No. 23-1141

In the Supreme Court of the United States

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

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

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

BRIEF FOR U.S. SENATOR TED CRUZ, U.S. REPRESENTATIVE DARRELL ISSA, AND 37 OTHER MEMBERS OF CONGRESS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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DECEMBER 3, 2024

QUESTIONS PRESENTED

The questions presented are:

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.

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.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*[1]

The foreign nation of Mexico has filed a lawsuit that attempts to use the federal courts to advance a theory of liability for lawful American businesses that would infringe upon a constitutional right and do so in direct conflict with a law Congress passed precisely to prevent such liability. The Second Amendment to the United States Constitution ensures the right to keep and bear arms for law-abiding and peaceable American citizens, but it would be impossible to exercise that right if a citizen could not lawfully purchase a firearm because the firearm industry had become insolvent. Congress passed the Protection of Lawful Commerce in Arms Act to prevent such an outcome by placing firearm manufacturers on equal footing with other American manufacturers. Under the Act, so long as a firearm is properly made and properly transferred into commercial channels, a manufacturer is generally not liable if a criminal later misuses that firearm in the commission of a crime.

Amici are U.S. Senator Ted Cruz of Texas, the Ranking Member of the Subcommittee on the Constitution of the Senate Committee on the Judiciary, U.S. Representative Darrell Issa of California, the Chairman of the Subcommittee on Courts, Intellectual Property, and the Internet of the House Judiciary Committee, and 37 other Members of Congress in both the Senate and the House of

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *Amici Curiae* or their counsel has made a monetary contribution toward the brief's preparation or submission.

Representatives. Members of Congress are called to pass statutes that constitute much of the public policy of this Nation, and as such have a substantial interest in seeing the judiciary interpret and apply those statutes in the manner Congress intended. *Amici* are also Members who recognize the importance of the Second Amendment as a fundamental right, and who are committed to ensuring that Acts of Congress have the desired effect of protecting the Second Amendment for future generations of Americans.

The following is the full list of *Amici*:

United States Senate

Ted Cruz

Marsha Blackburn	John Hoeven
Mike Braun	Mike Lee
Bill Cassidy, M.D.	Cynthia Lummis
John Cornyn	Roger Marshall, M.D.
Mike Crapo	James Risch
Kevin Cramer	Eric Schmitt
Steve Daines	Rick Scott
Deb Fischer	Thom Tillis

***AMICI CURIAE* (cont'd)**

United States House of Representatives

Darrell Issa

Mark Alford
Jim Baird
Aaron Bean
Andy Biggs
Mike Bost
Chuck Fleischmann
Glenn Grothman
Andy Harris
Diana Harshbarger
Kevin Hern
Clay Higgins
Ronny Jackson
Doug LaMalfa
Mary Miller
Troy Nehls
August Pfluger
Keith Self
Pete Sessions
Adrian Smith
Claudia Tenney
Daniel Webster

SUMMARY OF ARGUMENT

Mexico's lawsuit is an affront to the sovereignty of the United States of America. It has no place in federal court, and it attempts to coerce American courts to subvert the policy determinations of the political branches of the U.S. Government. A nation's authority on its own soil is virtually absolute. Congress exercised that authority in passing the Protection of Lawful Commerce in Arms Act (PLCAA), Pub. L. No. 109-92, 119 Stat. 2095 (2005) (codified at 15 U.S.C. §§ 7901–03). Mexico's suit disregards those legal principles, trying to impose its own foreign view of liability protection law and the right to bear arms on the American people.

Mexico's suit attempts to impose the laws of that foreign nation upon the citizens and companies of this nation. This is ironic, given that Mexico's Constitution also provides its citizens the right to possess firearms in their residences for self-defense. But that nominal right is a pale shadow of its American counterpart, subject to severe restrictions, coupled with the fact that there is only a single gun store in Mexico. That nation's laws and tradition of the right to own firearms bear little resemblance to that of our own.

Consistent with the principle of comity—that is, the recognition one nation gives domestically to the official acts of another nation, having due regard to international duty and the rights of those under the protection of its laws—a foreign nation is generally entitled to pursue claims in U.S. courts on the same basis as that of a domestic person. Thus, Mexico is entitled to pursue firearm manufacturers to the same extent that a U.S. citizen could, but no more.

Contrary to Mexico's contention, there is no gap in PLCAA's coverage that would allow this suit. PLCAA reaches as far as each district court's jurisdiction, and prevents it at every turn. The theory of liability that Mexico argues for U.S. courts to impose upon firearm manufacturers contradicts the clear and unambiguous language of PLCAA's preclusion of liability.

The district court understood as much and dismissed Mexico's action as barred by PLCAA. The district court properly rejected Mexico's arguments that because its alleged injuries occurred outside the United States and because it is a foreign-sovereign plaintiff, PLCAA was categorically inapplicable to this

lawsuit. *See Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 633 F. Supp. 3d 425, 443–45 (D. Mass. 2022). The First Circuit agreed with the district court's holding that PLCAA applied to Mexico's suit—though the appellate court went on to hold that Mexico's claims fell within PLCAA's textual exceptions and allowed the suit to proceed. *See Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 518, 538 (1st Cir. 2024). *Amici* focus here on Mexico's arguments that its suit is categorically exempt from PLCAA—though *Amici* also submit that the First Circuit's holding that Mexico's suit fell within PLCAA's exceptions was erroneous, for reasons explained in the petition for certiorari.

This Court should reject Mexico's spurious argument that PLCAA is categorically inapplicable, as well as its other arguments on the merits. Mexico's lawsuit thus disrespects the U.S. Constitution and U.S. law. While Mexico may not place much stock in the Second Amendment, the right to keep and bear arms is fundamental to *our* scheme of ordered liberty. This right predates the Amendment's adoption in 1791, but the concept of everyday law-abiding citizens being able to own firearms is a distinctly American right. By the time the Fourteenth Amendment was ratified in 1868, the right's focus came to include personal protection against criminal elements, in addition to concern about an oppressive central government. But throughout our history and tradition, this right has remained fundamental to American liberty.

The Second Amendment must be construed according to its original public meaning. Anything its

plain text covers is presumptively protected, placing the burden on the government to demonstrate that a restriction is consistent with America's historical firearms tradition. As with other constitutional rights, the Second Amendment is the product of interest balancing by the American people and secures the right of citizens to use arms for lawful purposes.

Congress passed PLCAA to protect the Second Amendment, as the right is practically worthless if the firearms industry goes out of business. As with the interpretation of any statute, analysis must begin with the text of PLCAA. Congress' enacted findings include that lawful firearm businesses whose products "have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by" criminals; that "imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system" and threatens constitutional rights under the Second and Fourteenth Amendments; and that such efforts "circumvent the Legislative branch of government to regulate interstate and foreign commerce[.]" 15 U.S.C. §§ 7901(a)(5), (6), (8). Congress' express purpose was "[t]o prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition" predicated on such theories, in order "[t]o preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes." *Id.* §§ 7901(b)(1), (2). PLCAA's legislative history is fully consistent with this enacted language.

This does not leave Mexico without recourse if it has suffered loss. Mexico has a full range of diplomatic tools at its disposal. But Mexico's lawsuit pursued on

American soil carries foreign-policy implications, which is the province of Congress and the President, not the courts. As with an agreement between nations, grievances become the subject of international negotiations and reclamations, resolved through political and diplomatic channels. It is the U.S. President's role to address such grievances consistent with law, as the U.S. Constitution assigns our President primary responsibility for the conduct of foreign relations. Congress left no route for judicial redress here because it made clear that firearm companies are not liable for criminal misuse of their products.

Congress passed PLCAA to prevent precisely this sort of lawsuit. Mexico cannot use our courts to evade our own positive law. This Court should therefore reverse the First Circuit's erroneous decision approving that evasion.

ARGUMENT

I. Mexico's Lawsuit Is an Affront to American Sovereignty.

This lawsuit has no place in a court of the United States. It is an attempt to coopt the power of the federal judiciary to both circumvent the role of Congress and usurp the role of the Executive. It shows disregard for the respective roles that the Constitution of the United States has assigned to the three branches of the Federal Government and is an affront to the sovereignty of the United States.

"The authority of a nation within its own territory is absolute and exclusive." *Church v. Hubbart*, 6 U.S. (2 Cranch) 187, 234 (1804). The United States

exercised its sovereign prerogative to create and enforce a system of laws within its own borders when Congress passed the Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (2005) (codified at 15 U.S.C. §§ 7901–03). That Act of Congress forecloses relief for the Respondent here, as the district court correctly held.

Mexico's lawsuit disregards the principle of territorial sovereignty in both directions. "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens." *The Apollon*, 22 U.S. (9 Wheat.) 362, 370 (1824); *see also The Santissima Trinidad*, 20 U.S. (7 Wheat.) 283, 353–54 (1822). "The Third Restatement provides that a State has jurisdiction to prescribe law with respect to '*conduct* that, wholly or in substantial part, takes place within its territory.' This is known as subjective territorial jurisdiction." Julie Rose O'Sullivan, *The Extraterritorial Application of Federal Criminal Statutes: Analytical Roadmap, Normative Conclusions, and a Plea to Congress for Direction*, 106 Geo. L.J. 1021, 1031 (2018) (emphasis in original) (quoting Restatement (Third) of the Foreign Relations Law of the United States § 402(1)(a) (1987)). Here, Mexico both ignores Congress' prerogative in PLCAA to limit tort liability and Mexico's constraint to focus its legal efforts on persons and events on Mexican soil.

A. Mexico's lawsuit attempts to hijack U.S. courts to subject American citizens to Mexican law, which restricts the right to bear arms.

With its lawsuit, Mexico is attempting to impose the laws of that foreign nation upon the citizens and companies of this nation. *See* Pet. App. 25a–27a (Compl. ¶¶ 55–62). Mexico also presumes to exempt itself from American law in such a way as to manipulate American courts into giving that foreign power what it wants here, in violation of clear U.S. law (*i.e.*, PLCAA). *See* Pet. App. 27a–43a (Compl. ¶¶ 61–117).

Ironically, Mexico's Constitution provides that its citizens have a right to possess firearms in their residences for purposes of self-defense. *See* Constitución Política de los Estados Unidos Mexicanos [Const.] Feb. 5, 1917 (rev'd 2015), as amended, art. 10 (Mex.) (hereinafter, "Mex. Const. art. 10"). But rather than the broad individual right enshrined in the Second Amendment, "[i]n practice, the right is much weaker in Mexico than in the United States." David B. Kopel, *Mexico's Gun-Control Laws: A Model for the United States?*, 18 Tex. Rev. L. & Pol. 27, 28 (2013); *see also* Nicholas J. Johnson et al., *Comparative Law: National constitutions, comparative studies of arms issues, case studies of individual nations*, *in* Firearms Law and the Second Amendment: Regulation, Rights, and Policy 182 (2d ed. Online Supp. 2020), https://perma.cc/F648-DR7X.

For one, the constitutional provision itself makes clear that the right does not extend to arms "prohibited by the Federal Law." Mex. Const. art. 10.

Thus, the Mexican Constitution offers, at best, minimal constitutional protection against legislative infringements upon the right to keep arms, since that right is subject federal lawmakers' judgment about which arms to prohibit. *See* Dominick Cortez, *There Can Be Only One: Mexico Has One Gun Store But a Proliferation of Guns*, Mich. St. Int'l. L. Rev. Blog (Apr. 21, 2021), https://tinyurl.com/u8we8jsr.

And indeed, there are many restrictions on the possession and use of arms. The Mexican Military operates a nationwide gun registry and handles all applications for gun permits. Kopel, *supra*, at 36. Mexico admits in this lawsuit that "[it] has one gun store in the entire nation and issues fewer than 50 gun permits per year." Pet. App. 8a (Compl. ¶ 4). The country's federal laws largely confine firearm possession to the home. Kopel, *supra*, at 39–40. Mexicans must belong to a shooting club to obtain a permit to possess more than a single firearm, and those who do not so belong may obtain a permit to keep only a single handgun at home. *Id.* at 36–37. In addition, Mexican federal law forbids various models and calibers of firearms. Possession of shotguns is allowed only if they are 12-gauge or smaller and have barrels longer than twenty-five inches. *Id.* at 34. The Mexican statute also prohibits rifles any greater than .30 caliber. *Id.* Handguns are allowed if they have calibers of .380 or less, but some calibers are excluded—most notably .357 magnum and 9mm parabellum. *Id.* at 35. These are but a few of the manifold, major restrictions on Mexican citizens' right to keep arms. *See id.* at 31–40. This "right" does not

resemble the American conception of a constitutional right. *Compare infra* Part II.A.

Thus, Mexico's lawsuit attempts to diminish the fundamental right to bear arms in America to resemble the nominal right to bear arms in Mexico. This Court should prevent that diminution and effectuate the directives Congress set forth in PLCAA.

B. Principles of comity confine each court to its own territorial jurisdiction.

Principles of comity in foreign relations do not allow this Court to do what Mexico is asking. International comity "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). Each sovereign power on earth must act in a manner that shows due respect to its fellow nations. "Comity refers to the spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states." *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. S. Dist. Iowa*, 482 U.S. 522, 543 n.27 (1987). *Black's Law Dictionary* defines comity as "[a] practice among political entities (as countries, states, or courts of different jurisdictions), involving esp[ecially] mutual recognition of legislative, executive, and judicial acts." *Comity, Black's Law Dictionary* 324 (10th ed. 2014). "The overarching function of comity in U.S. jurisprudence is to manage conflict between sovereign

authorities within the context of a decentralized international system. In essence, comity mitigates the inherent tension between principles of territorial exclusivity and sovereign equality. Comity does not address the conflict between sovereign authorities directly, but softens our sensitivity to potential sovereign conflicts by bridging gaps created by other related tensions." Joel R. Paul, *Comity in International Law*, 32 Harv. Int'l L.J. 1, 54 (1991).

An important aspect of comity—one that is especially relevant here—is what is sometimes termed "'prescriptive comity,'" or "'the respect sovereign nations afford each other by limiting the reach of their laws.' [This Court] … [has] employed 'prescriptive comity' … as a means 'to avoid unreasonable interference with the sovereign authority of other nations.'" William S. Dodge, *International Comity in American Law*, 115 Colum. L. Rev. 2071, 2099 (2015) (quoting *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting); *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004)). "For a country to treat a defendant 'according to its own notions rather than those of the place where he did the acts' …, 'not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent.'" *Id.* (quoting *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1909)), *overruled on other grounds, Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962)).

These principles govern the resolution of this case. This Court "has long recognized the rule that a

foreign nation is generally entitled to prosecute any civil claim in the courts of the United States upon the same basis as a domestic corporation or individual might do." *Pfizer, Inc. v. Government of India*, 434 U.S. 308, 318–19 (1978). Indeed, to do otherwise "would manifest a want of comity and friendly feeling." *The Sapphire*, 78 U.S. (11 Wall.) 164, 167 (1870). But "every state has both the right and the power to control and regulate personal property found within its limits; and having given such rights to its own citizens, they shall not be taken away by the application of the principle of comity." *May v. Breed*, 61 Mass. (7 Cush.) 15, 43 (1851); *see also* Joseph Story, *Commentaries on the Conflict of Laws* § 512 (1834) ("[N]o nation is under any obligation to enforce foreign laws, prejudicial to its own rights, or those of its subjects.").

That is what Petitioners successfully argued in the district court below. Mexico is entitled to pursue firearms manufacturers to the same extent that a U.S. citizen or a U.S. company could pursue those manufacturers, but no further. In that vein, PLCAA would not allow district courts to entertain a suit by domestic plaintiffs seeking to impose the tort liability on the firearms manufacturers that Mexico seeks in this case. Domestic plaintiffs could not bring suit for these same injuries alleged here by Mexico. Under *Pfizer*, this Court may allow Mexico to sue firearms manufacturers only on the "same basis" allowed for domestic parties, foreclosing Mexico's claims here.

C. PLCAA's reach is coextensive with the reach of U.S. court jurisdiction.

Bizarrely, Mexico argues that PLCAA does not take away the authority of the U.S. District Court for the District of Massachusetts to hear this case. But the wording of the statute is clearly to the contrary: "A qualified civil liability action may not be brought in any Federal or State court." 15 U.S.C. § 7902(a). The word "any" is unambiguous. And in terms of what sorts of actions cannot be adjudicated by *any* district court, PLCAA adds:

> The term "qualified civil liability action" means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party[.]

Id. § 7903(5)(A).[2]

Mexico has the statute precisely backward. PLCAA is intended to provide protection as far as U.S. courts can reach, consistent with Congress' findings and purposes set forth below in Part II.B. These American causes of action do not extend to conduct adjudicated in Mexican courts on Mexican soil, and

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[2] The statute then provides a number of exemptions. But none of those apply here for the reasons argued by Petitioners. *See* Pet'rs Br. 17–20, 29–31, 39.

conversely the foreign laws of Mexico do not extend into U.S. courts on U.S. soil. Insofar as any cause of action would otherwise obtain on U.S. soil under U.S. or foreign law, PLCAA bars it.

It would be a perverse reading of PLCAA to refuse to give effect to the clear and unambiguous language of an Act of Congress that precludes that liability. PLCAA's prohibition on the adjudication of a "qualified civil liability action" by a district court—such as Mexico's suit here—extends to the full extent of the district court's jurisdictional reach, including geographical, personal, and subject-matter jurisdiction. It is difficult to conceive of language that Congress could have used to make that point clearer. PLCAA applies here, and thus, bars Mexico's suit.

II. Mexico's Lawsuit Disrespects the U.S. Constitution and U.S. Law.

This lawsuit's affront to the sovereignty of the United States also manifests disrespect to the U.S. Constitution and U.S. statutory law. This Court should correct the First Circuit's mistaken holding that this action may proceed, and make clear that sweeping legal theories of the sort pressed by Mexico in this case are untenable under PLCAA.

A. The Second Amendment recognizes a fundamental right to keep and bear arms.

While Mexico may not place much stock in America's Second Amendment, "the right to keep and bear arms is fundamental to *our* scheme of ordered liberty." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (emphasis in original). This Court in

District of Columbia v. Heller, 554 U.S. 570 (2008), made "clear that this right is 'deeply rooted in this Nation's history and tradition.'" *McDonald*, 561 U.S. at 767 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). This right is antecedent to the Constitution, as Blackstone regarded it as "one of the fundamental rights of Englishmen," *Heller*, 554 U.S. at 594, 603; *see also* St. George Tucker, *View of the Constitution of the United States, in* 1 *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia* app. at 300 (Phila., William Young Birch & Abraham Small 1803) ("Tucker's Blackstone") ("The right of self-defense is the first law of nature.... Wherever … the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty … is on the brink of destruction."); Robert J. Cottrol & Raymond T. Diamond, *The Fifth Auxiliary Right*, 104 Yale L.J. 995 (1995) (reviewing Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (1994)).

But the concept of everyday law-abiding private citizens being able to own and carry firearms is a distinctly American right, as recognized years before *Heller*. *See generally* Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. Rev. 793 (1998); Nelson Lund, *The Past and Future of the Individual's Right to Arms*, 31 Ga. L. Rev. 1 (1996). "The right to keep and bear arms was considered no less fundamental by those who drafted and ratified the Bill of Rights." *McDonald*, 561 U.S. at 768–69 (citing, *inter alia*, Stephen P. Halbrook, *The Founders' Second*

Amendment 171–278 (2008); Malcolm, *supra*, at 155–64).

That regard continued in the Early Republic, as Justice Joseph Story explained:

> The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

3 Joseph Story, *Commentaries on the Constitution of the United States* § 1890 (1833) (quoted in *McDonald*, 561 U.S. at 769–70). This Court consistently regards Justice Story's *Commentaries* as authoritative expositions of the original public understanding of constitutional provisions. *See*, *e.g.*, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 802–03 (1995); *Heller*, 554 U.S. at 608.

Nor was Story alone in his view. Another leading figure among expositors of the Constitution during the Early Republic, St. George Tucker, explained:

> This may be considered as the true palladium of liberty.[] The right of self-defense is the first law of nature. * * * Wherever * * * the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

1 Tucker's Blackstone app. at 300.

The decades between the adoption of the Second Amendment in 1791 and the adoption of the Fourteenth Amendment in 1868—which extended the right to keep and bear arms to apply against the States, *McDonald*, 561 U.S. at 750—saw the central concern shift from protection against an all-powerful national government that would disarm the people writ large to a concern for personal self-defense, *see id.* at 769–77. Acknowledging this shift was nothing new. This Court had already held that when the Second Amendment was ratified in 1791, individual self-defense was "the *central component*" of the right to keep and bear arms. *Heller*, 554 U.S. at 599. The Court defined self-defense as the "central component" notwithstanding the primary anti-tyranny concern in 1791 that the citizenry be able to organize in large-scale collective self-defense against a federal government that would throw off the constraints of the Constitution and refuse to submit to political accountability by standing for election. *Id.* at 598–99; *see also, e.g.*, *Nunn v. State*, 1 Ga. (1 Kelly) 243, 251 (1846).

By 1868, the primary concern was for individual citizens who were not being protected by state or local law enforcement officers, or worse yet, whose rights were actually being violated by those obligated to protect them. *See McDonald*, 561 U.S. at 770–78; Cong. Globe, 39th Cong., 1st Sess. 1182 (1866) (statement of Sen. Pomeroy) ("Every man * * * ha[s] the right to bear arms for the defense of himself and family * * *. [I]f the cabin door of the freedman is broken open and the intruder enters for purposes as vile as were known to slavery, then should a well-

loaded musket be in the hand of the occupant to send the polluted wretch to another world * * *."). That core concern regarding self-defense remained throughout the development of the American Nation, such that "it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *McDonald*, 561 U.S. at 778.

The contours of the right to keep and bear arms are the capacious metes and bounds of the Second Amendment's original public meaning. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). This too is nothing new. "The Second Amendment standard accords with how we protect other constitutional rights." *Id.* The Second Amendment "is the very *product* of an interest balancing by the people" and it "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms" for lawful purposes. *Heller*, 554 U.S. at 635 (emphasis in original). "It is this balance—struck by the traditions of the American people—that demands [this Court's] unqualified deference." *Bruen*, 597 U.S. at 26.

It is obvious, too, that "[t]he right to keep arms, necessarily involves the right to purchase them * * *, and to purchase and provide ammunition suitable for such arms[.]" *Teixeira v. County of Alameda*, 873 F.3d

670, 678 (9th Cir. 2017) (quoting *Andrews v. State*, 50 Tenn. 165, 178 (1871)); *see also Miller v. State*, 54 Ala. 155, 157, 158 (1875) (noting that the "constitutional right to bear arms" encompasses "[t]he right * * * to obtain * * * [a] pistol for defense"). This follows from the axiom that "[c]onstitutional rights * * * implicitly protect those closely related acts necessary to their exercise." *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in judgment). Where a legal instrument "confers a right, it confers all the necessary means by which such right can be established and made effectual." *Davenport v. Tilton*, 51 Mass. 320, 329 (1845) (Shaw, C.J.); *accord Leighton v. Kelsey*, 57 Me. 85, 89 (1869); *Chapman v. Allen*, 15 Tex. 278, 284 (1855); *Golding v. Golding's Adm'r*, 24 Ala. 122, 129 (1854). Thus, "[a] ban on gun sales, or a heavy tax on such sales, would be unconstitutional * * * because it would make it much harder for would-be gun owners to get guns." Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. Rev. 1443, 1545 (2009) (footnote omitted). That is particularly true for the Second Amendment, as the right to bear arms is unusual in that it can be effectively exercised by the vast majority of citizens who lack the skills to be gunsmiths only if those citizens are able to purchase firearms manufactured by others, such as Petitioners here. The Court should explicitly include in its decision here that these lower courts and scholars are correct, providing much-needed direction to lower courts that have not afforded adequate weight to that practical reality.

It therefore is not a material difference here that suits like that of Mexico nominally target firearms manufacturers rather than firearms bearers. One cannot exercise the right to keep and bear arms without a means for acquiring them, and firearms cannot be acquired if no one can make them. This Court illustrated the point nicely in holding unconstitutional a statute targeting bookstores as a violation of the "constitutionally protected freedoms" of speech and press, noting that "[c]ertainly a retail bookseller plays a most significant role in the process of the distribution of books." *Smith v. California*, 361 U.S. 147, 150 (1959). This Court's "decisions furnish examples of legal devices and doctrines in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it." *Id.* at 150–51. The parallels to the present issue are obvious: an arms manufacturer "plays a most significant role in the process of the distribution of" constitutionally protected arms and suits like Mexico's are "legal devices and doctrines" that, even assuming they are "in most applications consistent with the Constitution" (which *Amici* do not concede), "cannot be applied in settings where they have the collateral effect of inhibiting" the right to keep and bear arms "by making the individual the more reluctant to exercise it." *See id.*

Even if one conceives of the Second Amendment as concerning rights belonging only to arms bearers and not to arms makers or merchants (which *Amici* do not concede), Second Amendment concerns are still

highly relevant when invoked by Petitioners here. "[T]he reasons which underlie [the] rule denying standing to raise another's rights, which is only a rule of practice," would be "outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained." *See Barrows v. Jackson*, 346 U.S. 249, 257 (1953).

Here, Petitioners' "interest" in invoking the Second Amendment's protections is "clear and immediate," just like those of the many "business enterprises" that the Court has permitted to litigate "against interference with the freedom"—including the constitutional rights—"of patrons or customers." *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 536 (1925). This Court's "decisions have settled that limitations on a litigant's assertion of jus tertii are not constitutionally mandated, but rather stem from a salutary 'rule of self-restraint' designed to minimize unwarranted intervention" in legal disputes. *Craig v. Boren*, 429 U.S. 190, 193 (1976). As one modern example, *Craig* held that vendors of alcoholic beverages could therefore assert third-party standing on behalf of their customers. *Id.* at 194. The Court held that principle holds when an enforcement action against a vendor "'would result indirectly in the violation of third parties' rights.'" *Id.* at 195 (quoting *Warth v. Seldin*, 422 U.S. 490, 510 (1975)). That being so, "vendors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function." *Id.*

There is a long and venerable history of third-party standing extending to similar contexts within

the broad realm of commerce, businesses, and institutions. More than a century ago, an employee was able to assert the rights of his employer. *Truax v. Raich*, 239 U.S. 33, 38–39 (1915). Private schools can assert the interests of potential students and their parents. *Runyon v. McCrary*, 427 U.S. 160, 175 n.13 (1976) (citing *Pierce*, 268 U.S. at 535–36). And parties with a connection to racially restrictive covenants have standing to vindicate the rights of prospective purchasers. *Barrows*, 346 U.S. at 258. The list goes on.

This case is of a piece with those just mentioned: arms-bearers cannot feasibly exercise their Second Amendment rights unless someone is able to manufacture "arms." By targeting Petitioners—vitally important players in the chain of commerce in lawful arms—Mexico's present suit has the clear "downstream" effect of frustrating their customers' exercise of constitutional rights. Thus, Second Amendment concerns should play a role in this litigation, even though it is not traditional "arms-bearers" who happen to be invoking them. Just as in another of this Court's cases, "[i]t sufficiently appears that mulcting in damages of [Petitioners] will be solely * * * to punish [them] for" manufacturing lawful weapons of the sort protected by the Second Amendment. *Barrows*, 346 U.S. at 258. "This Court will not permit or require [a plaintiff] to coerce [a defendant] to respond in damages" under such circumstances. *Id.*

Furthermore, just as Congress could not prohibit the manufacture or sale of firearms protected by the Second Amendment, courts cannot recognize causes of action that would impose liability for the manufacture

or sale of those same firearms. That which government "may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law," and "'a form of regulation that creates hazards to protected freedoms'" as much as direct regulation. *New York Times Co. v. Sullivan*, 376 U.S. 254, 277, 278 (1964) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). After all, "[m]aking a constitutional right too expensive to exercise infringes the right just as much as criminal prohibition." Stephen P. Halbrook, *The Right to Bear Arms in Texas: The Intent of the Framers of the Bills of Rights*, 41 Baylor L. Rev. 629, 683 (1989). Here, Mexico is attempting to do via litigation what no public body in the United States could do via legislation or regulation—namely, impose massive costs and injunctive relief against the manufacturers of firearms, including many firearms that fall within the core of the Second Amendment's protections. Such attempts by a foreign power to circumvent our Constitution must be rejected.

B. Congress enacted PLCAA to preserve the Second Amendment.

The Second Amendment is a right on paper only—a practically meaningless right—if American citizens are unable to lawfully obtain firearms. And firearms will become increasingly harder to procure if they are no longer being manufactured because the companies who currently do so went out of business. Congress passed PLCAA precisely to obviate such an eventuality.

When interpreting a statute, this Court begins with the statute's text. *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). As part of that task, this Court looks to "the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Mexico argues that the firearms manufacturers named here are unprotected because exceptions to PLCAA's operative protections apply here. Regarding both those points and Mexico's other arguments, the plain words of Congress' findings and purposes belie Mexico's position.

Congress made several findings relevant here. One is that Congress found that

> [b]usinesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

15 U.S.C. § 7901(a)(5). Another relevant finding is Congress' determination that

> [t]he possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws,

> threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

Id. § 7901(a)(6). Directly on point regarding suing American companies for the illegal conduct of others occurring on Mexican soil, Congress found that such lawsuits are based on theories that are

> without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

Id. § 7901(a)(7). As a final point, Congress found that

> [t]he liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest

> groups *and others* attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate *and foreign* commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

Id. § 7901(a)(8) (emphases added).

All this is consistent with Congress' express purposes for enacting the statute, which, as relevant to this litigation, include

> prohibit[ing] 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.

Id. § 7901(b)(1). Of critical importance, Congress intended PLCAA "[t]o preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes[.]" *Id.* § 7901(b)(2). And specific to Congress' power to regulate interstate and international commerce, U.S. Const. art. I, § 8, cl. 3, yet another purpose is "[t]o prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce." 15 U.S.C. § 7901(b)(4).

The enacted text is controlling here. The impetus for PLCAA was to prevent products-liability litigation

of the sort here, where the firearms were lawfully manufactured, had no defects, and were properly transferred from the manufacturer into streams of lawful commerce.

PLCAA would not permit a U.S. plaintiff to bring this suit in district court against U.S. firearms manufacturers for purported injuries such as these if they were suffered by U.S. citizens on U.S. soil invoking U.S. law. For all these reasons, it follows *a fortiori* that PLCAA does not permit a foreign plaintiff to bring this suit in district court for these purported injuries suffered by foreign citizens on foreign soil invoking not only U.S. law, but also foreign law. PLCAA bars this suit.

C. This matter is a foreign policy dispute properly handled through diplomacy, not domestic litigation.

None of this is to say that if Mexico considers itself aggrieved by the American firearms industry that Mexico has no recourse. Quite the contrary, Mexico has a full range of diplomatic tools at its disposal. That is where this complaint would be properly directed: to the U.S. Department of State, with the goal of bringing it to the attention of the White House. If Mexico believes the United States is not meeting its international obligations, then the President of Mexico should seek action from the President of the United States.

Foreign policy is committed to the political branches of Congress and the Executive. *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918). In dealings between sovereign nations, an "infraction

becomes the subject of international negotiations and reclamations," such that this Court has regarded it as "obvious that with all this the judicial courts have nothing to do and can give no redress." *Edye v. Robertson (Head Money Cases)*, 112 U.S. 580, 598 (1884). In other words, such disputes are resolved through "political and diplomatic negotiations." *Medellín v. Texas*, 552 U.S. 491, 520 (2008). It is outside the traditional role of Article III courts to decide such foreign policy disputes. *See Republic of Mexico v. Hoffman*, 324 U.S. 30, 34–36 (1945); *Zivotofsky v. Kerry*, 576 U.S. 1, 22 (2015).

The President addresses such international grievances as part of his power to resolve claims against the United States. *See American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 415 (2003). Indeed, the U.S. Constitution tasks the President with the "'vast share of responsibility for the conduct of our foreign relations.'" *Id.* at 414 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610–11 (1952) (Frankfurter, J., concurring)). "Such considerations, however, do not allow [courts] to set aside first principles. The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellín*, 552 U.S. at 524 (quoting *Youngstown*, 343 U.S. at 585).

However, Congress left no channel for any such purported international obligation here to be brought in district court. It is Congress' prerogative to make international obligations binding in U.S. courts. *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 315 (1829), *overruled on other grounds by United States v. Percheman*, 32

U.S. (7 Pet.) 51 (1833). Moreover, unless international agreements include language that speaks to judicial remedies, the default presumption is that the only remedies for grievances are diplomatic. *See Sanchez-Llamas v. Oregon*, 548 U.S. 331, 347 (2006). Without a clear statement in a statute, obligations under international agreements are not enforceable in U.S. district courts. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115–16 (2013). And there is no agreement here, anyway.

Even if there were, the only clear statements are to the contrary. Congress found that "[b]usinesses … engaged in … foreign commerce … of firearms … that have been shipped or transported in … foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products[.]" 15 U.S.C. § 7901(a)(5). Congress made a clear public-policy judgment. "The possibility of imposing liability on an entire industry for harm that is solely caused by others … constitutes an unreasonable burden on … foreign commerce[.]" *Id.* § 7901(a)(6). Such lawsuits "attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees[.]" *Id.* § 7901(a)(8). Therefore, one of Congress' purposes in enacting PLCAA was "[t]o prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce." *Id.* § 7901(b)(4). Congress thus spoke clearly: Congress clearly did not want lawsuits such as Mexico's lawsuit here to be adjudicated in U.S. courts.

CONCLUSION

Congress passed PLCAA to prevent precisely this sort of lawsuit. For the foregoing reasons, and for those set forth by Petitioners, the judgment of the First Circuit should be reversed.

Respectfully submitted,

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