

No. 23-1141

**In The
Supreme Court of the United States**

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

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

*On Writ of Certiorari to the U.S. Court of Appeals
for the First Circuit*

**BRIEF *AMICUS CURIAE* FOR
G. ANTAEUS B. EDELSON,
IN SUPPORT OF NEITHER PARTY**

JOAN DEBORAH B. EDELSON
*Counsel of Record**
460 Center Street
Unit 6045
Moraga, CA 94570
(415) 944-9509
SAGEPropertiesLLC09@gmail.com

** Counsel for Amicus Curiae
G. Antaeus B. Edelson*

November 27, 2024

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	iii
IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. The Government of Mexico is seemingly arguing to rewrite the entire theory and understanding of United States tort law, essentially asking the Court to ignore explicit statutory protections and established legal doctrine.	3
1. The jurisprudential doctrines of remoteness (lack of proximate causation) and free public services argue strongly against a governmental plaintiff, like Mexico, from being able to recover under the type of tort action pled.	3
2. The U.S. tort system was not intended to allow theories of liability when Congress grants express statutory protections to businesses or individuals engaging in specifically approved conduct.	9
3. The business of making and physically transferring firearms is heavily regulated in the United States at both the federal and state level, and compliance with those regulations should fulfil substantive duties.....	12
4. Even discounting the protections of the PLCAA, the complaint by Mexico seeks to base liability solely on foreseeability and completely ignores the legal principle of superseding causes of injury, substituting ‘but-for’ causation for proximate causation.	15

5. Mexico’s theory of liability would be risible if applied to other industries which sell ‘dangerous products,’ like vehicles..... 19

II. Mexico’s arguments and requested relief would functionally work to usurp both the power of Congress and state legislatures to determine what firearms may legally be sold on the civilian market, and the power of the executive branch and the law enforcement agencies which implement and enforce firearms laws. 22

III. Mexico is essentially seeking to use U.S. courts and the U.S. tort system to abrogate its responsibility to run and manage its own domestic and border security..... 25

 1. Mexico seeks to escape and abrogate culpability for decades of corruption which have seen its own actual military weapons be directed to cartels..... 27

 2. Mexico seeks to ascribe liability to American manufacturing firms for its own failed policies to address domestic criminality and secure its own side of the border. 29

CONCLUSION..... 31

TABLE OF AUTHORITIES

Cases

<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	16
<i>Associated General Contractors of Calif., Inc. v. California State Council of Carpenters</i> , 459 U.S. 519, 532–33 n.25 (1983)	4
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	16
<i>Camden County Bd. v. Beretta, U.S.A.</i> , 273 F.3d 536 (3d Cir. 2001)	8
<i>City of Chicago v. Beretta U.S.A. Corp.</i> , 821 N.E.2d 1099 (Ill. 2004)	7
<i>City of Flagstaff v. Atchison, Topeka and Santa Fe Railway Co.</i> 719 F.2d 322, 323 (9th Cir. 1983)	6
<i>City of Gary v. Smith & Wesson Corp.</i> , 801 N.E.2d 1222 (Ind. 2003)	7
<i>City of Philadelphia v. Beretta U.S.A. Corp.</i> , 277 F.3d 415 (3d Cir. 2002)	8
<i>County of San Luis Obispo v. Abalone Alliance</i> , 178 Cal.App.3d 848 (Cal. Ct. App. 1986)	5
<i>District of Columbia v. Air Florida, Inc.</i> , 750 F.2d 1077 (D.C. Cir. 1984)	6, 8
<i>Foster v. United States</i> , 303 U.S. 118 (1938)	9
<i>Ganim v. Smith & Wesson Corp.</i> , No. X06 CV 990153198S, 1999 Conn. Super. LEXIS 3330 (Dec. 10, 1999), <i>aff'd</i> , 780 A.2d 98 (Conn. 2001)	7
<i>Hess v. Pawloski</i> , 274 U.S. 352 (1927)	19
<i>Holmes v. Sec. Investor Prot. Corp.</i> , 503 U.S. 258, 268 (1992)	4

<i>Hustler Magazine, Inc. v. Falwell</i> , 485 U.S. 46 (1988)	8
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803)	22
<i>Milavetz, Gallop & Milavetz, P. A. v. United States</i> , 559 U.S. 229 (2010)	10
<i>Milner v. Dep't of the Navy</i> , 562 U.S. 562 (2011)	10
<i>Morial v. Smith & Wesson Corp.</i> , 785 So. 2d 1 (La. 2001)	7
<i>Nanni v. Aberdeen Marketplace, Inc.</i> , 878 F.3d 447 (4th Cir. 2017)	16
<i>Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.</i> , 591 F.3d 250 (4th Cir. 2009)	16
<i>Penelas v. Arms Technology, Inc.</i> , 778 So. 2d 1042 (Fla.App. 2001)	8, 22
<i>Printz v. United States</i> , 521 U.S. 898 (1997)	25
<i>Pulka v Edelman</i> , 40 N.Y.2d 781 (N.Y. 1976)	15
<i>Spitzer v. Sturm, Ruger Company, Inc.</i> , 309 A.D.2d 91 (N.Y. App. Div. 2003)	7, 23
<i>Strauss v. Belle Realty Co.</i> , 65 N.Y.2d 399 (N.Y. 1985)	15
<i>Youngberg v. Romeo</i> , 457 U.S. 307 (1982)	6

Case Materials

Brief of Respondent-Plaintiff in Opposition (Jul. 03, 2024)	11
Petitioner-Defendants' App. (April 18, 2024)	passim
Question Presented, <i>Smith & Wesson Brands v.</i> <i>Estados Unidos Mexicanos</i> , No. 23-1141 (U.S. Oct. 4, 2024)	12

Governmental Materials

ATF Form 5630.7, Special Tax Registration and Return.....	13
<i>Revocation of Firearms Licenses</i> , ATF, https://www.atf.gov/firearms/revocation-firearms-licenses	13, 14

Statutes and Regulations

15 U.S.C. § 7901(b)(1) and (4).....	10
18 U.S.C. § 921(a)(3)–(8).....	23
22 U.S.C. § 2778(b)(1)(A).....	13
27 C.F.R. § 447.....	23
27 C.F.R. § 478.....	23
27 C.F.R. § 478.73(a) (2003).....	13
27 C.F.R. § 478.73(a) (2023).....	13
27 C.F.R. § 479.....	23
27 C.F.R. § 555.....	23
803 MASS. CODE. REGS. 10.09.....	14
CAL. PENAL CODE §§ 30500–31115.....	23
MASS. GEN. LAWS ch. 140, §§ 122–122B, 128B ..	14, 23
Pub. L. No. 103–159, 107 Stat. 1536 (1993).....	23
Pub. L. No. 117–159, 136 Stat. 1313 (2022).....	23
Pub. L. No. 73-474, 48 Stat. 1236 (1934).....	23
Pub. L. No. 90-618, 82 Stat. 1213 (1968).....	23
Pub. L. No. 99–308, 100 Stat. 449 (1986).....	23

Congressional Materials

151 Cong. Rec. H8993 (daily ed. Oct. 20, 2005).....	11
151 Cong. Rec. H8997 (daily ed. Oct. 20, 2005).....	11
151 Cong. Rec. S9061 (daily ed. July 27, 2005).....	10, 11
151 Cong. Rec. S9062 (daily ed. July 27, 2005).....	11

Treatises

W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 53 (5th ed. 1984).....	12
--	----

Other Authorities

- Andrew L. Kaufman, *Benjamin Cardozo as Paradigmatic Tort Lawmaker*,
49 DEPAUL L. REV. 281 (1999) 3, 16
- Compare State Gun Laws*, EVERYTOWN RESEARCH & POLICY,
<https://everytownresearch.org/rankings/compare/>
(last visited Nov. 21, 2024) 24
- Daniel Shailer, *9 years later, families of 43 missing Mexican students march to demand answers in emblematic case*, AP (Sept. 26, 2023),
<https://apnews.com/article/ayotzinapa-obrador-march-dissapearing-protest-guerrero-411f9f467a22080095c0ae301586904c> 30
- David L. Strauss, *Comment, Where There's Smoke, There's the Firefighter's Rule: Containing the Conflagration After One Hundred Years*,
1992 WIS. L. REV. 2031 (1992) 6
- Eliás Camhaji, *'Mexico is not safe': Ken Salazar takes hardest stance yet on violence crisis*, EL PAIS (Nov. 14, 2024),
<https://english.elpais.com/international/2024-11-14/mexico-is-not-safe-ken-salazar-takes-hardest-stance-yet-on-violence-crisis.html> 26
- Embassy Mexico, *Mexican Army Major Arrested For Assisting Drug Trafficking Organizations*, WikiLeaks Cable: 09MEXICO133_a (Jan. 20, 2008),
https://wikileaks.org/plusd/cables/09MEXICO133_a.html 28
- Fidel Gutierrez, *Former attorney general of Mexico arrested over multiple charges related to disappearance of 43 students*, CNN (Aug. 19, 2022),
<https://www.cnn.com/2022/08/19/americas/jess-murillo-karam-mexico-missing-students-intl-latam/index.html> 27

GEORGE W. GRAYSON, THE IMPACT OF PRESIDENT FELIPE CALDERÓN'S WAR ON DRUGS ON THE ARMED FORCES: THE PROSPECTS FOR MEXICO'S "MILITARIZATION" AND BILATERAL RELATIONS (2013)	29
INSTITUTO NACIONAL DE ESTADÍSTICA, GEOGRAFÍA E INFORMÁTICA, RESULTADOS DE LA SEGUNDA ENCUESTA NACIONAL DE CALIDAD E IMPACTO GUBERNAMENTAL (ENCIG) 2013 (2014)	28
INT'L ASS'N OF CHIEFS OF POLICE, VEHICLE CRIMES AUTO THEFT EDUCATIONAL AWARENESS REPORT (2017)	20
INT'L CRISIS GROUP, THE GENERALS' LABYRINTH: CRIME AND THE MILITARY IN MEXICO (2024)	30
JANET SMILOWSKI ET AL., AUTO THEFT AND VEHICLE CRIMES 2020 TRENDS AND PATTERNS (2021)	20
Julio Montes, <i>Portable Anti-Tank Weapons in Mexico & the Northern Central American Triangle</i> , SMALL ARMS DEFENSE JOURNAL (Aug. 15, 2023), https://sadefensejournal.com/portable-anti-tank-weapons-in-mexico-the-northern-central-american-triangle/	29
Kevin Daimi et al., <i>Using Multimodal Biometrics to Secure Vehicles</i> , in ADVANCES IN SECURITY, NETWORKS, AND INTERNET OF THINGS (2021)	21
María Verza, <i>US ambassador says Mexico 'closed the doors' on security cooperation and denies its violence problem</i> , AP (Nov. 13, 2024), https://apnews.com/article/mexico-sinaloa-cartel-violence-bodies-02e0c9a499e9605291f3ba5a2f9e6f4d	26
Michael I. Krauss, <i>Public Services Meet Private Law</i> , 44 San Diego L. Rev. 1 (2007)	5, 6
Nat'l Ins. Crime Bureau, <i>Vehicle Thefts Surge Nationwide in 2023</i> , NICB (April 9, 2024), https://www.nicb.org/news/news-releases/vehicle-thefts-surge-nationwide-2023	20

- Rafael Prieto-Curiel et al., *Reducing cartel recruitment is the only way to lower violence in Mexico*, 381 SCIENCE 1312 (2023)..... 29
- Scott Neuman, *Mexican Authorities Disarm Acapulco Police, Fearing Infiltration By Drug Gangs*, NPR (Sept. 26, 2018), <https://www.npr.org/2018/09/26/651708030/mexican-authorities-disarm-acapulco-police-amid-infiltration-concerns-by-drug-ga> 28
- Sharyl Attkisson, *A primer on the "Fast and Furious" scandal*, CBS (Feb. 12, 2013), <https://www.cbsnews.com/news/a-primer-on-the-fast-and-furious-scandal/> 18
- Sharyl Attkisson, *Legal U.S. gun sales to Mexico arming cartels*, CBS (Dec. 6, 2011), <https://www.cbsnews.com/news/legal-us-gun-sales-to-mexico-arming-cartels/>..... 28
- Simon Romero & Emiliano R. Mega, *Mexico's 'Monster' Trucks Show Cartels Taking Drug War to Next Level*, NY TIMES (Aug. 1, 2023), <https://www.nytimes.com/2023/08/01/world/americas/mexico-cartels-trucks.html>..... 22
- State Ignition Interlock Laws*, NCSL (Mar. 14, 2024), <https://www.ncsl.org/transportation/state-ignition-interlock-laws> 21
- Timothy D. Lytton, *Should Government Be Allowed to Recover the Costs of Public Services from Tortfeasors: Tort Subsidies, the Limits of Loss Spreading, and the Free Public Services Doctrine*, 76 TUL. L. REV. 727, 746 n.9 (2002)..... 4
- Victor E. Schwartz, *The Remoteness Doctrine: A Rationale for a Rational Limit on Tort Liability*, 27 PEPP. L. REV. 759 (2000) 4

IDENTITY AND INTEREST OF *AMICUS CURIAE*

G. Antaeus B. Edelson respectfully submits this brief in support of neither party.¹ Mr. Edelson is a licensed attorney in California, Vermont, and the District of Columbia. As an officer of the court, Mr. Edelson has a keen interest in the fair, just, and equitable use of the American court system to address tort issues and disputes between aggrieved parties. Mr. Edelson is especially interested in preventing the abuse of accessibility of the American court system by plaintiffs who seek either to bully an opposing party with unreasonable litigation or even worse, seek to arrogate to themselves powers which are exclusively held by the legislative and executive branches at the federal and state levels. Preventing such abuses is even more important in situations where foreign plaintiffs would seek to batter and harass American companies under a theory that their foreign status conveys greater rights than a similarly situated American plaintiff would be afforded.

Given the scope of Plaintiff's claims, allowing this case to proceed will not only have a profoundly negative impact on American tort law, but will also have knock-on effects in the scope of international relations and the ability of litigants to circumvent the authority of federal and state governments. Accordingly, Mr. Edelson feels compelled to offer this

¹ In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than amicus curiae or his counsel made a monetary contribution to its preparation or submission.

legal analysis to the Court as it fully evaluates the issues which are directly and indirectly being raised, and urges the Court to rule in accordance with America's history and tradition of tort liability.

SUMMARY OF ARGUMENT

No one disputes the tragedy of the violence, death, and destruction caused by the numerous Mexican cartels, which has affected communities on both sides of the U.S./Mexican border. Similarly, none of the parties in this case, and no one outside it with a respect for law, order, or basic humanity, is advocating in favor of criminal activity or the arming of violent criminal organizations. Any statements to the contrary are simply *ad hominem* and distract from the fundamental legal issues and governmental policy concerns which Plaintiff's suit raises.

This brief emphasizes the weight of American legal tradition and jurisprudential doctrines and argues that a decision allowing Mexico's claims to proceed would run counter to that history and tradition, effectively rewriting tort law as we know it. This brief also addresses the practical implications of what allowing Mexico's suit forward would have on authority of U.S. governments and the balance of power between litigants and legislatures. Finally, this brief argues that foreign plaintiffs should not be allowed to use the U.S. tort system to evade responsibility for their own domestic failings.

This brief is not meant as support or rebuke for any specific law or set of laws at any level; but is instead aimed at preserving the rights and powers of

American institutions against the interference of a foreign sovereign.

ARGUMENT

I. The Government of Mexico is seemingly arguing to rewrite the entire theory and understanding of United States tort law, essentially asking the Court to ignore explicit statutory protections and established legal doctrine.

In the case presently before the Court, as in most cases which involve serious injury and death to innocent people, there is always going to be tension between the emotions which tragic events evoke and the limits of what tort law and the legal system permit regarding restitution or future restrictions. While some areas of law, like equity cases, seek to provide “justice . . . to be done on an individual basis,” in the realm of torts, “justice [is] done by crafting a just rule, applying it impartially to the relevant facts, and accepting the results, whether seemingly harsh or not.”² This case is about the application of just and consistent rules to the tort landscape, even though the results might seem harsh in light of the tragic suffering of innocent Mexican civilians.

1. The jurisprudential doctrines of remoteness (lack of proximate causation) and free public services argue strongly against a governmental plaintiff, like Mexico, from being able to recover under the type of tort action pled.

In dealing with causes of action where a governmental entity targets a private business based in tort law, the American legal tradition generally

² Andrew L. Kaufman, *Benjamin Cardozo as Paradigmatic Tort Lawmaker*, 49 DEPAUL L. REV. 281, 282–83 (1999) (paraphrasing Justice Benjamin Cardozo).

uses two doctrines to help evaluate the merit of such claims; the remoteness doctrine, and the free public services doctrine. While either doctrine, and the lengthy precedential scope which has been built on upon its use, should be sufficient to foreclose Mexico's cause of action, any decision which undercuts both doctrines simultaneously would bring a sea-change to the nation's tort landscape.

As this Court has recognized, any recovery in a suit brought under the theory of tort necessarily requires proximate causality, *viz.* "a demand for some direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992). Absent that direct and close connection between the defendant's acts and a plaintiff's harms, this Court has found the plaintiff "stand[s] at too remote a distance to recover." *Id.* at 268–69. This makes abundant sense as "the more indirect an injury is, the more difficult it is to determine the amount of the plaintiff's injury due to the wrongdoing of the defendant, as distinct from other contributing factors."³ Noted authority on tort law, Victor Schwartz, has highlighted over 150 years of positive treatment of this principle in U.S. courts, including in this Court.⁴ *See Associated General Contractors of Calif., Inc. v. California State Council of Carpenters*, 459 U.S. 519, 532–33 n.25 (1983) (positively citing a legal treatise holding "*where the*

³ Timothy D. Lytton, *Should Government Be Allowed to Recover the Costs of Public Services from Tortfeasors: Tort Subsidies, the Limits of Loss Spreading, and the Free Public Services Doctrine*, 76 TUL. L. REV. 727, 746 n.9 (2002).

⁴ *See* Victor E. Schwartz, *The Remoteness Doctrine: A Rationale for a Rational Limit on Tort Liability*, 27 PEPP. L. REV. 759 (2000).

plaintiff sustains injury from the defendant's conduct to a third person, [the plaintiff's claim] is too remote" to recover.) (emphasis in original).

The other component of the remoteness doctrine, beyond the connection between the action done and any harm alleged by the plaintiff, is the existence of a duty owed from the defendant to the plaintiff. See *County of San Luis Obispo v. Abalone Alliance*, 178 Cal.App.3d 848, 865 (Cal. Ct. App. 1986) ("Whether intentional or negligent, a tort 'involves a violation of a legal duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. Without such a duty, any injury is '*damnum absque injuria*'—injury without wrong.'). Any theory of negligence, either common-law or statutory, must be premised on a duty owed by the defendant to the plaintiff, and the defendant's failure to fulfil that duty. When the defendant is a governmental entity, the issue of duty overlaps with what is known as the free public services doctrine.

The free public services doctrine has long existed in our nation's jurisprudence, limiting the scope to which governmental entities, including local, state, and even federal, can sue tortfeasors for incurring costs for the use of public services. This is because "tortfeasors do not owe any legal duty to the providers of government services," and "the discharge of government services does not constitute proximately caused compensable damages."⁵ An archetypal example of this is a fireman who gets injured while fighting a fire caused by a negligent homeowner; he has no claim against the homeowner because the homeowner has no duty to a firefighter

⁵ Michael I. Krauss, *Public Services Meet Private Law*, 44 San Diego L. Rev. 1, 7–8 (2007).

responding to a fire.⁶ At the federal level, one of the most common examples of the free public services doctrine in action is *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077 (D.C. Cir. 1984), where the D.C. Circuit affirmed that Air Florida had no duty to the District of Columbia for the dispatch of emergency services which responded following its plane crashing into a D.C. bridge. The D.C. Circuit ruled “the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service.” *Id.* at 1080 (quoting *City of Flagstaff v. Atchison, Topeka and Santa Fe Railway Co.* 719 F.2d 322, 323 (9th Cir. 1983)). Stated differently, a “government’s self-imposed duty to provide rescue services without later suing for compensation, and the negligent citizen’s lack of duty to refrain from non-maliciously using government services, are two sides of the same coin.”⁷ This Court has already held “[a]s a general matter, the State is under no constitutional duty to provide substantive services for those within its border.” *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982). As a result, the costs of governmental services which a government does choose to provide, are non-compensable in the context of a tort action against a tortfeasor whose negligence predicated the government’s decision to provide such services.

In the context of the present case against Petitioners, Mexico’s own pleadings run headlong into the brick wall of both doctrines. First, Mexico

⁶ See David L. Strauss, *Comment, Where There’s Smoke, There’s the Firefighter’s Rule: Containing the Conflagration After One Hundred Years*, 1992 WIS. L. REV. 2031 (1992).

⁷ *Krauss*, at 9.

acknowledges the significant extent of the remove between Petitioners and any Mexican citizens who are victims of cartel violence due to the use of a three tier distribution model (*see infra*, part I.4.), and none of the Petitioners sell weapons directly to common consumers (non-governmental entities)—this does not even account for the remove between the individual Mexican citizens and the government of Mexico, the actual plaintiff.⁸ Second, Mexico claims damages as a result of having “to spend vast funds on a wide range of services to fight the effects” of cartel violence, which “has strained the Government’s resources, including by causing the Government to incur substantial and unusual costs for providing, for example, extraordinary health care, law enforcement and military and services, criminal justice administration, public assistance, and other social services and public programs.”⁹ This claim of damages is exactly in the ambit of what the free public services doctrine excludes from recovery, and is essentially identical to other cases which courts have dismissed on the same basis.¹⁰ This Court should also note the D.C. Circuit’s

⁸ Petitioner-Defendants’ App. at 140a ¶ 378 (April 18, 2024)

⁹ *Id.* at 167a ¶ 447 (April 18, 2024). The complaint lists a range of expenditures on different services and the fact those expenditures result in less money being available for other government programs or services. *Id.* at 167a–68a ¶ 448..

¹⁰ *See* Ganim v. Smith & Wesson Corp., No. X06 CV 990153198S, 1999 Conn. Super. LEXIS 3330, at *4 (Dec. 10, 1999), *aff’d*, 780 A.2d 98 (Conn. 2001); City of Gary v. Smith & Wesson Corp., 801 N.E.2d 1222 (Ind. 2003); Morial v. Smith & Wesson Corp., 785 So. 2d 1 (La. 2001); City of Chicago v. Beretta U.S.A. Corp., 821 N.E.2d 1099 (Ill. 2004); Spitzer v. Sturm, Ruger Company, Inc., 309 A.D.2d 91 (N.Y. App. Div. 2003); Camden County Bd. v.

comment about the allocation of costs for supporting broad social services “through assessing taxpayers.” *Air Florida*, 750 F.2d at 1080. This seems particularly poignant in light of the fact it is U.S. taxpayers who have been responsible for footing a bill of “over \$3 Billion in assistance since 2008 to address transnational organized crime and violence in Mexico, [and] enhance the country’s rule of law.”¹¹

A ruling which would allow Mexico’s theory of tort liability to proceed will almost certainly open (or reopen) a floodgate of litigation by similarly situated plaintiffs who are currently outside the scope of recovery under the existing framework of proximate causality. Moreover, any such litigation against a socially polarizing defendant, like Petitioners, allowed to proceed, would almost certainly only serve as a referendum on the social acceptability of the defendant according to local political and social discourse, instead of a simple finding of fact along clearly delineated legal principles. *Cf. Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 55 (1988) (“‘Outrageousness’ in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors’ tastes or views, or perhaps on the basis of their dislike of a particular expression.”). The D.C. Circuit was “especially reluctant to reallocate risks where a governmental entity is the injured

Beretta, U.S.A., 273 F.3d 536 (3d Cir. 2001); *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415 (3d Cir. 2002); *Penelas v. Arms Technology, Inc.*, 778 So. 2d 1042 (Fla.App. 2001).

¹¹ GAO, U.S. ASSISTANCE TO MEXICO: STATE DEPARTMENT SHOULD TAKE STEPS TO ASSESS OVERALL PROGRESS 1 (2023).

party.”¹² The instant case should prompt similar reluctance in this Court.

2. The U.S. tort system was not intended to allow theories of liability when Congress grants express statutory protections to businesses or individuals engaging in specifically approved conduct.

Tort law is derived from the common-law tradition of resolving disputes involving injuries or other harms between private parties not in privity. While American tort law is generally quite accommodating to plaintiffs, seeking to provide deterrence, accountability, and compensation where harms have or could be done, in some instances, broader policy concerns lead governments to foreclose certain types of claims by providing legislative protections. Such is the case here, with the Protection of Lawful Commerce in Arms Act (PLCAA),¹³ though it is by no means the only instance of federal protections being broadly extended.¹⁴

While the parties and other *Amici* will no doubt thoroughly parse the text of the PLCAA, I believe it would be instructive to briefly review the Act’s history, specifically as to the purpose for which its drafters and sponsors sought its passage. This Court has spoken multiple times on the importance of interpreting and applying laws in accordance with the legislative intent of their drafters, even where a statute appears unambiguous. *See Foster v. United States*, 303 U.S. 118, 120 (1938) (“Courts should

¹² *Air Florida, Inc.*, 750 F.2d at 1080.

¹³ Pub. L. No. 109-92, 119 Stat. 2095 (2005).

¹⁴ *See, e.g.* KEVIN M. LEWIS, CONG. RES. SERV., FEDERAL LEGISLATION SHIELDING BUSINESSES AND INDIVIDUALS FROM TORT LIABILITY: A LEGAL AND HISTORICAL OVERVIEW (2020).

construe laws in harmony with the legislative intent and seek to carry out legislative purpose.”); *Milner v. Dep’t of the Navy*, 562 U.S. 562, 572 (2011) (“[C]lear evidence of congressional intent may illuminate ambiguous text.”); and *Milavetz, Gallop & Milavetz, P. A. v. United States*, 559 U.S. 229, 236 n.3 (2010) (“Although reliance on legislative history is unnecessary in light of the statute’s unambiguous language, we note the support that record provides for the Government’s reading.”). Though a review of the text of the PLCAA strongly argues against any ambiguity,¹⁵ an examination of the Congressional Record is nevertheless beneficial.

The record clearly reflects the intent of what Congress was seeking to do with the PLCAA, and can be succinctly addressed by the words of its initial sponsor, Senator Larry Craig (ID): “The courts of our Nation are supposed to be a forum for resolving controversies between citizens and providing relief where it is warranted, not a mechanism for achieving political ends that are rejected by the people’s representatives, the Congress of the United States.”¹⁶ Members of the House of Representatives were equally clear about describing the threats the PLCAA was meant to address, with Congressman Jim

¹⁵ The “Purposes” section of the act states the law was to “prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended,” and to “prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.”

15 U.S.C. § 7901(b)(1) and (4).

¹⁶ 151 Cong. Rec. S9061 (daily ed. July 27, 2005).

Sensenbrenner (WI) stating the fear that “[o]ne abusive lawsuit filed in a single county could destroy a national industry and deny citizens nationwide the right to keep and bear arms guaranteed by the Constitution,”¹⁷ and Congressman Rick Boucher (VA) pointing out “[t]he lawsuits against the firearms industry are nothing more than thinly veiled attempts to circumvent the legislative process and achieve gun control through litigation.”¹⁸

Mexico’s attempt to point to instances in the Congressional Record where Senators emphasized the bill would still allow for legitimate suits based on actual negligence or criminality is not only inapposite, but fundamentally misleading.¹⁹ Unlike what Mexico would have this Court believe, the statements assuring that firearms manufacturers would not have blanket immunity for any misdeeds or harms, were made to address the few but vociferous voices who erroneously believed the proposed legislation granted greater protections than it actually did.²⁰ The purpose of the legislation though, as clearly stated by one of its cosponsors, Senator Tom Coburn (OK), was “to put a stop to the unmeritorious litigation that threatens to bankrupt a vital industry in this country.”²¹

This case is precisely the type of litigation this statute was designed to prevent, and shows Congressman Sensenbrenner’s concerns were undoubtedly justified. Moreover, as the Court’s order granting certiorari recognizes, “Mexico asks for

¹⁷ 151 Cong. Rec. H8993 (daily ed. Oct. 20, 2005).

¹⁸ *Id.* at H8997.

¹⁹ Brief of Respondent-Plaintiff in Opposition at 8 (Jul. 03, 2024).

²⁰ *See generally*, 151 Cong. Rec. S9061–62 (daily ed. July 27, 2005).

²¹ *Id.* at S9062.

billions of dollars in damages, plus extensive injunctive relief imposing new gun-control measures in the United States.”²² Any argument that this is anything other than an attempt by an opportunistic Plaintiff seeking a big payday while circumventing federal law simply does not pass muster—and this case should not be the test bed for turning conventional judicial wisdom on its head.

3. The business of making and physically transferring firearms is heavily regulated in the United States at both the federal and state level, and compliance with those regulations should fulfil substantive duties.

In his analysis of tort law, William Prosser notably described duty as “a question of whether the defendant is under any obligation for the benefit of the particular plaintiff; and in negligence cases, the duty is always the same—to conform to the legal standard of reasonable conduct in the light of the apparent risk.”²³ More succinctly, duty is “a question of the standard of conduct required” by the defendant.²⁴ Despite what the government of Mexico would have this Court believe, the business of making and physically transferring firearms is heavily regulated in the U.S., at both the federal and state levels. Any person or entity seeking to engage in the business of firearms, like the eight Petitioners, is required at a minimum to apply for and be granted a Federal Firearms License (FFL), a state business license to deal with firearms, and to comply with local business

²² Question Presented, *Smith & Wesson Brands v. Estados Unidos Mexicanos*, No. 23-1141 (U.S. Oct. 4, 2024).

²³ W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 53, at 356 (5th ed. 1984).

²⁴ *Id.*

and zoning laws. Any person or entity seeking to deal in anything covered by the National Firearms Act (including machine guns, short-barreled shotguns, silencers, destructive devices, etc.), is also required to complete additional paperwork and pay a special occupational tax.²⁵ Generally, any FFL holder who seeks to engage in the manufacture of weapons must register with the Department of State as a manufacturer, and in the case of businesses which will export firearms, like Petitioners, must also register with Directorate of Defense Trade Controls (DDTC), as required by Arms Export Control Act.²⁶

As the federal agency in charge of issuing FFLs and regulating the firearms industry, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also has the power to revoke licenses, in addition to helping the DOJ bring criminal charges, of licensees who violate the law. Federal regulation clearly states, “[w]henver the Director has reason to believe that a licensee has willfully violated any provision of the Act or this part, a notice of revocation of the license . . . may be issued.”²⁷ The ATF website provides guidance on what are willful violations, including: “(1) Transferring a firearm to a prohibited person; (2) Failing to conduct a required background check; (3) Falsifying records, such as a firearms transaction form; (4) Failing to respond to a trace request; [and] (5) Refusing to permit ATF to conduct

²⁵ See ATF Form 5630.7, Special Tax Registration and Return.

²⁶ 22 U.S.C. § 2778(b)(1)(A).

²⁷ 27 C.F.R. § 478.73(a) (2023). With the exception of the title of the Director, this regulation has been unchanged for at least the last 20 years. See, 27 C.F.R. § 478.73(a) (2003).

an inspection.”²⁸ The ATF website also notes that failing to take required actions can also result in license revocation, including failures to: “(1) Account for firearms; (2) Verify and document buyer eligibility; (3) Maintain records needed for successful firearms tracing; [and] (4) Report multiple sales of handguns.”²⁹

Individual states also have extensive statutory and regulatory schemes governing the firearms industry within their borders. In the state of Massachusetts, there is a strict application process governing the licensing of persons who wish to engage in business selling or renting firearms, restrictions on the sale/purchase of firearms only through state-licensed dealers, and clear penalties for violations of the law.³⁰

Given this strict regulatory scheme on who can legally participate in the firearms business, and the stiff penalties for failing to comply, it seems fairly straightforward to assume that any FFL holder should be able to generally rely on the current license of any other licensee with whom they do business to remain compliant with the law. Thus, one should be able to legally conclude that under Prosser’s definition of duty, the standard of conduct required by a firearms manufacturer or distributor, like Petitioners, would be to only deal with other licensed FFLs, at least insofar as it pertains to business with civilian markets. Since nowhere in Mexico’s complaint is there an allegation that any of the Petitioners are conducting business with an unlicensed distributor or

²⁸ *Revocation of Firearms Licenses*, ATF, <https://www.atf.gov/firearms/revocation-firearms-licenses>.

²⁹ *Id.*

³⁰ *See* MASS. GEN. LAWS ch. 140, §§ 122–122B, 128B; *and* 803 MASS. CODE. REGS. 10.09 (Sanctions).

end dealer—just the opposite in fact³¹—standard legal analysis would indicate there has been no violation of duty, and thus no recovery can be had.

4. Even discounting the protections of the PLCAA, the complaint by Mexico seeks to base liability solely on foreseeability and completely ignores the legal principle of superseding causes of injury, substituting ‘but-for’ causation for proximate causation.

Mexico’s complaint alleges the “flow of guns into Mexico is a foreseeable result”³² of Petitioners’ business activity, that it is equally “foreseeable and expected” this “would lead to their trafficking to the cartels in Mexico,”³³ and the guns “would fall into the hands of unintended users.”³⁴ Mexico’s complaint is therefore impermissibly relying on pure foreseeability, and substitutes ‘but-for’ causation for proximate causation. The Court need not rely solely upon the PLCAA to find fatal flaws in Mexico’s claims, and determine these bases are insufficient to find liability.

While foreseeability is helpful in establishing reasonableness in regard to a given party’s actions or inactions, “[d]uty in negligence cases is [not] defined . . . by foreseeability of injury” *Strauss v. Belle Realty Co.*, 65 N.Y.2d 399, 402 (N.Y. 1985) (citing *Pulka v Edelman*, 40 N.Y.2d 781, 785 (N.Y. 1976)). According to Professor Andrew Kaufman, biographer of Justice Benjamin Cardozo, even Cardozo believed

³¹ Petitioner-Defendants’ App. at 9a ¶ 7 (April 18, 2024) (noting how Petitioners only sell to a “distributor or dealer that has a U.S. license to buy and sell the product . . .”).

³² Petitioner-Defendants’ App. at 24a ¶ 50 (April 18, 2024).

³³ *Id.* at 93a ¶ 279 (April 18, 2024).

³⁴ *Id.* at 128a ¶ 356 (April 18, 2024).

foreseeability in the context of a negligence claim was “limited by the notion that liability was not to be extended in indeterminate amounts to indeterminate numbers of people or in new situations whose complexity suggested that the legislature or an agency was a better forum for reaching a solution.”³⁵ After all, it is foreseeable and expected that sportscars will be driven at speeds above the legal speed limit; that beer and liquor will be consumed by under-age persons; and that baseball bats will be used to attack or accost someone. The simple fact that each of those examples is *foreseeable*, does not mean Coors, Ferrari, or Louisville Slugger can or should be held liable when such events occur. The same is true here; a ruling that general foreseeability, completely by itself, is sufficient to bring a claim would severely upend the established framework of proximate causation being necessary for a cause of action in tort. It would also run counter to this Court’s established precedent of plausibility being necessary when pleading any causal link between the alleged action or inaction, and the claimed harm.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[T]o satisfy the plausibility standard, a plaintiff is not required to plead factual allegations in great detail, but the allegations must contain sufficient factual heft ‘to allow a court, drawing on judicial experience and common sense, to infer more than the mere possibility’ of that which is alleged.” *Nanni v. Aberdeen Marketplace, Inc.*, 878 F.3d 447, 452 (4th Cir. 2017) (quoting *Nemet Chevrolet, Ltd. v.*

³⁵ Kaufman, *supra* note 2 at 283.

Consumeraffairs.com, Inc., 591 F.3d 250, 256 (4th Cir. 2009)). A plaintiff cannot just plead a possible cause of action; the claims must be plausible to pass muster.

As addressed, the U.S. firearms market is highly regulated with a comprehensive licensing and oversight scheme at both the federal and state levels. Mexico's complaint also acknowledges that Petitioners use a three-tier distribution system, which entails firearms manufacturers selling their products to licensed distributors, who in turn deal with licensed firearms dealers;³⁶ specifically noting how it is the *end dealers and sellers* of the business side of the supply chain which are the final step between the Petitioners and any non-dealer purchaser. Mexico's complaint makes no claims that Petitioners are dealing directly with the cartels or with cartel agents. Mexico's complaint makes no claim that Petitioners are conspiring with federal or state law enforcement to ensure illegal gun sales are allowed to proceed unhindered. Mexico's complaint makes no claim that America's state and federal law enforcement are either egregiously negligent or woefully incompetent in their duties of monitoring federal firearms licensees or interdicting illicit firearms transactions and smuggling. Mexico's complaint does however detail events spanning decades, and alleges a considerable scope to Petitioners' activities which fall under the category of willful negligence if not deliberately tortious activity. Thus, Mexico is expecting this Court to believe not only in the possibility, but the *plausibility* that Petitioners have been able to magically ensure the down-stream dealers sell considerable volume of their products to prohibited persons or in prohibited transactions, while

³⁶ Petitioner-Defendants' App. at 140a ¶ 378 (April 18, 2024).

simultaneously ensuring these dealers and the buyers either do not come to the notice of state or federal law enforcement or their illicit sales are ignored, and that all of this has been going on for decades.³⁷ To whomever is inclined to believe such a state of affairs, I have a couple of chupacabras and a quetzalcoatl I'm willing to sell at a discount.

At the very least, it should raise a few eyebrows that despite Mexico's lengthy complaint, including a Washington Post graphic naming 12 firearms dealers in the American border states which are purported to be the sellers of the largest number of weapons which illegally end up in Mexico, not a single dealer or seller is named as a defendant in the case. More eyebrows should be raised at the fact the complaint contains no potential proof or substantiation that the Petitioners had any special arrangement with any individual dealer (again, nary a one is identified outside the Washington Post graphic), nor any proof or alleged testimony of a specific pipeline by which cartels or their agents consistently receive Petitioners' goods. This becomes especially curious given this case was filed by the

³⁷ While some detractors of this brief might try to bring up the series of shockingly atrocious ATF gun interdiction operations which saw thousands of firearms be smuggled across south of the border, including 'Operation Wide Receiver' (2006–07), 'Operation Fast and Furious' (2009–11), it should be noted that these and other "gunwalking" operations were carried out from their inceptions with coordination between the ATF and the gun stores where the weapons were sold, and are entirely different than what Mexico is alleging in its complaint. See Sharyl Attkisson, *A primer on the "Fast and Furious" scandal*, CBS (Feb. 12, 2013), <https://www.cbsnews.com/news/a-primer-on-the-fast-and-furious-scandal/>.

government of Mexico, which must surely have access to all manner of records and information to substantiate any claim of a specific network or arrangement to engage in weapons smuggling. The lack of any such evidence is telling, indeed.

5. Mexico’s theory of liability would be risible if applied to other industries which sell ‘dangerous products,’ like vehicles.

Mexico argues that any “manufacturer of a dangerous product is an accessory or co-conspirator to illicit conduct by downstream actors where it continues to supply, support, or assist the downstream parties and has knowledge—*actual or constructive*—of the illicit conduct.”³⁸ Mexico further argues a general knowledge that criminals use their products in the commission of violent criminal activity, supported by “government and media reports,” is “continual notice” which requires a company to use “affirmative design safeguards;” standards including “a duty not to include features making [the products] more attractive to and useful for malicious actors and to include safety features reducing their susceptibility to theft and diversion to the criminal market.”³⁹ Under this logic, every motor vehicle manufacturer in America can and should be held liable for all the illicit conduct which is done by downstream actors using their vehicles, since “[m]otor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property.” *Hess v. Pawloski*, 274 U.S. 352, 356 (1927). After all, the news is replete with instances of bad or malicious actors using vehicles, stolen or legally bought, for illegal activities.

³⁸ *Id.* at 42a ¶ 110.

³⁹ *Id.* at 50a and 39a ¶¶ 89–90.

Applying Mexico's argument to the idea of opening motor vehicle manufactures up to liability for downstream actions, highlights the absurdity of allowing Mexico's claim in the matter at bar: The International Association of Chiefs of Police avers "[v]ehicle crime is often a high-impact crime also involving [subsequent] crimes; in many instances, a stolen vehicle is either driven while committing some crimes or is the nexus of others, [including] robbery or burglary, home invasion, shootings, homicide, drug trafficking, arson, terrorism" and more.⁴⁰ In both 2022 and 2023, over 1 million vehicles were reported stolen per year according to the National Insurance Crime Bureau.⁴¹ A report by the Lehigh Valley Regional Intelligence and Investigation Center, based on survey data from law enforcement across the country, revealed that potentially 40% of motor vehicle thefts were used in secondary crime in 2020.⁴² Using instead a modest figure of only 20% to extrapolate the number of vehicles used in secondary crimes, that would still equal over 200,000 stolen vehicles used in secondary crimes, per year. Every car manufacturer and dealer in America is surely on notice regarding the long history of stolen vehicles being used in the furtherance of criminal activity, from the heyday of gangsters like John Dillinger, and Bonnie and Clyde, through to the most recent instances of stolen vehicles used in crime sprees

⁴⁰ INT'L ASS'N OF CHIEFS OF POLICE, VEHICLE CRIMES AUTO THEFT EDUCATIONAL AWARENESS REPORT 7 (2017).

⁴¹ Nat'l Ins. Crime Bureau, *Vehicle Thefts Surge Nationwide in 2023*, NICB (April 9, 2024), <https://www.nicb.org/news/news-releases/vehicle-thefts-surge-nationwide-2023>.

⁴² JANET SMILOWSKI ET AL., AUTO THEFT AND VEHICLE CRIMES 2020 TRENDS AND PATTERNS 13 (2021).

around the country. Should the United States open up the most popular American vehicle brands to liability for these crimes? Should the United States open all car manufacturers to potential liability for any damages caused by drunk drivers or non-owners, since we clearly have the technology to tie biometrics or breathalyzers to a vehicle's ignition system?⁴³ Under Mexico's theory of liability, we should.

Even dialed back a few degrees, such a theory of liability would still potentially wreak havoc on American manufacturers who could suddenly be targeted under such an expansive concept of negligence. For example, since Mexico is specifically concerned with violence perpetrated by cartels using commonly available consumer products made by American companies, which are "attractive to and useful for malicious actors,"⁴⁴ the large American 4x4 trucks and SUVs must surely be next. After all, these vehicles which are the bread and butter of Ford and Dodge Ram, and are highly profitable for Chevy, also happen to be the vehicles of choice for cartels, and are

⁴³ Currently 31 states and D.C. have laws requiring mandatory breathalyzer ignition interlock devices on vehicles of persons convicted of DUI. *See State Ignition Interlock Laws*, NCSL (Mar. 14, 2024), <https://www.ncsl.org/transportation/state-ignition-interlock-laws>. Multimodal biometrics, including fingerprint and facial identification technology is also able to be seamless integrated into vehicles. *See Kevin Daimi et al., Using Multimodal Biometrics to Secure Vehicles*, in *ADVANCES IN SECURITY, NETWORKS, AND INTERNET OF THINGS* 567, 567–84 (2021).

⁴⁴ Petitioner-Defendants' App. at 39a ¶¶ 89 (April 18, 2024).

often converted into up-armored ‘narco tanks.’⁴⁵ Though it may seem ludicrous now, this would be the logical extension of the liability theory Mexico asks the Court to adopt.

II. Mexico’s arguments and requested relief would functionally work to usurp both the power of Congress and state legislatures to determine what firearms may legally be sold on the civilian market, and the power of the executive branch and the law enforcement agencies which implement and enforce firearms laws.

Mexico’s prayer for relief goes beyond merely seeking restitution for damages, but actively seeks the authority to usurp the rights and powers of federal and state legislatures to determine what firearms may be legally sold on the civilian market. As a Florida appellate court so succinctly put it, when faced with a similar request brought by Miami-Dade County, Mexico’s “request that the trial court use its injunctive powers to mandate the redesign of firearms and declare that the appellees’ business methods create a public nuisance, is an attempt to regulate firearms and ammunition through the medium of the judiciary.” *Penelas v. Arms Technology, Inc.*, 778 So. 2d 1042, 1045 (Fla.App. 2001). While it is “the duty of

⁴⁵ ‘Narco tanks’ are standard vehicles which are heavily modified with armor-plating, bullet-proof glass, and weapons, to make ersatz armored assault vehicles. *See, e.g.* Simon Romero & Emiliano R. Mega, *Mexico’s ‘Monster’ Trucks Show Cartels Taking Drug War to Next Level*, NY TIMES (Aug. 1, 2023), <https://www.nytimes.com/2023/08/01/world/americas/mexico-cartels-trucks.html>.

the Judicial Department to say what the law is,” (*Marbury v. Madison*, 5 U.S. 137, 177 (1803)), it is not within the rights or powers of the judicial department to amend existing statutory law, or draft new laws, upon the whims of a plaintiff. Indeed, when asked to weigh in on the matter, a New York appellate court was emphatic in asserting “the plain fact that courts are the least suited, least equipped, and thus the least appropriate branch of government to regulate and micro-manage the manufacturing, marketing, distribution and sale of [firearms].” *Spitzer v. Sturm, Ruger Company, Inc.*, 309 A.D.2d 91, 99 (N.Y. App. Div. 2003).

There is no shortage of firearms legislation and regulation at all levels of government across this country: from federal statutes like the National Firearms Act (which notably classify firearms into various different categories, including pistols, rifles, shotguns, short-barrel rifles/shotguns, destructive devices, etc.),⁴⁶ Gun Control Act,⁴⁷ Firearm Owners Protection Act,⁴⁸ Brady Handgun Violence Prevention Act,⁴⁹ and most recently the Bipartisan Safer Communities Act;⁵⁰ to regulations promulgated by the IRS and ATF;⁵¹ to state legislation which places restrictions on what firearms citizens are and are not allowed to own in the state.⁵² The key factor

⁴⁶ Pub. L. No. 73-474, 48 Stat. 1236 (1934); 18 U.S.C. § 921(a)(3)–(8).

⁴⁷ Pub. L. No. 90-618, 82 Stat. 1213 (1968).

⁴⁸ Pub. L. No. 99-308, 100 Stat. 449 (1986).

⁴⁹ Pub. L. No. 103-159, 107 Stat. 1536 (1993).

⁵⁰ Pub. L. No. 117-159, 136 Stat. 1313 (2022).

⁵¹ *See e.g.* 27 C.F.R. §§ 447, 478, 479, 555.

⁵² *E.g. supra* note 30; *and* CAL. PENAL CODE §§ 30500–31115 (Provisions addressing ‘assault weapons’ and .50 caliber firearms).

underlying all these statutes and regulations is the fact that each was passed by the elected legislative bodies of the applicable jurisdictions or the executive agencies established by those legislatures.

While Mexico gives the pretense of accepting the right of the U.S. to set its own domestic firearms policy,⁵³ it clearly is seeking to impose its own judgment on what can and cannot be legally sold in U.S. markets. Throughout the complaint, Mexico repeatedly takes issue with .50 caliber rifles, semiautomatic versions of AR-15 and AK platform rifles, the importation laws regarding firearms and firearm kits produced abroad, the types of features which weapons should have, etc. Clearly, Mexico is asking this Court to allow it, a foreign nation, to have not just a partial say, but the whole decision-making authority to regulate for the entirety of the U.S., bypassing the American legislative process. The current status of U.S. gun laws is the result of an extensive history of passed and discarded legislation at all levels: from 1994–2004 there was a federal assault weapons ban which Congress did not renew; certain firearm features are prohibited in California, but are allowed in Virginia; Connecticut sets magazine capacity limits at 10 rounds, while in Delaware the limit is 15; etc.⁵⁴ Any judicial determination which grants Mexico, or any plaintiff, the ability to dictate what firearms may or may not be sold, would be a clear violation of the constitutional rights of the legislature of each state and Congress. Indeed, Mexico's comparison of its own domestic

⁵³ Petitioner-Defendants' App. at 14a ¶ 20 (April 18, 2024).

⁵⁴ *See generally, Compare State Gun Laws*, EVERYTOWN RESEARCH & POLICY, <https://everytownresearch.org/rankings/compare/> (last visited Nov. 21, 2024).

firearm regulatory scheme and appeal to use that scheme as the standard by which U.S. courts evaluate its claims, is the functional equivalent of seeking to impose its own domestic laws on the U.S. market.⁵⁵

The same holds true of the enforcement element of firearms policy. Mexico is not content to merely dictate firearms laws to the U.S., but also seemingly seeks to dictate enforcement powers as well, when it alleges the Petitioners, “not the Government, have the authority to discipline distributors and dealers that sell to straw purchasers and otherwise supply traffickers.”⁵⁶ While it is true, American businesses do generally have the freedom to choose with whom they wish to deal, the concept of ‘discipline’ is generally considered exclusive to the purview of an authority over a subservient entity; the governing over the governed. If the federal government lacks the power to commandeer state officials for the purpose of conducting background checks, *see Printz v. United States*, 521 U.S. 898 (1997), then surely Mexico has no right to require American businesses to act as law enforcement officers to impose its interpretation of firearms policy.

III. Mexico is essentially seeking to use U.S. courts and the U.S. tort system to abrogate its responsibility to run and manage its own domestic and border security.

In evaluating this case properly, it is important for this Court to remain cognizant of who the parties are, and the broader geopolitical situation from which

⁵⁵ Petitioner-Defendants’ App. at 145a–150a, 195a–196a ¶¶ 396–403, b. and c. (April 18, 2024).

⁵⁶ *Id.* at 158a ¶ 433 (April 18, 2024).

this case arises, *viz.*, that Mexico is a sovereign nation with the power to enact its own laws and police its own borders, and the duty to enforce such laws and provide domestic security for its citizens. In contrast, the Petitioners are American corporations operating inside the United States, which have no hand or say in border security, Mexican law enforcement policy, or Mexican governance. The current U.S. Ambassador to Mexico, Ken Salazar, is on record decrying the deplorable state of security in Mexico due to the failed leadership of its president and said that “blaming someone else, blaming the United States, obviously is not (the solution).”⁵⁷ This is particularly notable when taken into context with the fact that former president, Andrés Manuel López Obrador refused to collaborate on security matters with the U.S. government, and even turned down “millions of dollars [that] were available to support Mexico’s security efforts.”⁵⁸ Unfortunately, this is just the latest in a chain of failed leadership, as evidenced by the case of Jesús Murillo Karam, who served as Attorney General under Obrador’s predecessor, Enrique Peña Nieto, and was arrested in 2022 for “the crimes of forced disappearance, torture and against the

⁵⁷ María Verza, *US ambassador says Mexico ‘closed the doors’ on security cooperation and denies its violence problem*, AP (Nov. 13, 2024), <https://apnews.com/article/mexico-sinaloa-cartel-violence-bodies-02e0c9a499e9605291f3ba5a2f9e6f4d>.

⁵⁸ Elías Camhaji, *‘Mexico is not safe’: Ken Salazar takes hardest stance yet on violence crisis*, EL PAIS (Nov. 14, 2024), <https://english.elpais.com/international/2024-11-14/mexico-is-not-safe-ken-salazar-takes-hardest-stance-yet-on-violence-crisis.html>.

administration of justice,” in relation to the disappearance and suspected murders of 43 students in 2014.⁵⁹ With this understanding, this case seemingly loses any pretense of being a legitimate cause of action under tort law, and instead has the profound air of maliciousness, aimed at unpopular defendants in the hopes of deflecting national accountability. Interestingly, this litigation notwithstanding, Mexico does not have any qualms about purchasing products from most, if not all, of the named manufacturers in the complaint, for use by its military, national guard, and police.

1. Mexico seeks to escape and abrogate culpability for decades of corruption which have seen its own actual military weapons be directed to cartels.

The Mexican government presents a litany of figures and statistics in its claims against the Plaintiffs in the attempt to show causality and craft a theory of liability against the chosen boogymen. The Mexican government’s filings are disingenuous though, as they conveniently overlook the deeply entrenched corruption in various ranks and at all levels of Mexico’s federal, state, and local governments, which have empowered cartels and criminal organizations and severely hampered broader efforts to stem the violence.

A few notable examples of which the Court should take notice include: in 2011, the Mexican

⁵⁹ Fidel Gutierrez, *Former attorney general of Mexico arrested over multiple charges related to disappearance of 43 students*, CNN (Aug. 19, 2022), <https://www.cnn.com/2022/08/19/americas/jess-murillo-karam-mexico-missing-students-intl-latam/index.html>.

military reported nearly 9,000 police weapons missing, and the U.S. government made a formal inquiry to Mexico asking how 1,030 AR-15 rifles were diverted from military and police sales to criminals;⁶⁰ a former Mexican army officer and guard for President Felipe Calderon, leaked military intelligence to drug cartels, trained hit men and supplied military weapons to Los Zetas;⁶¹ a report published in 2014 by the National Institute of Statistics and Geography, an autonomous agency within the Mexican government, found endemic corruption in law enforcement, with 24,000 cases of corruption recorded per 100,000 people, of which 50.6% were related to the police and public safety, and many officers do not meet basic qualifications;⁶² in September of 2018, the Mexican military took the entire police department of Acapulco into custody and confiscated all weapons, ammo, ballistic vests, and radios due to deep suspicion of extensive infiltration by criminal organizations;⁶³ cartels are one of the

⁶⁰ Sharyl Attkisson, *Legal U.S. gun sales to Mexico arming cartels*, CBS (Dec. 6, 2011), <https://www.cbsnews.com/news/legal-us-gun-sales-to-mexico-arming-cartels/>.

⁶¹ Embassy Mexico, *Mexican Army Major Arrested For Assisting Drug Trafficking Organizations*, WikiLeaks Cable: 09MEXICO133_a (Jan. 20, 2008), https://wikileaks.org/plusd/cables/09MEXICO133_a.html.

⁶² INSTITUTO NACIONAL DE ESTADÍSTICA, GEOGRAFÍA E INFORMÁTICA, RESULTADOS DE LA SEGUNDA ENCUESTA NACIONAL DE CALIDAD E IMPACTO GUBERNAMENTAL (ENCIG) 2013 at 56 (2014).

⁶³ Scott Neuman, *Mexican Authorities Disarm Acapulco Police, Fearing Infiltration By Drug Gangs*, NPR (Sept. 26,

largest employers in Mexico with an estimated 160,000–185,000 people employed as of 2022;⁶⁴ rockets and anti-tank weapons from Central and South American countries have been found in the hands of cartels.⁶⁵ This is a pattern of systemic corruption which undermines public safety, and should not be ignored.

2. Mexico seeks to ascribe liability to American manufacturing firms for its own failed policies to address domestic criminality and secure its own side of the border.

Mexican cartels have posed a serious public safety problem since at least the late 1980's, but the general consensus is that violence by cartels spiked following President Felipe Calderón's decision to pursue an aggressive policy against the cartels in 2006, commonly known as the 'War on Drugs,' which saw the use of federal military forces in lieu of local civilian law enforcement, largely seen as ineffectual and corrupt.⁶⁶ Despite this initiative, the situation

2018),

<https://www.npr.org/2018/09/26/651708030/mexican-authorities-disarm-acapulco-police-amid-infiltration-concerns-by-drug-ga>.

⁶⁴ Rafael Prieto-Curiel et al., *Reducing cartel recruitment is the only way to lower violence in Mexico*, 381 SCIENCE 1312 (2023).

⁶⁵ Julio Montes, *Portable Anti-Tank Weapons in Mexico & the Northern Central American Triangle*, SMALL ARMS DEFENSE JOURNAL (Aug. 15, 2023), <https://sadefensejournal.com/portable-anti-tank-weapons-in-mexico-the-northern-central-american-triangle/>.

⁶⁶ *E.g.* GEORGE W. GRAYSON, THE IMPACT OF PRESIDENT FELIPE CALDERÓN'S WAR ON DRUGS ON THE ARMED

has not improved. The inability to deal with crime rests hand in hand with local and federal forces who have a history of ignoring or refusing to deal with violence. A notable example is the case of the 43 students in Iguala, Guerrero, in 2014. While the true events are still shrouded in mystery, a “government truth commission concluded that local, state and federal authorities colluded with the gang to murder the students in what it called a ‘state crime.’”⁶⁷ A succession of police reform attempts, including the suspension of most municipal police in favor of federal police in 2014, and then disbanding many of those forces due to corruption concerns, and forming a National Guard under military control in 2019, highlight this problem. The International Crisis Group has recently released a detailed report analyzing the failed policies and the underlying causes which perpetuate the calamity.⁶⁸

This situation is profoundly tragic and it seems impossible to properly understand what life must be like for the innocent, good, hard-working people of Mexico who are forced to live in the middle of this tragedy, with no end in sight. That said, this situation is far deeper, more nuanced, and certainly more complicated than what Mexico would have the

FORCES: THE PROSPECTS FOR MEXICO’S “MILITARIZATION” AND BILATERAL RELATIONS (2013).

⁶⁷ Daniel Shailer, *9 years later, families of 43 missing Mexican students march to demand answers in emblematic case*, AP (Sept. 26, 2023), <https://apnews.com/article/ayotzinapa-obrador-march-dissapearing-protest-guerrero-411f9f467a22080095c0ae301586904c>.

⁶⁸ INT’L CRISIS GROUP, *THE GENERALS’ LABYRINTH: CRIME AND THE MILITARY IN MEXICO* (2024).

American courts believe, as evidenced by their complaint.

CONCLUSION

For the foregoing reasons, the Court should uphold the established history and tradition of U.S. tort law, affirm the free public services doctrine, and disallow non-meritorious claims to circumvent federal statutes. Additionally, the Court should reject any outcome with allows meddling by foreign sovereigns with the rights and powers of the legislative and executive branches of the federal government, and the separate states.

Respectfully submitted,

JOAN DEBORAH B. EDELSON
*Counsel of Record**
460 Center Street
Unit 6045
Moraga, CA 94570
(415) 944-9509
SAGEPropertiesLLC09@gmail.com

** Counsel for Amicus Curiae
G. Antaeus B. Edelson*