No. 23-1141

IN THE
Supreme Court of the United States

SMITH & WESSON BRANDS, INC., *et al.*,

Petitioners,

v.

ESTADOS UNIDOS MEXICANOS,

Respondent.

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

BRIEF IN OPPOSITION

JONATHAN E. LOWY
YAACOV (JAKE) MEISELES
GLOBAL ACTION ON GUN VIOLENCE
805 15th Street NW, #601
Washington, DC 20005

STEVE D. SHADOWEN
RICHARD M. BRUNELL
NICHOLAS W. SHADOWEN
HILLIARD SHADOWEN LLP
1717 W. 6th Street
Suite 290
Austin, TX 78703

CATHERINE E. STETSON
Counsel of Record
MICHAEL J. WEST
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

MACKENZIE AUSTIN
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067

Counsel for Respondent

QUESTION PRESENTED

Whether the Government of Mexico plausibly alleged that Petitioners aided and abetted unlawful firearms sales to traffickers for cartels in Mexico, proximately causing Mexico harm, and thereby triggering the predicate exception to the Protection of Lawful Commerce in Arms Act.

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BRIEF IN OPPOSITION

INTRODUCTION

To hear Petitioners and their *amici* tell it, the First Circuit held that gun manufacturers may be liable for negligence and public nuisance merely because they know that their guns are trafficked to Mexico, upending settled law and creating an existential threat to the gun industry. That is not what the Government of Mexico alleged; it is not what the court below held; and it is not what will result from this preliminary decision.

Here are the actual facts: Mexico's Complaint alleged that—far from mere knowledge or passive acceptance—Petitioners deliberately chose to engage in unlawful *affirmative conduct* to profit off the criminal market for their products. The First Circuit held, at the motion-to-dismiss stage, that Mexico's Complaint plausibly alleged both that Petitioners deliberately aided and abetted the unlawful sale of firearms to purchasers supplying brutal cartels in Mexico and that Mexico suffered injuries that Petitioners' actions proximately caused.

As for consequences: A long road lies between the First Circuit's decision and a final judgment. The district court will resolve other asserted grounds for dismissal—including lack of personal jurisdiction and failure to state a claim under state law—that it did not previously address. After discovery will come summary judgment, then potentially trial, then appeal. Petitioners' challenges are best addressed on a developed factual record, if it proves necessary to address them at all. That is why this Court routinely denies petitions seeking review of a suit at such an early stage.

The petition also satisfies none of the certiorari criteria. Petitioners' first question does not present a split. Petitioners do not identify a single case that breaks with the decision below on the meaning of the proximate-cause requirement in the Protection of Lawful Commerce in Arms Act (PLCAA)'s predicate exception. Petitioners muster only cases decided before the PLCAA's enactment, under various state-common-law proximate-cause doctrines, and on less egregious and less detailed allegations than those

here. Different courts applying different laws to different facts reaching different conclusions is not a split. And Petitioners do not even try to argue that the court of appeals' decision on their second question presented—aiding and abetting—splits with *any* other decision; after all, Petitioners' theory is that the decision below broke with *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471 (2023), which is barely a year old.

Petitioners' arguments on the merits fare no better. Petitioners complain that the decision below failed to consider factors other than foreseeability in holding that the predicate exception's proximate-cause requirement was satisfied. But the court of appeals considered *every* proximate-cause principle Petitioners insist it ignored. *See* Pet. App. 301a-319a. As for Petitioners' second question presented: Petitioners' aiding-and-abetting argument rests on what the First Circuit accurately described as a "fundamental misunderstanding of the complaint." *Id.* at 300a-301a. Mexico is not seeking to hold Petitioners liable for mere passive indifference to the trafficking of their firearms, but for their affirmative and intentional conduct that increases their profits by enabling and facilitating unlawful firearms sales to cartel-linked traffickers. This case is as different from *Twitter* as guns are from tweets.

The petition should be denied.

STATEMENT

A. Mexico's Lawsuit

The cartels in Mexico are transnational criminal organizations heavily involved in the drug trade. Pet. App. 9a, 12a. The cartels are brutally violent; they have killed thousands of civilians across Mexico and

regularly clash with the Mexican military and federal police. *Id.* at 12a, 169a-170a, 172a-173a.

The cartels' power derives largely from their firepower—much of which comes from Petitioners. Gun dealers in the United States are a primary source of firearms for the cartels. *Id.* at 7a. Unable to source firearms in Mexico—Mexico has strong domestic gun laws and only one gun store, *id.* at 146a-148a—traffickers arming the cartels have flocked to the United States for decades, *id.* at 43a-71a, 121a-125a.

Petitioners' firearms are particularly popular among the cartels; between 342,000 and 597,000 of Petitioners' weapons are trafficked into Mexico every year. *Id.* at 159a. Nearly half of all firearms recovered at Mexican crime scenes are manufactured by Petitioners. *Id.* at 158a-159a.

The most popular method by which the cartels obtain firearms across the border is through "straw purchasers"—third parties buying guns for the cartels—who purchase firearms at federally licensed firearms dealers. *Id.* at 29a, 81a-85a. Straw purchasing is a federal crime for the purchaser and for dealers who, among other things, have reasonable cause to believe the purchaser is buying guns to be trafficked. *Id.* at 28a-29a, 84a-85a.

The flood of Petitioners' firearms from sources in the United States to cartels in Mexico is no accident. As the Complaint sets forth in detail, it results from Petitioners' knowing and deliberate choice to supply their products to bad actors, to allow reckless and unlawful practices that feed the crime-gun pipeline, and to design and market their products in ways that Petitioners intend will drive up demand among the cartels.

Ninety percent of the guns used in crimes are sold by a known subset of dealers. *Id.* at 44a. And the crime-gun pipeline could be curtailed if those dealers were not supplied and were required to sell guns safely. This is no closely held secret; as far back as 2001, the United States Department of Justice urged Petitioners to stop supplying those high crime-gun-sellers, and to require their dealers to use safe sales practices. *Id.* at 13a, 34a-36a. Petitioners did nothing. *Id.* at 13a.

Over a decade ago, public reporting "identified by name 12 dealers that sold the most guns recovered in Mexico." *Id.* at 44a. And in the years since, many government reports, academic reports, and news articles have documented in detail the rampant trafficking from sources in the United States to Mexico. *Id.* at 50a-52a. Trace requests from the Bureau of Alcohol, Tobacco, Firearms and Explosives—reports that track firearms collected at crime scenes back to their source, *id*. at 36a—identify the firearms that Petitioners "sell to specific distributors and dealers [that] are being recovered at crimes scenes in Mexico," *id.* at 46a. The Complaint alleges dozens of specific incidents of dealers unlawfully selling Petitioners' firearms to cartel-linked traffickers. *Id.* at 54a-71a. And the cartels' use of Petitioners' weapons to commit heinous acts of violence has been widely reported. *Id.* at 71a-78a.

The Complaint alleges that Petitioners intentionally foster this trade. *See, e.g.*, *id.* at 12a, 139a-140a, 185a-186a. They supply dealers that are known to engage in unlawful sales. *Id.* at 43a-50a, 54a-71a. Even when dealers conspire with and advise cartel traffickers on how to evade law enforcement, *see id.* at 55a-

56a, Petitioners choose to supply them, *id.* at 71a. Petitioners also have "double[d] down" on sales practices they know are favored by the cartels. *Id.* at 80a. And they have resisted measures that would make it harder for cartel traffickers to access firearms in this country. *Id.* at 131a-139a. For example, Petitioner Smith & Wesson reneged on a 2000 federal settlement agreement addressing the same unlawful practices cartels use to get weapons. *Id*. at 13a, 36a, 132a-135a. In light of the types of firearms being trafficked into Mexico, as well as the extent of that trafficking, Petitioners' marketing and design choices similarly reflect an intentional effort to sustain the illegal firearms trade into Mexico. *Id.* at 93a-131a. Petitioners market firearms to intentionally cater to cartel demand, such as Petitioner Colt's Mexico-themed pistols; one, the "Emiliano Zapata 1911" pistol, is engraved with the Mexican revolutionary's dictum: "It is better to die standing than to live on your knees." *Id.* at 75a. It is a particular favorite of the cartels. *Id.*

The intentional flow of firearms from Petitioners to cartels in Mexico, *see, e.g.*, *id.* at 24a, has directly harmed Mexico. Mexico "has had to spend vast funds on a wide range of services to fight" this unlawful trafficking, including for increased law enforcement and military services. *Id.* at 167a. Scores of Mexican federal police and military servicemembers have been killed by weapons trafficked from the United States. Between 2006 and 2021, "guns were used to kill at least 415 members of the Mexican Federal police or National Guard," and the "vast majority of these guns were trafficked from the U.S." *Id.* at 172a. Over a similar timeframe, "U.S.-origin guns were used to kill 25 members of the Mexican military and to wound another 84." *Id.* U.S.-origin guns also were used to

cause tens of millions of dollars in damage to Mexican military aircraft and vehicles in cartel-linked violence. *Id.* at 173a. Petitioners manufactured and marketed many of those guns. *See id.* at 172a-173a. And while Mexico has tried to combat this unlawful trafficking, *id.* at 150a-151a, its considerable efforts—and those of the United States—have not stanched the flow of guns into its territory.

B. The Protection of Lawful Commerce in Arms Act

Congress enacted the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. §§ 7901-7903, to preclude "the possibility of imposing liability on an entire industry for harm that is solely caused by others." 15 U.S.C. § 7901(a)(6). Congress provided that civil actions against firearms manufacturers or sellers for relief "resulting from the criminal or unlawful misuse of a qualified product by the person or a third party," *id.* § 7903(5)(A), "may not be brought in any Federal or State court," *id.* § 7902.

The Protection of Lawful Commerce in Arms Act does not, however, protect *unlawful* commerce in arms. To that end, the PLCAA contains several enumerated exceptions. *See id.* § 7903(5)(A)(i)-(vi). One exception, the "predicate exception," permits "action[s] in which a manufacturer or seller" of firearms itself "knowingly violate[s] a State or Federal statute applicable to the sale or marketing" of firearms, where the "violation was a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii). This exception specifically excludes from the PLCAA's bar "any case in which the manufacturer or seller aided[] [or] abetted" the sale of a firearm "knowing, or having reasonable cause to believe, that the actual buyer * * *

was prohibited from possessing or receiving" it. *Id.* § 7903(5)(A)(iii)(I).

The PLCAA's sponsors and supporters confirmed at the time of the Act's passage what the statute's text specifies: The PLCAA allows firearms manufacturers to be held liable for their own tortious or unlawful conduct. The Act's chief Senate sponsor, Senator Larry Craig, emphasized that the PLCAA "does not protect firearms or ammunition manufacturers, sellers, or trade associations from any other lawsuits based on their own negligence or criminal conduct." 151 Cong. Rec. S9061, S9099 (daily ed. July 27, 2005). Other sponsors concurred. 151 Cong. Rec. S9077 (daily ed. July 27, 2005) (Sen. Orrin Hatch explaining that "this bill carefully preserves the right of individuals to have their day in court with civil liability actions where negligence is truly an issue"); 151 Cong. Rec. S8911 (daily ed. July 26, 2005) (Sen. Jeff Sessions explaining that "[m]anufacturers and sellers are still responsible for their own negligent or criminal conduct.").

In the decades since the PLCAA's passage, courts have regularly permitted civil-liability actions against firearms manufacturers and dealers to proceed beyond the motion-to-dismiss stage when the plaintiffs have plausibly pleaded facts consistent with the predicate exception. *See, e.g.*, *Soto* v. *Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 325 (Conn. 2019), *cert. denied sub nom. Remington Arms Co.* v. *Soto*, 140 S. Ct. 513 (2019) (mem.); *Smith & Wesson Corp.* v. *City of Gary*, 875 N.E.2d 422, 432-435 (Ind. Ct. App. 2007), *petition for review denied*, 915 N.E.2d 978 (Ind. 2009) (table); *Williams* v. *Beemiller, Inc.*, 100 A.D.3d 143, 148, 150-151 (N.Y. App. Div. 2012), *amended by* 103 A.D.3d 1191 (N.Y. App. Div. 2013); *New York* v. *Arm*

or Ally, LLC, No. 22-CV-6124 (JMF), 2024 WL 756474, at *11-12 (S.D.N.Y. Feb. 23, 2024), *interlocutory appeal filed*, No. 24-773 (2d Cir. Mar. 26, 2024), *motion to certify interlocutory appeal granted*, No. 22-CV-6124 (JMF), 2024 WL 2270351 (S.D.N.Y. May 20, 2024); *Minnesota* v. *Fleet Farm LLC*, 679 F. Supp. 3d 825, 831-832, 841-842 (D. Minn. 2023); *Brady* v. *Walmart Inc.*, No. 8:21-CV-1412-AAQ, 2022 WL 2987078, at *8-10 (D. Md. July 28, 2022); *Prescott* v. *Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1138-39 (D. Nev. 2019).

C. Procedural History

Mexico sued Petitioners in 2021 for their unlawful participation in firearms trafficking to the cartels. Pet. App. 1a-197a. In a Complaint spanning 135 pages and replete with detailed factual allegations, Mexico asserted claims for negligence, public nuisance, defective condition of the products, negligence per se, gross negligence, unjust enrichment, and restitution, explaining that Petitioners' conduct aided and abetted the unlawful sale of firearms to the cartels, triggering the PLCAA's predicate exception. *Id.* at 183a-195a. Mexico sought damages for its injuries caused by Petitioners' conduct, as well as injunctive relief. *Id.* at 195a-196a.

Petitioners moved to dismiss Mexico's Complaint on multiple grounds. They argued that Mexico lacked Article III standing; that the PLCAA barred the suit; that Mexico's state-common-law counts failed to state a claim; and that the court lacked personal jurisdiction over several Petitioners. D. Ct. Dkt. Nos. 57, 59, 61, 63, 65, 67, 71, 72, 73; Pet. App. 224a. The district court concluded that Mexico had standing but dismissed the Complaint, concluding that none of the

PLCAA's exceptions applied. Pet. App. 224a, 240a-251a. The court did not reach Petitioners' other arguments. *Id.* at 224a, 251a n.13.[1]

The court of appeals reversed the district court's PLCAA holding, concluding that Mexico had plausibly alleged that Petitioners' conduct satisfied the predicate exception. *Id.* at 293a-319a. As the First Circuit explained,

> [D]efendants do not contend that the complaint fails to allege widespread sales of firearms by dealers in knowing violation of several state and federal statutes. Nor do defendants dispute that the predicate exception of section 7903(5)(A)(iii) would apply if Mexico were to prove that a defendant aided and abetted any such violation. Instead, defendants contend that even for pleading purposes the complaint fails to allege facts plausibly supporting the theory that defendants have aided and abetted such unlawful sales.

Id. at 299a-300a. The First Circuit disagreed with Petitioners on that score, concluding that Mexico had adequately alleged that Petitioners' conduct constituted aiding and abetting, and that Petitioners' alleged conduct had proximately caused damage to Mexico. *Id.* at 299a-306a, 309a-319a.

After surveying Mexico's allegations, the court first concluded "that by passing along guns knowing that

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[1] Mexico also asserted claims under the Connecticut Unfair Trade Practices Act and the Massachusetts Consumer Protection Act. Pet. App. 191a-194a. The district court dismissed those claims, and Mexico did not challenge their dismissal on appeal. *Id.* at 251a.

the purchasers include unlawful buyers, and making design and marketing decisions targeted towards those exact individuals, the manufacturer is aiding and abetting illegal sales." *Id.* at 302a. The court rejected Petitioners' contention that Mexico had alleged only "defendants' knowing indifference" to illegal firearms trafficking, finding that argument to be a "fundamental misunderstanding of the complaint." *Id.* at 300a-301a. Far from passive indifference, Mexico had plausibly alleged that "defendants engage in conduct—design decisions, marketing tactics, and repeated supplying of dealers known to sell guns that cross the border—with the intent of growing and maintaining an illegal market in Mexico from which they receive substantial revenues." *Id.* at 305a.

The court of appeals also rejected Petitioners' reliance on *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471 (2023). Pet. App. 304a-305a. As the court noted, Petitioners were "alleged to be much more active participants in the alleged activity than were the *Twitter* defendants." *Id.* at 305a. The court explained that Mexico's allegations were instead "remarkably analogous" to those in *Direct Sales Co.* v. *United States*, 319 U.S. 703 (1943), in which this Court upheld the conspiracy conviction of a pharmaceutical wholesaler where "the defendant must have known that the sales volume meant there were likely illegal sales, and by encouraging volume sales, the defendant could have been found to have intended to supply the products for the illegal sales." Pet. App. 302a, 304a; *see Twitter*, 598 U.S. at 502 (citing *Direct Sales* with approval).

The court further held that Mexico had plausibly alleged that Petitioners' violations proximately caused

at least some of its injuries. Pet. App. 309a-319a. Relying on "traditional understandings of proximate cause," *id.* at 310a n.8, the court held that some of Mexico's injuries were a "foreseeable and direct" result of Petitioners' conduct, *id.* at 311a. The court rejected Petitioners' contention that the cartels' intervening criminal conduct could always sever the causal chain in the PLCAA context because the dealers' and cartels' criminal acts themselves were "foreseeable." *Id.* at 312a-313a. "If a third party's unlawful act always undercuts proximate cause," the court explained, then "the predicate exception would be meaningless," because it is an exception to an otherwise general rule that manufacturers cannot be held liable for third-party criminal acts. *Id.* at 313a.

The First Circuit then held that at least some of Mexico's injuries were "not merely derivative of those borne by the direct victims of gun violence," concluding that any damage-apportionment issues are "best resolved once Mexico has had an opportunity to engage in discovery." *Id.* at 315a, 318a. The court cautioned that while Mexico's allegations sufficed at this early stage, Mexico "will have to support its theory of proximate causation with evidence later." *Id.* at 319a.

The court concluded by noting the still-unresolved issues in this case, including "which jurisdiction's law governs Mexico's tort claims and whether defendants owe a duty to Mexico under whichever tort law does apply." *Id.* The court remanded to "allow the district court to address the[se] * * * issues in the first instance." *Id.*

Following issuance of the mandate, the district court entered an order renewing Petitioners' motions to dismiss for lack of personal jurisdiction. D. Ct. Dkt. No.

206. The court held a hearing on those motions on June 17, 2024. D. Ct. Dkt. No. 219.

REASONS FOR DENYING THE PETITION

I. THE FIRST CIRCUIT'S DECISION DOES NOT BREAK WITH ANY OTHER COURT OF APPEALS AND IS CORRECT.

A. There Is No Split.

Petitioners contend that the decision below splits with other courts that "have applied traditional proximate cause doctrine to reject the exact same type of suit brought by other government entities." Pet. 15. But Petitioners' decisions applied different jurisdictions' laws to different allegations to answer different legal questions. And all of them predated the PLCAA. Other than the First Circuit below, no federal appeals court or state supreme court has addressed the question presented in this unique context, which itself is predicated on a thorny legal question this Court would have to resolve itself even though *no court* has passed upon it. The Court should allow further percolation before accepting review of these largely unventilated questions. *Cf.* Opening Br. at 52-58, *New York* v. *Arm or Ally, LLC*, No. 24-773 (2d Cir. May 10, 2024) (raising similar proximate-cause arguments).

1. None of Petitioners' cases concerned the legal question at issue here: whether a particular "violation of the law" proximately caused the plaintiff's injury within the meaning of the PLCAA's predicate exception.

Petitioners' cases instead applied various *state-law* proximate-cause principles to different *state-law* questions. *City of Philadelphia* v. *Beretta U.S.A. Corp.*, 277 F.3d 415, 422-426 (3d Cir. 2002), applied

Pennsylvania law to conclude that the plaintiffs failed to state a claim for negligence under Pennsylvania common law. *Ganim* v. *Smith & Wesson Corp.*, 780 A.2d 98, 118-130 (Conn. 2001), applied Connecticut law to conclude that the plaintiffs lacked standing under Connecticut law. *City of Chicago* v. *Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1125-1138 (Ill. 2004), applied Illinois law to conclude that the plaintiffs failed to state a claim for public nuisance under Illinois law; the court's proximate-cause analysis does not cite a single federal case as even persuasive authority. And *District of Columbia* v. *Beretta U.S.A. Corp.*, 872 A.2d 633, 639-651 (D.C. 2005) (en banc), applied D.C. law to conclude that the plaintiffs failed to state a claim for negligence and public nuisance under D.C. law.

These state-law cases do not—and could not—split with the decision below. *See West* v. *American Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940) ("[T]he highest court of the state is the final arbiter of what is state law."). These cases did not concern the PLCAA; indeed, they were all decided before the PLCAA's enactment in late 2005. The PLCAA's predicate exception therefore does not mean different things in different courts; different state laws and different facts lead to different results in different courts. *See Danforth* v. *Minnesota*, 552 U.S. 264, 290 (2008) (noting that "nonuniformity is a necessary consequence of a federalist system of government"). That is reason enough to deny review.

2. Even assuming that the disparate legal traditions at play across these cases could be clumped into the loose category of "traditional proximate cause doctrine," Pet. 15, there is still no split for this Court to resolve. Petitioners cannot gin up a split simply by comparing cases that contain the words "gun" and

"proximate cause." Proximate cause is a fact-bound inquiry, one "controlled by the nature of the statutory cause of action." *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 133 (2014). Petitioners' cited cases involved different legal issues calling for different proximate-cause analyses in the context of different facts.

The first difference between Petitioners' cases and this one is where the causal chain begins. In Petitioners' cited cases, the courts started the causation analysis with the defendant-manufacturer's conduct, which the courts distinguished from dealers' unlawful firearm sales. *See Philadelphia*, 277 F.3d at 423-424; *Ganim*, 780 A.2d at 123-124; *District of Columbia*, 872 A.2d at 647, 650; *Chicago*, 821 N.E.2d at 1136-37. The Illinois Supreme Court characterized the causal chain as starting at "defendants' lawful commercial activity," *Chicago*, 821 N.E.2d at 1136 (quotation marks omitted), and the Third Circuit stressed that the defendant's supply of firearms to dealers was through a "lawful" distribution system, *Philadelphia*, 277 F.3d at 424. The courts thus found proximate cause lacking because the causal chains started from an earlier, concededly lawful point. *See Philadelphia*, F.3d at 423-424; *Ganim*, 780 A.2d at 124; *Chicago*, 821 N.E.2d at 412; *District of Columbia*, 872 A.2d at 1137. Under the PLCAA's predicate exception, however, the causal chain starts at the relevant "violation"; the exception provides that "*the violation*" must be "a proximate cause of the harm." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added). Here, "the violation" is the dealers' felonious firearms sales that Petitioners unlawfully aided and abetted. *See* Pet. App. 310a.

Petitioners' cases and this one also differ in whether intervening criminal conduct can sever the causal chain. Several of Petitioners' cases found proximate cause lacking for that reason. *See Philadelphia*, 277 F.3d at 425; *Chicago*, 821 N.E.2d at 1138, 1148; *District of Columbia*, 872 A.2d at 645. But the PLCAA's text precludes applying that principle in this context. Pet. App. 313a. As the First Circuit explained, the PLCAA "precludes only those claims 'resulting from the criminal or unlawful misuse of a qualified product' by someone other than the defendant," so "[i]f a third party's unlawful act always undercuts proximate cause, the predicate exception would be meaningless." Pet. App. 313a (quoting 15 U.S.C. § 7903(5)(A)). Unlike in Petitioners' cases, unlawful criminal conduct of this sort is not the focus of the PLCAA's proximate-cause analysis.

Petitioners' cases also all involved allegations different in both kind and degree:

Knowledge of unlawful sales. Petitioners (at 15-17) highlight *Philadelphia*, but that case involved general allegations that the defendants were merely aware that "some handguns reach prohibited purchasers." 277 F.3d at 424 n.14. That complaint's allegations about defendants' knowledge were nonspecific and "d[id] not put a gun manufacturer on notice that a specific distributor or dealer [wa]s engaged in unlawful firearm trafficking." *Id.* But the Complaint in this case alleges that Petitioners have information that their weapons are being sold unlawfully to cartels *by particular dealers*, deliberately chose to supply these dealers, and intended that the unlawful sales occur. *See supra* pp. 6-7; *infra* pp. 28-29.

Ready availability of firearms. Two of Petitioners' cases concluded that proximate cause was lacking given "the ready availability of firearms in the nation at large, and the sheer number and variety of opportunities by which persons intent on acquiring them unlawfully can do so." *District of Columbia*, 872 A.2d at 650; *accord Chicago*, 821 N.E.2d at 1137. Here, by contrast, Mexico "has strong domestic laws that make it virtually impossible for criminals to lawfully obtain guns in Mexico. Mexico has one gun store in the entire nation and issues fewer than 50 gun permits per year." Pet. App. 8a. Yet hundreds of thousands of guns flow annually from Petitioners to criminals in Mexico. *Id.*

Derivative injuries. Finally, Petitioners' cases emphasized the "derivative" nature of the plaintiffs' injuries. *See Philadelphia*, 277 F.3d at 424-425; *Ganim*, 780 A.2d at 124. As the Third Circuit explained, "the gravamen of the complaint is that guns are used in crime, with resulting deaths and injuries to City residents, prompting much of the expenses plaintiffs claim as damages." *Philadelphia*, 277 F.3d at 424 n.13; *accord Ganim*, 780 A.2d at 124.

Here, however, Mexico alleged direct harm from Petitioners' conduct, contending in its Complaint that Petitioners' aiding and abetting of this "epidemic of unlawful gun trafficking" has "foreseeably—indeed inexorably"—caused Mexico *itself* injury. Pet. App. 315a. Those injuries include increased spending to combat firearms trafficking and damage to its employees and property. *See infra* pp. 20-21, 24.

Petitioners home in on the court of appeals' statement that it found "the reasoning" of some other state-law cases more "persuasive" than *Philadelphia* and

Ganim. Pet. App. 315a. But that does not change that those were different cases with different facts applying different States' laws. And while Petitioners try (at 20) to place those other cases on the same side of a supposed "split" as the First Circuit, Petitioners' own arguments betray them. *City of Cincinnati* v. *Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002), has been overtaken by statute, and *City of Boston* v. *Smith & Wesson Corp.*, No. 199902590, 2000 WL 1473568 (Mass. Super. Ct. July 13, 2000), is an unpublished state trial-court opinion from a quarter-century ago. These state-law cases are thus outside any "split" twice over.

Petitioners try to shore up their "split" (at 18-19) by pointing to cases arising in other industries. Those cases are even further afield. How state and federal courts apply different jurisdictions' proximate-cause standards to different causes of actions in cases concerning tobacco, subprime lending, lead paint, or meth precursors has *nothing* to do with whether unlawful firearms sales proximately cause a foreign government's injury under the PLCAA, the specific federal statute at issue here.

3. Finally, there are practical barriers to this Court's review. If, despite the early stage of this case and the lack of a split on the questions presented, this Court were to grant review, it will have to address and resolve whether the predicate exception's proximate-cause requirement incorporates or is informed by state or local law. The PLCAA does not create a cause of action and does not define proximate cause. State-law causes of action proceeding through the predicate exception are thus governed by the law of the relevant State. *See Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64, 78

(1938). And it is unclear whether that State's law is incorporated into—or at least informs—the meaning of the predicate exception's proximate-cause requirement. *Cf. Wallace* v. *Kato*, 549 U.S. 384, 387 (2007) (state law governs the limitations period for 42 U.S.C. § 1983 claims).

The lower courts have not ventilated this issue *at all*. The court of appeals instead elected to interpret the predicate exception in light of a combination of this Court's case law, various state common-law principles, and the *Restatement (Second) of Torts*. *See* Pet. App. 310a-318a. And this issue could be dispositive. Petitioners insist (at 23) that proximate cause cannot turn on foreseeability alone. But several States—including Massachusetts—define proximate cause as the "foreseeable result" of the defendant's conduct. *Kent* v. *Commonwealth*, 771 N.E.2d 770, 777 (Mass. 2002). Whose law applies and in what way could therefore be outcome-determinative.

B. The First Circuit's Proximate-Cause Holding Is Correct.

The court of appeals' holding is not just splitless. It is also correct.

1. Proximate cause "is a flexible concept that does not lend itself to 'a black-letter rule that will dictate the result in every case.'" *Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639, 654 (2008). "[P]roximate cause" instead "label[s] generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts." *Id.* (quotation marks omitted). At its most basic level, proximate cause requires "some direct relation between the injury asserted and the injurious conduct alleged." *Paroline* v. *United States*, 572 U.S. 434, 444 (2014)

(quotation marks omitted). Proximate cause "thus serves, *inter alia,* to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Id.* at 445. And because proximate cause is a question of fact, it "is ordinarily a question for the jury." *Milwaukee & Saint Paul Ry. Co.* v. *Kellogg*, 94 U.S. 469, 474 (1876).

The court of appeals faithfully applied these principles to conclude that Mexico plausibly alleged that Petitioners' aiding and abetting of dealers' unlawful firearms sales to traffickers proximately caused Mexico's alleged injuries. Pet. App. 309a-319a. The court anchored its analysis in the principle that "[p]roximate cause demands some direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 309a (brackets and quotation marks omitted). The court then applied that principle to conclude that "the complaint plausibly alleges that aiding and abetting the illegal sale of a large volume of assault weapons to the cartels foreseeably caused the Mexican government to shore-up its defenses." *Id.* at 311a.

The court further explained that proximate cause bars recovery where a plaintiff's injury is "derivative" of a third party's injuries. *Id.* at 313a-314a (citing *Holmes* v. *Securities Inv. Prot. Corp.*, 503 U.S. 258, 268-269 (1992)). But it concluded that "Mexico has plausibly alleged at least some injuries that it has suffered directly from the illegal trafficking of guns into Mexico, and that are not merely derivative of the harm suffered by the victims of gun violence," such as "the cost of increased law enforcement personnel and training to mitigate the flow of illegal weapons and to combat drug cartels that—armed with defendants'

weapons—are essentially hostile military operations." *Id.* at 315a-316a. Other alleged direct injuries include Mexico's increased spending on government functions and services "in response to the cartels' accumulation of defendants' guns." *Id.* at 316a.

The court hastened to add that not *all* of Mexico's claimed injuries are sufficiently direct. For example, the court recognized that some of Mexico's alleged "lower economic efficiency" is "derivative because the harm to the government flows only from prior harm inflicted upon its citizens." *Id.* The court of appeals left it to the district court in the first instance to sort through Mexico's claimed categories of damages, concluding at this stage only that Mexico "has adequately alleged proximate causation." *Id.* at 318a.

2. Petitioners' attacks on the court of appeals' careful and case-specific proximate-cause analysis miss the mark. As Petitioners see it, the decision below held that foreseeability alone "was required to satisfy PLCAA." Pet. 23; *see also, e.g.*, Nat'l Ass'n of Mfrs. et al. Amicus Br. 10. That is belied by the face of the opinion: The First Circuit considered and rejected *every one* of the "four reasons" Mexico's Complaint supposedly fails. Pet. 21; *see* Pet. App. 310a-319a. For good reason. Petitioners' arguments all depend on a misinterpretation of this Court's proximate-cause cases or a misunderstanding of Mexico's allegations.

Attenuation. Petitioners contend that the decision below erred in going "beyond the first step" in the causal chain. Pet. 21 (quoting *Holmes*, 503 U.S. at 271); *see also* Pet. 23-25. But Petitioners begin their supposed "eight-step" chain from the wrong link. Pet. 11 (emphasis omitted). As the First Circuit explained,

"the starting point for the predicate exception's causation analysis is the 'violation' of 'a State or Federal statute applicable to the sale or marketing' of firearms." Pet. App. 310a (quoting 15 U.S.C. § 7903(5)(A)(iii)). The causal chain here thus begins "when a dealer knowingly violates the law in selling guns intended for cartels." *Id.* at 311a.

Petitioners insist (at 24) that the predicate exception's proximate-cause requirement begins at a defendant's upstream "business activities." Petitioners cite nothing for this proposition, which flouts both the text and basic aiding-and-abetting principles. "A 'violation' is not simply an act or conduct; it is an act or conduct that is contrary to law." *Richardson* v. *United States*, 526 U.S. 813, 818 (1999). As alleged aiders and abettors, Petitioners' conduct is not unlawful until someone engages in the principal offense. *See Rosemond* v. *United States*, 572 U.S. 65, 70-71 (2014). Only then is there a "violation." And it is at that point—when a dealer completes the crime by illegally selling firearms—that the causal chain begins.

Petitioners also overstate the law's "general tendency * * * not to go beyond the first step." *Holmes*, 503 U.S. at 271 (quotation marks omitted). This "tendency" is concerned with ensuring that the cause of a plaintiff's asserted harm is not "a set of actions * * * *entirely distinct* from the alleged * * * violation." *Anza* v. *Ideal Steel Supply Co.*, 547 U.S. 451, 458 (2006) (emphasis added). The mere presence of third parties in the causal chain does not necessarily violate that principle. *See Lexmark*, 572 U.S. at 139-140; *Bridge*, 553 U.S. at 656. Instead, where "the injury alleged is so integral an aspect of the [violation] alleged, * * *

proximate cause is satisfied." *Lexmark*, 572 U.S. at 139 (quotation marks omitted).

Just so here. Petitioners' alleged intention in aiding and abetting unlawful firearms sales is that their "guns would end up in the hands of [the] cartels." Pet. App. 313a. The "steps" following dealers' unlawful sales, Pet. 21—the means by which the cartels get the guns and use them—is not conduct that is "entirely distinct" from the unlawful sales, *Anza*, 547 U.S. at 458. They are "integral" to Petitioners' violation of the law. *Lexmark*, 572 U.S. at 139 (quotation marks omitted). They do not sever the causal chain.

Petitioners contend (at 24) that their strict one-step proximate-cause test is especially appropriate in the PLCAA context, but the opposite is true: The PLCAA bars certain actions seeking recovery against a firearms manufacturer only for injuries "resulting from the criminal or unlawful misuse of a qualified product by the person *or a third party*." 15 U.S.C. § 7903(5)(A) (emphasis added). The causes of action allowed through the predicate exception are therefore ones where the plaintiffs are permitted to recover for harms caused in part by third-party conduct; otherwise, there's no need for the exception. But those are the very causes of action Petitioners' one-step rule would bar. That cannot be right. *See Abramski* v. *United States*, 573 U.S. 169, 183 n.8 (2014) (courts should not interpret a statute in a way that "would render [it] all but useless").

Intervening criminal conduct. Petitioners argue (at 21) that the causal chain here is "broken by multiple intervening criminal acts." But, as Petitioners' own case explains, the superseding-cause doctrine applies only where "the injury was actually brought about by

a later cause of independent origin that was not foreseeable." *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 837 (1996) (quotation marks omitted). As the court below recognized, this "foreseeability" limitation applies just as much to intervening criminal acts as to other superseding causes. Pet. App. 312a-313a (citing, among other sources, the *Restatement (Second) of Torts*). Mexico plausibly alleged that Petitioners "actually intended" that their "guns would end up" in the hands of the cartels. Pet. App. 313a. "And it is certainly foreseeable that [the] drug cartels—armed with defendants' weapons—would use these weapons to commit violent crimes." *Id.*

Derivative injuries. Petitioners repeat (at 22) their position that Mexico's injuries are "derivative" of those suffered by the cartels' victims. The court of appeals properly rejected that argument, which is untethered from Mexico's Complaint. As the court explained, "the harm caused by the trafficking goes in multiple directions—both directly to the victims of gun violence and directly to the Mexican government." Pet. App. 317a. In addition to Mexico's increased law-enforcement spending "to mitigate the flow of illegal weapons and to combat drug cartels," *id.* at 315a, and its increased spending on other government services "in response to the cartels' accumulation of defendants' guns," *id.* at 316a, Mexico has suffered direct injury to its military and federal police, as well as government equipment, *id.* at 172a.

Apportionment. Petitioners finally contend (at 22) that "apportioning damages and liability would be unworkable" because Mexico's injuries are too "remote" from Petitioners' conduct. But as the court of appeals recognized, Petitioners' apportionment concerns "do

not apply" to Mexico's requested injunctive relief. Pet. App. 318a; *see Lexmark*, 572 U.S. at 135 ("Even when a plaintiff cannot quantify its losses with sufficient certainty to recover damages, it may still be entitled to injunctive relief * * * ."). And damages are unduly difficult to apportion only where there is a "discontinuity" between the conduct and the injury. *Anza*, 547 U.S. at 459. Here, once the causal chain is properly linked, there is no discontinuity between Petitioners' conduct (aiding and abetting the unlawful sale of firearms) and Mexico's injuries (increased spending to combat firearms trafficking and damage to its employees and property).

In short, Petitioners' arguments amount to complaints that the court of appeals misapplied settled proximate-cause principles to an unusual set of factual allegations. It did not. In any event, this Court does not ordinarily grant review "when the asserted error consists of * * * misapplication of a properly stated rule of law." Sup. Ct. R. 10. It should not do so here.

II. THE FIRST CIRCUIT'S CONCLUSION THAT MEXICO'S COMPLAINT PLAUSIBLY ALLEGED AIDING AND ABETTING DOES NOT WARRANT THIS COURT'S REVIEW.

Petitioners' second question presented regarding aiding-and-abetting liability is shot through with the same issues that plague the first. That question proceeds from a false premise, mischaracterizes the decision below, and reflects a fundamental misunderstanding of basic aiding-and-abetting principles. The court of appeals' conclusion that Mexico plausibly alleged that Petitioners aid and abet firearms dealers'

unlawful sales is correct. And the Court should allow more courts of appeals to interpret *Twitter* before it takes up aiding-and-abetting liability again.

1. *Twitter* reaffirmed the common-law principle that aiding-and-abetting liability requires "that the defendant have given knowing and substantial assistance to the primary tortfeasor." 598 U.S. at 491. These "twin requirements" of knowledge and assistance "work[] in tandem, with a lesser showing of one demanding a greater showing of the other." *Id.* at 491-492. Such "balancing" allows courts to determine whether "the defendant consciously and culpably 'participate[d]' in a wrongful act so as to help 'make it succeed.'" *Id.* at 492, 493.

As the court of appeals recognized, Mexico plausibly alleged that Petitioners knowingly and affirmatively supplied, enabled, and facilitated dealers' unlawful sales. Pet. App. 300a-302a. Petitioners choose to sell their guns through dealers they know unlawfully sell their firearms, they cultivate a market among unlawful buyers through specific design and marketing decisions, and they have "double[d] down on the exact practices that they know supply the cartels." Pet. App. 80a; *see supra* pp. 4-7. This is consciously and culpably participating in unlawful sales "so as to help 'make [those sales] succeed.'" *Twitter*, 598 U.S. at 493.

Direct Sales "strongly supports" the court of appeals' conclusion. Pet. App. 303a. *Direct Sales* held that there was sufficient evidence to convict a mail-order pharmaceutical wholesaler of criminal conspiracy to illegally resell morphine because the wholesaler sold a specific doctor large quantities while "actively stimulat[ing]" those purchases through various sales techniques. 319 U.S. at 705. The government had warned

the wholesaler that "it was being used as a source of supply by convicted physicians." *Id.* at 707. The Court concluded that this evidence was sufficient for the jury to find that the wholesaler "not only kn[ew] and acquiesce[d]" in the doctors' criminal activity, but also "join[ed] both mind and hand * * * to make its accomplishment possible." *Id.* at 713.

Direct Sales maps onto this case. Indeed, this case is stronger: Petitioners were told by the government to stop supplying high crime-gun-selling dealers and to require that their dealers use safe practices. Pet. App. 13a, 34a-36a. Petitioners know who the crime-gun sellers are, and they designed and marketed their products "in such a way as to make them attractive to the illegal market." *Id.* at 303a. With full knowledge of the unlawful sales by their purchasers, Petitioners "resisted taking measures that would make it more difficult for" their products to be sold to cartel-linked traffickers. *Id.* If lesser facts were "sufficient to support a criminal conviction," these allegations are sufficient to "plausibly support an aiding-and-abetting theory of liability in this civil case." *Id.*

2. Petitioners' contrary arguments reflect a fundamental misunderstanding of basic aiding-and-abetting principles and are unmoored from Mexico's Complaint.

Petitioners stumble at the threshold by framing the issue as whether they aided and abetted "the drug cartels' terroristic mission," Pet. 27, or unspecified "downstream criminal" activities, *id.* at 3. The question here is whether Petitioners aided and abetted *unlawful firearm sales*. *See* 15 U.S.C. § 7903(5)(A)(iii). Petitioners' error is exactly like the Ninth Circuit's error in *Twitter* in focusing on "defendants' assistance to

ISIS' activities in general." 598 U.S. at 503. As this Court instructed, the aiding-and-abetting analysis must be anchored to the specific tort or crime at issue. *See id.* at 494-495. Here, that is the "widespread sale[] of firearms by dealers in knowing violation of several state and federal statutes"—a phenomenon Petitioners do not contest. Pet. App. 299a-300a.

On the merits, the crux of Petitioners' argument is that Mexico has alleged mere knowing indifference to illegal firearms sales, and that their business practices were not "adopted" or "developed" specifically to aid traffickers. Pet. 27-29; *see also id.* at 30-32; *see also* Nat'l Shooting Sports Found. (NSSF) Amicus Br. at 11-13. But as the court of appeals observed, "[t]his argument reflects a fundamental misunderstanding of the complaint." Pet. App. 301a. The Complaint alleges in detail that Petitioners knowingly and actively design, market, and sell their firearms in such a way as to "maintain the unlawful market in Mexico." *Id.*; *accord id.* at 305a.

Petitioners bluster (at 29 n.3) that "the complaint does not include a single allegation of any defendant specifically selling to someone it knew worked with the cartels or trafficked any firearms." That is false. For instance, the Complaint alleges that "a 2010 *Washington Post* article identified by name 12 dealers that sold the most guns recovered in Mexico" and that Petitioners nevertheless "continued to use these dealers." Pet. App. 44a-46a. The Complaint also alleges that Petitioner Century Arms continued to supply "specific distributor and dealer networks" that it was informed were "disproportionately associated with" hundreds of guns trafficked to Mexico. *Id.* at 80a-81a. And the Complaint catalogs many instances of specific

dealers selling to straw purchasers or traffickers for the cartels, *e.g.*, *id.* at 56a, 59a-63a, 65a-66a, 67a, with Petitioners nonetheless "continu[ing] to use these dealers," *id.* at 71a.

For all these reasons, Petitioners' *Twitter* comparisons are inapt. *See* Pet. 25-26, 30-31. *Twitter* concerned whether social-media companies plausibly aided and abetted a specific act of terrorism. That attack was not planned or coordinated on the defendants' platforms, and the defendants' alleged affirmative conduct was "creating their platforms and setting up their algorithms." 598 U.S. at 498. Once those "were up and running, defendants at most allegedly stood back and watched." *Id.* at 499. There was no allegation in *Twitter* "that the platforms * * * do more than transmit information by billions of people." *Id.* at 502-503. The Court therefore concluded that "[t]he fact that some bad actors took advantage of these platforms" to spread their message "is insufficient to state a claim that the defendants knowingly gave substantial assistance and thereby aided and abetted those wrongdoers' acts." *Id.* at 503.

In stark contrast, Petitioners do not run a platform that, once released into the world, allows them to stand "back and watch[]." *Id.* at 499. Petitioners made distinct, repeated, and deliberate decisions to supply unlawful sellers and took affirmative steps necessary for the illegal gun sales that armed the cartels. And this is not a case where "bad actors took advantage" of Petitioners' products; Mexico alleges that Petitioners "actually intended" for their products to "end up in the hands of [the] cartels." Pet. App. 313a. These markedly different allegations rightly led to a different result.

The First Circuit did not "erase[] the very distinction between active complicity and passive conduct that animated" *Twitter*. Pet. 30. Petitioners' alleged conduct just falls on the wrong side of the line.

III. THIS PETITION IS A POOR VEHICLE TO REVIEW ISSUES OF LIMITED PRACTICAL EFFECT.

A. This Case Is A Poor Vehicle.

Even if Petitioners' questions presented warranted this Court's review, this would be a poor vehicle to address them.

For starters, this case comes to the Court following a motion to dismiss; this "interlocutory posture * * * counsel[s] against this Court's review at this time." *National Football League* v. *Ninth Inning, Inc.*, 141 S. Ct. 56, 56-57 (2020) (Kavanaugh, J., respecting the denial of certiorari) (citing *Abbott* v. *Veasey*, 137 S. Ct. 612, 613 (2017) (Roberts, C.J., respecting the denial of certiorari)); *see also Harrel* v. *Raoul*, No. 23-877, 603 U.S. __, slip op. at 2 (July 2, 2024) (Thomas, J., statement) ("This Court is rightly wary of taking cases in an interlocutory posture."); *Wrotten* v. *New York*, 560 U.S. 959, 130 S. Ct. 2520, 2521 (2010) (Sotomayor, J., respecting the denial of certiorari) (noting interlocutory posture as a reason "to deny the petition").

This Court's recognition that it is better to allow litigation to proceed past this early stage has special force in this case. A slew of motions are pending in the district court. That court is actively considering motions to dismiss for lack of personal jurisdiction, which were the subject of a June 17 hearing. *See* D. Ct. Dkt. No. 219. Also pending are Petitioners' motions to dismiss on the grounds that Mexico's common-

law tort theories do not state a claim. *See supra* pp. 9-10. If Mexico's claims survive, discovery and likely summary judgment motions await.

Petitioners try to twist the interlocutory status of this case to their advantage, arguing (at 35) that it frees this Court of a "factual record." But that's exactly what makes certiorari inappropriate here. Discovery may disprove Mexico's allegations—or it may yield even more egregious examples of aiding and abetting. If this Court wants to weigh in on the exact boundaries of the PLCAA's predicate exception, it should wait for a case rooted in facts.

B. The Decision Below Is Of Limited Importance.

1. Petitioners try to bolster this case's importance by arguing that the decision below "upends" "basic norms of American law," exposing (apparently) every American business to wide-ranging liability. Pet. 32-33. Petitioners' flotilla of amici offer much the same rhetoric. *See, e.g.*, Nat'l Ass'n of Mfrs. et al. Amicus Br. 4 (the decision below "violates the basic tenets of the American civil justice system").[2]

The decision below "upends" nothing. The law on proximate cause and aiding-and-abetting liability is no different in the First Circuit after this decision

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[2] Firearms petitions regularly attract a number of amicus briefs—including many of the same organizations that filed here. *See, e.g.*, *Remington Arms Co.* v. *Soto*, No. 19-168 (six amicus briefs), *cert. denied,* 140 S. Ct. 513 (2019); *Kolbe* v. *Hogan*, No. 17-127 (eight amicus briefs), *cert. denied*, 583 U.S. 1007 (2017). Such amici, of course, are less *amici curiae* than they are *amici querentis*: friends of the complainant.

than it was before. And other courts also have concluded that firearms manufacturers allegedly aided and abetted unlawful firearms sales in such a way as to trigger the PLCAA's predicate exception. *See City of Gary*, 875 N.E.2d at 432-435; *Williams*, 100 A.D.3d at 150-151. The sky did not fall when these courts issued their decisions.

Unique allegations also naturally limit a court of appeals' decision. The court of appeals held that Mexico plausibly alleged that Petitioners' assisting of unlawful firearms sales harmed Mexico because those sales armed powerful transnational criminal organizations, with devastating consequences to Mexico itself, as well as to the United States. That is, of course, a highly unusual set of facts and circumstances.

For all these reasons, the decision below did not "broadly expand[] the ability of *governments* to bring suit over these alleged harms." Pet. 33. A government, like any litigant, must always show that it has standing to sue in federal court. Petitioners initially argued that Mexico lacked standing, *see* Pet. App. 226a-229a, but abandoned that argument on appeal.

2. Petitioners argue (at 34-35) that Mexico's status as a foreign-government plaintiff makes this case important. But the Framers specifically directed that federal courts be available for suits by foreign governments. *See* U.S. Const. art. III, § 2; *see also* 28 U.S.C. § 1332(a)(4). And this country's courts have handled *hundreds* of foreign-government-plaintiff suits. *See* Hannah L. Buxbaum, *Foreign Governments as Plaintiffs in U.S. Court and the Case Against "Judicial Imperialism,"* 73 Wash. & Lee L. Rev. 653, 656 (2016).

Mexico's tort case against Petitioners also does not "undermine American sovereignty." Pet. 35. Petitioners are private firearms manufacturers and wholesalers. Like any other private actor, they can be held to account for their tortious behavior when the PLCAA allows.

Nor does this case threaten Second Amendment rights, as Petitioners and their amici speculate. *See* Pet. 34-35; NSSF Amicus Br. 17-19; Sen. Cruz et al. Amicus Br. 12-17. Even assuming some penumbral Second Amendment right to "make[] firearms readily available to law-abiding citizens," Pet. 34, the Second Amendment does not grant a right to supply firearms to cartels in Mexico. And this Court has blessed "longstanding * * * laws imposing conditions and qualifications on the commercial sale of arms" as consistent with the Second Amendment. *District of Columbia* v. *Heller*, 554 U.S. 570, 626-627 (2008); *see also United States* v. *Rahimi*, No. 22-915, 2024 WL 3074728, at *28 (U.S. June 21, 2024) (Kavanaugh, J., concurring) (explaining that, under *Heller*, such laws "are presumptively constitutional"). Petitioners face liability because Mexico plausibly alleged that they knowingly aided and abetted the violation of such laws—"various federal statutes that prohibit selling guns without a license, exporting guns without a license, and selling to straw purchasers," Pet. App. 299a. This is not a Second Amendment case.

Finally, this case does not "jeopardiz[e]" the PLCAA's recognition of "democratic control" over the firearms industry. Pet. 35. Congress reserved a role for the Judiciary to hold the firearms industry responsible for common-law torts by limiting the circum-

stances where the PLCAA applies and carving out exceptions from the PLCAA's protections. *See* 15 U.S.C. § 7903(5)(A)(i)-(vi). Petitioners face litigation because Congress concluded that suits like this one can proceed. If Petitioners want more "accountability to the American people" for this suit, Pet. 35, they can petition their elected representatives.

IV. SUMMARY REVERSAL IS INAPPROPRIATE.

Nothing about the decision below warrants the extraordinary remedy of a summary reversal. *Contra* Pet. 36-37. The decision below is entirely correct. But in any event, it was neither "obviously wrong" nor "squarely foreclosed by [this Court's] precedent." *Shoop* v. *Cassano*, 142 S. Ct. 2051, 2057 (2022) (Thomas, J., dissenting from denial of certiorari).

Petitioners (at 36) attempt to bolster their bid for summary reversal by likening the PLCAA's statutory bar to the qualified-immunity doctrine, which relieves government actors from the burden of defending a lawsuit in certain circumstances. That analogy goes nowhere. "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson* v. *Callahan*, 555 U.S. 223, 231 (2009). The PLCAA, in contrast, is a statutory bar on a certain type of suit—with specified and finely calibrated exceptions. The court of appeals concluded that the Complaint's allegations plausibly satisfied one such exception. Having lost a motion to dismiss, Petitioners are no more "immune" from suit than any

other disappointed private defendant at the dismissal stage.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JONATHAN E. LOWY
YAACOV (JAKE) MEISELES
GLOBAL ACTION ON GUN VIOLENCE
805 15th Street NW, #601
Washington, DC 20005
(202) 415-0691

STEVE D. SHADOWEN
RICHARD M. BRUNELL
NICHOLAS W. SHADOWEN
HILLIARD SHADOWEN LLP
1717 W. 6th Street
Suite 290
Austin, TX 78703

CATHERINE E. STETSON
Counsel of Record
MICHAEL J. WEST
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

MACKENZIE AUSTIN
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067

Counsel for Respondent

JULY 2024