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

REPLY BRIEF FOR PETITIONERS

ANDREW E. LELLING
JONES DAY
100 High St.
21st Floor
Boston, MA 02110

KELLY HOLT RODRIGUEZ
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402

NOEL J. FRANCISCO
Counsel of Record
ANTHONY J. DICK
ERIC WALKER
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001
(202) 879-3939
njfrancisco@jonesday.com

Counsel for Petitioner Smith & Wesson Brands, Inc.
(Additional Counsel Listed in Signature Block)

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INTRODUCTION

Mexico's brief confirms that it would eviscerate PLCAA by allowing exactly the type of claims the Act sought to bar. It would make the predicate exception swallow the rule, destroying the immunity that Congress enacted.

As for proximate cause, Mexico asserts that its suit is a "textbook" application of this ancient doctrine. But usually when something is textbook, one can find an example of it happening before. Yet Mexico cannot unearth a single case ever finding proximate cause on anything like the attenuated chain of causation alleged here. Mexico's sole retort is to try to transform the federal standard for proximate cause into a foreseeability-alone test. But this Court has repeatedly rejected that maneuver, consistently holding that proximate cause demands a *direct* connection. And no case is more *indirect* than this.

As to aiding and abetting, Mexico claims this is a "classic" case of criminal accomplice liability. But for Mexico to be right, every law-enforcement agency in the country would have had to overlook *for decades* an obvious criminal enterprise carried out by one of the most scrutinized industries in the nation. Needless to say, Mexico has not uncovered a decades-long criminal conspiracy hiding in plain sight. It just gets the law wrong. When a company engages in routine business practices to supply lawful products to market, it is not responsible for downstream crimes involving those products. Mere generalized knowledge that some unknown fraction of the products will be used or sold illegally does not make the supplier a felon.

ARGUMENT

I. THERE IS NO PROXIMATE CAUSE.

Mexico's brief is a frontal assault on this Court's precedent and the traditional rule of proximate cause PLCAA adopted. This Court has long held proximate cause requires a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). That bars liability when a "new and independent cause interven[es] between the wrong and the injury." *Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876). Even if intervening acts are foreseeable, "foreseeability alone does not ensure the close connection that proximate cause requires." *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202 (2017).

Mexico argues the exact opposite. It says that "foreseeability is the crux of proximate cause"—no matter how attenuated the causal chain, or how many independent third-party crimes intervene. Resp. 34, 49. That is wrong. And without that defective premise, Mexico's suit collapses. It never argues its causal theory is somehow direct, because it is not.

A. Proximate Cause Means Direct Cause.

1. Mexico is wrong that "foreseeability is the crux of proximate cause." Resp. 16. This Court has repeatedly held that *directness* is the test. A plaintiff must show a "sufficiently 'direct relationship'" between the defendant's unlawful conduct and the alleged injury. *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 12 (2010) (plurality); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 460-61 (2006); *Holmes*, 503 U.S. at 268. And "foreseeability alone does not ensure [that] close connection." *Bank of Am.*, 581 U.S. at 202.

Mexico insists foreseeability is the test, and that the directness rule just bars "derivative injuries." Resp. 43. But this Court has never drawn that artificial distinction. The principle is that the law "does not attribute remote consequences to a defendant." *S. Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918); *see Anza*, 547 U.S. at 461 (asking if violation "directly" led to injury); *Hemi*, 559 U.S. at 9-10 (asking whether the connection is too "remote," "contingent," and "indirect"); *Holmes*, 503 U.S. at 268-69 (same). A claim can be too indirect because the injury is derivative, *or* because independent intervening acts sever the chain. *See Anza*, 547 U.S. at 458-61. Either way, the fundamental inquiry is the same: Is there a "direct relationship" between the defendant's unlawful action and the injury? *Hemi*, 559 U.S. at 15. *See also Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 239 n.4 (2d Cir. 1999) (injuries "remote[] in time or space" can be "indirect" even if not "derivative").

Indeed, if Mexico were right about foreseeability, the "derivative injury" cases would make no sense. Derivative injuries are often quite foreseeable. It is, for example, eminently foreseeable that a tort victim's landlord could lose rent money if the victim is injured. *Apple Inc. v. Pepper*, 587 U.S. 273, 291 (2019) (Gorsuch, J., dissenting). Or that a city could lose tax revenue due to a business's deception of state regulators. *Hemi*, 559 U.S. at 11. Or that subprime mortgages might indirectly harm the public fisc. *Bank of Am.*, 581 U.S. at 193-94. In each of these cases, proximate cause fails not for lack of *foreseeability*, but for lack of *directness*.

Mexico cannot explain why derivative injuries defeat proximate cause despite foreseeability, but intervening third-party acts do not. Mexico suggests that with derivative injuries, there are more fitting plaintiffs. Resp. 41-42. But with intervening third-party actors, there are more appropriate *defendants*.

Mexico cites nothing for its gerrymandered view that directness is solely about derivative injuries, not intervening third-party acts. It quotes Justice Thomas in *Anza* (at 34), but in that passage he was simply making the point that hard-to-ascertain damages are not *necessarily* indirect, even if they are more likely to be. 547 U.S. at 466 (Thomas, J., concurring). Entirely true. But as Justice Thomas also affirmed, injuries still must be "direct" to pass muster. *Id.*; *see also Bank of Am.*, 581 U.S. at 212-13 (Thomas, J., concurring and dissenting in part); *Hemi*, 559 U.S. at 9 (same) (joined by Justice Thomas).

Of course, none of this is to say foreseeability is irrelevant. As *Hemi*'s author put it, "foreseeability … has long been an *aspect* of proximate cause." *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 717 (2011) (emphasis added). Foreseeability is thus "necessary" for proximate cause, not "sufficient." *General Motors, LLC v. FCA US, LLC*, 44 F.4th 548, 561 n.7 (6th Cir. 2022) (Larsen, J.). Indeed, "substituting the foreseeability test, in place of finding the existence of a direct injury, is error," because "proximate cause requires that both be present." *Laborers Local 17*, 191 F.3d at 236.

2. Mexico is also wrong to say that Petitioners' view of proximate cause would have PLCAA's predicate exception "serve[] no purpose," because third-party

crimes would "*always* cut off the causal chain." Resp. 46. Not so. As Petitioners explained (at 24-25, 30-31), only "independent" third-party acts break the chain of causation. *Milwaukee*, 94 U.S. at 475; *Hemi*, 559 U.S. at 15 ("independent actions"); *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 658 (2008) ("independent factors"); *Holmes*, 503 U.S. at 269 ("other, independent, factors"). If third-party crimes are not *independent*, such as where the defendant cooperates with the criminals or breaches a special duty to protect the plaintiff against them, they do not defeat proximate cause. For instance, in the PLCAA context, if a dealer criminally cooperates with a buyer to pick out the best firearm to rob a bank, there is no *independent* intervening act, and the dealer may be liable for harms that follow.

The predicate exception thus ensures firearm companies are not immune when they do not act *independently of*, but *jointly with*, third-party criminals. In that situation, they are both treated as direct causes. And that, in turn, explains why injuries under PLCAA can have *multiple* proximate causes. *See* Resp. 46-47. But none of that alters the rule that *independent* third-party crimes sever causation. Mexico never claims Petitioners were directly involved in the multiple layers of crimes that allegedly caused its injuries, or that Petitioners owed some special duty to protect Mexico from those crimes. Traditional proximate-cause principles thus clearly foreclose Mexico's claims.

Mexico is also wrong to say Petitioners' rule would allow sellers to evade liability by "find[ing] middlemen" to commit crimes. Resp. 18. If a seller coordinates with a middleman to commit a crime, they

are part of the same joint scheme and there is no *independent* intervening act to sever causation. Both can be civilly liable as proximate causes of resulting harms. Moreover, any company that illegally sells a firearm can be *criminally* prosecuted, have its license revoked, and its business destroyed. Respecting the limits of proximate cause for civil liability thus in no way licenses misconduct by the industry.

3. Instead of the traditional rule requiring directness, Mexico favors a modern academic view, embraced by some treatises, that would eschew "formalism" for a flexible foreseeability standard. *See, e.g.*, Restatement (Third) of Torts, § 34 (2010); *but see SEIU v. Philip Morris Inc.*, 249 F.3d 1068, 1070 (D.C. Cir. 2001) (Second Restatement required both "foreseeability" and "direct[ness]").

Whatever the merits of the flexible modern view, it is not the traditional view of proximate cause this Court has recognized, or what Congress enacted in PLCAA. PLCAA's objective was to ensure firearm companies would not be "liable for the harm caused by those who criminally or unlawfully misuse firearm products." 15 U.S.C. § 7901(a)(5). Congress expressly rejected the novel "expansion" of "liability" wrought by some courts, instead opting for the traditional view of proximate cause that existed for "hundreds of years [at] the common law." *Id.* § 7901(a)(7). It recognized that "the relationship between a tortious act and actual injury historically must be direct, not remote." H.R. 109-124, at 11-13 (2005) ("House Report") (citing *Holmes*, 503 U.S. at 268). And it sought to combat the "infinite flexibility of the 'foreseeability' doctrine," which could "crippl[e]" the industry. *Id.* at 11-13; U.S. House of Reps. Amicus Br. 12.

Congress thus had the same understanding this Court did the year PLCAA was enacted: The "common-law foundations" of proximate cause impose a "directness requirement." *Anza*, 547 U.S. at 457 (citing *Holmes*, 503 U.S. at 268). That understanding formed the "backdrop against which Congress" acted. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487 (2005).

The view of proximate cause Congress enacted in PLCAA has a long pedigree. Over a century ago, Justice Holmes recognized that the seller of a firearm is not "answerable for assaults committed with pistols bought of him," even though he "know[s] the probability that, sooner or later, someone will buy [one] for some unlawful end," because it is "well established" that "every one has a right to rely upon his fellow-men acting lawfully," and is thus not liable for independent crimes committed by others. Holmes, *Privilege, Malice, and Intent*, 8 HARV. L. REV. 1, 10 (1894). Mexico has no authority going back nearly so far—much less "hundreds of years," 15 U.S.C. § 7901(a)(7).

Indeed, Mexico's view would ignore the key statutory context because it would bar virtually *none* of the suits that prompted the Act. As Congress knew, it is certainly *foreseeable* that a "small percentage" of firearms will be used in crimes—just as Budweiser can foresee underage drinking. *See* House Report, at 24-26. That was the exact premise of the suits Congress sought to stop. *E.g.*, *City of Bos. v. Smith & Wesson*, 2000 WL 1473568, at *15 (Mass. Super. July 13, 2000) (allowing claim for "foreseeable" harms). And since Congress was trying to *stop* those lawsuits, it would make no sense to read the law to *allow* them. *See Fischer v. United States*, 603 U.S. 480, 498 (2024)

(rejecting reading "inconsistent with the context from which the statute arose," given the problem the law "was enacted to address"). Mexico says Congress's sole concern was protecting companies acting "lawfully." Resp. 47. But Congress added proximate cause as a separate check, *even if* a violation is alleged.

4. In any event, even if PLCAA adopted the modern academic view, that still would not save Mexico. At most, it would allow liability with *one* layer of independent intervening action. But Mexico cannot cite any case or treatise endorsing anything like here, with *multiple* layers of independent crimes across an international border to harm a foreign sovereign.

Mexico's best case is a 4-3 decision from Florida, involving a plaintiff harmed by a thief who stole and crashed a rental car the company had left with the key in the ignition in a "high-crime area." Resp. 36 (citing *Vining v. Avis Rent-A-Car Systems, Inc.*, 354 So. 2d 54 (Fla. 1977)). As the majority recognized, that decision was a *departure* from "the traditional approach" to proximate cause. *Id.* The dissent criticized the majority for its "fundamental change," since a car owner traditionally "is not liable for the torts committed by a thief who steals the car." *Id.* at 56 (Boyd, J., dissenting). *See* Gun Owners of America Amicus Br. 24-25. But even under the majority's reasoning, Avis was liable only for the immediate harms caused by a *single* intervening third party. The majority did not suggest the company would have been liable if, for example, a thief had stolen the car and sold it to a smuggler, who then drove it across the border and gave it to a gang of Mexican criminals, who then used it to rob the Mexican National Bank. That, however, is what Mexico effectively alleges here.

The other cases Mexico cites are even farther afield. One involved an employer breaching a "duty" to its employee to "make reasonable provision" to protect her from criminal conduct—the exact sort of "special relationship" Petitioners flagged. *Lillie v. Thompson*, 332 U.S. 459, 462 (1947); Pet. Br. 25. Mexico says the "special relationship" cases are just about duty, not causation. Resp. 46 n.7. But duty and proximate cause are linked, as Congress understood. *See* House Report, at 8 (companies not liable for third-party crimes given "absence of special relationship"); Prosser and Keeton on Torts § 42, at 273-75 (5th ed. 1984) ("It is quite possible to state every question which arises in connection with 'proximate cause' in the form of a single question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur?"). After all, both proximate cause and duty address where to draw the line of legal responsibility. And where one has a special duty to protect another against third-party harm, he can be treated as the proximate cause of that harm.

Mexico also cites *Petition of Kinsman Transit Co.*, 338 F.2d 708 (2d Cir. 1964). But that case did not involve independent criminal conduct at all. Instead, it was about apportioning fault across two parties who were both responsible for a single bridge crash. *Id.* And there, Judge Friendly endorsed the very principle that dooms Mexico's complaint here: "[T]here must be a terminus somewhere, short of eternity, at which the second party becomes responsible in lieu of the first." *Id.* at 722.

Against all this, it is unsurprising that even Mexico's modern treatises do not come close to blessing a view of foreseeability that would allow

liability through *multiple* layers of independent third-party conduct. None cites any case allowing that. Much less do they endorse Mexico's extravagant theory—not just resting on multiple tiers of independent crimes, but stretching over a foreign border and harming a foreign sovereign. Even the most aggressive treatises recognize that "courts [should] be loathe to extend [] liability" for intervening crimes that do not "immediately" follow the defendant's own acts. Third Restatement, *supra*, § 29.

Meanwhile, the treatises begrudgingly recognize some cases still apply the traditional rule that independent intervening acts break causation. *See* Dobbs, *The Law of Torts* § 209 & n.12, n.19 (2d ed. 2024). Mexico is thus wrong that the treatises say the traditional rule has been "rejected everywhere." Resp. 44. In fact, the treatises say that courts have rejected the notion that the "last human wrongdoer" is the "sole proximate cause" of injury. *Id*. Petitioners agree. Injuries can indeed have multiple proximate causes, as when they are caused by coordinated parties acting in sequence. If a seller cooperates with a third-party criminal, there is no *independent* intervening act to break the chain. *That* is the traditional rule long embraced by this Court and embodied in PLCAA.

5. Mexico makes little attempt to rely on PLCAA's text, and its limited arguments fail.

First, Mexico notes the product-defect exception deems third-party criminals the "sole proximate cause" of harms they inflict, while the predicate exception does not. Resp. 46. But there is a simple explanation: the predicate exception recognizes that a firearms retailer *can* be a proximate cause of injuries

a criminal inflicts, if it cooperates with the criminal or has a special duty to protect the plaintiff against harm by the criminal. *Supra* 4-5. That is why PLCAA does not deem third-party criminal acts to be the "sole" proximate cause of harms across the board.

Second, some amici stress that two of PLCAA's exceptions refer to "direct" harm, while the predicate exception does not. *See* 15 U.S.C. § 7903(5)(A)(v) (product defect creates liability if it "directly" causes harm); *id.* § 7903(5)(A)(i) (unlawful transferor can be sued by anyone "directly harmed by the conduct of" the transferee). Amici argue that proximate cause and direct cause must be different. Professors Br. 19-20.

But the statute itself treats "direct cause" and "proximate cause" interchangeably. For example, the product-defect exception provides that manufacturers can be liable for injuries "resulting directly from a defect in design or manufacture of the product . . . *except that*," if the injuries were caused "by a volitional act that constituted a criminal offense," then "such act shall be considered the sole proximate cause" of the injuries. 15 U.S.C. § 7903(5)(A)(v) (emphasis added).

In any event, to the extent the terms are used differently in PLCAA, that suggests a *heightened* directness requirement for the other exceptions, not permission to evade the traditional directness requirement of proximate cause in the predicate exception. By using the term "proximate cause," the predicate exception clearly adopts the traditional caveats discussed above: A party can be liable when it cooperates with a third party to inflict harms, Pet. Br. 30-31; *supra* p. 10, or if it has a special relationship or special duty to prevent third-party crimes. *See* Pet.

Br. 25; *supra* p. 9. In both instances, the defendant can be a proximate cause even though it was *not* the most direct cause of the injury. But even that degree of attenuation may be sufficient to defeat claims brought under the other statutory exceptions.

6. Finally, Mexico says that even if proximate cause bars its claims for damages, it can still seek injunctive relief. Resp. 48-49. That makes no sense.

PLCAA allows a company to be sued only if its "violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). The question is thus whether the defendant's unlawful conduct had a sufficiently "close connection" to the plaintiff's injury. *Bank of Am.*, 581 U.S. at 202. That has nothing to do with what type of *remedy* the plaintiff later seeks for that injury. And the statute says nothing to suggest that the relief sought matters.

Both this Court and multiple circuits have recognized that proximate cause does not turn on the requested remedy. In *Lexmark*, for instance, this Court applied a single proximate-cause standard, without differentiating between the claims for damages and injunctive relief. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132-40 (2014). The circuits likewise maintain that proximate cause "does not distinguish between claims for damages and those for declaratory and injunctive relief." *City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030, 1042 (9th Cir. 2021) (en banc); *see also, e.g.*, *In re Am. Express Anti-Steering Rules Antitrust Litig.*, 19 F.4th 127, 143 n.10 (2d Cir. 2021) (Menashi, J.) ("[T]he difference in remedies does not affect the proximate cause analysis."); *City of Philadelphia v. Beretta*

U.S.A. Corp., 277 F.3d 415, 422-26 (3d Cir. 2002) (joined by Alito, J.) (dismissing for lack of proximate cause without distinguishing claims for damages and equitable relief). Mexico does not cite any contrary case.

To be sure, one way to tell proximate cause is lacking is that it would be difficult to "apportion[]" damages and liability among diffuse parties. *Holmes*, 503 U.S. at 269. That is certainly true here. But that is just a method of determining that the causal chain is too attenuated to establish liability. *See id.* at 266 n.10 (proximate cause sets the "point beyond which the wrongdoer should not be held liable"); *Anza*, 547 U.S. at 461 (no valid "claim" unless "the alleged violation led directly to the plaintiff's injuries"); *Lexmark*, 572 U.S. at 134 n.6 (proximate cause "is an element of the cause of action"). If causation is too indirect for any reason, then there is no proximate cause, regardless of the remedy sought. Again, Mexico cannot cite a case ever finding proximate cause for injunctive relief despite finding no proximate cause for damages. And while Congress might be able to authorize relief without requiring proximate cause, *see Lexmark*, 572 U.S. at 134 n.6, it plainly has not done so here.

B. Mexico's Theory Is Fatally Indirect.

Not even Mexico thinks it can prevail if proximate cause requires directness. It raises only two points in attempting to mitigate the extremely indirect nature of its theory, but neither solves the problem.

First, Mexico says its causal chain is shorter than advertised, because under PLCAA, it starts at the "unlawful sale of firearms" by third-party dealers.

Resp. 50. That misreads the Act. As Petitioners explained (at 29), the text asks what harm was proximately caused by the defendant's *own* "violation"—which here, means Petitioners' *own* acts of (alleged) aiding and abetting. Mexico does not engage with this, and offers no reason why the relevant "violation" would be the crimes of third-party retailers. 15 U.S.C. § 7903(5)(A)(iii).

Even if the proximate-cause inquiry started with dealer sales, rather than Petitioners' conduct, Mexico does not seriously dispute the causal chain is still exceedingly indirect—firearms purchased illegally, smuggled across the border, handed off to cartels, and used to commit crimes, injuring a foreign government. Mexico does not even *attempt* to identify any decision by any court finding proximate cause on such facts—even on its shortened version of the chain. *Cf., e.g.*, *City of Chicago v. Beretta, U.S.A., Corp.,* 821 N.E.2d 1099, 1136-37 (Ill. 2004) (firearm dealers not proximate cause of injuries to city from third-party crimes).

Second, Mexico insists not all of its alleged injuries are "derivative," since a small fraction involve damage to its own property. Resp. 50. It thus abandons the vast majority of its multi-*billion* dollar damages claim, almost all of which rests on harms stemming from cartel violence against others. Resp. 17-18.

But even if some fraction of Mexico's harms are not derivative, they are all highly indirect and remote from Petitioners' conduct. Every one of Mexico's asserted injuries stems from cartels acting independently of Petitioners. And while the cartels use firearms in those crimes, those firearms are in

Mexico only after a lengthy chain of *other* criminal activity. Moreover, as Mexico admits (at 8), the majority of crime guns in Mexico originate from sources other than Petitioners. Indeed, Mexico never offers any way to isolate Petitioners as the legal cause of its injury, given that cartels have access to firearms from many other sources around the world. Petitioners thus are not even close to the proximate cause of Mexico's injuries.

II. THERE IS NO AIDING AND ABETTING.

As Petitioners detailed (at 31-39), when a business engages in routine business practices to put a lawful product to market, it is not liable as a criminal accomplice to customers who misuse that product downstream. Something more is required, lest the economy grind to a halt. And *much* more is required when, as here, the theory of liability is not about assisting a "specific wrongful act[]," but instead seeks to hold a business liable for any and all misdoings of its buyers. *Twitter v. Taamneh*, 598 U.S. 471, 494 (2023). Mexico cannot get around these basic principles.

A. Mexico has no response to the point that its view of aiding and abetting would radically expand criminal liability for all sorts of ordinary companies. After all, beer companies design and market products known to appeal to underage drinkers, knowing some fraction will be illegally sold and used downstream. They know that some bars disproportionately sell their products to underage customers (in college towns, for example), and they could take steps to purge those sellers from their distribution networks. But none of that makes them criminal accomplices to

unlawful sales, because they do nothing more than supply products to the market generally, without any knowledge (much less any active assistance) of any specific unlawful sale that will occur. Because they do not engage in any targeted or unusual activity to assist downstream criminals, and have no knowledge of any specific crime, they at most "incidentally facilitate" crimes, not "actively participate" in them. *Rosemond v. United States*, 572 U.S. 65, 77 n.8. (2014). That ends Mexico's case.

Mexico points to a handful of cases that have held companies liable for routine business practices based on a "strong showing of assistance and scienter" that they were aiding in the commission of a crime. Resp. 26-28. But in all of those rare cases, the defendants were directly and intentionally aiding *specific* crimes they "actual[ly] kn[ew]" about—and there is nothing routine about that. *Aetna Cas. & Sur. Co. v Leahey Constr. Co.*, 219 F.3d 519, 536 (6th Cir. 2000); *see, e.g.*, *Camp v. Dema*, 948 F.2d 455, 458-59 (8th Cir. 1991) (particular "stock transaction"); *Metge v. Baehler*, 762 F.2d 621, 625 (8th Cir. 1985) ("thrift certificates"); *Monsen v. Consol. Dressed Beef Co.*, 579 F.2d 793, 795-96 (3d Cir. 1978) (specific "loan"); *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 89 (5th Cir. 1975) ("promissory notes"). Here, by contrast, Mexico admits Petitioners were *not* aware of any "particular unlawful sale" or any "specific bad act" involving their products. Resp. 30; Pet.App.305a. In this situation, no company has ever been held liable for engaging in routine business practices by selling lawful products based on the mere generalized knowledge that some unknown fraction would be illegally used or sold downstream at some unknown time in the future.

B. Indeed, Mexico admits that since Petitioners did not assist with any "specific bad act," they cannot be held liable unless they provided "pervasive and systemic" aid to some "illicit enterprise," making them criminally liable for "*every* wrongful act committed by that enterprise." Resp. 30 (quoting *Twitter*, 598 U.S. at 506 (emphasis added)). But Mexico cannot come close to meeting that standard. It doubles down on its arguments about Petitioners' distribution, design, and marketing practices, but none of that suffices.

1. Mexico says Petitioners "supply" "red-flag dealers" whose guns are "disproportionately" found at crime scenes in Mexico. Resp. 10, 22-23. But that is sleight of hand. As Mexico concedes, its complaint does not allege that the manufacturer Petitioners sell to any dealer at all. They sell to wholesalers.

Mexico also concedes Witmer (the one wholesaler Petitioner) is not alleged to have sold to any dealer it knew was making illegal sales. While the complaint identifies some specific dealers that allegedly made past unlawful sales (Pet.App.55a-71a), it conspicuously does *not* allege that Witmer made sales to them. At most, the complaint vaguely says that Witmer sells firearms to dealers "like" those named in a 15-year-old *Washington Post* article. Pet.App.45a-46a (¶¶ 120-21). Petitioners' brief challenged Mexico even on this (at 48), and in response Mexico retreated yet further, saying only that Witmer "sells directly to dealers," generally. Resp. 32.

Mexico's allegations thus boil down to the generalized claim that Petitioners have failed to police their "supply chains" to purge dealers that *might* have made unlawful sales, based on those dealers' firearms'

"disproportionate" use in crimes. Resp. 32. But even if true, these allegations do not come remotely close to the "strong showing of assistance and scienter" required for aiding and abetting. *Twitter*, 598 U.S. at 500.

First, failing to purge one's supply chain of *possible* criminals does not establish the requisite "strong" degree of "scienter." Mexico emphasizes that some dealers "have been identified as disproportionately" associated with firearms recovered at crime scenes. Resp. 22-23. But as its own leading source makes clear, a "high number of guns traced to a store does not necessarily signal wrongdoing"—and can be attributed to a number of factors, from volume of sales to geography. Sari Horwitz & James V. Grimaldi, *U.S. Gun Dealers with the Most Firearms Traced Over the Past Four Years*, WASH. POST (Dec. 13, 2010). If a dealer near the border sells a high volume of firearms, then more of its firearms will likely be recovered in Mexico *regardless* of whether its sales are unlawful. Indeed, the article Mexico invokes explained that ATF had no indication that the number one retailer of firearms found at crime scenes in Mexico was "doing anything wrong or illegal." *Id.* Thus, the awareness that some dealers sell firearms that are disproportionately misused in Mexico is not enough to *know* with any "strong" degree of "scienter" that they are making unlawful sales. Resp. 22-23. And that is especially clear since the federal government has all the same information about these dealers (plus even more, and power to investigate them), yet continues to license them. Pet. Br. 48-49; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (not enough to allege facts showing "a sheer possibility" of unlawful conduct).

Second, even if Petitioners knew to a certainty the identities of some downstream dealers engaged in unlawful sales, passively failing to purge them from the supply chain cannot establish an objectively "strong" degree of "assistance." *Twitter*, 598 U.S. at 500. Again, there is no allegation that *any* Petitioner—including Witmer—sells directly to dealers known to make unlawful sales. And in any event, the passive failure to "terminate customers after discovering that the customers were using [their goods] for illicit ends" is insufficient as a matter of law for aiding-and-abetting liability. *Twitter*, 598 U.S. at 501. A supplier of a lawful product is not "liable for any sort of wrongdoing merely for knowing that the wrongdoers were using its services and failing to stop them." *Id.* at 503. Mexico never acknowledges, let alone rebuts, this key point.

2. Mexico also argues that Petitioners help "cultivate" unlawful sales through the "design" of lawful firearms like the AR-15, which are allegedly "sought-after" by criminal straw-purchasers. Resp. 8.

But it is not illegal to make a lawful product just because one knows that some subset of customers may be criminals trying to purchase it unlawfully downstream. Mexico makes the same mistake as the plaintiffs in *Twitter*, focusing "primarily on the value of defendants' [products]" to criminals, "rather than whether defendants culpably associated themselves with [these criminals'] actions." *Twitter*, 598 U.S. at 504. That is "error." *Amazon Services LLC v. Dep't of Agric.*, 109 F.4th 573, 583 (D.C. Cir. 2024) (Srinivasan, C.J.). When a merchant sells a lawful product "generally" to the public, it does not become criminal just because some bad actors abuse it. *Id.*

3. Finally, Mexico takes issue with Petitioners' "marketing" practices. Resp. 23. But its only example is one Petitioner (Colt) making certain "special-edition" handguns that have Spanish or Mexican names ("El Jefe" and "Emiliano Zapata 1911"). *Id.* at 10. The complaint does not allege any facts plausibly showing that these marketing campaigns were *designed* to appeal to the cartels. These campaigns appeal to millions of law-abiding Hispanic Americans, among others. *See* Second Amend. Found. Amicus Br. 19-20. And it is as baseless as it is offensive to suggest such marketing is innately appealing to criminals.

C. Mexico tries but fails to make this Court's decisions in *Direct Sales* and *Twitter* work in its favor. In fact, both show why it is wrong.

1. Mexico says this case is "indistinguishable" from *Direct Sales Co. v. United States*, 319 U.S. 703 (1943). But this claim does not survive even a skim of that opinion. As Mexico concedes, *Direct Sales* is about two parties that have "joined both mind and hand" in a single enterprise. Resp. 24. But again, Mexico has identified neither a specific bad act nor a specific bad actor to whom Petitioners have "joined" anything. Instead, Mexico's suit is premised on Petitioners indirectly supplying a class of "criminals" who resell their products. *Id.* Nothing in *Direct Sales* supports that sort of amorphous liability, where one party (let alone an industry) is a *criminal accomplice* to an indefinite set of downstream strangers who have committed some unknown set of crimes.

As problematic, Mexico misreads *Direct Sales* as standing for the proposition that a supplier of an inherently dangerous product (like morphine or

machineguns) should be held "culpable" when it continues "business practices that it knows systemically deliver the product into criminals' hands." Resp. 28. But that is very much not the law—as *Direct Sales* itself made plain. "[N]ot every instance of sale of restricted goods, harmful as are opiates, in which the seller knows the buyer intends to use them unlawfully, will support a charge of conspiracy." 319 U.S. at 712. "[M]ore than knowledge" is required; there must be "active" involvement with the criminal principal, done to make him succeed. *Id.* at 712-713 & n.8. Mexico never alleges anything close to that.

2. Mexico also cannot distinguish this case from *Twitter*. The sole ground it offers is that the platforms in *Twitter* were made available by "automated algorithms," while Petitioners' sales are attributable to "human agency." Resp. 30. But algorithms are designed by humans to replicate human decisions on a large scale. What matters is not whether a company uses an algorithm or human employees to make those decisions, but whether it provides routine goods and services generally to the market. Indeed, Mexico admits that Petitioners here follow an automatic sales policy of their own, selling to "any and all" buyers with a federal license. Pet.App.79a (¶ 228). The critical point is that they are generally providing routine goods and services without any intentional and targeted assistance to criminals. It cannot be that aiding-and-abetting liability turns on whether the company is acting through human beings or a human-designed algorithm to execute that set policy.

Instead, the relevant point is that the platforms made their services available to the "public writ large," with only *generalized* knowledge they would be

used by criminals. *Twitter*, 598 U.S. at 499. They were "agnostic" as to criminal misuse. *Id.* And as for the terrorists using their services, the platforms treated them "just like everyone else." *Id.* at 498. Such "highly attenuated" and incidental assistance to criminals lacked the "direct" and targeted aiding of criminal activity required for liability. *Id.* at 500.

Just so here. And just as this Court refused to subject the platforms in *Twitter* to far-reaching accomplice liability for failing to "stop" bad users, the same holds for the firearms industry, for failing to stop downstream criminals. *Id.* at 501.

D. Mexico also tries to minimize the practical toll of this Court holding the U.S. firearms industry is made up of felons. But the implications would be sweeping.

First, Mexico's view of aiding and abetting would eviscerate PLCAA. Again, Mexico does not dispute its position would allow the very suits that prompted PLCAA. The same allegations could proceed, just under a new legal banner. But PLCAA was about barring lawsuits, not tweaking legal theories.

Second, Mexico insists no "floodgates" would open if this Court ruled in its favor. That defies credulity. *See, e.g.*, Atlantic Legal Amicus Br. 16-18; U.S. Chamber Amicus Br. 15-20. It is obvious how Mexico's playbook could be adapted against virtually every industry or business whose lawful product is predictably misused. Every business can do more to stop crimes involving its products: Budweiser can tell distributors to cut out college bars that have served sophomores; Ford can tell dealers to stop selling cars to drivers ticketed for speeding. But that has never been a theory of criminal liability. This Court should keep it that way.

CONCLUSION

The First Circuit's decision should be reversed.

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Respectfully submitted,

ANDREW E. LELLING
JONES DAY
100 HIGH ST.
21st Floor
Boston, MA 02110

KELLY HOLT RODRIGUEZ
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402

NOEL J. FRANCISCO
Counsel of Record
ANTHONY J. DICK
ERIC WALKER
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001
(202) 879-3939
njfrancisco@jonesday.com

Counsel for Petitioner Smith & Wesson Brands, Inc.
(Additional Counsel Listed on Next Page)

JAMES M. CAMPBELL
TREVOR J. KEENAN
CAMPBELL CONROY & O'NEIL, P.C.
1 Constitution Wharf, Suite 310
Boston, MA 02129

JAMES W. PORTER, II
WARREN KINNEY
PORTER & HASSINGER, P.C.
880 Montclair Road, Suite 175
Birmingham, AL 35213

Counsel for Barrett Firearms Manufacturing, Inc.

PETER M. DURNEY
PATRICIA A. HARTNETT
SMITH DUGGAN CORNELL & GOLLUB LLP
101 ARCH STREET, SUITE 1100
Boston, MA 02110

JOHN F. RENZULLI
CHRISTOPHER RENZULLI
JEFFREY MALSCH
RENZULLI LAW FIRM LLP
One North Broadway, Suite 1005
White Plains, NY 10601

Counsel for Glock, Inc.

MARK D. SHERIDAN
SQUIRE PATTON BOGGS (US) LLP
382 Springfield Avenue, Suite 300
Summit, NJ 07901

DANIEL C. HARKINS
SQUIRE PATTON BOGGS (US) LLP
1120 Avenue of the Americas, 13th Floor
New York, NY 10036

MICHAEL T. MULLALY
SQUIRE PATTON BOGGS (US) LLP
2000 Huntington Center
41 South High St.
Columbus, OH 43215

Counsel for Beretta U.S.A. Corp.

(Additional Counsel Listed on Next Page)

NORA R. ADUKONIS
LITCHFIELD CAVO LLP
6 Kimball Lane, Suite 200
Lynnfield, MA 01940

S. JAN HUEBER
LITCHFIELD CAVO LLP
100 Throckmorton St. Suite 500
Fort Worth, TX 76102

Counsel for Witmer Public Safety Group, Inc.

JOHN G. O'NEILL
MCANGUS, GOUDELOCK & COURIE LLC
53 State Street, Suite 1305
Boston, MA 02109

Counsel for Colt's Manufacturing Company LLC

JOSEPH G. YANNETTI
MORRISON MAHONEY LLP
250 Summer Street
Boston, MA 02210

ANTHONY M. PISCIOTTI
DANNY C. LALLIS
RYAN L. ERDREICH
PISCIOTTI LALLIS ERDREICH
30 Columbia Turnpike, Suite 205 Florham Park, NJ 07932

Counsel for Century International Arms, Inc.

JONATHAN I. HANDLER
KEITH H. BENSTEN
DAY PITNEY LLP
One Federal Street, 29th Floor
Boston MA 02110

JAMES VOGTS
SWANSON, MARTIN & BELL LLP
330 N. Wabash Suite 3300
Chicago, IL 60611

Counsel for Sturm, Ruger & Co., Inc.