

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

SMITH & WESSON BRANDS, INC.,)
ET AL.,)
) Petitioners,
) v.) No. 23-1141
ESTADOS UNIDOS MEXICANOS,)
) Respondent.)

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10
11 Washington, D.C.
12 Tuesday, March 4, 2025

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14 The above-entitled matter came on for
15 oral argument before the Supreme Court of the
16 United States at 10:05 a.m.

17
18 APPEARANCES:
19 NOEL J. FRANCISCO, ESQUIRE, Washington, D.C.; on
20 behalf of the Petitioners.
21 CATHERINE E. STETSON, ESQUIRE, Washington, D.C.; on
22 behalf of the Respondent.

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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 23-1141, Smith & Wesson Brands versus Estados Unidos Mexicanos.

Mr. Francisco.

ORAL ARGUMENT OF NOEL J. FRANCISCO

ON BEHALF OF THE PETITIONERS

MR. FRANCISCO: Mr. Chief Justice, and may it please the Court:

Mexico asserts that American firearms companies are responsible for cartel violence ravaging Mexico. Its theory is that federally licensed manufacturers sell firearms to licensed distributors, who sell to licensed retailers, a small percentage of whom sell to straw purchasers, some of whom transfer to smugglers, who then smuggle them into Mexico, hand them over to cartels, who in turn use them to commit murder and mayhem, all of which requires the government of Mexico to spend money.

Needless to say, no case in American history supports that theory, and it's squarely foreclosed by the Protection of Lawful Commerce in Arms Act. As to proximate cause, this Court

1 has repeatedly said there must be a direct
2 relationship between the defendant's conduct and
3 the plaintiff's injury. But no such
4 relationship exists if plaintiff's injury is
5 caused by multiple intervening independent
6 crimes committed by foreign criminals on foreign
7 soil to inflict harm on a foreign sovereign.

8 As to aiding and abetting, Mexico
9 doesn't identify a specific crime, criminal, or
10 criminal enterprise that defendants supposedly
11 helped. Instead, it asserts that defendants are
12 liable for every illegal sale by every retailer
13 in America because they know that a small
14 percentage of firearms are sold illegally and
15 don't do more to stop it.

16 Again, no case in history supports
17 that theory. Indeed, if Mexico is right, then
18 every law enforcement organization in America
19 has missed the largest criminal conspiracy in
20 history operating right under their nose, and
21 Budweiser is liable for every accident caused by
22 underage drinkers since it knows that teenagers
23 will buy beer, drive drunk, and crash. The
24 First Circuit gravely erred in embracing that
25 implausible theory and should be reversed.

1 I welcome your questions.

2 JUSTICE THOMAS: Mr. Francisco, as to
3 the predicate exception, which federal or state
4 law is your -- is Petitioner reputed to have
5 violated?

6 MR. FRANCISCO: So my understanding,
7 Your Honor, is that they're invoking the federal
8 aiding-and-abetting statute to argue that we
9 have aided and abetted the federal statutes that
10 govern the sale of firearms, and they're
11 alleging that retailers have knowingly sold
12 firearms to straw purchasers and that we aided
13 and abetted that knowing sale.

14 That actually raises a very important
15 question about their allegation of knowing. I
16 don't think it's relevant because I'm willing to
17 even assume a certain level of knowledge. I
18 don't think it matters. But their theory of
19 knowledge is that we actually know that
20 retailers are selling illegally.

21 I'd actually urge you to look at that
22 2010 Washington Post article that they
23 incorporate into their complaint. That article
24 talks about a particular retailer called Lone
25 Wolf. In 2010, it was the number one seller of

1 firearms that were found in Mexican crime gun
2 scenes. And, in that article, you actually have
3 a quote from ATF that says that ATF has no --
4 has no basis to believe that Lone Wolf is doing
5 anything illegal or wrong.

6 Well, if the government doesn't know,
7 how are we supposed to know? It reflects this
8 convoluted theory that -- that simply because
9 the gun is found in Mexico, can be traced back
10 to a retailer, that means the retailer
11 necessarily sold it illegally and that we know
12 that the retailer sold it illegally.

13 JUSTICE THOMAS: Would -- would this
14 be a different case if there was a specific
15 federal or state statute that was alleged --
16 that you were known to have violated?

17 MR. FRANCISCO: Your Honor, it would
18 be a different case. I would want to know more
19 because I still think that, depending on what
20 they alleged, I would have very strong arguments
21 on proximate cause and aiding-and-abetting
22 liability, but it would certainly be a different
23 case.

24 JUSTICE THOMAS: Well, the -- the --
25 the reason I ask is because the exception is for

1 knowingly violating a state or federal statute,
2 and it would seem helpful in determining aiding
3 and abetting and then eventually proximate cause
4 if that comes up if you knew which statute we
5 were dealing with.

6 MR. FRANCISCO: So the complaint is a
7 little bit vague on this. To the extent I
8 understand it, they're looking at federal
9 statutes that restrict the knowing sale of
10 firearms to people who aren't authorized to
11 purchase them, and then they're invoking the
12 criminal federal aiding-and-abetting statute to
13 claim that we're then liable for those illegal
14 sales.

15 I'm willing to assume for the sake of
16 argument that that's valid because I don't think
17 they come anywhere close to establishing
18 aiding-and-abetting liability, and even if they
19 did, I don't think they come anywhere close to
20 establishing proximate cause. I --

21 CHIEF JUSTICE ROBERTS: I'm sorry,
22 counsel, but exactly what role -- I had
23 difficulty telling from your brief -- does
24 foreseeability play in your proximate cause
25 analysis?

1 MR. FRANCISCO: So, as -- as this
2 Court has made clear in a number of cases, it's
3 not that foreseeability is irrelevant. It's
4 that foreseeability alone is not the standard.
5 So it's necessary but not sufficient. In
6 addition, there has to be a direct relationship
7 between the defendant's conduct and the
8 plaintiff's injury.

9 And, Your Honor, I think that the
10 plurality opinion you authored in the Hemi Group
11 is directly on point. That is where a case -- a
12 case where the plurality held that the City of
13 New York couldn't sue a cigarette retailer for
14 not filing the tax reports in order for the city
15 to recover its lost tax revenue because in
16 between the city's injury of lost tax revenue
17 and the retailer's failure to file the reports
18 stood the citizens of New York who illegally
19 failed to pay their taxes, and that broke the
20 chain.

21 This is a much easier case. Here, we
22 don't have just one intervening independent
23 crime. We have a multitude of intervening
24 independent crimes. So, even if they could
25 establish aiding-and-abetting liability -- and I

1 don't think they come even close under
2 Twitter -- they couldn't establish proximate
3 cause, which is the --

4 JUSTICE SOTOMAYOR: I --

5 MR. FRANCISCO: -- other requirement
6 here.

7 JUSTICE SOTOMAYOR: Counselor, it
8 seems to me that the cases are a mess on
9 proximate cause, and you're asking us in this
10 case to choose among a variety of different
11 explanations of it.

12 I think, however -- I try to break
13 this down -- I think their complaint is saying
14 that the violation is selling to straw
15 purchasers, and I think the risk in selling to a
16 straw purchaser -- and that's the known risk of
17 that violation -- is that that straw purchaser
18 is giving or selling the gun to someone who
19 can't possess it because the likelihood is that
20 they're going to use that gun illegally.

21 And that's the risk of the violation.
22 And I think that that's what their complaint
23 says, which is -- now I'm going to put aside the
24 lack of -- the conclusory allegations, and I
25 agree with your point that they don't really

1 tell us which dealers are doing this, who
2 they're aiding and abetting. There may be a lot
3 of conclusory allegations, but the theory, I
4 think, that they're advocating is, if you're
5 selling to a straw purchaser --

6 MR. FRANCISCO: Mm-hmm.

7 JUSTICE SOTOMAYOR: -- that's -- you
8 know that the risk is that they're giving it or
9 selling it to people who are going to commit
10 crimes, here, the Mexican cartel.

11 So I don't know if this is a proximate
12 cause case or it really is what you say it's not
13 or that the allegations are insufficient for
14 aiding and abetting. I think for us to go into
15 proximate cause opens up a pan -- Pandora's box.

16 MR. FRANCISCO: So I want to take one
17 step back, Your Honor, because they're not
18 alleging that my clients engaged in any illegal
19 retail sale. None of my clients actually --

20 JUSTICE SOTOMAYOR: They aided -- no.

21 MR. FRANCISCO: -- sell to consumers.

22 JUSTICE SOTOMAYOR: The -- the
23 complaint says they aided --

24 MR. FRANCISCO: Exactly.

25 JUSTICE SOTOMAYOR: -- aided and

1 abetted. Justice Thomas asked you what
2 violation. I believe the violation they claim
3 is that the dealers are selling to straw buyers.

4 MR. FRANCISCO: Sure. And I just
5 wanted to be clear that I think that the chain
6 of causation -- I think it's relevant both to
7 proximate cause and aiding and abetting.

8 I think that the chain of causation
9 under the statute doesn't start at the illegal
10 sale because we aren't alleged to have engaged
11 in an illegal sale. It starts with the conduct
12 that they allege constitutes aiding and abetting
13 the illegal sale, which is the -- the -- the --
14 the -- the way that we manufacture and
15 distribute our firearms.

16 But I also think that's relevant to
17 aiding-and-abetting liability because we're not
18 alleged to have aided and abetted any cartels or
19 any illegal purchaser. We're alleged in this
20 case at least as they presented it here to have
21 aided and abetted the retailers.

22 And so they have to carry the argument
23 that somehow we're liable for every illegal
24 retail sale in America because we know that some
25 small percentage of retailers may sell the

1 firearms illegally and don't do more.

2 Now I dispute that --

3 JUSTICE GORSUCH: Now, Mr. Francisco,
4 I just want to pause there for a second. Sorry
5 to interrupt you, but just to follow up on
6 Justice Sotomayor's question.

7 Assume -- put aside aiding and
8 abetting. Assume for the moment that you --
9 you -- you did aid and abet the sale -- your
10 clients aided and abetted --

11 MR. FRANCISCO: Mm-hmm.

12 JUSTICE GORSUCH: -- the sale of -- of
13 guns to bad apple dealers, ones they knew or
14 intended even for them to sell on to people in
15 Mexico doing bad things. They knew that. They
16 knew all of that.

17 How would you not have proximate cause
18 in -- in that hypothetical?

19 MR. FRANCISCO: So, sure, Your Honor.
20 And that is a huge assumption. But --

21 JUSTICE GORSUCH: It is.

22 MR. FRANCISCO: -- even accepting that
23 assumption, for the same reason there was no
24 proximate cause in Hemi Group. Even if you
25 assume that we're on the hook for that illegal

1 retail sale, you still have a multitude of
2 independent crimes in between that sale and
3 injury to Mexico.

4 You have the straw purchaser that
5 gives it to the actual purchaser. You have a
6 smuggle across an international border.

7 JUSTICE GORSUCH: I understand, but my
8 hypothetical assumes that you know all that,
9 your clients know all that, maybe even intend
10 it.

11 Now whether there -- there are
12 allegations in this complaint sufficient, put
13 that aside. But, if you know or intend all of
14 that, then what?

15 MR. FRANCISCO: I still don't think
16 that establishes proximate cause when you have
17 an intervening independent crime. And I'll
18 point you to Hemi Group, Your Honor.

19 JUSTICE GORSUCH: Yeah.

20 MR. FRANCISCO: In Hemi Group, the
21 underlying statute was the filing of the tax
22 reports. The entire purpose of the tax reports
23 was to allow governmental entities to collect
24 tax revenue from cigarette sales online that
25 weren't otherwise subject to sales taxes.

1 But the plurality held that that
2 independent intervening act still broke
3 proximate cause. I think it goes back to the
4 Court's 1876 decision in the St. Paul Railway
5 case, where you made clear that if there is a
6 sufficient and independent cause --

7 JUSTICE GORSUCH: It wasn't me.

8 (Laughter.)

9 MR. FRANCISCO: Your Honor, I -- I --
10 I think of the Court as a collective body that
11 operates across time.

12 (Laughter.)

13 MR. FRANCISCO: And it made clear --
14 it made --

15 JUSTICE SOTOMAYOR: Justice Gorsuch
16 doesn't believe that.

17 (Laughter.)

18 JUSTICE GORSUCH: Yes, I do.

19 MR. FRANCISCO: And it made quite
20 clear way back in 1876 when you do have that,
21 and I'm quoting, a sufficient and independent
22 cause operating between the wrong and the
23 injury, that does break the chain of causation
24 even if it's eminently foreseeable, just like
25 many, many, many years later in -- in the Hemi

1 Group case, the Court concluded the same even
2 though it was eminently foreseeable that the
3 retailer's failure to file the tax reports could
4 lead to lost tax revenue.

5 JUSTICE BARRETT: Mr. Francisco, can I
6 just put a point on this? Because I want to
7 make sure I understand the -- the line of
8 questions you've been asked.

9 So it seems to me as Justice Thomas
10 began that when we're talking about the statute
11 that was the violation at the beginning, for the
12 predicate, it has to be a statute that was
13 specifically applicable to the sale or marketing
14 of the product, the gun.

15 MR. FRANCISCO: Yes.

16 JUSTICE BARRETT: Justice Sotomayor
17 asked you. So that's the retailer selling it to
18 the bad guy, right?

19 MR. FRANCISCO: Yes.

20 JUSTICE BARRETT: Okay. That's where
21 the proximate cause inquiry comes in. Your
22 client -- the theory, right? The theory is that
23 your client under 2, under Example 2, is -- has
24 aided and abetted as the manufacturer.
25 Proximate cause doesn't appear in that portion

1 of the statute. It's only in the predicate
2 portion.

3 So, if we accept that framing of the
4 theory, the framing of the complaint, we're
5 really only asking about proximate cause, as
6 Justice Gorsuch was asking you, between the
7 retail --

8 MR. FRANCISCO: Mm-hmm.

9 JUSTICE BARRETT: -- retailer, the
10 sale, and the harm ultimately caused to Mexico.

11 And then we're looking at the chain of
12 events that you're talking at right now: sale
13 to the bad guy, smuggled across the border,
14 misuse.

15 MR. FRANCISCO: Mm-hmm. So I think I
16 have two responses, Your Honor.

17 The first is I -- I actually disagree
18 with how you framed it. But the second is, even
19 if I accept how you framed it, I still think
20 there's no proximate cause.

21 The statute says that there has to be
22 proximate cause between our violation and
23 Mexico's injury. Our violation is not the
24 illegal sale itself. It's the actions that we
25 undertake to aid and abet it, the violative

1 aiding and abetting conduct. So --

2 JUSTICE BARRETT: How does that fit in
3 the statute, though?

4 MR. FRANCISCO: Your Honor, because I
5 think the statute says it's a -- the statute
6 requires that -- sets forth the exception where
7 a seller has knowingly violated an applicable
8 statute and the violation, referring to the
9 seller's violation --

10 JUSTICE BARRETT: But it's not just
11 applicable statute. It's statute applicable to
12 the sale or marketing of the product. So that
13 seems to me to refer to a specific statute
14 relating to the manufacture, sale, distribution
15 of guns, not the aiding-and-abetting statute,
16 right?

17 MR. FRANCISCO: Well, I think it's got
18 to refer to our violation. It refers back to
19 the seller's violation. And, here, the seller
20 hasn't specifically -- and this maybe goes to
21 the confusion that Justice Thomas pointed out.
22 But the seller's violation is not the actual
23 retail sale. We're not retail sellers.

24 JUSTICE BARRETT: Right.

25 MR. FRANCISCO: The seller's violation

1 here is the aiding and abetting of that retail
2 sale. And I presume what they are invoking is
3 the federal aiding-and-abetting statute, and
4 they're trying to combine that with the actual
5 specific sale.

6 So I think there are all kinds of
7 problems with their theory --

8 JUSTICE KAGAN: I guess I don't get
9 that, Mr. -- Mr. Francisco. I mean, aiding and
10 abetting is a form of vicarious liability. Why
11 wouldn't you just say the aiding-and-abetting
12 violation is the violation that is aided and
13 abetted, which, here, as Justice Barrett said,
14 is the retail sale, say the sale to a straw
15 purchaser?

16 MR. FRANCISCO: Sure, Your Honor. I
17 think it's -- I'm just trying to construct the
18 statute properly, and I think, as a matter of
19 proper statutory construction, that's where you
20 begin the proximate cause, with our violation.

21 But I don't really want to fight about
22 it because --

23 JUSTICE KAGAN: Well, your violation,
24 as a matter of vicarious liability, is the
25 violation that the retail seller, you know,

1 sells to the straw purchaser.

2 MR. FRANCISCO: Your Honor, I'm not
3 sure that's right, but -- but, again, I'm
4 willing to assume for the sake of argument that
5 it is right because I still think that there's
6 no proximate cause in between -- for -- for --
7 between the illegal retail sale and Mexico's
8 injury off in Mexico. And I sure don't think
9 that they've come anywhere close to establishing
10 aiding-and-abetting liability.

11 I've already explained why I think
12 there are multiple independent crimes after the
13 retail sale, in addition to the smuggle across
14 an international border and the murder and
15 mayhem committed independently by cartels in
16 Mexico. To me, that is more than sufficient to
17 break that chain.

18 But, in any event, I think that their
19 theory of aiding-and-abetting liability is
20 equally farfetched. I think this is --

21 JUSTICE KAGAN: So, with reference to
22 aiding and abetting, could you just explain to
23 me the sort of structure of this industry? Who
24 are these distributors? Are they pass-through
25 entities? Are they completely independent?

1 Might they be both?

2 What -- what -- what -- what's the --
3 MR. FRANCISCO: The -- they're
4 independent entities, Your Honor. It's possible
5 that there might be some internal distribution,
6 but, by and large, a manufacturer makes the
7 firearms. Then there are distributors who
8 purchase the firearms from different
9 manufacturers. Those distributors then sell
10 firearms to retailers. Everyone in this chain
11 is fully licensed. The retailers then are fully
12 licensed and they sell to purchasers. The
13 allegation is some small percentage of those
14 sales are illegal and we know it.

15 JUSTICE KAGAN: Is your representation
16 that the manufacturers really only deal with the
17 distributors, or do you understand the
18 manufacturers to be looking at and paying
19 attention to the dealers too?

20 MR. FRANCISCO: Well, Your Honor,
21 we're here on the complaint. And, as far as the
22 complaint alleges, it's simply the manufacturers
23 going to the distributors, the distributors
24 going to the retailers and so on.

25 JUSTICE KAGAN: Right. I'm asking,

1 from what you know of the industry and your
2 client, is -- is -- is -- is -- is the
3 manufacturer essentially dealing with the
4 dealers, or is there, like, a big roadblock --

5 MR. FRANCISCO: All right. So
6 we're --

7 JUSTICE KAGAN: -- which is in the --
8 in the form of the distributors?

9 MR. FRANCISCO: We're outside of the
10 complaint now, so I want to be very careful
11 because I don't a hundred percent know the
12 answer to all of your question. But my
13 understanding is that the manufacturers are not
14 generally dealing with the retailers. You do
15 have this tiered distribution chain where
16 they're principally dealing with the
17 distributors, the distributors to the retailers,
18 and so on.

19 I think that the reason this is such
20 an implausible aiding-and-abetting theory is
21 because I actually think this case is a lot
22 easier than the Twitter case in a number of
23 different respects.

24 First of all, Twitter, you actually
25 had a specific criminal, ISIS; you had a

1 specific crime, the Reina nightclub attack; and
2 the defendants were actually providing that
3 product to that criminal.

4 You don't have any of that here.
5 Instead, their theory is that by simply knowing
6 that some percentage of retailers may be doing
7 something illegal, that somehow puts us on the
8 hook for everything that the retailers are
9 doing.

10 This is kind of a common law area.
11 You'd think that they could cite one case that
12 comes anywhere close to that.

13 JUSTICE JACKSON: So --

14 MR. FRANCISCO: But they don't cite a
15 single case.

16 JUSTICE JACKSON: -- Mr. Francisco,
17 I -- that's sort of what I'm a little confused
18 about and I wanted to focus on, which is it
19 seems to me that the core of your argument both
20 here and in your brief has been that there's an
21 implausible theory of abating -- of
22 aiding-and-abetting liability based on what
23 they've alleged and no case in American history
24 supports this theory of liability, as if the
25 question before us is evaluating the viability

1 of Mexico's theory.

2 And what I'm looking at is a statute
3 that I think really makes this case about the
4 scope of the predicate exception, that it's not
5 really, you know, an invitation to assess as a
6 common law matter whether or not we think these
7 facts allege aiding-and-abetting liability.

8 Would you agree with me that the PLCAA
9 statute takes off the table theories of tort
10 with respect to these kinds of manufacturers
11 and, really, the only question is whether the
12 statutory exception applies in this situation?

13 MR. FRANCISCO: Well, I -- yeah, I
14 think I would agree that we're dis -- we're --
15 we're arguing about what the meaning of the
16 statute is. But the statute can only be
17 triggered if they find a violation that's the
18 proximate cause. Here, the violation that
19 they've identified --

20 JUSTICE JACKSON: No, I understand.

21 MR. FRANCISCO: -- is aiding and
22 abetting.

23 JUSTICE JACKSON: But that proximate
24 cause analysis is coming up in the context of an
25 exception to the immunity that Congress has set

1 forth, is that right?

2 MR. FRANCISCO: Sure. Yeah.

3 JUSTICE JACKSON: And I think that's
4 important because the scope of that exception
5 may not be coterminous with our understanding of
6 aiding-and-abetting liability as a common law
7 principle.

8 In other words, you look at Twitter,
9 for example, and you say: Okay, is this -- are
10 what -- is what is being alleged here the same
11 as aiding and -- aiding-and-abetting liability
12 as it was set forth in that statute? That was a
13 totally different statutory scheme. That
14 statute, JASTA in the Twitter case, was about
15 allowing for these kinds of claims.

16 And so what counts for aiding-and --
17 and-abetting liability in Twitter may not be
18 what Congress intended for this exception. I
19 feel like we have to focus on where we actually
20 are in this context in making this
21 determination.

22 MR. FRANCISCO: Well, Your Honor, I
23 think that's where I might very much disagree
24 with the theory that you're articulating. I
25 think that they do have to show a violation.

1 They've alleged it's aiding and abetting.
2 There's no aiding and abetting in the air. What
3 Twitter purported to do was look at traditional
4 aiding-and-abetting principles --

5 JUSTICE JACKSON: No, I understand,
6 but Twitter --

7 MR. FRANCISCO: -- and apply them.

8 JUSTICE JACKSON: -- was a different
9 kind of statute. We have said that, you know,
10 when we're doing statutory interpretation, when
11 we're thinking about aiding-and-abetting
12 liability, it may not be the same in every
13 statutory scheme.

14 And I guess what I'm just trying to --
15 I mean, this is not supposed to be like a --
16 a --

17 MR. FRANCISCO: Sure. Yeah.

18 JUSTICE JACKSON: -- a statement that
19 is necessarily against your position. I'm just
20 trying to understand the framing of this.

21 It seems to me this is a statutory
22 interpretation question about the meaning of
23 what the predicate exception says, knowingly
24 violated a state or federal statute. Aiding and
25 abetting is in the examples. It's not even in

1 the actual core statutory statement of what
2 would qualify.

3 So shouldn't we be focused more on
4 trying to understand what Congress meant when it
5 was excepting -- you say narrowly --

6 MR. FRANCISCO: Mm-hmm.

7 JUSTICE JACKSON: -- a certain kind of
8 claim?

9 MR. FRANCISCO: Well, Your Honor, to
10 the extent I understand what you're getting at,
11 first, I do think that you really do have to
12 grapple with the aiding-and-abetting liability
13 issue and Twitter sets out the framework.

14 But, even if you want to take a step
15 back and look at what Congress was getting at
16 more broadly, Congress's entire purpose was to
17 prohibit lawsuits just like this one. It was
18 trying to prohibit lawsuits that had been
19 brought by the City of Chicago, the City of
20 Cincinnati, the City of Boston, on theories and
21 seeking relief exactly like this one.

22 So, if you adopt my friend's position
23 on the other side, you have essentially gutted
24 PLCAA. And remember what the larger purpose of
25 PLCAA was. It was actually to ultimately

1 protect Second Amendment rights by preventing
2 plaintiffs from bankrupting the industry through
3 frivolous lawsuits. After all, the Second
4 Amendment doesn't really mean anything if
5 there's no -- nobody from whom you can buy a
6 firearm.

7 JUSTICE GORSUCH: So -- so, Mr.
8 Francisco --

9 MR. FRANCISCO: So I'm willing to
10 take --

11 JUSTICE GORSUCH: -- just to follow up
12 on this, PLCAA, as you call it, says that --
13 that you've got to show a violation of a state
14 or federal statute. And we -- Justice Thomas
15 asked you, and I -- I still am not sure we
16 completely identified what that statute is. I
17 think it's 18 U.S.C. 922, maybe 923. Do you
18 agree with that?

19 MR. FRANCISCO: Your Honor, I --

20 JUSTICE GORSUCH: We don't know?
21 Okay.

22 MR. FRANCISCO: -- I -- I don't think
23 the complaint was clear on it.

24 JUSTICE GORSUCH: That's -- that's
25 what they cited in --

1 MR. FRANCISCO: We did speculate about
2 that. We speculated about it in our brief.
3 I -- I think that might be the statute we cited.

4 JUSTICE GORSUCH: Okay. And -- and
5 then, for aiding and abetting, it would be 18
6 U.S.C. Section 2, I think.

7 MR. FRANCISCO: I think that's right,
8 yeah.

9 JUSTICE GORSUCH: Okay. All right. I
10 just want to be clear on what -- what is being
11 alleged.

12 And then your friends on the other
13 side make a good point about our precedent in
14 Direct Sales, which I did not write either and
15 is about 80 years old too. I want to give you
16 an opportunity to respond to Direct -- that.

17 MR. FRANCISCO: Sure. I -- I will
18 agree with them on one point, that Direct Sales
19 is their single best case.

20 And Direct Sales isn't even close. In
21 Direct Sales, you had a manufacturer that was
22 selling to a specific doctor in such massive
23 quantities that there was no possible lawful
24 explanation. And, in addition, the manufacturer
25 then further encouraged that doctor to buy more

1 by offering it massive discounts on bulk
2 purchases.

3 So, to use the language of Twitter,
4 you had both a very high degree of scienter and
5 a very high degree of conduct and encouragement.

6 JUSTICE GORSUCH: Well --

7 MR. FRANCISCO: Nothing like that
8 here.

9 JUSTICE GORSUCH: -- that raises
10 another question I had, and then I'll stop.

11 But, in terms of aiding and abetting
12 under Section 2 for 922 if that's what we're
13 talking about, those are criminal statutes. And
14 Rosemond says that aiding and abetting in the
15 criminal arena generally requires intent, not
16 knowledge. But you didn't make anything of
17 that. Can you just --

18 MR. FRANCISCO: Well, Your Honor, I
19 think that because they don't come anywhere
20 close on any standard, whether you call it
21 knowledge, whether you call it intent --
22 remember, in Rosemond, the defendant was
23 actually part of the drug transaction. The
24 question was, did Rosemond, in participating in
25 that drug transaction, also know that one of his

1 collaborators was going to shoot somebody? You
2 don't have anything like that here.

3 The other respect in which this is far
4 different from Twitter in a way that also
5 highlights Direct Sales is that in Twitter, the
6 defendants there were far more active. We were
7 here just a few weeks ago talking about
8 algorithms. The way that algorithms work is
9 that they match up the creator's content with
10 the user's interests. So it starts out with
11 ISIS's vile content. It surveys the billions of
12 users on the platform, figures out which ones
13 are actually interested in that content, and
14 puts the two together.

15 We're not doing anything even like
16 that. This is an a fortiori case after Twitter.

17 JUSTICE GORSUCH: Thank you. Thank
18 you.

19 CHIEF JUSTICE ROBERTS: Counsel, the
20 complaint says that 2 percent of the guns
21 manufactured in the United States find their way
22 into Mexico, and I know you dispute that, but is
23 there a number where your legal analysis might
24 have to be altered? If it's 10 percent, if it's
25 20 percent? At some point, the proximate cause

1 lines that you draw really can't bear the weight
2 of the ultimate result.

3 MR. FRANCISCO: So, Your Honor, if
4 we're -- I take their complaint as it comes. If
5 we're talking about proximate cause, I don't
6 think that the percentage would actually matter
7 when you have a multitude of intervening
8 independent crimes.

9 In Hemi, for example, I don't think it
10 matter -- would matter whether the city was
11 losing -- whether everybody was not paying their
12 taxes in New York City or just a small
13 percentage were not paying their taxes in New
14 York City. What mattered is that you had the
15 independent decision of the New York City
16 taxpayers not to pay their taxes that broke that
17 chain.

18 Here, you have a multitude of
19 intervening independent crimes. So I don't
20 think that percentage would matter at all on my
21 proximate cause analysis.

22 CHIEF JUSTICE ROBERTS: Well, I mean,
23 at some -- at some point, it must matter. I
24 mean, I understand you don't want to -- your
25 theory about the different steps, but if it ends

1 up that most of your product or whatever number
2 you want to get to a change in your view ends up
3 there, you've got to know that. And if you know
4 that, do you still have to go through the
5 intricate step-by-step-by-step --

6 MR. FRANCISCO: I --

7 CHIEF JUSTICE ROBERTS: -- or can you
8 just say this is what they make --

9 MR. FRANCISCO: Mm-hmm.

10 CHIEF JUSTICE ROBERTS: -- and pick
11 whatever number you want, 70 percent of it ends
12 up in Mexico?

13 MR. FRANCISCO: I -- I still think you
14 do have to go through that analysis, Your Honor.
15 But, even if you disagree with me, I'm willing
16 to accept the allegations in their complaint and
17 the number of 2 percent and to be quite
18 confident that that is not enough for proximate
19 cause, particularly when their theory is that
20 simply because a firearm was found in Mexico at
21 a crime scene and can ultimately trace -- be
22 traced back to a particular retailer that sold
23 it in the first instance, that means that the
24 retailer illegally sold it and that we knew the
25 retailer illegally sold it. Even the ATF and

1 the federal government rejects that theory.

2 CHIEF JUSTICE ROBERTS: Thank you.

3 Justice Thomas?

4 JUSTICE THOMAS: Mr. Francisco, the --
5 in Direct Sales, there was exactly that, a
6 direct sale to a doctor, and the seller worked
7 closely with the doctor to work around the
8 limitations.

9 In your brief, you summarized the
10 chain that you've mentioned or alluded to a
11 number of times.

12 MR. FRANCISCO: Mm-hmm.

13 JUSTICE THOMAS: Would you just list
14 the chain for our benefit?

15 MR. FRANCISCO: Sure. It starts out
16 with a licensed manufacturer, a manufacturer
17 that the federal government says is allowed to
18 make firearms. It then distributes its legal
19 firearms to licensed distributors, distributors
20 who the federal government says are allowed to
21 distribute them.

22 They then sell to licensed retailers,
23 retailers that the federal government says are
24 allowed to retail. Those retailers, some very
25 small percentage of them, an unknown number but

1 some small percentage of them, transfer those
2 firearms illegally to straw purchasers.

3 The straw purchaser then hands it over
4 to the actual purchaser. You then have a
5 smuggle across an international border, yet
6 another violation of law. The smuggler then
7 presumably gives it to the cartels who are
8 illegally possessing the firearm in Mexico under
9 Mexican law as my friends have described it.

10 Then the Mexican cartels engage in
11 murder and mayhem against the good people of
12 Mexico, all of which in turn causes the Mexican
13 government to have to spend money to respond to
14 that murder and mayhem.

15 With respect, there's not a single
16 case in history that comes close to that. They
17 don't even cite cases that find a manufacturer,
18 I think, ever liable for the unlawful criminal
19 misuse of its products, other than the cases
20 that PLCAA was meant to prohibit and perhaps
21 other than the Avis case, the Florida Supreme
22 Court case.

23 But they certainly don't cite anything
24 that comes close to that chain of causation,
25 which is more extreme than the cases that PLCAA

1 was meant to prohibit.

2 CHIEF JUSTICE ROBERTS: Justice Alito?

3 Justice Sotomayor?

4 Justice Kagan?

5 JUSTICE KAGAN: So suppose,

6 Mr. Francisco -- and this is not the complaint

7 in this case, so I'm making changes to it.

8 Suppose there's a manufacturer and it

9 deals directly with a network of dealers, or

10 there's a wholesaler and it deals directly with

11 a number of dealers. I think one of the

12 defendants in this case is a wholesaler. Either

13 way, let's assume you have a

14 manufacturer/wholesaler that deals directly with

15 a network of dealers.

16 And suppose that that manufacturer

17 does have knowledge that a particular dealer

18 does more than the usual share of -- of -- of

19 straw transactions and also knows that more than

20 the usual share of guns wind up in Mexico and

21 particularly at Mexican crime scenes so that the

22 manufacturer -- and the way that manufacturers

23 do, I think, when they're dealing with dealer

24 networks --

25 MR. FRANCISCO: Mm-hmm.

1 JUSTICE KAGAN: -- they're paying
2 attention to their dealers and they're trying to
3 figure out whether there's a dealer whose sales
4 are kind of out of kilter with the rest. And
5 they think, yes, I have a dealer whose sale
6 is -- sales are out of kilter. They're doing
7 more straw transactions. They keep on selling
8 to people who are taking the guns to Mexico and
9 particularly to people who are leaving the guns
10 at Mexican crime scenes.

11 MR. FRANCISCO: Mm-hmm.

12 JUSTICE KAGAN: Is that enough?

13 MR. FRANCISCO: Your Honor, that's
14 obviously very different, as you acknowledged.
15 Even in that case, if the manufacturer was
16 simply treating all of the dealers the same,
17 including that dealer, then I don't think you
18 would have crossed the line into
19 aiding-and-abetting liability --

20 JUSTICE KAGAN: Treating them the
21 same, what -- what does that mean?

22 MR. FRANCISCO: So, you know, like,
23 say they have a policy that says: You know,
24 look, I sell firearms. Any dealer that wants to
25 purchase my firearms --

1 JUSTICE KAGAN: I see.

2 MR. FRANCISCO: -- I'm going to sell
3 them to that dealer.

4 JUSTICE KAGAN: Okay. Well, they are
5 treating them the same. I mean, from one
6 perspective, that's -- that's the problem --

7 MR. FRANCISCO: Mm-hmm.

8 JUSTICE KAGAN: -- that they're
9 treating this rogue dealer the same as the good
10 dealers, right --

11 MR. FRANCISCO: Right.

12 JUSTICE KAGAN: -- even though that
13 they know that the rogue dealer is, in fact, a
14 rogue dealer.

15 Isn't that enough of a problem to
16 bring you -- and say just where -- one thing
17 that's not -- that is the same is that we're at
18 a 12(b)(6) stage.

19 MR. FRANCISCO: Sure. And, Your
20 Honor, I -- I -- I think I'd invoke Twitter,
21 where the social media platforms knew to a
22 metaphysical certainty that ISIS was on its
23 platform doing nefarious things, and that
24 knowledge to a metaphysical certainty wasn't
25 enough if you were simply treating your

1 customers all the same and you were indifferent
2 to what they were doing.

3 I think this case is a lot easier than
4 Twitter in various respects.

5 JUSTICE KAGAN: Yeah, I guess that's
6 the question. Is the -- is the case that I gave
7 you, is it a Twitter or is it a Direct Sales?

8 It seems to me more like a Direct
9 Sales. I'm a manufacturer. I have a dealer
10 network. I know that there's one dealer that's
11 way off the beaten track and doing things that
12 are really different.

13 MR. FRANCISCO: Right.

14 JUSTICE KAGAN: That seems a Direct
15 Sales case.

16 MR. FRANCISCO: And -- and if I can
17 explain why I think that Direct Sales is far
18 more extreme than your hypothetical. Remember,
19 in Direct Sales, it wasn't just that this doctor
20 was purchasing so much that there was no
21 possible explanation. There was no issue --
22 nobody even argued about whether he was -- the
23 Direct Sales was treating everybody the same.

24 But, in addition, what that
25 manufacturer was doing was explicitly

1 encouraging that doctor who it was -- knew --
2 knew it was already illegal -- illegally
3 prescribing to do it even more. There's an
4 example in the facts, for example, where the
5 doctor orders two batches of pills, one for a
6 thousand pills and another for a hundred pills.

7 And Direct Sales comes back and says:
8 Don't do that. I'm just going to cancel your
9 hundred order because I'll sell you another
10 thousand pills at this massive discount.

11 So you not only had a high degree of
12 knowledge, you had a very high degree of conduct
13 with the manufacturer actually encouraging the
14 over-sale.

15 JUSTICE KAGAN: So you think that's
16 necessary to Direct Sales, that there's a kind
17 of encouragement in addition to a realization
18 that your products are being used in this way
19 for these purposes?

20 MR. FRANCISCO: Yeah, I -- I -- I
21 think that's the necessarily implication of
22 Twitter, where you had knowledge to a
23 metaphysical certainty that one of your
24 customers was doing something bad.

25 But what the opinion makes clear is

1 that simple knowledge doesn't get you across the
2 line unless you're, in addition, acting in an
3 unusual way, as the Court put it --

4 JUSTICE KAGAN: How about if the
5 conduct is like -- and we do this for everybody.
6 Don't get me wrong, we do this for everybody,
7 but it's particularly maybe important to Mexican
8 gang members, is that we make it so that you
9 can, you know, easily scrape off serial numbers
10 and we construct a set of products that are
11 obviously useful in their characteristics for
12 cartel members.

13 MR. FRANCISCO: Well -- well, Your
14 Honor, the more you ratchet up the facts and
15 make them cartel-specific, I think the closer
16 you do get --

17 JUSTICE KAGAN: Because those --

18 MR. FRANCISCO: -- to Direct Sales.
19 But --

20 JUSTICE KAGAN: -- those allegations
21 are in this complaint, right, that the
22 manufacturers have basically designed and
23 manufactured a set of weapons with a set of
24 characteristics that are peculiarly useful for
25 criminal activity?

1 MR. FRANCISCO: Well, and that's where
2 I don't think you would be getting anywhere
3 close. If we simply make our firearms in a way
4 that the general public likes and we allow
5 whoever wants to buy our firearms buy our
6 firearms and we know, as in Twitter, that some
7 percentage of them are going to do something
8 wrong, that's not the type of affirmative action
9 that gives rise to aiding-and-abetting
10 liability.

11 After all, the social media platforms
12 in Twitter did know that ISIS was on their
13 platform. They were much more active than we
14 are in the ways that I've already described.

15 This Court said as a matter of law on
16 a motion to dismiss that that wasn't even close
17 enough because there was no unusual treatment of
18 ISIS relative to any other customer.

19 JUSTICE KAGAN: Thank you.

20 MR. FRANCISCO: And there was no
21 affirmative conduct towards ISIS.

22 CHIEF JUSTICE ROBERTS: Justice
23 Gorsuch?

24 Justice Barrett?

25 JUSTICE BARRETT: Just one question.

1 Is there any reason for us to reach the
2 proximate cause question if we conclude for
3 aiding and abetting that you win?

4 MR. FRANCISCO: If you rule for us on
5 aiding and abetting, that will completely
6 dispose of the case. The reason to also address
7 proximate cause is because it's an
8 extraordinarily important issue that I think
9 applies in many different contexts, which is why
10 there's such a broad range of amici in this case
11 that go well beyond the firearms industry.

12 So, while you could completely resolve
13 it on aiding and abetting, I would -- I would
14 urge you to address proximate cause as well.

15 JUSTICE BARRETT: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Jackson?

18 JUSTICE JACKSON: So, Mr. Francisco,
19 I'm just trying to understand what you mean by
20 "resolve it on aiding-and-abetting liability."
21 Don't we have to have a conception of
22 aiding-and-abetting liability that is specific
23 to this statute?

24 MR. FRANCISCO: No.

25 JUSTICE JACKSON: You seem to be

1 drawing on others. And I thought we took a
2 statute-by-statute approach to
3 aiding-and-abetting liability. We've held as
4 much. We've said that before.

5 MR. FRANCISCO: Well, Your Honor, in
6 Twitter, you were applying aiding-and-abetting
7 principles that arose in the context of a murder
8 when you were talking about social media
9 platforms.

10 I think the whole point of Twitter was
11 that there is a set of general
12 aiding-and-abetting principles, and that is the
13 law that informs what aiding-and-abetting
14 liability is.

15 JUSTICE JACKSON: But I thought we
16 were --

17 MR. FRANCISCO: I don't even know how
18 you would do this kind of statute-specific
19 aiding-and-abetting liability outside of the
20 general principles of aiding and abetting.

21 JUSTICE JACKSON: Well, I -- I thought
22 we were only looking at aiding and abetting to
23 the extent that Congress mentions that in an
24 example in the statute. So what we're really
25 doing is trying to understand what Congress

1 intended with respect to the exception that it
2 put in this statute.

3 And so, to the extent that it
4 references aiding-and-abetting liability in one
5 of the examples, that is just to illuminate the
6 meaning of the statutory terms that exist there,
7 right?

8 I mean, it's sort of odd to me that
9 suddenly a common law of aiding-and-abetting
10 liability is coming in to, in your view, be
11 dispositive of how we think about this case.

12 MR. FRANCISCO: Sure. Well, I think
13 that it's an example. The -- the reference to
14 aiding and abetting in the statute is an example
15 of a violation that then triggers the statutory
16 exception and the proximate cause analysis.

17 So you have to understand then what it
18 means to aid and abet a particular crime.
19 Again, I don't --

20 JUSTICE JACKSON: As Congress intended
21 it for the purpose of this statute in --

22 MR. FRANCISCO: Well, and -- and --
23 and I think it's not that plausible to say that
24 Congress had some completely idiosyncratic view
25 of what aiding and abetting was for this statute

1 as opposed to just looking to the principles
2 like this Court looked to in Twitter, which are
3 just the basic aiding-and-abetting --

4 JUSTICE JACKSON: Can I just ask you
5 about your proximate --

6 MR. FRANCISCO: -- principles that are
7 covered in criminal law.

8 JUSTICE JACKSON: Can I ask you about
9 the proximate cause because I'm still a little
10 confused about where you start your proximate
11 cause analysis. I listened as you --

12 MR. FRANCISCO: Mm-hmm.

13 JUSTICE JACKSON: -- discussed with
14 Justice Thomas the steps, the series of steps,
15 from your clients to the alleged ultimate harm,
16 but it seemed to me that the first moment of
17 illegality in the chain, as you articulated it,
18 was the retailers selling to the straw
19 purchasers. Am I right about that?

20 You say your clients do things that
21 are legal. They sell to --

22 MR. FRANCISCO: Mm-hmm.

23 JUSTICE JACKSON: -- other legal
24 buyers and -- et cetera, et cetera, until we get
25 to that straw purchaser point, right?

1 MR. FRANCISCO: That is the first
2 moment of illegality, but I don't think that's
3 the sole step relevant to a general proximate
4 cause analysis.

5 JUSTICE JACKSON: Right. But we don't
6 have a general proximate cause analysis. We
7 have a statute. And the statute makes clear
8 that we're starting with an action in which a
9 manufacturer or seller of a qualified product
10 knowingly violated a state or federal statute
11 applicable to the sale or marketing of the
12 product.

13 So it seems to me that the first step,
14 given this statute, is the moment of violation,
15 of illegality, as opposed to some theoretical
16 original point.

17 MR. FRANCISCO: And my answer to that
18 question is no, but it doesn't matter. No --

19 JUSTICE JACKSON: No, I understand you
20 think you make it anyway --

21 MR. FRANCISCO: Yeah. Yeah.

22 JUSTICE JACKSON: -- but I'm just
23 trying to understand why you --

24 MR. FRANCISCO: And it's because what
25 the --

1 JUSTICE JACKSON: -- why you're
2 insisting --

3 MR. FRANCISCO: Yeah.

4 JUSTICE JACKSON: -- that it's way
5 back here.

6 MR. FRANCISCO: Because what the
7 statute says is there has to be a proximate
8 cause between the defendant's violation. Our
9 violation is not the illegal sale itself. We
10 don't sell to consumers. Our --

11 JUSTICE JACKSON: But you say you
12 don't violate at the time the beginning. So I
13 don't know what your violation is unless it --
14 it's the point of illegality.

15 MR. FRANCISCO: It's the aiding and
16 abetting. That is the whole --

17 JUSTICE JACKSON: All right.

18 MR. FRANCISCO: -- aiding-and-abetting
19 theory.

20 JUSTICE JACKSON: Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 MR. FRANCISCO: Thank you, Your Honor.

24 CHIEF JUSTICE ROBERTS: Ms. Stetson.

25

1 ORAL ARGUMENT OF CATHERINE E. STETSON

2 ON BEHALF OF THE RESPONDENT

3 MS. STETSON: Mr. Chief Justice, and

4 may it please the Court:

5 Mexico's complaint pleads that
6 Petitioners aided and abetted violations of
7 specific federal gun laws and that those
8 violations proximately caused Mexico's harm.
9 That satisfies PLCAA's predicate exception.

10 First, the complaint details that
11 Petitioners deliberately supplied the illegal
12 Mexican market by selling guns through the small
13 number of dealers that they know sell a large
14 number of crime guns and who repeatedly sell in
15 bulk to the cartel traffickers.

16 Petitioners' arguments ignore these
17 allegations.

18 Next, as the Court said in *Twitter*, an
19 aider and abetter is liable for harms that were
20 a foreseeable risk of that violation. That
21 framing, foreseeable risk, is the proximate
22 cause question. As this Court put it in *Bank of*
23 *America*, does the harm alleged have a
24 sufficiently close connection to the conduct the
25 statute prohibits? The answer is yes. The laws

1 broken here are designed to keep guns out of
2 criminals' hands. Those violations put guns in
3 criminals' hands and those criminals harmed
4 Mexico.

5 Petitioners' arguments would rewrite
6 PLCAA and proximate cause law far beyond this
7 case. Petitioners argue that independent
8 criminal acts sever the causal chain. But an
9 independent act, criminal or not, only breaks
10 the causal chain if it is not foreseeable.
11 These acts were foreseeable.

12 Petitioners argue that Mexico's injury
13 is not direct. But their directness argument
14 borrows from cases involving indirect victims.
15 Mexico is not an indirect victim.

16 We are here at the beginning of the
17 beginning of this case. This Court need not
18 vouch for Mexico's allegations, but it must
19 assume they are true. And the issue at this
20 stage is not whether every aspect of Mexico's
21 complaint survives but whether any of it clears
22 the predicate exception.

23 Mexico should be given a chance to
24 prove its case.

25 I welcome the Court's questions.

1 JUSTICE THOMAS: How is your suit
2 different from the types of suits that prompted
3 the passage of PLCAA?

4 MS. STETSON: Our suit is different,
5 Justice Thomas, because the types of suits that
6 prompted the passage of PLCAA specifically did
7 not allege that the manufacturers had violated
8 any law. So, if you look, for example, at the
9 Third Circuit's decision in City of
10 Philadelphia, the Illinois Supreme Court's
11 decision of City of Chicago, each of them
12 specifically made the point that those
13 manufacturers were not alleged to have violated
14 any federal or state statute. They were being
15 held liable for actions solely caused by
16 criminals.

17 And that's the important balance that
18 this bipartisan act struck. If an action was
19 solely caused by criminals, manufacturers of
20 guns, like any other product, wouldn't be held
21 liable. But, if --

22 JUSTICE THOMAS: Well, it seems as
23 though the only connection -- or the difference
24 would be the allegation or the assertion that
25 you have an aiding-and-abetting problem with

1 respect to the manufacturer. You could have
2 done that in the other cases, couldn't you?

3 MS. STETSON: I don't know that they
4 could have. And they certainly didn't. And --
5 and PLCAA, for -- more to the point, could have
6 also barred, as many states did, all lawsuits
7 against manufacturers. Many -- many states
8 barred lawsuits by cities. Many states barred
9 lawsuits by all manufacturers. PLCAA didn't.
10 And what PLCAA did was to preserve exactly these
11 types of claims.

12 You asked a question about the
13 specific allegations of illegality. I want to
14 direct you to paragraph 249 of the complaint.
15 There is a list at paragraph 249 that includes
16 18 U.S.C. 922, several different subparts,
17 (a)(6), (d)(1); 923(g)(1); 924(a)(1)(A). And
18 those map closely onto the predicate exception
19 we're talking about, including, of course, that
20 first example of the predicate exception, which
21 involves aiding and abetting a straw purchase,
22 which is at the core of what we are talking
23 about. That's 18 U.S.C. 922(a)(6), 922(t)(1),
24 922(m), 924(a)(1)(A), 923(g)(1)(A). Each of
25 those are specified in the complaint, and the

1 manufacturers and distributor in this case are
2 alleged to have aided and abetted all of them.

3 JUSTICE THOMAS: Have --

4 CHIEF JUSTICE ROBERTS: Counsel -- I'm
5 sorry.

6 JUSTICE THOMAS: Oh, just one last.

7 Have any of these violations been
8 violations that ATF have -- has pinpointed?

9 MS. STETSON: They have not been
10 violations that ATF has pinpointed, and that's
11 a -- that's a point that the Petitioners are
12 fond of making. I think the issue with ATF, as
13 the complaint alleges, is that ATF -- and you
14 can find this at paragraphs 126, 129, 133 --
15 ATF, just because of its resources, is only able
16 to look even every year at about anywhere
17 between 3 and 10 percent of licensed dealers and
18 manufacturers and distributors.

19 And if PLCAA, again, had wanted ATF to
20 be the sole arbiter of this, it could have
21 barred cases altogether. It could have required
22 a conviction. It could have required the
23 stripping of a license before any of these
24 allegations were allowed to go forward. It
25 didn't do any of those things in the predicate

1 exception.

2 CHIEF JUSTICE ROBERTS: Counsel, in
3 his argument this morning and also in his brief,
4 Mr. Francisco focused on two particular cases,
5 the Twitter case, of course, and you engaged
6 with that in your brief, but also Hemi Group,
7 and you cite that once in a string cite at page
8 42 of your brief. I wanted to give you an
9 opportunity to say a little bit more about that.

10 MS. STETSON: Certainly. So Hemi
11 Group, of course, is -- is -- pertains to the
12 proximate cause issue. And Hemi Group, I think,
13 is in a line with all of the cases that talk
14 about what my friend, Mr. Francisco, calls
15 direct harm. And that's something that you
16 heard a lot in his argument. Direct came up a
17 lot. Independent came up 13 times.

18 Direct harm, if you look at Hemi
19 Group, if you look at Associated General
20 Contractors, Holmes, Anza, Bridge, there is a
21 list of proximate cause cases, and if you look
22 at each of them, what you will find is that the
23 issue there was that the victim who was bringing
24 the complaint was an indirect victim.

25 So this Court, like -- like many of

1 us, finds it hard to speak with one voice on
2 proximate cause. One of the few times it has is
3 in Lexmark. And what Lexmark says is the reason
4 for that directness requirement is that there
5 ordinarily is a discontinuity between the injury
6 to the direct victim and the injury to the
7 indirect victim so that the latter is not surely
8 attributable to the former. That, I think, is
9 an important component of the proximate cause
10 argument.

11 And I want to touch on this
12 independent idea because it came up so much. As
13 I said in the opening, an act that is
14 independent can still be foreseeable. It's when
15 an independent act is unforeseeable that you
16 have the intervening cause that breaks the
17 causal chain.

18 So Mr. Francisco mentioned that 1876
19 case that Justice Gorsuch did not write about
20 Milwaukee railroad. You know, that is the case
21 that says the primary cause may be the proximate
22 cause of a disaster, though it may operate
23 through successive instruments as an article at
24 the end of a chain may be moved by a force
25 applied to the other end.

1 So it's not a question about one step
2 or a causal chain. It's a question about
3 whether something breaks that chain.

4 Hemi was an example of an -- of
5 something breaking the chain because you had
6 unlawful conduct over here and an injury over
7 there, and the two weren't connected by anything
8 other than a very articulate series of steps.
9 The injury and the conduct were very different.

10 JUSTICE SOTOMAYOR: You know, it --
11 it's nearly impossible to say that something's
12 not foreseeable in -- in a chain. It doesn't
13 help me when people talk foreseeability.

14 I'm much more helped by the
15 Restatement (Third) of Torts that basically
16 says: You impose liability for harms within the
17 scope of the risk that made the defendant's
18 conduct wrongful in the first place.

19 That makes much more sense because, as
20 I started earlier with Mr. Francisco, we know
21 that a straw seller is going to sell to someone
22 who is going to use the gun illegally because,
23 if they weren't, they wouldn't use the straw
24 purchaser. And that illegal conduct is going to
25 cause harm and harm like this, that the gun is

1 going to be used in some way to injure people.

2 Correct?

3 MS. STETSON: That's correct.

4 JUSTICE SOTOMAYOR: And that basically
5 is much easier than saying that all foreseeable
6 harms are -- you're responsible for all
7 foreseeable harms. You're only responsible for
8 those that your wrongful conduct causes a risk
9 about.

10 MS. STETSON: That's exactly right,
11 Justice Sotomayor. And that's why I started
12 with that reference to Twitter because, when
13 Twitter talks about the aider and abetter being
14 responsible for harms that are a foreseeable
15 risk of the conduct, that's the closest thing
16 that I've seen that comes to encapsulating what
17 a proximate cause test is.

18 JUSTICE SOTOMAYOR: Exactly.

19 MS. STETSON: It's foreseeable risk.

20 JUSTICE SOTOMAYOR: Now can I go back
21 to what's troubling me? You have the
22 manufacturers aiding and abetting, in your
23 theory, by producing guns that are singularly
24 attractive to the cartel because they are
25 designed in a particular way that cartel members

1 like, because they're showy.

2 They're making erasable serial
3 numbers, which obviously are attractive to
4 criminals because every criminal would like to
5 erase the serial number if they can.

6 So that's what you claim is aiding and
7 abetting. But what are you claiming interstate
8 the distributor wholesaler did other than
9 selling the product? They don't design it.
10 They didn't do any of the -- they didn't design
11 it. They didn't have anything to do with that.
12 They just have a product they're selling.

13 So how do we make in -- how are your
14 allegations enough with respect to interstate?
15 And if we were to say they're not enough with
16 respect to interstate, doesn't that break the
17 causal connection with the manufacturers?

18 MS. STETSON: Justice Sotomayor,
19 the -- the complaint actually details six or
20 seven different examples of how the
21 manufacturers are actively participating in the
22 illegal market. One -- one of them is design.

23 JUSTICE SOTOMAYOR: I -- I -- I -- I'm
24 accepting that.

25 MS. STETSON: Yes. Yes.

1 JUSTICE SOTOMAYOR: I'm asking, tell
2 me what it says that the distributors are doing.

3 MS. STETSON: What it says the
4 distributors are doing, including the -- the one
5 that's named in this complaint, are knowingly
6 supplying the dealers who we know sell
7 unlawfully across the border.

8 JUSTICE SOTOMAYOR: But knowledge is
9 not enough. We have repeatedly said mere
10 knowledge is not enough. You have to aid and
11 abet in some way.

12 MS. STETSON: What the -- what --

13 JUSTICE SOTOMAYOR: You have to -- you
14 have to intend and take affirmative action to
15 encourage what they're -- not to encourage but
16 to participate in what they're doing.

17 MS. STETSON: What this Court said in
18 Rosemond is a person who actively participates
19 in a criminal scheme, knowing its intent and
20 character, intends that scheme's commission.
21 That's the criminal aiding-and-abetting
22 standard.

23 JUSTICE GORSUCH: Yeah, that -- that
24 is the standard. That was a question I wanted
25 to circle back with you on, Ms. Stetson.

1 If 922 and 3 and 4 are your predicate
2 violations and -- and aiding and abetting under
3 18 U.S.C. Section 2, I think, would then be your
4 aiding-and-abetting hook, that's a criminal --
5 those are criminal statutes. And the mens rea
6 under Rosemond is intent, right?

7 MS. STETSON: The mens rea under
8 Rosemond for aiding and abetting in the criminal
9 context --

10 JUSTICE GORSUCH: Yeah.

11 MS. STETSON: -- would -- would be
12 intent under Rosemond.

13 JUSTICE GORSUCH: And -- and you're
14 invoking criminal statutes. So is -- is that
15 the standard you have to meet here?

16 MS. STETSON: It's the standard we
17 have to meet, but just as in Rosemond, if you
18 actively participate knowing the scheme --

19 JUSTICE GORSUCH: Sure, then you can
20 infer knowledge.

21 MS. STETSON: -- then you can infer --

22 JUSTICE GORSUCH: I -- I get that.

23 MS. STETSON: -- particularly at the
24 motion-to-dismiss stage.

25 JUSTICE GORSUCH: Yeah. Got it.

1 Thank you.

2 MS. STETSON: And -- and let me -- if
3 I could, I want to be pretty specific about some
4 of the allegations in the complaint, because
5 what I heard this morning was that the
6 allegations are vague and -- and so forth.

7 I want to point you to a few
8 particular allegations. Two of them are at
9 paragraphs 122 and 146. And this has to do with
10 trace data. Defendants are alleged to regularly
11 receive -- I'm sorry?

12 JUSTICE GORSUCH: One-twenty-two?

13 MS. STETSON: Paragraphs 122 and 146
14 I'm starting with.

15 Regularly receive even more direct
16 information about problem dealers. Trace
17 requests from ATF and other agencies alert
18 defendants that guns they sell to specific
19 distributors and dealers are being recovered at
20 crime scenes.

21 Paragraph 146: Authorities have
22 repeatedly identified and recovered defendants'
23 guns in connection with notorious gun
24 trafficking rings.

25 Paragraph 232: Defendants are aware

1 that specific networks of distributors and
2 dealers they were supplying were consistently
3 channeling their guns.

4 Paragraph 233: Century Arms received
5 communications from ATF. Those trace requests
6 revealed that specific distributor and dealer
7 networks were disproportionately associated with
8 those guns.

9 Paragraph 234: All of the other
10 defendants have access to the same information.

11 That is exactly the kind of specific
12 allegation in the complaint at this stage that
13 satisfies a motion to dismiss.

14 JUSTICE JACKSON: But that -- that --
15 those statements aren't allegations of
16 violations of the law, correct?

17 I mean, those statements just go to
18 whether or not the defendant had knowledge that
19 at the end of the day, some deal -- some dealers
20 might be doing something wrong, these guns that
21 they're selling are ending up in the wrong
22 hands. But I took the statutory language here
23 to be requiring more in terms of a violation on
24 the part of the defendants in this case.

25 MS. STETSON: It certainly requires,

1 Justice Jackson, a knowing violation, but as far
2 as these allegations go, what these allegations
3 show is that the dealers, a small number that is
4 responsible for the large number of guns, are
5 knowingly violating federal laws and that these
6 suppliers, these manufacturers and the
7 distributor, know that is happening and continue
8 to actively supply.

9 And I want to make --

10 JUSTICE KAGAN: But what you don't
11 have is particular dealers, right? I mean,
12 it's -- it's a -- it's a pretty -- there are
13 lots of dealers. And you're just saying they
14 know that some of them do.

15 But which some of them? I mean, who
16 are they aiding and abetting in this complaint?

17 MS. STETSON: There are a number of
18 dealers that we do know are responsible for
19 selling a great number of crime guns into
20 Mexico. There's the Washington Post article
21 that the complaint mentions. Those -- that
22 names eight -- eight or 10 different dealers by
23 name, most of which are still very actively in
24 the business.

25 And, you know, more to the point,

1 again, we are here at a motion to dismiss. What
2 we have alleged is that these manufacturers know
3 from ATF exactly what dealers are the problem,
4 are the rogue dealers.

5 So the hypothetical that you gave
6 Mr. Francisco, Justice Kagan, is not a
7 hypothetical. That is actually this case. The
8 allegations in this case establish, for purposes
9 of getting past the motion to dismiss on the
10 predicate exception, as Justice Jackson
11 mentioned, that there are allegations of aiding
12 and abetting, violations of federal laws.

13 And I want to get back to a question
14 that Justice Barrett asked as well about what
15 the violation is because I think there's been
16 some -- some -- some noise in the data.

17 JUSTICE ALITO: Well, Ms. --
18 Ms. Stetson, before you do that, could I just
19 ask you something related to the point you were
20 just discussing? Are there any allegations in
21 the complaint that the Petitioners knowingly
22 sell to specific red flag dealers?

23 MS. STETSON: Yes. If you look at
24 paragraph 247 -- and I'll -- I'll read it
25 because I think this one is important --

1 "Defendants supply dealers with all the guns
2 they can pay for, without any public safety
3 conditions, even if a gun dealer has been
4 repeatedly found to have violated gun laws, been
5 indicted, its employees have had federal gun
6 licenses revoked, or has repeatedly supplied
7 cartels in suspicious and obvious sales to
8 traffickers, including repeated bulk sales."

9 That is an allegation that goes
10 directly to specific rogue dealers, and that
11 gets us, I think, to the Twitter/Direct Sales
12 dichotomy. What Mr. Francisco says is that
13 Twitter was very actively managing something.

14 Twitter was actively managing, to the
15 extent it was managing anything at all, its
16 algorithm. And what this Court said in Twitter
17 was that that kind of starting the platform,
18 sending it out into the world and standing back
19 and watching, which was the phrase in Twitter,
20 is not enough.

21 What you need is active, culpable
22 participation. The active, culpable
23 participation here is continuing to sell guns to
24 rogue dealers that you know are the problem
25 dealers. That is exactly --

1 JUSTICE BARRETT: You haven't --

2 MS. STETSON: -- Direct Sales.

3 JUSTICE BARRETT: -- identified the
4 dealers. Justice Alito was asking you about
5 specific red flag dealers. But that paragraph
6 doesn't identify dealers, and it seems to me
7 that that's one of the distinctions between this
8 case and Direct Sales and, for that matter, this
9 case and Twitter.

10 Let's talk about Twitter. There was a
11 specific rogue actor, ISIS, and there was a
12 specific attack in France. And so the attempt
13 was to draw the line between them, and we said
14 it wasn't enough.

15 In Direct Sales, there was a specific
16 manufacturer, a pharmaceutical company, selling
17 to a specific doctor, causing specific harm.

18 And Justice Alito asked you what
19 specific red flag dealers there are. You
20 haven't sued any of the retailers that were the
21 most proximate cause of the harm, and you
22 haven't identified them that I can tell in the
23 complaint.

24 MS. STETSON: Justice Barrett, there
25 are many, many paragraphs that specifically

1 identify rogue dealers in the complaint. If you
2 look at approximately paragraphs 147 to 203,
3 they identify specific dealers that have been
4 found to have sold guns in bulk to traffickers
5 that go across the border.

6 If the question is you haven't named
7 in paragraph 247, which says that these
8 manufacturers know that they're selling to
9 dealers who sell to cartels, I think that is
10 pushing a little bit past what is necessary for
11 drawing reasonable inferences from a motion to
12 dismiss.

13 But I want to pause too on Twitter and
14 Direct Sales. Direct Sales involved an entity
15 that was selling large quantities of morphine to
16 a doctor. The entity was licensed. The doctor
17 was licensed. And if you look at Direct Sales,
18 what Direct Sales says is that the quantities
19 that were at issue were in line with that
20 defendant's marketing practices. There was
21 nothing unusual about the quantities at issue
22 there.

23 What was unusual in that case and what
24 is different in that case is that that man --
25 the Direct Sales manufacturer did not know that

1 that specific doctor was a problem. It had been
2 put on notice that there were other doctors who
3 were selling lots of their products to people
4 who shouldn't be getting them, but unlike this
5 case, where these manufacturers and the
6 distributor are alleged to know who the dealers
7 are and what problems they are causing, the --
8 the manufacturer that was held liable for
9 criminal conspiracy in Direct Sales didn't know
10 anything about that doctor. All it knew was
11 that the doctor kept sending them legal order
12 forms and they kept fulfilling the orders. That
13 was Direct Sales.

14 This case is much like Direct Sales,
15 if not stronger, for that reason.

16 JUSTICE KAVANAUGH: What do you do
17 with the suggestion on the other side and in the
18 amicus briefs that your theory of
19 aiding-and-abetting liability would have
20 destructive effects on the American economy in
21 the sense that, as you've read in the briefs,
22 lots of sellers and manufacturers of ordinary
23 products know that they're going to be misused
24 by some subset of people? They know that to a
25 certainty, that it's going to be

1 pharmaceuticals, cars, what -- you can name lots
2 of products. So that's a real concern, I think,
3 for me about accepting your theory of
4 aiding-and-abetting liability.

5 And, relatedly, you've referred often
6 to the motion to dismiss. Of course, as you're
7 well aware, getting past that is often the whole
8 thing. So I don't think we can just rely on the
9 motion to dismiss.

10 But the broader point, I'd be
11 interested in your reactions, how we rule for
12 you but don't cause that problem that is
13 identified with great force in the briefs.

14 MS. STETSON: Sure. So let's take
15 Budweiser as an example. As you heard
16 Mr. Francisco say today, if Budweiser had a
17 practice, was alleged to have a practice, of
18 selling bulk quantities of Bud Light to liquor
19 stores that were arranged next to high schools
20 and it was selling more and more into those high
21 schools, knowing that those liquor stores were
22 regularly serving underage students, and, in
23 fact, Bud Light designed it to put out a new can
24 that says Best Prom Ever and sold it right into
25 that high school, that is the allegations in

1 this case.

2 If you have a product manufacturer of
3 a dangerous product that is alleged to have done
4 all of the things knowing who they're selling to
5 and what is being done with that product, then
6 and only then, I think, that product
7 manufacturer doesn't -- has a problem.

8 If you look at the examples that are
9 given in PLCAA that aren't at issue in this
10 case, the examples that the congressmen and
11 senators were concerned about in PLCAA were when
12 a car dealer sells a car to someone who later
13 drives drunk, when Campbell's is sued because
14 someone is killed with a soup can. Those are
15 the things that PLCAA was concerned about.

16 This case is -- marches through in
17 detail allegations taken as true at this stage
18 that these manufacturers know that they are
19 selling a dangerous product to specific rogue
20 dealers who are -- who are selling to straw
21 purchasers for the cartels across the country.

22 JUSTICE ALITO: What if a --

23 MS. STETSON: That's --

24 JUSTICE ALITO: -- beer -- what if a
25 beer -- I'm sorry. I cut off your sentence.

1 MS. STETSON: That's okay.

2 JUSTICE ALITO: What if a beer
3 manufacturer knows that the per capita beer
4 sales in a small college town are, you know, 50
5 times more than another town without a college
6 there? Is that enough?

7 MS. STETSON: I don't think that alone
8 would be enough. I mean, you -- you do have
9 allegations in this complaint that the -- the
10 number of dealers that have arranged themselves
11 along the border of Texas and Arizona, of
12 Mexico, are vast. I don't think that itself
13 would be enough.

14 It would be you know the dealers are
15 there, you know what they're selling, you know
16 who the bad apple dealers are, because we're not
17 talking about every dealer in the country. We
18 are talking about a small percentage of
19 retailers responsible for about 90 percent of
20 the crime guns that are found.

21 Those retailers in that college town,
22 if you plug in that hypothetical of Budweiser
23 and Budweiser was marketing in with some kind
24 of, you know, best first year homecoming ever,
25 then you would again have the problem. But

1 you'd have to have each of those specific
2 allegations in the complaint that you have here.

3 JUSTICE JACKSON: Ms. Stetson, I guess
4 what I'm concerned about, you talked in response
5 to Justice Kavanaugh about what PLCAA was about,
6 what it was getting at, and I really thought, as
7 the statute itself says, that it partially at
8 least is about Congress protecting its own
9 prerogative to be the one to regulate this
10 industry, that there were concerns and the
11 statute itself says that, you know, we're
12 worried that tort suits are an attempt to use
13 the judicial branch to circumvent the
14 legislative branch of government.

15 And, to me, when you think about that
16 as being the reason why Congress wanted to have
17 immunity in this area, and I'm starting from
18 the, I'm sure, consensus view that we're trying
19 to do what the statute -- the -- the statute
20 wants, I think, when you think about that, the
21 predicate exception makes perfect sense to the
22 extent that there's a violation of a state or
23 federal statute at issue, because Congress says
24 we want to be the ones to regulate, but in this
25 particular situation in which a tort suit aligns

1 with a clear violation of the law, then we're --
2 we don't worry that we have judges in -- in the
3 common law system dictating what people can do.

4 I worry that without that clarity in
5 a -- in a -- in a complaint like yours, where we
6 don't really see exactly how the manufacturers
7 are violating a particular state or federal law,
8 that we're running up against the very concerns
9 that motivated this statute to begin with.

10 So can you speak to that?

11 MS. STETSON: Sure. Justice Jackson,
12 I -- I think, if you look at the paragraphs,
13 let's call it 203 to 250 of the complaint,
14 which -- which pertain exactly to the violations
15 of federal law that we started with, all of the
16 specific statutory violations, 922 subparts,
17 923, 924, what you will find is that there are
18 plentiful allegations that these manufacturers,
19 by knowingly sell -- selling to the rogue
20 dealers that they know are selling to straw
21 purchasers, are aiding and abetting that
22 violation.

23 Part of the problem maybe we're
24 having --

25 JUSTICE JACKSON: Well, I understand,

1 but I guess my point is that Congress didn't
2 want, like, general aiding-and-abetting concerns
3 to be what is imposing duties on these
4 manufacturers.

5 I mean, if you look at your lawsuit
6 and what you're asking for, you're asking for
7 changes to the firearm industry's safety
8 practices. You say not, you know, putting these
9 kinds of constraints is a thing that should give
10 lies to -- give rise to liability, the
11 distribution practices, the marketing. All of
12 the things that you ask for in this lawsuit
13 would amount to different kinds of regulatory
14 constraints that I'm thinking Congress didn't
15 want the courts to be the ones to impose.

16 MS. STETSON: So let me answer the
17 aiding-and-abet -- abetting liability point
18 first, and then I want to answer your remedies
19 point because I think that's particularly
20 important.

21 Aiding and abetting, of course, was
22 specifically contemplated in PLCAA in the first
23 predicate exception itself. Any case in which
24 the manufacturer or seller knowingly made a
25 false entry, et cetera, et cetera, or aided,

1 abetted, or conspired with any person in making
2 any false or fictitious statement. Aiding and
3 abetting is baked into this.

4 JUSTICE JACKSON: So you don't read
5 that --

6 MS. STETSON: And, as I mentioned --

7 JUSTICE JACKSON: -- you don't read
8 that to be very, very closely tied to the
9 record-keeping violation, the particular
10 statutory violation that's also mentioned --

11 MS. STETSON: No.

12 JUSTICE JACKSON: -- in that?

13 MS. STETSON: I mean, that -- that --
14 the predicate exception begins by talking about
15 the action in which the manufacturer knowingly
16 violated and -- and the violation was a
17 proximate cause, including the -- the exceptions
18 that are mentioned. So that -- so aiding and
19 abetting these violations of federal and state
20 statutes pertaining to guns is exactly what this
21 exception was built to do. That is why it was
22 carved out in this bipartisan legislation.

23 But, on your remedies question, one of
24 the difficulties I think for all of us is that
25 we're here so early. This is a complaint that

1 has asked for a number of different remedies,
2 including a number of different types of
3 injunctive relief.

4 And one of the things that you heard
5 the Petitioners and a lot of their amici in
6 their briefs complain about is what these
7 remedies might do. That is for the district
8 judge on remand to make sure that the judge
9 equitably crafts a remedy that is designed to
10 limit the harm to Mexico.

11 Mexico is not trying to legislate gun
12 use in the United States.

13 JUSTICE JACKSON: Yeah, I understand
14 that. I guess I'm just wondering whether the
15 PLCAA statute itself is telling us that we don't
16 want the courts to be the ones to be crafting
17 remedies that amount to regulation on this
18 industry.

19 MS. STETSON: I think --

20 JUSTICE JACKSON: That that was really
21 the point of the entire thing. And so, to the
22 extent that we're now reading an exception to
23 allow the very thing that the statute seems to
24 preclude, I'm concerned about that.

25 MS. STETSON: Justice Jackson, if

1 PLCAA had wanted to preclude any lawsuit against
2 a manufacturer, including for instances where
3 the manufacturer had committed a wrong, it could
4 have done that, as so many different states, in
5 fact, did.

6 What PLCAA did in this effort, which,
7 as I mentioned, was joined by members of both
8 parties, was to carefully carve out
9 circumstances where the manufacturer or the
10 seller was -- was alleged to have done something
11 wrong.

12 The thing they were concerned about
13 was lawful design and manufacture and sale of
14 product and injury solely caused by others.
15 That is replete throughout the purpose section
16 of PLCAA.

17 PLCAA could have been designed quite
18 differently. It was designed this way for a
19 reason, so that harmful actions by manufacturers
20 and sellers breaking the law could continue to
21 be remedied. That was exactly the point.

22 JUSTICE KAVANAUGH: You've mentioned
23 about four times that it was bipartisan. What's
24 the relevance of that to this -- to our
25 interpretation here?

1 MS. STETSON: I -- I think I -- I --
2 yes. I was -- I haven't gotten to -- to 13
3 times yet, but four will do.

4 The fact that it's bipartisan, I
5 think, points out particularly in this climate
6 that the -- what was being challenged there were
7 really unusual lawsuits that really weren't
8 showing up in any other part of the -- the
9 economy against the manufacturers of a lawful
10 product, selling their product lawfully,
11 distributing their product lawfully, where no
12 allegations were made in those prior lawsuits
13 about unlawful behavior.

14 That was what PLCAA carefully carved
15 out. What it left, among other things, were
16 actions for things like negligent entrustment,
17 product liability. And product liability is
18 interesting, by the way, because you probably
19 notice this as well, product liability
20 specifically says you can sue for product
21 liability, but, if it was a criminal act, then
22 that act becomes the sole proximate cause.

23 That, of course, is very different
24 from the violation of which is the -- or a
25 proximate cause, which is what you see in the

1 predicate exception. I think that language
2 difference is very important.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 I'd like to ask you pretty much the
6 flip side of the question I asked your -- your
7 friend on the -- the other side, which you
8 allege that 2 percent of the guns manufactured
9 in the United States make their way to Mexico.

10 I assume the volume of that is
11 critical to your -- your argument, and I just
12 want to know how much is enough, if it's
13 1 percent or a more miniscule amount. Where --
14 where's the floor?

15 MS. STETSON: So 2 -- 2 percent is
16 always a question that begs the question of
17 what. And, here, what you have is data in the
18 complaint that says -- this is paragraph 438 --
19 between 342,000 and 597,000 of defendants'
20 guns -- and, remember, this is not the entire
21 industry we're here talking about -- so up to
22 600,000 of defendants' guns are likely
23 trafficked into Mexico every year. That's your
24 2 percent.

25 But I think the issue is not so much

1 whether it's 2 or 10 or 70. It's do these
2 manufacturers know who the rogue dealers are and
3 what they're doing. And this complaint in all
4 of those paragraphs that I read to you earlier
5 and many others around them specifically says
6 the -- these manufacturers know the trace data
7 that show the dealers, that show the bulk sales
8 that are being made to traffickers who come in
9 repeatedly over a short period of time and bring
10 the guns into Mexico, where they're found at
11 crime scenes.

12 That, I think, more than percentage is
13 important.

14 CHIEF JUSTICE ROBERTS: The -- you --
15 you emphasize -- you have a number of criteria
16 or examples, you know, the -- the gun says this
17 or it looks like a military weapon and it has an
18 American flag, and, you know, I -- Zapata's
19 quote about better to die on your feet than live
20 on your knees. I mean, those are all things
21 that are not illegal in any way.

22 And the idea -- I mean, there are some
23 people who want the experience of shooting a
24 particular type of gun because they find it more
25 enjoyable than using a -- a BB gun. And I just

1 wonder exactly what the -- the defendant, the
2 manufacturer, is supposed to -- to do in that
3 situation.

4 You say no, he shouldn't be marketing
5 a particular legal firearm because they're going
6 to go into Mexico at a higher percentage than --
7 than others?

8 MS. STETSON: Mr. Chief Justice, I
9 think it's not so much that the defendants are
10 designing a particular gun. It's that what the
11 complaint alleges is that they are designing
12 certain guns to target the Mexican market,
13 including the cartels.

14 So, if you take the example that you
15 gave, this is paragraph 215, Colt produces three
16 models of guns that it specifically targets to
17 the Mexican market: the Super El Jefe, the
18 Super El Grito, and the Emiliano Zapata 1911.
19 These are coveted by the cartels. And you can
20 see evidence of this at paragraphs 217, 218,
21 219, 220. And they are smuggled into Mexico in
22 volume, which you can also find.

23 CHIEF JUSTICE ROBERTS: Do -- do you
24 know what the percentage of those guns that are
25 sold in the United States compared to the ones

1 that are found in Mexico is?

2 MS. STETSON: I don't know, but,
3 again, the percentage, I think, is less
4 important than the allegation that they are
5 smuggled into Mexico in volume and coveted by
6 the cartels, including being found on the person
7 of many cartel chiefs who have been arrested.

8 CHIEF JUSTICE ROBERTS: Thank you.
9 Justice Thomas?

10 JUSTICE THOMAS: If there's no earlier
11 finding of a violation, how is that done within
12 the context of a civil suit like this?

13 MS. STETSON: If there's no earlier
14 finding of a violation, because, of course,
15 the -- as I think you're -- you're getting at,
16 the predicate exception doesn't require one,
17 there's another exception that does, I think
18 what you would find are that at the motion to
19 dismiss stage, the question is simply has there
20 been a -- a -- a sufficient allegation of aiding
21 and abetting in order to get you past the
22 predicate exception.

23 Now, you know, we -- we talked about
24 how we are here early. There are actually still
25 other motions to dismiss to be addressed. In

1 fact --

2 JUSTICE THOMAS: But it has to be
3 aiding and abetting of something.

4 MS. STETSON: Aiding and abetting
5 the -- the -- the -- the violations including of
6 a straw purchase being --

7 JUSTICE THOMAS: So it is -- it is the
8 violation that you say in your complaint there
9 is a violation, but there's been no finding of a
10 violation. How do we know there is a violation?

11 MS. STETSON: I think what the -- what
12 the district court would determine at summary
13 judgment, if the evidence comes back and says,
14 for example, these manufacturers simply had no
15 idea what their distributors were doing or who
16 their guns were going to, or these dealers were
17 doing everything by the book and they are not
18 responsible for the straw purchases that kept
19 coming into their stores, if you had that
20 evidence, then, on summary judgment, as has
21 happened before, the court would say: We can't
22 find the predicate exception met here.

23 JUSTICE THOMAS: So let's say I am the
24 alleged straw purchaser or the retailer who
25 sells to a straw purchaser.

1 Now you have found that I have
2 violated the Gun Control Act, right?

3 MS. STETSON: You would have to --

4 JUSTICE THOMAS: And my point is, how
5 do you make that finding within the context of
6 this suit?

7 MS. STETSON: Justice Thomas, within
8 the context of that suit, I think you would take
9 discovery from the dealer and ask the question
10 because, remember, the -- the predicate
11 exception goes to knowing violation.

12 Ask the dealer what it knew when it
13 sold, for example, as has been alleged in the
14 complaint, you know, dozens of guns over a
15 two-month period to the same person. The
16 evidence at summary judgment will flesh out some
17 of these questions, but at --

18 JUSTICE THOMAS: So you're saying you
19 can find a violation of selling to a straw
20 purchaser within the context of a civil suit
21 against the wholesalers and the manufacturers?

22 MS. STETSON: I think what -- maybe
23 where you and I are parting is -- is on the --
24 the issue of finding a violation.

25 JUSTICE THOMAS: Yeah.

1 MS. STETSON: We -- we've alleged
2 those violations specifically in the complaint.
3 As far as finding the violation, I -- I think
4 what the district court would do on remand,
5 after discovery, if -- provided we get past the
6 other motions to dismiss that are pending --
7 after discovery would be to ask the question:
8 Has the evidence pointed to actual violations?

9 So, if you take the Arcadia,
10 California, case, that was a case in which, at
11 the summary judgment stage, some defendants were
12 dismissed because there was not evidence that
13 they were acting unlawfully. Others were kept
14 in because there was evidence that they were
15 acting unlawfully.

16 So that might be the best example of
17 the dichotomy you're talking about.

18 JUSTICE THOMAS: Wouldn't you run into
19 at some point a due process problem as far as
20 the people you allege to have violated the Gun
21 Control Act, who have not been charged with that
22 by ATF and proven to have done that by the
23 government?

24 MS. STETSON: No, I don't think you
25 run into a due process problem precisely for the

1 reason I think you pointed out a couple minutes
2 ago, Justice Thomas. There's no requirement of
3 a conviction. And there are plenty of examples,
4 including Williams versus Beemiller from New
5 York, of instances where manufacturers have been
6 alleged to have contribute -- to -- to have
7 aided and abetted a violation by a dealer, and
8 that case has been allowed to go forward.
9 There's not a due process issue that inheres in
10 that.

11 CHIEF JUSTICE ROBERTS: Justice Alito?

12 JUSTICE ALITO: There are some very
13 interesting technical legal issues in this case:
14 proximate cause, aiding and abetting, how much
15 do you have to plead in a complaint. And you
16 and Mr. Francisco have briefed and argued those
17 very well. It's very helpful to the Court.

18 I just thought I would ask you a
19 question that may be on the minds of ordinary
20 Americans who hear this argument or learn about
21 the case. Mexico says that U.S. gun
22 manufacturers are contributing to illegal
23 conduct in Mexico. There are Americans who
24 think that Mexican government officials are
25 contributing to a lot of illegal conduct here.

1 So suppose that one of the 50 states
2 sued the government of Mexico for aiding and
3 abetting illegal conduct within the state's
4 borders that causes the state to incur law
5 enforcement costs, public welfare costs, other
6 costs.

7 Would your client be willing to
8 litigate that case in the courts of the United
9 States?

10 MS. STETSON: Justice Alito, I think
11 we -- we would have to accessorize that
12 hypothetical with what I assume are a lot of the
13 things that are built into it, that there are no
14 forum and venue questions and that the kinds of
15 allegations are specific and talk about specific
16 harms to the states. You mentioned --

17 JUSTICE ALITO: Well, would your --
18 would your government say, whoa -- your client
19 say, whoa, sovereign immunity, you can't sue us
20 on this?

21 MS. STETSON: Ah. Well, you know,
22 if -- if the --

23 JUSTICE ALITO: Or would you will --
24 be willing to litigate all the doctrines that
25 would apply if -- if the government of Mexico

1 were not entitled to sovereign immunity?

2 MS. STETSON: So, Justice Alito,
3 under -- under Pfizer, of course, Mexico is
4 entitled to come in -- and the Petitioners' own
5 amici point this out -- to come into this case
6 just like any other litigant. There are, of
7 course, differences, if Mexico is brought in as
8 a defendant.

9 So I can't and certainly, you know,
10 don't -- don't feel comfortable giving away
11 things like sovereign immunity on behalf of the
12 government of Mexico.

13 JUSTICE ALITO: Well, I understand
14 that. So the -- the argument basically is it's
15 a one-way street?

16 MS. STETSON: No, Justice Alito, I
17 don't --

18 JUSTICE ALITO: The government of
19 Mexico can sue U.S. manufacturers here for harm
20 caused in Mexico, but one of the states here
21 can't sue the government of Mexico for cause --
22 for harm caused in the United States?

23 MS. STETSON: I don't think it's
24 entirely accurate to call it a one-way street.
25 And if the street is one-way, it's because

1 Pfizer and other decisions from this Court have
2 said that when a sovereign comes into this Court
3 as a plaintiff, it is treated exactly like any
4 other plaintiff, no more, no less.

5 JUSTICE ALITO: Thank you.

6 MS. STETSON: Thank you.

7 CHIEF JUSTICE ROBERTS: Justice
8 Sotomayor?

9 Justice Kagan?

10 Justice Gorsuch?

11 Justice Kavanaugh?

12 JUSTICE KAVANAUGH: I just want to
13 pick up briefly on questions Justice Thomas was
14 asking. I mean, would your theory of aiding and
15 abetting suggest that manufacturers should be
16 concerned if their products, their lawful
17 products, are sold in certain communities or
18 certain neighborhoods where they're more likely
19 to be misused? You know, we -- we manufacture
20 knives, but there are a lot of stabbings in
21 certain neighborhoods. Should we -- should we
22 make sure our products aren't sold there? Or a
23 sporting goods company, and -- and baseball bats
24 are used to, you know, storm CVSs or what have
25 you, so we shouldn't sell in this city? Or

1 prescription drugs are misused in a certain
2 area, so we need to be alert and make sure?

3 Is that where your theory of aiding
4 and abetting leads, that you have to be kind of
5 chasing -- tracing everything down the chain and
6 make sure we're not selling in these places or
7 it's not ending up in the places where it's more
8 likely to be misused or a certain percentage, to
9 go to the Chief Justice's point, are being
10 misused?

11 MS. STETSON: Justice Kavanaugh, I
12 think what you've described would qualify under
13 Twitter as general awareness. It would not
14 qualify as specific culpable participation.

15 If you had a -- a manufacturer --

16 JUSTICE KAVANAUGH: You know -- you
17 know you make baseball bats, and you know
18 they're being used in a -- in a particular way
19 in particular areas by particular gangs.

20 MS. STETSON: So --

21 JUSTICE KAVANAUGH: And -- and you
22 should -- so, therefore, you know, we got to
23 make sure that we're not selling to those
24 sporting goods stores that are in particular
25 neighborhoods.

1 MS. STETSON: I think the -- the first
2 lawyerly response is that guns and drugs tend to
3 be treated differently than things like knives
4 and baseball bats. But, even that aside, if you
5 knew that your baseball bats --

6 JUSTICE KAVANAUGH: Well,
7 prescription --

8 MS. STETSON: -- were being --

9 JUSTICE KAVANAUGH: -- drugs too.

10 MS. STETSON: Prescription drugs were
11 being sold into a particular pharmacy -- and
12 this has happened, of course, in the opioid
13 cases -- were being sold into a particular
14 pharmacy at -- you know, in a small town at
15 numbers that were simply unsustainable and you
16 knew that you were continuing to sell after
17 being told by the federal government that you
18 were selling into a rogue dealer and you
19 continued to sell into that dealer, then, yes,
20 you would have a problem.

21 JUSTICE KAVANAUGH: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice
23 Barrett?

24 Justice Jackson?

25 JUSTICE JACKSON: But do you concede

1 that you would have a problem or not depending
2 upon how the statute is worded? I mean, we're
3 in a statutory scheme here. We're not just
4 doing aiding-and-abetting liability as a matter
5 of common law. Don't you agree?

6 MS. STETSON: I do agree with that,
7 Justice Jackson, but I think the fact that we're
8 in a statutory scheme is an important element
9 of -- of centering this case where it is now.
10 That's why I said earlier we are at the
11 beginning of the beginning of this case.

12 JUSTICE JACKSON: No, I understand.

13 MS. STETSON: There's a statute --

14 JUSTICE JACKSON: I guess I just --
15 just quickly in response to what Justice
16 Kavanaugh was just exploring with you, the --
17 the facts that he laid out seem to me to be
18 covered by this particular PLCAA immunity, that
19 Congress looked at that situation and said, you
20 know, the term "qualified civil liability
21 action," which you can't bring in court, means a
22 civil action resulting from the criminal or
23 unlawful misuse of a qualified product by the
24 person of a third party.

25 So, in other words, Congress started

1 with Justice Kavanaugh's example, you know, I --
2 there -- there -- my product is being used by
3 third parties --

4 MS. STETSON: Right.

5 JUSTICE JACKSON: -- in criminal ways.
6 And they said immunity. They said immunity.
7 And so --

8 MS. STETSON: They said --

9 JUSTICE JACKSON: -- and so to read
10 the exception to that as essentially capturing
11 the same facts, if you know that your product is
12 going to these people, seems odd to me.

13 MS. STETSON: Justice Jackson, what
14 the -- what Congress said was immunity unless.
15 And the predicate exception that we've been
16 talking about says immunity unless the
17 manufacturer is alleged, among other things, to
18 have aided and abetted violations of federal gun
19 laws.

20 JUSTICE JACKSON: Thank you.

21 MS. STETSON: It's that -- that's the
22 important point.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 MS. STETSON: Thank you.

1 CHIEF JUSTICE ROBERTS: Rebuttal,
2 Mr. Francisco?

3 REBUTTAL ARGUMENT OF NOEL J. FRANCISCO
4 ON BEHALF OF THE PETITIONERS

5 MR. FRANCISCO: Thank you, Mr. Chief
6 Justice. Just a few points.

7 First, Justice Thomas, as to one of
8 your questions, if they're right under PLCAA,
9 this would, in fact, revive the exact same
10 lawsuits that PLCAA was meant to prohibit. If
11 you look at Texas's -- Mexico's complaint, the
12 underlying torts alleged, which is what they're
13 seeking relief on, are the exact same torts that
14 were at issue in all of the other cases.

15 The violations only come in in their
16 effort to get -- to get around PLCAA and fit
17 with one of its exceptions. But, if you accept
18 their interpretation of the PLCAA exception, you
19 will have revived exactly the same type of
20 lawsuit that PLCAA was meant to prohibit when
21 they adopted this statute in the first place.

22 Secondly, my friend talked about some
23 paragraphs in their complaint, but I think that
24 their complaint makes quite clear what their
25 basic aiding-and-abetting theory is.

1 Paragraph 228 -- and this is a
2 allegation that they repeat throughout -- "each
3 defendant's policy is to sell its guns to any
4 and all federal firearms licensees." That is
5 anyone that the federal government says that we
6 can sell to.

7 So their allegation is that we're
8 treating all retailers exactly the same. We're
9 not treating any one better than any other.
10 We're treating them the same. That's important
11 because, in Twitter, the Court made quite clear
12 that the reason they didn't get across the
13 aiding-and-abetting line was because there was
14 no allegation that they were treating ISIS, who
15 they knew to a metaphysical certainty was on
16 their platform, they weren't treating ISIS any
17 better or worse than any other customer.

18 Instead, they go on -- and this is
19 paragraph 110 -- to explain their theory. "A
20 manufacturer of a dangerous product is an
21 accessory or co-conspirator to illicit conduct
22 by downstream actors where it continues to
23 supply, support, or assist the downstream
24 parties and has knowledge, actual or
25 constructive, of the illicit conduct." I think

1 that's the mere knowledge theory that my friend
2 was just referring to, Justice Kavanaugh. That,
3 however, is the theory that the Court squarely
4 rejected in the Twitter case.

5 Turning to foreseeability, Mr. Chief
6 Justice, there was an exchange with my friend on
7 the case law, where I think what I heard her say
8 was that a -- an intervening independent act
9 didn't break the chain if it was foreseeable.

10 Well, I would say that that is
11 completely inconsistent with this Court's
12 repeated statement that foreseeability alone
13 isn't the standard. It's also completely
14 independent with the Hemi Group case that did
15 not involve a derivative injury.

16 New York City was the only plaintiff
17 that could sue for the lost taxes that New York
18 City suffered. There was absolutely no other
19 plaintiff that would have been able to pursue
20 that remedy and that loss. Yet this Court held
21 that the intervening independent act did break
22 the chain.

23 Lexmark is no different. It did not
24 involve an intervening independent act. If I
25 trick consumers into not buying my competitors'

1 products, I've directly harmed my competitor.

2 There is no intervening independent act.

3 As to the various treaties, I would
4 agree, Justice Sotomayor, with your suggestion
5 that the law in the verbal formulations here are
6 kind of a mess. But, if you actually look at
7 the cases that the treatises cite for their
8 assertion that foreseeability alone is the
9 standard, they don't cite this Court's cases,
10 which is kind of surprising, if what they're
11 supposed to be doing is describing the law
12 rather than making the law.

13 But the cases that they do cite
14 principally involve special relationships, like
15 a landlord/tenant relationship or a
16 teacher/student relationship. They don't cite
17 any case in which a manufacturer has been held
18 liable because some criminal unlawfully misuses
19 its product to harm somebody else.

20 My friend, again, emphasized the
21 Washington Post article. I would urge you to
22 read that article from beginning to end. I
23 think it's very helpful in illuminating how even
24 their theory of mere knowledge doesn't make
25 sense.

1 My friend also talked about three
2 pistols sold by Colt with Spanish-named
3 firearms. The notion that selling a
4 Spanish-named firearm is what gives rise to
5 joint purpose with cartels under the
6 aiding-and-abetting statute is as wrong as it is
7 offensive. There are, after all, millions of
8 perfectly law-abiding Spanish-speaking Americans
9 in this country that find those firearms very
10 attractive. And making those firearms available
11 cannot possibly cross the line into
12 aiding-and-abetting liability.

13 But, even if it could, the notion that
14 selling three Spanish-named pistols is the
15 proximate cause of cartel violence in Mexico is,
16 frankly, absurd, and I don't think it comes even
17 close to establishing Twombly's plausibility
18 standard.

19 My final point is just to step back
20 and talk about what PLCAA was really about. At
21 the end of the day, PLCAA is about protecting
22 Second Amendment rights. It's not just about
23 protecting the manufacturers, the distributors,
24 and the retailers, but it's protecting the right
25 of every American to exercise their right of --

1 under the Second Amendment to possess and bear
2 firearms. That right is meaningless if there
3 are no manufacturers, retailers, and
4 distributors that provide them in the first
5 place.

6 We ask that you reverse.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 The case is submitted.

10 (Whereupon, at 11:37 a.m., the case
11 was submitted.)

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1	<p>922(a)(6) [1] 51:23 922(m) [1] 51:24 922(t)(1) [1] 51:23 923 [2] 27:17 72:17 923(g)(1) [1] 51:17 923(g)(1)(A) [1] 51:24 924 [1] 72:17 924(a)(1)(A) [2] 51:17,24 93 [1] 2:10</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a)(6) [1] 51:17 a.m [3] 1:16 3:2 98:10 abating [1] 22:21 abet [4] 12:9 16:25 44:18 58:11 abetted [13] 5:9,13 11:1,18,21 12:10 15:24 18:13 48:6 52:2 74:1 85:7 92:18 abetter [2] 48:19 56:13 abetting [45] 4:8 7:3 10:2,14 11:7,12 12:8 17:1 18:1,10 19:22 23:22 25:1,2,25 28:5 29:11,14 42:3,5,13 43:20,22 44:14,25 47:16 51:21 56:22 57:7 59:2,8 62:16 63:12 72:21 73:17,21 74:3,19 81:21 82:3,4 85:14 86:3 88:15 89:4 able [2] 52:15 95:19 above-entitled [1] 1:14 absolutely [1] 95:18 absurd [1] 97:16 accept [4] 16:3,19 32:16 93:17 accepting [3] 12:22 57:24 68:3 access [1] 61:10 accessorize [1] 86:11 accessory [1] 94:21 accident [1] 4:21 accurate [1] 87:24 acknowledged [1] 36:14 across [10] 13:6 14:11 16:13 19:13 34:5 40:1 58:7 66:5 69:21 94:12 Act [14] 3:25 14:2 49:9 50:18 54:13,15 77:21,22 83:2 84:21 95:8,21,24 96:2 acting [3] 40:2 84:13,15 action [7] 41:8 46:8 50:18 58:14 74:15 91:21,22 actions [4] 16:24 50:15 76:19 77:16 active [4] 30:6 41:13 64:21,22 actively [7] 57:21 58:18 59:18 62:8,23 64:13,14 activity [1] 40:25 actor [1] 65:11 actors [1] 94:22 acts [2] 49:8,11 actual [7] 13:5 17:22 18:4 26:1 34:4 84:8 94:24 actually [19] 5:14,19,21 6:2 10:19 16:17 21:21,24 22:2 24:19 26:25 29:23 30:13 31:6 39:13 57:19 63:7 81:24 96:6 addition [6] 8:6 19:13 28:24 38:24 39:17 40:2</p>	<p>address [2] 42:6,14 addressed [1] 81:25 adopt [1] 26:22 adopted [1] 93:21 advocating [1] 10:4 affirmative [3] 41:8,21 58:14 agencies [1] 60:17 ago [2] 30:7 85:2 agree [8] 9:25 23:8,14 27:18 28:18 91:5,6 96:4 Ah [1] 86:21 aid [4] 12:9 16:25 44:18 58:10 aided [15] 5:9,12 10:20,23,25 11:18,21 12:10 15:24 18:12 48:6 52:2 73:25 85:7 92:18 aided [2] 48:19 56:13 aiding [45] 4:8 7:2 10:2,14 11:7,12 12:7 17:1 18:1,9 19:22 23:21 24:11 25:1,2,24 28:5 29:11,14 42:3,5,13 43:20,22 44:14,25 47:15 51:21 56:22 57:6 59:2,8 62:16 63:11 72:21 73:21 74:2,18 81:20 82:3,4 85:14 86:2 88:14 89:3 aiding-and [1] 24:16 aiding-and-abet [1] 73:17 aiding-and-abetting [43] 5:8 6:21 7:12,18 8:25 11:17 17:15 18:3,11 19:10,19 21:20 22:22 23:7 24:6,11 25:4,11 26:12 36:19 41:9 42:20,22 43:3,6,12,13,19 44:4,9 45:3 47:18 50:25 58:21 59:4 67:19 68:4 73:2 91:4 93:25 94:13 97:6,12 air [1] 25:2 AL [1] 1:4 alert [2] 60:17 89:2 algorithm [1] 64:16 algorithms [2] 30:8,8 aligns [1] 71:25 Alito [17] 35:2 63:17 65:4,18 69:22,24 70:2 85:11,12 86:10,17,23 87:2,13,16,18 88:5 allegation [10] 5:15 20:13 50:24 61:12 64:9 81:4,20 94:2,7,14 allegations [27] 9:24 10:3,13 13:12 32:16 40:20 48:17 49:18 51:13 52:24 57:14 60:4,6,8 61:15 62:2,2 63:8,11,20 68:25 69:17 70:9 71:2 72:18 77:12 86:15 allege [5] 11:12 23:7 50:7 78:8 84:20 alleged [25] 6:15,20 11:10,18,19 22:23 24:10 25:1 28:11 45:15 48:23 50:13 52:2 60:10 63:2 67:6 68:17 69:3 76:10 82:24 83:13 84:1 85:6 92:17 93:12 alleges [3] 20:22 52:13 80:11 alleging [2] 5:11 10:18 allow [3] 13:23 41:4 75:23 allowed [5] 33:17,20,24 52:24 85:8 allowing [1] 24:15 alluded [1] 33:10 alone [4] 8:4 70:7 95:12 96:8 already [3] 19:11 39:2 41:14</p>	<p>altered [1] 30:24 altogether [1] 52:21 Amendment [4] 27:1,4 97:22 98:1 America [4] 4:13,18 11:24 48:23 American [6] 3:11,22 22:23 67:20 79:18 97:25 Americans [3] 85:20,23 97:8 amici [3] 42:10 75:5 87:5 amicus [1] 67:18 among [3] 9:10 77:15 92:17 amount [3] 73:13 75:17 78:13 analysis [9] 7:25 23:24 30:23 31:21 32:14 44:16 45:11 46:4,6 and-abetting [1] 24:17 another [6] 29:10 34:6 39:6,9 70:5 81:17 answer [5] 21:12 46:17 48:25 73:16,18 anyway [1] 46:20 Anza [1] 53:20 appear [1] 15:25 APPEARANCES [1] 1:18 apple [2] 12:13 70:16 applicable [5] 15:13 17:7,11,11 46:11 applied [1] 54:25 applies [2] 23:12 42:9 apply [2] 25:7 86:25 applying [1] 43:6 approach [1] 43:2 approximately [1] 66:2 arbitrator [1] 52:20 Arcadia [1] 84:9 area [3] 22:10 71:17 89:2 areas [1] 89:19 aren't [5] 7:10 11:10 61:15 69:9 88:22 arena [1] 29:15 argue [3] 5:8 49:7,12 argued [2] 38:22 85:16 arguing [1] 23:15 argument [19] 1:15 2:2,5,8 3:4,7 7:16 11:22 19:4 22:19 48:1 49:13 53:3,16 54:10 78:11 85:20 87:14 93:3 arguments [3] 6:20 48:16 49:5 Arizona [1] 70:11 Arms [2] 3:25 61:4 arose [1] 43:7 around [3] 33:7 79:5 93:16 arranged [2] 68:19 70:10 arrested [1] 81:7 article [7] 5:22,23 6:2 54:23 62:20 96:21,22 articulate [1] 55:8 articulated [1] 45:17 articulating [1] 24:24 aside [4] 9:23 12:7 13:13 90:4 aspect [1] 49:20 assertion [2] 50:24 96:8 asserts [2] 3:11 4:11 assess [1] 23:5 assist [1] 94:23 Associated [2] 53:19 61:7</p>
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