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 OF MASSACHUSETTS, CALIFORNIA, CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, HAWAI'I, ILLINOIS, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, PENNSYLVANIA, AND VERMONT AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICI CURIAE

Massachusetts, California, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, and Vermont share a strong interest in preserving all lawful state remedies for misconduct by anyone, including gun manufacturers and sellers, that inflicts harm on our residents. The Amici States, as independent sovereigns, bear weighty responsibility for protecting our residents from the risks of gun violence and promoting safety in the use of firearms within our borders.

Exercising our police powers in service of these goals, Amici States have adopted a range of measures regulating the possession and carrying of firearms. We have also adopted measures to encourage responsible gun manufacturing and sales practices. And when, despite those regulatory efforts, our residents are injured or killed as a result of gun violence, our states have historically provided civil remedies to redress injuries in court.

Petitioners incorrectly assert that the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. §§ 7901-7903, shields gun manufacturers and sellers from liability for essentially all harms inflicted by firearms and ammunition through the criminal conduct of a third party. But PLCAA does not extinguish all forms of accountability for members of the gun industry with respect to gun violence. To the contrary, Congress expressly sought through PLCAA to preserve longstanding tort remedies in actions alleging that gun manufacturers' and sellers' *own*

misconduct has resulted in harm. Such remedies not only provide compensation to victims, but also enhance public safety by encouraging manufacturers to produce safer products and sellers to employ more responsible sales practices.

The Amici States thus have a strong interest in ensuring that Congress's aim to bar some, but not all, state-law remedies, as reflected in PLCAA's text and legislative history, is respected. An overly broad interpretation of PLCAA, like the one advanced by Petitioners here, would stray far from congressional intent and from the settled principle that, absent unmistakably clear language, federal statutes must not be read to displace traditional domains of state authority.

SUMMARY OF THE ARGUMENT

Absent clear congressional intent, federal courts should not interpret federal law to intrude on a traditional area of state authority. That fundamental principle, a central tenet of federalism, has been repeatedly reiterated by this Court and is well understood by Congress. In addressing the civil liability of gun manufacturers and sellers, PLCAA implicates core State powers, including the authority to provide remedies for injuries to State residents and to regulate matters of health and safety. Only an unmistakable signal from Congress can therefore justify interpreting PLCAA to shield gun manufacturers and sellers from state-law liability.

Petitioners fail to heed this principle, instead proposing an interpretation of PLCAA's proximate-cause element that is both legally wrong and insufficiently mindful of the constitutional balance

between federal and state authority. Specifically, Petitioners' assertion that independent criminal conduct by a third party necessarily defeats proximate cause under PLCAA is contrary to traditional tort principles, which hold that a foreseeable criminal act by a third party does not necessarily break the chain of proximate causation. Rather, the question whether a third party's criminal act is a superseding cause of harm is ordinarily for the finder of fact. Petitioners' claim is also contrary to both the plain text and the legislative history of PLCAA. While Congress sought through PLCAA to limit novel forms of liability for *blameless* gun manufacturers and sellers whose guns and ammunition are used by third parties to inflict harm, Congress did not wish to extinguish liability for wrongful conduct by manufacturers and dealers themselves. Petitioners' suggestion that PLCAA vitiates any claim involving independent third-party criminal conduct should therefore be rejected.

ARGUMENT

When Congress enacted PLCAA, it deliberately struck a balance: it sought to ensure that law-abiding manufacturers and sellers of guns would not face liability for harms inflicted *solely* as a result of third parties' unlawful conduct, but simultaneously preserved certain common-law and statutory remedies for harms brought about by gun industry members' *own* misconduct. That balance is reflected in PLCAA's text and its legislative history. Nothing in PLCAA expresses in unmistakably clear language an intent to erect absolute immunity for gun manufacturers and sellers in cases involving independent criminal conduct—to the contrary, PLCAA's text is quite clear that it does no such thing.

This Court should reject Petitioners' invitation to interpret PLCAA's predicate exception to confer upon them absolute immunity as inconsistent with settled principles regarding preemption, with traditional principles of tort law, and with PLCAA's text and legislative history.

I. Federal Statutes May Not Be Read to Displace Traditional Areas of State Authority Absent an Unmistakably Clear Statement from Congress.

Whenever Congress enacts a federal statute like PLCAA, it "'legislates against the backdrop' of certain unexpressed presumptions." *Bond v. United States*, 572 U.S. 844, 857 (2014) ("*Bond II*") (quoting *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991)). Among them is the "well-established principle that 'it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides' the 'usual constitutional balance of federal and state powers.'" *Id.* at 858 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)).

Grounded in the "basic principles of federalism" central to our constitutional order, this presumption instructs courts to "insist on a clear indication" from Congress before construing a federal statute to intrude on an area of traditional state authority. *Id.* at 859-60. Thus, should Congress wish to "alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory*, 501 U.S. at 460-61 (quoting *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (internal citations and quotation marks omitted)).

This federalism canon of construction serves important functions. Like other presumptions that respect the system of dual sovereignty embodied within our Constitution,[1] the "requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue," an intrusion on state authority, before a court may conclude that Congress "effect[ed] a significant change" through "legislation affecting the federal balance." *United States v. Bass*, 404 U.S. 336, 349 (1971). And that federal balance "'is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'" *Bond v. United States*, 564 U.S. 211, 221 (2011) ("*Bond I*") (quoting *New York v. United States*, 505 U.S. 144, 181 (1992) (internal citations and quotation marks omitted)). The federalism canon thus simultaneously safeguards "the integrity, dignity, and residual sovereignty of the States" and allows for "local policies" and remedies that are "'more sensitive to the diverse needs of a heterogeneous society.'" *Id.* (quoting *Gregory*, 501 U.S. at 458).

This Court has applied the federalism canon in cases involving diverse realms of state authority, including in actions involving state-law primacy in landlord-tenant law, *see Alabama Association of Realtors v. Department of Health & Human Services*, 594 U.S. 758, 764 (2021) (per curiam); private property rights, *see United States Forest Service v.*

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[1] *See, e.g., Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242-43 (1985) (courts presume federal statutes do not abrogate states' Eleventh Amendment immunity unless "unmistakably clear in the language of the statute").

Cowpasture River Preservation Association, 590 U.S. 604, 621-22 (2020); state and municipal provision of telecommunications services, *see Nixon v. Missouri Municipal League*, 541 U.S. 125, 140-41 (2004); and the availability of tort remedies to compensate for harm, *see Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 500-02 (1996). Across a wide range of controversies, this Court has not wavered from the precept that Congress must "enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *Cowpasture*, 590 U.S. at 621-22.

The federalism canon bears directly on the proper construction of PLCAA as well. PLCAA bars a variety of actions against the firearms industry seeking relief for harm "resulting from the criminal or unlawful misuse of a [firearm or ammunition]." 15 U.S.C. § 7903(5)(A).[2] PLCAA thus limits the state law claims that may be brought in response to gun violence, thereby intruding on an area of traditional state authority: the States' longstanding prerogative to provide remedies for injuries to our residents. "In our federal system, there is no question that States possess the 'traditional authority to provide tort remedies to their citizens' as they see fit." *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 639-40 (2013) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238,

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[2] Specifically, PLCAA instructs that "[a] qualified civil liability action may not be brought in any Federal or State court," 15 U.S.C. § 7902(a), and it defines a "qualified civil liability action" to include, subject to important exceptions, *see id.* §§ 7903(5)(A)(i)-(vi), any civil action "brought by any person against a manufacturer or seller" of firearms or ammunition "resulting from the criminal or unlawful misuse of a [firearm or ammunition] by the person or a third party," *id.* § 7903(5)(A).

248 (1984)). That authority, which predates the Founding, is fundamental to the States' exercise of our police powers. *See CTS Corp. v. Waldburger*, 573 U.S. 1, 19 (2014) (authority to provide tort remedies is "an area traditionally governed by the States' police powers"). State-law remedies have long been available to redress harms caused by any number of consumer products—from cars, *see, e.g., Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 336 (2011) (state common-law tort claims against manufacturer not preempted); to cigarettes, *see, e.g., Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 518-19 (1992) (same); *id.* at 529-30 (plurality opinion) (same); to heavily regulated prescription drugs, *see, e.g., Wyeth v. Levine*, 555 U.S. 555, 573, 578-81 (2009) (same).

Relatedly, PLCAA also "overrides the usual constitutional balance of federal and state powers," *Bond II*, 572 U.S. at 858 (internal quotation marks omitted), with respect to "the historic primacy of state regulation of matters of health and safety," *Medtronic*, 518 U.S. at 485. The existence of tort remedies for harms caused by consumer products can encourage manufacturers to make products safer and encourage sellers to adopt more responsible sales practices. *See, e.g., Wyeth*, 555 U.S. at 574 ("[S]tate-law remedies further consumer protection by motivating manufacturers to produce safe and effective drugs and to give adequate warnings."); *Pokorny v. Ford Motor Co.*, 902 F.2d 1116, 1126 (3d Cir. 1990) (noting "[c]ommon law liability . . . would 'encourage' automobile manufacturers to provide safety features in addition to those listed in" federal regulations). Federal displacement of such remedies can therefore "eliminat[e] a critical component of the States' traditional ability to protect the health and safety of

their citizens" and amount to a "radical readjustment of federal-state relations." *Cipollone*, 505 U.S. at 544 (Blackmun, J., concurring in part, concurring in the judgment in part, and dissenting in part). By precluding certain state remedies for harm inflicted by firearms, PLCAA limits a mechanism long relied upon by States to promote safety in consumer products. *See* J. Vernick et al., *Availability of Litigation as a Public Health Tool for Firearm Injury Prevention: Comparison of Guns, Vaccines, and Motor Vehicles*, 97 AM. J. OF PUB. HEALTH 1991, 1996 (Nov. 2007), https://tinyurl.com/36bpskcv.

In construing PLCAA, then, federal courts must be mindful of the statute's incursion into spheres of state authority that are as longstanding as they are vital to the wellbeing of our residents. Absent an "unmistakably clear" statement from Congress, courts should not interpret PLCAA to preempt actions based on state law. *Gregory*, 501 U.S. at 460-61. And this action is not of the kind that Congress "unmistakably" intended to preempt—to the contrary, as explained below and in Respondent's brief, Congress unmistakably intended to allow actions alleging wrongdoing by the gun industry itself that is a proximate cause of harm to a plaintiff to proceed.

II. Petitioners' Proximate-Cause Argument Misstates the Issue in This Case and Is Inconsistent with Black-Letter Tort Law and PLCAA's Text and Legislative History.

A. The Proximate-Cause Question that Petitioners Ask This Court to Decide Is Not Presented in This Case.

Petitioners repeatedly misstate the proximate-cause issue in this case. The question before this Court is not "[w]hether the *production and sale* of firearms in the United States is a 'proximate cause' of alleged injuries to the Mexican government," Pet. Br. i (emphasis added), nor is it whether "*American firearms companies* are [or are] not a proximate cause of Mexico's injuries," *id.* at 17 (emphasis added; capitalization altered), nor is it whether "Petitioners' *manufacturing and sale* of firearms in the United States has led to violent cartel crime in Mexico," *id.* (emphasis added). The question under the predicate exception, rather, concerns the effects of *alleged illegal acts* by Petitioners. *See* 15 U.S.C. § 7903(5)(A)(iii). Thus, what Mexico actually claimed, Pet. App. 7a, 79a-139a (Complaint), is that Petitioners' alleged "aid[ing] and abett[ing] the knowingly unlawful downstream trafficking of their guns into Mexico," Pet. App. 306a (First Circuit opinion), has proximately caused Mexico harm.

Petitioners' misstated causation questions, which incorrectly suggest that Mexico's claims focus on lawful activities, flow from their addressing the proximate-cause question first, before turning to the aiding-and-abetting question. *See* Pet. Br. i; *id.* at 17-

31 (discussing proximate cause); *id.* at 31-50 (discussing predicate violation). Doing so makes little sense, as one cannot sensibly ask whether *A* caused *B* without first knowing what *A* is. *Cf.* Resp. Br. 19 ("The aiding-and-abetting question is the logical antecedent to the proximate-cause issue . . . ."). The text of PLCAA's "predicate exception" reflects this straightforward logic by asking two questions: (1) whether the defendant "knowingly violated a State or Federal statute applicable to the sale or marketing of [firearms]"; and, if so, (2) whether "the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). It would be illogical to ask whether "*the violation* was a proximate cause of the harm" without first determining what the alleged "violation" is. *Id.* (emphasis added).[3]

In other words, the proximate-cause analysis must be tethered to a properly-alleged predicate violation. By instead arguing proximate cause in the abstract, Petitioners largely sidestep the question that this case actually presents, substituting in its place questions bearing little relationship to the allegations in Mexico's complaint.

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[3] Accordingly, the First Circuit first determined that Mexico had adequately alleged a predicate violation, Pet. App. 299a-306a, and only then went on to analyze whether Mexico had adequately alleged that that "violation" was "a proximate cause" of Mexico's claimed harm, Pet. App. 309a-319a. And when the First Circuit rejected one of Mexico's claimed predicate violations (namely, that Petitioners sold unlawful machineguns, see Pet. App. 306a-309a), it of course had no need to—and did not—subsequently address whether Mexico had adequately alleged that selling unlawful machineguns was a proximate cause of injury to Mexico.

B. Petitioners' Proximate-Cause Analysis Cannot Be Squared with Basic Principles of Tort Law, or with PLCAA's Text or Legislative History.

In arguing that Mexico has not properly alleged causation under the predicate exception to PLCAA, Petitioners posit a proximate-cause requirement inconsistent with established tort doctrine, and contradicted by the text and legislative history of PLCAA itself. Under ordinary tort principles, if, as ably argued by counsel for Mexico, *see* Resp. Br. 19-33, Mexico has adequately alleged that Petitioners "aided and abetted the knowingly unlawful downstream trafficking of their guns into Mexico," Pet. App. 306a, then the proximate-cause question very nearly answers itself. That is, if Petitioners *knew* that their guns were being illegally trafficked into Mexico and *substantially assisted* in that trafficking—as would be required if the aiding-and-abetting question is answered affirmatively, *see Twitter, Inc. v. Taamneh*, 598 U.S. 471, 491 (2023) (noting that "knowing and substantial assistance" to the primary wrongdoer is required to establish aiding-and-abetting liability)—then it is a short, direct, and easily foreseeable journey to the conclusion that Petitioners' unlawful conduct proximately caused harm to Mexico. *See* Resp. Br. 39-40.

Petitioners, however, argue wrongly that PLCAA instead incorporates a rule that a manufacturer or distributor *cannot* be a "proximate cause of [a firearm's] independent criminal misuse." Br. 17, 25. The only exceptions to this rule, they argue, involve a "special relationship or legal duty." Br. 25. "Absent"

those circumstances, Petitioners assert, "an independent criminal act breaks the causal chain." *Id*.

That is not correct, either under basic principles of tort law or as a matter of statutory interpretation. *Amici* will not repeat the proximate-cause analysis that is persuasively laid out in Mexico's brief, Resp. Br. 33-52, and further explicated by the Brief of Professors of Tort Law, Statutory Interpretation, and Firearms Regulation as *Amici Curiae* in Support of Neither Party. Instead, *Amici* note only three of the most glaring defects in Petitioners' proximate-cause argument.

First, contrary to Petitioners' assertion that traditional principles of tort law support their position, Pet. Br. 17-20, black-letter tort doctrine holds that the criminal act of a third party does *not* always (absent a special relationship) defeat liability. Instead, "[t]he intervening criminal act of a third party is a superseding cause which breaks the chain of proximate causation *only* where the original wrongdoer reasonably could not have foreseen such act." *Copithorne v. Framingham Union Hosp.*, 520 N.E.2d 139, 141 (Mass. 1988) (emphasis added); *see also, e.g.*, *Braitman v. Overlook Terrace Corp.*, 346 A.2d 76, 82-84 & n.8 (N.J. 1975) (holding that intervening criminal act does not preclude liability if the act was "reasonably to be anticipated," and citing examples). Petitioners repeatedly speak of "intervening" acts breaking the causal chain, *see, e.g.*, Pet. Br. 19-20, 24-25, but they have conflated *intervening* acts with *superseding* acts (Petitioners never even mention the latter). It is hornbook law that an *intervening* act—even a criminal one—that is

nonetheless foreseeable does not break the chain of proximate causation. *See* Dan B. Dobbs, et al., *The Law of Torts* § 209 (2d ed. 2024) ("If an intervening *and unforeseeable* intentional harm or criminal act triggers the injury to the plaintiff, the criminal act is ordinarily called a superseding cause . . . .) (emphasis added); *see also, e.g.*, *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 840 (1996) (explaining that a "superseding" cause is by definition "the sole proximate cause" of an injury).

Indeed, the Dobbs treatise—upon which Petitioners rely, *see* Pet. Br. 20, 24-25—emphasizes that Petitioners' view of the law is badly outdated. The treatise observes that "[i]n an earlier era, courts tended to hold that intervening criminal acts were unforeseeable as a matter of law," but that "[t]his archaic doctrine has been rejected everywhere" and that "[t]oday's courts . . . now often permit juries to find that a criminal act was foreseeable and not a superseding cause." Dobbs, *supra*, § 209 (footnotes and internal quotation marks omitted). Thus, under traditional tort principles, whether any particular criminal act was a *superseding* act that breaks the chain of proximate causation will generally be a fact question that is unsuitable for resolution at the motion-to-dismiss stage. *See, e.g.*, *Sofec*, 517 U.S. at 840-41 ("The issues of proximate causation and superseding cause involve application of law to fact, which is left to the factfinder . . . .").[4] This case fits comfortably within that general rule.

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[4] Accordingly, the invocation by *amici* Montana, *et al.* of the purportedly "available evidence," Montana Br. at 6 (citing a law review article), is inappropriate, as the only question at the

Second, Petitioners' proximate cause argument is contradicted by the text of PLCAA itself. The statute makes clear that whether the harm allegedly results from the *misconduct of gun manufacturers and dealers*—rather than whether there has been an intervening criminal act—is generally decisive as to the applicability of PLCAA's bar.

PLCAA's text emphasizes that its purpose is to provide gun manufacturers and sellers a defense to liability for harm *solely* caused by third parties, but not harm caused—in whole *or in part*—by sellers and manufacturers themselves. Congress specified that PLCAA's principal purpose is "[t]o prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products . . . 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." 15 U.S.C. § 7901(b)(1) (emphasis added). And Congress found that "[t]he possibility of imposing liability on an entire industry for harm that is *solely* caused by others is an abuse of the legal system" that "erodes public confidence in our Nation's laws." *Id.* § 7901(a)(6) (emphasis added).

In stressing that PLCAA's defense extends only to liability for harms caused "solely" by unrelated third parties, Congress cabined PLCAA's scope. "'[S]olely'

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motion-to-dismiss stage is whether the plaintiff's "well-pleaded factual allegations and reasonable inferences therefrom," taken as true, adequately state a claim. *National Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 181 (2024) (citation, quotation marks, and alteration omitted). Resolution of the question whether Mexico can marshal evidence sufficient to sustain its allegations must await summary judgment or trial proceedings.

means 'alone.'" *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 768 (2018) (citing Webster's Third New International Dictionary 2168 (2002); American Heritage Dictionary 1654 (4th ed. 2000)); *see also BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 239 (2021) ("solely" is "limiting" language). Thus, while the statute protects lawful manufacturing and sales practices from liability for harm resulting entirely from others' misconduct, it does not foreclose remedies against manufacturers and sellers for their own misconduct. *See* 15 U.S.C. §§ 7901, 7903. As explained by the Connecticut Supreme Court, Congress's "primary concern was that liability should not be imposed in situations in which the producer or distributor of a consumer product bears absolutely no responsibility for the misuse of that product in the commission of a crime." *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 320 (Conn. 2019), *cert. denied sub nom. Remington Arms Co., LLC v. Soto*, 140 S. Ct. 513 (2019); *see also id.* at 309 ("At no time and in no way does the congressional statement [of facts and purposes] indicate that firearm sellers should evade liability for the injuries that result if they promote the illegal use of their products.").

In accordance with this objective, while PLCAA generally bars actions against firearms manufacturers to recover for harms "resulting from the criminal or unlawful misuse of a qualified product by the person or a third party," 15 U.S.C. §7903(5)(A), Congress carved out a number of exceptions. The simple fact of these exceptions' existence belies Petitioners' assertion that an intervening criminal act always defeats liability.

The statute specifies that "[t]he term 'qualified civil liability action' . . . shall not include" the following six categories of "action[s]": (1) an action brought against a transferor of a gun who was convicted under 18 U.S.C. § 924(h) or a comparable state law for knowingly receiving or transferring a gun with reasonable cause to believe the gun will be used to commit a felony; (2) an action against a seller for negligent entrustment or negligence per se; (3) the predicate exception at issue here, for "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought";[5] (4) an action for breach of contract or warranty; (5) an action "resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner"; and (6) an action by the Attorney General to enforce the federal Gun Control Act, 18 U.S.C. §§ 921

[5] The indefinite article "a" before the term "proximate cause" is important in the predicate exception (despite Petitioners apparently having overlooked it in their petition, *see* Pet. i (incorrectly suggesting that a predicate violation must be "*the* 'proximate cause'" of the plaintiff's claimed injuries to avoid PLCAA's bar (emphasis added)); they corrected the error in their merits brief, *see* Pet. Br. i). It is important both because it clarifies that the predicate violation need only be one of multiple proximate causes, and because it contrasts with the design-or-manufacturing-defect exception, which specifies that criminal acts in certain circumstances "shall be considered *the sole* proximate cause" of the claimed harm. 15 U.S.C. § 7903(5)(A)(v) (emphasis added). The Congress that enacted PLCAA knew how to differentiate scenarios involving one, as opposed to more than one, proximate cause. *Cf. Staub v. Proctor Hospital*, 562 U.S. 411, 420 (2011) ("[I]t is common for injuries to have multiple proximate causes.").

et seq., and National Firearms Act, 26 U.S.C. §§ 5801 et seq. 15 U.S.C. §§ 7903(5)(A)(i)-(vi).

Each of these categories—that is, categories of judicial proceedings where a person suffers harm "resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party," 15 U.S.C. § 7903(5)(A), but PLCAA nonetheless provides no defense to liability—involves *misconduct by gun sellers and manufacturers themselves*. *See* 151 Cong. Rec. S9087, S9089 (July 27, 2005) (Sen. Craig) ("What all these nonprohibited lawsuits have in common is that they involve actual misconduct or wrongful actions of some sort by a gun manufacturer, a seller or a trade association."). The predicate exception, in particular, applies when the defendant's misconduct was, despite the plaintiff's or third party's actions, nonetheless "a proximate cause" of that harm, 15 U.S.C. § 7903(5)(A)(iii). If a criminal or unlawful act always "breaks the causal chain," as Petitioners would have it, Pet. Br. 25, then the predicate exception can never be satisfied. But Congress is presumed not to enact entire paragraphs that serve no purpose. *See, e.g.*, *Pulsifer v. United States*, 601 U.S. 124, 143 (2024) ("When a statutory construction thus renders an entire subparagraph meaningless, this Court has noted, the canon against surplusage applies with special force. And still more when the subparagraph is so evidently designed to serve a concrete function." (alteration, citations, and internal quotation marks omitted)).

Third, PLCAA's legislative history confirms that Congress sought to prevent firearms-industry liability for harms caused solely by unrelated third parties, but did not intend to foreclose remedies, including tort

remedies, for unlawful conduct by manufacturers and sellers.

Two of PLCAA's sponsors—Senator Jeff Sessions of Alabama and Senator Larry Craig of Idaho—made this point repeatedly in explaining PLCAA's scope. Senator Sessions characterized PLCAA as "incredibly narrow." 151 Cong. Rec. S8908-01, S8911 (July 26, 2005). The statute, he explained, "allows lawsuits for violation of contract, for negligence, in not following the rules and regulations and for violating any law or regulation that is part of the complex rules that control sellers and manufacturers of firearms." 151 Cong. Rec. S9374-01, S9378 (July 29, 2005). He emphasized that "[p]laintiffs can go to court if the gun dealers do not follow the law, if they negligently sell the gun, if they produce a product that is improper or they sell to someone they know should not be sold to or did not follow steps to determine whether the individual was [eligible] to bu[y] a gun." 151 Cong. Rec. S8908-01, S8911 (July 26, 2005). Thus, he underscored, "[m]anufacturers and sellers are still responsible for their own negligent or criminal conduct." 151 Cong. Rec. S8908-01, S8911 (July 26, 2005).

Senator Craig struck a similar note. He explained that PLCAA "does not prevent [gun manufacturers and sellers] from being sued for their own misconduct." 151 Cong. Rec. S9087, S9088 (July 27, 2005). "We have tried," Senator Craig emphasized, "to make that limitation as clear as we possibly can." *Id.*; *see also id.* ("This is not a gun industry immunity bill."). "If a gun dealer or manufacturer violates the law," Senator Craig confirmed, "this bill is not going to protect them from a lawsuit brought against them

for harms resulting from that misconduct." *Id.* at S9089; *see also id.* at 9099 ("[T]his legislation will not bar the courthouse doors to victims who have been harmed by the negligence or misdeeds of anyone in the gun industry."); *accord* 151 Cong. Rec. S9374-01, S9378 (July 29, 2005) (statement of Sen. Thune) ("The bill allows suits against manufacturers who breach a contract or a warranty, for negligent entrustment of a firearm, for violating a law in the production or sale of a firearm, or for harm caused by a defect in design or manufacture."). Indeed, Senator Craig spoke in terms directly applicable to Mexico's allegations in this case: "Another example of conduct that would not be shielded from a civil lawsuit under this bill is the case in which the manufacturer or seller aided, abetted or conspired with any other person to sell firearms or ammunition if they knew or had reasonable cause to believe that the purchaser intended to use those products for the furtherance of a crime." 151 Cong. Rec. S9087, S9089 (July 27, 2005).[6]

As this record confirms, Congress did not intend PLCAA to bar all claims against gun industry members where independent criminal conduct occurred. Rather, Congress intended to bar only those lawsuits seeking to hold manufacturers and sellers liable for blameless conduct. That intent accords with both the text that Congress adopted and with Congress's awareness that PLCAA should intrude no further on state-law remedies than necessary to achieve its narrow aims. *See* 151 Cong. Rec. S9087, S9089 (July 27, 2005) (Sen. Craig) ("tort reform" should be "narrow," because "law-abiding citizens

[6] This comment by Senator Craig is directly at odds with Petitioners' theory that third-party criminal acts always break the chain of proximate causation.

have their rights and should not in any way be jeopardized in the legal sense from their constitutional right to go to court").

For all of these reasons, if this Court reaches the proximate-cause issue, it should reject Petitioners' interpretation of the proximate-cause requirement of PLCAA's predicate exception.

CONCLUSION

The Court should affirm the judgment below.

Respectfully submitted,

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