

The Protection of Lawful Commerce in Arms Act: The Supreme Court Recognizes Statutory Immunity for Firearm Companies in Case Brought by the Government of Mexico

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Enacted in 2005, the Protection of Lawful Commerce in Arms Act (PLCAA) generally bars lawsuits in federal or state court against firearm manufacturers, distributors, importers, and dealers when a third party acquires a firearm from that distribution chain and uses it for criminal ends. While the statute generally provides immunity to gun manufacturers and others for any downstream misuse of their firearms, the statute contains a few exceptions to this immunity. One such exception, the predicate exception, leaves gun manufacturers and others open to civil liability if (1) they knowingly violated a federal or state statute regulating the sale or marketing of firearms, and (2) the defendant's violation was a proximate cause of the plaintiff's injuries.

In 2025, the Supreme Court issued its first substantive opinion on the scope and meaning of this statute and this exception. The opinion stems from a complaint filed by the Government of Mexico against several firearms manufacturers and a firearms distributor. After a series of pretrial motions, the remaining defendants were Smith & Wesson (a firearms manufacturer) and Interstate Arms (a firearms distributor). In its complaint, Mexico alleged that the defendants made and sold firearms knowing that the firearms would end up in the hands of Mexican cartels and be used for criminal purposes. Mexico further charged that the defendants specifically designed and marketed the firearms to be attractive to cartel members. Mexico claimed that it suffered harm by having to respond to the resulting "murder and mayhem." Mexico pointed out that, at the time, its country had one firearm mercantile establishment, and that most of the guns recovered at crime scenes in the country may be traced to guns made or sold by the defendants.

The defendants filed a motion to dismiss, arguing that Mexico's complaint is barred by PLCAA. The district court granted the defendants' motion to dismiss. A panel of the U.S. Court of Appeals for the First Circuit (First Circuit) reversed, holding that the predicate exception applies because (1) Mexico alleged a sufficient predicate violation under an aiding and abetting theory of liability, and (2) the defendants' actions were a proximate cause of Mexico's injuries.

In *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, the Supreme Court clarified the scope of the predicate exception. On June 5, 2025, the Supreme Court unanimously rejected the First Circuit's opinion, holding that the violation alleged by Mexico in its complaint—that the defendants aided and abetted illegal firearms trafficking in Mexico—was insufficiently plausible to satisfy the statute's predicate exception.

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Introduction

In 2005, Congress enacted the Protection of Lawful Commerce in Arms Act (PLCAA) to prohibit lawsuits against firearm and ammunition manufacturers, distributors, dealers, and importers seeking recovery for harm solely caused by the “criminal or unlawful misuse” of a firearm or ammunition, or component part of either.¹ Accordingly, PLCAA generally bars civil suits in federal or state court against these entities when a third party criminally uses a firearm or ammunition that has been shipped in interstate or foreign commerce. PLCAA also provides, however, that these entities may be liable under some exceptions, including the “predicate exception” to such immunity. PLCAA’s predicate exception authorizes civil liability if (1) a defendant knowingly violated a federal or state statute regulating the sale or marketing of firearms, and (2) the defendant’s violation was a proximate cause of the plaintiff’s injuries.² Thus, if these two conditions are met, “a suit can proceed, even though it arises from a third party’s later misuse of a gun.”³

In 2021, the Government of Mexico filed suit against seven U.S. gun manufacturers and a U.S. gun distributor, Interstate Arms, alleging that the defendants were civilly liable for costs associated with gun violence in Mexico.⁴ The defendants responded that they were shielded from civil liability under PLCAA,⁵ and Mexico responded that PLCAA’s predicate exception applied on the theory that the defendants knowingly aided and abetted gun trafficking in Mexico.⁶ The U.S. Court of Appeals for the First Circuit (First Circuit) agreed with Mexico.⁷

In 2025, the Supreme Court reversed the First Circuit’s decision and held that the violation alleged by Mexico in its complaint—that the defendants aided and abetted illegal firearms trafficking in Mexico—was insufficiently plausible to satisfy PLCAA’s predicate exception.⁸

This report offers an overview of PLCAA, including its legislative history and the text of the predicate exception; discusses lower court rulings that served as the general backdrop for the Supreme Court’s eventual decision; and summarizes the Mexico case that made its way to the Supreme Court, focusing on Mexico’s complaint, the district court and First Circuit rulings, the request for Supreme Court review, and the Supreme Court’s majority and concurring opinions. This report then concludes with considerations for Congress.

¹ 15 U.S.C. § 7903(5)(A); *see also id.* § 7902.

² *Id.* § 7903(5)(A)(iii).

³ *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025).

⁴ Complaint at 1–8, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 21-11269 (D. Mass. Aug. 4, 2021) [hereinafter Complaint].

⁵ Joint Memorandum of Law in Support of Defendants’ Motion to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 21-11269 (D. Mass. Nov. 22, 2021) [hereinafter Joint Motion to Dismiss].

⁶ Plaintiff’s Memorandum of Law in Opposition to Defendants’ Joint Motion to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 21-11269 (D. Mass. Jan. 31, 2021).

⁷ *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511 (1st Cir. 2024), *rev’d and remanded*, 605 U.S. 280, 286 (2025).

⁸ *Smith & Wesson Brands, Inc.*, 605 U.S. at 281.

The Protection of Lawful Commerce in Arms Act

Legislative History and Purpose

Prior to PLCAA, victims of shooting incidents, as well as municipalities with high incidences of firearms-related crimes, brought numerous civil suits seeking damages and injunctive relief against out-of-state manufacturers and sellers of firearms; one goal of these civil suits was to inhibit the flow of firearms into illegal markets. In 1998, for example, the City of Chicago sued 22 gun manufacturers, 12 gun stores, and 4 gun distributors on the theory that the gun industry causes a “public nuisance” by creating excess costs for Chicago’s police, fire department, and public hospital.⁹ This suit followed a drafted lawsuit that was later put on hold by the City of Philadelphia and a filed lawsuit by the City of New Orleans.¹⁰ Ultimately, this type of litigation against U.S. gun companies occurred with plaintiffs representing 30 states—including Louisiana, Georgia, and California (through its state legislature)—and various cities, including Chicago, Philadelphia, New Orleans, Atlanta, and Detroit.

In 2005, Congress enacted PLCAA in response to these and similar lawsuits.¹¹ Through PLCAA, Congress sought to prohibit most lawsuits against firearm and ammunition manufacturers, distributors, dealers, and importers seeking recovery “for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.”¹² Accordingly, PLCAA generally bars civil suits in federal or state court against those entities when a third party criminally uses a firearm or ammunition that has been shipped in interstate or foreign commerce. As a result, PLCAA preempts some legal remedies that may otherwise be available to shooting victims under state law.¹³

The statute’s findings state that the lawsuits seeking to hold liable “an entire industry for harm that is solely caused by others is an abuse of the legal system,” and that the businesses targeted should not be liable for the harm caused by third parties who criminally or unlawfully misuse firearms products that function as designed and intended.¹⁴ Senator Larry E. Craig, sponsor of the legislation, said that the bill would end the “trend of abusive litigation targeting the firearms industry [that] not only defies common sense and concepts of fundamental fairness, but . . . [does]

⁹ Fox Butterfield, *Chicago Is Suing over Guns from Suburbs*, N.Y. TIMES (Nov. 13, 1998), <https://www.nytimes.com/1998/11/13/us/chicago-is-suing-over-guns-from-suburbs.html> [<https://perma.cc/HY4E-SM8T>].

¹⁰ For a broad overview of the lawsuits, see Brian J. Siebel, *City Lawsuits Against the Gun Industry: A Roadmap for Reforming Gun Industry Misconduct*, 18 ST. LOUIS PUB. L. REV. 248 (1999). For the Philadelphia lawsuit, see *City of Philadelphia v. Beretta USA, Corp.*, 126 F. Supp. 2d 882 (E.D. Pa. 2000); for the New Orleans lawsuit, see *Morial v. Smith & Wesson Corp.*, No. 98-19578 (La. Civ. Dist. Ct. Feb. 28, 2000). The City of New Orleans’ lawsuit differed insofar as New Orleans contended that gunmakers build their products in a negligent manner and failed to take advantage of technology that would prevent anyone but the registered owner from firing the weapon. In essence, the New Orleans model of suit was focused on safer gun designs, whereas the Chicago lawsuit was focused on gun trafficking and industry marketing practices.

¹¹ See, e.g., *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002) (appellate court reversing lower court dismissal and holding that distributors could be held liable for creating alleged nuisance); *NAACP v. AcuSport, Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003) (gun industry held to have created public nuisance after trial; case dismissed due to lack of organizational standing); *Jefferson v. Rossi*, No. 01-CV-2536, 2002 WL 32154285, at *1 (E.D. Pa. Jan. 22, 2002).

¹² 15 U.S.C. § 7901(b).

¹³ Recent Legislation, *Tort Law. Civil Immunity. Congress Passes Prohibition of Qualified Civil Claims Against Gun Manufacturers and Distributors*, 119 HARV. L. REV. 1939 (2006).

¹⁴ 15 U.S.C. § 7901(a)(6).

nothing to curb criminal gun violence.”¹⁵ An opponent of the legislation, Senator Dianne Feinstein, countered, “the bill effectively rewrites traditional principles of liability law which generally hold that persons and companies may be liable for their negligence, even if others are liable as well. This bill would essentially give the gun industry blanket immunity from civil liability cases of this type, an immunity no other industry in America has today.”¹⁶

Congressional advocacy for PLCAA was focused on seven issues. As stated in 15 U.S.C. § 7901(b), the purposes of PLCAA are

- (1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.
- (2) To preserve a citizen’s access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.
- (3) To guarantee a citizen’s rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.
- (4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.
- (5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.
- (6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.
- (7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.¹⁷

The first, second, third, and fourth purposes all dealt with a similar issue: that lawsuits against the firearms industry would make it challenging to own a business that manufactures or imports firearms for sale. In other words, much of the legislative advocacy centered primarily on reducing the costs of lawsuits, which, without such intervention, advocates argued could raise the prices of firearms and potentially destroy the firearms industry if a single lawsuit were successful.¹⁸

Opponents of PLCAA argued that the costs of the lawsuits were exaggerated, that most gun companies are privately owned so there was no way of knowing their exact legal expenses, and that 57 out of 10 million tort suits filed between 1993 and 2003 had involved the gun industry.¹⁹ One recent study found that PLCAA resulted in increased handgun production and sales, but had minimal effect on long gun sales—concluding that “the PLCAA contributed to an increase in the supply of handguns.”²⁰

¹⁵ 151 CONG. REC. S9061 (July 27, 2005) (statement of Sen. Larry E. Craig).

¹⁶ 151 CONG. REC. S9070 (July 27, 2005) (statement of Sen. Dianne Feinstein).

¹⁷ 15 U.S.C. § 7901(b).

¹⁸ For example, see 151 CONG. REC. H8993 (October 20, 2005) (statement of Rep. Jim Sensenbrenner).

¹⁹ 151 CONG. REC. S8913–14 (July 26, 2005) (statement of Sen. Jack Reed).

²⁰ Mark Gius, *The Impact of the Protection of Lawful Commerce in Arms Act of 2005 on Gun Sales*, 7 CURRENT RSCH. J. OF SOC. SCIS. AND HUMANS. 114, 115 (2024).

Senate amendment debates over PLCAA focused significantly on what the act *did not* do. Senator Craig noted that PLCAA was “not a gun industry immunity bill This bill does not create a legal shield for anybody who manufactures or sells a firearm.”²¹ Certain amendments were submitted but not voted on or not added to the legislation after not being agreed to by Congress. These included amendments that would have required standards on transferring and purchasing domestic handguns equivalent to those applied to imported handguns,²² would have closed the “gun show loophole,”²³ would have exempted lawsuits involving injuries to children from the definition of qualified civil liability action,²⁴ and would have expanded the definition of “armor piercing ammunition.”²⁵ An amendment by Senator Carl Levin was adopted in earlier versions of the legislation, but then omitted from the final legislation. That amendment would have allowed gun companies to continue to be sued if their recklessness or “gross negligence” was “a proximate cause of death or injury.”²⁶

Members of Congress have attempted to repeal PLCAA on various occasions since its passage. For example, in every Congress between the 113th and 119th Congresses, legislation has been introduced that would repeal parts of PLCAA or PLCAA in its entirety. Legislation titled “Equal Access to Justice for Victims of Gun Violence Act,”²⁷ introduced several times, would make it so that

an action against a manufacturer, seller, or trade association for damages or relief resulting from an alleged defect or alleged negligence with respect to a product, or conduct that would be actionable under State common or statutory law in the absence of the Protection of Lawful Commerce in Arms Act, shall not be dismissed by a court on the basis that the action is for damages resulting from, or for relief from, the criminal, unlawful, or volitional use of a qualified product.²⁸

Other legislation would repeal sections 2 through 4 of PLCAA—the section containing findings and purposes; the section prohibiting bringing of qualified civil liability actions in federal or state court; and the section regarding definitions—as well as the section allowing the contents of the Firearms Trace System to no longer be immune from legal processes.²⁹

Predicate Exception

Although PLCAA generally bars civil lawsuits in federal or state court against firearm manufacturers, the law contains several exceptions to this general bar. As outlined in PLCAA, the third of these exceptions, the predicate exception, applies to

²¹ 151 CONG. REC. 18083–84 (July 27, 2005) (statement of Sen. Larry E. Craig).

²² *Id.* at 19002 (amendment submitted by Sen. Barbara Boxer).

²³ *Id.* at 19003 (amendment submitted by Sen. Jack Reed).

²⁴ *Id.* at 18188 (amendment submitted by Sen. Frank Lautenberg).

²⁵ *Id.* at 18190 (amendment submitted by Sen. Edward Kennedy).

²⁶ *Id.* at 18192 (amendment submitted by Sen. Carl Levin).

²⁷ For example, in the 113th Congress, see H.R. 332, 113th Cong. (2013) (“To provide victims of gun violence access to the same civil remedies as are available to those injured through other means.”).

²⁸ H.R. 332, 113th Cong. (2013).

²⁹ For example, in the 114th Congress, see H.R. 4399, 114th Cong. (2016) (“To repeal the Protection of Lawful Commerce in Arms Act, and provide for the discoverability and admissibility of gun trace information in civil proceedings”); in the 115th Congress, see H.R. 3984, 115th Cong. (2017) (“To repeal the Protection of Lawful Commerce in Arms Act, and provide for the discoverability and admissibility of gun trace information in civil proceedings”); and as introduced in the 116th, 117th, 118th, and 119th Congresses, respectively, under H.R. 3214, H.R. 2814, H.R. 4184, and H.R. 3740.

an action in which a manufacturer or seller of a qualified product violated a state or federal law applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought including:

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under 18 U.S.C. § 922(g) or (n).³⁰

In other words, the “predicate exception” is known as such because it requires the plaintiff to assert, as part of their claim, that the manufacturer or distributor of the firearm(s) knowingly committed a violation of an underlying (i.e., predicate) law.

Interpretations of the Predicate Exception

Cases that proceed under this third exception often turn on whether the predicate statute is “applicable to the sale or marketing of the product.”³¹ For example, the U.S. Court of Appeals for the Second Circuit (Second Circuit)³² in *City of New York v. Beretta U.S.A. Corp.* held that PLCAA barred the action because the criminal nuisance law upon which the City relied “does not fall within the contours of the Act’s predicate exception.”³³

The City had alleged that the firearms suppliers violated the State of New York’s criminal nuisance provision, which provides that a person is guilty of such an offense if that person, by conduct that is “either unlawful in itself or unreasonable under all circumstances, knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons.”³⁴ While the City acknowledged that the criminal nuisance statute was one of general applicability, it argued that the provisions could be applied to the sale or marketing of firearms and thus fell within the predicate exception.³⁵ The firearms suppliers, on the other hand,

³⁰ See 15 U.S.C. § 7903(5)(A)(iii)(II). Other exceptions include the following: actions brought against a person who was convicted for transferring a firearm to another person knowing that other person would use it to commit a felony, federal crime of terrorism, or drug trafficking crime, and brought by a person directly harmed by the conduct for which the firearm transferee was ultimately convicted; actions brought against a seller for negligent entrustment or negligence per se; actions alleging breach of contract or warranty; product liability actions stemming from design or manufacture defects; and actions brought by the Attorney General to enforce Chapter 44 of Title 18 or Chapter 53 of Title 26 of the U.S. Code. These chapters generally contain the codification of the Gun Control Act and National Firearms Act, respectively. See Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (2005).

³¹ 15 U.S.C. § 7903(5)(A)(iii).

³² For brevity, this report refers to U.S. Courts of Appeals by their circuit number or name (e.g., “the First Circuit” refers to the U.S. Court of Appeals for the First Circuit).

³³ *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 390 (2d Cir. 2008) (also holding that PLCAA is a valid exercise of the powers granted to Congress pursuant to the Commerce Clause and that the act does not violate the doctrine of separation of powers or otherwise offend the Constitution).

³⁴ *Id.* at 399 (citing N.Y. PENAL LAW § 240.45(1) (McKinney 2025)).

³⁵ *Id.* at 400.

argued that the predicate exception “was intended to include statutes that specifically and expressly regulate the firearms industry.”³⁶

The Second Circuit, in determining the meaning of a law “applicable to the sale or marketing of [firearms],” agreed with neither the City nor the firearms suppliers. The court rejected the parties’ positions, finding that the firearms suppliers’ reading of PLCAA’s third exception—that is, that the predicate statute must expressly refer to the firearms industry—was too narrow, and that the City’s reading of this PLCAA exception (i.e., that the statute need only be “capable of being applied”) was too broad.³⁷ Rather, the court concluded that the predicate exception (1) does not include the New York criminal nuisance law asserted by the plaintiffs; (2) does encompass statutes that expressly regulate firearms, or that have been declared by courts to apply to the sale and marketing of firearms; and (3) does cover statutes that clearly implicate the purchase and sale of firearms, even if they do not expressly regulate firearms.³⁸

Similarly, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) in *Ileto v. Glock* rejected the plaintiffs’ claim that California’s public nuisance statutes can be predicate statutes under PLCAA’s third exception. The parties disputed whether the California tort statutes are “applicable to the sale or marketing of [firearms],”³⁹ and each side advanced an interpretation of “applicable” similar to their counterparts in *City of New York*. The Ninth Circuit also found that the term “‘applicable’ has a spectrum of meanings, including the two poles identified by the parties.”⁴⁰ The court in *Ileto* declared that PLCAA preempted common law claims, such as general tort theories of liability, even if such claims are codified by state law, as is the case in California.⁴¹ However, the Ninth Circuit did not go as far as the Second Circuit to outline the contours of the types of laws that might be acceptable as predicate statutes under the exception. Rather, it declined to “express any view on the scope of the predicate exception with respect to any other statute.”⁴²

Although the federal courts have rejected both criminal and civil public nuisance laws as statutes that would be encompassed by the predicate exception, one state court reached the opposite conclusion. The Indiana Court of Appeals in *Smith & Wesson Corp. v. City of Gary, Indiana* rejected the manufacturers’ argument that the term “applicable” is limited to those statutes that regulate the manner in which a firearm is sold or marketed, that is, “statutes specifying when, where, how, and to whom a firearm may be sold or marketed.”⁴³ Rather, the court found that “on the face of the [predicate exception’s language], Indiana’s public nuisance statute appears applicable to the sale or marketing of firearms.”⁴⁴ Furthermore, the court did not believe that PLCAA requires an underlying violation of a statute applicable to the sale or marketing of

³⁶ *Id.* at 399.

³⁷ *Id.* at 400.

³⁸ *Id.* at 404.

³⁹ *Ileto v. Glock*, 565 F.3d 1126, 1133 (9th Cir. 2009).

⁴⁰ *Id.* at 1134.

⁴¹ *Id.* at 1135–36. The Ninth Circuit noted that PLCAA’s second exception further bolstered its conclusion that Congress intended to preempt common law claims, because the second exception, which allows only the common law claims of negligent entrustment and negligence per se, “demonstrates that Congress consciously considered how to treat tort claims.” *Id.* at 1136 n.6. Furthermore, the court stated that accepting the plaintiffs’ argument of recognizing codified common law claims but not noncodified common law claims under the predicate exception would lead to “a result that is difficult to square with Congress’ intention to create national uniformity.” *Id.* at 1136.

⁴² *Id.* at 1138 n.9.

⁴³ *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007).

⁴⁴ *Id.* at 432.

firearms because “unlawful conduct was not a requirement of a public nuisance claim.”⁴⁵ However, the appeals court recognized that even if PLCAA were to require an underlying violation of a statute *directly* applicable to the sale of a firearm, the City had already alleged such violations in its complaint.⁴⁶ In its decision in *Ileto*, the Ninth Circuit remarked that *City of Gary* was of “limited persuasive value” to that case because, unlike the Ninth Circuit case, the Indiana court’s decision was based, in part, on the fact that the plaintiffs in *City of Gary* had alleged violations of the state’s statutory firearms regulations.⁴⁷

Although, as indicated by these cases, plaintiffs who have brought challenges under the predicate exception often have not been successful, some claims have been allowed to proceed.⁴⁸ Claims that have been not been allowed to proceed have alleged violations of broader statutes. Cases where the alleged violations of a statute are specific to firearms have seen more success.

For example, the New York Appellate Division of the Supreme Court in *Williams v. Beemiller, Inc.*, allowed a civil suit against a manufacturer, distributor, and dealer to proceed under the predicate exception.⁴⁹ The complaint listed several causes of action, including that the defendants had intentionally violated federal, state, and local legislative enactments by permitting straw purchases to occur (i.e., the sale of firearms to an individual who purchased firearms on behalf of another whom the dealer knew or had reasonable cause to believe was ineligible to purchase weapons).⁵⁰ The court held that the claims were not barred by PLCAA because the plaintiffs had sufficiently alleged facts to support a finding that the defendants knowingly violated the Gun Control Act, which makes it unlawful for any licensee to knowingly make any false entry in, or fail to properly maintain, any record that the licensee is legally required to keep.⁵¹ By allowing the suit to proceed, the court acknowledged that—unlike the rejected nuisance laws—provisions of the Gun Control Act are “applicable to firearms” sales and therefore could be used as predicate statutes for the predicate exception.⁵²

Most recently, there has been increased interest in the scope of PLCAA after the Connecticut Supreme Court ruled that a wrongful death lawsuit brought against the alleged dealer, distributor,

⁴⁵ *Id.* (quoting the Indiana Supreme Court, who declared “generally, gun regulatory laws leave room for the defendants to be in compliance with those regulations while still acting unreasonably and creating a public nuisance,” *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1232–33, 1235 (Ind. 2003)).

⁴⁶ *Id.* at 433.

⁴⁷ *Ileto*, 565 F.3d at 1135 n.5 (“Indeed, the *City of Gary* court distinguished the facts of this case on that basis.”); *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 433 n.7 (Ind. Ct. App. 2007) (“Here, unlike in *Ileto*, the City alleged activity on the part of the Manufacturers that facilitates unlawful sales and violates regulatory statutes.”).

⁴⁸ *See, e.g.*, *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 170–71 (D.C. 2008) (holding that the District of Columbia’s Assault Weapons Manufacturing Strict Liability Act of 1990 does not qualify as a predicate statute because it does not impose any duty on firearms manufacturers or sellers to operate in any particular manner or according to any standards of reasonableness and that Congress could not have intended “to exempt an action founded on so attenuated a connection between statutory ‘violation’ and an injury from the reach of those civil actions the PLCAA proscribes”).

⁴⁹ 952 N.Y.S.2d 333 (N.Y. App. Div. 2012). The plaintiffs, an injured student and his father, alleged that the licensed dealer sold eighty-seven handguns, including the weapon used to shoot the student in 2003, to a gun trafficker in one transaction in Ohio, as well as more than fifty additional sales within a period of months. *Id.*

⁵⁰ *Id.* at 338.

⁵¹ *Id.*; *see* 18 U.S.C. § 922(m) (making it unlawful for any Federal Firearms Licensee knowingly to make any false entry in, or fail to appropriately maintain, any record that the licensee is required to keep by law). *See also* 18 U.S.C. § 923(g) (requiring a Federal Firearms Licensee to maintain records on the identity of an individual to whom the licensee transfers firearms).

⁵² *Williams*, 952 N.Y.S.2d at 338. (“[W]e agree with plaintiffs that the court erred in dismissing the complaint inasmuch as [the plaintiffs] sufficiently alleged that defendants knowingly violated various federal and state statutes applicable to the sale or marketing of firearms within the meaning of the PLCAA’s predicate exception.”).

and manufacturer of the Bushmaster XM15-E2S semi-automatic rifle (“Bushmaster”) used in the Sandy Hook Elementary School shooting could proceed.⁵³ The plaintiffs in *Soto v. Bushmaster Firearms International* claimed, among other things, that the defendants violated the Connecticut Unfair Trade Practices Act (CUTPA), which prohibits unfair or deceptive acts or practices in conducting commerce.⁵⁴ The plaintiffs alleged that the defendants advertised the Bushmaster in a manner that violated CUTPA by promoting “illegal offensive use of the rifle.”⁵⁵ The plaintiffs contended, for example, that the defendants encouraged using the Bushmaster for “waging war and killing human beings,”⁵⁶ as opposed to using the rifle for lawful purposes, such as hunting, target practice, or self-defense. The plaintiffs further alleged that the defendants’ marketing contributed to the victims’ injuries because the assailant, who “had dreamed as a child” of joining the U.S. Army and thus was “especially susceptible to militaristic marketing,” had selected the Bushmaster, among other available firearms, to bring to Sandy Hook because of its marketed association with military use.⁵⁷ With respect to PLCAA, the plaintiffs contended that the alleged claims fit within PLCAA’s enumerated exception: when a manufacturer or seller knowingly violates a state or federal law “applicable to” the sale or marketing of firearms, and that violation “was a proximate cause” of the harm the lawsuit seeks to vindicate.⁵⁸

The court adopted a broad view of the predicate exception, holding that CUTPA is a state law applicable to the sale or marketing of a firearm and, thus, the defendants could not avail themselves of PLCAA’s immunity.⁵⁹ Turning first to PLCAA’s text, the court reviewed dictionaries available at the time Congress enacted the statute and explained that “applicable” principally means “capable of being applied.”⁶⁰ CUTPA, the court continued, “clearly is capable of being applied to the sale and marketing of firearms.”⁶¹ The court rejected the defendants’ call for a narrower reading of the predicate exception—one that would limit its scope to statutes that directly, expressly, or exclusively apply to firearms—because, the court explained, “Congress is presumed to be aware that the wrongful marketing of dangerous items such as firearms for unsafe or illegal purposes traditionally has been and continues to be regulated primarily by consumer protection and unfair trade practice laws” like CUTPA, “rather than by firearms specific statutes.”⁶²

The court further noted that, “although the [PLCAA] findings indicate that Congress sought to immunize the firearms industry from liability for third-party conduct,” those findings emphasize that such immunity “extended only to ‘harm that is *solely* caused by others.’”⁶³ Here, the court reasoned, the plaintiffs alleged that the defendants’ marketing of the Bushmaster violated CUTPA and directly caused the Sandy Hook shooting, and Congress never “indicat[ed] that firearm sellers should evade liability for injuries that result if they promote illegal use of their products.”⁶⁴

⁵³ *Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 285 (Conn. 2019).

⁵⁴ CONN. GEN. STAT. § 42-110b (2025) (“Unfair Trade Practices Prohibited.”).

⁵⁵ *Soto*, 202 A.3d at 284.

⁵⁶ *Id.* at 277.

⁵⁷ *Id.* at 278.

⁵⁸ *Id.* at 301.

⁵⁹ *Id.* at 306–07.

⁶⁰ *Id.* at 311.

⁶¹ *Id.* at 302.

⁶² *Id.* at 308.

⁶³ *Id.* at 309 (quoting 15 U.S.C. § 79019(a)(6) (emphasis added by the court)).

⁶⁴ *Id.* at 59.

The court further reasoned that its reading of PLCAA’s text is bolstered by the statute’s legislative history. The court explained that, during legislative debate, several congressmen who cosponsored PLCAA stressed their intent to quash the rising number of lawsuits they viewed to be designed to harass and endanger the firearms industry.⁶⁵ But, the court added, the legislation was not intended, as the bill’s principal sponsor remarked, to “bar the courthouse doors to victims who have been harmed by the negligence or misdeeds of anyone in the gun industry.”⁶⁶

Finally, the court opined that its interpretation of the predicate exception is consistent with that of the Second Circuit—the federal circuit in which the State of Connecticut sits and which is persuasive authority for Connecticut’s interpretation of federal law. As discussed above, in *City of New York v. Beretta U.S.A. Corp.*, the Second Circuit reviewed whether PLCAA barred New York City from seeking a court order to abate an alleged public nuisance caused by the defendant firearm supplier’s distribution practices. Like the Connecticut court, the Second Circuit concluded that “nothing in the statute . . . requires any express language regarding firearms to be included in a statute in order for that statute to fall within the predicate exception.”⁶⁷

Still, the Second Circuit clarified that the predicate exception “was meant to apply only to statutes that actually regulate the firearms industry.”⁶⁸ In particular, the Second Circuit held that the predicate exception would apply to statutes that do not expressly regulate firearms if (1) courts have applied the statute to the sale and marketing of firearms, or (2) the statute “clearly can be said to implicate the purchase and sale of firearms.”⁶⁹ The Second Circuit ultimately held that New York City’s criminal nuisance statute is a law of general applicability that does not fit into any of those two categories.

However, the Connecticut Supreme Court in *Soto* determined that CUTPA was distinguishable from the New York City law reviewed in *Beretta* and fit into the Second Circuit’s enumerated categories. To support this conclusion, the Connecticut Supreme Court pointed to past cases in which CUTPA had been applied to the sale of firearms.⁷⁰ The result of this litigation was a \$73 million settlement in 2022 between the families of the victims of the 2012 Sandy Hook Elementary School shooting and Remington Arms Company.⁷¹ Remington—the principal defendant in the case—also declared bankruptcy in 2018 and 2020.⁷² In addition, following the ruling, California and New Jersey adopted consumer protection laws that placed obligations and prohibitions on the gun industry in those states.⁷³

⁶⁵ *Id.* at 318–19 (citing 151 CONG. REC. S9106–07 (July 27, 2005) (remarks of Sen. Max Baucus)).

⁶⁶ *Id.* at 302 (citing 51 CONG. REC. S9099 (July 27, 2005) (remarks of Sen. Larry E. Craig)).

⁶⁷ *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 400 (2d Cir. 2008).

⁶⁸ *Id.* at 404.

⁶⁹ *Id.*

⁷⁰ *Id.* at 399–400.

⁷¹ Emily Field & Y. Peter Kang, *4 Takeaways from \$73M Remington Deal over Sandy Hook*, LAW 360, Feb. 15, 2022.

⁷² Peg Brickley, *Bankrupt Gun Maker Remington Outdoor to Be Broken Up and Sold*, WALL STREET JOURNAL, Sept. 27, 2020.

⁷³ See Robert J. Spitzer, *The Sandy Hook-Remington Settlement: Consequences for Gun Policy*, ROCKEFELLER INST. OF GOV’T., Mar. 21, 2022; *Gun Industry Immunity in California*, GIFFORDS LAW CTR., Dec. 31, 2023; and *Gun Industry Immunity in New Jersey*, GIFFORDS LAW CTR., Apr. 17, 2024.

Supreme Court Case: *Smith & Wesson Brands v. Estados Unidos Mexicanos*

District Court Dismisses Mexico's Complaint Under PLCAA

Background of Mexico's Complaint Against Several Firearms Companies

In 2021, the Government Accountability Office (GAO) reported that the Mexican government estimated that 200,000 firearms are smuggled from the United States into Mexico each year.⁷⁴ The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) trace data⁷⁵ indicate that 65.5% of guns recovered in Mexico in 2022 and submitted to ATF for tracing were either manufactured in the United States or legally imported into the United States before being recovered in Mexico.⁷⁶ Also, 67.3% of firearms recovered in Mexico and traced by ATF between 2019 and 2024 were U.S.-sourced.⁷⁷ Out of those U.S.-sourced firearms recovered in Mexico and traced by ATF, 51,623 (52.9%) were traced to a U.S. purchaser.⁷⁸ ATF data also indicate that, between 2017 and 2021, a small percentage (0.1%) of U.S.-sourced crime guns recovered in Mexico during that same period had been possessed at the time of the crime by the known initial purchaser of the firearm.⁷⁹ These data may suggest that the crime guns recovered in Mexico were likely straw-purchased, sold on the black market, or stolen.⁸⁰

For Mexican citizens who do not have a professional need to possess a firearm in Mexico, Mexican federal law requires them to buy a weapon from a “mercantile establishment” (i.e., not an individual seller).⁸¹ In Mexico, there are reportedly two legal mercantile establishments in the entire country that sell firearms.⁸² These stores are in compounds run by the Mexican military, and visitors must pass through a metal detector, leave cell phones in lockers, and provide the following: photographic ID, a gun acquisition form, proof of no federal criminal record, medical

⁷⁴ U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-322, FIREARMS TRAFFICKING: U.S. EFFORTS TO DISRUPT GUN SMUGGLING INTO MEXICO WOULD BENEFIT FROM ADDITIONAL DATA AND ANALYSIS (2021).

⁷⁵ “Firearms tracing is the systematic tracking of the movement of a firearm recovered by law enforcement officials from its first sale by the manufacturer or importer through the distribution chain (wholesaler/retailer) to identify the first retail purchaser.” U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-223, U.S. EFFORTS TO COMBAT FIREARMS TRAFFICKING TO MEXICO HAVE IMPROVED, BUT SOME COLLABORATION CHALLENGES REMAIN 1 n.1 (2016).

⁷⁶ *Id.*

⁷⁷ See ATF, FIREARMS TRACE DATA: MEXICO - 2019–2024 (Apr. 3, 2025), <https://www.atf.gov/resource-center/firearms-trace-data-mexico-2019-2024> [<https://perma.cc/MY45-4MQQ>].

⁷⁸ *Id.*

⁷⁹ See ATF, NATIONAL FIREARMS COMMERCE AND TRAFFICKING ASSESSMENT (NFCTA): CRIME GUNS – VOLUME TWO, PART IV - CRIME GUNS RECOVERED OUTSIDE OF THE UNITED STATES AND TRACED BY LAW ENFORCEMENT (Jan. 11, 2023), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iv-crime-guns-recovered-outside-us-and-traced-le/download#page=16> [<https://perma.cc/JR5U-YK5M>].

⁸⁰ A *straw purchase* is a firearm purchase made by someone who is allowed to purchase a firearm on behalf of a person who is prohibited from owning a firearm. For classes of prohibited persons, see 18 U.S.C. § 922(g). For more information about straw purchases, see CRS In Focus IF12190, *Gun Control: Straw Purchase and Gun Trafficking Provisions in P.L. 117-159* (2024).

⁸¹ For information about Mexican firearms law, see L. LIBR. OF CONG., MEXICO: FIREARMS LAWS (Feb. 2009), <https://tile.loc.gov/storage-services/service/ll/lglrd/2019669439/2019669439.pdf#page=5> [<https://perma.cc/U23E-VJR9>]. For many years, there was only one mercantile establishment in Mexico that sold firearms, but a new store was opened in 2019 in Apodaca, Nuevo León.

⁸² James Wagner, *At Mexico's 2 Legal Gun Shops, a Conflicted View of Firearms Is on Display*, N.Y. TIMES, May 17, 2025, <https://www.nytimes.com/2025/05/17/world/americas/mexico-us-gun-stores.html>.

and psychological evaluations, a drug test, proof of residence and employment, a birth certificate, tax number, and a \$25 fee.⁸³

There is an additional legal avenue for those serving in the Mexican military or law enforcement to acquire firearms: They may purchase weapons on the 600 series in the U.S. Commerce Control List (CCL) from Federal Firearms Licensees (FFLs) based in the United States.⁸⁴ These weapons include small arms and related ammunition (weapons that were listed in Categories I–III on the U.S. Munitions List), fully automatic firearms, and arms that are on the Wassenaar Arrangement Munitions List.⁸⁵ After receiving a license from the U.S. Department of Commerce to export firearms, an individual Federal Firearms Licensee can export firearms on these lists to authorized buyers in authorized foreign countries.⁸⁶

From October 15, 2013, to June 30, 2023, Mexico received the sixth most shipments of 600 series weapons from the United States via these legal means, with a total dollar value of \$969.9 million.⁸⁷ While the initial sale may be legal, these firearms can be diverted at various points after delivery via straw purchases, secondary sales through private sellers, or theft.⁸⁸

In some cases, according to U.S. federal criminal indictments, Mexico-based transnational criminal organizations (TCOs) allegedly send members into the United States with illicit drugs and use the proceeds from selling these drugs in the United States to buy firearms, which are then smuggled across the border into Mexico.⁸⁹

The United States has taken various actions to prevent firearms trafficking to Mexico. In June 2022, Congress and President Biden enacted the Bipartisan Safer Communities Act (P.L. 117-159), which amended the Gun Control Act with several substantive, firearm trafficking-related provisions. These amendments addressed straw purchases, gun trafficking, and related criminal activity.⁹⁰

⁸³ *Id.*

⁸⁴ 15 C.F.R. § 774.

⁸⁵ U.S. Dep’t of Com., Bureau of Indus. and Sec. (BIS), DEEMED EXPORTS FAQs – 600 SERIES ITEMS, https://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs/cat/62-600-series-items-2#faq_302 [<https://perma.cc/5YUB-NSB4>] (last visited Aug. 13, 2025).

⁸⁶ *Id.* The BIS notes that some countries “are subject to special license requirements and policies other than those that are defined by the Commerce Country Chart in conjunction with other portions of the EAR [Export Administration Regulations].” These countries are Cuba, Iran, North Korea, Sudan, and Syria. For more information on what countries and objects require export authorization, *see* BIS, COUNTRY GUIDANCE, <https://www.bis.gov/licensing/country-guidance> [<https://perma.cc/G26Y-4NVU>] (last visited Aug. 13, 2025).

⁸⁷ BIS, 2023 JUNE STATISTICS OF BIS EXPORTS UNDER USML TO CCL REGULATORY CHANGES (2023), <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/ecr-analysis/3364-2023-june-statistics-of-bis-exports-under-usml-to-ccl-regulatory-changes/file#page=2> [<https://perma.cc/PF3M-9Y4A>].

⁸⁸ CTR. FOR AM. PROGRESS, FREQUENTLY ASKED QUESTIONS ABOUT GUN TRAFFICKING 1 (2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/08/Gun-Trafficking-FAQ.pdf> [<https://perma.cc/BBM5-6U3F>].

⁸⁹ These enforcers are sponsored and hired by TCOs to find surrogates that are willing to straw-purchase “military-style” firearms from Federal Firearms Licensees. Under 18 U.S.C. § 922(g)(5), unauthorized immigrants and nonimmigrant visitors (with exceptions in the latter case) are ineligible to receive or possess firearms. For example, *see* Press Release, U.S. Dep’t of Just., U.S. Att’y’s Office, Cent. Dist. of Cal., Indictment Names Six in Scheme to Provide High-Powered Firearms and Huge Quantities of Ammunition to Mexican Drug Cartel (Jan. 24, 2022), <https://www.justice.gov/usao-cdca/pr/indictment-names-six-scheme-provide-high-powered-firearms-and-huge-quantities> [<https://perma.cc/ME4J-EMB7>].

⁹⁰ For further information, *see* CRS Report R47310, *Bipartisan Safer Communities Act (P.L. 117-159): Section-by-Section Summary*, coordinated by Johnathan H. Duff (2022), and CRS In Focus IF12190, *Gun Control: Straw Purchase and Gun Trafficking Provisions in P.L. 117-159* (2024).

Additionally, to prevent legal sales from being diverted after being delivered to their intended recipient, on October 27, 2023, the U.S. Department of Commerce initiated a 90-day pause on issuing new firearms export licenses in order to make it harder to export small arms and ammunition to foreign recipients who have not been vetted by the United States.⁹¹

Following the pause, on April 30, 2024, the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) released an interim final rule (IFR) that restricts private transfers of firearms out of the United States.⁹² This IFR made three changes affecting private firearms exports.

First, 36 countries are labeled by the Department of State’s Country Reports on Human Rights Practices and the Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries, as well as by reputable nongovernmental reports, as having a “substantial risk that lawful firearms exports to nongovernmental end users will be diverted or misused.”⁹³ These countries are to be treated with a “presumption of denial” for granting a license to export weapons abroad, whereas the previous policy was one of “general approval.”⁹⁴ The seller can overcome this presumption of denial only by successfully arguing their sale does not contain risk, such as if the purchaser is protecting U.S. interests or is otherwise trustworthy.⁹⁵ Additionally, 17 countries in the Organization of American States are no longer to be treated with a policy of general approval, and instead are to be considered on a case-by-case basis because of their higher risks for firearms diversion or misuse.⁹⁶

The second change is that export licenses provided to U.S. sellers now last one to two years instead of the previous four to five years, resulting in sellers having to more frequently make the case that the sale meets existing requirements.⁹⁷

Finally, the third change is that, in their applications, potential exporters need to include purchase orders and passport identifications from the intended recipient to show that it is an actual person who is interested in and allowed to receive a firearm.⁹⁸

Mexico’s Complaint Against Several Firearms Companies

On August 4, 2021, the Government of Mexico filed a lawsuit in federal district court against seven U.S. gun manufacturers—Smith & Wesson, Beretta, Century International Arms, Colt, Glock, Ruger, and Barrett—and a U.S. gun distributor, Interstate Arms.⁹⁹ The complaint alleged that “[a]lmost all guns recovered at crime scenes in Mexico—70% to 90% of them—were trafficked from the U.S.”; that guns made by six of the defendant-manufacturers “are most often recovered in Mexico”; that defendant Barrett’s “.50 caliber sniper rifle is a weapon of war prized

⁹¹ BIS, FIREARMS PAUSE & REVIEW: FREQUENTLY ASKED QUESTIONS (2023), <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file> [<https://perma.cc/D63K-FV8G>].

⁹² Revision of Firearms License Requirements, 15 Fed. Reg. 34680 (Apr. 30, 2024) (to be codified in scattered provisions in 15 C.F.R.). Some gun trade groups suggest that the pause has cost U.S. sellers over \$250 million since October 2023; see Larry Keane, *President Biden’s Whole-of-Government Gun Control Crusade Confronts Reality*, NAT’L SHOOTING SPORTS FOUND. (May 6, 2024), <https://www.nssf.org/articles/president-bidens-whole-of-government-gun-control-crusade-confronts-reality/> [<https://perma.cc/PHX9-C49E>].

⁹³ 15 Fed. Reg. at 34696.

⁹⁴ *Id.* at 34693.

⁹⁵ *Id.* at 34682.

⁹⁶ *Id.*

⁹⁷ *Id.* at 34695.

⁹⁸ *Id.* at 34694.

⁹⁹ Complaint at 9–11.

by the drug cartels”; and that it is the defendant-distributor “through which all but one of the defendant-manufacturers sell their guns for re-sale to gun dealers throughout the U.S.”¹⁰⁰

The Government of Mexico claimed that the defendants knowingly design their weapons—including weapons designed to be modified to be machineguns—to have a high degree of lethality, and market and sell the weapons as such, and that the defendants, through the use of “reckless and corrupt” channels, are “supplying” these weapons to the cartels in Mexico.¹⁰¹ The complaint alleged that the Department of Justice had recommended reforms to the defendant-manufacturers, which, according to the Government of Mexico, these defendants ignored.¹⁰²

The Government of Mexico pointed out that the defendants produce most of the “half million guns [that are] annually . . . trafficked from the U.S. into Mexico.”¹⁰³ Mexico asserted that the defendants are on notice of the consequences of their design, distribution, and marketing plans, yet have “refused” to take reform efforts to mitigate the flow of their weapons to Mexico.¹⁰⁴ The Government of Mexico averred that the defendants aided and abetted in the trafficking of firearms into Mexico, in contravention of Mexico law and the Gun Control Act.¹⁰⁵ In general and in short, Mexico argued that “while the actionable harm occurs south of the U.S. border, it is caused by Defendants’ conduct north of the border.”¹⁰⁶

The Defendants’ Motion to Dismiss Case, Invoking PLCAA

On November 22, 2021, the defendants jointly filed a motion to dismiss the Government of Mexico’s lawsuit.¹⁰⁷ The defendants cited 15 U.S.C. § 7901(a)(3) for the proposition that “Congress enacted the PLCAA to immunize federally licensed firearms manufacturers and sellers from actions seeking ‘. . . relief for the harm caused by the misuse of firearms by third parties, including criminals.’”¹⁰⁸ The defendants argued that the Government of Mexico’s complaint satisfies neither component of the predicate exception.¹⁰⁹

In particular, the defendants argued that the Government of Mexico has claimed violations of generally applicable laws, including public nuisance and consumer protection laws;¹¹⁰ that the defendants are not subject to Mexican law, including any prohibition on aiding and abetting firearms trafficking;¹¹¹ and that “[t]he complaint does not plead the required connection between any alleged statutory violation and any alleged injury,”¹¹² listing eight steps between the

¹⁰⁰ *Id.* at 1.

¹⁰¹ *Id.*

¹⁰² *Id.* at 91.

¹⁰³ *Id.* at 2.

¹⁰⁴ *Id.* at 5–6.

¹⁰⁵ *Id.* at 15–16, 18.

¹⁰⁶ *Id.* at 8.

¹⁰⁷ Joint Motion to Dismiss, *supra* note 5; *see generally* FED. R. CIV. P. 12(b)(6). Individual defendants also lodged separate motions to dismiss, triggering separate responses from the Government of Mexico. *See* Docket, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 21-11269 (D. Mass. Aug. 4, 2021).

¹⁰⁸ Joint Motion to Dismiss, *supra* note 5, at 12 (quoting 15 U.S.C. § 7901(a)(3)). The motion raises arguments in addition to one based on PLCAA, such as claiming that the Government of Mexico lacks standing. *Id.* at 6. This summary focuses on the arguments that the Supreme Court has agreed to review. *See* Petition for Writ of Certiorari at i, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025) (No. 23-1141).

¹⁰⁹ Joint Motion to Dismiss, *supra* note 5, at 13.

¹¹⁰ *Id.* at 14, 21.

¹¹¹ *Id.* at 39.

¹¹² *Id.* at 23.

defendants' actions and any crime in Mexico to suggest that the causal chain is too attenuated to support liability.¹¹³

On January 31, 2022, the Government of Mexico responded to the defendants' motion to dismiss.¹¹⁴ The Government of Mexico asserted, in part, that the complaint properly alleged that the defendants violated federal firearms laws, specifically the trafficking of firearms designed to be easily converted into prohibited machineguns.¹¹⁵ According to the Government of Mexico, the defendants sold firearms to distributors and dealers with knowledge that the firearms would be resold to traffickers and cartels, with foreseeability that the cartels would use those firearms to impose the harms felt by Mexico.¹¹⁶ This foreseeability, the complaint continued, negates the defendants' argument that there is an insufficient causal connection between the defendants' misconduct and the plaintiff's injuries.¹¹⁷

On March 14, 2022, the defendants filed their reply.¹¹⁸ In their brief, the defendants emphasized their position that PLCAA's predicate exception does not apply, and that the defendants are therefore immune from the allegations in the complaint, because Mexico failed to adequately allege that the defendants knowingly violated a specific subset of federal or state laws applicable to the "sale or marketing" of firearms, a limitation that is necessary, the defendants added, to avert the possibility that the exception will swallow the statute.¹¹⁹

With respect to Mexico's argument that the defendants knowingly sold semiautomatic weapons easily converted into prohibited machineguns, the defendants answered that this argument is implausible, as it would imply that the defendants have been knowingly selling machineguns for "decades" with prosecutors doing "nothing about it."¹²⁰ The relevant firearms are not machineguns under federal law in any case, the defendants argued.¹²¹ To the extent that the defendants were aware that a "small percentage" of end users may use the firearms in crime, this would not convert the defendants into accomplices, any more than would manufacturers of products "from kitchen knives to baseball bats to sports cars," the defendants asserted.¹²² The defendants also argued that the touchstone of causation for purposes of the predicate exception is not foreseeability, but proximate causation—and, here, the defendants' actions—were too remote relative to the alleged harms.¹²³

¹¹³ *Id.* at 32–33.

¹¹⁴ Plaintiff's Memorandum of Law in Opposition to Defendants' Joint Motion to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 21-11269 (D. Mass. Jan. 31, 2022).

¹¹⁵ *Id.* at 22.

¹¹⁶ *Id.* at 24.

¹¹⁷ *Id.* at 34–35.

¹¹⁸ Joint Reply in Support of Defendants' Motions to Dismiss, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 21-11269 (D. Mass. Mar. 14, 2022).

¹¹⁹ *Id.* at 17–20.

¹²⁰ *Id.* at 21.

¹²¹ *Id.* at 22.

¹²² *Id.* at 23.

¹²³ *Id.* at 26.

The District Court Finding That the Defendants Were Entitled to Immunity Under PLCAA

On September 30, 2022, the federal district court granted the defendants’ motion to dismiss.¹²⁴ The court found that, “[i]n 2019 alone, there were more than 3.9 million crimes committed in Mexico with U.S.-manufactured guns,”¹²⁵ but the court framed the lawsuit as one in which the Government of Mexico was seeking to hold the defendants responsible for an “indirect cause” of these crimes: “the marketing and sales practices of American gun manufacturers and distributors.”¹²⁶

The court held that “[t]he PLCAA unequivocally bars lawsuits seeking to hold gun manufacturers responsible for the acts of individuals using guns for their intended purpose,”¹²⁷ dismissing counts one through six and nine on account of PLCAA.¹²⁸ The court reasoned that PLCAA’s predicate exception applies only to allegations of violations of statutes. Here, however, the court observed that counts one through six and nine in the complaint do not state a violation of a statute but instead press causes of action arising under common law.¹²⁹ Such a limiting construction is also supported, the court said, by the concern that an opposite interpretation would end up turning the exception into the general rule.¹³⁰

Having concluded that PLCAA does not apply to common law claims, the court did not address the second leading parties’ causation arguments in the context of the applicability of PLCAA. The court dismissed the remaining state consumer protection claims on other grounds.¹³¹

U.S. Court of Appeals Reverses the District Court Ruling

On December 5, 2022, the Government of Mexico lodged its appeal with the First Circuit.¹³² On January 24, 2024, a three-judge panel of the First Circuit reversed the district court’s grant of the defendants’ motion to dismiss.¹³³ First, the court determined that PLCAA’s predicate exception

¹²⁴ *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 633 F. Supp.3d 425 (D. Mass. Sept. 30, 2022), *rev’d and remanded*, 91 F.4th 511 (1st Cir. 2024), *rev’d and remanded*, 605 U.S. 280 (2025).

¹²⁵ *Id.* at 431.

¹²⁶ *Id.*

¹²⁷ *Id.* at 432. The court’s determination that Mexico possessed standing, *see id.* at 438–40, is beyond the scope of this report.

¹²⁸ *Id.* at 441.

¹²⁹ *Id.* at 446.

¹³⁰ *Id.*

¹³¹ *See id.* at 450–55.

¹³² Notice of Appeal, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511 (1st Cir. 2024) (No. 22-1823).

¹³³ *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511 (1st Cir. 2024), *rev’d and remanded*, 605 U.S. 280 (2025). This section focuses primarily on the issues that the Supreme Court agreed to hear on further appeal. *See* Petition for Writ of Certiorari at i, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025) (No. 23-1141). It thus does not address one aspect of the court’s holding, specifically that PLCAA applies extraterritorially to claims brought by a foreign government for harms that culminate outside of the United States, *see Estados Unidos Mexicanos*, 91 F.4th at 522–25, and that this holding does not violate considerations of international comity. *See id.* at 525–26. The court explained,

It may be that Mexico, as it claims, would be unable to pursue its lawsuit in the only forum that could provide effective injunctive relief. But that is a necessary consequence of Congress’s decision to protect the U.S. firearm industry by regulating the types of lawsuits that can be adjudicated by U.S. courts [W]e hold that the PLCAA applies to lawsuits by foreign
(continued...)

applies to common law claims, not just statutory causes of action.¹³⁴ The court interpreted the predicate exception's reference to actions "in which" a manufacturer or seller violates a statute to mean that the predicate exception covers common law claims that support statutory causes of action.¹³⁵

The panel also held that the complaint adequately alleged that the defendants' actions are a proximate cause of the harms felt in Mexico—using an aiding and abetting theory of liability, the panel found that the defendants sold military-grade weapons, intending that some would be sold further to cartels; the defendants made specific design and marketing decisions to have these weapons better appeal to the cartels; the defendants profited from some decisions; and the defendants ignored the recommendations of the federal government.¹³⁶ Critically, the panel credited the complaint for "expressly alleg[ing] that the defendants did know which dealers were making illegal sales."¹³⁷ The court asserted that the defendants "are not mere passive observers of the buyer's illegal activity, but more akin to a calculated and willing participant in the supply chain that ends with a profitable illegal firearm market in Mexico."¹³⁸

The court concluded its proximate cause analysis by determining that the complaint adequately alleged that it was foreseeable that the defendants' firearms would "end up in the hands of Mexican cartels," that the defendants "intended to bring about that result," and that it was further foreseeable that the cartels would use the defendants' firearms to commit violent crimes.¹³⁹ The court responded to the defendants' arguments against the existence of proximate cause by adding that a third party's intervening unlawful acts cannot categorically break the chain of proximate cause; otherwise, the predicate exception would be reduced to a nullity.¹⁴⁰ The court also took note that at least some of Mexico's alleged injuries, including the cost of increased law enforcement, may be traced "directly from the illegal trafficking of guns into Mexico and . . . are not merely derivative of the harm suffered by the victims of gun violence."¹⁴¹

The Defendants' Appeal to the Supreme Court

The defendants filed a petition for review with the Supreme Court,¹⁴² asking the Court to address the following two questions:

governmental entities for harm suffered outside this country, just as it applies to lawsuits by domestic governmental entities for harm suffered in this country.

Id. at 526.

¹³⁴ *Id.* at 527.

¹³⁵ *Id.*

¹³⁶ *Id.* at 529–33; *see also id.* at 534 (characterizing Mexico's proximate cause argument as "straightforward: defendants aid and abet the trafficking of guns to the Mexican drug cartels, and this trafficking has foreseeably required the Mexican government to incur significant costs in response to the increased threats and violence accompanying drug cartels armed with an arsenal of military-grade weapons."); *id.* at 535 ("the complaint alleges not only that it was foreseeable that defendants' guns would end up in the hands of Mexican cartels, but also that defendants actually intended to bring about that result.").

¹³⁷ *Id.*

¹³⁸ *Id.* at 531. The court rejected the plaintiff's argument that the defendants' production or selling of semiautomatic weapons that can be easily converted into prohibited machineguns serves as an additional predicate exception piercing PLCAA's immunity. *See id.* at 532–34.

¹³⁹ *Id.* at 535.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 537.

¹⁴² Petition for Writ of Certiorari at i, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025) (No. 23-1141).

1. whether the production and sale of firearms in the United States is the proximate cause of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico; and
2. whether the production and sale of firearms in the United States amounts to “aiding and abetting” illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.¹⁴³

On October 4, 2024, the Supreme Court granted the defendants’ petition for review.¹⁴⁴ On March 4, 2025, the Court held oral argument.¹⁴⁵

The Supreme Court Unanimously Concluded That PLCAA’s Predicate Exception Does Not Apply in This Case

Majority Opinion

On June 5, 2025, the Supreme Court unanimously ruled in favor of the defendants, holding that Mexico’s complaint did not adequately demonstrate that the defendants “aided and abetted unlawful sales routing guns to Mexican drug cartels.”¹⁴⁶ The Court, in an opinion authored by Justice Kagan, began its discussion by recognizing that PLCAA was enacted in response to a rise in civil suits against gun manufacturers and sellers,¹⁴⁷ that PLCAA generally bars such civil suits arising out of the misuse of firearms by third parties,¹⁴⁸ and that the predicate exception “opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.”¹⁴⁹ The Court emphasized that the predicate exception expressly permits a civil suit against a gun manufacturer to proceed if the manufacturer itself “aids and abets a federal gun crime.”¹⁵⁰ The Court framed the central issue before it as whether Mexico’s complaint sufficiently alleges aiding and abetting.¹⁵¹

In reviewing that complaint, the Court acknowledged that Mexico has a “severe gun violence problem”; that firearms imported from the United States are used to commit “serious crimes,” including murder; and that Mexico alleges that upward of 90% of the firearms recovered at crime scenes originated in the United States.¹⁵² The Court identified three arguments from Mexico’s complaint: (1) “the manufacturers supply firearms to retail dealers whom they know illegally sell to Mexican gun traffickers,”¹⁵³ (2) “the manufacturers have failed to impose the kind of controls on their distribution networks that would prevent illegal sales to Mexican traffickers,”¹⁵⁴ and (3)

¹⁴³ *Id.* at i.

¹⁴⁴ SUPREME COURT OF THE UNITED STATES, 2023 TERM ORDER LIST (Oct. 4, 2024), https://www.supremecourt.gov/orders/courtorders/100424zr_o7jp.pdf [<https://perma.cc/N4TA-XAMB>].

¹⁴⁵ See Transcript of Oral Argument, *Smith & Wesson Brands, Inc.*, 605 U.S. 280 (No. 23-1141), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1141_8m59.pdf [<https://perma.cc/UR45-S4MJ>].

¹⁴⁶ *Smith & Wesson Brands, Inc.*, 605 U.S. at 285.

¹⁴⁷ *Id.* (quoting 15 U.S.C. § 7903(a)(3)).

¹⁴⁸ *Id.* at 286.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 286–87.

¹⁵¹ *Id.* at 287–88.

¹⁵² *Id.*

¹⁵³ *Id.* at 288.

¹⁵⁴ *Id.* at 289.

“manufacturers make ‘design and marketing decisions’ intended to stimulate cartel members’ demand for their products.”¹⁵⁵ The Court stated that “[b]ecause Mexico relies exclusively on an aiding-and-abetting theory,” it must “plausibly alleg[e] that the manufacturers have aided and abetted gun dealers’ firearms offenses (such as sales to straw purchasers), so as to proximately cause harm to Mexico.”¹⁵⁶

Knowingly Selling Firearms to Distributors Who Sell to Traffickers

To answer Mexico’s first argument, the Court recounted general aiding and abetting liability principles. The Court observed that aiding and abetting liability requires “participat[ion]”¹⁵⁷ in “specific wrongful acts.”¹⁵⁸ In contrast, “omissions” or “incidental” conduct, the Court explained, are not enough to establish aiding and abetting liability.¹⁵⁹

The Court recalled two cases applying this framework. In one case, the Court held that to sustain a conviction under an aiding and abetting theory, the defendant must not only have knowledge of a user’s unlawful conduct, but must also be “join[ed] both mind and hand” in wanting to achieve that unlawful conduct and actively helping to achieve that unlawful conduct, such as through special treatment of the third-party actor.¹⁶⁰ In the other case, the Court determined that a defendant’s “arm’s length, passive, and largely indifferent” conduct fell short of the required showing for aiding and abetting liability.¹⁶¹ The Court’s analysis therefore boiled down to whether Mexico’s complaint alleged conduct that resembled the former or the latter case.

In determining that Mexico’s complaint was inadequate to support aiding and abetting liability, the Court found that the complaint did not “pinpoint . . . any specific criminal transactions that the defendants (allegedly) assisted,”¹⁶² nor did the complaint allege that the defendants favorably treated any unlawful users to further any such criminal activity.¹⁶³ Rather, the Court stressed, the complaint “repeatedly states that the manufacturers treat rogue dealers just the same as they do law-abiding ones—selling to everyone, and on equivalent terms.”¹⁶⁴

Even if the defendants treated rogue dealers in a better fashion, the Court stated, the complaint suffered from failing to connect the defendants further downstream to the actors who ultimately acquired firearms from the middleman dealers.¹⁶⁵ The complaint seems speculative, the Court added, as to whether the defendants had sufficient knowledge of, let alone an active intent to further, those connections.¹⁶⁶ The Court conceded that the complaint alleges that the defendants could have done more to curb the supply of firearms to rogue dealers, but, referencing precedent, the Court assessed that this allegation amounts to the defendants’ acting with “‘indifference,’ rather than assistance.”¹⁶⁷

¹⁵⁵ *Id.* at 290 (quoting Brief for Respondent at 23, *Smith & Wesson Brands, Inc.*, 605 U.S. 280 (2025) (No. 23-1141)).

¹⁵⁶ *Id.* at 291.

¹⁵⁷ *Id.* at 292 (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938)).

¹⁵⁸ *Id.* at 292 (quoting *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023)).

¹⁵⁹ *Id.* (quoting *Twitter*, 598 U.S. at 489).

¹⁶⁰ *Id.* at 293 (quoting *Direct Sales Co. v. United States*, 319 U.S. 703, 713 (1943)).

¹⁶¹ *Id.* (quoting *Twitter*, 598 U.S. at 493, 500).

¹⁶² *Id.* at 294.

¹⁶³ *Id.* at 295.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 296.

¹⁶⁷ *Id.* at 297 (quoting *Twitter*, 598 U.S. at 500).

Failing to Impose Controls on the Distribution Network

For the same reason, the Court rejected Mexico's second line of argument, specifically that "the manufacturers have declined to suitably regulate the dealers' practices[.]"¹⁶⁸ That is, the defendants' alleged failure to curb middlemen from making unlawful sales is the type of "passive nonfeasance" or a "failure to stop" that the Court has deemed to be inadequate for aiding and abetting liability.¹⁶⁹

Designing and Marketing Firearms to Appeal to Cartels

The Court characterized Mexico's third salvo—that the defendants designed and marketed their firearms to enhance demand among the cartel—as being "nothing of consequence."¹⁷⁰ The Court pointed out that the firearms in question, including assault weapons and weapons with Spanish-language names, are widely legal and/or purchased by many others.¹⁷¹ In other words, the Court determined that the broad appeal of the relevant firearms to both cartels and noncartel users undermines the suggestion that the defendants specially assisted the cartels.

* * *

In closing, the Court opined that its holding aligns with Congress's purpose in enacting PLCAA, to "halt a flurry of lawsuits attempting to make gun manufacturers pay for the downstream harms resulting from misuse of their products."¹⁷² If the predicate exception were construed to encompass Mexico's allegations, the Court wrote, the "exception . . . would swallow most of the rule."¹⁷³ "We doubt Congress intended to draft such a capacious way out of PLCAA, and in fact it did not," the Court concluded.¹⁷⁴

Concurring Opinions

Justice Thomas penned a solo concurring opinion to address the flip side of the case: While the Court held only that Mexico's complaint does not cross the plausibility threshold, Justice Thomas sought to clarify when that bar might be satisfied.¹⁷⁵ According to Justice Thomas, the predicate exception requires more than an allegation, but, at a minimum, a "finding of guilt or liability in an adjudication regarding the [predicate] violation."¹⁷⁶

Justice Jackson, writing for herself, authored a concurring opinion suggesting that the predicate violation must be a violation of a federal or state statute.¹⁷⁷ Here, Justice Jackson asserted, the complaint fails because "Mexico does not tether its claims to alleged statutory breaches."¹⁷⁸

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* (quoting *Twitter*, 598 U.S. at 500).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 298.

¹⁷² *Id.*

¹⁷³ *Id.* at 299.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (Thomas, J., concurring).

¹⁷⁶ *Id.* at 300 (Thomas, J., concurring) (emphasis omitted).

¹⁷⁷ *Id.* (Jackson, J., concurring).

¹⁷⁸ *Id.* at 302 (Jackson, J., concurring). The complaint does state that the defendants violated the Gun Control Act. *See* Complaint *supra* note 4, at 18.

Considerations for Congress

As PLCAA and the predicate exception are creatures of federal statute, Congress has options to address the Court's ruling in *Smith & Wesson*. Congress could amend the predicate exception, strengthening the immunity it confers on firearms manufacturers and distributors by codifying the Supreme Court's holding. Alternatively, Congress could amend the statute to narrow the predicate exception to the extent that it disagrees with the Court's conclusion. An amendment could include clarifying language as to what legal violations by actors in the firearms industry may trigger the predicate exception, when a firearms entity bears sufficient causal responsibility for any downstream misuse of a firearms, and when and if plaintiffs may bring an action under PLCAA for harms occurring outside of the United States.

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