the  
12 retailer illegally sold it and that we knew the  
13 retailer illegally sold it. Even the ATF and  
14 the federal government rejects that theory.

15           CHIEF JUSTICE ROBERTS: Thank you.  
16 Justice Thomas?

17           JUSTICE THOMAS: Mr. Francisco, the --  
18 in Direct Sales, there was exactly that, a  
19 direct sale to a doctor, and the seller worked  
20 closely with the doctor to work around the  
21 limitations.

22           In your brief, you summarized the  
23 chain that you've mentioned or alluded to a  
24 number of times.

25           MR. FRANCISCO: Mm-hmm.

1                   JUSTICE THOMAS: Would you just list  
2 the chain for our benefit?

3                   MR. FRANCISCO: Sure. It starts out  
4 with a licensed manufacturer, a manufacturer  
5 that the federal government says is allowed to  
6 make firearms. It then distributes its legal  
7 firearms to licensed distributors, distributors  
8 who the federal government says are allowed to  
9 distribute them.

10                   They then sell to licensed retailers,  
11 retailers that the federal government says are  
12 allowed to retail. Those retailers, some very  
13 small percentage of them, unknown number but  
14 some small percentage of them, transfer those  
15 firearms illegally to straw purchasers.

16                   The straw purchaser then hands it over  
17 to the actual purchaser. You then have a  
18 smuggle across an international border, yet  
19 another violation of law. The smuggler then  
20 presumably gives it to the cartels who are  
21 illegally possessing the firearm in Mexico under  
22 Mexican law as my friends have described it.

23                   Then the Mexican cartels engage in  
24 murder and mayhem against the good people of  
25 Mexico, all of which in turn causes the Mexican

1 government to have to spend money to respond to  
2 that murder and mayhem.

3 With respect, there's not a single  
4 case in history that comes close to that. They  
5 don't even cite cases that find a manufacturer,  
6 I think, ever liable for the unlawful criminal  
7 misuse of its products, other than the cases  
8 that PLCAA was meant to prohibit and perhaps  
9 other than the Avis case, the Florida Supreme  
10 Court case.

11 But they certainly don't cite anything  
12 that comes close to that chain of causation,  
13 which is more extreme than the cases that PLCAA  
14 was meant to prohibit.

15 CHIEF JUSTICE ROBERTS: Justice Alito?  
16 Justice Sotomayor?

17 Justice Kagan?

18 JUSTICE KAGAN: So suppose,  
19 Mr. Francisco -- and this is not the complaint  
20 in this case, so I'm making changes to it.

21 Suppose there's a manufacturer and it  
22 deals directly with a network of dealers, or  
23 there's a wholesaler --

24 MR. FRANCISCO: Mm-hmm.

25 JUSTICE KAGAN: -- and it deals

1 directly with a number of dealers. I think one  
2 of the defendants in this case is a wholesaler.  
3 Either way, let's assume you have a  
4 manufacturer/wholesaler that deals directly with  
5 a network of dealers.

6           And suppose that that manufacturer  
7 does have knowledge that a particular dealer  
8 does more than the usual share of -- of -- of  
9 straw transactions and also knows that more than  
10 the usual share of guns wind up in Mexico and  
11 particularly at Mexican crime scenes so that the  
12 manufacturer -- and the way that manufacturers  
13 do, I think, when they're dealing with dealer  
14 networks --

15           MR. FRANCISCO: Mm-hmm.

16           JUSTICE KAGAN: -- they're paying  
17 attention to their dealers and they're trying to  
18 figure out whether there's a dealer whose sales  
19 are kind of out of kilter with the rest. And  
20 they think, yes, I have a dealer whose sale  
21 is -- sales are out of kilter. They're doing  
22 more straw transactions. They keep on selling  
23 to people who are taking the guns to Mexico --

24           MR. FRANCISCO: Mm-hmm.

25           JUSTICE KAGAN: -- and particularly to

1 people who are leaving the guns at Mexican crime  
2 scenes.

3 MR. FRANCISCO: Mm-hmm.

4 JUSTICE KAGAN: Is that enough?

5 MR. FRANCISCO: Your Honor, that's  
6 obviously very different, as you acknowledged.  
7 Even in that case, if the manufacturer was  
8 simply treating all of the dealers the same,  
9 including that dealer, then I don't think you  
10 would have crossed the line into  
11 aiding-and-abetting liability --

12 JUSTICE KAGAN: Treating them the  
13 same, what -- what does that mean?

14 MR. FRANCISCO: So, you know, like,  
15 say they have a policy that says: You know,  
16 look, I sell firearms. Any dealer that wants to  
17 purchase my firearms --

18 JUSTICE KAGAN: I see.

19 MR. FRANCISCO: -- I'm going to sell  
20 them to that dealer.

21 JUSTICE KAGAN: Okay. Well, they are  
22 treating them the same. I mean, from one  
23 perspective, that's -- that's the problem --

24 MR. FRANCISCO: Mm-hmm.

25 JUSTICE KAGAN: -- that they're

1 treating this rogue dealer the same as the good  
2 dealers, right --

3 MR. FRANCISCO: Right.

4 JUSTICE KAGAN: -- even though that  
5 they know that the rogue dealer is, in fact, a  
6 rogue dealer.

7 Isn't that enough of a problem to  
8 bring you -- and say just where --

9 MR. FRANCISCO: Mm-hmm.

10 JUSTICE KAGAN: -- one thing that's  
11 not -- that is the same is that we're at a  
12 12(b)(6) stage.

13 MR. FRANCISCO: Sure. And, Your  
14 Honor, I -- I -- I think I'd invoke Twitter,  
15 where the social media platforms knew to a  
16 metaphysical certainty that ISIS was on its  
17 platform doing nefarious things, and that  
18 knowledge to a metaphysical certainty wasn't  
19 enough if you were simply treating your  
20 customers all the same and you were indifferent  
21 to what they were doing.

22 I think this case is a lot easier than  
23 Twitter in various respects.

24 JUSTICE KAGAN: Yeah, I guess that's  
25 the question. Is this -- the case that I gave

1 you, is it a Twitter or is it a Direct Sales?

2 It seems to me more like a Direct  
3 Sales. I'm a manufacturer. I have a dealer  
4 network.

5 MR. FRANCISCO: Mm-hmm.

6 JUSTICE KAGAN: I know that there's  
7 one dealer that's way off the beaten track and  
8 doing things that are really different.

9 MR. FRANCISCO: Right.

10 JUSTICE KAGAN: That seems a Direct  
11 Sales case.

12 MR. FRANCISCO: And -- and if I can  
13 explain why I think that Direct Sales is far  
14 more extreme than your hypothetical. Remember,  
15 in Direct Sales, it wasn't just that this doctor  
16 was purchasing so much that there was no  
17 possible explanation. There was no issue --  
18 nobody even argued about whether he was -- the  
19 Direct Sales was treating everybody the same.

20 But, in addition, what that  
21 manufacturer was doing was explicitly  
22 encouraging that doctor who it was -- knew --  
23 knew it was already illegal -- illegally  
24 prescribing to do it even more. There's an  
25 example in the facts, for example, where the

1 doctor orders two batches of pills, one for a  
2 thousand pills and another for a hundred pills.

3 And Direct Sales comes back and says:  
4 Don't do that. I'm just going to cancel your  
5 hundred order because I'll sell you another  
6 thousand pills at this massive discount.

7 So you not only had a high degree of  
8 knowledge, you had a very high degree of conduct  
9 with the manufacturer actually encouraging the  
10 over-sale.

11 JUSTICE KAGAN: So you think that's  
12 necessary to Direct Sales, that there's a kind  
13 of encouragement in addition to a -- a  
14 realization that your products are being used in  
15 this way for these purposes?

16 MR. FRANCISCO: Yeah, I -- I -- I  
17 think that's the necessarily implication of  
18 Twitter, where you had knowledge to a  
19 metaphysical certainty that one of your  
20 customers was doing something bad.

21 But what the opinion makes clear is  
22 that simple knowledge doesn't get you across the  
23 line unless you're, in addition, acting in an  
24 unusual way, as the Court put it --

25 JUSTICE KAGAN: How about if the

1 conduct is like -- and we do this for everybody.  
2 Don't get me wrong, we do this for everybody,  
3 but there -- it's particularly maybe important  
4 to Mexican gang members, is that we make it so  
5 that you can, you know, easily scrape off serial  
6 numbers and we construct a set of products that  
7 are obviously useful in their characteristics  
8 for cartel members.

9 MR. FRANCISCO: Well, Your Honor, the  
10 more you ratchet up the facts and make them  
11 cartel-specific, I think the closer you do  
12 get --

13 JUSTICE KAGAN: Because those --

14 MR. FRANCISCO: -- to Direct Sales.  
15 But --

16 JUSTICE KAGAN: -- those allegations  
17 are in this complaint, right, that the  
18 manufacturers have basically designed and  
19 manufactured a set of weapons with a set of  
20 characteristics that are peculiarly useful for  
21 criminal activity?

22 MR. FRANCISCO: Well, and that's where  
23 I don't think you would be getting anywhere  
24 close. If we simply make our firearms in a way  
25 that the general public likes and we allow

1     whoever wants to buy our firearms buy our  
2     firearms and we know, as in Twitter, that some  
3     percentage of them are going to do something  
4     wrong, that's not the type of affirmative action  
5     that gives rise to aiding-and-abetting  
6     liability.

7                     After all, the social media platforms  
8     in Twitter did know that ISIS was on their  
9     platform. They were much more active than we  
10    are in the ways that I've already described.

11                    This Court said as a matter of law on  
12    a motion to dismiss that that wasn't even close  
13    enough because there was no unusual treatment of  
14    ISIS relative to any other customer.

15                    JUSTICE KAGAN: Thank you.

16                    MR. FRANCISCO: And there was no  
17    affirmative conduct towards ISIS.

18                    CHIEF JUSTICE ROBERTS: Justice  
19    Gorsuch?

20                    Justice Barrett?

21                    JUSTICE BARRETT: Just one question.  
22    Is there any reason for us to reach the  
23    proximate cause question if we conclude for  
24    aiding and abetting that you win?

25                    MR. FRANCISCO: If you rule for us on

1 aiding and abetting, that will completely  
2 dispose of the case. The reason to also address  
3 proximate cause is because it's an  
4 extraordinarily important issue that I think  
5 applies in many different contexts, which is why  
6 there's such a broad range of amici in this case  
7 that go well beyond the firearms industry.

8 So, while you could completely resolve  
9 it on aiding and abetting, I would -- I would  
10 urge you to address proximate cause as well.

11 JUSTICE BARRETT: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice  
13 Jackson?

14 JUSTICE JACKSON: So, Mr. Francisco,  
15 I'm just trying to understand what you mean by  
16 "resolve it on aiding-and-abetting liability."  
17 Don't we have to have a conception of  
18 aiding-and-abetting liability that is specific  
19 to this statute?

20 MR. FRANCISCO: No.

21 JUSTICE JACKSON: You seem to be  
22 drawing on others. And I thought we took a  
23 statute-by-statute approach to  
24 aiding-and-abetting liability. We've held as  
25 much. We've said that before.

1           MR. FRANCISCO: Well, Your Honor, in  
2     Twitter, you were applying aiding-and-abetting  
3     principles that arose in the context of a murder  
4     when you were talking about social media  
5     platforms.

6           I think the whole point of Twitter was  
7     that there is a set of general  
8     aiding-and-abetting principles, and that is the  
9     law that informs what aiding-and-abetting  
10    liability is.

11          JUSTICE JACKSON: But I thought we  
12    were --

13          MR. FRANCISCO: I don't even know how  
14    you would do this kind of statute-specific  
15    aiding-and-abetting liability outside of the  
16    general principles of aiding and abetting.

17          JUSTICE JACKSON: Well, I -- I thought  
18    we were only looking at aiding and abetting to  
19    the extent that Congress mentions that in an  
20    example in the statute. So what we're really  
21    doing is trying to understand what Congress  
22    intended with respect to the exception that it  
23    put in this statute.

24          And so, to the extent that it  
25    references aiding-and-abetting liability in one

1 of the examples, that is just to illuminate the  
2 meaning of the statutory terms that exist there,  
3 right?

4 I mean, it's sort of odd to me that  
5 suddenly a common law --

6 MR. FRANCISCO: Mm-hmm.

7 JUSTICE JACKSON: -- of  
8 aiding-and-abetting liability is coming in to,  
9 in your view, be dispositive of how we think  
10 about this case.

11 MR. FRANCISCO: Sure. Well, I think  
12 that it's an example. That -- the reference to  
13 aiding and abetting in the statute is an example  
14 of a violation that then triggers the statutory  
15 exception and the proximate cause analysis.

16 So you have to understand then what it  
17 means to aid and abet a particular crime.  
18 Again, I don't --

19 JUSTICE JACKSON: As Congress intended  
20 it for the purpose of this statute in --

21 MR. FRANCISCO: Well, and -- and --  
22 and I think it's not that plausible to say that  
23 Congress had some completely idiosyncratic view  
24 of what aiding and abetting was for this statute  
25 as opposed to just looking to the principles

1 like this Court looked to in Twitter, which are  
2 just the basic aiding-and-abetting --

3 JUSTICE JACKSON: Can I just ask you  
4 about your proximate --

5 MR. FRANCISCO: -- principles that are  
6 covered in criminal law.

7 JUSTICE JACKSON: Can I ask you about  
8 the proximate cause because I'm still a little  
9 confused about where you start your proximate  
10 cause analysis. I listened as you --

11 MR. FRANCISCO: Mm-hmm.

12 JUSTICE JACKSON: -- discussed with  
13 Justice Thomas the steps, the series of steps,  
14 from your clients to the alleged --

15 MR. FRANCISCO: Mm-hmm.

16 JUSTICE JACKSON: -- ultimate harm,  
17 but it seemed to me that the first moment of  
18 illegality in the chain, that -- as you  
19 articulated it, was the retailers selling to the  
20 straw purchasers. Am I right about that?

21 You say your clients do things that  
22 are legal. They sell to --

23 MR. FRANCISCO: Mm-hmm.

24 JUSTICE JACKSON: -- other legal  
25 buyers and -- et cetera, et cetera, until we get

1 to that straw purchaser point, right?

2 MR. FRANCISCO: That is the first  
3 moment of illegality, but I don't think that's  
4 the sole step relevant to a general proximate  
5 cause analysis.

6 JUSTICE JACKSON: Right. But we don't  
7 have a general proximate cause analysis. We  
8 have a statute. And the statute makes clear  
9 that we're starting with an action in which a  
10 manufacturer or seller of a qualified product  
11 knowingly violated a state or federal statute  
12 applicable to the sale or marketing of the  
13 product.

14 So it seems to me that the first step,  
15 given this statute, is the moment of violation,  
16 of illegality, as opposed to --

17 MR. FRANCISCO: Right.

18 JUSTICE JACKSON: -- some theoretical  
19 original point.

20 MR. FRANCISCO: And my answer to that  
21 question is no, but it doesn't matter. No --

22 JUSTICE JACKSON: No, I understand you  
23 think you make it anyway --

24 MR. FRANCISCO: Yeah. Yeah.

25 JUSTICE JACKSON: -- but I'm just

1 trying to understand why you --

2 MR. FRANCISCO: And it's because what  
3 the --

4 JUSTICE JACKSON: -- why you're  
5 insisting --

6 MR. FRANCISCO: Yeah.

7 JUSTICE JACKSON: -- that it's way  
8 back here.

9 MR. FRANCISCO: Because what the  
10 statute says is there has to be a proximate  
11 cause between the defendant's violation. Our  
12 violation is not the illegal sale itself. We  
13 don't sell to consumers. Our --

14 JUSTICE JACKSON: But you say you  
15 don't violate at the time the beginning. So I  
16 don't know what your violation is unless it --  
17 it's the point of illegality.

18 MR. FRANCISCO: It's the aiding and  
19 abetting. That is the whole --

20 JUSTICE JACKSON: All right.

21 MR. FRANCISCO: -- aiding-and-abetting  
22 theory.

23 JUSTICE JACKSON: Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 MR. FRANCISCO: Thank you, Your Honor.

2 CHIEF JUSTICE ROBERTS: Ms. Stetson.

3 ORAL ARGUMENT OF CATHERINE E. STETSON

4 ON BEHALF OF THE RESPONDENT

5 MS. STETSON: Mr. Chief Justice, and  
6 may it please the Court:

7 Mexico's complaint pleads that  
8 Petitioners aided and abetted violations of  
9 specific federal gun laws and that those  
10 violations proximately caused Mexico's harm.  
11 That satisfies PLCAA's predicate exception.

12 First, the complaint details that  
13 Petitioners deliberately supplied the illegal  
14 Mexican market by selling guns through the small  
15 number of dealers that they know sell a large  
16 number of crime guns and who repeatedly sell in  
17 bulk to the cartel traffickers.

18 Petitioners' arguments ignore these  
19 allegations.

20 Next, as the Court said in *Twitter*, an  
21 aider and abetter is liable for harms that were  
22 a foreseeable risk of that violation. That  
23 framing, foreseeable risk, is the proximate  
24 cause question. As this Court put it in *Bank of*  
25 *America*, does the harm alleged have a

1 sufficiently close connection to the conduct the  
2 statute prohibits? The answer is yes. The laws  
3 broken here are designed to keep guns out of  
4 criminals' hands. Those violations put guns in  
5 criminals' hands and those criminals harmed  
6 Mexico.

7           Petitioners' arguments would rewrite  
8 PLCAA and proximate cause law far beyond this  
9 case. Petitioners argue that independent  
10 criminal acts sever the causal chain. But an  
11 independent act, criminal or not, only breaks  
12 the causal chain if it is not foreseeable.  
13 These acts were foreseeable.

14           Petitioners argue that Mexico's injury  
15 is not direct. But their directness argument  
16 borrows from cases involving indirect victims.  
17 Mexico is not an indirect victim.

18           We are here at the beginning of the  
19 beginning of this case. This Court need not  
20 vouch for Mexico's allegations, but it must  
21 assume they are true. And the issue at this  
22 stage is not whether every aspect of Mexico's  
23 complaint survives but whether any of it clears  
24 the predicate exception.

25           Mexico should be given a chance to

1 prove its case.

2 I welcome the Court's questions.

3 JUSTICE THOMAS: How is your suit  
4 different from the types of suits that prompted  
5 the passage of PLCAA?

6 MS. STETSON: Our suit is different,  
7 Justice Thomas, because the types of suits that  
8 prompted the passage of PLCAA specifically did  
9 not allege that the manufacturers had violated  
10 any law. So, if you look, for example, at the  
11 Third Circuit's decision in City of  
12 Philadelphia, the Illinois Supreme Court's  
13 decision of City of Chicago, each of them  
14 specifically made the point that those  
15 manufacturers were not alleged to have violated  
16 any federal or state statute. They were being  
17 held liable for actions solely caused by  
18 criminals.

19 And that's the important balance that  
20 this bipartisan act struck. If an action was  
21 solely caused by criminals, manufacturers of  
22 guns, like any other product, wouldn't be held  
23 liable. But, if --

24 JUSTICE THOMAS: Well, it seems as  
25 though the only connection -- or the difference

1 would be the allegation or the assertion that  
2 you have an aiding-and-abetting problem with  
3 respect to the manufacturer. You could have  
4 done that in the other cases, couldn't you?

5 MS. STETSON: I -- I don't know that  
6 they could have. And they certainly didn't.  
7 And -- and PLCAA, for -- more to the point,  
8 could have also barred, as many states did, all  
9 lawsuits against manufacturers. Many -- many  
10 states barred lawsuits by cities. Many states  
11 barred lawsuits by all manufacturers. PLCAA  
12 didn't. And what PLCAA did was to preserve  
13 exactly these types of claims.

14 You asked a question about the  
15 specific allegations of illegality. I want to  
16 direct you to paragraph 249 of the complaint.  
17 There is a list at paragraph 249 that includes  
18 18 U.S.C. 922, several different subparts,  
19 (a)(6), (d)(1); 923(g)(1); 924(a)(1)(A). And  
20 those map closely onto the predicate exception  
21 we're talking about, including, of course, that  
22 first example of the predicate exception, which  
23 involves aiding and abetting a straw purchase,  
24 which is at the core of what we are talking  
25 about. That's 18 U.S.C. 922(a)(6), 922(t)(1),

1 922(m), 924(a)(1)(A), 923(g)(1)(A). Each of  
2 those are specified in the complaint, and the  
3 manufacturers and distributor in this case are  
4 alleged to have aided and abetted all of them.

5 JUSTICE THOMAS: Have --

6 CHIEF JUSTICE ROBERTS: Counsel -- I'm  
7 sorry.

8 JUSTICE THOMAS: Oh, just one last.

9 Have any of these violations been  
10 violations that ATF have -- has pinpointed?

11 MS. STETSON: They have not been  
12 violations that ATF has pinpointed, and that's  
13 a -- that's a point that the Petitioners are  
14 fond of making. I think the issue with ATF, as  
15 the complaint alleges, is that ATF -- and you  
16 can find this at paragraphs 126, 129, 133 --  
17 ATF, just because of its resources, is only able  
18 to look even every year at about anywhere  
19 between 3 and 10 percent of licensed dealers and  
20 manufacturers and distributors.

21 And if PLCAA, again, had wanted ATF to  
22 be the sole arbiter of this, it could have  
23 barred cases altogether. It could have required  
24 a conviction. It could have required the  
25 stripping of a license before any of these

1 allegations were allowed to go forward. It  
2 didn't do any of those things in the predicate  
3 exception.

4 CHIEF JUSTICE ROBERTS: Counsel, in  
5 his argument this morning and also in his brief,  
6 Mr. Francisco focused on two particular cases,  
7 the Twitter case, of course, and you engaged  
8 with that in your brief, but also Hemi Group,  
9 and you cite that once in a string cite at page  
10 42 of your brief. I wanted to give you an  
11 opportunity to say a little bit more about that.

12 MS. STETSON: Certainly. So Hemi  
13 Group, of course, is -- is -- pertains to the  
14 proximate cause issue. And Hemi Group, I think,  
15 is in a line with all of the cases that talk  
16 about what my friend, Mr. Francisco, calls  
17 direct harm. And that's something that you  
18 heard a lot in his argument. Direct came up a  
19 lot. Independent came up 13 times.

20 Direct harm, if you look at Hemi  
21 Group, if you look at Associated General  
22 Contractors, Holmes, Anza, Bridge, there is a  
23 list of proximate cause cases, and if you look  
24 at each of them, what you will find is that the  
25 issue there was that the victim who was bringing

1 the complaint was an indirect victim.

2           So this Court, you know, like -- like  
3 many of us, finds it hard to speak with one  
4 voice on proximate cause. One of the few times  
5 it has is in Lexmark. And what Lexmark says is  
6 the reason for that directness requirement is  
7 that there ordinarily is a discontinuity between  
8 the injury to the direct victim and the injury  
9 to the indirect victim so that the latter is not  
10 surely attributable to the former. That, I  
11 think, is an important component of the  
12 proximate cause argument.

13           And I want to touch on this  
14 independent idea because it came up so much. As  
15 I said in the opening, an act that is  
16 independent can still be foreseeable. It's when  
17 an independent act is unforeseeable that you  
18 have the intervening cause that breaks the  
19 causal chain.

20           So Mr. Francisco mentioned that 1876  
21 case that Justice Gorsuch did not write about  
22 Milwaukee railroad. You know, that is the case  
23 that says, "the primary cause may be the  
24 proximate cause of a disaster, though it may  
25 operate through successive instruments, as an

1 article at the end of a chain may be moved by a  
2 force applied to the other end."

3 So it's not a question about one step  
4 or a causal chain. It's a question about  
5 whether something breaks that chain.

6 Hemi was an example of an -- of  
7 something breaking the chain because you had  
8 unlawful conduct over here and an injury over  
9 there, and the two weren't connected by anything  
10 other than a very articulate series of steps.  
11 The injury and the conduct were very different.

12 JUSTICE SOTOMAYOR: You know, it --  
13 it's nearly impossible to say that something's  
14 not foreseeable in -- in a chain. It doesn't  
15 help me when people talk foreseeability.

16 I'm much more helped by the  
17 Restatement (Third) of Torts that basically  
18 says: You impose liability for harms within the  
19 scope of the risk that made the defendant's  
20 conduct wrongful in the first place.

21 That makes much more sense because, as  
22 I started earlier with Mr. Francisco, we know  
23 that a straw seller is going to sell to someone  
24 who is going to use the gun illegally because,  
25 if they weren't, they wouldn't use the straw

1 purchaser. And that illegal conduct is going to  
2 cause harm and harm like this, that the gun is  
3 going to be used in some way to injure people.  
4 Correct?

5 MS. STETSON: That's correct.

6 JUSTICE SOTOMAYOR: And that basically  
7 is much easier than saying that all foreseeable  
8 harms are -- you're responsible for all  
9 foreseeable harms. You're only responsible for  
10 those that your wrongful conduct causes a risk  
11 about.

12 MS. STETSON: That's exactly right,  
13 Justice Sotomayor. And that's why I started  
14 with that reference to Twitter because, when  
15 Twitter talks about the aider and abetter being  
16 responsible for harms that are a foreseeable  
17 risk of the conduct, that's the closest thing  
18 that I've seen that comes to encapsulating what  
19 a proximate cause test is.

20 JUSTICE SOTOMAYOR: Exactly.

21 MS. STETSON: It's foreseeable risk.

22 JUSTICE SOTOMAYOR: Now can I go back  
23 to what's troubling me? You have the  
24 manufacturers aiding and abetting, in your  
25 theory, by producing guns that are singularly

1 attractive to the cartel because they are  
2 designed in a particular way that cartel members  
3 like, because they're showy.

4           They're making erasable serial  
5 numbers, which obviously are attractive to  
6 criminals because every criminal would like to  
7 erase the serial number if they can.

8           So that's what you claim is aiding and  
9 abetting. But what are you claiming interstate  
10 the distributor wholesaler did other than  
11 selling the product? They don't design it.  
12 They didn't do any of the -- they didn't design  
13 it. They didn't have anything to do with that.  
14 They just have a product they're selling.

15           So how do we make in -- how are your  
16 allegations enough with respect to interstate?  
17 And if we were to say they're not enough with  
18 respect to interstate, doesn't that break the  
19 causal connection with the manufacturers?

20           MS. STETSON: Justice Sotomayor,  
21 the -- the complaint actually details six or  
22 seven different examples of how the  
23 manufacturers are actively participating in the  
24 illegal market. One -- one of them is design.

25           JUSTICE SOTOMAYOR: I -- I -- I -- I'm

1 accepting that.

2 MS. STETSON: Yes. Yes.

3 JUSTICE SOTOMAYOR: I -- I'm asking,  
4 tell me what it says that the distributors are  
5 doing.

6 MS. STETSON: What it says the  
7 distributors are doing, including the -- the one  
8 that's named in this complaint, are knowingly  
9 supplying the dealers who we know sell  
10 unlawfully across the border.

11 JUSTICE SOTOMAYOR: But knowledge is  
12 not enough. We have repeatedly said mere  
13 knowledge is not enough. You have to aid and  
14 abet in some way.

15 MS. STETSON: What the -- what --

16 JUSTICE SOTOMAYOR: You have to -- you  
17 have to intend and take affirmative action to --

18 MS. STETSON: What --

19 JUSTICE SOTOMAYOR: -- encourage what  
20 they're -- not to encourage but to participate  
21 in what they're doing.

22 MS. STETSON: What this Court said in  
23 Rosemond is "a person who actively participates  
24 in a criminal scheme knowing its [intent] ...  
25 and character intends that scheme's commission."

1 That's the criminal aiding-and-abetting  
2 standard.

3 JUSTICE GORSUCH: Yeah, that -- that  
4 is the standard. And I -- that was a question I  
5 wanted to circle back with you on, Ms. Stetson.

6 And -- if 922 and 3 and 4 are your  
7 predicate violations and -- and aiding and  
8 abetting under 18 U.S.C. Section 2, I think,  
9 would then be your aiding-and-abetting hook,  
10 that's a criminal -- those are criminal  
11 statutes. And the mens rea under Rosemond is  
12 intent, right?

13 MS. STETSON: The mens rea under  
14 Rosemond for aiding and abetting in the criminal  
15 context --

16 JUSTICE GORSUCH: Yeah.

17 MS. STETSON: -- would -- would be  
18 intent under Rosemond.

19 JUSTICE GORSUCH: And -- and you're  
20 invoking criminal statutes. So is -- is that  
21 the standard you have to meet here?

22 MS. STETSON: It's the standard we  
23 have to meet, but just as in Rosemond, if you  
24 actively participate knowing the scheme --

25 JUSTICE GORSUCH: Sure, then you can

1 infer knowledge.

2 MS. STETSON: -- then you can infer --

3 JUSTICE GORSUCH: I -- I get that.

4 MS. STETSON: -- particularly at the  
5 motion-to-dismiss stage.

6 JUSTICE GORSUCH: Yeah. Got it.

7 Thank you.

8 MS. STETSON: And -- and let me -- if  
9 I could, I want to be pretty specific about some  
10 of the allegations in the complaint, because  
11 what I heard this morning was that the  
12 allegations are vague and -- and so forth.

13 I want to point you to a few  
14 particular allegations. Two of them are at  
15 paragraphs 122 and 146. And this has to do with  
16 trace data. Defendants are alleged to  
17 "regularly receive" -- I'm sorry?

18 JUSTICE GORSUCH: One-twenty-two?

19 JUSTICE SOTOMAYOR: One-twenty-two?

20 MS. STETSON: Paragraphs 122 and 146  
21 I'm starting with.

22 "Regularly receive even more direct  
23 information about problem dealers. Trace  
24 requests from ATF and other agencies alert  
25 Defendants that guns they sell to specific

1 distributors and dealers are being recovered at  
2 crime scenes."

3 Paragraph 146: "Authorities have  
4 repeatedly identified and recovered Defendants'  
5 guns in connection with notorious  
6 gun-trafficking rings."

7 Paragraph 232: Defendants are aware  
8 "that specific networks of distributors and  
9 dealers they were supplying were consistently  
10 channeling their guns."

11 Paragraph 233: "Century Arms received  
12 communications from ATF ... those trace requests  
13 revealed that specific distributor and dealer  
14 networks were disproportionately associated with  
15 those guns."

16 Paragraph 234: "All of the other  
17 defendants have" access to the same information.

18 That is exactly the kind of specific  
19 allegation in the complaint at this stage that  
20 satisfies a motion to dismiss.

21 JUSTICE JACKSON: But that -- that --  
22 those statements aren't allegations of  
23 violations of the law, correct?

24 I mean, those statements just go to  
25 whether or not the defendant had knowledge that

1 at the end of the day, some deal -- some dealers  
2 might be doing something wrong, these guns that  
3 they're selling are ending up in the wrong  
4 hands. But I took the statutory language here  
5 to be requiring more in terms of a violation on  
6 the part of the defendants in this case.

7 MS. STETSON: It certainly requires,  
8 Justice Jackson, a knowing violation, but as far  
9 as these allegations go, what these allegations  
10 show is that the dealers, a small number that is  
11 responsible for the large number of guns, are  
12 knowingly violating federal laws and that these  
13 suppliers, these manufacturers and the  
14 distributor, know that is happening and continue  
15 to actively supply.

16 And I want to make --

17 JUSTICE KAGAN: But what you don't  
18 have is particular dealers, right? I mean,  
19 it's -- it's a -- it's a pretty -- there are  
20 lots of dealers. And you're just saying they  
21 know that some of them do.

22 But which some of them? I mean, who  
23 are they aiding and abetting in this complaint?

24 MS. STETSON: There are a number of  
25 dealers that we do know are responsible for

1 selling a great number of crime guns into  
2 Mexico. There's the Washington Post article  
3 that the complaint mentions. Those -- that  
4 names eight -- eight or 10 different dealers by  
5 name, most of which are still very actively in  
6 the business.

7           And, you know, more to the point,  
8 again, we are here at a motion to dismiss. What  
9 we have alleged is that these manufacturers know  
10 from ATF exactly what dealers are the problem,  
11 are the rogue dealers.

12           So the hypothetical that you gave  
13 Mr. Francisco, Justice Kagan, is not a  
14 hypothetical. That is actually this case. The  
15 allegations in this case establish, for purposes  
16 of getting past the motion to dismiss on the  
17 predicate exception, as Justice Jackson  
18 mentioned, that there are allegations of aiding  
19 and abetting, violations of federal laws.

20           And I want to get back to a question  
21 that Justice Barrett asked as well about what  
22 the violation is because I think there's been  
23 some -- some -- some noise in the data.

24           JUSTICE ALITO: Well, Ms. --  
25 Ms. Stetson, before you do that, could I just

1 ask you something related to the point you were  
2 just discussing? Are there any allegations in  
3 the complaint that the Petitioners knowingly  
4 sell to specific red flag dealers?

5 MS. STETSON: Yes. If you look at  
6 paragraph 247 -- and I'll -- I'll read it  
7 because I think this one is important --  
8 "Defendants supply dealers with all the guns  
9 they can pay for, without any public-safety  
10 conditions, even if a gun dealer has been  
11 repeatedly found to have violated gun laws ...  
12 been indicted ... its employees have had federal  
13 gun licenses revoked, or has repeatedly supplied  
14 cartels in suspicious and obvious sales to  
15 traffickers, including repeated bulk sales."

16 That is an allegation that goes  
17 directly to specific rogue dealers, and that  
18 gets us, I think, to the Twitter/Direct Sales  
19 dichotomy. What Mr. Francisco says is that  
20 Twitter was very actively managing something.

21 Twitter was actively managing, to the  
22 extent it was managing anything at all, its  
23 algorithm. And what this Court said in Twitter  
24 was that that kind of starting the platform,  
25 sending it out into the world and standing back

1 and watching, which was the phrase in Twitter,  
2 is not enough.

3           What you need is active, culpable  
4 participation. The active, culpable  
5 participation here is continuing to sell guns to  
6 rogue dealers that you know are the problem  
7 dealers. That is exactly --

8           JUSTICE BARRETT: You haven't --

9           MS. STETSON: -- Direct Sales.

10           JUSTICE BARRETT: -- identified the  
11 dealers. Justice Alito was asking you about  
12 specific red flag dealers. But that paragraph  
13 doesn't identify dealers, and it seems to me  
14 that that's one of the distinctions between this  
15 case and Direct Sales and, for that matter, this  
16 case and Twitter.

17           Let's talk about Twitter. There was a  
18 specific rogue actor, ISIS, and there was a  
19 specific attack in France. And so the attempt  
20 was to draw the line between them, and we said  
21 it wasn't enough.

22           In Direct Sales, there was a specific  
23 manufacturer, a pharmaceutical company, selling  
24 to a specific doctor, causing specific harm.

25           And Justice Alito asked you what

1 specific red flag dealers there are. You  
2 haven't sued any of the retailers that were the  
3 most proximate cause of the harm, and you  
4 haven't identified them that I can tell in the  
5 complaint.

6 MS. STETSON: Justice Barrett, there  
7 are many, many paragraphs that specifically  
8 identify rogue dealers in the complaint. If you  
9 look at approximately paragraphs 147 to 203,  
10 they identify specific dealers that have been  
11 found to have sold guns in bulk to traffickers  
12 that go across the border.

13 If the question is you haven't named  
14 in paragraph 247, which says that these  
15 manufacturers know that they're selling to  
16 dealers who sell to cartels, I think that is  
17 pushing a little bit past what is necessary for  
18 drawing reasonable inferences from a motion to  
19 dismiss.

20 But I want to pause too on Twitter and  
21 Direct Sales. Direct Sales involved an entity  
22 that was selling large quantities of morphine to  
23 a doctor. The entity was licensed. The doctor  
24 was licensed. And if you look at Direct Sales,  
25 what Direct Sales says is that the quantities

1 that were at issue were in line with that  
2 defendant's marketing practices. There was  
3 nothing unusual about the quantities at issue  
4 there.

5 What was unusual in that case and what  
6 is different in -- in that case is that that  
7 man -- the Direct Sales manufacturer did not  
8 know that that specific doctor was a problem.  
9 It had been put on notice that there were other  
10 doctors who were selling lots of their products  
11 to people who shouldn't be getting them, but  
12 unlike this case, where these manufacturers and  
13 the distributor are alleged to know who the  
14 dealers are and what problems they are causing,  
15 the -- the manufacturer that was held liable for  
16 criminal conspiracy in Direct Sales didn't know  
17 anything about that doctor. All it knew was  
18 that the doctor kept sending them legal order  
19 forms and they kept fulfilling the orders. That  
20 was Direct Sales.

21 This case is much like Direct Sales,  
22 if not stronger, for that reason.

23 JUSTICE KAVANAUGH: What do you do  
24 with the suggestion on the other side and in the  
25 amicus briefs that your theory of

1 aiding-and-abetting liability would have  
2 destructive effects on the American economy in  
3 the sense that, as you've read in the briefs,  
4 lots of sellers and manufacturers of ordinary  
5 products know that they're going to be misused  
6 by some subset of people? They know that to a  
7 certainty, that it's going to be  
8 pharmaceuticals, cars, what -- you can name lots  
9 of products. So that's a real concern, I think,  
10 for me about accepting your theory of  
11 aiding-and-abetting liability.

12           And, relatedly, you've referred often  
13 to the motion to dismiss. Of course, as you're  
14 well aware, getting past that is often the whole  
15 thing. So I don't think we can just rely on the  
16 motion to dismiss.

17           But the broader point, I'd be  
18 interested in your reactions, how we rule for  
19 you but don't cause that problem that is  
20 identified with great force in the briefs.

21           MS. STETSON: Sure. So let's take  
22 Budweiser as an example. As you heard  
23 Mr. Francisco say today, if Budweiser had a  
24 practice, was alleged to have a practice, of  
25 selling bulk quantities of Bud Light to liquor

1 stores that were arranged next to high schools  
2 and it was selling more and more into those high  
3 schools, knowing that those liquor stores were  
4 regularly serving underage students, and, in  
5 fact, the Bud Light designed it to put out a --  
6 a new can that says Best Prom Ever and sold it  
7 right into that high school, that is the  
8 allegations in this case.

9           If you have a product manufacturer of  
10 a dangerous product that is alleged to have done  
11 all of the things knowing who they're selling to  
12 and what is being done with that product, then  
13 and only then, I think, that product  
14 manufacturer doesn't -- has a problem.

15           If you look at the examples that are  
16 given in PLCAA that aren't at issue in this  
17 case, the examples that the congressmen and  
18 senators were concerned about in PLCAA were when  
19 a car dealer sells a car to someone who later  
20 drives drunk, when Campbell's is sued because  
21 someone is killed with a soup can. Those are  
22 the things that PLCAA was concerned about.

23           This case is -- marches through in  
24 detail allegations taken as true at this stage  
25 that these manufacturers know that they are

1 selling a dangerous product to specific rogue  
2 dealers who are -- who are selling to straw  
3 purchasers for the cartels across the country.

4 JUSTICE ALITO: What if a --

5 MS. STETSON: That's --

6 JUSTICE ALITO: -- beer -- what if a  
7 beer -- I'm sorry. I cut off your sentence.  
8 Did you --

9 MS. STETSON: That's okay.

10 JUSTICE ALITO: What if a beer  
11 manufacturer knows that the per capita beer  
12 sales in a small college town are, you know, 50  
13 times more than another town without a -- a  
14 college there? Is that enough?

15 MS. STETSON: I don't think that alone  
16 would be enough. I mean, you -- you do have  
17 allegations in this complaint that the -- the  
18 number of dealers that have arranged themselves  
19 along the border of Texas and Arizona, of  
20 Mexico, are vast. I don't think that itself  
21 would be enough.

22 It would be you know the dealers are  
23 there, you know what they're selling, you know  
24 who the bad apple dealers are, because we're not  
25 talking about every dealer in the country. We

1 are talking about a small percentage of  
2 retailers responsible for about 90 percent of  
3 the crime guns that are found.

4 Those retailers in that college town,  
5 if you plug in that hypothetical of Budweiser  
6 and Budweiser was marketing in with some kind  
7 of, you know, best first year homecoming ever,  
8 then you would again have the problem. But  
9 you'd have to have each of those specific  
10 allegations in the complaint that you have here.

11 JUSTICE JACKSON: Ms. Stetson, I guess  
12 what I'm concerned about, you talked in response  
13 to Justice Kavanaugh about what PLCAA was about,  
14 what it was getting at, and I really thought, as  
15 the statute itself says, that it partially at  
16 least is about Congress protecting its own  
17 prerogative to be the one to regulate this  
18 industry, that there were concerns and the  
19 statute itself says that, you know, we're  
20 worried that tort suits are an attempt to use  
21 the judicial branch to circumvent the  
22 legislative branch of government.

23 And, to me, when you think about that  
24 as being the reason why Congress wanted to have  
25 immunity in this area, and I'm starting from

1 the, I'm sure, consensus view that we're trying  
2 to do what the statute -- the -- the statute  
3 wants, I think, when you think about that, the  
4 predicate exception makes perfect sense to the  
5 extent that there's a violation of a state or  
6 federal statute at issue, because Congress says  
7 we want to be the ones to regulate, but in this  
8 particular situation in which a tort suit aligns  
9 with a clear violation of the law, then we're --  
10 we don't worry that we have judges in -- in the  
11 common law system dictating what people can do.

12 I worry that without that clarity in  
13 a -- in a -- in a complaint like yours, where we  
14 don't really see exactly how the manufacturers  
15 are violating a particular state or federal law,  
16 that we're running up against the very concerns  
17 that motivated this statute to begin with.

18 So can you speak to that?

19 MS. STETSON: Sure. Justice Jackson,  
20 I -- I think, if you look at the paragraphs,  
21 let's call it 203 to 250 of the complaint,  
22 which -- which pertain exactly to the violations  
23 of federal law that we started with, all of the  
24 specific statutory violations, 922 subparts,  
25 923, 924, what you will find is that there are

1 plentiful allegations that these manufacturers,  
2 by knowingly sell -- selling to the rogue  
3 dealers that they know are selling to straw  
4 purchasers, are aiding and abetting that  
5 violation.

6 Part of the problem maybe we're  
7 having --

8 JUSTICE JACKSON: Well, I understand,  
9 but I guess my point is that Congress didn't  
10 want, like, general aiding-and-abetting concerns  
11 to be what is imposing duties on these  
12 manufacturers.

13 I mean, if you look at your lawsuit  
14 and what you're asking for, you're asking for  
15 changes to the firearm industry's safety  
16 practices. You say not, you know, putting these  
17 kinds of constraints is a -- a thing that should  
18 give lies to -- give rise to liability, the  
19 distribution practices, the marketing. All of  
20 the things that you ask for in this lawsuit  
21 would amount to different kinds of regulatory  
22 constraints that I'm thinking Congress didn't  
23 want the courts to be the ones to impose.

24 MS. STETSON: So let me answer the  
25 aiding-and-abet -- abetting liability point

1 first, and then I want to answer your remedies  
2 point because I think that's particularly  
3 important.

4 Aiding and abetting, of course, was  
5 specifically contemplated in PLCAA in the first  
6 predicate exception itself. Any case in which  
7 the manufacturer or seller knowingly made a  
8 false entry, et cetera, et cetera, or aided,  
9 abetted, or conspired with any person in making  
10 any false or fictitious statement. Aiding and  
11 abetting is baked into this.

12 JUSTICE JACKSON: So you don't read  
13 that --

14 MS. STETSON: And, as I mentioned --

15 JUSTICE JACKSON: -- you don't read  
16 that to be very, very closely tied to the  
17 record-keeping violation, the particular  
18 statutory violation that's also mentioned --

19 MS. STETSON: No.

20 JUSTICE JACKSON: -- in that?

21 MS. STETSON: I mean, that -- that --  
22 the predicate exception begins by talking about  
23 the action in which the manufacturer knowingly  
24 violated and -- and the violation was a  
25 proximate cause, including the -- the exceptions

1 that are mentioned. So that -- so aiding and  
2 abetting these violations of federal and state  
3 statutes pertaining to guns is exactly what this  
4 exception was built to do. That is why it was  
5 carved out in this bipartisan legislation.

6 But, on your remedies question, one of  
7 the difficulties I think for all of us is that  
8 we're here so early. This is a complaint that  
9 has asked for a number of different remedies,  
10 including a number of different types of  
11 injunctive relief.

12 And one of the things that you heard  
13 the Petitioners and a lot of their amici in  
14 their briefs complain about is what these  
15 remedies might do. That is for the district  
16 judge on remand to make sure that the judge  
17 equitably crafts a remedy that is designed to  
18 limit the harm to Mexico.

19 Mexico is not trying to legislate gun  
20 use in the United States.

21 JUSTICE JACKSON: Yeah, I understand  
22 that. I guess I'm just wondering whether the  
23 PLCAA statute itself is telling us that we don't  
24 want the courts to be the ones to be crafting  
25 remedies that amount to regulation on this

1 industry.

2 MS. STETSON: I think --

3 JUSTICE JACKSON: That that was really  
4 the point of the entire thing. And so, to the  
5 extent that we're now reading an exception to  
6 allow the very thing that the statute seems to  
7 preclude, I'm concerned about that.

8 MS. STETSON: Justice Jackson, if  
9 PLCAA had wanted to preclude any lawsuit against  
10 a manufacturer, including for instances where  
11 the manufacturer had committed a wrong, it could  
12 have done that, as so many different states, in  
13 fact, did.

14 What PLCAA did in this effort, which,  
15 as I mentioned, was joined by members of both  
16 parties, was to carefully carve out  
17 circumstances where the manufacturer or the  
18 seller was -- was alleged to have done something  
19 wrong.

20 The thing they were concerned about  
21 was lawful design and manufacture and sale of  
22 product and injury solely caused by others.  
23 That is replete throughout the purpose section  
24 of PLCAA.

25 PLCAA could have been designed quite

1 differently. It was designed this way for a  
2 reason, so that harmful actions by manufacturers  
3 and sellers breaking the law could continue to  
4 be remedied. That was exactly the point.

5 JUSTICE KAVANAUGH: You've mentioned  
6 about four times that it was bipartisan. What's  
7 the relevance of that to this -- to our  
8 interpretation here?

9 MS. STETSON: I -- I think I -- I --  
10 yes. I was -- I -- I haven't gotten to -- to 13  
11 times yet, but four will do.

12 The fact that it's bipartisan, I  
13 think, points out particularly in this climate  
14 that the -- what was being challenged there were  
15 really unusual lawsuits that really weren't  
16 showing up in any other part of the -- the  
17 economy against the manufacturers of a lawful  
18 product, selling their product lawfully,  
19 distributing their product lawfully, where no  
20 allegations were made in those prior lawsuits  
21 about unlawful behavior.

22 That was what PLCAA carefully carved  
23 out. What it left, among other things, were  
24 actions for things like negligent entrustment,  
25 product liability. And product liability is

1 interesting, by the way, because you probably  
2 notice this as well, product liability  
3 specifically says you can sue for product  
4 liability, but, if it was a criminal act, then  
5 that act becomes the sole proximate cause.

6 That, of course, is very different  
7 from the violation of which is the -- or a  
8 proximate cause, which is what you see in the  
9 predicate exception. I think that language  
10 difference is very important.

11 CHIEF JUSTICE ROBERTS: Thank you,  
12 counsel.

13 I'd like to ask you pretty much the  
14 flip side of the question I asked your -- your  
15 friend on the -- the other side, which you  
16 allege that 2 percent of the guns manufactured  
17 in the United States make their way to Mexico.

18 I assume the volume of that is  
19 critical to your -- your argument, and I just  
20 want to know how much is enough, if it's  
21 1 percent or a more miniscule amount. Where --  
22 where's the floor?

23 MS. STETSON: So 2 -- 2 percent is  
24 always a question that begs the question of  
25 what. And, here, what you have is data in the

1 complaint that says -- this is paragraph 438 --  
2 "between 342,000 and 597,000 of Defendants'  
3 guns" -- and, remember, this is not the entire  
4 industry we're here talking about -- so up to  
5 600,000 of defendants' guns "are likely  
6 trafficked into Mexico every year." That's your  
7 2 percent.

8           But I think the issue is not so much  
9 whether it's 2 or 10 or 70. It's do these  
10 manufacturers know who the rogue dealers are and  
11 what they're doing. And this complaint in all  
12 of those paragraphs that I read to you earlier  
13 and many others around them specifically says  
14 the -- these manufacturers know the trace data  
15 that show the dealers, that show the bulk sales  
16 that are being made to traffickers who come in  
17 repeatedly over a short period of time and bring  
18 the guns into Mexico, where they're found at  
19 crime scenes.

20           That, I think, more than percentage is  
21 important.

22           CHIEF JUSTICE ROBERTS: The -- you --  
23 you emphasize -- you have a number of criteria  
24 or examples, you know, the -- the gun says this  
25 or it looks like a military weapon and it has an

1 American flag, and, you know, I -- Zapata's  
2 quote about better to die on your feet than live  
3 on your knees. I -- I mean, those are all  
4 things that are not illegal in any way.

5 And the idea -- I mean, there are some  
6 people who want the experience of shooting a  
7 particular type of gun because they find it more  
8 enjoyable than using a -- a BB gun. And I -- I  
9 just wonder exactly what the -- the defendant,  
10 the manufacturer, is supposed to -- to do in  
11 that situation.

12 You say no, he shouldn't be marketing  
13 a particular legal firearm because they're going  
14 to go into Mexico at a higher percentage than --  
15 than others?

16 MS. STETSON: Mr. Chief Justice, I  
17 think it's not so much that the defendants are  
18 designing a particular gun. It's that what the  
19 complaint alleges is that they are designing  
20 certain guns to target the Mexican market,  
21 including the cartels.

22 So, if you take the example that you  
23 gave, this is paragraph 215, "Colt produces  
24 three models of guns that it specifically  
25 targets to the Mexican market": the Super El

1 Jefe, the Super El Grito, and the Emiliano  
2 Zapata 1911. These are coveted by the cartels.  
3 And you can see evidence of this at paragraphs  
4 217, 218, 219, 220. And "they are smuggled into  
5 Mexico ... in volume," which you can also find.

6 CHIEF JUSTICE ROBERTS: Do -- do you  
7 know what the percentage of those guns that are  
8 sold in the United States compared to the ones  
9 that are found in Mexico is?

10 MS. STETSON: I don't know, but,  
11 again, the percentage, I think, is less  
12 important than the allegation that they are  
13 smuggled into Mexico in volume and coveted by  
14 the cartels, including being found on the person  
15 of many cartel chiefs who have been arrested.

16 CHIEF JUSTICE ROBERTS: Thank you.  
17 Justice Thomas?

18 JUSTICE THOMAS: If there's no earlier  
19 finding of a violation, how is that done within  
20 the context of a civil suit like this?

21 MS. STETSON: If there's no earlier  
22 finding of a violation, because, of course,  
23 the -- as I think you're -- you're getting at,  
24 the predicate exception doesn't require one,  
25 there's another exception that does, I think

1 what you would find are that at the motion to  
2 dismiss stage, the question is simply has there  
3 been a -- a -- a sufficient allegation of aiding  
4 and abetting in order to get you past the  
5 predicate exception.

6 Now, you know, we -- we talked about  
7 how we are here early. There are actually still  
8 other motions to dismiss to be addressed. In  
9 fact --

10 JUSTICE THOMAS: But -- but it has to  
11 be aiding and abetting of something.

12 MS. STETSON: Aiding and abetting  
13 the -- the -- the -- the violations including  
14 of --

15 JUSTICE THOMAS: So --

16 MS. STETSON: -- a straw purchase  
17 being --

18 JUSTICE THOMAS: So it is -- it is the  
19 violation that you say in your complaint there  
20 is a violation, but there's been no finding of a  
21 violation. How do we know there is a violation?

22 MS. STETSON: I think what the -- what  
23 the district court would determine at summary  
24 judgment, if the evidence comes back and says,  
25 for example, these manufacturers simply had no

1 idea what their distributors were doing or who  
2 their guns were going to, or these dealers were  
3 doing everything by the book and they are not  
4 responsible for the straw purchases that kept  
5 coming into their stores, if you had that  
6 evidence, then, on summary judgment, as has  
7 happened before, the court would say: We can't  
8 find the predicate exception met here.

9 JUSTICE THOMAS: So let's say I am the  
10 alleged straw purchaser or the retailer who  
11 sells to a straw purchaser.

12 Now you have found that I have  
13 violated the Gun Control Act, right?

14 MS. STETSON: You would have to --

15 JUSTICE THOMAS: And my point is, how  
16 do you make that finding within the context of  
17 this suit?

18 MS. STETSON: Justice Thomas, within  
19 the context of that suit, I think you would take  
20 discovery from the dealer and ask the question  
21 because, remember, the -- the predicate  
22 exception goes to knowing violation.

23 Ask the dealer what it knew when it  
24 sold, for example, as has been alleged in the  
25 complaint, you know, dozens of guns over a

1 two-month period to the same person. The  
2 evidence at summary judgment will flesh out some  
3 of these questions, but at --

4 JUSTICE THOMAS: So you're saying you  
5 can find a violation of selling to a straw --  
6 purchaser within the context of a civil suit  
7 against the wholesalers and the manufacturers?

8 MS. STETSON: I think what -- maybe  
9 where you and I are parting is -- is on the --  
10 the issue of finding a violation.

11 JUSTICE THOMAS: Yeah.

12 MS. STETSON: We -- we've alleged  
13 those violations specifically in the complaint.  
14 As far as finding the violation, I -- I think  
15 what the district court would do on remand,  
16 after discovery, if -- provided we get past the  
17 other motions to dismiss that are pending --  
18 after discovery would be to ask the question:  
19 Has the evidence pointed to actual violations?

20 So, if you take the Arcadia,  
21 California, case, that was a case in which, at  
22 the summary judgment stage, some defendants were  
23 dismissed because there was not evidence that  
24 they were acting unlawfully. Others were kept  
25 in because there was evidence that they were

1 acting unlawfully.

2 So that might be the best example of  
3 the dichotomy you're talking about.

4 JUSTICE THOMAS: Wouldn't you run into  
5 at some point a due process problem as far as  
6 the people you allege to have violated the Gun  
7 Control Act, who have not been charged with that  
8 by ATF and proven to have done that by the  
9 government?

10 MS. STETSON: No, I don't think you  
11 run into a due process problem precisely for the  
12 reason I think you pointed out a couple minutes  
13 ago, Justice Thomas. There's no requirement of  
14 a conviction. And there are plenty of examples,  
15 including Williams versus Beemiller from New  
16 York, of instances where manufacturers have been  
17 alleged to have contribute -- to -- to have  
18 aided and abetted a violation by a dealer, and  
19 that case has been allowed to go forward.  
20 There's not a due process issue that inheres in  
21 that.

22 CHIEF JUSTICE ROBERTS: Justice Alito?

23 JUSTICE ALITO: There are some very  
24 interesting technical legal issues in this case:  
25 proximate cause, aiding and abetting, how much

1 do you have to plead in a complaint. And you  
2 and Mr. Francisco have briefed and argued those  
3 very well. It's very helpful to the Court.

4 I just thought I would ask you a  
5 question that may be on the minds of ordinary  
6 Americans who hear this argument or learn about  
7 the case. Mexico says that U.S. gun  
8 manufacturers are contributing to illegal  
9 conduct in Mexico. There are Americans who  
10 think that Mexican government officials are  
11 contributing to a lot of illegal conduct here.

12 So suppose that one of the 50 states  
13 sued the government of Mexico for aiding and  
14 abetting illegal conduct within the state's  
15 borders that causes the state to incur law  
16 enforcement costs, public welfare costs, other  
17 costs.

18 Would your client be willing to  
19 litigate that case in the courts of the United  
20 States?

21 MS. STETSON: Justice Alito, I think  
22 we -- we would have to accessorize that  
23 hypothetical with what I assume are a -- a lot  
24 of the things that are built into it, that there  
25 are no forum and venue questions and that the

1 kinds of allegations are specific and talk about  
2 specific harms to the states. You mentioned --

3 JUSTICE ALITO: Well, would your --  
4 would your government say, whoa -- your client  
5 say, whoa, sovereign immunity, you can't sue us  
6 on this?

7 MS. STETSON: Ah. Well, you know,  
8 if -- if the --

9 JUSTICE ALITO: Or would you will --  
10 be willing to litigate all the doctrines that  
11 would apply if -- if the government of Mexico  
12 were not entitled to sovereign immunity?

13 MS. STETSON: So, Justice Alito,  
14 under -- under Pfizer, of course, Mexico is  
15 entitled to come in -- and -- and the  
16 Petitioners' own amici point this out -- to come  
17 into this case just like any other litigant.  
18 There are, of course, differences, if Mexico is  
19 brought in as a defendant.

20 So I can't and certainly, you know,  
21 don't -- don't feel comfortable giving away  
22 things like sovereign immunity on behalf of the  
23 government of Mexico.

24 JUSTICE ALITO: Well, I understand  
25 that. So the -- the argument basically is it's

1 a one-way street?

2 MS. STETSON: No, Justice Alito, I  
3 don't --

4 JUSTICE ALITO: The government of  
5 Mexico can sue U.S. manufacturers here for harm  
6 caused in Mexico, but one of the states here  
7 can't sue the government of Mexico for -- for  
8 harm caused in the United States?

9 MS. STETSON: I don't think it's  
10 entirely accurate to call it a one-way street.  
11 And if the street is one-way, it's because  
12 Pfizer and other decisions from this Court have  
13 said that when a sovereign comes into this Court  
14 as a plaintiff, it is treated exactly like any  
15 other plaintiff, no more, no less.

16 JUSTICE ALITO: Thank you.

17 MS. STETSON: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice  
19 Sotomayor?

20 Justice Kagan?

21 Justice Gorsuch?

22 Justice Kavanaugh?

23 JUSTICE KAVANAUGH: I just want to  
24 pick up briefly on -- on questions Justice  
25 Thomas was asking. I mean, would your theory of

1 aiding and abetting suggest that manufacturers  
2 should be concerned if their products, their  
3 lawful products, are sold in certain communities  
4 or certain neighborhoods where they're more  
5 likely to be misused? You know, we -- we  
6 manufacture knives, but there are a lot of  
7 stabbings in certain neighborhoods. Should  
8 we -- make sure our products aren't sold there?  
9 Or a sporting goods company, and -- and baseball  
10 bats are used to, you know, storm CVSs or what  
11 have you, so we shouldn't sell in -- in this  
12 city? Or prescription drugs are misused in a  
13 certain area, so we need to be alert and make  
14 sure?

15           Is that where your theory of aiding  
16 and abetting leads, that you have to be kind of  
17 chasing -- tracing everything down the chain and  
18 make sure we're not selling in these places or  
19 it's not ending up in the places where it's more  
20 likely to be misused or a certain percentage, to  
21 go to the Chief Justice's point, are being  
22 misused?

23           MS. STETSON: Justice Kavanaugh, I  
24 think what you've described would qualify under  
25 Twitter as general awareness. It would not

1 qualify as specific culpable participation.

2 If you had a -- a manufacturer --

3 JUSTICE KAVANAUGH: You know -- you  
4 know you make baseball bats, and you know  
5 they're being used in a -- in a particular way  
6 in particular areas by particular gangs.

7 MS. STETSON: So --

8 JUSTICE KAVANAUGH: And -- and you  
9 should -- so, therefore, you know, we got to  
10 make sure that we're not selling to those  
11 sporting goods stores that are in particular  
12 neighborhoods.

13 MS. STETSON: I think the -- the first  
14 lawyerly response is that guns and drugs tend to  
15 be treated differently than things like knives  
16 and baseball bats. But, even that aside, if you  
17 knew that your baseball bats --

18 JUSTICE KAVANAUGH: Well,  
19 prescription --

20 MS. STETSON: -- were being --

21 JUSTICE KAVANAUGH: -- drugs too.

22 MS. STETSON: Prescription drugs were  
23 being sold into a particular pharmacy -- and  
24 this has happened, of course, in the opioid  
25 cases -- were being sold into a particular

1 pharmacy at -- you know, in a small town at  
2 numbers that were simply unsustainable and you  
3 knew that you were continuing to sell after  
4 being told by the federal government that you  
5 were selling into a rogue dealer and you  
6 continued to sell into that dealer, then, yes,  
7 you would have a problem.

8 JUSTICE KAVANAUGH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice  
10 Barrett?

11 Justice Jackson?

12 JUSTICE JACKSON: But do you concede  
13 that you would have a problem or not depending  
14 upon how the statute is worded? I mean, we're  
15 in a statutory scheme here. We're not just  
16 doing aiding-and-abetting liability as a matter  
17 of common law. Don't you agree?

18 MS. STETSON: I do agree with that,  
19 Justice Jackson, but I think the fact that we're  
20 in a statutory scheme is an important element  
21 of -- of centering this case where it is now.  
22 That's why I said earlier we are at the  
23 beginning of the beginning of this case.

24 JUSTICE JACKSON: No, I understand.

25 MS. STETSON: There's a statute --

1 JUSTICE JACKSON: I guess I -- I  
2 just -- just quickly in response to what Justice  
3 Kavanaugh was just exploring with you, the --  
4 the facts that he laid out seem to me to be  
5 covered by this particular PLCAA immunity, that  
6 Congress looked at that situation and said, you  
7 know, the term "qualified civil liability  
8 action," which you can't bring in court, means  
9 "a civil action ... resulting from the criminal  
10 or unlawful misuse of a qualified product by the  
11 person [of] ... a third party."

12 So, in other words, Congress started  
13 with Justice Kavanaugh's example, you know, I --  
14 there -- there -- my product is being used by  
15 third parties --

16 MS. STETSON: Right.

17 JUSTICE JACKSON: -- in criminal ways.  
18 And they said immunity. They said immunity.  
19 And so --

20 MS. STETSON: They said --

21 JUSTICE JACKSON: -- and so --

22 MS. STETSON: Yeah.

23 JUSTICE JACKSON: -- to read the  
24 exception to that as essentially capturing the  
25 same facts, if you know that your product is

1 going to these people, seems odd to me.

2 MS. STETSON: Justice Jackson, what  
3 the -- what Congress said was immunity unless.  
4 And the -- the predicate exception that we've  
5 been talking about says immunity unless the  
6 manufacturer is alleged, among other things, to  
7 have aided and abetted violations of federal gun  
8 laws.

9 JUSTICE JACKSON: Thank you.

10 MS. STETSON: It's that -- that's the  
11 important point.

12 CHIEF JUSTICE ROBERTS: Thank you,  
13 counsel.

14 MS. STETSON: Thank you.

15 CHIEF JUSTICE ROBERTS: Rebuttal,  
16 Mr. Francisco?

17 REBUTTAL ARGUMENT OF NOEL J. FRANCISCO  
18 ON BEHALF OF THE PETITIONERS

19 MR. FRANCISCO: Thank you, Mr. Chief  
20 Justice. Just a few points.

21 First, Justice Thomas, as to one of  
22 your questions, if they're right under PLCAA,  
23 this would, in fact, revive the exact same  
24 lawsuits that PLCAA was meant to prohibit. If  
25 you look at Texas's -- Mexico's complaint, the

1 underlying torts alleged, which is what they're  
2 seeking relief on, are the exact same torts that  
3 were at issue in all of the other cases.

4           The violations only come in in their  
5 effort to get -- to -- to get around PLCAA and  
6 fit with one of its exceptions. But, if you  
7 accept their interpretation of the PLCAA  
8 exception, you will have revived exactly the  
9 same type of lawsuit that PLCAA was meant to  
10 prohibit when they adopted this statute in the  
11 first place.

12           Secondly, my friend talked about some  
13 paragraphs in their complaint, but I think that  
14 their complaint makes quite clear what their  
15 basic aiding-and-abetting theory is.

16           Paragraph 228 -- and this is a  
17 allegation that they repeat throughout -- "Each  
18 Defendant's policy is to sell its guns to any  
19 and all Federal Firearms Licensees." That is  
20 anyone that the federal government says that we  
21 can tell -- sell to.

22           So their allegation is that we're  
23 treating all retailers exactly the same. We're  
24 not treating any one better than any other.  
25 We're treating them the same. That's important

1 because, in Twitter, the Court made quite clear  
2 that the reason they didn't get across the  
3 aiding-and-abetting line was because there was  
4 no allegation that they were treating ISIS, who  
5 they knew to a metaphysical certainty was on  
6 their platform, they weren't treating ISIS any  
7 better or worse than any other customer.

8           Instead, they go on -- and this is  
9 paragraph 110 -- to explain their theory. "A  
10 manufacturer of a dangerous product is an  
11 accessory or co-conspirator to illicit conduct  
12 by downstream actors where it continues to  
13 supply, support, or assist the downstream  
14 parties and has knowledge -- actual or  
15 constructive -- of the illicit conduct." I  
16 think that's the mere knowledge theory that my  
17 friend was just referring to, Justice Kavanaugh.  
18 That, however, is the theory that the Court  
19 squarely rejected in the Twitter case.

20           Turning to foreseeability, Mr. Chief  
21 Justice, there was a -- an exchange with my  
22 friend on the case law, where I think what I  
23 heard her say was that a -- an intervening  
24 independent act didn't break the chain if it was  
25 foreseeable.

1           Well, I would say that that is  
2 completely inconsistent with this Court's  
3 repeated statement that foreseeability alone  
4 isn't the standard. It's also completely  
5 independent with the Hemi Group case that did  
6 not involve a derivative injury.

7           New York City was the only plaintiff  
8 that could sue for the lost taxes that New York  
9 City suffered. There was absolutely no other  
10 plaintiff that would have been able to pursue  
11 that remedy and that loss. Yet this Court held  
12 that the intervening independent act did break  
13 the chain.

14           Lexmark is no different. It did not  
15 involve an intervening independent act. If I  
16 trick consumers into not buying my competitors'  
17 products, I've directly harmed my competitor.  
18 There is no intervening independent act.

19           As to the various treaties, I would  
20 agree, Justice Sotomayor, with your suggestion  
21 that the law in the verbal formulations here are  
22 kind of a mess. But, if you actually look at  
23 the cases that the treatises cite for their  
24 assertion that foreseeability alone is the  
25 standard, they don't cite this Court's cases,

1     which is kind of surprising, if what they're  
2     supposed to be doing is describing the law  
3     rather than making the law.

4             But the cases that they do cite  
5     principally involve special relationships, like  
6     a landlord/tenant relationship or a  
7     teacher/student relationship. They don't cite  
8     any case in which a manufacturer has been held  
9     liable because some criminal unlawfully misuses  
10    its product to harm somebody else.

11            My friend, again, emphasized the  
12    Washington Post article. I would urge you to  
13    read that article from beginning to end. I  
14    think it's very helpful in illuminating how even  
15    their theory of mere knowledge doesn't make  
16    sense.

17            My friend also talked about three  
18    pistols sold by Colt with Spanish-named  
19    firearms. The notion that selling a  
20    Spanish-named firearm is what gives rise to  
21    joint purpose with cartels under the  
22    aiding-and-abetting statute is as wrong as it is  
23    offensive. There are, after all, millions of  
24    perfectly law-abiding Spanish-speaking Americans  
25    in this country that find those firearms very

1 attractive. And making those firearms available  
2 cannot possibly cross the line into  
3 aiding-and-abetting liability.

4 But, even if it could, the notion that  
5 selling three Spanish-named pistols is the  
6 proximate cause of cartel violence in Mexico is,  
7 frankly, absurd, and I don't think it comes even  
8 close to establishing Twombly's plausibility  
9 standard.

10 My final point is just to step back  
11 and talk about what PLCAA was really about. At  
12 the end of the day, PLCAA is about protecting  
13 Second Amendment rights. It's not just about  
14 protecting the manufacturers, the distributors,  
15 and the retailers, but it's protecting the right  
16 of every American to exercise their right of --  
17 under the Second Amendment to possess and bear  
18 firearms. That right is meaningless if there  
19 are no manufacturers, retailers, and  
20 distributors that provide them in the first  
21 place.

22 We ask that you reverse.

23 CHIEF JUSTICE ROBERTS: Thank you,  
24 counsel.

25 The case is submitted.

1                   (Whereupon, at 11:37 a.m., the case  
2 was submitted.)  
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## Official

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