No. 23-1141

IN THE

Supreme Court of the United States

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

v.

ESTADOS UNIDOS MEXICANOS

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

BRIEF FOR THE U.S. HOUSE OF REPRESENTATIVES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The U.S. House of Representatives (House)[2] has a substantial institutional interest in preserving its constitutional authority to decide how to regulate the firearms industry. Congress has been wrestling with that complicated issue for nearly a century, weighing competing interests as it makes legislative decisions. How, exactly, to balance those interests is a policy question that the Constitution assigns to Congress, subject to the constraints of the Second Amendment.

If Respondent (the plaintiff below) had its way, however, such policy decisions would be thrown to the courts. Indeed, the Mexican government's suit here urges the lower court to impose all sorts of far-reaching regulations on the firearms industry, restrictions that Congress itself has considered and declined to adopt. This suit thus attempts to use the Judicial Branch to seize legislative power. As Congress explained nearly twenty years ago, such a maneuver "threaten[s] the

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[1] Consistent with Supreme Court Rule 37.6, the House states that no counsel for a party authored this brief in whole or in part and that no person or entity other than the House or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] The House's Bipartisan Legal Advisory Group (BLAG) has authorized the filing of this *amicus* brief. BLAG comprises the Honorable Mike Johnson, Speaker of the House, the Honorable Steve Scalise, Majority Leader, the Honorable Tom Emmer, Majority Whip, the Honorable Hakeem Jeffries, Minority Leader, and the Honorable Katherine Clark, Minority Whip, and it "speaks for, and articulates the institutional position of, the House in all litigation matters." Rule II.8(b), Rules of the U.S. House of Representatives, 118th Cong. (2023), https://perma.cc/DK3P-55K6. The Speaker of the House, the Majority Leader, and the Majority Whip voted to support the filing of this brief; the Minority Leader and Minority Whip did not.

Separation of Powers." *See* 15 U.S.C. § 7901(a)(8). That is why Congress passed the Protection of Lawful Commerce in Arms Act (Protection Act), which bars suits—like this one—that try to hold firearms manufacturers liable for harms caused by third-party criminals and seek injunctive relief that would impose new regulations on the firearms industry.

The House files this brief to explain how the decision below, if affirmed, would allow the Judicial Branch to usurp Congressional authority and to do so through a suit that Congress intended to bar.

SUMMARY OF THE ARGUMENT

After careful study, Congress decided that firearms manufacturers ordinarily should not be liable for harms that third-party criminals cause when they use firearms illegally. It thus enacted the Protection Act, which generally bars suits that aim to hold firearms manufacturers liable for such harms. *See id*. §§ 7902(a), 7903(5)(A). Congress did not enact this law in a vacuum. Rather, it was reacting to a flurry of lawsuits attempting to hold the firearms industry liable for criminals misusing their products. These suits sought both huge damage awards and injunctive relief that would have imposed new regulations on the firearms industry. However, Congress saw this legal gambit for what it was: an effort to use the judiciary to accomplish policy goals that advocates could not achieve through the legislative process.

The Mexican government is now trying to peddle the same scheme. It aims to hold American firearms companies (Petitioners) liable for harms that criminal drug cartels have caused in Mexico. And it is asking a federal court to impose regulations—like a requirement for firearms to include certain features that would

prevent unauthorized users from firing them—that Congress has declined to adopt. This is the posterchild for what the Protection Act was meant to prevent. But the court below concluded that the Protection Act does not apply to the Mexican government's complaint. In its view, this suit falls within a narrow statutory exception, one that permits suits against companies that knowingly violate a firearms law if—and only if—that violation is the proximate cause of the relevant harm. *Id.* § 7903(5)(A)(iii).

That exception does not apply here. Petitioners themselves have violated no law. They sell lawful products to firearms wholesalers or retail dealers that have the federal government's stamp of approval (through government-issued licenses). Yet this may amount to aiding and abetting, according to the court below, because Petitioners allegedly know that some of their firearms will end up in cartel hands yet fail to take action to prevent that. This limitless theory would essentially criminalize the sale of any product that has a history of third-party misuse, and it lacks support in this Court's precedent. Nor is any purported legal violation by firearms companies the proximate cause of the damage that the cartels caused. Cartels are, after all, criminal enterprises. And Petitioners' (lawful) conduct in the United States is far removed from harms inflicted by the cartels in Mexico. Their firearms pass through other hands and even cross the U.S. border before finding their way into criminal enterprises, which independently choose to use them in a manner that inflicts harm. These are textbook intervening causes. And Petitioners have no special relationship with the cartels that might justify departing from the standard rule, which does not hold parties liable for harms that flow from intervening causes.

The Mexican government, at bottom, is trying to dragoon the judiciary into exercising legislative power. It is asking the lower court to impose regulations that Congress has consistently refrained from enacting. Such an outcome would run afoul of the separation of powers and is exactly what Congress sought to prevent when it passed the Protection Act. Affirming the judgment below would therefore gut the Protection Act and threaten our constitutional order. The Court should reverse the First Circuit's decision.

ARGUMENT

I. The authority to regulate the firearms industry rests with Congress, not the courts, and Congress has decided that firearms manufacturers generally should not be held liable for third parties' criminal actions

The Constitution provides that "[a]ll legislative [p]owers herein granted shall be vested in … Congress." U.S. Const. art. I, § 1. Congress has used these powers, such as regulating interstate and foreign commerce, for nearly a century to regulate the firearms industry. After the "bloody 'Tommy gun' era"[3] of the 1920s, Congress passed the National Firearms Act of 1934, which imposed taxation and registration requirements on those firearms most associated with gangland violence. *See* Pub. L. No. 73-474, 48 Stat. 1236 (1934). Just four years later, Congress passed the Federal Firearms Act, which created a licensing requirement

[3] *History of gun-control legislation*, Wash. Post (Dec. 22, 2012, 9:17 PM), https://www.washingtonpost.com/national/history-of-gun-control-legislation/2012/12/22/80c8d624-4ad3-11e2-9a42-d1ce6d0ed278_story.html.

for firearms manufacturers and dealers. Pub. L. No. 75-785, 52 Stat. 1250 (1938).

The Federal Firearms Act was then superseded by the Gun Control Act of 1968. Pub. L. No. 90-618, 82 Stat. 1213 (1968). The Gun Control Act, among other things, expanded the Federal Firearms Act's licensing scheme and prevented certain persons (such as felons) from possessing firearms. *Id.* § 102, 82 Stat. at 1220, 1221-23. At the same time, it created a process that prohibited individuals could follow to restore their right to possess firearms. *Id.*, 82 Stat. at 1224. In 1986, Congress passed the Firearm Owners' Protection Act, which made it unlawful "to transfer or possess" machineguns manufactured on or after the date of enactment. Pub. L. No. 99-308, 100 Stat. 449 (1986). It also shrunk the category of felons who may not possess firearms. *Id.* § 101, 100 Stat. at 449-50. In the Brady Handgun Violence Protection Act of 1993, Congress required federal licensees to perform background checks before selling firearms to the public. Pub. L. No. 103-159, 107 Stat. 1536 (1993). Then, as part of the Violent Crime Control and Law Enforcement Act of 1994, Congress generally made it unlawful (1) "to manufacture, transfer, or possess" semiautomatic weapons and (2) "to transfer or possess" large capacity magazines. *See* Pub. L. 103-322, §§ 110102(a), 110103(a), 110105(2), 108 Stat. 1796, 1996-97, 1998-99, 2000 (1994). However, Congress did not renew those two provisions after they lapsed in 2004.

As history shows, Congress has regularly used its powers to legislate on matters concerning the firearms industry. While its legislative decisions inevitably have not satisfied everyone, they are ultimately Congress's decisions to make, subject to Second Amendment constraints. And when litigants have attempted to sidestep

the legislative process by using the courts to impose more onerous firearms regulations than they could obtain through the legislative process, Congress has responded to preserve its own constitutional authority.

A. Litigants attempt to use the courts to regulate the firearms industry

Beginning in the late 1990s, various public entities and other plaintiffs began suing members of the firearms industry. They raised "novel claims that invite[d] courts to dramatically break from bedrock principles of tort law and expose firearm manufacturers to unprecedented and unlimited liability exposure." *See* H. Rep. No. 109-124, at 11 (2005). These claims, based on attenuated theories of causation or expansive interpretations of strict liability, sought to hold firearms manufacturers responsible for harms caused by third parties, usually those far down the chain of custody, who used firearms illegally. *See, e.g.*, *id.* at 6.

These suits constituted attempts to use the courts to accomplish what these plaintiffs could not achieve through the legislative process: the imposition of broad new regulations on the firearms industry. *See id.* at 20 ("Public entities are seeking to achieve through the courts what they have been unwilling or unable to obtain legislatively, namely limits on the numbers, locations, and types of firearms sold, and a shift in the responsibility for violence response costs to the private sector."); *see also id.* at 19 (noting that these suits included "both extraordinary compensatory and punitive damage requests and requests for injunctive relief in an attempt to impose broad new regulations on the design, manufacture, and interstate distribution of firearms, outside of the appropriate legislative context"); *Ganim v. Smith & Wesson Corp.*, No. CV 990153198S, 1999 WL 1241909, at *1 (Conn. Super. Ct. Dec. 10,

1999) (noting that the complaint sought, "[i]n addition to compensatory and punitive damages[,] … injunctive relief" and explaining that the plaintiffs "seek to enjoin the defendants from continuing to produce handguns without safety devices").

Indeed, these plaintiff groups were not particularly shy about their motivations. For example, a city mayor, after announcing that his city had sued firearms manufacturers, explained that he was "creating law with litigation" because contrary views had prevailed in the legislature that "kept [his preferred] laws from being passed." *See* Fred Musante, *After Tobacco, Handgun Lawsuits*, N.Y. Times (Jan. 31, 1999), https://www.nytimes.com/1999/01/31/nyregion/after-tobacco-handgun-lawsuits.html. And the cases themselves show that the goal was to make new law.

One suit, for example, seemingly invited the court to restrict the number of firearms that manufacturers could sell. *Compare* First Amended Complaint ¶ 70, *City of Cincinnati v. Beretta U.S.A. Corp.*, No. A9902369, 2002 WL 34429690 (Ohio Com. Pl. 2002) ("For many years, defendants knew or should have known that they were producing and selling substantially more firearms than could be justified by the legitimate gun market, and that a substantial portion of their guns would end up in the hands of criminals …."); *with id.* ¶ 2(A) (prayer for relief) (requesting injunctive relief that would require the manufacturers "to create and implement standards regarding their own distribution of handguns … in an effort to eliminate or substantially reduce the secondary handgun market").

The plaintiff in that case also wanted the court to require firearms manufacturers to regulate their third-party dealers, even though those dealers were already regulated and licensed by federal and state govern-

ments. *Compare id.* ¶¶ 74 (alleging the manufacturers "make no meaningful efforts to supervise, regulate or impose standards on the distribution practices of either the distributors or the dealers who channel their handguns to the public"), 75 ("Defendant manufacturers fail to supervise, regulate or set standards for dealers' conduct, but instead rely upon the mere fact that dealers are licensed by the federal and state governments."); *with id.* ¶ 2(A) (prayer for relief) (requesting injunctive relief that would require the manufacturers "to create and implement standards regarding … the conduct of the dealers to whom the distributors supply handguns in an effort to eliminate or substantially reduce the secondary handgun market").

Another suit asked the court to "use its injunctive powers to mandate the redesign of firearms." *Penelas v. Arms Tech., Inc.*, 778 So. 2d 1042, 1045 (Fla. Dist. Ct. App. 2001) (footnote omitted). That redesign would have supposedly (1) "prevent[ed] the weapons from being used by unauthorized persons," (2) "alert[ed] users that a round is in the weapon's chamber," and (3) "prevent[ed] the weapon from being fired when the ammunition magazine is removed." *Id.* at n.5.

The court in one of the two cases discussed above recognized that the plaintiff's "request that the trial court use its injunctive powers to mandate the redesign of firearms … [wa]s an attempt to regulate firearms and ammunition through the medium of the judiciary." *Id.* at 1045 ("The power to legislate belongs not to the judicial branch of government, but to the legislative branch."). But the other suit was ultimately allowed to proceed. *See Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1150 (Ohio 2002) (reversing dismissal). Similar suits spread to many jurisdictions. *See* H. Rep. No. 109-124, at 11 (collecting cases).

As the Committee on the Judiciary of the U.S. House of Representatives (Judiciary Committee) explained, this wave of litigation "ero[ded] … the separation of powers" because regulating the firearms industry "is a job for voters and legislatures, not lawyers." *Id.* at 20; *see also id.* ("Just as large damage awards have a regulatory effect, requests for injunctive relief tend to force the judiciary to intrude into the decision-making process properly within the sphere of another branch of government."); *Koohi v. United States*, 976 F.2d 1328, 1332 (9th Cir. 1992) ("[T]he framing of injunctive relief may require the courts to engage in the type of operational decision-making beyond their competence and constitutionally committed to other branches ….").

Congress was also concerned about what product would be the next target for these efforts to regulate by judicial fiat. *See* H. Rep. No. 109-124, at 23 ("Once it is established, in the context of firearms, that product manufacturers are responsible for 'socializing' the cost of criminal product misuse, then it may be hard to avoid the slippery slope that leads to making automobile dealers liable for drunk drivers, knife manufacturers liable for knife wounds, or food manufacturers liable for the harm caused by the fat content of snacks."). As a result of all these concerns, Congress was spurred to act.

B. Congress responds by passing the Protection Act to, among other things, preserve its legislative authority to make policy decisions regarding firearms regulation

To "protect the separation of powers and uphold democratic procedures," *id.* at 5, Congress, in 2005, passed with bipartisan support the Protection Act, which was signed into law by President George W. Bush. The Protection Act made clear that firearms

companies should generally not be "liable for the harm caused by those who criminally or unlawfully misuse firearm products." 15 U.S.C. § 7901(a)(5). The Protection Act was meant to address the above-mentioned lawsuits, since those "attempt[s] to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees [threatened] the Separation of Powers." *Id.* § 7901(a)(8).

The Protection Act generally prevents a plaintiff from suing a firearms manufacturer for injuries "resulting from the criminal or unlawful misuse" of a firearm because the firearms company is not a proximate cause of those injuries. *See id.* §§ 7902(a), 7903(5)(A). In particular, "the absence of a special relationship between criminal third parties and manufacturers means that negligence claims should be dismissed." H. Rep. No. 109-124, at 8. After all, "manufacturers have no duty to control the conduct of third parties." *Id.* As the Judiciary Committee noted at the time, "[h]andgun manufacturers historically have been found, and generally continue to be found, to have no duty to third-party victims of firearm misuse, such as criminal or accidental misuse." *Id.* (footnote omitted).

Congress did not, however, give firearms manufacturers a blank check to violate the law. Rather, the Protection Act contains several exceptions. The one relied upon by the court below allows suits against manufacturers or sellers when they "knowingly" violate a state or federal firearms law related to the sale or marketing of firearms, and that violation "was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii). A recent suit against a firearms seller, Walmart, shows how this

narrow exception works in practice. There, a Walmart employee who was suffering from a mental health crisis bought a shotgun directly from the Walmart where he worked, even though his coworkers and supervisor at the store were personally aware of his mental disorder. *Brady v. Walmart Inc.*, No. 8:21-CV-1412-AAQ, 2022 WL 2987078, at *1-2 (D. Md. July 28, 2022). His coworkers and supervisor were also allegedly aware that he wanted to buy a firearm to harm himself. *Id.* at *1, *16. The employee ultimately committed suicide with the shotgun he purchased from Walmart. *Id.* at *2. The employee's surviving spouse sued and alleged, given these particular facts, that Walmart aided and abetted the violation of a Maryland law prohibiting the possession of a shotgun by a person who suffers from a mental disorder. *Id.* at *6-*9. The court therefore determined that the exception applied and permitted the suit to proceed. *Id.*

The decision below, however, is a far cry from the *Walmart* case, which involved a highly unusual fact pattern, and distorts the exception beyond recognition.

II. The decision below usurped Congress's legislative power and, if affirmed, would allow a foreign government to use courts to impose firearms regulations that Congress has declined to adopt

If this Court affirms the decision below, the Protection Act's narrow exception would swallow the rule, and firearms manufacturers would face liability that Congress intended to prevent. Federal courts, in turn, would be asked to second-guess Congress's policy decisions regarding firearms regulation through requests for injunctive relief. This result would upset the separation of powers: Congress is charged with making such policy judgments, not Article III courts.

A. If affirmed, the decision below would gut the Protection Act

1. The Mexican government's lawsuit seeks to hold Petitioners liable for harms that drug cartels inflicted when they used firearms to commit crimes in Mexico. *See, e.g.*, Pet. App. 7a (¶ 2) (alleging that "[f]or decades the [Mexican] Government and its citizens have been victimized by a deadly flood of military-style and other particularly lethal guns that flows from the U.S. across the border, into criminal hands in Mexico"); *id.* at 24a (¶ 52) (alleging that "[t]he cartels that cause such bloodshed and terror … fire [Petitioners'] guns in Mexico"). Such an outcome is exactly what Congress intended to prevent through the Protection Act.

The Protection Act says that suits for harms "resulting from the criminal or unlawful misuse of a" firearm "may not be brought in any Federal or State court." *See* 15 U.S.C. §§ 7902(a), 7903(5)(A). Congress studied the issue and concluded that businesses that lawfully manufacture or distribute firearms "are not, and should not[] be[,] liable for the harm caused by those who criminally or unlawfully misuse firearm products … that function as designed and intended." *See id.* § 7901(a)(5). The suit falls squarely within the Protection Act's general bar.

2. Petitioners, of course, could be sued consistent with the Protection Act if they "knowingly violated" a state or federal law that relates to selling or marketing firearms, so long as that violation is the proximate cause of a plaintiff's alleged injury. *See id.* § 7903(5)(A)(iii). That is not the case here, and the court below wrongly held that this narrow exception applies. Under its view, the Mexican government has plausibly alleged that Petitioners aided and abetted each sale of a firearm that ends up in cartel hands. And they have

done so by taking certain actions permitted by U.S. law. This is "a far cry from the type of pervasive, systemic, and culpable assistance" that this Court's precedent requires before imposing such sweeping aiding-and-abetting liability. *Cf. Twitter, Inc. v. Taamneh*, 598 U.S. 471, 502 (2023). Worse yet, the court below concluded that the Mexican government has plausibly alleged that Petitioners' purported aiding and abetting is the proximate cause of injuries caused by third-party criminals. If that decision is affirmed, the exception would swallow the statutory bar whole and allow a flood of suits that Congress intended to ban.

First, the exception is not triggered here because the Mexican government's aiding-and-abetting theory relies, at most, on passive indifference. That is insufficient under this Court's precedent. *See id.* at 500.

As the Mexican government tells it, Petitioners are "aiding and abetting illegal downstream [firearms] sales," Pet. App. 299a, through business practices that, standing alone, are legal. For example, the Mexican government alleges that Petitioners know their firearms end up in the hands of certain dealers that, in turn, illegally sell to the cartels, yet they still "supply th[ose] very dealers." *See id.* at 301a. What the Mexican government leaves out is that Petitioners' sales are legal. Indeed, all Petitioners (but one) are manufacturers, which means they sell to licensed distributors, who then sell to licensed retail dealers, who finally sell to the public. *See id.* at 140a (¶ 378). (The lone distributor, of course, does not sell directly to the public; it sells to retail dealers. *See id.*)

As the court below conceded, "the complaint does not allege [Petitioners'] awareness of any particular unlawful sale." *Id.* at 305a. It brushed that aside,

however, pointing to this Court's decision in *Direct Sales Co. v. United States*, 319 U.S. 703, 713 (1943). *See id.* ("But neither did the convicted mail-order company in *Direct Sales* have such specific knowledge."). There, a morphine distributor sold to a doctor who, in turn, illegally resold the morphine. *See Direct Sales*, 319 U.S. at 704-05. This Court held that the distributor—which sold the doctor enough morphine to prescribe in a single day what an "average physician" would use over an entire year—could be held liable as a co-conspirator. *See id.* at 706, 713-15. As this Court pointed out in *Taamneh*, providing a routine service in such an "unusual way" may amount to aiding and abetting. *See* 598 U.S. at 502 (citing *Direct Sales*, 319 U.S. at 707, 711-12, 714-15) (explaining that the distributor in *Direct Sales* "mailed morphine far in excess of normal amounts").

Here, however, the Mexican government does not allege anything unusual about the way that Petitioners (usually indirectly) supply firearms dealers. It does not allege that Petitioners oversupply any particular dealer as the distributor in *Direct Sales* did. Indeed, the Mexican government does not allege that Petitioners treat any one dealer different from other dealers. Rather, Petitioners' culpable conduct, according to the Mexican government, is that they make their firearms generally available. *See, e.g.*, Pet. App. 79a ("Each [Petitioner's] policy is to sell its guns to any and all Federal Firearms Licensees ….") They apparently should, in the Mexican government's view, affirmatively refuse to supply certain licensed dealers. But this is no more than the "passive aid" that online platforms provide terrorist groups when they allow those groups to use their generally available platforms for illegal ends. *See Taamneh*, 598 U.S. at 499. As this Court

recently held, such "mere passive nonfeasance" is not enough for aiding-and-abetting liability. *See id.* at 500.

The same goes for Petitioners' other actions. The Mexican government claims that Petitioners are aiding and abetting illegal sales by "design[ing] their guns as military-style assault weapons." *See* Pet. App. 93a. Those "military-style assault weapons" are simply firearms that fire semiautomatically and that "accept large-capacity ammunition magazines." *See id.* at 93a, 95a-96a (¶¶ 283, 288). And critically, those firearms may lawfully be sold in the United States. *Cf. id.* at 306a-09a (holding that Petitioners do not sell machineguns without authorization, which the Gun Control Act prohibits). By marketing them as "military-style weapons," Petitioners allegedly make them more attractive to cartels. *See id.* at 301a. Petitioners also, the Mexican government claims, make it easy to remove serial numbers on their firearms—another feature the cartels prefer. *See id.* But as Petitioners pointed out, the Mexican government does not allege that they made these lawful design decisions to aid and abet illegal sales to cartels. *See* Pet. 27-28. Rather, their gripe is that Petitioners have not affirmatively changed their business practices in response to the cartels' misconduct. *See, e.g.*, Pet. App. 104a (¶ 314) ("Defendants could limit their sales of these military-style assault weapons to military and perhaps some law enforcement units. They do not."). This, again, is not the "active[] and substantial" assistance that's necessary for aiding-and-abetting liability. *Cf. Taamneh*, 598 U.S. at 502.

At its core, the Mexican government's aiding-and-abetting theory relies on passive assistance: Petitioners sell firearms that drug cartels allegedly prefer, and they have allegedly failed to take the steps necessary

(according to a foreign government) to prevent those firearms from ending up in cartel hands. If that were enough to support aiding-and-abetting liability, Petitioners would, for example, need to stop distributing semiautomatic firearms—like the AR-15, the most popular rifle in the United States—to avoid liability. After all, some of those firearms will always be trafficked and used to commit crimes no matter what firearms companies do to stop that from happening. This Court's precedent, however, does not require Petitioners to take ever-increasing actions to avoid liability. *Cf. id.* at 500 ("[B]oth tort and criminal law have long been leery of imposing aiding-and-abetting liability for mere passive nonfeasance.").

Second, even if the Mexican government had plausibly alleged that Petitioners aided and abetted unlawful sales, the statutory exception still would not apply. Mexico admits that its purported derivative injuries were caused by third-party criminals. That means Petitioners' actions are not the proximate cause of those injuries: the alleged harm is far too remote. Indeed, shielding manufacturers from downstream criminal acts—over which they have no control—was a primary reason that Congress passed the Protection Act. *See* 15 U.S.C. § 7901(a)(5).

The sale of a product that a criminal then uses to harm a victim is ordinarily not the proximate cause of the victim's injuries. As the Judiciary Committee explained when it passed the House version of the bill that ultimately became the Protection Act, "[t]he sale of a firearm merely furnishes the condition for a crime." H. Rep. No. 109-124, at 7. So typically, "as a matter of law, there can be no finding of proximate cause in an action brought on behalf of a victim against the seller of the firearm used in the crime." *Id.*

This makes sense. Generally, proximate cause limits a person's liability to "the consequences of that person's own acts." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992) ("Here we use 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts.").

But the acts of third-party criminals, not Petitioners, caused the Mexican government's alleged injuries here. The Mexican government does not allege that Petitioners themselves made illegal sales (let alone that they sold directly to the cartels). After all, Petitioners are licensed by the federal government, and they complied with the relevant regulatory regime by selling their products only to federally licensed wholesalers or retail dealers. "[T]hese legal transactions," the Judiciary Committee has explained, "are the last stage in the process in which the manufacturers exercise any control over their products." H. Rep. No. 109-124, at 10 (citation omitted); *see also id.* ("The only sales in which [manufacturers] participate are to other Federal licensees, after which they can exercise no control over their product." (citation omitted)).

Once the firearms make their way to licensed retail dealers (who are two steps below manufacturers in the distribution chain), those retailers must then conduct a background check before selling to a buyer. *See id.* The Mexican government was then purportedly injured only after a firearm crossed an international border, landed in cartel hands, and was used to commit a crime. These remote injuries are far downstream, causally and geographically for that matter, from anything over which Petitioners had control; Petitioners' actions cannot be the proximate cause of such remote harm. *Cf. id.* at 10, 13.

The court below nonetheless concluded that proximate cause was satisfied. In its view, the complaint plausibly alleges that it was foreseeable that Petitioners' firearms would end up in cartel hands (and that Petitioners intended as much). *See* Pet. App. 313a. But to say that some firearms will end up in criminal hands is simply to state a fact of life. *See* H. Rep. No. 109-124, at 24 ("Like firearms manufacturers, knife and automobile manufacturers, for example, are aware that a small percentage of their products will be misused by criminals or intoxicated individuals, and knives and automobiles cannot currently be feasibly designed to prevent such misuse."). Nor does the Mexican government's allegation that Petitioners "actually intended" for their firearms to "end up in the hands of Mexican cartels," *see* Pet. App. 313a, change the analysis. As we explained above, the Mexican government's theory relies on Petitioners' passive—*lawful*—conduct. Petitioners' allegedly culpable conduct is little more than making their lawful products generally available.

If making an inherently dangerous product generally available—while knowing that some bad actors will inevitably misuse it—is all the Protection Act's exception requires, Congress would have had no reason to include the proximate-cause requirement. Indeed, under that limitless theory, every criminal misuse of the product would be foreseeable, and the proximate-cause requirement would be superfluous. It defies basic logic to read the statute this way since one of the Protection Act's primary aims was *preventing* firearms manufacturers from being held liable for the harms caused by third-party criminals. *See* 15 U.S.C. § 7901(a)(5).

Rather, as the Judiciary Committee pointed out, firearms manufacturers may be liable for third-party

criminal acts only if there is a "special relationship between criminal third parties and manufacturers." *See* H. Rep. No. 109-124, at 8. There is no such special relationship here. Rather, the Mexican government's theory faults Petitioners for making their products generally available through licensed wholesalers or retail dealers. This falls well short of the special relationship that's necessary to hold manufacturers responsible for the criminal acts of others.

* * *

According to the court below, Petitioners' lawful sales of a legal product that eventually finds its way to bad actors constitutes aiding and abetting. And that purported aiding and abetting—in the form of legal business practices—is the proximate cause of harms caused by third-party criminals. This distorted view of both aiding and abetting and proximate cause, if accepted, would gut the Protection Act.

B. The Mexican government is attempting to dragoon courts into imposing regulations upon the firearms industry that Congress, so far, has declined to adopt

The Mexican government—like the litigants that spurred Congress to pass the Protection Act—is attempting to regulate the firearms industry under the guise of judicially imposed injunctive relief. Indeed, it asks an Article III court to enter a sweeping injunction: one that requires Petitioners "to take all necessary action to abate the current and future harm that their conduct is causing and would otherwise cause in the future in Mexico." *See* Pet. App. 196a (¶ c). The complaint offers a smorgasbord of injunctive options. We highlight just a few here.

1. One way that Petitioners allegedly "assist and facilitate" illegal gun trafficking in Mexico, at least according to its government, is by manufacturing so-called "assault weapons" such as the AR-15, *see* Pet. App. 94a-95a (¶¶ 282-83), "America's most popular rifle," Pet. 8. Allegedly, these semiautomatic weapons fire almost as rapidly as automatic weapons, *id.* at 97a (¶ 289), and Petitioners design them to "accept large-capacity ammunition magazines," *id.* at 96a (¶ 288). In the Mexican government's view, the assault-rifle-large-magazine combination "enable[s] military-style assaults in which many rounds can be fired in seconds." *Id.* In its words, Petitioners have "designed their assault weapons to be effective people-killing machines." *Id.* at 93a (¶ 280). The Mexican government's sweeping request for injunctive relief, then, apparently asks the lower court to prohibit the sale of semiautomatic firearms and magazines that hold twenty or more rounds. *See id.* at 96a (¶ 288).

But it is not just the firearm type or magazine size. The Mexican government claims that Petitioners' firearms are "unreasonably dangerous" because "they enable any person who gains access to them to fire them." *Id.* at 128a (¶ 355). It thus asks a federal court to require Petitioners to redesign their firearms to include new features that would prevent unauthorized users from firing them. *See id.*; *see also id.* at 129a (¶ 357) (discussing a safety feature that prevents firing unless the user has a "special key" (citation omitted)); *id.* at 129a (¶ 358) (discussing "features that employ biometric, radio frequency, or magnetic technologies").

Finally, the Mexican government believes that Petitioners could stop firearms trafficking into Mexico by mandating background checks when a firearm is resold. *See id.* at 84a (¶ 245). It claims that Petitioners could adopt this reform without legislation, *id.* (¶ 246),

yet it is unclear how. Petitioners, of course, cannot mandate that private citizens conduct background checks before selling a firearm to another citizen. The complaint itself offers limited insight into this issue. As best the House can tell, the Mexican government seems to be asking an Article III court to require Petitioners to act in a way that will motivate private citizens to use federally licensed retailers for any resales. *See id.* at 83a-84a (¶ 245) (alleging that Petitioners could "regulat[e] their own distribution systems …, as Judge Weinstein found"); *NAACP v. AcuSport, Inc.*, 271 F. Supp. 2d 435, 525 (E.D.N.Y. 2003) (Weinstein, J.) (explaining that firearms manufacturers could, by contract, "institute an industry-wide program of warranty revocation upon individual resale of handguns, unless the firearm is resold only through a storefront stocking handgun retailer so that secondary sales are subject to background checks").

2. This ruse violates the separation of powers: the legislative power that would be effectively exercised here is vested in Congress, not courts. At bottom, a foreign government is asking the Judicial Branch to impose firearms restrictions that, so far, Congress has specifically elected not to adopt.

Start with the ability to sell semiautomatic weapons and large-capacity magazines. As we explained above, from 1994 to 2004, Congress restricted the sale and possession of each. *See* Pub. L. No. 103-322, §§ 110102(a), 110103(a), 110105(2), 108 Stat. at 1996-97, 1998-99, 2000. Congress considered multiple bills that proposed making the restriction permanent or

extending it beyond 2004—it passed none.[4] And since that restriction expired in 2004, bills that would have again prohibited such sales and possessions were introduced in nearly every Congress.[5] But while such proposals have been the subject of intense political debate,[6] not one has made it across the finish line. The

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[4] *See, e.g.*, H.R. 2038, 108th Cong. § 3 (2003) (never voted on in committee); S. 1431, 108th Cong. § 3 (2003) (same); H.R. 3831, 108th Cong. § 1 (2004) (same); S. 2109, 108th Cong. § 2 (2004) (same).

[5] *See, e.g.*, H.R. 698, 118th Cong. § 3(a) (2023) (never voted on in committee); S. 25, 118th Cong. § 3(a) (2023) (same); H.R. 1808, 117th Cong. § 3(a) (2021) (passed by the House but never considered by the Senate); S. 736, 117th Cong. § 3(a) (2021) (never voted on in committee); H.R. 1296, 116th Cong. § 3(a) (2019) (same); S. 66, 116th Cong. § 3(a) (2019) (same); H.R. 5087, 115th Cong. § 3(a) (2018) (same); S. 2095, 115th Cong. § 3(a) (2017) (same); H.R. 4269, 114th Cong. § 3(a) (2015) (same); H.R. 437, 113th Cong. § 3(a) (2013) (same); S. 150, 113th Cong. § 3(a) (2013) (reported favorably out of committee but never considered by the full Senate); H.R. 1022, 110th Cong. § 2 (2007) (never voted on in committee); H.R. 1312, 109th Cong. § 2 (2005) (same); S. 620, 109th Cong. §§ 2-3 (2005) (same).

[6] *See, e.g.*, Abené Clayton, *Kamala Harris Talks Assault-Weapons Ban and Tax Relief in Pennsylvania Stop*, Guardian (Sept. 13, 2024, 8:31 PM), https://perma.cc/64YC-DJBZ (quoting Vice President Harris as saying "I feel very strongly that it's consistent with the second amendment to say we need an assault weapons ban. They're literally tools of war they were literally designed to kill a lot of people quickly"); Matt Viser & Mike DeBonis, *Biden's Long Quest on the Assault Weapons Ban*, Wash. Post (June 4, 2022, 8:00 AM), https://www.washingtonpost.com/politics/2022/06/04/biden-assault-weapons-ban/ (quoting President Biden as asking "[w]hy in God's name should an ordinary citizen be able to purchase an assault weapon that holds 30-round magazines that let mass shooters fire hundreds of bullets in a matter of minutes"); Ron Elving, *The U.S. Once Had A Ban On Assault Weapons — Why Did It Expire?*, NPR (Aug. 13, 2019, 1:06 PM), https://perma.cc/JU9H-VHT8 ("On the presidential campaign trail in Iowa and on the op-ed page of The New York Times,

Mexican government is therefore asking a federal court to impose regulations that Congress itself has for decades refused to adopt.

Congress has also considered requiring firearms to include features that would prevent unauthorized users from firing them. In the 117th Congress, for example, a bill was introduced that would have outlawed the sale of any handgun that did not prevent firing by unauthorized users. *See* H.R. 1008, 117th Cong. §§ 101(3), 202(a) (2021). But that bill failed to get out of the relevant House committee, let alone pass the entire House and Senate. The Mexican government's request here again goes further than Congress has been willing to go.

Finally, Congress has considered numerous bills that would generally mandate background checks when private citizens want to resell a firearm.[7] But again Congress has declined to adopt this restriction. An injunction that attempts to engineer this outcome (apparently through a convoluted inducement-by-

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former Vice President Joe Biden has made the case for going back to a nationwide ban on assault weapons and making it 'even stronger.'"); Ed Pilkington, *Hillary Clinton Calls for Renewed Assault Weapons Ban: They're a 'Weapon of War*,' Guardian (June 13, 2016, 9:02 AM), https://perma.cc/WB7H-Y9SU (noting that "Hillary Clinton has called for the reinstatement of the assault weapons ban").

[7] *See, e.g.*, H.R. 715, 118th Cong. § 3(a) (2023) (never voted on in committee); S. 494, 118th Cong. § 2(a) (2023) (same); H.R. 8, 117th Cong. §3(a) (2021) (passed by the House but never considered by the Senate); S. 529, 117th Cong. § 2(a) (2021) (never voted on in committee); H.R. 8, 116th Cong. § 3 (2019) (passed by the House but never considered by the Senate); S. 42, 116th Cong. § 2(a) (2019) (never voted on in committee).

contract ploy) would take firearms policy down a road that Congress has not been willing to travel.

As all these examples show, if affirmed, the decision below would short-circuit the legislative process and usurp Congressional authority. The Constitution assigns firearms-related policy decisions to the American people's elected representatives, subject to the constraints of the Second Amendment. The Mexican government's radical request for injunctive relief would instead allow federal courts to make those important decisions. Such a result would turn our constitutional structure on its head, and the Court should not permit it.

CONCLUSION

The Court should reverse the judgment below and hold that this suit is barred by the Protection Act.

Respectfully submitted,

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