

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 MARCH FOR OUR LIVES
ACTION FUND AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENT**

MICHAEL J. DELL

Counsel of Record

SHAKED SIVAN

HARRY P. MORGENTHAU

DREW ZAGAMI

KATHARINE RUBERY

KRAMER LEVIN NAFTALIS &

FRANKEL LLP

1177 Avenue of the Americas

New York, New York 10036

(212) 715-9100

mdell@kramerlevin.com

Counsel for Amicus Curiae

335820



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	4
I. PETITIONERS' INTERPRETATION OF PLCAA AND PROXIMATE CAUSE WOULD CLOSE THE COURTHOUSE DOORS TO VICTIMS FORESEEABLY HARMED BY GUN COMPANIES' MISCONDUCT	4
A. Janet Delana	10
B. Sabika Sheikh	13
C. Guy Boyd and Denise Wieck	15
D. Mia Tretta	18
E. Kayla Brady.....	20
F. Daniel Williams.....	22
G. Victims of the Sandy Hook Elementary School Mass Shooting.....	23

Table of Contents - Continued

	<i>Page</i>
H. Victims of the Harvest Music Festival Mass Shooting .....	.25
II. THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT PERMITS CLAIMS AGAINST FIREARM SELLERS AND MANUFACTURERS WHO ACT UNLAWFULLY.....	.27
III. THE FIRST CIRCUIT CORRECTLY APPLIED LONGSTANDING PRINCIPLES OF AIDING AND ABETTING AND PROXIMATE CAUSE TO PERMIT PLAINTIFF TO SUE FIREARMS MANUFACTURERS AND SELLERS WHO ACT UNLAWFULLY ....	.29
A. The First Circuit Correctly Applied Aiding and Abetting Law.....	.29
B. The First Circuit Correctly Applied the Law of Proximate Cause .....	.30
CONCLUSION .....	.32

TABLE OF AUTHORITIES

	<i>Page</i>
Cases	
<i>Boyd v. Not an LLC et al.</i> , No. 24-000304-NP (Mich. Trial Ct., Washtenaw Cty, Jul. 24, 2024)	17
<i>Brady v. Walmart Inc.</i> , 2022 WL 2987078 (D. Md. Jul. 28, 2022).	20-22
<i>Brady v. Walmart Inc.</i> , 2024 WL 2273382 (D. Md. May 20, 2024)	22
<i>Delana v. CED Sales, Inc.</i> , 486 S.W.3d 316 (Mo. 2016)	12
<i>Garland v. Cargill</i> , 602 U.S. 406 (2024).	25
<i>In re LuckyGunner, LLC</i> , No. 14-21-00194-CV, 2021 WL 1904703 (Tex. Ct. App. May 12, 2021)	14
<i>Paroline v. United States</i> , 572 U.S. 434 (2014).	31
<i>Prescott v. Slide Fire Solutions, LP</i> , 18-cv-00296-GMN-BNW (Sept. 17, 2020), ECF 84	26
<i>Prescott v. Slide Fire Solutions, LP</i> , 410 F.Supp.3d 1123 (D. Nev. 2019)	25, 26

Table of Authorities - Continued

	<i>Page</i>
<i>Remington Arms Co. LLC v. Soto</i> , 140 S. Ct. 513 (2019) . . . . .	.24
<i>Soto v. Bushmaster Firearms Int’l, LLC</i> , 202 A.3d 262 (Conn. 2019) . . . . .	.24
<i>Tretta v. Osman</i> , No. 20STCV48910, 2022 WL 3334319 (Cal. Super. June 29, 2022) . . . . .	.20
<i>Twitter v. Taamneh</i> , 598 U.S. 471 (2023) . . . . .	.29
<i>Williams v. Beemiller, Inc.</i> , 100 A.D.3d 143 (N.Y. App. Div. 4th Dep’t 2012)	22, 23
Statutes	
15 U.S.C. § 7901 . . . . .	.27
15 U.S.C. § 7902 . . . . .	.27
15 U.S.C. § 7903 . . . . .	.27, 28
15 U.S.C. § 7905 . . . . .	.27
Con. Gen. Stat. §42-110a . . . . .	.24

Table of Authorities - Continued

	<i>Page</i>
Legislative Materials	
151 Cong. Rec. S8911 (daily ed. July 26, 2005)	28
151 Cong. Rec. S9061, S9099 (daily ed. July 27, 2005) . .	28
151 Cong. Rec. S9077 (daily ed. July 27, 2005)	28
Other Authorities	
<i>Assault Weapons and Large-Capacity Machines</i> , Brady United, https://www.bradyunited.org/resources/issues/what-are-assault-weapons-and-high-capacity-magazines	7
<i>Background Checks On All Gun Sales</i> , Everytown, https://www.everytown.org/solutions/background-checks/	10
Emily Baumgaertner, <i>U.S. Rate of Suicide by Firearm Reaches Record Level</i> , N.Y. Times (Nov. 30, 2023), https://www.nytimes.com/2023/11/30/health/suicide-guns-cdc.html	6
Business Leaders for Gun Safety, <i>The Impact of Gun Violence on Business in the U.S.</i> , Everytown Support Fund, https://everytownsupportfund.org/initiatives/business-leaders/impact-of-gun-violence-on-business/	9

Table of Authorities - Continued

	<i>Page</i>
Center for Gun Violence Solutions, <i>Continuing Trends: Five Key Takeaways from 2023 CDC Provisional Gun Violence Data</i> , Johns Hopkins Bloomberg School of Public Health (Sept. 12, 2024), https://publichealth.jhu.edu/center-for-gun-violence-solutions/2024/continuing-trends-five-key-takeaways-from-2023-cdc-provisional-gun-violence-data	2
Center for Gun Violence Solutions, <i>Firearm Violence in the United States</i> , Johns Hopkins Bloomberg School of Health, https://publichealth.jhu.edu/sites/default/files/2024-09/2022-cgvs-gun-violence-in-the-united-states.pdf	5
EveryStat, <i>How Does Gun Violence Impact the Community You Care About?</i> , EveryStat, https://everystat.org/	5, 6, 9
Everytown Research & Policy, <i>Assault Weapons and High-Capacity Magazines</i> , Everytown Research (May 24, 2023), https://everytownresearch.org/report/assault-weapons-and-high-capacity-magazines/	7
Everytown Research & Policy, <i>Gunfire on School Grounds in the United States</i> , Everytown Research (2024), https://everytownresearch.org/maps/gunfire-on-school-grounds/	7

Table of Authorities - Continued

	<i>Page</i>
Everytown Research & Policy, <i>Guns and Violence Against Women</i> , Everytown Research (Nov. 20, 2024), https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/	8
Everytown Research & Policy, <i>Gun Violence in America</i> , Everytown Research (Nov. 7, 2024), https://everytownresearch.org/report/gun-violence-in-america/	5, 6
<i>Inspection Reports by Violation</i> , The Trace, https://projects.thetrace.org/inspections/violation/	10
N.R. Kleinfield et al., <i>Newtown Killer’s Obsessions, in Chilling Detail</i> , N.Y. Times (Mar. 28, 2013) http://www.nytimes.com/2013/03/29/nyregion/search-warrants-reveal-items-seized-at-adam-lanzas-home.html	23
Jennifer Mascia, <i>Domestic Violence</i> , The Trace (Feb. 9, 2016), https://www.thetrace.org/2016/02/women-domestic-violence-death-statistics/	8
Nirmita Panchal, <i>The Impact of Gun Violence on Children and Adolescents</i> , KFF (Feb. 22, 2024), https://www.kff.org/mental-health/issue-brief/the-impact-of-gun-violence-on-children-and-adolescents/	6

Table of Authorities - Continued

	<i>Page</i>
Office of the U.S. Surgeon General, <i>Firearm Violence: A Public Health Crisis in America</i> (June 25, 2024), https://www.hhs.gov/sites/default/files/firearm-violence-advisory.pdf	1, 5, 6
Rick Rojas et al., <i>Sandy Hook Families Settle With Gunmaker for \$73 Million Over Massacre</i> , N.Y. Times (Feb. 15, 2022), https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html	24
Kalhan Rosenblatt, <i>Las Vegas Shooting is Deadliest in Modern U.S. History</i> , NBC News (Oct. 2, 2017), https://www.nbcnews.com/storyline/las-vegas-shooting/las-vegas-shooting-deadliest-modern-u-s-history-n806486	25
Maya Rossin-Slater, <i>Surviving a School Shooting: Impacts on the Mental Health, Education, and Earnings of American Youth</i> , Stanford Institute for Economic Policy Research (June 2022), https://siepr.stanford.edu/publications/health/surviving-school-shooting-impacts-mental-health-education-and-earnings-american	8
Jamila K Stockman et al., <i>Intimate Partner Violence and Its Health Impact</i> , 24 J. Women’s Health 62 (2015)	8

Table of Authorities - Continued

	<i>Page</i>
<i>Student Firearm Carrying in Schools</i> , Brady United, https://www.bradyunited.org/resources/research/analysis-student-firearm-carrying-schools	6-8
Silvia Vilarreal et al., Johns Hopkins Center for Gun Violence Solutions, <i>Gun Violence in the United States 2022: Examining the Burden Among Children and Teens</i> (2024), https://publichealth.jhu.edu/sites/default/files/2024-09/2022-cgvs-gun-violence-in-the-united-states.pdf	3
<i>The Firearm Supply Chain Arms Criminals, The Smoking Gun</i> , https://smokinggun.org/issue/arming-criminals/	9
<i>Trafficking & Straw Purchasing</i> , Giffords Law Center, https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing/	10
Garen Wintemute, <i>Firearm Retailers' Willingness to Participate in an Illegal Gun Purchase</i> , 87 J. Urb. Health 865 (2010)	10
John Woodrow Cox et al., <i>More Than 390,000 Students Have Experienced Gun Violence At School Since Columbine</i> , Washington Post (Dec. 16, 2024)	2

INTEREST OF *AMICUS CURIAE*

Amicus curiae March For Our Lives Action Fund is a non-profit, youth-led organization dedicated to promoting civic engagement, education, and direct action to eliminate the epidemic of gun violence. Formed in the wake of the 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, *amicus* organized the largest single day of protest against gun violence in history. Hundreds of thousands of protesters marched in Washington, D.C. There were additional marches around the world. *Amicus* is a leader in gun-violence prevention advocacy. It is assisted by youth-led chapters across the United States. *Amicus* has registered millions of young voters, supported the passage of more than 300 gun-safety laws, and held leaders accountable for their campaign promises.¹

Amicus respectfully submits this brief to offer its unique perspective, based on first-hand knowledge of the deaths and injuries inflicted by firearms and the unlawful and negligent commerce in firearms. Firearms are now and have been for some time the leading cause of death for children and teens, taking more lives than car crashes and cancer.²

¹ This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amicus* or their counsel made any monetary contribution to the preparation or submission of this brief.

² See Office of the U.S. Surgeon General, *Firearm Violence: A Public Health Crisis in America* (June 25, 2024), <https://www.hhs.gov/sites/default/files/firearm-violence-advisory.pdf> [hereinafter Surgeon General's Report].

Since the mass shooting at Columbine in 1999, there have been 426 school shootings in the United States.³ More than 390,000 students have been directly affected.⁴ Countless more have been indirectly impacted. They and their parents, grandparents, families, friends, and communities live every day with the fear that they may become victims. Any of our children, grandchildren, friends, and relatives could become victims. The gun violence epidemic extends beyond mass shootings. Gun suicides reached a record high in 2023.⁵ Such suicides disproportionately impact Black and Hispanic teens.⁶

Amicus believes that victims of gun violence should be able to rely on the Protection of Lawful Commerce in Arms Act (“PLCAA”) exceptions enacted by Congress and well-established principles of aiding and abetting and proximate cause to vindicate their rights against gun manufacturers and sellers who engage in negligent and criminal conduct. It is long past the time when gun manufacturers and sellers have had full knowledge of the manner in which their weapons are being used to kill,

³ John Woodrow Cox et al., *More Than 390,000 Students Have Experienced Gun Violence At School Since Columbine*, Washington Post (Dec. 16, 2024), <https://www.washingtonpost.com/education/interactive/school-shootings-database/>.

⁴ *Id.*

⁵ Center for Gun Violence Solutions, *Continuing Trends: Five Key Takeaways from 2023 CDC Provisional Gun Violence Data*, Johns Hopkins Bloomberg School of Public Health (Sept. 12, 2024), <https://publichealth.jhu.edu/center-for-gun-violence-solutions/2024/continuing-trends-five-key-takeaways-from-2023-cdc-provisional-gun-violence-data>.

⁶ *See id.*

maim, and injure countless innocent victims, including children.⁷

STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

The Protection of Lawful Commerce in Arms Act means what it says—it protects only *lawful* commerce in arms. It provides no protection to a manufacturer or seller of firearms whose unlawful conduct harms an innocent third party. PLCAA is not a “get out of liability free” card for bad actors in the firearms industry.

The First Circuit correctly determined that, assuming the truth of the well-pleaded allegations of Mexico’s complaint, PLCAA does not bar the relief Mexico seeks. The court reasonably determined that Mexico sufficiently alleges that Petitioners knowingly and intentionally aided and abetted unlawful firearms sales to traffickers for Mexican drug cartels, and that those sales proximately caused Mexico’s injuries by leading directly to cartel violence. The facts alleged by Mexico, if true, show Petitioners are intentional participants in the unlawful gun trade in order to line their own pockets, not innocent, law-abiding gun sellers.

Amicus knows all too well the heavy toll that *unlawful* commerce in firearms can have on individuals and communities across the United States. Point I of this brief

⁷ Silvia Vilarreal et al., Johns Hopkins Center for Gun Violence Solutions, *Gun Violence in the United States 2022: Examining the Burden Among Children and Teens* 1, 2 (2024), <https://publichealth.jhu.edu/sites/default/files/2024-09/2022-cgvs-gun-violence-in-the-united-states.pdf>.

shares the stories of some of the victims of gun violence whose suffering was caused by the unlawful conduct by manufacturers and sellers of firearms and ammunition that led to their products being used by individuals who should never have possessed them under state and federal law. These stories are heartbreaking. They are also painfully commonplace. They represent only a tiny fraction of the victims of avoidable gun violence in this country.

Point II explains that PLCAA permits victims of gun violence to bring claims against firearm sellers and manufacturers who have acted unlawfully.

Point III explains why the First Circuit was correct in applying longstanding principles of aiding and abetting and proximate cause to find that Mexico has stated a claim for relief.

The Court should affirm the rights of gun violence victims to seek redress against manufacturers and sellers who have acted unlawfully. If the Court were to adopt the rule of law that Petitioners seek, then companies that knowingly engage in misconduct would be able to avoid accountability and continue to act with impunity.

ARGUMENT

I. PETITIONERS' INTERPRETATION OF PLCAA AND PROXIMATE CAUSE WOULD CLOSE THE COURTHOUSE DOORS TO VICTIMS FORESEEABLY HARMED BY GUN COMPANIES' MISCONDUCT

The epidemic of firearm violence in this country is more serious today than it has ever been. It is pervasive.

The majority of U.S. adults report that either they, or a family member, have experienced a firearm-related incident. *See* Surgeon General's Report. In 2024, the Surgeon General declared firearm violence a public health crisis. *Id.*

In 2022 alone, 48,204 people died from firearm-related injuries. *See id.* The rate of firearm deaths has increased a staggering 34% in less than a decade, with an average of one death every 11 minutes. *See* EveryStat, *How Does Gun Violence Impact the Community You Care About?*, EveryStat, <https://everystat.org/> [hereinafter EveryStat]; Center for Gun Violence Solutions, *Firearm Violence in the United States*, Johns Hopkins Bloomberg School of Health, <https://publichealth.jhu.edu/sites/default/files/2024-09/2022-cgvs-gun-violence-in-the-united-states.pdf>. An additional 96,935 children, women and men are injured in non-fatal shootings in an average year. *See* EveryStat.

Four of every ten firearm deaths are homicides. *See* Everytown Research & Policy, *Gun Violence in America*, Everytown Research (Nov. 7, 2024), <https://everytownresearch.org/report/gun-violence-in-america/> [hereinafter *Gun Violence in America*]. Firearms are responsible for 79% of the homicides in the United States. *See* EveryStat. The U.S. homicide rate is 26 times that of other high-income countries. *Gun Violence in America*. That rate is climbing rapidly. *See* EveryStat. In less than ten years, the firearm homicide rate has increased 57%. *Id.* This stark reality is even worse for individuals of color. They are 12 times more likely to die by firearm homicide than white people in this country. *See Gun Violence in America*.

Nearly six of every ten firearm deaths are suicides. *Id.* These suicides occur every 20 minutes. *See* EveryStat. The firearm suicide rate is now at a record high. *See* Emily Baumgaertner, *U.S. Rate of Suicide by Firearm Reaches Record Level*, N.Y. Times (Nov. 30, 2023), <https://www.nytimes.com/2023/11/30/health/suicide-guns-cdc.html>. Merely having access to a firearm triples the risk of death by suicide, as most attempts occur within ten minutes of a suicidal thought. *See* *Gun Violence in America*; Nirmita Panchal, *The Impact of Gun Violence on Children and Adolescents*, KFF (Feb. 22, 2024), <https://www.kff.org/mental-health/issue-brief/the-impact-of-gun-violence-on-children-and-adolescents/>.

The toll of firearm violence is even more devastating for the nation's most vulnerable. Since 2020, firearm-related injury has been the leading cause of death for children and adolescents, surpassing cancer, car accidents, overdose, and poisoning. *See* Surgeon General's Report. Over the past decade, the use of firearms in suicides has increased at the highest percentages for young people, with a 68% increase among children 10-14 years old and a 45% increase among adolescents and young adults aged 15-24. *Id.*

The frequency of school shootings is also increasing. *See* *Student Firearm Carrying in Schools*, Brady United, <https://www.bradyunited.org/resources/research/analysis-student-firearm-carrying-schools> [hereinafter *Student Firearm Carrying*]. For students, educators, and parents, school shootings, and the fear of them, have become commonplace. 57% of students fear that their school will be the location of the next school shooting. *See id.* Over the past six school years (2017-2023), more than

2,000 firearms have been brought to school by children. *Id.* In 2024 alone, there were more than 200 incidents of gunfire on school grounds. *See* Everytown Research & Policy, *Gunfire on School Grounds in the United States*, Everytown Research (2024), <https://everytownresearch.org/maps/gunfire-on-school-grounds/>.

Mass shootings on school campuses are among the most alarming and deadly shootings. Assault weapons and high-capacity magazines enable this destruction. Assault weapons, typically semiautomatic rifles, can load and fire subsequent rounds much faster than other firearms. *See* Everytown Research & Policy, *Assault Weapons and High-Capacity Magazines*, Everytown Research (May 24, 2023), <https://everytownresearch.org/report/assault-weapons-and-high-capacity-magazines/>. They fire bullets at a greater velocity and inflict greater damage to the body than a traditional handgun. *Id.* When combined with a high-capacity magazine, assault rifles allow a shooter to fire more rounds in less time. *Id.* In mass shootings between 2015 and 2022 where an assault weapon was used, six times as many people were shot and more than twice the number of people were killed. *Id.* In incidents where a high-capacity magazine was involved, nearly five times as many people were shot, with more than twice the fatalities. *Id.* Assault weapons were used in many of the most tragic school shootings, including Uvalde (21 killed), Parkland (17 killed), and Sandy Hook (26 killed). *Id.*; *Assault Weapons and Large-Capacity Machines*, Brady United, <https://www.bradyunited.org/resources/issues/what-are-assault-weapons-and-high-capacity-magazines>.

The long-term psychological harm for survivors of school shootings and the numerous others who live

in daily fear of such shootings cannot be overstated. Students exposed to firearm violence in school are more likely to develop anxiety disorders, receive prescriptions for antidepressants, and suffer from substance abuse issues. *See Student Firearm Carrying*; Maya Rossin-Slater, *Surviving a School Shooting: Impacts on the Mental Health, Education, and Earnings of American Youth*, Stanford Institute for Economic Policy Research (June 2022), <https://siepr.stanford.edu/publications/health/surviving-school-shooting-impacts-mental-health-education-and-earnings-american>. This exposure is also linked to chronic absenteeism, repeating of grades, drops in enrollment, and lower test scores. *Id.*

People who suffer from domestic violence are similarly vulnerable to the ever-increasing threat of firearm violence. Domestic violence impacts people in all states, of all races, and in all socioeconomic classes, but it particularly impacts women. *See* Jamila K. Stockman et al., *Intimate Partner Violence and Its Health Impact*, 24 *J. Women's Health* 62 (2015). More than one third of women report abuse by an intimate partner. *Id.* There is a lethal nexus between domestic violence and the abuser's access to a firearm. Nearly six million women have reported that an intimate partner used a gun on them. *See* Everytown Research & Policy, *Guns and Violence Against Women*, Everytown Research (Nov. 20, 2024), <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/>. An abusive partner with access to a firearm is five times more likely to kill his victim. *Id.* At least once every 16 hours, a woman is fatally shot by a current or former intimate partner. Jennifer Mascia, *Domestic Violence*, *The Trace* (Feb. 9, 2016), <https://www.thetrace.org/2016/02/women-domestic-violence-death-statistics/>.

Firearm violence also harms unseen victims. It costs the United States an estimated \$557.2 billion each year. *See* EveryStat. \$12.6 billion of that amount is borne by taxpayers. *Id.* Victims' lost wages and reductions in productivity alone account for a loss of \$49 billion annually. *See* Business Leaders for Gun Safety, *The Impact of Gun Violence on Business in the U.S.*, Everytown Support Fund, <https://everytownsupportfund.org/initiatives/business-leaders/impact-of-gun-violence-on-business/>. Communities facing gun violence are less likely to be hubs for economic growth and commerce. *Id.* They have lower property values, open fewer businesses, and experience job loss at elevated rates. *Id.*

Gun dealers and manufacturers should be held responsible for negligent or criminal practices that contribute to these deeply troubling statistics. Some dealers repeatedly turn a blind eye to their obligations, fail to keep required records, allow guns to get "lost," and sell guns to straw purchasers. In 2023 alone, nearly 18% of completed federal firearms license (FFL) inspections uncovered violations of federal law. *See* *The Firearm Supply Chain Arms Criminals*, *The Smoking Gun*, <https://smokinggun.org/issue/arming-criminals/>. The most common violations are failing to maintain accurate inventory records, failing to complete required forms, failing to keep transaction records, and failing to report multiple sales of handguns. *Id.* Dealers often neglect to record the sales of guns or claim their records are missing. Between 2017 and 2021, nearly 100,000 crime guns could not be traced because of this problem. *Id.* One gun dealer in Arkansas "may have neglected to record" sales for thousands of guns and was personally responsible for 98% of the state's 2,951 missing guns in one year. *Id.*

Some licensed dealers fail to appropriately comply with required background checks. *See Inspection Reports by Violation*, The Trace, <https://projects.thetrace.org/inspections/violation/>. This allows guns to be placed in the hands of people with felony convictions, subject to domestic abuse restraining orders, or with a history of mental illness. *See Background Checks On All Gun Sales*, Everytown, <https://www.everytown.org/solutions/background-checks/>. Straw purchases of a firearm by an individual on behalf of someone else are the most common channel for guns to enter the illegal market. *See Trafficking & Straw Purchasing*, Giffords Law Center, <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing/>. Recent data suggests there are more than 30,000 attempted straw purchases every year and that gun dealers are willing to make gun sales under conditions that suggest a straw purchase. *Id.* One investigation revealed that 20% of firearm sellers were willing to sell guns when explicitly told the purchaser was buying the firearm for someone else. *See* Garen Wintemute, *Firearm Retailers' Willingness to Participate in an Illegal Gun Purchase*, 87 J. Urb. Health 865, 872 (2010).

Gun violence victims like those described in the stories below must be able to seek redress for their injuries. Petitioners' view of PLCAA and proximate cause would close the courthouse doors to individuals who are foreseeably harmed by gun companies' misconduct and allow such bad actors to operate with impunity.

A. Janet Delana

Janet Delana stood in a lightless room of her daughter Colby Sue Weathers' house. Colby had avoided Janet for

months, lost twenty pounds, and covered her windows with blankets. *People are watching me*, Colby told her mother.

Soon after, 38-year-old Colby moved back in with her parents in Wellington, Missouri. Her condition steadily deteriorated over the next year. Janet and her husband (Colby's father) Tex found a mental health clinic for their daughter. But doctors there could not agree on a diagnosis or a treatment plan. After one doctor changed Colby's medication yet again, she began to talk to herself. She raised her voice for no apparent reason, made strange gestures, and leveled confusing accusations at her parents. She sometimes ranted incoherently to Janet about nasal probes, and about hidden messages being disseminated to her through the local news.

One day in June 2012, Colby walked into the room where her parents were watching TV. She was holding a gun. Tex asked her where she got it. She said she bought it at Odessa Gun & Pawn, the same gun store in nearby Odessa where Tex bought his guns.

Tex took the gun from Colby. Janet, fearful that Colby was a danger to herself, started looking for ways to keep guns out of her daughter's hands. She called the local police. She called the FBI and ATF. And, desperate for an immediate solution, she called Odessa Gun & Pawn. She pleaded with the clerk on the line not to sell her daughter another weapon. She gave the clerk her daughter's name and social security number and described her recent erratic behavior. Janet hoped at the very least that the clerk would write the information down on a post-it and keep it by the register. But the clerk was not moved. He was running a business, he told her. He would make a sale to any customer who passed the required background check.

The gun store seller made good on that statement. Two days after that phone call, he sold Colby another gun. Colby drove the ten miles back to her parents' home, walked inside the house, saw her father sitting at his computer with his back to her, and shot and killed him. News outlets later reported that Colby killed her father because the voices in her head urged her to do it. Colby also intended to kill herself after shooting her father, but a gun malfunction spared her life.

Tex's death was heartbreaking for his family and their small Missouri community. Janet and Tex married at the age of 17. They spent every day together in their nearly 40-year marriage. Janet had to learn how to live without her husband while struggling to manage her family's grief and her daughter's incarceration.

Janet sued the gun store for selling her daughter a gun when it was on notice that Colby was suffering from a severe mental health crisis. The trial court dismissed. It ruled that PLCAA barred Janet's negligence claims and that Missouri law does not recognize a cause of action for negligent entrustment against sellers. The Missouri Supreme Court affirmed the dismissal of Janet's negligence claims under PLCAA, but unanimously reversed on the question of negligent entrustment. *See Delana v. CED Sales, Inc.*, 486 S.W.3d 316 (Mo. 2016). The court held Janet's claim that the store sold the gun to Colby "with knowledge that she would likely use the gun in a manner that would pose an unreasonable risk of physical harm to herself or others" precisely "fit[] within [PLCAA's] statutory definition" of negligent entrustment. *Id.* at 324. And nothing in Missouri common law precluded a plaintiff from bringing that claim against a seller. *Id.* at 325. The Missouri Supreme Court remanded the case.

Ultimately, the case settled before trial. The money from the settlement helps Janet make ends meet without Tex.

Janet is glad that the lawsuit got people talking about the need for accountability when a gun store turns a blind eye to its customers' mental health crises. She wants people to know that the gun shop made a \$58 profit from the killing of her husband. She wants people to balance that figure against the value of a human life.

B. Sabika Sheikh

On May 18, 2018, seventeen-year-old Santa Fe (Texas) High School student Sabika Sheikh was murdered—together with seven other students and two teachers—by a seventeen-year-old classmate using his parents' guns and ammunition he purchased from an online retailer that did not bother to check whether its customers were old enough to make such purchases legally.

Halfway across the world, Sabika's family was shattered. Sabika was a foreign exchange student from Karachi, Pakistan who had come to the United States as part of the State Department's highly selective Kennedy-Lugar Youth Exchange and Study Program. She was scheduled to return home from her ten-month stay in Santa Fe in less than three weeks. Instead, she returned to Karachi in a casket.

Sabika's family had rejoiced when she was accepted to the Kennedy-Lugar program and assigned to attend the local public high school in Santa Fe, Texas, a small town about 35 miles south of Houston. A bright and ambitious student with a love for math and a knack for forming

friendships, Sabika wanted to contribute to society in Pakistan. She dreamed of working for the civil service and helping fellow Pakistani women. She was thrilled about the opportunity to live and learn in the United States.

Sabika thrived in the United States, excelling in her studies and forming meaningful connections with her peers. Sabika's parents believed her time abroad would inspire her younger siblings and open doors for their futures. They never feared for her safety. They imagined life would be safer for her in the United States than in Pakistan. Unfortunately, they were wrong.

After Sabika's death, her family was consumed by grief. Her mother, Farah Naz, could not comprehend the loss of her eldest child, a daughter for whom she had so many hopes. Even now, more than six years later, the emotional wounds from that day remain devastatingly fresh. Every family gathering, every meal, every joyful moment is overshadowed by Sabika's absence. For Sabika's younger sister, Sania, the pain of losing her big sister is renewed every day. Even the act of eating an apple—Sabika's favorite snack—can trigger memories and cause fresh grief.

Sabika's parents joined a lawsuit brought by the relatives of several of the shooting victims against the shooter, his parents, and the online ammunition store that sold the shooter his ammunition without verifying his age, in violation of federal law. The court correctly rejected the ammunition seller's argument that PLCAA barred the plaintiffs' claims. That decision was affirmed on appeal. *See In re LuckyGunner, LLC*, No. 14-21-00194-CV, 2021 WL 1904703 (Tex. Ct. App. May 12, 2021); Order, No. 21-0463 (Tex. Feb. 18, 2022) (denying motion

for temporary relief and stay of proceedings). The fact that the underage customer committed the shooting did not negate the ammunition store's unlawful conduct in selling him ammunition.

The shooting victims' families subsequently reached a settlement with the ammunition sellers, which requires the sellers to verify customers' ages before future ammunition sales. Sabika's family is proud they could help bring about this positive change through litigation. But they will suffer the pain of her loss for the rest of their lives. "Gun violence doesn't just take lives," Sabika's mother says. "It shatters families, it steals futures, and it leaves wounds that never fully heal. We owe it to our children to create a safer world."

C. Guy Boyd and Denise Wieck

It wasn't until seventeen-year-old Guy Boyd was headed into surgery to have his right eye removed that anyone told him he had been shot.

On May 30, 2021, in Ann Arbor, Michigan, Guy was playing video games in an RV with his girlfriend and his best friends, Alex and Kyle. Sometime after midnight, Kyle carelessly took out a gun, pointed it at Guy, and shot him in the face. The bullet entered Guy's skull through his right eye. It split his eyelid in half, ricocheted off his orbital bone, and embedded in his brain. Pieces of the bullet penetrated his right temple and damaged his temporal lobe. Guy remembers his friends' panicked voices, the unbearable pain in his head, someone crying out "I love you, bro," and his groggy reply, unsure of exactly what had occurred.

In the dead of night, Denise Wieck, Guy's mother, awoke to the sound of her phone ringing. She could hear nothing but sobs on the other end. When she finally pieced together the words "Guy has been shot," her world crumbled.

Kyle, a minor, had bought a gun in unassembled pieces—commonly known as a "ghost gun"—from a website, without having to submit any proof of his age. His parents found the gun and took it away. So he bought another gun from the same site. He knew how to put it together because the site gave him the instructions.

For the first 72 hours, Guy's parents were left in devastating suspense as to whether their son would live or die. He survived. His doctors consider it a miracle. But although he survived, Guy is different now. He is anxious and depressed. He is on so many prescribed medications that he cannot keep track of them. He has poor coordination. His left arm is weaker than his right. And after two years of seizures of varying severity (once, his mother found him unconscious at the bottom of a staircase, foaming at the mouth, his complexion gray), doctors implanted a nerve stimulator, which sends a thirty-second stimulation to his brain every five minutes instructing it not to seize.

The stimulator works well, but the risk of seizure remains a constant. Once sociable, athletic, and interested in carpentry and the restaurant business, now Guy cannot drive a car to visit his friends, because of the risk that he will have another seizure. He cannot go to the gym by himself to exercise. He cannot go fishing without bringing someone else in the boat. His career aspirations and the

vibrant, independent life he had imagined for himself now seem out of reach.

Guy is suing the company that sold Kyle the unassembled firearm, in Michigan state court, alleging negligence, negligence *per se*, negligent entrustment, and a violation of the Michigan Consumer Protection Act. These claims, other than the claim for negligence *per se*, survived the ghost gun seller's motion to dismiss. *See Order, Boyd v. Not an LLC et al.*, No. 24-000304-NP (Mich. Trial Ct., Washtenaw Cnty, July 24, 2024). PLCAA did not apply because the company that unlawfully sold the teenager the ghost gun that injured Guy did not obtain a federal firearms license. However, as the court rightly recognized, a company's negligent sale of a ghost gun to a minor could be a proximate cause of Guy's injuries, even though that minor's accidental discharge of the ghost gun may be another.

Guy brought the action because he wants to ensure that indiscriminate sellers cannot continue to put guns into the hands of people who are not permitted to have them (such as convicted felons, domestic abusers, and minors) without facing consequences for the foreseeable violence and harm they cause.

Denise and Guy refuse to let their pain and their loss be in vain. They founded LIFE (Lock It For Everyone), a nonprofit dedicated to gun safety education and youth empowerment for gun violence prevention. Through community workshops, they teach families about the importance of proper gun storage and the dangers of untraceable ghost guns. As Denise explains, "Our goal is

to turn tragedy into advocacy, ensuring no other family has to endure what we have.”

D. Mia Tretta

On the morning of November 14, 2019, fifteen-year-old Mia Tretta was on the quad of her Santa Clarita, California high school, talking to her best friend Dominic Blackwell and other friends about an upcoming Sadie Hawkins dance and the big test in their Spanish class. All of a sudden, Mia heard a loud pop, and her ears began to ring. A sixteen-year-old had walked to the quad with a ghost gun and opened fire. The shooter shot Mia in the stomach, killed two students—fourteen-year-old Dominic and fifteen-year-old Gracie Anne Muehlberger—and wounded others, before turning the gun on himself.

The entire attack happened in the span of eight seconds. Mia got up confused, knowing she had to run away. She told herself it was just a drill and ran up two flights of stairs. Luckily, Mia found two peers who took her to the closest classroom.

That was when Mia realized she had been shot. Mia remained in the classroom for fifteen minutes while a student put pressure on the gunshot wound to stop the bleeding. Mia was able to get on the phone with her mother, who went to the school immediately. Mia’s mom was with her when she was airlifted to a hospital with a high-level trauma center. Mia spent the next six days there, before being transferred to a children’s hospital where she stayed for another five days. For the first few days, she could not feel her legs. She was unable to walk. For about three days she had to endure a wound vacuum—an extremely painful process designed to remove any excess fluid. The bullet

wound would have to heal from the inside out. Doctors had to ensure she didn't go into shock because the bullet was in such a vulnerable position.

Mia also had acoustic blast damage and a hole in her eardrum from standing so close to the shooter. She continues to take medicine every day to manage her nerve pain and lives with four bullet fragments inside her.

Mia's sense of safety, self, and innocence was lost. That day was not only the day she got shot but the day she lost her best friend, Dominic. Mia begged her nurses to let her leave the hospital early to attend Dominic's funeral.

Even after returning to school in December 2019, Mia remained in shock for months. Teachers and students were also deeply impacted. Even the pop of a potato chip bag scared people at school.

The shooter used a ghost gun his father had assembled from a gun kit. The father was prohibited by law from possessing firearms at the time he bought the gun kit. He had previously been arrested in connection with alleged physical abuse of his daughter and had a psychiatric episode during which he was found wandering the street intoxicated. After that incident, police took him to a psychiatric hospital for review pursuant to California law. That meant he was prohibited from possessing firearms. Police subsequently confiscated 42 guns from his home and destroyed them. Despite that, he ordered from a ghost gun dealer the gun his son used in the shooting.

Mia, through her guardian ad litem, brought a lawsuit against, *inter alia*, the owner and operator of the gun dealer, alleging they sold unfinished ghost gun kits that

were easy to assemble, and illegally and negligently sold a kit to the shooter's father without taking reasonable measures to ensure he was eligible to possess a firearm. Mia brought claims for negligence, negligent entrustment, and public nuisance. The defendant's motion for summary judgment was denied because, among other things, the court determined that "the sale of the firearm without any regard to the propriety of the sale to potentially unqualified purchasers, who may engage in criminal behavior, established triable issues of material fact on the issue of causation." *Tretta v. Osman*, No. 20STCV48910, 2022 WL 3334319, at *3 (Cal. App. Dep't Super. Ct. June 29, 2022). The court also held that since the defendant had conceded he was not a Federal Firearms License holder, PLCAA was not applicable. *Id.* at *2.

Mia wants this Court to know that nobody deserves to have a bullet enter their body, but it can happen anywhere when there is no accountability for unlawful or negligent gun sales. Before she was shot, she had never heard of a ghost gun. Now, she is a completely different person, physically and emotionally, because of the harm the unlawful commerce in guns caused her to suffer. Mia lives with the uncertainty of never knowing when gun violence will happen again.

E. Kayla Brady

On November 15, 2019, Jacob Mace shot himself in his truck in a parking lot near the Walmart store where he worked. He was found dead two hours after buying the shotgun and a box of shells from that store. *Brady v. Walmart Inc.*, 2022 WL 2987078 at *2 (D. Md. July 28, 2022).

Jacob had been diagnosed with major depressive disorder and borderline personality disorder that summer. *Id.* at *1. In early November, Jacob texted a coworker he was suffering from “crippling” depression and had attempted suicide just days earlier. *Id.* He said he would try again, either by slitting his wrists or shooting himself. *Id.* The coworker showed those texts to Jacob’s supervisor, who considered adding Jacob to the store’s do-not-sell list for firearms but never did. *Id.*

On November 9, Jacob was hospitalized for three days. *Id.* He had previously missed work for mental health-related hospitalizations and provided documentation of them to his supervisor. *Id.* After his discharge from this hospitalization, Jacob messaged another Walmart colleague who worked at the gun counter, to ask for information about the store’s cheapest available shotgun. *Id.* On November 15, 2019, back at work again, Jacob clocked out for an early lunch break, approached the store’s gun counter, and asked the coworker to sell him a shotgun and ammunition. *Id.* at *2. The transaction was approved by a Walmart manager. *Id.* It took less than fifteen minutes. *Id.*

Jacob’s widow Kayla Brady sued Walmart, alleging negligence, negligent entrustment, and creation of a public nuisance. *See Brady v. Walmart Inc.*, 2022 WL 2987078 (D. Md. July 28, 2022).

She alleged that Jacob’s possession of a firearm violated a Maryland statute prohibiting possession “by a person that ‘suffers from a mental disorder,’” and that Walmart aided and abetted Jacob’s violation by selling him a firearm despite knowing of his mental health crisis. *Id.*

at *6. The District Court ruled that her case fell within PLCAA's predicate exception. The Court explained that "PLCAA's purpose . . . sought to exclude cases of this type from its ambit." *Id.* at *8. The Court also held Kayla adequately alleged proximate cause, because Jacob's coworkers and supervisor had sufficient knowledge to make it entirely "foreseeable" to Walmart that Jacob would shoot himself "using the firearm sold to him." *Id.* at *16. The Court reaffirmed these legal conclusions when it denied Walmart's motion for summary judgment. *See Brady v. Walmart Inc.*, 2024 WL 2273382 (D. Md. May 20, 2024).

F. Daniel Williams

Daniel Williams was a high school student in Buffalo, New York when he was shot in the abdomen by a man who apparently misidentified him as a rival gang-member. The Hi-Point 9mm semiautomatic pistol used to shoot him was acquired through a straw purchaser in Ohio and sold to the shooter in Buffalo. *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 145 (N.Y. App. Div. 4th Dep't 2012). Thankfully, Daniel survived.

Daniel filed an action in New York state court against the pistol's manufacturer, the wholesaler, and the dealer that sold the pistol to the straw purchaser. The trial court dismissed the case pursuant to PLCAA but the appellate court reversed, finding that Daniel's claims fell within the predicate exception. *Id.* at 147. As Daniel pleaded in his complaint, the manufacturer, wholesaler, and dealer were not innocent bystanders. *Id.* at 148. They were intentional participants in a lucrative scheme to sell guns to criminals. The dealer (who was also a high-level officer

of the wholesaler, which was the lone wholesaler for the manufacturer) sold at least 140 pistols—including 87 at a single gun show—to the straw purchaser and the criminal dealer he worked for. *Id.* at 150-151. The two men shopped together, with the criminal dealer selecting the firearms to purchase and the straw purchaser filling out the necessary paperwork. *Id.* at 150. They always paid cash. *Id.*

In light of this obvious conduct, and the fact that the manufacturer and wholesaler had been warned by ATF that thousands of their guns were being used in crimes, the court found Daniel adequately alleged that the defendants knowingly violated federal gun laws by selling to the straw purchaser and that those violations were the proximate cause of his injury. *Id.* at 149-151.

G. Victims of the Sandy Hook Elementary School Mass Shooting

On December 14, 2012, a shooter killed twenty children and six adults at Sandy Hook Elementary School. He used an AR-15 style Bushmaster XM15-E2S semiautomatic assault rifle and fired approximately 154 shots. The shooting took approximately five minutes.⁸

Plaintiffs, administrators of the estates of nine victims, brought suit under Connecticut law against the manufacturer, distributor, and retailer that made and sold the shooter's assault rifle. Plaintiffs alleged, *inter*

⁸ N.R. Kleinfeld et al., *Newtown Killer's Obsessions, in Chilling Detail*, N.Y. Times (Mar. 28, 2013), <http://www.nytimes.com/2013/03/29/nyregion/search-warrants-reveal-items-seized-at-adam-lanzas-home.html>.

alia, the defendants knowingly marketed, advertised, and promoted the weapon used in the shooting for civilian use for military-style combat missions in violation of the Connecticut Unfair Trade Practices Act, Connecticut General Statutes §42-110a, *et seq.* (“CUPTA”). *Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 272 (Conn. 2019). Plaintiffs alleged this militaristic advertising influenced the shooter’s actions and was a substantial factor in causing the mass shooting. They alleged that the shooter selected the XM15-E2S over less lethal firearms in his arsenal (including at least three handguns, one shotgun, two bolt action rifles and three swords) in part because of the weapon’s “marketed association with the military.” *Id.* at 278. The defendants allegedly advertised the gun by, among other things, touting the “military proven performance” of firearms like the XM15-E2S, claiming elite branches of the U.S. military used the AR-15, and depicting a close up of an AR-15 with the slogan, “Forces of opposition, bow down. You are single-handedly outnumbered.” *Id.* at 277-78.

The Connecticut Supreme Court held that plaintiffs’ claim under CUPTA met the PLCAA predicate exception because plaintiffs alleged a knowing violation of a state statute applicable to the sale or marketing of the firearm. *Id.* at 325. This Court denied certiorari. *Remington Arms Co. LLC v. Soto*, 140 S. Ct. 513 (2019). The victims’ families ultimately settled for \$73 million.⁹

⁹ Rick Rojas et al., *Sandy Hook Families Settle With Gunmaker for \$73 Million Over Massacre*, N.Y. Times (Feb. 15, 2022), <https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html>.

H. Victims of the Harvest Music Festival Mass Shooting

The deadliest mass shooting in U.S. history¹⁰ lasted eleven minutes and left 58 people dead. The shooter fired indiscriminately from his perch, thirty-two floors above the crowd of 22,000 attending the last night of the Route 91 Harvest Music Festival in Las Vegas. *Prescott v. Slide Fire Solutions, LP*, 410 F.Supp.3d 1123, 1128 (D. Nev. 2019). His weapons of choice were semiautomatic rifles he had equipped with “bump stocks” (*id.* at 1129), attachments that allow shooters to “fir[e] semiautomatic firearms at rates approaching those of some machineguns.” *Garland v. Cargill*, 602 U.S. 406, 411 (2024). “All the shooter had to do was pull the trigger and press the gun forward. The bump stock did the rest.” *Id.* at 430 (Sotomayor, J., dissenting).

The survivors of the shooting sued the bump stock manufacturer, Slide Fire, for violation of the Nevada Deceptive Trade Practices Act. *See Prescott*, 410 F.Supp.3d at 1130. The survivors alleged Slide Fire initially told the ATF that the bump stocks were meant to make guns easier to use for people who lacked mobility in their trigger fingers. *Id.* at 1129. But when Slide Fire took bump stocks to market, it advertised them to the general public as “intended for consumers who seek a firearm that mimics a fully automatic weapon,” “despite ‘indicia that [they] would be used, with firearms and ammunition, for unlawful purposes.’” *Id.* The survivors also alleged Slide

¹⁰ Kalhan Rosenblatt, *Las Vegas Shooting is Deadliest in Modern U.S. History*, NBC News (Oct. 2, 2017), <https://www.nbcnews.com/storyline/las-vegas-shooting/las-vegas-shooting-deadliest-modern-u-s-history-n806486>.

Fire held out its bump stocks as “ATF approved” when in fact ATF had determined they were not firearms and therefore were outside ATF regulation. *Id.* at 1139.

Slide Fire moved to dismiss the action as barred by PLCAA. But the Nevada District Court correctly rejected that argument and held the lawsuit met PLCAA’s predicate exception. *Id.* at 1134. Plaintiffs had not only adequately alleged that Slide Fire’s misrepresentations about ATF approval violated the Nevada Deceptive Trade Practices Act, they had also adequately alleged proximate causation. The marketing enticed people like the Las Vegas shooter to buy bump stocks from Slide Fire, and Slide Fire’s “promot[ing] the bump stock device for its high rate-of-fire capabilities” made it foreseeable to Slide Fire that the accessory would be “‘misused’ in the manner resulting in Plaintiffs’ injuries.” *Id.* at 1140. After withstanding the motion to dismiss, the matter settled. *See Order, Prescott v. Slide Fire Solutions, LP*, 18-cv-00296-GMN-BNW (Sept. 17, 2020) ECF 84.

* * *

Just as courts nationwide have appropriately permitted claims of unlawful or negligent commerce in firearms to proceed to discovery or trial, this court should too. The victims are entitled to redress. PLCAA does not preclude that.

II. THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT PERMITS CLAIMS AGAINST FIREARM SELLERS AND MANUFACTURERS WHO ACT UNLAWFULLY

PLCAA explains that its purpose is to “prohibit” civil actions against licensed manufacturers or sellers of firearms or ammunition “for the harm *solely* caused by the criminal or unlawful misuse of [those products] by others when the product functioned as designed and intended.” 15 U.S.C. § 7901(b)(1) (emphasis added). It does not bar *all* “civil liability action[s]” against licensed firearms sellers or manufacturers for harm resulting from the criminal or unlawful misuse of their products by third parties. It bars only “qualified civil liability action[s]”—namely, actions against a manufacturer or seller of a firearm or ammunition as defined in 15 U.S.C. § 7903(2) and (6), for damages (or relief) “resulting from the criminal or unlawful misuse of a qualified product by the person or third party” (15 U.S.C. § 7905(A))—where the defendant seller or manufacturer does not engage in an unlawful act or make an omission that contributes to the harm. *See* 15 U.S.C. § 7902(a).

PLCAA expressly provides several remedies to victims of gun violence. *See* 15 U.S.C. § 7903(5)(A)(i)-(vi). For example, an injured plaintiff may bring an action against a seller for negligent entrustment or negligence *per se*, *see* 15 U.S.C. § 7903(5)(A)(ii), or for breach of contract, breach of warranty, or product liability, *see* 15 U.S.C. § 7903(5)(A)(iv)-(v). The predicate exception permits a plaintiff to bring an action against a manufacturer or seller who “knowingly violated a State or Federal statute

applicable to the sale or marketing of the product, [where] the violation was a proximate cause of the harm for which relief is sought.” 15 U.S.C. § 7903(5)(A)(iii). This exception includes “any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under [federal law].” 15 U.S.C. § 7903(5)(A)(iii)(II). Such manufacturers and sellers cannot stand behind PLCAA’s shield when they knowingly put firearms into the hands of people who are prohibited from carrying the firearms in the first place, and those people point them at innocent victims and pull the trigger. The facts alleged in Mexico’s complaint state a claim under this exception.

PLCAA’s legislative history confirms what the language of the statute makes clear. For example, the Act’s chief Senate sponsor, Senator Larry Craig, explained that PLCAA “does not protect firearms or ammunition manufacturers, sellers, or trade associations from any other lawsuits based on their own negligence or criminal conduct.” 151 Cong. Rec. S9061, S9099 (daily ed. July 27, 2005). Other sponsors of the Act agreed. Senator Orin Hatch said “this bill carefully preserves the right of individuals to have their day in court with civil liability actions where negligence is truly an issue.” 151 Cong. Rec. S9077 (daily ed. July 27, 2005). Senator Jeff Sessions explained that “[m]anufacturers and sellers are still responsible for their own negligent or criminal conduct.” 151 Cong. Rec. S8911 (daily ed. July 26, 2005).

III. THE FIRST CIRCUIT CORRECTLY APPLIED LONGSTANDING PRINCIPLES OF AIDING AND ABETTING AND PROXIMATE CAUSE TO PERMIT PLAINTIFF TO SUE FIREARMS MANUFACTURERS AND SELLERS WHO ACT UNLAWFULLY

This appeal presents two questions: first, whether Mexico plausibly alleged that Petitioners aided and abetted unlawful firearms sales to traffickers for Mexican drug cartels; and second, whether those unlawful sales proximately caused Mexico harm. The First Circuit correctly applied traditional standards for aiding and abetting claims and proximate cause to hold that Mexico’s allegations are sufficient to survive Petitioners’ motion to dismiss. This Court should affirm.

A. The First Circuit Correctly Applied Aiding and Abetting Law

This Court recently explained that “the essence of aiding and abetting” is “participation in another’s wrongdoing that is both significant and culpable enough to justify attributing the principal wrongdoing to the aider and abettor.” *Twitter v. Taamneh*, 598 U.S. 471, 504 (2023). This standard is satisfied when the defendant provides “knowing and substantial assistance to the primary tortfeasor.” *Id.* at 491. Courts view these “twin requirements as working in tandem, with a lesser showing of one demanding a greater showing of the other.” *Id.* at 491-92. “[T]he knowledge and substantial assistance components should be considered relative to one another as part of a single inquiry designed to capture conscious and culpable conduct.” *Id.* at 503-04.

The First Circuit correctly applied these principles when it found that Mexico adequately states a claim that Petitioners “have been aiding and abetting the sale of firearms by dealers in knowing violation of relevant state and federal laws.” Pet. App. 300a. As the First Circuit explained, Mexico’s complaint alleges far more than Petitioners’ “knowing indifference to the downstream illegal trafficking of their guns into Mexico.” *Id.* It alleges that Petitioners know exactly who waits downstream and divert the waters accordingly. Mexico alleges that Petitioners are “aware of the significant demand for their guns among the Mexican drug cartels, that they can identify which of their dealers are responsible for the illegal sales that give the cartels the guns, and that they know the unlawful sales practices those dealers engage in to get the guns to the cartels.” *Id.* at 310a. Mexico also alleges that, “even with all this knowledge, and even after warnings from the U.S. government, [Petitioners] continue to supply the very dealers that they know engage in straw sales and large-volume sales to traffic guns into Mexico,” and they design and market their guns in ways that they know the cartels want. *Id.* Together, their revenue from this illegal market is approximately \$170 million per year. *Id.* The First Circuit correctly found these allegations are enough to state a claim that Petitioners “engage in all this conduct *in order to* maintain the unlawful market in Mexico, and not merely in spite of it,” *id.*, and to place Petitioners squarely within PLCAA’s predicate exception.

B. The First Circuit Correctly Applied the Law of Proximate Cause

Proximate cause is “a flexible concept” that “generally refers to the basic requirement that . . . there must be some direct relation between the injury asserted and the

injurious conduct alleged.” *Paroline v. United States*, 572 U.S. 434, 444 (2014). It “is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct,” and “thus serves . . . to preclude liability in situations where the causal link between the conduct and result is so attenuated that the consequence is more aptly described as a mere fortuity.” *Id.* at 445.

The First Circuit correctly applied these principles when it found that Mexico plausibly alleges that Petitioners’ conduct that is not protected by PLCAA proximately caused Mexico’s injuries. As the Court of Appeals explained, “Mexico’s claim of proximate cause is straightforward: [Petitioners] aid and abet the trafficking of guns to the Mexican drug cartels, and this trafficking has foreseeably required the Mexican government to incur significant costs in response to the increased threats and violence accompanying drug cartels armed with an arsenal of military-grade weapons.” Pet. App. 310a. The First Circuit rejected the notion that the “chain of causation” is too attenuated. *Id.* It found “the Mexican government’s expenditure of funds to parry the cartels is a foreseeable and direct consequence” of a dealer’s knowing aiding and abetting of unlawful firearm sales to traffickers for Mexican drug cartels. *Id.* at 311a.

The causal chain Mexico alleges is not and cannot be broken by the “intervening criminal act” of straw buyers because Mexico’s “complaint alleges not only that it was foreseeable that [Petitioners’] guns would end up in the hands of Mexican cartels, but also that [Petitioners] actually intended to bring about that result.” *Id.* at 313a. As the Court of Appeals found, Mexico adequately alleges that it “directly and uniquely” bore the costs of, for example, “increased law enforcement personnel

and training to mitigate the flow of illegal weapons and to combat drug cartels,” which are the “direct result of [Petitioners’] alleged facilitation of gun trafficking to the Mexican cartels.” *Id.* at 315a.

CONCLUSION

This Court should affirm the First Circuit’s decision and should preserve the right of victims of firearms violence to redress for unlawful commerce in arms and pursuant to PLCAA’s exceptions.

Respectfully submitted,

MICHAEL J. DELL

Counsel of Record

SHAKED SIVAN

HARRY P. MORGENTHAU

DREW ZAGAMI

KATHARINE RUBERY

KRAMER LEVIN NAFTALIS &

FRANKEL LLP

1177 Avenue of the Americas

New York, New York 10036

(212) 715-9100

mdell@kramerlevin.com

Counsel for Amicus Curiae

January 17, 2025