No. 23-1141

In the Supreme Court of the United States

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

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

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

BRIEF OF GUN VIOLENCE PREVENTION GROUPS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

Amici include six of the nation's leading nonprofit organizations dedicated to preventing gun violence and advocating for survivors of gun violence.

Everytown for Gun Safety Support Fund ("Everytown") is the education, research, and litigation arm of Everytown for Gun Safety, the nation's largest gun-violence-prevention organization. Through its litigation arm, Everytown Law, Everytown regularly litigates cases involving the interpretation of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq*. ("PLCAA"). See, *e.g.*, *In re LuckyGunner, LLC*, No. 14-21-00194-CV, 2021 WL 1904703 (Tex. App. May 12, 2021) (Everytown Law serving as counsel in case involving interpretation of PLCAA), *mandamus denied*, No. 21-0463 (Tex. Feb. 18, 2022); *Tretta* v. *Osman*, 2021 WL 9273931 (Cal. Super. Ct. June 28, 2021) (same).

Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a nonprofit law and policy organization founded more than 30 years ago following a gun massacre at a San Francisco law firm

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[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Everytown Law, which is a part of Everytown, represents the country of Mexico in a separate litigation, *Estados Unidos Mexicanos* v. *Diamondback Shooting Sports Incorporated et al.*, Case No. 22-cv-00472 (D. Ariz.).

that was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords. Giffords Law Center has extensive experience litigating cases involving PLCAA. See, *e.g.*, *People of the State of California* v. *Blackhawk Mfg. Grp., Inc.*, *et al.*, No. CGC-21-594577 (Cal. Sup. Ct. May 2, 2023) (counsel in case involving interpretation of PLCAA); *Patterson* v. *Meta Platforms, Inc.*, No. 805896/2023, (N.Y. Sup. Ct. Erie Cnty. May 12, 2023) (same).

Newtown Action Alliance ("Alliance") is a national grassroots organization founded by Newtown residents after the tragic Sandy Hook Elementary School shooting on December 14, 2012, where 20 children and six educators lost their lives. The Alliance comprises advocates and families of victims and survivors of gun violence working to end gun violence.

States United to Prevent Gun Violence ("States United") is a nonprofit whose mission is to reduce gun violence at the State level by providing support for State level advocacy, education, and policy expertise across the country. Founded in 1999 and merged with the organization Freedom States Alliance in 2010, States United currently supports a coalition of 32 affiliated State gun violence prevention organizations all working to reduce gun violence in their respective States, mainly through the passage of life-saving laws that work to prevent gun violence and address its root causes.

The Violence Policy Center ("Center") is a national nonprofit organization that researches firearms violence and provides information and

analysis to policymakers, journalists, researchers, advocates, and the public. The Center examines the role of firearms in the United States, analyzes trends and patterns in firearms violence, and develops policies to reduce gun-related deaths and injuries.

Community Justice, a fiscally sponsored project of Tides Center, is changing the conversation on gun violence prevention by leading with the people closest to the pain of gun violence and advocating for policy change. Community Justice focuses on the unique and disproportionate harm that gun violence inflicts on Black and Brown communities, and the impact that this violence has on families, neighborhoods, and entire communities. Through organizing, policy advocacy, and coalition-building, Community Justice seeks to dismantle the systemic barriers that perpetuate gun violence and inequality.

Amici also include several academics and attorneys who have devoted their careers to gun violence prevention and policy.

Cassandra Crifasi, PhD, MPH is an Associate Professor of Health Policy and Management and Co-Director of the Center for Gun Violence Solutions at the Johns Hopkins Bloomberg School of Public Health[2] with more than 10 years of experience researching gun violence prevention and policy.

Joshua Horwitz, J.D. is the Dana Feitler Professor of the Practice and Co-Director of the Center for Gun Violence Solutions at the Johns Hopkins

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[2] The Center for Gun Violence Solutions does not file or join amicus briefs. These signatories join as amici in their individual capacities.

Bloomberg School of Public Health. Professor Horwitz has over 30 years of experience as a practitioner in the field of gun violence prevention and policy.

Kelly Roskam is the Director of Law and Policy at the Johns Hopkins University Bloomberg School of Public Health Center for Gun Violence Solutions with more than 10 years of experience working as an attorney on gun violence prevention.

Tim Carey, Law and Policy Advisor at the Johns Hopkins Center for Gun Violence Solutions, is an attorney who uses their expertise in public health and constitutional law to reduce gun violence through the law.

Kari Still is also a Law and Policy Advisor at the Johns Hopkins Bloomberg School of Public Health who has been working as an attorney in violence prevention, including gun violence prevention, for 5 years.

Amici work closely with shooting victims and their families and thus understand the critical role that civil lawsuits serve to redress injustices and prevent future injuries. Amici have an interest in ensuring that PLCAA and its exceptions are properly construed, so that the statute is not misread to extinguish claims that Congress sought to permit. Amici submit this brief to show that those who intentionally aid and abet criminal purchases of firearms are not exempt from liability under PLCAA based on the foreseeable violence caused by their misconduct.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the gun industry, as in any industry, there are some who break the law. Amici litigate cases where defendants willfully sell guns and ammunition to straw purchasers, minors, or others who cannot legally own them. These illegal acts cause foreseeable harm: first responders ambushed by felons, children gunned down by their classmates, women killed by domestic abusers under restraining orders. Where illegal activity by gun manufacturers or sellers enables such violence, lower courts have correctly held that PLCAA does not shield them from liability. Still, Petitioners ask this Court to skip over PLCAA's plain text and find gun manufacturers and sellers immune even when their own illegal conduct foreseeably enables violence. They arrive at this dangerous conclusion through a series of logical and legal errors.

The first question presented asks whether "the production and sale of firearms" proximately caused Mexico's alleged harm. Petitioners' cardinal error is baked into this framing: Mexico alleges far more than the ordinary production and sale of firearms. One might as well ask whether a getaway driver caused harm by "using public roadways," or a cybercriminal caused harm by "communicating over the internet." To analyze whether a defendant's illegal act caused an alleged harm, one must start with the alleged act itself. And that is the question PLCAA asks: whether the alleged "violat[ion of] a State or Federal statute" was "a proximate cause of the harm." 15 U.S.C. § 7903(5)(A)(iii). Framed correctly, the first

question should ask whether aiding and abetting violent gangs in obtaining firearms could be a proximate cause of gang violence—a statement so obviously true that it is nearly tautological.

Petitioners' response to the first question boils down to an argument that there is no proximate cause *because* they did not intentionally provide gangs with substantial assistance in carrying out violent acts. After all, Petitioners concede (as they must) that if a defendant intentionally aids a violent group in obtaining guns used to commit violence, the resulting violence is foreseeable. Pet. Br. 31. But what remains is a dispute over whether Mexico has adequately alleged a cause of action for aiding and abetting. In other words, Petitioners' first question presented assumes the answer to the second.

To the extent that Petitioners do not assume away Mexico's cause of action, their argument is that PLCAA immunizes a gun company's illegal acts when those acts cause harm through the conduct of another. That is not what PLCAA says. Under PLCAA's predicate exception, companies who manufacture and sell firearms are normally protected from civil liability when they follow the law. But when those same companies break laws applicable to firearms, PLCAA contemplates liability for the foreseeable harm that follows. Petitioners seek to fashion an extratextual immunity for *illegal* acts, through a proximate cause rule that defies logic and PLCAA's text. Petitioners' rule also contravenes black-letter tort law, which holds that a defendant whose tortious conduct foreseeably enables criminal violence by a third party proximately causes such violence.

The parties dispute whether Respondent has adequately alleged that Petitioners aided and abetted the gangs that have devastated the State of Mexico and its people. The Court can resolve this dispute by answering Petitioners' second question. But it should decline Petitioners' invitation to use the first question to mangle the law of causation and the language of PLCAA—to the enduring benefit of criminals and the compounding loss of their victims.

STATUTORY BACKGROUND

PLCAA bars certain civil claims against gun companies where the alleged harm arises solely from the unlawful misuse of firearms. 15 U.S.C. § 7902(a); § 7903(5)(A). But it does not protect gun companies when they themselves break the law. At issue in this litigation is the so-called "predicate exception," which allows a plaintiff to sue companies that knowingly violate a state or federal statute "applicable to the sale or marketing of" firearms if the violation "was *a* proximate cause" of the plaintiff's harm. *Id*. § 7903(5)(A)(iii) (emphasis added). In other words: if gun companies break the law, they may be held liable for the foreseeable consequences.

The predicate exception is so-called because "its operation requires an underlying or predicate statutory violation." *Smith & Wesson Corp.* v. *City of Gary*, 875 N.E.2d 422, 429-430 (Ind. Ct. App. 2007). PLCAA's language makes clear that the predicate statute need not itself supply the cause of action; rather, the exception allows "an action," which includes a state common law claim, "*in which* a

manufacturer or seller of a qualified product knowingly violated a State or Federal statute." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). Thus, in some cases, the predicate statute itself provides the cause of action; in others, the cause of action is a common-law claim predicated on the violation of another statute. Compare *Soto* v. *Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 67, 121 (2019) (violation of Connecticut Unfair Trade Practice Act served as both predicate violation and cause of action), with *Williams* v. *Beemiller, Inc.*, 952 N.Y.S. 2d 333, 336–339 (N.Y. App. Div 2012) (permitting negligence and public nuisance claims predicated on alleged violation of federal Gun Control Act).[3]

Throughout their brief, Petitioners presume that PLCAA is intended to grant them nearly total immunity. This is wrong. The Protection of Lawful Commerce in Arms Act means what it says: *lawful* commerce is generally protected but *unlawful* commerce is not. This is exactly the point of the predicate exception. See, *e.g.*, 109 Cong. Rec. S9088, Statement of Sen. Craig ("[PLCAA] does not prevent

[3] As the Second Circuit has held, the predicate exception is not limited to violation of statutes "that expressly regulate firearms," but also covers statutes that "courts have applied to the sale and marketing of firearms," and those that "clearly can be said to implicate the purchase and sale of firearms." *City of New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008). However, the meaning of "applicable to" in the predicate exception is not presented in this case. Here, Petitioners are charged with aiding and abetting violations of federal laws specifically addressing firearm sales. And liability for such aiding and abetting is spelled out in PLCAA's text. See 15 U.S.C. § 7903(5)(A)(iii)(I) & (II).

[members of the gun industry] from being sued for their own misconduct. This bill only stops one extremely narrow category of lawsuits, lawsuits that attempt to force the gun industry to pay for the crimes of third parties over whom they have no control."); *id.* at 9107, Statement of Sen. Baucus ("This bill will not close the courthouse doors to legitimate suits against the firearms industry. It will not shield the industry from its own wrongdoing or from its negligence or if the industry puts out a bad product."). PLCAA does not protect any company that aids and abets lawbreaking from liability for the foreseeable consequences of those illegal acts.

ARGUMENT

I. The Court should reject Petitioners' effort to conflate liability with proximate cause

The first question presented asks whether "the production and sale of firearms in the United States is a 'proximate cause'" of Mexico's alleged injuries. Petitioners arrive at the wrong answer because they ask the wrong question. The right question under PLCAA is whether the underlying alleged "violat[ion of] a State or Federal statute" was "a proximate cause of the harm." 15 U.S.C. § 7903(5)(A)(iii). Petitioners' framing of the first question omits the underlying "violation" altogether and assumes Petitioners have merely engaged in lawful commerce. But whether an alleged harm is foreseeable depends entirely on the nature of the underlying wrongful act: a sale to an obvious straw purchaser has different foreseeable

consequences than a legal sale; the backroom production of ammunition for a robbery has different foreseeable consequences than production on an assembly line. See, *e.g.*, 15 U.S.C. § 7903(5)(A)(iii)(I)-(II). Petitioners' framing and arguments presuppose that they have done nothing more than lawfully make and sell guns—a challenge to proximate cause that assumes away the cause itself.[4] The Court should decline Petitioners' invitation to conflate liability with causation.

A simple (if extreme) example makes clear that Petitioners' causation arguments actually take issue with the liability evidence. Imagine a hypothetical complaint with the same top-line allegations and cause of action as we have here: a claim that defendants have aided and abetted cartels by changing the way they manufacture and sell guns to facilitate straw purchasing by those cartels. But imagine that the supporting factual allegations are airtight—say, clips from company documents showing that defendants made specific changes in how they design and sell the firearms in response to outreach from a gang contact who assured them of astronomical profits from future straw purchases if they did so. In this hypothetical, the manufacturers and sellers would also have engaged in, as Question 1 innocuously puts it, "the manufacture and sale of firearms." But in so doing, the defendants would have indisputably aided and abetted the cartels by "consciously and culpably 'participat[ing] in a

[4] Mexico reframes the questions presented, apparently to correct the logical error inherent in Petitioners' framing.

wrongful act so as to help make it succeed.'" *Twitter Inc.* v. *Taamneh*, 598 U.S. 471, 493 (2023) (quoting *Nye & Nissen* v. *United States*, 336 U.S. 613, 619 (1949)). And the defendants' conduct would have undoubtedly been a proximate cause of the resulting criminal violence by the cartel. The only difference between the hypothetical and this case is the particular factual allegations supporting *liability*. But that has nothing to do with proximate causation.

Throughout their brief, Petitioners implicitly acknowledge that their proximate cause challenge depends on rejecting the underlying cause of action. For example, Petitioners assert that the Complaint relies on a causal chain with "eight links" while assuming that Petitioners' conduct begins and ends with "sell[ing] firearms to federally licensed wholesalers." Pet. Br. 22. Similarly, Petitioners argue that PLCAA's affirmative defense applies here because this case involves only "*independent* criminal activity in which Petitioners played no role." *Id.* at 31 (emphasis in original). But none of this is what Mexico's Complaint alleges. Instead, it alleges an intentional scheme by Petitioners to aid cartels in Mexico in obtaining trafficked firearms through straw purchasers. Whether the factual allegations pled in the Complaint are sufficient to support that allegation is a separate question—Question 2.

Framed correctly, the proximate cause question presented here should be: "Whether gun manufacturers that intentionally aid and abet violent gangs in Mexico are a proximate cause of the alleged injuries to the Mexican government." The answer to this question is plainly yes. As this Court made clear

last term, "people who aid and abet a tort can be held liable for other torts that were 'a foreseeable risk' of the intended tort." *Taamneh*, 598 U.S. at 496 (quoting *Halberstam* v. *Welch*, 705 F.2d 472, 488 (D.C. Cir. 1983)).

In fact, Petitioners concede this point (as they must) when they admit that "[n]obody is saying PLCAA cuts off liability for a company engaged in *coordinated* criminal activity." Pet. Br. 30-31 (emphasis in original). This concession gives up the game. Aiding and abetting *is* coordinated criminal activity, and the Complaint alleges that Petitioners coordinated with gangs in Mexico to traffic weapons. See, *e.g.*, Pet. App. 79a (detailing allegations). Petitioners simply do not believe Mexico's factual allegations are sufficient to state a claim that they aided and abetted criminals.

Petitioners' concession makes clear that their real grievance is with the strength of Mexico's liability allegations, not with proximate causation. In the end, both parties (sensibly) agree that if Petitioners aided and abetted the cartels in obtaining weapons to use for violent ends, then Petitioners' illegal acts would be a proximate cause of that violence. But whether Mexico has adequately alleged such aiding and abetting is presented by Petitioners' second question, not the first.

II. Petitioners' view of proximate cause conflicts with PLCAA's text and black-letter tort law, immunizing dangerous and illegal conduct

To the extent Petitioners do more than assume away liability, their position is even more brazen. They ask this Court to hold that a gun company's intentional violation of firearms laws can never be a proximate cause of injury that results from the criminal misuse of its products, no matter what laws the company violates. Pet. Br. 3-4, 17-20. Petitioners' theory runs roughshod over PLCAA's plain language and invites devastating consequences. PLCAA sought to protect the gun industry from lawsuits for "harm caused *solely by* the criminal or unlawful misuse of firearm products." 15 U.S.C. § 7901(a)(3) (emphasis added). But the statute expressly preserves claims where illegal conduct by a gun manufacturer or seller was "a proximate cause" of the criminal misuse of a firearm. 15 U.S.C. § 7903(5)(A)(iii). Petitioners' theory would eviscerate this statutory exception and discard black-letter tort law. Petitioners thus invite the Court to immunize the gun industry for illegal conduct that foreseeably fuels violence, while denying any remedy to the victims—including police officers, first responders, children—and their families. The Court should decline this invitation.

A. Petitioners' view conflicts with PLCAA's text

PLCAA was intended to protect gun companies from suits seeking to hold them liable for harm resulting *solely* from the criminal misuse of their products by others. *Ileto* v. *Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009). But PLCAA was not intended to, and did not, bar all suits against the gun industry involving criminal violence with a firearm.

Instead, PLCAA's predicate exception expressly allows claims involving third-party criminal misuse of a firearm to go forward when the manufacturer or seller violates state or federal law. 15 U.S.C. § 7903(5)(A)(iii). The predicate exception lists non-exhaustive examples of preserved claims, including cases where the manufacturer or seller falsified gun records, sold to straw purchasers, or aided and abetted or conspired to do so. See *id.* § 7903(5)(A)(iii)(I)-(II). These are crucial—and purposeful—exceptions that allow victims to hold gun companies liable for violating the law. Petitioners' proposed rule would eviscerate them.

On Petitioners' theory, conduct by gun manufacturers or sellers could *never* be a proximate cause of the criminal misuse of a firearm by a third person—because their conduct would not be "the first step" in the causal chain and because intervening criminal conduct would always cut off causation. Pet. Br. 17-19. But if the "intervening act" of criminal misuse always severed proximate cause, as Petitioners argue, then no plaintiff would ever be able to bring cases against gun manufacturers or sellers

who knowingly break the law—even though the predicate exception explicitly permits them. This interpretation would render the predicate exception a nullity. See *Pulsifer* v. *United States*, 601 U.S. 124, 143 (2024) (noting the canon against surplusage applies with "special force" where a statutory construction "render[s] an entire subparagraph meaningless").

Petitioners argue that their interpretation does not nullify the predicate exception because plaintiffs could still bring claims if the gun seller or manufacturer conspired to commit the subsequent violent felony (say, a bank robbery) in which the gun was used. Pet. Br. 30-31. But that reading makes no sense. The predicate exception applies to those in the gun industry who violate "a State or Federal statute *applicable to the sale or marketing*" of firearms. 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). It is not limited to those who also participate in the subsequent violent felony itself. PLCAA's examples make clear that the manufacturer or seller can be liable for subsequent criminal misuse like bank robbery if they violate *other* laws, such as federal background check rules or state marketing regulations, and if a jury determines their conduct foreseeably caused that gun violence.

Finally, Petitioners' argument also ignores that the predicate exception requires only that the manufacturer or seller's conduct was "*a* proximate cause." This use of the indefinite article "a" contrasts with the phrase "sole proximate cause" used in PLCAA's design defect provision. See § 7903(5)(A)(v). This contrast makes clear the predicate exception

adopts the common-law view that a single injury can have multiple different proximate causes. See, *e.g.*, *Sheridan* v. *United States*, 487 U.S. 392, 406 (1988) (describing this rule as "standard tort doctrine"). Because the predicate exception requires only that the manufacturer or seller's conduct is "a proximate cause," such conduct may be actionable even if it is not the nearest or most direct cause of the injury.

B. Petitioners' causation rule conflicts with black-letter law

Petitioners' new immunity rule also bulldozes traditional tort law. A party who commits a tort that foreseeably facilitates tortious or criminal harm by a third party is a proximate cause of that harm. This principle is not novel or controversial. It is hornbook law. See generally Amicus Br. of Professors of Tort Law, Statutory Interpretation, and Firearms Regulation, at 2-29.

The Restatements adopt this rule. The Third Restatement makes clear that "[i]f the third party's misconduct is among the risks making the defendant's conduct negligent, then ordinarily plaintiff's harm will be within the defendant's scope of liability." Restatement (Third) of Torts: Phys. & Emot. Harm § 34 cmt. e (2010). Similarly, the Second Restatement explains that a negligent actor proximately causes harm if his negligence "created an opportunity" for a "third person to commit [] a tort or crime" and the actor "should have realized" the risk when he acted. Restatement (Second) of Torts § 448 (1965).

Leading tort law treatises—including those Petitioners cite—do too. Petitioners rely on Dobbs' Law of Torts for the uncontroversial proposition that an intervening cause can sometimes sever proximate causation. Pet. Br. 20. But Petitioners ignore the critical caveat that follows the general rule: "if a criminal or intentional intervening act is *foreseeable*, or is part of the *original risk negligently created by the defendant* in the first place, then the harm is not outside the scope of the defendant's liability[.]" Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, The Law of Torts § 209 (2d ed.) ("Dobbs' Law of Torts") (emphasis added); see also Prosser and Keeton, *The Law of Torts* § 44, at 302 (5th ed. 1984) (when third-party conduct intervenes, the original defendant "is to be held liable if, but only if, the intervening cause is 'foreseeable'").

Courts have applied this same approach to intervening criminal conduct across industries and over roughly the past century. The manufacturer of a defective alarm system may be liable if the system's failure allows thieves to succeed in burglarizing the plaintiff's property.[5] A seller that fails to conduct appropriate background checks of its independent door-to-door distributor can be held liable if the distributor foreseeably assaults a customer.[6] An aircraft manufacturer that fails to design secure cockpit doors may be liable for the damages caused by

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[5] *Collins & Sons Fine Jewelry, Inc.* v. *Carolina Safety Sys., Inc.*, 371 S.E.2d 539, 543–544 (S.C. Ct. App. 1988).

[6] See, *e.g.*, *McLean* v. *Kirby Co., a Div. of Scott Fetzer Co.*, 490 N.W.2d 229, 242 (N.D. 1992).

hijacking.[7] A manufacturer of combustible construction products may be liable for the harm caused by a building fire started through arson.[8] A bar that serves liquor to an already intoxicated person knowing that the patron will drive home drunk may be sued by third parties who are injured in the resulting car wreck.[9] Similar cases are a dime a dozen.[10]

Even Petitioners' cases make clear that foreseeability is the touchstone of the proximate cause analysis. Pet. Br. 24-25. For instance, *Kemper* v. *Deutsche Bank AG* reiterates black-letter law that "a cause is superseding when it is a cause of independent origin *that was not foreseeable*." 911 F.3d 383, 393 (7th Cir. 2018) (internal quotation and citation omitted) (emphasis added). And in *City of Chicago* v. *Beretta, U.S.A., Corp.*, the court's finding that defendants had not created a public nuisance "depend[ed] on an analysis of foreseeability." 821 N.E.2d 1099, 1136 (Ill. 2004). The *Beretta* court held that it was unforeseeable for the defendants' "*lawful sale* of a nondefective product" to cause such a public nuisance. *Id.* at 1136-1137 (emphasis added); but see *City of Gary ex rel. King* v. *Smith & Wesson Corp.*, 801 N.E.2d 1222, 1235 (Ind. 2003) (concluding that plaintiffs stated a claim that a public nuisance of gun violence *was* a foreseeable result of defendants'

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[7] *In re Sept. 11 Litig.*, 280 F. Supp. 2d 279, 308 (S.D.N.Y. 2003).
[8] *d'Hedouville* v. *Pioneer Hotel Co.*, 552 F.2d 886, 894 (9th Cir. 1977).
[9] *Lopez* v. *Maez*, 651 P.2d 1269, 1276 (N.M. 1982).
[10] Restatement (Second) of Torts § 449 (collecting state and federal cases).

sale and marketing of firearms); *Cincinnati* v. *Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1144 (Ohio 2002) (similar). The key difference between this case and *Chicago* v. *Beretta* is that the Complaint in this case alleges illegal sales, not legal ones.[11]

Nor do Petitioners' cases hold that proximate cause is limited to the "first step" in a causal chain. Pet. Br. 17. As an initial matter, these cases are about indirect injuries, not causal chains that include third-party actors. See, *e.g.*, *Holmes* v. *Sec. Inv. Prot. Corp.*, 503 U.S. 258, 271 (1992) (discussing rule in antitrust law that only direct purchasers may sue).[12] Those are distinct concepts, though Petitioners confuse them. An indirect injury is derivative of a harm inflicted on another party. A multi-actor causal chain requires multiple actions before injury is felt. Cases barring recovery for purely derivative injury do not remotely support Petitioners' broader proposition that a causal chain fails if it contains more than one "step." And here, at least some of the injuries Mexico alleges are *direct* to the government. See, *e.g.*, JA173a

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[11] Petitioners' other cases are irrelevant because they are not about proximate causation at all but are about the separate tort-law element of legal duty. See, *e.g.*, *D.C.* v. *Beretta, U.S.A., Corp.*, 872 A.2d 633, 647 (D.C. 2005). While PLCAA's predicate exception contains a requirement of proximate cause, it does not intend to, and does not, displace state law on the discrete question of whether and when a gun seller or manufacturer has a duty under state tort or statutory law.

[12] See also *Bank of Am. Corp.* v. *City of Miami, Fla.*, 581 U.S. 189, 202-203 (2017) (holding that city could not sue for indirect harm from discriminatory lending against its residents).

(Compl. ¶ 464) (direct damages to military aircraft and police vehicles).

Petitioners' "first step" cases are inapplicable for another reason, too: the statute's plain text. It would be exceptionally odd to interpret PLCAA to (silently) preempt state tort law via a (unique) federal standard for proximate cause. See *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 484 (1996) (even in a statute containing express preemption language, a court must "identify the domain expressly pre-empted by that language.") (internal citations omitted). To the contrary, PLCAA safeguards "important principles of federalism," 15 U.S.C. § 7901(a)(8). And when Congress wanted to create a federal statutory standard for traditional tort principles in PLCAA, it did so *and explained the standard it was creating*. See *id.* § 7903(5)(B) (defining "negligent entrustment"). The idea that Congress intended to create a brand-new definition of proximate cause simply by using the words "proximate cause" in the statute is more tarot than textualism.

When this Court analyzes proximate cause, it does so with respect to the cause of action. See, *e.g.*, *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118 (2014) (plaintiffs can sustain claims based on third party reliance on misrepresentations under the Lanham Act). The cause of action here arises from state law, not federal law. This, too, distinguishes PLCAA from the "first step" cases Petitioners cite. See, *e.g., Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639, 641, 655 (2008) (explaining that RICO "provides a private right of action" and under the statute's text, claimants need not show

reliance to establish proximate cause). PLCAA does not create a cause of action—it provides an affirmative defense. 15 U.S.C. § 7903(5)(C) ("[N]o provision of this chapter shall be construed to create a public or private cause of action or remedy.") It would be bizarre indeed to impose a proximate cause rule wholly unrelated to the traditional state tort law that supplies the cause of action itself.

Nor would Petitioners' "first step" rule be administrable here, because the number of "steps" in a causal chain is a matter of semantics. For example, a gun dealer illegally sells a gun to a person he knows is a convicted felon, and the felon then uses the gun to shoot a teller during a bank robbery. Is the causal chain one step (from "dealer sells the gun to felon" to "felon uses gun to shoot teller")? Or is it many more than that? (1) dealer sells the gun to the felon; (2) felon's landlord threatens to evict felon for non-payment of rent; (3) driven by financial desperation, felon decides to rob a bank; (4) felon enlists a co-conspirator to drive him to the bank in a getaway car; (5) felon demands the teller give him money; (6) teller refuses to hand over the cash; (7) felon shoots the teller with the illegal gun. Proximate cause does not rise or fall on the ability of lawyers and judges to carve up a causal link into arbitrary "steps." Instead, the proximate cause inquiry asks whether the harm is foreseeable and is thus one of the factors that makes the conduct tortious in the first place.

In short, Petitioners ask this Court not to apply tort law, but to upend it. They seek to resurrect a long-defunct rule that intervening criminal acts invariably sever proximate causation. But this "archaic doctrine

has been rejected everywhere." *Britton* v. *Wooten*, 817 S.W.2d 443, 449 (Ky. 1991); see Dobbs' Law of Torts § 209 (describing the rule in these "earlier cases" as "contrary to human experience"); see also *Petition of Kinsman Transit Co.*, 338 F.2d 708, 719 (2d Cir. 1964) (rejecting "the discredited notion that only the last wrongful act can be a cause—a notion as faulty in logic as it is wanting in fairness"); *d'Hedouville* v. *Pioneer Hotel Co.*, 552 F.2d 886, 894 (9th Cir. 1977) ("[M]ore recent decisions apply the general principle of foreseeability to intervening criminal acts.").

By the time Congress enacted PLCAA in 2005, it had been black-letter common law for many decades that a defendant whose unlawful conduct foreseeably facilitates harm by a third party is a proximate cause of that harm. "[W]hen Congress transplants a common-law term, the old soil comes with it." *Sec. & Exch. Comm'n* v. *Jarkesy*, 603 U.S. 109, 125 (2024). It is the contemporary common-law understanding of "proximate cause" that Congress adopted in PLCAA—not Petitioners' defunct nineteenth-century version of the concept.

C. Petitioners' view of proximate cause under PLCAA would immunize dangerous unlawful conduct

Lower courts applying PLCAA have correctly understood that the statute provides no defense to gun manufacturers or sellers whose unlawful conduct foreseeably enables the criminal misuse of a firearm. These cases illustrate how devastating the blanket

immunity that Petitioners propose would be for gun violence victims and their families.

Consider a gun seller who knowingly sells a firearm to a prohibited purchaser. Say that a teen who could not legally buy a gun walks into a gun store with his friend. The teen selects a firearm for purchase. The friend then goes to ring it up on behalf of the teen. The friend truthfully completes the requisite Firearms Transaction Record, ATF Form 4473, answering "no" to the question, "Are you the actual transferee/buyer" of the desired gun.[13] Then, rather than discontinue the transaction because it is illegal to sell a firearm to anyone other than the actual buyer, the store clerk advises the friend to lie on the federal form and papers the sale. As a result, a teen otherwise prohibited from purchasing a gun obtains one and, with that gun, shoots two police officers seven times—one point blank in the face—during a routine stop. These were the facts in the case against Badger Guns in Wisconsin. Compl. at ¶¶ 2-4, 82-90, *Norberg* v. *Badger Guns*, No. 10CVO20655 (Wis. Cir. Dec. 6, 2010), https://perma.cc/4PKW-HHTX; see also Yanan Wang, *Landmark jury verdict orders gun shop to pay nearly $6 million to injured police officers*, Washington Post (Oct. 14, 2025), https://perma.cc/TEW2-WZ5J.

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[13] See 18 U.S.C. § 922(a)(6) (criminalizing knowing false or oral written statements regarding any material fact to the lawfulness of a gun sale); see also *Abramski* v. *United States,* 573 U.S. 169,193 (2014) (affirming straw purchasing conviction, and holding that "[n]o piece of information is more important under federal firearms law than the identity of a gun's purchaser").

Officers Bryan Norberg and Graham Kunisch sued Badger Guns for, among other things, aiding and abetting tortious conduct. Compl. at ¶¶ 134-137. Before trial, the retailer asked a Wisconsin court to cloak its unlawful conduct in PLCAA's protections and dismiss the case. The court refused, explaining that it was for a jury to decide whether alleged unlawful behavior fell within PLCAA's predicate exception. Order, *Norberg* v. *Badger Guns*, No. 10CVO20655 (Wis. Cir. Jul. 11, 2011), https://perma.cc/JJP5-DZ5N; see also John Diedrich, *Milwaukee County judge's ruling favors officers in Badger Guns suit*, Milwaukee Journal Sentinel (Jan. 30, 2014), https://perma.cc/PGJ8-PE9R. And at trial the officers won. A jury awarded the officers nearly six million in damages. Verdict Form, *Norberg* v. *Badger Guns*, No. 10CVO20655, 2015 WL 10488402, (Wis. Cir. Dec. 6, 2010), https://perma.cc/UWH4-5YQZ.

Officers Norberg and Kunisch's suit against Badger Guns was only the second to reach a jury in the ten years following PLCAA's enactment. But the officers' injuries are hardly unique.

One Christmas Eve, two firefighters responding to 911 dispatch in upstate New York were shot dead by a felon using an illegally purchased firearm. Greg Botelho, *New York town's 'Firefighter of the Year' shot dead responding to blaze*, CNN (Dec. 25, 2012), https://perma.cc/4JLE-GC63. Two more firefighters and an off-duty police officer were also wounded. *Ibid.* Earlier that morning the gunman had killed his sister, set his home ablaze, and laid in wait for the first responders to arrive. *Chiapperini* v. *Gander Mountain Co.,* 13 N.Y.S. 3d 777, 781 (2014).

Despite the gunman's prior conviction, he obtained the firearms he used in the ambush through a straw purchaser. *Ibid*. The gunman and straw purchaser "perus[ed] long guns" "together" at a retailer. *Ibid*. The straw purchaser accepted help from a store clerk, attested that she was the "true" purchaser, and paid for two guns in cash provided by the gunman. The gunman then "took the guns off the counter and left the store with them." *Ibid*. The straw purchaser "never again possessed" the weapons. *Ibid*. The retailer invoked PLCAA in a bid to dismiss the victims' suit. But the New York court declined to do so. The plaintiffs sufficiently pled "red flags," indicating the retailer had reason to know the sale was an illegal straw purchase. *Id.* at 787. The court also rejected the argument that the gun seller's unlawful conduct could not be a "proximate cause" of the shooting, holding that causation was "a question of fact for a jury." *Id*. at 786.

A similar fact pattern repeated itself one Passover Eve in Kansas. Reat Underwood, a freshman in high school, and his grandfather, William Corporon, were gunned down outside a Jewish Community Center. John Bacon, *Shooting victim was an Eagle Scout, 'tremendous talent'*, USA Today (April 14, 2014), https://perma.cc/VLC8-AFB5. Reat, a debater and theater student, was visiting the center to compete for the KC SuperStar singing scholarship. *Ibid.* Before Reat even stepped out of his grandfather's truck, a convicted felon and former Ku Klux Klan "Grand Dragon" took his life. *Ibid*. The shooter did not stop at the Jewish Community Center. He then opened fire at a nearby Jewish retirement home,

Village Shalom. There, he murdered Terri LaManno, a pediatric occupational therapist who was visiting her mom, as she did every Sunday. Catherine Shoichet, *Kansas City shooting: 3 lives defined by love, taken by gunman's rage*, CNN (Aug. 31, 2015), https://perma.cc/24QK-78HF.

The shooter had illegally acquired a firearm through a straw purchase at a Wal-Mart in Missouri. *Corporan* v. *Wal-Mart Stores East, LP*, No. 16-2305, 2016 WL 3881341, at *1 (D. Kan. July 18, 2016). In front of a store clerk, the shooter "selected a Remington shotgun and initiated its purchase." *Ibid*. He then "claimed he did not have any identification with him" and "offered" his friend accompanying him "would complete the purchase." *Ibid*. The friend did so, also "in the presence of at least one Wal-Mart employee." *Ibid*. And with "assist[ance]" from that employee, the friend completed the requisite federal forms and attested to being the actual buyer of the firearm. *Ibid*. Wal-Mart certified the transaction's lawfulness. *Id*. at *3. Days later, the shooter used that Remington shotgun to execute his neo-Nazi vision of white supremacy and "kill Jews." Becky Sullivan, *Man Who Shot and Killed 3 at Kansas Jewish Centers Dies in Prison*, NPR (May 4, 2021), https://perma.cc/N4RA-UX7R.

Wal-Mart sought PLCAA's protection. The Kansas federal court denied it. *Corporan,* 2016 WL 3881341, at *3. The court noted that federal law required Wal-Mart to "certify in writing" that it "believe[d]" the transaction was lawful—*i.e.*, based on the information obtained by the retailer on the federal form and the facts of the sale, that the shooter's

"friend" was the firearm's actual buyer. *Ibid.* Wal-Mart did so even though it knew or reasonably should have known that the sale was an illegal straw purchase: the shooter selected the shotgun and tried to buy it but had a "friend" finish the transaction midstream—all while Wal-Mart staff watched. *Ibid.* As a result, the court declined to dismiss the case. Instead, it granted plaintiffs leave to amend their complaint to include allegations about Wal-Mart's certification. Plaintiffs' claims could "survive the PLCAA filter" with these amendments regarding Wal-Mart's knowing violation of gun laws. *Ibid.*

Unfortunately, these cases involving illegal straw purchase sales are not isolated examples.[14] They are also not the only kind of unlawful conduct

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[14] See, *e.g.*, *KS&E Sports* v. *Runnels*, 72 N.E. 3d 892 (Ind. 2017) (holding retailer could be liable for sale to straw purchaser resulting in convicted felon later shooting police officer during traffic stop); *Englund* v. *World Pawn Exch., LLC*, 2017 WL 7518923 (Or. Cir. Ct. June 30, 2017) (holding retailer could be liable for sale to apparent straw purchaser resulting in a multi-day crime spree where convicted felon shot and killed a woman, set her on fire, and shot her once more); *Minnesota* v. *Fleet Farm LLC*, 679 F. Supp. 3d 825 (D. Minn. 2023) (holding retailer could be for selling at least 37 firearms to two straw purchasers resulting in two public shooting incidents and the death of a 27-year-old woman); *Shirley* v. *Glass*, 308 P.3d 1 (Kan. 2013) (holding retailer could be liable for sale to straw purchaser resulting in convicted felon shooting and killing his eight-year-old son); *Williams* v. *Beemiller, Inc.*, 952 N.Y.S. 2d. 333 (N.Y. App 2012) (holding plaintiffs sufficiently alleged manufacturer and sellers violated PLCAA through straw purchase and trafficking transaction, resulting in 16-year-old athlete shot while playing basketball after being mistaken for rival gang member).

that may lead to liability for the gun industry under PLCAA.

For instance, Texas state courts recently held that PLCAA did not require dismissal of a suit over an illegal ammunition sale that facilitated a school shooting. LuckyGunner, an online retailer, sold nearly 200 rounds of ammunition to a 17-year-old, violating federal minimum age rules. See Real Parties in Interest Brief at 31, *In re LuckyGunner, LLC*, No. 21-0463 (Tex. 2021), https://perma.cc/CT6Z-54LB. LuckyGunner's website had no mechanism to verify the teen's—or any buyer's—age. *Id.* at 7. And in less than two minutes, the retailer's fully automated system approved the teen's unlawful order. *Ibid.* The teen, using his parent's guns, then unloaded that ammunition at Santa Fe High School, killing ten classmates and teachers and injuring thirteen more. *Id.* at 1.

The school-shooting victims sued LuckyGunner for negligence and conspiracy. *Id.* at 9. The trial court denied LuckyGunner's bids to dismiss these cases under PLCAA, and the Texas appellate court denied mandamus relief and LuckyGunner's motion to stay the litigation. *Id.* at 10; *In re LuckyGunner, LLC*, No. 14-21-00194-CV, 2021 WL 1904703, at *1 (Tex. App. May 12, 2021). The Texas Supreme Court denied the petition for review, allowing the case to proceed. *In re LuckyGunner, LLC*, No. 14-21-00194-CV, 2021 WL 1904703 (Tex. App. May 12, 2021), mandamus denied, No. 21-0463 (Tex. Feb. 18, 2022). LuckyGunner later settled and agreed to maintain an age verification system for future sales. Juan Lozano, *Suit settled over*

sale of Texas school shooter's ammo, Associated Press (Feb. 10, 2023), https://perma.cc/R5NX-FBMA.

A California court also held that PLCAA did not require dismissal of a suit over unlawful ghost gun sales that led to the shooting of two sheriff's deputies. Order, *Apolinar* v. *Polymer80, Inc.*, No. 21STCV29196 (LA Sup. Cnty. Ct. Feb. 2, 2022). The officers, Claudia Apolinar and Emmanuel Perez-Perez were sitting in a marked patrol car outside of a transit station when an assailant ambushed them. Matthew Ormseth, *Inside the ambush of two L.A. sheriff's deputies: Cold, calculating*, LA Times (Sept. 22, 2023), https://perma.cc/4LT5-Z58L. The assailant shot each officer multiple times at point-blank range with an untraceable and home-assembled ghost gun. Compl. at ¶¶ 1-6, 8-11, *Apolinar* v. *Polymer80, Inc.*, No. 21STCV29196 (LA Sup. Cnty. Ct. Aug. 20, 2021), https://perma.cc/G35L-V6LX. The ghost gun used by the assailant, a convicted felon, was sold by the defendant without so much as a background check. *Id.* at ¶ 13.

Polymer80, Inc. sought PLCAA's affirmative defense for its unlawful conduct. The California court disagreed, finding the officers' allegations in the complaint under several predicate statutes sufficient for the case to proceed. Order at 6, *Apolinar* v. *Polymer80, Inc.*, No. 21STCV29196 (LA Sup. Cnty. Ct. Feb. 2, 2022), https://perma.cc/P9HT-9H9P. Polymer80, Inc. also challenged causation, arguing that officer Apolinar and Perez-Perez's injuries were caused by independent intervening criminal acts. The court disagreed, again. The officers' allegations sufficiently established the defendant "supplied the

instrumentality necessary to commit such a crime, in a form (no serialization) suited to the commission of such a crime, and a manner (no background checks) that enabled purchase by and attracted the group of people most likely to commit such a crime (criminals ineligible to purchase or possess guns)." *Ibid*. The officers' injuries, therefore, were foreseeable. *Ibid.*

To be sure, these examples do not represent how most gun manufacturers and sellers run their businesses. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") estimates that at least 86 percent of federally licensed retailers sell no crime guns in any given year. Brady Center, *The Truth About Gun Dealers In America*, 5 (2015), https://perma.cc/UVZ6-LHJM. By contrast, five percent of gun retailers in the United States account for ninety percent of the crime guns ATF can trace. *Id*. at 9. For instance, when a teen shot officers Norberg and Kunisch in Milwaukee with the straw-purchased firearm from Badger Guns, that retailer had been the top supplier of crime guns recovered in that city for over a decade, having once even held that title nationally. Compl. at ¶ 24, *Norberg* v. *Badger Guns*, No. 2010-cv-20655, verdict returned (Wis. Cir. Ct., Milwaukee Cty. Oct. 13, 2015); see also Compl. at ¶¶ 2-4, 65, 74, *Chicago* v. *Westforth Sports*, No. 2021-CH-01987 (Ill. Cnty. Apr. 4, 2021), https://perma.cc/8AD9-4TV5 (alleging one gun store systematically engaged in illegal sales practices, including selling 180 firearms to 40 individuals later charged with federal gun crimes). Petitioners' arguments would provide a safe haven to such bad actors.

Petitioners ask this Court to do what state and federal courts across this country have refused to do: immunize a gun manufacturer or seller's illegal conduct, even where their egregious violations of law foreseeably facilitate criminal misuse of their products. PLCAA's plain text and traditional tort law principles reject Petitioners' interpretation. No authority permits rogue actors in the gun industry to flout the law with impunity. And with good reason: as these cases show, Petitioners' proposed license-to-crime would enable great harm.

CONCLUSION

This Court should reject Petitioners' dangerous invitation to muddle the law of proximate cause and eviscerate PLCAA's predicate exception. If the Court finds that the allegations in the Complaint sufficiently allege that Petitioners aided and abetted illegal straw purchases of firearms, it should hold that this conduct could have proximately caused Mexico's injury.

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January 17, 2025