

US Supreme Court: Hearing in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico). Selling guns comparable to selling beer to teenagers?



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The hearing in the case of Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico) No. 23-1141 took place in March 2025 before the US Supreme Court. We have previously reported on this case [here](#) and [here](#). The transcript and the audio files can be found [here](#).

As previously indicated, this is a much-politicized case brought by Mexico against US gun manufacturers. Mexico alleges *inter alia* that defendants actively assist and facilitate trafficking of their guns to drug cartels in Mexico. Among the claims

for relief are: Negligence, public nuisance, defective condition - unreasonably dangerous, negligence per se, gross negligence, unjust enrichment and restitution, violation of CUTPA [Connecticut Unfair Trade Practices Act], Violation of Mass. G.L. c. 93A [Massachusetts Consumer Protection Act] and punitive damages.

From the perspective of Mexico, this case is of crucial importance because it has a direct impact on its access to US courts to seek justice for all the mayhem that cartels have inflicted using American-made weapons smuggled into Mexico. However, from an American perspective, this case seems to raise many questions and confusion as to how legal standards of proximate cause / aiding and abetting could actually apply, and all of this against the backdrop of the immunity conferred by congress to weapon manufacturers.

Perhaps controversially, counsel for Smith & Wesson Brands, Inc. et al. contended as part of his opening argument that (our summary): no case in American history supports Mexico's theory. And if Mexico is right then every law enforcement organization in America has missed the largest criminal conspiracy in America, and a large beer company is liable for every accident caused by every underage drinker since it knows that teenagers will buy beer, drive drunk and crash. More on this further down.

The proceedings

This case before the US Supreme Court is about overcoming a motion to dismiss. Consequently, it is not about determining which aspects of Mexico's allegations would survive during the litigation (and some are controversial), as indicated by one of the counsels, but whether they pass this legal hurdle.

The US District Court for the District of Massachusetts dismissed the case under the Protection of Lawful Commerce in Arms Act (PLCAA). But the First Circuit reversed, holding that the PLCAA does not bar this suit as Mexico adequately alleged that defendants have "aided and abetted the knowingly unlawful downstream trafficking of their guns into Mexico".

Unsatisfied with the decision, defendants filed a petition for a writ of certiorari before the US Supreme Court, which was granted. The hearing before the US Supreme Court took place on 4 March 2025. No judgment has yet been rendered.

The hearing

Some prominent statutes and case law mentioned

The applicable statute is the Protection of Lawful Commerce in Arms (PLCAA), which is codified in 15 U.S. Code Chapter 105, sections: §7901. Findings; purposes; §7902. Prohibition on bringing of qualified civil liability actions in Federal or State court; §7903. Definitions – 15 U.S. Code § 7903 (5)(A)(iii)).

As its title suggests, section §7902 sets forth a prohibition on bringing of qualified civil liability actions in Federal or State court, the purpose of which is to protect the Second Amendment.

The predicate exception / aiding and abetting is contained in 15 U.S. Code § 7903 (5)(A)(iii), which states the following:

(5) Qualified civil liability action

(A) In general

*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, **but shall not include**— [...]*

*(iii) an action in which a manufacturer or seller of a qualified product **knowingly violated** a State or Federal statute 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 subsection (g) or (n) of section 922 of title 18; (our emphasis)

However, other statutes were also alleged to be applicable but the extent to which they were was the subject of controversy. Mention was made to 18 U.S.C. 922, 923, 924 and 18 U.S.C. Section 2 (and other state statutes in the complaint).

Throughout the argument, the *Twitter* case was mentioned (*Twitter, Inc. v. Taamneh*, 598 U. S. 471 (2023)). This case is relevant because it deals with aiding and abetting. In its ruling, the Supreme Court held that “Plaintiffs’ allegations that these social-media companies aided and abetted ISIS in its terrorist attack on the Reina nightclub fail to state a claim under 18 U. S. C. §2333(d)(2).” However, this case deals with a different statute as will be pointed out later in this post.

Among other decisions mentioned are:

- *Hemi Group, LLC v. City of New York*, 559 U. S. 1 (2010). This case is significant because it deals with proximate cause. It concerns the filing of tax reports with respect to the sale of cigarettes online.
- *Direct Sales Co. v. United States*, 319 U. S. 703 (1943) concerns a manufacturer selling narcotics/morphine to a specific doctor in great quantities, offering them at significant discounts.

Key concepts and some allegations

The hearing revolved around some key concepts: proximate cause, foreseeability, aiding and abetting, knowingly violated, statutory interpretation, predicate exception and immunity.

With regard to ***the relationship between manufacturers, distributors and retailers***, it was pointed out that *licensed* manufacturers sell weapons to *licensed* distributors who then sell them to *licensed* retailers, a small percentage of whom sell those weapons to straw purchasers, some of whom sell them to other purchasers who transfer them to smugglers, who then transfer them to cartels that in turn do mayhem in Mexico. In the US, there is a tier-distribution chain.

One of the key allegations put forth by Mexico was that manufacturers ***aided and***

abetted the retailers because manufacturers knew that they would sell the weapons to straw purchasers. Some retailers were identified in a Washington Post article. However, a comment was made to the effect that if the government ignores which retailers are committing such actions how are the manufacturers supposed to know this fact.

A discussion ensued whether **proximate cause** related to the violation of the manufacturers and Mexico's injury or to the retail sellers and Mexico's injury. However, under the theory that aid and abetting is a form of vicarious liability then it would point to the retail sellers and Mexico's injury. Interestingly, Justice Sotomayor noticed that the proximate cases are a mess and going into that would be like opening Pandora's box.

Several cases were discussed including **Twitter and Direct Sales** and the fact that they relate to a specific violation. While counsel contended that this case is much easier, in many different respects, than the *Twitter* case, a justice said that *Twitter* dealt with a different statute. While discussing case law, and in particular a case from 1876 (St Paul Railway), there was a fleeting exchange (a telling jest) between counsel and two justices (Sotomayor and Gorsuch) about the role of the court as a collective body operating across time.

To the question whether the **PLCAA's objective** was to bar lawsuits such as this one by foreseeing immunity, it was contended by the counsel for Mexico that this was not the case. Allegations were also made that Mexico is a direct victim and that the actions were foreseeable. Importantly, serial numbers could be erased for some weapons.

Finally, it was noted that 2% of the guns manufactured in the US (about 300,000-600,000 guns) are likely trafficked into Mexico each year and end up in the cartels. Three models of guns made by the manufacturer seem to target Mexican cartels: the Super El Jefe, the Super El Grito, and the Emiliano Zapata 1911. These are smuggled to Mexico in volume. Whether this mere fact was enough for aiding and abetting was qualified as absurd by the opposite counsel.

Comments

This is a very complex case. Not only are the civil and criminal aspects intertwined but the allegations also concern independent crimes or actions committed by multiple parties before the weapons cross the border and reach

Mexico. In addition, very few retailers have been named, and allegedly on the basis of a newspaper article published in the Washington Post. Importantly, unlike *Twitter* and *Direct Sales*, there is no specific violation identified.

In my view, there is certain hesitancy with regard to this case. In particular, the consequences of this case can be far-reaching. Think for example of the production of baseball bats, knives, prescription medicines and unavoidably, selling beer to teenagers, all of which were mentioned during the hearing.

Having said that, this case has been politicized and emotions run high on both sides of the border. The need for justice is clear and compelling. There is also a growing sympathy for Mexico and for the need to remedy the wrongs committed in its territory.

From a legal perspective, however, we must recall that this case falls within the confines of PLCAA (and perhaps other statutes) and thus it is a matter of statutory interpretation. With regard to the PLCAA's predicate exception, it would seem very hard to prove that there are substantial allegations regarding a violation and that manufacturers "knowingly violated" a state or federal statute and that the violation was the "proximate cause of the harm" of Mexico's injury. Equally difficult is to prove that there are substantial allegations of "aiding and abetting", which is an example of the predicate exception and should be read as such. Accordingly, the court could rule that there is no *prima facie* violation (or substantial allegations of a violation) and thus the immunity foreseen by Congress applies. If the court favors this approach, it may not need to go into the analysis of complex concepts such as proximate cause, and in this way, avoid opening Pandora's box.

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