

ALERT

Supreme Court Blocks Mexico's Gun Lawsuit: PLCAA Shields U.S. Firearm Makers from Litigation

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On June 5, 2025, the U.S. Supreme Court held unanimously, in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, that the gun-manufacturer and gun-distributor defendants sued by Mexico for negligence and related torts were immune from suit under the Protection of Lawful Commerce in Arms Act (PLCAA) because the defendants' alleged conduct did not constitute aiding and abetting the illegal sale of firearms. No. 23-1141 (U.S. June 5, 2025) (Kagan, J.).

Congress enacted PLCAA in 2005 in response to a spate of litigation that sought to hold gun companies liable in tort for harms caused by third parties' (generally criminal) misuse of firearms. *See generally* 15 U.S.C. §§ 7901-03. PLCAA generally bars civil suits against gun companies seeking to hold them responsible for such third-party misconduct. But PLCAA contains a provision called the "predicate exception," which carves out from PLCAA's general prohibition suits that allege that the gun-company defendant "knowingly violated" a statute applicable to the sale or marketing of firearms (which can include **aiding and abetting** someone else's violation of such a law), which "violation was a **proximate cause** of the harm" alleged by the plaintiff.

In 2021, Mexico sued several gun manufacturers and one gun distributor under a variety of tort claims, trying to hold them liable for the gun-violence epidemic harming the country. Seeking to make its claims viable in the face of PLCAA's bar to suit, Mexico tried to frame its allegations to fit within the predicate exception. The suit alleged that the defendants aided and abetted dealers' illegal sale of

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firearms by distributing and selling firearms to those dealers despite knowing that they make illegal sales and without trying to deter or prevent such sales – such as by refusing to distribute to those dealers, by regulating those dealers' sales practices, or by changing the design and marketing of their firearms to make them less attractive to illegal buyers. Mexico alleged that those firearms subsequently made their way into the hands of Mexican cartels, whose violence harmed the country in several ways.

The defendants moved to dismiss, arguing (among other things) that PLCAA barred the case and that their alleged conduct neither constituted aiding and abetting illegal firearms sales nor was the proximate cause of the cartel violence harming Mexico. The district court dismissed the lawsuit, finding that it was barred by PLCAA, but the First Circuit reversed, concluding that Mexico's allegations sufficed to fit the case within the predicate exception.

The Supreme Court reversed the First Circuit, holding once more that the lawsuit was barred by PLCAA. The Court did not address the proximate-causation prong of the predicate exception, instead holding simply that Mexico's allegations did not suffice to show that the defendants' conduct aided and abetted the illegal sales of firearms, under controlling principles of aiding-and-abetting liability. Specifically, as the Supreme Court explained in its 2023 decision in *Twitter v. Taamneh*, aiding-and-abetting liability requires "conscious ... and culpable participation in another's wrongdoing." And when a plaintiff seeks to hold a defendant liable under an aiding-and-abetting theory for a broad category of misconduct rather than a discrete act – like Mexico sought in its lawsuit – the defendant's participation must be "pervasive, systemic, and culpable." Under these standards, aiding-and-abetting liability generally requires more than a failure to act. Instead, the defendant must affirmatively do something to support the underlying misconduct; that is, the defendant must "participate in a crime as in something that he wishes to bring about and seek by his action to make it succeed." A defendant's "routine and general activity," combined with inaction about downstream misconduct benefiting from that activity, is thus typically not enough to show aiding-and-abetting liability – even if the defendant "knows that in some fraction of cases," third parties will exploit the defendant's activity to criminal ends.

According to the Court, Mexico's complaint did not allege conduct on the part of the defendants that satisfied these principles to plausibly allege aiding-and-abetting liability. Mexico alleged, in essence, that the defendants contributed to "systemic" misconduct (rather than discrete acts) by third parties, downstream from the defendants' own actions. Mexico thus faced a "heighten[ed]" bar to plead the defendants' involvement in that downstream misconduct in order to plausibly allege aiding-and-abetting liability. But Mexico ultimately alleged only inaction on the defendants' part – failure to alter their ordinary manufacturing and distributing practices to deter or prevent dealers' illegal sales of firearms.

In dissecting the allegations, the Court observed several flaws in Mexico's position. First, the Court expressed doubt that the claim that "manufacturers elect to sell guns to ... known rogue dealers ... without more [behavior], could ever count as aiding and abetting" under the foregoing principles. The Court also noted that, even if such allegations could ever suffice (which "would stretch the bounds of our caselaw" to hold), Mexico did not allege enough to make such a theory factually plausible because it ignored that "manufacturers do not directly supply any dealers," but rather sell to independent "middlemen" (and, even with respect to the distributor-defendant who functioned as one such middleman in the firearms market,

Mexico did not allege any facts about its practices to differentiate it from the manufacturers on this point). Further, Mexico did not even so much as name one such “bad-apple” dealer whose illegal sales the defendants allegedly aided and abetted. Nor did Mexico plausibly allege that manufacturers and distributors, upstream from those dealers, “often acquire[] ... information” about those dealers’ sales practices.

Second, the Court reasoned that the defendants’ alleged failure to regulate the dealers’ practices (such as by prohibiting bulk sales of guns by dealers in their supply chains, which Mexico said was a common feature of illegal sales) was just another instance of “passive nonfeasance” rather than affirmative action that could support an aiding-and-abetting theory. The Court reasoned that such inactions, “especially in an already highly regulated industry” like the firearms industry, “are rarely the stuff of aiding-and-abetting liability,” and “nothing special in Mexico’s allegations makes them so.”

Third, Mexico’s allegations about the defendants’ design and marketing decisions “add[ed] nothing of consequence.” In observing as much, the Court noted that Mexico took issue with the defendants’ “military style” weapons, such as the AR-15, but the “AR-15 is the most popular rifle in the country,” and guns like it are “both widely legal and bought by many ordinary consumers.” And though Mexico took issue with the defendants’ failure to make guns with better non-defaceable serial numbers, the Court recognized that this was just one more example of the defendants’ alleged inaction.

In closing, the Court observed that holding that PLCAA barred Mexico’s suit “well accords with PLCAA’s core purpose” to bar the type of lawsuits that Congress expressly enacted PLCAA to prohibit. And if the predicate exception were read as broadly as Mexico argued for in order to allow its suit to proceed, the exception “would swallow most of the rule.”

Justice Thomas concurred, but he wrote separately to underscore that, “[i]n future cases,” courts should “more fully examine the meaning of ‘violation’ under the PLCAA,” which “at least arguably” requires not just allegations of a relevant violation but also an earlier finding/adjudication that such a “violation” occurred. Otherwise, plaintiffs could force defendants to “litigate their criminal guilt in a civil proceeding, without the full panoply of protections that we otherwise afford to criminal defendants”; or even could deem defendants guilty after they have been cleared of such misconduct in an earlier proceeding. “Such collateral adjudication would be ... highly unusual, and would likely raise serious constitutional questions that would counsel in favor of a narrower interpretation.”

Justice Jackson also concurred and wrote separately, to express her view that Mexico’s complaint failed for the additional reason that it did not allege any “nonconclusory statutory violations” by either the defendants or their downstream dealers. And this failure “expose[d] Mexico’s lawsuit as precisely what Congress passed PLCAA to prevent” – lawsuits that sought to compel gun companies, through the courts, to adopt safety measures “that exceeded what state or federal statutes required.” Justice Jackson added that “Mexico merely faults the industry writ large for engaging in practices that legislatures and voters have declined to prohibit” and seeks to turn the courts into common-law regulators,” bringing its suit squarely within PLCAA’s bar, which was adopted to “preserve the primacy of the political branches” in regulating this industry.

Wiley's attorneys have extensive experience handling regulatory issues involving the firearms industry and lawsuits implicating the Second Amendment. Please reach out to any of the authors on this alert if you have any questions.