



## FIREARMS

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## Unanimous Win For PLCAA, Manufacturers and Sellers of Firearms

The Supreme Court unanimously decided a significant case today upholding the Protection of Lawful Commerce in Arms Act ("PLCAA"). Justice Kagan wrote the opinion for the Court with Justices Jackson and Thomas each filing concurring opinions. The Government of Mexico filed suit against seven firearm manufacturers alleging that they each aided and abetted in the unlawful sales of firearms that directed those firearms across the border into Mexico and into the hands of the drug cartels.

The general prohibition in the PLCAA against "qualified civil liability actions" is applicable unless the claims fall under one of the exceptions. The Mexican government alleged that the so-called "predicate exception" applied to the facts such that they could hold the manufacturers liable for the guns that were illegally trafficked into Mexico. The argument was that the American firearms manufacturers aided and abetted those sales by failing to exercise reasonable care to prevent trafficking their firearms into Mexico.

The unanimous Court did not doubt that such sales occurred. The issue was whether Mexico adequately pled that the U.S. Firearms manufacturers participated in those sales. The Court acknowledged the domestic firearms industry's three-tier distribution model: manufacturers sell to distributors; distributors sell to dealers; and dealers sell to customers. With that in mind, the Court identified that the Complaint failed to identify any so-called bad apple gun dealers and that the manufacturers did not directly supply gun dealers, bad apple or otherwise.

The Court held that Mexico's complaint did not plausibly allege that the manufacturers aided and abetted gun dealers' unlawful sales to Mexican traffickers and, for that reason, the PLCAA bars the suit.

The District Court dismissed Mexico's complaint but was reversed by the First Circuit. The Supreme Court granted certiorari and today's opinion issued.

Justice Jackson noted in her concurrence that the allegations in the Complaint are precisely the type that Congress enacted the PLCAA to prevent. The Court reversed the decision of the First Circuit and remanded the case.

### What this Means

This unanimous decision is a strong endorsement of the PLCAA and the analysis indicates that this Court takes both the protections and the exceptions seriously and understands Congress' intent in passing this law. While the specific facts of this case are difficult to extrapolate to many other invocations of the PLCAA, it should be comforting to see the Court's analysis.

### Next Steps

If you have questions about whether your company is subject to this Supreme Court opinion or other state or federal responsibility laws and what to do to comply, or about general firearms business matters involving licensing requirements, import and export compliance, intellectual property, excise tax, finance, or cyber-risk laws, please contact your Kutak Rock attorney or a member of Kutak Rock's [National Firearms Group](#). You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).



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