



# WEIL'S SCOTUS TERM IN REVIEW

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## Supreme Court Rejects Mexico's Effort to Hold American Gun Manufacturers Liable for Cartel Violence in Mexico

*By Zack Tripp and Marina Masterson*

Yesterday, the Supreme Court unanimously dismissed an effort by the Mexican government to hold American gun manufacturers liable for violence in Mexico by drug cartels using American firearms. The Court held that the Protection of Lawful Commerce in Arms Act ("PLCAA") shielded the manufacturers from liability, but the decision has broader implications because it clarified the law on civil aiding-and-abetting liability.

Mexico sued seven American gun manufacturers, seeking to hold them liable for cartel violence in Mexico. The PLCAA broadly bars civil lawsuits against firearm manufacturers for injuries "resulting from the criminal or unlawful misuse" of a firearm by "a third party." 15 U.S.C. § 7903(5)(A). The PLCAA has an exception, however, permitting civil lawsuits when the manufacturer "knowingly violated a State or Federal statute applicable to the sale or marketing" of firearms and that "violation was a proximate cause of the harm for which relief is sought." *Id.* § 7903(5)(A)(iii).

Mexico argued that its suit fit within that exception because the manufacturers knowingly aided and abetted gun sales in violation of federal statute. Specifically, Mexico alleged the manufacturers sold guns to dealers who they knew were involved in illegal straw purchases, failed to put controls in place to prevent an illegal market for guns, and designed and marketed guns targeting the preferences of the cartels. The First Circuit allowed the suit to proceed, holding that Mexico plausibly alleged aiding-and-abetting liability.

The Supreme Court unanimously reversed. In a 9-0 opinion by Justice Kagan, the Court emphasized that aiding-and-abetting liability requires "conscious" and "culpable participation in another's wrongdoing," and the Court found that Mexico did not make that showing. The Court emphasized that merchants are not liable for all criminal misuses of their goods, "even if [they] know[] that in some fraction of cases misuse will occur." In other words, ordinary business activity that "happens on occasion to assist in a crime" will generally *not* qualify as aiding and abetting. To become liable, a merchant must knowingly take steps to promote the crime.

The Court acknowledged that the manufacturers surely knew illegal sales of guns were taking place, but held that such knowledge does not mean the manufacturers participated in the sales. Plus, the Court reasoned, Mexico set a “high bar” for itself by claiming that these defendant manufacturers were aiding and abetting gun trafficking *in general*, rather than pinpointing any specific criminal transaction. When relying on such general accusations, the complaint must plausibly allege “pervasive, systematic, and culpable assistance” in the criminal scheme by the defendant. The allegations here did not clear that bar, with the Court even suggesting that merely electing to sell guns to known rogue dealers could never give rise to aiding and abetting. Here, the Court found, the manufacturers had simply “treat[ed] rogue dealers just the same as they do law-abiding ones.”

Justice Thomas concurred, adding his view that the PLCAA exception requires a finding of guilt or liability in an adjudication regarding a violation of state or federal statute. Justice Jackson separately concurred, adding that Mexico failed to provide anything beyond conclusory allegations about statutory violations.

The Court’s decision is important for firearms manufacturers, but it is also important for companies that face secondary liability for the misuse of their products by some customers. In particular, the Court’s decision builds upon and expands *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), which previously made clear the challenges of pleading such an aiding-and-abetting theory. Notably, like *Taamneh*, the *Smith & Wesson* decision arose on a motion to dismiss and thus rejected an aiding-and-abetting theory without need for discovery.

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