No. 23-1141

IN THE
# Supreme Court of the United States

SMITH & WESSON BRANDS, INC., *et al.*,

*Petitioners*,

v.

ESTADOS UNIDOS MEXICANOS,

*Respondent*.

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

## BRIEF FOR RESPONDENT


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## QUESTION PRESENTED

Whether the Government of Mexico plausibly alleges in its complaint that Petitioners aided and abetted unlawful firearms sales to gun traffickers and that those unlawful sales were a proximate cause of Mexico's harm.

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## BRIEF FOR RESPONDENT

## INTRODUCTION

The Protection of Lawful Commerce in Arms Act (PLCAA) generally protects businesses engaged in the lawful manufacture, distribution, or sale of arms from liability for the unlawful misuse of their products. 15 U.S.C. §§ 7901-7903. But PLCAA provides no protection for businesses engaged in *unlawful* commerce in arms. To that end, PLCAA permits suits against businesses that "knowingly violated a State or Federal statute applicable to the sale or marketing of the product," including by aiding and abetting such violations, where that violation was "a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii).

That is exactly what Mexico alleges.

Petitioners deliberately sell their guns through dealers who are known to disproportionately sell firearms that are recovered at crime scenes in Mexico. They provide these red-flag dealers with the firearms that Petitioners know cartels prefer, designing and marketing those firearms in ways they know cater to the cartels. They embrace distribution practices they know enable these red-flag dealers to illegally sell to cartel traffickers. And they intentionally do all this to boost their bottom lines. This constitutes classic aiding and abetting, in violation of federal law.

By aiding and abetting violations of laws designed to keep guns out of criminals' hands, Petitioners' actions have predictably caused guns to fall into criminals' hands. And those criminals have—again, predictably—caused Mexico harm, including millions of dollars in damage to its military and police property. That is a textbook example of proximate cause, as every major treatise recognizes and PLCAA's text confirms.

A unanimous First Circuit panel properly applied these principles and held that Mexico plausibly pleaded at least one claim that fit PLCAA's predicate exception. That narrow ruling, at a preliminary stage, on fact-intensive issues commonly reserved for juries, merely means that Mexico overcame one of the many hurdles standing between itself and relief.

To hear Petitioners tell it, however, the sky is falling, Americans' constitutional rights hang in the balance, and only this Court can set things right. Wrong, wrong, and wrong. This case is about basic proximate-cause and aiding-and-abetting principles. It is not a platform for a debate about Americans' right

to bear arms. Mexico simply seeks to halt the unlawful flow of guns into Mexico, where they cause harm in Mexico, to the Government of Mexico. This case is also at the beginning of a long road. The district court and First Circuit have already substantially narrowed the claims at issue, and Petitioners have other remaining threshold arguments. But at this stage, as to the narrow question presented, Mexico has plausibly alleged facts that bring its complaint within PLCAA's predicate exception.

Rather than continuing to litigate on those remaining fronts, however, Petitioners seek a declaration that they are categorically immune from even the prospect of liability. Accepting Petitioners' arguments requires rejecting established common law, rewriting PLCAA's text, and ignoring Mexico's well-pled allegations.

Petitioners' primary objection is that they engage in "nothing but" lawful behavior and that they cannot be liable for mere knowledge that their guns may be illegally sold. Opening Br. 15. But that is not what Mexico alleges. The complaint alleges *unlawful*, deliberate *actions*. Petitioners' staunch refusal to accept this case as it comes before the Court infects every part of their argument.

Petitioners also argue that what they call "business as usual" can never constitute aiding and abetting. *Id.* at 32. That proposition (again) ignores Mexico's allegations; is antithetical to the classic aiding-and-abetting principles this Court surveyed in *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471 (2023); and would radically limit a theory of liability that is used in everyday criminal and civil litigation.

As for proximate cause, Petitioners argue that PLCAA cuts off liability whenever there are "multiple steps" between the defendant and plaintiff. Opening Br. 19. That proposed rule resembles one the common law long ago rejected; makes no sense given PLCAA's text and goals; and would be far too easy to manipulate.

This Court should affirm.

## STATEMENT

### A. The Protection of Lawful Commerce in Arms Act

Congress enacted PLCAA to "prohibit causes of action" against those in the gun industry "for the harm *solely* caused by the criminal or unlawful misuse" of guns or ammunition "by others when the product functioned as designed and intended." 15 U.S.C. § 7901(b)(1) (emphasis added). To that end, PLCAA prohibits "qualified civil liability actions" against firearms manufacturers, sellers, or trade associations for relief "resulting from the criminal or unlawful misuse of a qualified product by the person or a third party." *Id.* §§ 7903(5)(A), 7902.

As its name shows, however, the Protection of Lawful Commerce in Arms Act does not protect *unlawful* commerce in arms. Where gun manufacturers or sellers engage in defined wrongful conduct, they remain subject to civil liability. PLCAA thus expressly authorizes actions for negligent entrustment, actions for negligence per se, and actions claiming "breach of contract or warranty." *Id.* § 7903(5)(A)(ii), (iv). PLCAA also authorizes actions for "death, physical injuries or property damage resulting directly from" a design or manufacturing

defect, except that "where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage." *Id.* § 7903(5)(A)(v).

Most relevant here, PLCAA provides that manufacturers and sellers can be held civilly liable when they "knowingly violate[] a State or Federal statute applicable to the sale or marketing" of firearms, where the "violation was a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii).[1] This provision, often called the "predicate exception," extends to "any case in which" a manufacturer "aided[] [or] abetted" unlawful firearms sales, such as a sale involving the "false entry" of "any record required to be kept under Federal or State law." *Id.* § 7903(5)(A)(iii)(I).

PLCAA thus reflects a careful balance: Congress sought to protect manufacturers and sellers who had merely lawfully sold guns ultimately used by third-party criminals. Indeed, PLCAA was enacted partly in response to concerns that suits by various municipalities could be used to hold a manufacturer or seller liable for harms caused by others' illegal possession and use, even if the manufacturer or seller were "generally in compliance with applicable state and federal laws governing the sale of firearms." *City*

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[1] The Question Presented in the petition for certiorari characterized PLCAA as requiring that the alleged violation be "*the* 'proximate cause' " of the plaintiff's harm. Pet. i (emphasis added). Petitioners corrected themselves following the grant of certiorari, Opening Br. i, but some of their amici persist in that mischaracterization, *see*, *e.g.*, Amicus Br. of American Free Enterprise Chamber of Commerce 2.

*of Chicago* v. *Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1109 (Ill. 2004); *see* 15 U.S.C. § 7901(a)(7) (expressing concern about the consequences of allowing suits to proceed based on "theories without foundation in hundreds of years of the common law and jurisprudence of the United States").

But Congress did not immunize manufacturers or sellers from liability where the manufacturer or seller *itself* engages in wrongful conduct, causing harm. PLCAA's narrow scope reflects Congress's choice to bar only a particular type of claim. Congress did not prohibit specific governmental entities from suing firearms manufacturers, as some States had. *See* H.R. Rep. No. 109-124, at 11 n.48 (2005) (collecting examples from 17 States). It did not cap damages or bar injunctive relief. *Compare* 42 U.S.C. § 2210(b)(1) (capping damages in suits against nuclear power companies); 28 U.S.C. § 2283 (Anti-Injunction Act). It did not preclude liability for harms stemming from older guns. *See* H.R. Rep. No. 109-124, at 12 & n.62 (discussing 49 U.S.C. § 40101 note, which bars suits against airlines involving aircraft over 18 years old). It did not narrow the common-law understanding of proximate cause in the predicate exception. *Compare, e.g.*, Fla. Stat. § 790.331(1) (2002) (declaring the unlawful use of firearms "the" proximate cause of injuries resulting from that use); 15 U.S.C. § 7903(5)(A)(v) (similar). And it did not authorize interlocutory appeals any time a motion to dismiss under PLCAA was denied. *Compare, e.g.*, 9 U.S.C. § 16 (Federal Arbitration Act).

PLCAA's sponsors and supporters confirmed what its text shows: PLCAA protects the firearms manufacturer "who is not negligent and obeys all

applicable laws" from being "held accountable for the unforeseeable actions of a third party." 151 Cong. Rec. S9063 (daily ed. July 27, 2005) (Sen. Coburn). But as the Act's chief Senate sponsor emphasized, PLCAA "does not protect firearms or ammunition manufacturers, sellers, or trade associations from any other lawsuits based on their own negligence." *Id.* at S9061 (Sen. Craig). Other sponsors agreed. *Id.* at S9077 (Sen. Hatch explaining that PLCAA "preserves the right of individuals to have their day in court with civil liability actions where negligence is truly an issue"); 151 Cong. Rec. S8911 (daily ed. July 26, 2005) (Sen. Sessions explaining that "[m]anufacturers and sellers are still responsible" for their own negligent conduct).

In the years since PLCAA's passage, courts have regularly allowed actions against firearms manufacturers and dealers to proceed past the motion-to-dismiss stage where the complaint plausibly pleaded facts consistent with the predicate exception. *See, e.g.*, *Williams* v. *Beemiller, Inc.*, 100 A.D. 3d 143 (N.Y. App. Div., 4th Dept. 2012); *Smith & Wesson Corp.* v. *City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007); *Minnesota* v. *Fleet Farm LLC*, 679 F. Supp. 3d 825 (D. Minn. 2023). In the meantime, the gun industry has boomed. *See, e.g.*, Larry Keane, *Americans Charted Record Book Year for Firearms in 2023, With 2024 Looming Large Too*, Nat'l Shooting Sports Found. (Jan. 8, 2024), https://www.nssf.org/articles/2023-record-year-for-firearms-2024-looming-large/.

### B. Mexico's Complaint

This case comes to the Court at the motion-to-dismiss stage. Except where otherwise indicated, the

facts are drawn from Mexico's complaint, which this Court must "accept as true." *Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639, 642 n.1 (2008) (quotation marks omitted).[2]

Mexico has "one gun store in the entire nation." Pet. App. 8a. Yet the nation is awash in guns, most of which are in the hands of drug cartels and other criminals. *Id.* at 8a, 12a. Cartels use military-style and other weapons to assassinate politicians, attack the military, and kill and injure "judges, journalists, police, and ordinary citizens throughout Mexico." *Id.* at 12a. Heavily armed cartels also "have aggressively marketed" fentanyl and other drugs into the United States. *Id.*

The cartels' power derives from their firepower—much of which comes from Petitioners. Hundreds of thousands of Petitioners' weapons are trafficked into Mexico every year. *Id.* at 159a. Nearly half of all firearms recovered at Mexican crime scenes are manufactured by Petitioners—seven firearms manufacturers and one distributor. *Id.* at 158a-159a.

Petitioners know that the most popular method by which cartels obtain firearms in the United States is through "straw purchasers"—third parties that buy guns through licensed firearms dealers, then traffic them across the border. *Id.* at 29a, 54a-70a, 81a-85a. Multiple sales to the same customer over a short

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[2] Following the First Circuit's decision, the District Court determined that the claims against six of the eight defendants should be dismissed for lack of personal jurisdiction. D. Ct. Dkt. No. 220. Following this Court's grant of certiorari, the District Court stayed further proceedings, D. Ct. Dkt. No. 228, and judgment in favor of those defendants has not been entered. The original complaint remains operative.

period of time are a telling indication that the sales are illicit straw purchases. *Id.* at 86a. The same is true for bulk sales. *Id.* at 79a-80a, 83a. Straw purchasing, too, implicates numerous federal criminal statutes. *See, e.g.*, 18 U.S.C. § 922(a)(6), (m), (t)(1); Pet. App. 28a-29a, 84a-85a.

Petitioners know that specific dealers supply an outsized percentage of crime guns that are illegally exported into Mexico. Petitioners "know that a fairly small percentage of their dealers sell virtually all crime guns recovered in Mexico." *Id.* at 44a. Over a decade ago, public reporting "identified by name 12 dealers that sold the most guns recovered in Mexico." *Id.* Petitioners also know that specific dealers have unlawfully sold their firearms to cartel traffickers. *Id.* at 54a-70a. For example, one dealer knowingly sold over 650 guns to straw purchasers recruited by a drug cartel after advising the purchasers on how to evade law enforcement; many of these guns were later recovered at crime scenes in Mexico. *Id.* at 55a-56a. Petitioners also routinely receive alerts from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) showing that "guns they sell to specific distributors and dealers are being recovered at crime scenes in Mexico." *Id.* at 46a; *see also id.* at 46a-50a. ATF notified Petitioner Century Arms, for instance, that "specific distributor and dealer networks were disproportionately associated with" hundreds of the company's rifles that were recovered at crime scenes in Mexico. *Id.* at 80a-81a.

Petitioners know that their distribution practices drive this crime-gun pipeline. Firearms-industry insiders have called on Petitioners to stop selling guns in ways they know supply criminals. *Id.* at 32a-34a,

82a-83a. And in 2001, the Department of Justice beseeched Petitioners to "refuse to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers" and "to monitor, supervise, and set reasonable conditions for their distribution systems to prevent supplying criminals." *Id.* at 13a, 34a-36a. Petitioners refused. *Id.* at 36a, 71a, 80a, 131a-139a.

But this case is not just about Petitioners' knowledge; Petitioners *deliberately and systemically support* this unlawful trade. They supply dealers known to disproportionally sell crime-guns—such as Century Arms's continued use of known red-flag dealers. *Id.* at 44a-46a, 80a-81a. Although Petitioners could exclusively use the "overwhelming majority of gun dealers—almost 85%—[that] sell zero crime guns," *id.* at 44a, Petitioners keep the supply coming "even if a gun dealer has been repeatedly found to have violated gun laws, has been indicted or its employees have had federal gun licenses revoked, or has repeatedly supplied cartels in suspicious and obvious sales to traffickers," *id.* at 84a. They have *increased* their reliance on "repeat and bulk customers"—hallmarks of illegal straw purchases. *Id.* at 86a. And they have resisted measures that would make it harder for cartel traffickers to access firearms in this country. *Id.* at 131a-139a.

There is more. Petitioners specifically design certain weapons to cater to cartels, including Colt's special-edition handguns like the Super "El Jefe" pistol, a term used to refer to cartel bosses, and the "Emiliano Zapata 1911" pistol, which comes engraved with the Mexican revolutionary's dictum: "It is better to die standing than to live on your knees." *Id.* at 75a.

"These models are status symbols and coveted by the drug cartels; they are smuggled into Mexico from the U.S. in volume." *Id.* Century Arms' WASR-10 assault rifle is a known cartel favorite. *See id.* at 100a. Barrett's sniper rifles, which have a mile range, is another; those rifles have been used to shoot down Mexican military helicopters. *Id.* at 99a-100a. Petitioners feed the market for these and other illegal firearms through their deliberate design and marketing decisions. *See id.* at 93a-102a, 104a-121a.

Petitioners deliberately engage in this affirmative conduct to boost their bottom lines. *Id.* at 49a, 141a-145a. "The annual value of [Petitioners'] guns trafficked into Mexico is well more than $170 million." *Id.* at 142a. The criminal market is "a feature, not a bug" of Petitioners' sales practices. *Id.* at 141a.

Mexico has suffered substantial harm as a foreseeable and direct consequence of Petitioners' actions. Scores of Mexican police and military have been killed or injured by weapons trafficked from the United States. *Id.* at 172a-173a. Assaults have destroyed military aircraft and vehicles. *Id.* at 173a. In addition, Mexico has expended "vast funds on a wide range of services to fight" gun trafficking. *Id.* at 167a.

Mexico has tried to stem this relentless tidal wave. *Id.* at 150a-158a. But its after-the-fact efforts to find and recover guns from the cartels are small-scale remedies given Petitioners' systemic conduct in getting the guns into the trafficker' hands in the first instance.

### C. Procedural History

Mexico sued Petitioners in 2021. Its 135-page complaint asserted several claims, including for

negligence and gross negligence, and exhaustively explained how Petitioners' deliberate and affirmative conduct aided and abetted dealers' unlawful sale of firearms to cartels in Mexico, triggering PLCAA's predicate exception. Pet. App. 1a-197a. Mexico sought damages and injunctive relief tailored to halting the flow of Petitioners' products into Mexico.

Petitioners moved to dismiss Mexico's complaint on multiple grounds, including PLCAA; failure to state a claim; and lack of personal jurisdiction. *See id.* at 224a.

The District Court held that PLCAA barred Mexico's common-law claims. *Id.* at 240a-251a. The court held that the predicate exception allows only causes of action that "arise under" a state or federal statute, and found Mexico's "common-law" claims insufficient. *Id.* at 242a-245a. The court also dismissed Mexico's state statutory claims as failing to state a claim. *Id.* at 251a-262a. It did not reach Petitioners' other grounds for dismissal. *Id.* at 224a, 251a n.13.

The First Circuit unanimously reversed the District Court's conclusion that PLCAA barred Mexico's common-law claims. Consistent with every other court, it held that PLCAA's "predicate exception encompasses common law claims in addition to statutory claims, as long as there is a predicate statutory violation that proximately causes the harm." *Id.* at 295a. The First Circuit also held that Mexico plausibly alleges that Petitioners aided and abetted statutory violations that proximately caused harm to Mexico. *Id.* at 299a-306a, 309a-319a.

Writing for the Court of Appeals, Judge Kayatta explained that, at the motion-to-dismiss stage, "Mexico's complaint adequately alleges that

[Petitioners] have been aiding and abetting the sale of firearms by dealers in knowing violation of relevant state and federal laws." *Id.* at 300a. Petitioners had not contested that Mexico adequately alleges a "widespread" practice of unlawful sales by firearms dealers "in knowing violation" of the law. *Id.* at 299a-300a. The court explained that Mexico's complaint plausibly alleges that Petitioners aided and abetted these illegal sales "by passing along guns knowing that the purchasers include unlawful buyers, and making design and marketing decisions targeted towards those exact individuals." *Id.* at 302a. The court rejected Petitioners' argument that their challenged conduct constituted mere "knowing indifference" as reflecting a "fundamental misunderstanding of the complaint." *Id.* at 300a-301a.

The court also rejected Petitioners' reliance on *Twitter*, 598 U.S. 471, and instead found the allegations "remarkably analogous to the facts in *Direct Sales Co.* v. *United States*, 319 U.S. 703 (1943)." Pet. App. 302a, 304a-305a. As the court explained, Petitioners are "alleged to be much more active participants in the alleged activity than were the *Twitter* defendants." *Id.* at 305a. The court explained that awareness of some "particular unlawful sale" was not required, because the complaint had sufficiently alleged that Petitioners "operate at a systemic level, allegedly designing, marketing, and distributing their guns so that demand by the cartels continues to boost sales." *Id.* at 306a.

The court further held that Mexico plausibly alleges that, by aiding and abetting these legal violations, Petitioners proximately caused at least some of

Mexico's injuries. *Id.* at 309a-319a. Looking to "traditional understandings of proximate cause," *id.* at 310a n.8, the court held that some of Mexico's injuries were a "foreseeable and direct" result of Petitioners' conduct, *id.* at 311a, and were not "derivative of those borne by the direct victims of gun violence," *id.* at 315a, 318a. The cartels' intervening criminal conduct did not sever the causal chain, the court explained, because the dealers' and cartels' criminal acts were "foreseeable." *Id.* at 312a-313a. But the court cautioned that Mexico "will have to support its theory of proximate causation with evidence later." *Id.* at 319a. The First Circuit remanded for the District Court to address "in the first instance" Petitioners' remaining arguments for dismissal. *Id.*

Petitioners sought, and this Court granted, certiorari review.

## SUMMARY OF ARGUMENT

**I.** PLCAA's predicate exception authorizes suits against firearms manufacturers for harms resulting from criminal gun use when a manufacturer "knowingly violated a State or Federal statute applicable to the sale or marketing" of firearms, and that violation is "a proximate cause" of the alleged harm. 15 U.S.C. § 7903(5)(A)(iii). Mexico plausibly alleges that Petitioners aided and abetted the knowing violation of firearms statutes by purposefully supplying, facilitating, and enabling the unlawful sale of firearms to traffickers for cartels in Mexico.

**A.** Aiding-and-abetting liability requires conscious and culpable assistance in the underlying wrong. Whether a defendant's conduct is sufficiently conscious and culpable requires balancing the level of

the defendant's assistance against its scienter, accounting for the nature of the product at issue.

**B.** Mexico plausibly alleges that Petitioners aid and abet the unlawful sale of firearms. Petitioners deliberately sell their firearms in large quantities to known red-flag dealers. They cultivate a market for their firearms in Mexico through design and marketing decisions. And they intentionally maintain the distribution practices they know facilitate this crime-gun pipeline. *Direct Sales* confirms that defendants can be held liable when they sell highly regulated, dangerous products such that otherwise "innocuous" business practices evince an intent to engage in unlawful conduct. 319 U.S. at 711-713.

**C.** Petitioners argue that "business as usual" can never constitute aiding and abetting. Opening Br. 32. But Mexico does not allege "business as usual." Mexico alleges that Petitioners engage in unlawful behavior by intentionally facilitating the unlawful export of their firearms into Mexico through red-flag dealers and abnormal sales.

Regardless, this Court has never recognized a business-as-usual exception to aiding-and-abetting liability. For good reason: "Ordinary" business practices can support aiding-and-abetting liability where the defendant intended to assist the underlying wrong via those business practices. Congress did not displace these traditional principles in PLCAA—it embraced them.

*Twitter* does not foreclose Mexico's complaint. Petitioners' deliberate, affirmative choice to supply known red-flag dealers reflects culpable human decision-making, unlike the passive, automated algorithms at issue in *Twitter*. Contrary to

Petitioners' arguments, given the "pervasive and systemic" nature of Petitioners' actions, Mexico need not allege that Petitioners aided and abetted any one specific unlawful act. *Twitter*, 598 U.S. at 506.

Petitioners distort Mexico's allegations and stress irrelevant features of their industry. For example, it makes no difference that Petitioners choose to use a three-tier distribution model. One Petitioner is a wholesaler that sells directly to dealers. The manufacturer-Petitioners can impose controls on their supply chain that would stanch the illegal export of their firearms into Mexico. And Petitioners' sky-is-falling refrain falls flat; it is *Petitioners'* proposed rule that would upend the classic aiding-and-abetting principles this Court surveyed only two Terms ago.

**II.** Mexico also plausibly alleges that Petitioners' conduct was "a proximate cause" of Mexico's harms. 15 U.S.C. § 7903(5)(A)(iii).

**A.** Foreseeability is the crux of proximate cause. Defendants may accordingly be held liable for harms from foreseeable intervening forces that are within the scope of the original risk, whether that intervening act was lawful or criminal. Consistent with this approach, an injury may have multiple proximate causes if it was reasonably foreseeable that each would lead to the harm.

**B.** PLCAA incorporates this traditional understanding. The predicate exception provides that manufacturers and sellers may be liable where they are "a proximate cause" of harm that also results from third-party criminal gun use. *Id.* § 7903(5)(A)(iii). By contrast, Congress elsewhere in PLCAA dictated that certain criminal conduct is considered "the sole proximate cause" of harm, truncating any potential

manufacturer or seller liability. *Id.* § 7903(5)(A)(v).

**C.** Mexico plausibly alleges proximate cause. Petitioners violated statutes prohibiting sales to straw purchasers and exporting guns to Mexico, which prevent guns from falling into criminals' hands. Those violations foreseeably harmed Mexico, including its property, military, and police. The harm caused by Petitioners' illegal conduct was thus foreseeable.

**D.** Petitioners' first-step proximate-cause rule has no basis in the law, logic, or PLCAA's text.

Petitioners conflate two distinct uses of "direct." First, there is a "general tendency of the law" to bar a plaintiff from recovering damages when the harm extends beyond "the first step," meaning when the harm first passed through a more direct plaintiff. *E.g.*, *Southern Pac. Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918). Second, courts have referred to the defendant as the "direct" cause of harm where no superseding event cuts off the defendant's liability. Petitioners port the plaintiff-focused "first-step" rule into the defendant-focused proximate-cause inquiry.

That slipshod approach leaves Petitioners pushing a rule that has been universally rejected and would render PLCAA's text superfluous. If third-party conduct cuts off the causal chain at common law, PLCAA—which generally cuts off liability caused by third parties' acts—serves no purpose. And the predicate exception—which allows for liability *despite* third parties' crimes—would make even less sense.

Even setting that aside, the rationale for this "general tendency" is damages specific. But as the First Circuit held, a suit may proceed under PLCAA

as long as one claim fits within the predicate exception, and Mexico plausibly alleges claims for injunctive relief. A narrow ruling allowing Mexico to proceed in seeking a limited injunction would thus resolve Petitioners' appeal.

Petitioners also distort Mexico's complaint. Unable to dispute the foreseeability of third-party acts, Petitioners artificially subdivide the so-called causal chain into multiple steps. But even if wrongdoers could insert "steps" to evade liability for harm that is a foreseeable consequence of their own conduct, the steps are far fewer than Petitioners claim. Petitioners also ignore Mexico's many unique, nonderivative harms, including millions in damage to military aircraft and security equipment from armed assaults.

Finally, adopting Petitioners' one-step test would lead to absurd, readily manipulable rules. Wrongdoers can always find middlemen or further splice a causal chain; that is precisely why the law looks to foreseeability, not step-counting, to define proximate cause.

## ARGUMENT

PLCAA's predicate exception authorizes suits for harms resulting in part from criminal gun use when a manufacturer is alleged to have "knowingly violated a State or Federal statute applicable to the sale or marketing" of firearms, and that violation is "a proximate cause" of the alleged harm. 15 U.S.C. § 7903(5)(A)(iii). The predicate exception specifically allows any action in which the manufacturer "aided[] [and] abetted" illegal sales. *Id.* § 7903(5)(A)(iii)(I), (II). The allegations in Mexico's complaint fit comfortably within this exception.

The aiding-and-abetting question is the logical antecedent to the proximate-cause issue, so we begin there.

## I. MEXICO PLAUSIBLY ALLEGES THAT PETITIONERS AIDED AND ABETTED UNLAWFUL FIREARMS SALES.

Mexico's complaint describes in detail Petitioners' affirmative and deliberate efforts to supply, enable, and facilitate unlawful sales by firearms dealers in violation of multiple federal statutes. *See, e.g.*, Pet. App. 84a-85a (alleging violations of "export laws" and laws prohibiting straw purchasing). Those allegations of conscious and culpable conduct suffice to state a claim for aiding and abetting the violation of federal firearms statutes.

Petitioners call their systemic support of unlawful firearms sales "business as usual," and advocate for a bespoke exception to aiding-and-abetting principles for such activities. Opening Br. 32-39. That argument has no factual basis, no legal basis, and is antithetical to PLCAA's text. It would also muddy a doctrine this Court exhaustively catalogued just two Terms ago.

### A. Aiding-and-Abetting Liability Requires Conscious, Culpable Conduct.

Under the centuries-old aiding-and-abetting doctrine, a person can be held responsible for a wrong if he helps another commit it. *See, e.g.*, *Twitter*, 598 U.S. at 489-492. At its "conceptual core," *id.* at 493, aiding-and-abetting liability attaches where the defendant provides "knowing aid" to a wrongdoer "with the intent to facilitate" the wrong, *Century Bank*

*of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994).

The touchstone of aiding-and-abetting liability is "conscious and culpable assistance" in the underlying wrong. *Twitter*, 598 U.S. at 492. A defendant assists in the underlying wrong when he takes some "affirmative act in furtherance of the offense." *Rosemond* v. *United States*, 572 U.S. 65, 71 (2014). The quantity of assistance is "immaterial," so long as the defendant "did *something* to aid the crime." *Id.* at 73 (quotation marks omitted). Thus, "words, acts, encouragement, or presence" can suffice. *Id.*

Whether that assistance is sufficiently culpable depends on whether it was "knowing and substantial." *Twitter*, 598 U.S. at 491-492. These "twin requirements * * * work[] in tandem." *Id.* Thus, "less substantial assistance require[s] more scienter before a court [can] infer conscious and culpable assistance," and vice versa. *Id.*

*Twitter* is illustrative. The plaintiffs claimed that social-media companies aided and abetted a terrorist attack. *Id.* at 479. The complaint did not allege that the social-media platforms affirmatively assisted ISIS in its attack—the attack was not coordinated on their platforms—or that they intended the attack. *Id.* at 498-501. The companies instead simply "creat[ed] their platforms and set[] up their algorithms," and the rest followed. *Id.* at 499. This Court held those allegations insufficient to state an aiding-and-abetting claim. As the Court explained, the plaintiffs' claims rested on the defendants' "failure to stop ISIS from using [their] platforms." *Id.* at 500. The passive nature of that conduct required "a strong showing of assistance and scienter" to establish "culpable

misconduct." *Id.* The *Twitter* plaintiffs failed to make that showing. *Id.* at 503.

This Court recognized, however, that there may be "situations where the provider of routine services does so in an unusual way or provides such dangerous wares to a terrorist group that selling those goods to a terrorist group could constitute aiding and abetting a foreseeable terror attack." *Id.* at 502. For support, this Court cited *Direct Sales*. *See id.*

In *Direct Sales*, this Court upheld the criminal-conspiracy conviction of a mail-order pharmaceutical wholesaler that sold large quantities of morphine to a doctor while "stimulat[ing]" those purchases through various sales techniques. 319 U.S. at 705. These sales techniques "attract[ed]" a "disproportionately large group of physicians who had been convicted" under federal drug laws. *Id.* at 706-707. The wholesaler argued that, "[a]t most," it engaged in "legal sales" to the doctor while knowing that "he was distributing goods illegally." *Id.* at 709. The Court recognized that the sales, standing alone, could theoretically be deemed "wholly lawful." *Id.* at 715. But the Court concluded that the defendant's sales and business practices nonetheless indicated "an unlawful intent to further the buyer's project." *Id.* at 712, 715.

The Court explained that the nature of the product at issue affects "the quantity of proof required to show knowledge that the buyer will utilize the article unlawfully." *Id.* at 711. Some products, like "narcotic drugs [and] machine guns," have an "inherent capacity for harm," which "from their very nature [give] the seller notice the buyer will use them unlawfully." *Id.* In cases involving such "restricted articles," business activities that would otherwise be

"wholly innocuous"—"such as quantity sales, high pressure sales methods, [or] abnormal increases in the size of the buyer's purchase"—"may furnish conclusive evidence * * * that the seller knows the buyer has an illegal object and enterprise." *Id.* at 711. After all, not all business practices are "appropriate to commodities so surrounded with restrictions." *Id.* at 712. All the more so when the sales are part "of a long course of conduct and executed in the same way," *id.* at 714, and when the government warns a company that its sales practices contribute to unlawful conduct—as the government had warned the wholesaler, *id.* at 707. In that circumstance, "there is no legal obstacle to finding that the supplier not only knows and acquiesces, but joins both mind and hand with him to make its accomplishment possible." *Id.* at 713.

### B. Petitioners Aid And Abet The Unlawful Sale Of Firearms.

Mexico plausibly alleges that Petitioners aid and abet unlawful sales of their firearms in violation of "Federal and State statutes applicable to the sale or marketing" of firearms. 15 U.S.C. § 7903(5)(A)(iii); *see id.* § 7903(5)(A)(iii)(I), (II). Those allegations—which at this early stage "must" be accepted as true—satisfy PLCAA's predicate exception. *See, e.g.*, *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

The complaint alleges, in detail, that Petitioners consciously and culpably assist in unlawful firearms sales. Petitioners know that the cartels primarily obtain their firearms through illegal straw purchases. Pet. App. 81a-88a. They nevertheless choose to supply known red-flag dealers—dealers that have

been identified as disproportionally selling firearms recovered at crime scenes in Mexico. *Id.* at 44a-50a, 80a-81a, 84a. They provide these dealers with the sought-after firearms Petitioners know are frequently the subject of unlawful straw sales to cartel traffickers. *See id.* at 75a-76a, 100a, 121a-122a, 124a. And Petitioners deliberately use distribution practices they know illegally funnel firearms to the cartels—despite both industry insiders and the United States Government urging them to reform those very practices. *See id.* at 32a-36a, 82a-84a, 131a-139a.

Put simply, Petitioners systemically "supply dealers with all the guns they can pay for, without any public-safety conditions, even if" that dealer has violated the law, has been indicted, or has engaged in "obvious sales" to cartel traffickers. *Id.* at 84a; *see also id.* at 43a-50a, 54a-71a, 80a-81a. On top of all that, they cultivate a market among unlawful buyers with design and marketing decisions, such as embellishing special-edition handguns with imagery favored by the cartels. *Id.* at 75a.

Petitioners knowingly engage in this conduct for the purpose of furthering, and profiting from, these unlawful sales. Petitioners engage in this conduct to "grow[] and maintain[] an illegal market in Mexico from which they receive substantial revenues," Pet. App. 305a—"well more than $170 million" per year, *id.* at 142a. Petitioners "affirmatively and deliberately chose[] to maintain their supply chain to the cartels * * * because, from their perspective of their bottom lines," those sales into Mexico and the distribution system that yields them "are a huge success." *Id.* at 141a.

Building the market, providing the product, and supplying the key link between the cartels and Petitioners' firearms is precisely the kind of deliberate assistance aiding-and-abetting liability contemplates. Thus, taking the allegations together, Mexico plausibly alleges that Petitioners "consciously and culpably participate" in illegal firearms sales so as to help make those illegal transactions succeed. *Twitter*, 598 U.S. 493.

*Direct Sales* confirms as much. The facts in this case are, in all relevant parts, indistinguishable from—if not stronger than—the facts in *Direct Sales*. Just as in that case, Petitioners sell highly regulated products with an inherent capacity for harm in large volumes in a way they know attracts criminals. As in that case, the government has called upon Petitioners to reform their distribution systems. As in that case, Petitioners sell, through a regular and sustained course of business, to known red-flag customers. To the extent that the underlying sale of a product might be "innocuous" in other contexts, *Direct Sales*, 319 U.S. at 711, Petitioners' products, like the morphine in *Direct Sales*, are regulated in part to prevent them from being easily obtained by criminals. Petitioners' knowledge of the extent of the unlawful sale of their products—and their sustained practice of supplying the products for those sales—means "there is no legal obstacle" to concluding, at this early stage in the case, that the complaint sufficiently alleges that Petitioners have "join[ed] both mind and hand to make its accomplishment possible." *Id.* at 713.

### C. Petitioners' Contrary Arguments Are Unavailing.

As the First Circuit pointed out, Petitioners do not dispute that Mexico alleges "widespread sales of firearms by dealers in knowing violation of several state and federal statutes." Pet. App. 299a. Nor do they dispute that "the predicate exception would apply if Mexico were to prove that [Petitioners] aided and abetted any such violation." *Id.* at 300a. Petitioners instead seek reversal by arguing for limitations on aiding-and-abetting liability that have no legal foundation.

**1.** Petitioners posit a sweeping theory: A business's act of "broadly putting a good to market" can "never" aid and abet any "downstream misuse" of the business's products. Opening Br. 15, 32, 36. According to Petitioners, "a business must break from the norm to become guilty as an accomplice." *Id.* at 35. Both the factual premise and the legal conclusion of that theory are wrong.

**a.** Mexico does not allege "business as usual." *Id.* at 32. Selling firearms to red-flag dealers that sell to cross-border criminals is not "ordinary." *Id.* at 40. It is unlawful. Even Petitioners concede that "a firearm supplier [that] knowingly makes an illegal sale to a specific criminal" engages in "atypical conduct." *Id.* at 39. That is exactly what Mexico alleges: Petitioners knowingly supply specific dealers they know disproportionately sell firearms that are used by cartels. A cabdriver's normal practice may be to pick up all customers; he may still be liable for deliberately driving the getaway car for a group of known bank robbers. Petitioners' decision to normalize unlawful

conduct as part of their business does not make it lawful.

In any event, *even if* Petitioners' conduct were "routine" or "ordinary," *id.* at 39-40, the complaint would still satisfy Rule 12(b)(6). A business that engages in criminal misconduct through ordinary business practices is subject to aiding-and-abetting liability.

Courts have long recognized that otherwise-ordinary business activities can constitute aiding and abetting, as Petitioners' own cases (at 35) illustrate. Where a defendant is alleged to have aided and abetted a wrong through its business practices, courts balance the nature of the challenged business practice with the defendant's "knowledge of a wrongful purpose." *Camp* v. *Dema*, 948 F.2d 455, 459 (8th Cir. 1991) (cited in *Twitter* and at Opening Br. 35). On one end of the scale, "[a] party who engages in atypical business transactions * * * may be found liable as an aider and abettor with a minimal showing of knowledge." *Id.* On the other end, "a party whose actions are routine and part of normal everyday business practices would need a higher degree of knowledge for liability as an aider and abettor to attach." *Id.*; *accord, e.g.*, *Metge* v. *Baehler*, 762 F.2d 621 (8th Cir. 1985).

Thus, as the Fifth Circuit explained in a case repeatedly cited by *Twitter*, "routine and * * * normal everyday business practices" can underpin an aiding-and-abetting claim—provided the defendant consciously intended to assist the underlying wrong via those business practices. *Woodward* v. *Metro Bank of Dallas*, 522 F.2d 84, 97 (5th Cir. 1975). Even "inaction * * * may provide a predicate for liability

where the plaintiff demonstrates that the aider-abettor consciously intended to assist in the perpetration of a wrongful act." *Monsen* v. *Consolidated Dressed Beef Co., Inc.*, 579 F.2d 793 (3d Cir. 1978) (cited in *Twitter*). After all, "[w]hen considered in context, * * * otherwise legitimate conduct can give rise to a negative inference." *Aetna Cas. & Sur. Co.* v. *Leahey Constr. Co.*, 219 F.3d 519, 535 (6th Cir. 2000).[3]

Intent, in short, is the "[s]omething more" Petitioners demand. Opening Br. 32. And, as explained, Mexico plausibly alleges that Petitioners intentionally engaged in the challenged conduct to further unlawful firearms sales and boost their bottom lines. *See supra* pp. 22-24. Thus, even if Petitioners' conduct could be deemed "ordinary" or "routine," the allegations bearing on Petitioners' intent render this conduct sufficiently culpable.

**b.** This Court has never embraced a normal-course-of-business exception to aiding-and-abetting liability.

Petitioners maintain that *Twitter* "held that a business must break from the norm to become guilty as an accomplice." Opening Br. 35 (citing *Twitter*, 598 U.S. at 491). That is wrong. *Twitter* endorsed—and applied—the proposition that courts consider knowledge and substantial assistance "in tandem, with a lesser showing of one demanding a greater showing of the other." 598 U.S. at 491-492 (citing *Woodward* and *Camp*). Passive aid to a terrorist group through the normal operation of defendants'

[3] These courts all applied this fact-intensive balancing approach at summary judgment or after trial, not at the motion-to-dismiss stage.

platforms thus *could* constitute aiding and abetting—with a "strong showing of assistance and scienter." *Id.* at 500.

Petitioners similarly cite *Direct Sales* as holding that typical business activity "cannot be fodder for a felony." Opening Br. 37. That is wrong again. *Direct Sales* rejected the defendant's argument that "legal sales" inoculated it from liability. 319 U.S. at 708. *Direct Sales* instead teaches that courts must take the context of the corporate defendant's activities into account when assigning responsibility for a product's criminal misuse. Where the product is highly regulated or inherently amenable to criminal misuse, courts and factfinders may more readily infer culpable intent from the defendant's use of business practices that it knows systematically deliver the product into criminals' hands. *See id.* at 711-713. That is why this Court upheld the defendant's criminal-conspiracy conviction for maintaining a routine practice of "filling orders * * * upon properly executed official order forms,"[4] when the nature of the orders should have made the defendant aware of criminal conduct. That is exactly what is alleged here.

Petitioners' business-as-usual exception also finds no purchase in PLCAA's text. Petitioners' proposed exception is alien to the common law, so Congress would have had to explicitly displace ordinary aiding-and-abetting principles in PLCAA. *See Twitter*, 598 U.S. at 484-485; *Sekhar* v. *United States*, 570 U.S. 729, 733 (2013). Petitioners argue Congress did just that, citing an exception to PLCAA concerning

[4] Br. for Appellant Direct Sales Co., *Direct Sales*, 319 U.S. 703 (No. 593), 1942 WL 75728, at *11.

violations of 18 U.S.C. § 924(h), along with one of the two examples of predicate violations. *See* Opening Br. 39 (citing 15 U.S.C. § 7903(5)(A)(iii)(II) and (5)(A)(i)).

That is quite the stretch. The Section 924(h) exception does not even use the words "aiding and abetting." *See* 15 U.S.C. § 7903(5)(A)(i). And the predicate-exception example is only one of two types of exemplary violations, both of which are preceded by the word "including," *id.* § 7903(5)(A)(iii)(I), (II), indicating that the list is "non-exhaustive," *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC* v. *Village at Lakeridge, LLC*, 583 U.S. 387, 390 (2018). This is not the type of express statement required to displace traditional aiding-and-abetting principles.

Plaintiffs' failure to find a textual hook for their proposed rule is unsurprising. Congress designed PLCAA to protect only "*lawful*" business practices. 15 U.S.C. § 7901(a)(5) (emphasis added). That is why the predicate exception broadly applies to any action in which a firearm manufacturer "knowingly violated" certain laws. *Id.* § 7903(5)(A)(iii). Petitioners' proposed rule would all but close that broad exception, thwarting PLCAA's text and Congress's stated purpose.

**2.** Petitioners' argument that *Twitter* "foreclose[s]" Mexico's complaint, Opening Br. 45, is meritless.

The plaintiffs in *Twitter* alleged merely that "the defendants have known that ISIS has used their platforms for years." 598 U.S. at 482. The specific act of terrorism at issue was not planned on the defendants' platforms; the terrorist responsible was not even alleged to have used them. *Id.* at 498. And the "only affirmative 'conduct' " the *Twitter* defendants "undertook was creating their platforms

and setting up their algorithms to display content relevant to user inputs and user history." *Id.* Once that was done, the defendants "stood back and watched." *Id.* at 499. Here, in contrast, Mexico alleges that Petitioners choose who to sell to, what products to sell, and how to sell those products, all while knowing the "extent and character" of unlawful firearm sales to traffickers. *Rosemond*, 572 U.S. at 77. This is the stuff of deliberate human agency, not automated algorithms.

Petitioners nevertheless insist this case fails under *Twitter* because Mexico failed to allege that Petitioners helped "a specific criminal enterprise" commit a "specific bad act." Opening Br. 46. But Mexico alleges the "widespread sale of firearms by dealers in knowing violation of several state and federal statutes." Pet. App. 299a. And where a "secondary defendant's role in an illicit enterprise" is "pervasive and systemic," aiding-and-abetting liability attaches for "every wrongful act committed by that enterprise." *Twitter*, 598 U.S. at 506. For example, in *Halberstam* v. *Welch*, 705 F.2d 472 (D.C. Cir. 1983)—a case this Court discussed at length in *Twitter*—a burglar's partner, who did "bookkeeping" for the burglar's "business," had sufficient "intentional and systemic" involvement to be held liable for aiding and abetting a murder committed during a burglary. *Twitter*, 598 U.S. at 486. Such is the case here. Petitioners design their products to appeal to criminals, market their products to criminals, and deliberately supply known red-flag dealers.

**3.** Petitioners also fight, or flat-out falsify, Mexico's well-pled allegations.

Petitioners submit that "Mexico does not argue that any Petitioner has itself broken any American law, rule or regulation specifically governing the manufacture or sale of firearms." Opening Br. 31. But that is exactly what Mexico alleges: Petitioners violated federal firearms laws by aiding and abetting illegal sales. *See* Pet. App. 84a-85a.

Petitioners also fight the complaint's allegations that ATF trace reports provide them notice, claiming that these reports cannot establish that a dealer unlawfully sold the crime gun. Opening Br. 48. But Mexico alleges that Petitioners "know that a high volume of crime-gun traces is a trafficking indicator." Pet. App. 46a, 44a-65a. It "defies credulity" that Petitioners are ignorant of what the data shows. *Halberstam*, 705 F.2d at 486. Petitioners also notably do not contest Mexico's other allegations regarding notice. *See* Pet. App. 44a-78a.

Petitioners and their amici also accuse Mexico of holding the view that firearms should not be sold "to regular Americans." Opening Br. 43; *see e.g.*, Amicus Br. of Nat'l Rifle Ass'n et al. 5-7. That is false. Mexico has no interest in denying "regular Americans" their guns.[5] It seeks to hold Petitioners liable for aiding and abetting sales of firearms to traffickers for criminals in Mexico. *See* Pet. App. 15a.

Petitioners repeatedly tout their "three-tier distribution chain." Opening Br. 10; *see also id.* at 43,

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[5] Petitioners also falsely claim that Mexico seeks to "ban 'assault rifles.' " Opening Br. 2. The complaint seeks relief for the unlawful trafficking of firearms into Mexico, including rifles that can be easily converted to automatically fire. Mexico's argument that Petitioners violate federal law by designing such assault rifles is no longer in the case. Pet. App. 306a-309a.

22. But one Petitioner (Witmer) sells directly to dealers. *See* Pet. App. 20a. And the manufacturer-Petitioners are fully capable of imposing commonsense restraints on their supply chains. *See id.* at 34a-36a, 131a-139a. For example, Petitioners could refuse to sell to dealers and distributors that have a pattern of unlawful sales, or require dealers to abide by a code of conduct to screen for straw purchasing. *See id.* at 35a; *see also id.* at 132a-134a. This is not revolutionary. Ruger previously "prohibit[ed] its distributors from selling to any dealers not selling 'exclusively' from their retail stores" in an attempt to "help ensure compliance with laws." *Id.* at 36a, 131a-134a.

Petitioners also observe that the dealers Petitioners aid and abet are federally licensed. Opening Br. 47. But both the wholesaler and the buyer in *Direct Sales* were licensed. *See* 319 U.S. at 704. Congress clearly contemplated that manufacturers could face civil liability for aiding and abetting dealers that have federal licenses but nevertheless violate the law. *See* 15 U.S.C. § 7903(5)(A)(iii)(I). Petitioners also know that some dealers retain their licenses despite making illegal sales. Pet. App. 34a, 47a-49a.

**4.** Petitioners' last resort is to argue that allowing Mexico's complaint to proceed past the motion-to-dismiss stage would open the floodgates to liability in every industry. Opening Br. 49. It is rare indeed for an industry to deliberately supply a booming criminal market. Other industries can rest easy—unless they also knowingly aid unlawful activity on a grand scale.

In fact, it is *Petitioners'* rule that would upend settled law. The aiding-and-abetting theory in this case serves as the foundation for everyday criminal

and civil litigation in a range of circumstances. *See, e.g.*, U.S. Dep't of Justice, U.S. Attorney for the District of N.J., Plea Agreement with Purdue Pharma L.P. (Oct. 20, 2020) (opioid manufacturer pleading guilty to "aid[ing] and abet[ing]" illegal distribution of opioids); *In re JUUL Labs, Inc. Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 19-MD-02913-WHO, 2022 WL 1601418, at *15-16 (N.D. Cal. Apr. 29, 2022) (cigarette company aided and abetted e-cigarette company's tortious conduct). And *Direct Sales* underpins every circuit's approach to establishing conspiracies between drug sellers and drug buyers. *See United States* v. *Page*, No. 21-3221, 2024 WL 5154496, at *5-6 (7th Cir. Dec. 18, 2024) (en banc) (collecting cases).

The First Circuit correctly concluded, applying traditional aiding-and-abetting doctrine, that Mexico's complaint made out a plausible predicate violation. This Court should affirm.

## II. MEXICO PLAUSIBLY ALLEGES THAT PETITIONERS' UNLAWFUL CONDUCT PROXIMATELY CAUSED MEXICO'S INJURIES.

Mexico plausibly alleges that the foreseeable result of Petitioners' illegal conduct was the criminal misuse of Petitioners' firearms, which caused Mexico harm.

Petitioners argue that any "causal chain" that includes "multiple steps" cannot "satisfy basic proximate cause," meaning that a third party's actions—no matter how foreseeable or intentional—virtually always cut off liability. Opening Br. 19. That "one-step" test finds no purchase in the treatises, precedent, PLCAA's text, or common sense.

### A. Proximate Cause Incorporates Principles Of Foreseeability And Intervening Causes.

Causation typically encompasses two distinct concepts: That "the former event caused the latter," known as factual causation, and that the cause had a legally "sufficient connection to the result" to warrant imposing liability, known as legal causation or proximate cause. *Paroline* v. *United States*, 572 U.S. 434, 444 (2014). Proximate cause reflects a "policy-based judgment that not all factual causes contributing to an injury should be legally cognizable causes" and provides a way to "place limits on the chain of causation." *CSX Transp., Inc.* v. *McBride*, 564 U.S. 685, 701, 692 (2011).

Courts impose those limits on the causal chain by asking whether the harm was foreseeable. *See, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Harm § 29 (2010); Restatement (Second) of Torts §§ 435, 442A, 442B, 448, 449 (1965); Restatement (First) of Torts §§ 435, 447, 448, 449 (1934); Dan B. Dobbs et al., The Law of Torts § 198 (2d ed. 2024 update); Prosser and Keeton on Torts § 43, at 281 (5th ed. 1984); 3 Stuart M. Speiser et al., American Law of Torts § 11:3 (3d ed. 2024 update). Indeed, "foreseeability has * * * long been an aspect of proximate cause." *CSX Transp.*, 564 U.S. at 717 (Roberts, C.J., dissenting); *see, e.g.*, *County of Los Angeles* v. *Mendez*, 581 U.S. 420, 431 (2017); *Paroline*, 572 U.S. at 444; *Milwaukee & St. Paul Ry. Co.* v. *Kellogg*, 94 U.S. 469 (1876); *Kent* v. *Commonwealth*, 771 N.E.2d 770, 777 (Mass. 2002).

Only those harms that made the original conduct tortious to begin with—known as the "harm within

the risk" of such conduct—are considered "foreseeable." *See, e.g.*, Dobbs § 199; Restatement (Third) of Torts: Phys. & Emot. Harm § 29; Restatement (First) of Torts § 281 cmt. e; *Babb* v. *Wilkie*, 589 U.S. 399, 414 (2020). Defendants thus are liable for injuries of "a type that a reasonable person would see as a likely result of his or her conduct," 3 American Law of Torts § 11:3 n.2, such that "a negligent defendant is liable for all the general kinds of harms he foreseeably risked by his negligent conduct and to the class of persons he put at risk by that conduct," Dobbs § 198. Defendants conversely are not liable for *unforeseeable* harms—meaning those harms that are not the "natural and probable consequence" of the wrongful act. *Milwaukee & St. Paul Ry. Co.*, 94 U.S. at 475; *see* Dobbs § 204. Likewise, defendants are not liable for harms resulting from unforeseeable intervening forces, such as an unforeseeable act of God or unforeseeable third-party conduct. Dobbs § 204.

But a defendant may be liable where its actions create or increase the risk of particular third-party conduct. Prosser § 44, at 305. This is because "[f]oreseeable intervening forces are within the scope of the original risk, and hence of the defendant's negligence." *Id.* at 303-304; *accord* Restatement (Third) of Torts: Phys. & Emot. Harm § 34; Restatement (Second) of Torts §§ 442A, 442B; Dobbs § 209. Such an action is not "superseding" because it is foreseeable that the "risk represented by the [intervening] act is * * * one that the defendant negligently created." Dobbs § 209; *see, e.g.*, *Kent*, 771 N.E.2d at 777. That is so even when the third party acted criminally; after all, "intervening criminal acts are quite often entirely foreseeable." Dobbs § 209; *see*

Restatement (Third) of Torts: Phys. & Emot. Harm § 34 cmt. d; Restatement (First) of Torts §§ 448, 449 cmt. b; Restatement (Second) of Torts §§ 442B cmt. b, 449; *see also, e.g.*, *Twitter*, 598 U.S. at 496 ("people who aid and abet a tort can be held liable for other torts that were 'a foreseeable risk' of the intended tort") (quoting *Halberstam*, 705 F.2d at 488). To hold otherwise would absolve a "defendant [who] is plainly morally responsible" for the injury. *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 471 (2006) (Thomas, J., concurring in part and dissenting in part).

Consistent with this approach, this Court has long said that "it is common for injuries to have multiple proximate causes." *See, e.g.*, *Staub* v. *Proctor Hosp.*, 562 U.S. 411, 420 (2011); *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 704 (2004). Every major treatise agrees. *See, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Harm § 29 cmt. b; Prosser § 42; Dobbs § 198; 3 American Law of Torts § 11:5.

Consider some examples. In *Vining* v. *Avis Rent-A-Car Systems, Inc.*, Avis left a rental car unattended, unlocked, door ajar, lights flashing, with the key in the ignition, in a high-crime area. 354 So. 2d 54, 55 (Fla. 1977). A thief stole the car and hit the plaintiff. The court held the plaintiff plausibly alleged that Avis was a proximate cause of the injuries because it was foreseeable that a thief would steal the car and endanger the public. *Id.* at 56. As the court explained, "if an intervening criminal act is foreseeable, the chain of causation is not broken and thus the original negligence may be the proximate cause of the damages sustained." *Id.* at 55-56; *see also, e.g.*, *Lillie* v. *Thompson*, 332 U.S. 459 (1947) (per curiam) (finding it foreseeable that a telephone operator would

be criminally assaulted where she was left to work alone, overnight, in a dangerous area, and was required to open the door to identify train workers seeking admittance); *Petition of Kinsman Transit Co.*, 338 F.2d 708, 712-713, 722 (2d Cir. 1964) (Friendly, J.) (explaining that failure to timely raise a bridge to avert a crash foreseeably risked the bridge's collapse and damage to adjacent property).

In contrast, *Exxon Co., U.S.A.* v. *Sofec, Inc.*, held a mooring company was *not* responsible when a ship detached from the facility and collided with the shore after the captain subsequently failed to keep track of the ship's position. 517 U.S. 830, 832-834 (1996). Although it was foreseeable that *some* harm might befall the ship, the captain's negligent behavior was unforeseeable, rendering it "the superseding" cause. *Id.* at 840; *see also Petition of Kinsman Transit Co.*, 338 F.2d at 725 (explaining liability would *not* attach if the bridge's destruction delayed a doctor's arrival, causing the patient's death).

### B. PLCAA Incorporates This Traditional Understanding Of Proximate Cause.

When Congress used the phrase "a proximate cause" in the predicate exception, it brought this "settled meaning" with it. *Neder* v. *United States*, 527 U.S. 1, 21 (1999) (quotation marks omitted); *see* Opening Br. 3, 13, 15 (agreeing common-law principles govern).

Because Congress only sought to bar liability for harm "*solely* caused" by third-party criminal misuse, Congress allowed lawsuits where the manufacturer or seller's "knowing[] violat[ion]" of State or Federal law is "*a proximate cause*" of the harm. 15 U.S.C. §§ 7901(b)(1); 7903(5)(A)(iii) (emphases added). The predicate exception thus allows for liability where a

manufacturer's unlawful acts foreseeably increase the risk of third-party criminal conduct, which harms the plaintiff. In that situation, *both* the manufacturer or seller and the third party are "a proximate cause" of the plaintiff's harms. PLCAA's examples bear this out: If a gun manufacturer aids and abets the falsification of sales records, which enables a dealer's straw sale of a gun later used to fatally shoot someone, the manufacturer, the dealer, and the shooter are all potentially liable. *See id.* § 7903(5)(A)(iii)(I).

Contrast this with PLCAA's product-defect exception, which assigns liability where a design or manufacturing defect results in death or injury, "except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered *the sole proximate cause* of any resulting [harm]." *Id.* § 7903(5)(A)(v) (emphasis added). This conveys a clear intent to displace the common-law rule that "a party's tortious conduct need only be *a* cause of the plaintiff's harm and not the *sole* cause." Restatement (Third) of Torts: Phys. & Emot. Harm § 26 cmt. c (emphases added); *see Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) (Congress presumptively acts "intentionally and purposely" when using language in one statutory provision but omitting it in another) (quotation marks omitted). Several States have likewise displaced the common law in similar statutes. *See*, *e.g.*, Fla. Stat. § 790.331(1) (declaring the "unlawful use of firearms and ammunition" "*the* proximate cause of injuries" and barring all actions except breach of warranty or product defect) (emphasis added) (cited at H.R. Rep. No. 109-124, at 17 n.103).

Congress did not go to these lengths in the predicate exception, and "this Court is not free to rewrite the statute to" Petitioners' or their amici's liking. *National Ass'n of Mfrs.* v. *Dep't of Def.*, 583 U.S. 109, 123 (2018) (quotation marks omitted); *see supra* n.1.

### C. Petitioners Proximately Caused Mexico Harm.

Mexico's complaint plausibly alleges that Petitioners' violations of "State or Federal statute[s] applicable to the sale or marketing" of firearms were "a proximate cause" of Mexico's injuries. 15 U.S.C. § 7903(5)(A)(iii); *see Milwaukee & St. Paul Ry. Co.*, 94 U.S. at 474 (noting proximate cause "is ordinarily a question for the jury"); Restatement (Second) of Torts § 453 cmt. b (same).

Mexico identifies several legal violations that proximately caused its harms, including violations of statutes prohibiting sales to straw purchasers, sales without a license, and exporting guns without a permit. *See* Pet. App. 27a-29a, 84a-85a; 18 U.S.C. § 922(m), (t)(1); *id.* § 923(a), (g); *id.* § 924(a)(1)(A), (a)(3)(A); 15 C.F.R. § 738.4. Violating laws designed to prevent guns from falling into criminals' hands creates a foreseeable risk that those guns will indeed fall into criminals' hands. And as the First Circuit explained, "it is certainly foreseeable" that those criminals "would use those" unlawfully obtained "weapons to commit violent crimes." Pet. App. 313a.

That is precisely what happened. Mexico's complaint details how Petitioners supply their guns to known red-flag dealers who traffic them across the border; that Petitioners know certain of their guns are particularly popular with the cartels; and that Petitioners make specific design and marketing

choices to better profit from that unlawful cross-border market. *See, e.g.*, Pet. App. 28a, 43a-44a, 46a, 51a, 54a-55a, 75a, 84a; *see supra* pp. 8-11, 22-24. As a result, Petitioners' unlawful conduct has caused harm to Mexico's police, military, and property. *E.g.*, Pet. App. 74a-75a, 167a-168a, 172a-173a; *see also id.* at 315a. Any intervening criminal acts do not cut off proximate cause. They were starkly foreseeable, and thus part and parcel of it. That is a hornbook tort. *See, e.g.*, Restatement (Second) of Torts § 449 ("If the likelihood that a third person may act in a particular manner is * * * one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby.").

The First Circuit thus correctly held that Mexico's complaint plausibly alleges proximate cause and that Mexico should be afforded a chance to "support its theory of proximate causation with evidence later in the proceedings," pending resolution of Petitioners' remaining threshold arguments, which "[t]he district court did not reach." Pet. App. 319a.

### D. Petitioners' Contrary Arguments Are Meritless.

Petitioners urge this Court to limit proximate cause "to the first step in a causal chain." Opening Br. 19 (quotation marks omitted). As Petitioners see it, third-party criminal behavior, no matter how predictable, virtually *always* cuts off liability. That proposed rule conflates several distinct concepts and runs counter to PLCAA's text and established law, as reflected in every major treatise. Petitioners' argument is also wrong on its own terms: Mexico's

injuries are neither attributable to superseding causes, nor derivative of another's harms.

**1.** Petitioners' argument conflates two distinct uses of the term "direct": non-derivative and not-superseded.

*First*, in a line of cases beginning with *Southern Pacific Co.*, 245 U.S. 531, the Court has differentiated between damages claims brought by "direct" plaintiffs—typically the first person harmed—and "derivative" plaintiffs—those whose harms derive from or passed through the direct plaintiff. *See, e.g.*, *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 133 (2014). Generally, only "direct" plaintiffs can recover for their injuries. *See id.* In *Southern Pacific*, for example, lumber companies sued a railroad for overcharging them. 245 U.S. at 533. These companies were found to be the "direct" plaintiffs, even though they could pass the overcharges on to their customers: "The general tendency of the law, in regard to damages at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant so it holds him liable if proximately the plaintiff has suffered a loss." *Id.* at 533-534.

In *Associated General Contractors of California, Inc.* v. *California State Council of Carpenters*, the plaintiffs' harm was "an indirect result of whatever harm may have been suffered by" other, "immediate victims." 459 U.S. 519, 541 (1983). In *Holmes* v. *Securities Investor Protection Corp.*, two broker-dealers that purchased stock in reliance on the defendant's fraud and lost money when the fraud was revealed and the market tanked were the "directly injured" parties; the plaintiff, a non-profit that bailed

out the insolvent brokers, was merely derivative. 503 U.S. 258, 268-269, 273-274 (1992). In *Anza*, the plaintiff likewise was not the "direct victim"; it was only derivatively injured by the State's inability to collect taxes from the defendant. 547 U.S. at 458. The plaintiff's claim in *Hemi Group, LLC* v. *City of New York*, "suffer[ed] from the same defect"; the alleged harms flowed through several other potential plaintiffs. 559 U.S. 1, 10-12 (2010); *see Lexmark*, 572 U.S. at 133 (characterizing *Holmes* and *Hemi* as involving "purely derivative" harm). So, too, in *Bank of America Corp.* v. *City of Miami*, where the City's harms were derivative of those suffered by victims of the bank's discriminatory lending. 581 U.S. 189, 201-203 (2017).

*Second*, courts sometimes use "direct" to mean that no superseding event cut off the defendant's liability. *See, e.g.*, *Cottrell* v. *Am. Fam. Mut. Ins. Co., S.I.*, 930 F.3d 969, 972 (8th Cir. 2019) (where intervening act is "not [a] foreseeable consequence[] of an original act of negligence," that "superseding event" "becomes the responsible, direct, proximate and immediate cause of the injury") (quotation marks omitted); Pet. App. 209a. Whereas the first "directness" inquiry is plaintiff-focused, this second concept is defendant-focused: Does another party's conduct constitute a superseding cause, such that the defendant's conduct is no longer a "direct" cause of the plaintiff's harm?[6]

These principles are distinct. As Justice Thomas has explained, "[p]roximate cause and certainty of

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[6] Courts once used "directness" to expand liability to include unforeseeable harms. *See, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Harm § 29 cmt. e. That strict-liability approach to proximate cause fell by the wayside long ago. *See id.*

damages * * * are distinct requirements for recovery in tort," and *Holmes* did not hold "that any injuries that are difficult to ascertain must be classified as indirect for purposes of determining proximate causation." *Anza*, 547 U.S. at 466 (Thomas, J., concurring in part and dissenting in part); *see also* Pet. App. 313a.

Petitioners at times appear to recognize that "direct" (non-derivative) injuries and "direct" (non-superseded) causes are different. *See*, *e.g.*, Opening Br. 27. Yet they mix and match these concepts with abandon. Petitioners cite *Lexmark* as holding that "the 'general' rule is that a direct cause is limited to the 'first step' in a causal chain," which they say means there is no proximate cause any time "multiple steps stand in between the conduct and the harm." Opening Br. 19 (quoting *Lexmark*, 572 U.S. at 139-140). But *Lexmark* was about whether a *plaintiff* who suffered "purely derivative" harms had statutory standing. 572 U.S. at 133. It did not hold that a causal chain with "multiple steps" committed by different potential *defendants* is necessarily "too * * * indirect to satisfy basic proximate cause." Opening Br. 19 (quotation marks omitted).

Petitioners also borrow a line from *Anza*'s derivative-plaintiffs discussion as evidence that a causal chain containing independent acts is not "direct[]." *Id.* (quoting *Anza*, 547 U.S. at 461). But *Anza* asked whether the plaintiff was the right party to bring suit, not whether the plaintiff sued the proper defendant. 547 U.S. at 458. Finally, Petitioners quote *Bank of America* to suggest that foreseeability is per se insufficient for proximate-cause purposes. Opening Br. 18. But that case merely held that *Southern*

*Pacific*'s derivative-plaintiff rule applies to the Fair Housing Act, because "*[i]n the context of the FHA*, foreseeability alone does not ensure the close connection that proximate cause requires." *Bank of Am.*, 581 U.S. at 202 (emphasis added). This Court thus remanded for the Eleventh Circuit to confirm that the necessary connection existed. *Id.* at 203. *Bank of America* never adopted Petitioners' proposed one-step test. *See City of Miami* v. *Wells Fargo & Co.*, 923 F.3d 1260, 1264, 1276 (11th Cir. 2019) (applying derivative-plaintiff rule on remand and finding proximate cause despite multi-step causal chain), *cert. granted and judgment vacated as moot*, 140 S. Ct. 1259 (2020).

**2.** Petitioners conflate these concepts in a bid to extend the "first-step" derivative-injury rule to proximate cause writ large. Under their view, because proximate cause stops at the "first step," any causal chain that "rests on independent acts" is necessarily too attenuated for liability to attach. Opening Br. 19-20. Petitioners are wrong.

*First*, Petitioners' one-step test closely resembles the now-defunct "last human wrongdoer" or "nearest cause" doctrines. These tests focused exclusively on the sequence of events leading to an injury and automatically cut off liability after the first (human) step in the causal chain. *See, e.g.*, Prosser § 42, at 276-277. "[T]he idea was that the last human wrongdoer or last culpable" actor is "the 'sole proximate cause,' so that intervening criminal acts would always relieve the defendant of liability." Dobbs § 209 (footnote and citation omitted) (cited at Opening Br. 24). "This archaic doctrine has been rejected everywhere" as incompatible with the common-sense proposition that

multiple events can contribute to a harm and each independently gives rise to legal liability. *Id.* (footnote and citation omitted); *see* Prosser § 42, at 277 (the "last human wrongdoer" rule "is now of purely historical interest"); *see also CSX Transp.*, 564 U.S. at 708, 712 (Roberts, C.J., dissenting) (the defendant's conduct need not be the "sole," "last," or "nearest" cause to constitute an "effective legal cause") (quotation marks omitted); *Petition of Kinsman Transit Co.*, 338 F.2d at 719 (explaining this theory is "as faulty in logic as it is wanting in fairness").

*Second*, Petitioners' preferred treatises refute their argument that "separate actions carried out by separate parties" automatically cut off liability. Opening Br. 19-20 (quotation marks omitted). The Second Restatement recognizes that a defendant may be liable in tort when the defendant's conduct "created or exposed the [victim] to a recognizable high degree of risk of harm" through another's criminal misconduct. Restatement (Second) of Torts § 302B cmt. e. Only those criminal acts that are "unforeseeable intentional harm" break the causal chain. Dobbs § 209. Thus, a defendant is liable "for all the consequences that, in the natural course of events, flow from his unlawful acts." 1 Thomas M. Cooley, A Treatise on the Law of Torts § 50, at 114 (4th ed. 1932) (quotation marks omitted).

*Third*, nothing in PLCAA suggests that Congress overrode these common-law principles when it comes to the predicate exception. The opposite, in fact: PLCAA generally bars claims against manufacturers and sellers "resulting from the criminal or unlawful misuse of a qualified product by * * * a third party," absent an exception. 15 U.S.C. § 7903(5)(A). If a third

party's unlawful actions *always* cut off the causal chain, PLCAA serves no purpose. *See Abramski* v. *United States*, 573 U.S. 169, 183 n.8 (2014) (rejecting "interpretation [that] would render the statute all but useless").[7] And PLCAA's exceptions would make even less sense. *See, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Harm § 19 (defendant is liable for negligent entrustment where its conduct "lack[s] reasonable care insofar as it foreseeably combines with or permits the improper conduct of * * * a third party").

Adopting Petitioners' view would also eliminate Congress's careful distinction between the predicate exception, which makes clear that a manufacturer and third party can *both* be "a proximate cause" of the harm, 15 U.S.C. § 7903(5)(A)(iii), and the product-defect exception, which specifies that certain illegal third-party conduct constitutes "the sole proximate

[7] Petitioners purport to recognize an exception to their one-step rule where there is a "special relationship" between the plaintiff and defendant. Opening Br. 24-25. "Special relationships" are irrelevant here. They are an exception to the usual rule that individuals have no *duty* to affirmatively "protect the plaintiff from a third person." Dobbs § 209. The "no duty" rule has "no logical application when the defendant is affirmatively negligent in creating a risk of harm to the plaintiff through the instrumentality of another or otherwise." *Id.* § 414; *see* Br. of Profs. of Tort Law, Statutory Interpretation, and Firearms Regulation as *Amici Curiae* in Support of Neither Party ("Legal Scholars' Amicus Br.") 16 n.9. Mexico's complaint is predicated on Petitioners' affirmative conduct, which created an unreasonable, foreseeable risk of harm. Nor does this limited exception solve Petitioners' textual problem: If a third party's intervening actions always sever the causal chain *absent* a special relationship, PLCAA and its exceptions are still a nullity.

cause" of harm in those circumstances, *id.* § 7903(5)(A)(v).

The examples applying the predicate exception also show that Congress contemplated multi-step causal chains involving third parties, including third parties that violate the law. Liability may attach, for instance, where a manufacturer knowingly aids and abets a false record entry, including through a straw purchase. Such cases necessarily involve multiple steps: The gun is generally transferred from the manufacturer, to a distributor, to a dealer, to the straw purchaser, then to the actual buyer, who causes "the harm for which relief is sought." *Id.* § 7903(5)(A)(iii). Moreover, the very notion of accomplice liability necessarily incorporates third-party unlawful conduct; after all, the accomplice must aid and abet *someone*.

Rather than addressing these issues, Petitioners simply reassert that Congress in PLCAA sought to protect manufacturers and sellers from liability where they lawfully sell their products. Opening Br. 20-21. Again: Petitioners are not lawfully selling their products. They are alleged to systemically aid and abet the *unlawful* sale of their products.

**3.** Even if *Southern Pacific* had articulated a special "one-step" principle that applies to intervening causes, it would still merely be a "general tendency." *Southern Pac.*, 245 U.S. at 533. The Court has declined to treat this principle as a hardline rule that applies across the board. *See Lexmark*, 572 U.S. at 133 (holding the Lanham Act authorizes suits for "commercial injuries" even where there is an "intervening step of consumer deception"); *Bank of Am.*, 581 U.S. at 202 (declining to dismiss despite

multiple derivative-injury steps between the bank's allegedly discriminatory lending and the City's damages).

That "general tendency" would be equally inapplicable here. As an initial matter, Mexico asserts non-derivative injuries for property damage. *Supra* p. 11. Furthermore, as explained, Petitioners' one-step rule makes no sense in light of PLCAA's text. *See Lexmark*, 572 U.S. at 133. Moreover, this Court has applied *Southern Pacific*'s "general tendency" only to federal causes of action—which PLCAA is not. 15 U.S.C. § 7903(5)(C). PLCAA deliberately preserved state common law, including on proximate cause, and state statutory causes of action and remedies. *See* CA1 Mass. et al. Amicus Br. 3-15. And local law is clear: Proximate cause turns on foreseeability, and "[i]ntervening conduct extinguishes proximate cause only if it was not reasonably foreseeable." *Kligler* v. *Att'y Gen.*, 198 N.E.3d 1229, 1243 (Mass. 2022).

But even if *Southern Pacific* could apply, every one of Petitioners' "directness" cases involved damages, and the reasoning in those cases hinged on damages-specific considerations. For example, it is difficult to isolate losses an indirect plaintiff suffered as a result of the *defendant's* actions, as opposed to the pass-through plaintiff's actions. *See Southern Pac.*, 245 U.S. 531, 533; *Anza*, 547 U.S. at 458. Assigning damages liability for harms suffered by derivative plaintiffs thus risks clogging the courts with "massive and complex damages litigation." *Associated Gen. Contractors*, 459 U.S. at 545; *see, e.g.*, *Bank of Am.*, 581 U.S. at 202; *Holmes*, 503 U.S. at 274.

Those concerns have no bearing on Mexico's claims for injunctive relief, which, as the First Circuit held,

Mexico has also plausibly alleged. Pet. App. 318a-319a. This Court has never applied the derivative-plaintiff rule to injunctive-relief claims, and Petitioners have offered no reason why it should. And PLCAA preempts "actions," not "claims," so a suit may proceed if one claim fits within the predicate exception. 15 U.S.C. §§ 7902, 7903; *see* Legal Scholars' Amicus Br. 28 n.18. Thus, allowing Mexico to proceed in seeking (for example) an injunction prohibiting Petitioners from doing business with red-flag dealers would eliminate this portion of Petitioners' Rule 12 argument. *See* Pet. App. 196a; *see also id.* at 319a (noting Petitioners' unresolved Rule 12 arguments). Any discussion of whether *Southern Pacific*'s "first-step" test applies to Mexico's damages claims would be an advisory opinion on an "abstract proposition[] of law." *Hall* v. *Beals*, 396 U.S. 45, 48 (1969).

**4.** Relying on their distorted view of *Southern Pacific*'s "first-step" principle, Petitioners argue that because there are multiple "independent" steps in the causal chain, including crimes, Mexico cannot plausibly allege proximate cause. Opening Br. 22-26. The law is clear, however, that *foreseeable* intervening acts—including criminal ones—do not constitute superseding causes. *Supra* pp. 35-37.

Petitioners do not dispute that these third-party acts were foreseeable. Instead, they say this analysis "improperly conflate[s] proximate cause and foreseeability." Opening Br. 28. But foreseeability *is* the crux of proximate cause, as this Court and every major treatise have long recognized. *Supra* pp. 34-37.

Unable to dispute the foreseeability of the third-party acts, Petitioners (and their amici) repeatedly

attack Mexico's factual allegations. *E.g.*, Opening Br. 22, 24, 26-27; Amicus Br. for Montana et al. 6-12. That is improper. Petitioners chose to seek an interlocutory appeal to this Court after the First Circuit denied their motions to dismiss. They must—just as this Court must—take Mexico's well-pleaded allegations as true.

Petitioners' refusal to credit Mexico's complaint infects every step of their purported "eight-step" causal chain. Opening Br. 13, 24. Petitioners argue that "step one" in their chain is Petitioners' "routine production and sale of firearms." *Id.* at 28-29. But as the First Circuit explained, the predicate exception's proximate-cause inquiry begins with the "violation." 15 U.S.C. § 7903(5)(A)(iii); *see* Pet. App. 311a. So even if proximate cause were an exercise in step-counting, Petitioners' chain collapses: Petitioners aid and abet dealers' unlawful gun sales to traffickers, who bring guns across the border where they harm Mexico.

Petitioners also characterize Mexico's injuries as "purely derivative." Opening Br. 27 (quoting *Lexmark*, 572 U.S. at 133). As the First Circuit recognized, however, "Mexico has plausibly alleged" that it "directly and uniquely" suffered injuries "from the illegal trafficking of guns into Mexico," Pet. App. 315a-316a, including more than $41 million in damage to military aircraft and vehicles, and millions more in "damage to security equipment," *id.* at 173a; *supra* pp. 11, 40. No other plaintiff could assert those injuries on Mexico's behalf. *Cf. City of Philadelphia* v. *Beretta*, 277 F.3d 415, 424-425 (3d Cir. 2002) (finding Philadelphia's alleged social-service-related injuries "entirely derivative"). That means any opinion addressing *Southern Pacific*'s application to Mexico's

other damages claims would be advisory twice over. *See* Pet. App. 315a-316a. Petitioners' remaining, premature concerns about potential difficulties ascertaining or apportioning damages "are best resolved" further down the line. Pet. App. 318a.

**5.** Adopting Petitioners' one-step theory of proximate cause would have consequences well beyond PLCAA. *See Paroline*, 572 U.S. at 444 ("proximate causation is applicable in both criminal and tort law"). A defendant that leaves a gaping hole in a 90-foot-high platform, protected only by two ropes, would not be liable if someone falls to their death after a third party removes that insubstantial barricade. *But see Dew* v. *Crown Derrick Erectors, Inc.*, 208 S.W.3d 448, 452 (Tex. 2006) (plurality op.) (third party's foreseeable conduct, which led to a "foreseeable consequence," was not a superseding cause). And a criminal who leads police on a high-speed chase, causing an officer to crash and kill a driver, would not be liable for manslaughter. *But see Brown* v. *Commonwealth*, 685 S.E.2d 43, 44-47 (Va. 2009) (officer's conduct was "a probable consequence of the defendant's own conduct," not "a superseding act that becomes the sole cause").

Petitioners' first-step rule is also readily manipulable. Many distribution chains involve multiple steps, and a clever defendant can always insert middlemen between itself and the plaintiff. But a company cannot evade liability simply by enlisting intermediaries to break the law. And any clever defendant can also slice a causal chain six ways to Sunday. *See* Pet. App. 311a (describing just such an example).

Petitioners' rule would preclude liability in these and many other cases, because the causal chain goes beyond the "first step" and involves third parties. That is not the law. Nor should it be.

## CONCLUSION

For the foregoing reasons, this Court should affirm.

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