No. 23-1141

In the Supreme Court of the United States

SMITH & WESSON BRANDS, INC., et al.,
Petitioners,

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

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

BRIEF FOR THE STATE OF MONTANA, 25 OTHER STATES, AND THE ARIZONA LEGISLATURE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER AND REVERSAL

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QUESTIONS PRESENTED

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 INTERESTS OF *AMICI CURIAE*[1]

Congress has long taken a measured and carefully calibrated approach to firearms regulation. It sought to balance the public's Second Amendment rights with the need to keep guns away from criminals. Anti-gun activists wanted more. So they turned to the judiciary. Their admitted goal: to circumvent the political branches by turning the courts into regulators via creative legal theories and tenuous chains of causation. Even better, they knew they didn't have to win. The mere threat of a bankrupting judgment was sufficient and—if it wasn't—enough rolls of the dice would eventually land them the outlier victory they sought.

Congress recognized the public's right to keep and bear arms was all-but-meaningless if firearms manufacturers were put out of business, and further recognized the importance of the firearms industry to the military and law enforcement. So Congress enacted the Protection of Lawful Commerce in Arms Act of 2005 ("PLCAA"), Pub. L. 109-92, 119 Stat. 2095 (Oct. 26, 2005).

You might think that would be the end of it. But the activists are at it again, trying to cram the same creative legal theories with even more tenuous chains of causation into PLCAA's narrow exceptions, admittedly attempting to achieve through litigation what

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[1] As required by Supreme Court Rule 37.2(a), counsel for *amici* timely notified counsel of record of their intent to file this brief. No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel contributed money intended to fund the preparation or submission of this brief.

Congress rejected. Here, the activists even had *Mexico* sue American gun manufacturers for crime problems resulting from *Mexico's* policy choices. The First Circuit erred by reversing the usual rule of statutory construction by broadly construing an exception to a general provision. The upshot? The First Circuit effectively neutered the general provision. Under the First Circuit's approach, the very cases PLCAA was intended to address now fall within one of its exceptions.

This Court should review this case to correct the First Circuit's wayward approach and to prevent it from proliferating as other circuits follow. A foreign sovereign's use of American courts to effectively limit the rights of American citizens is yet another reason to review this case. For these reasons, the States of Montana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming, and the Arizona Legislature ("Amici States"), submit this amicus brief in support of petitioners' petition for a writ of certiorari.

SUMMARY OF ARGUMENT

I. For decades, Congress has carefully balanced the public's Second Amendment rights with the need to keep firearms out of criminals' hands. In the late 1990s, activists who were unhappy with the balance Congress struck turned to the judiciary, concededly attempting to use litigation to circumvent their lack of success in the legislature. Throngs of meritless litiga-

tion threatened to crush the firearms industry. Congress responded by enacting PLCAA to prevent the circumvention of its carefully calibrated scheme.

II. This case is but the latest attempt to cram materially identical litigation into one of PLCAA's narrow exceptions. Mexico seeks to do so via artful pleading that ignores its own policy choices. And yet, the First Circuit blessed Mexico's gambit by minimizing the PLCAA predicate exception's proximate causation requirement, effectively neutering PLCAA.

III. Mexico is a sovereign nation. It can close its borders if it desires to do so, but it chooses not to. Mexico's policy decisions have caused cartel violence within its borders. And now, the Mexican government has adopted a conscious policy of refusing to address that violence. Mexico should not be permitted to effectively deprive Americans of their Second Amendment rights to alleviate the negative consequences of its own policy choices.

REASONS FOR GRANTING THE PETITION

I. PLCAA is part of a carefully calibrated regulatory scheme in which Congress—not the judiciary—regulates the firearms industry.

1. For decades, Congress has carefully balanced the people's Second Amendment rights with the need to keep firearms away from criminals. That careful balancing started with Congress's first foray into firearms regulation in response to the 1930s' gangland violence. Even in responding to that pressing problem, Congress used a tailored approach: it concluded heavy taxation of transfers of machineguns, short-barreled

shotguns, short-barreled rifles, and silencers—together with the manufacturers, importers, and dealers of those weapons—was enough to achieve its aim. *See* National Firearms Act of 1934, Pub. L. 73-474, 48 Stat. 1236 (June 26, 1934). Congress concluded regulation of pistols, revolvers, and sporting arms was unnecessary. H.R. Rep. No. 73-1780, at 1 (1934). Four years later, Congress recalibrated its view, requiring manufacturers and dealers of any firearms to obtain a license, but imposing little regulation other than record-keeping. Federal Firearms Act of 1938, Pub. L. 75-785, 52 Stat. 1250 (June 30, 1938).

But Congress expanded its regulation of the firearms industry with the Gun Control Act of 1968 ("GCA"), Pub. L. 90-168, 82 Stat. 1213 (Oct. 22, 1968), "the most comprehensive gun control law ever signed in this Nation's history." President Lyndon B. Johnson, Remarks Upon Signing the Gun Control Act of 1968, 2 Pub. Papers 1059, 1059 (Oct. 22, 1968). Still, Congress's touch was measured. It expressly sought to prevent "crime and violence" without "plac[ing] any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity." 82 Stat. at 1213-14. Anyone "engaged in the business" of manufacturing or dealing in firearms fell within the statute's ambit. *Id.* at 1232. But Congress made clear the Act was "not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes." *Id.* at 1213-14.

By the 1980s, Congress concluded the Executive was overreaching in its zeal to regulate transfers of firearms. *See* Senate Subcommittee on the Constitution, *The Right to Keep and Bear Arms* 20-21 (Comm. Print Feb. 1982). Congress responded with the Firearm Owners Protection Act, Pub. L. 99-308, 100 Stat. 449 (May 19, 1986). As part of that Act, Congress found that "the rights of citizens … to keep and bear arms under the Second Amendment" required "correct[ion] of existing firearms statutes and enforcement policies," and that new legislation was needed to reaffirm the limited purpose of the GCA. 100 Stat. at 449 (codified at 18 U.S.C. § 921 Note).

Congress continued to retailor its scheme to provide greater or lesser regulation as it believed necessary. In 1993, for example, Congress required background checks for those purchasing firearms. Brady Handgun Violence Prevention Act ("Brady Act"), Pub. L. 103-159, 107 Stat. 1536 (Nov. 30, 1993). But that, too, was tailored: the statute included a waiting period provision that was in effect only until the National Instant Criminal Background Check System could be implemented. *Id.* at 1536-37. Similarly, Congress enacted a ban on so-called "assault weapons," *see* Public Safety and Recreational Firearms Use Protection Act ("Assault Weapons Ban"), Pub. L. 103-322 Title XI, 108 Stat. 1796, 1996 (Sept. 13, 1994), but allowed the ban to sunset when there was no evidence of a statistically significant effect on violent crime, *see, e.g.*, Robert A. Hahn et al., First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws, 52 RR-14 MMWR 11 (Oct. 3, 2003) ("insufficient evidence"); Lois K. Lee et al., Firearm Laws and Firearm Homicides – A Systematic Review, 177 JAMA

Int. Med. 106, 117 (Jan. 2017) ("4 studies … do not provide evidence that the ban was associated with a significant decrease in firearm homicides").

2. Although anti-gun activists had some success with the Brady Act and the Assault Weapons Ban, they were unhappy with Congress's measured approach. So the activists—often in concert with politicians pressing restrictive gun policies—started suing firearm manufacturers. They made no secret that their strategy was to file scores of lawsuits asserting novel legal claims to bankrupt firearms manufacturers.

New Orleans sued first. In 1998, it sought to hold gun manufacturers responsible for police and healthcare expenditures the city alleged resulted from gun violence. Paul Dugan & Saundra Torry, *New Orleans Initiates Suit Against Gunmakers*, WASH. POST (Oct. 30, 1998), https://perma.cc/3MDS-NUM8. Among other things, New Orleans argued the firearms industry had not invested in technology to make weapons safer. *Id.* "Guns must now become the next tobacco," said Dennis Henigan, a lawyer in the case who worked for the Washington-based Center to Prevent Handgun Violence. *Id.*

Chicago quickly followed with a suit against 38 retailers, distributors, and manufacturers, seeking $433 million in damages. Raad Cawthon, *Chicago Sues Gun-makers*, PHILA. INQUIRER (Nov. 13, 1998). Mayor Richard Daly explained it was "not a product-liability suit," adding that the "problem is the guns work all too well." *Id.* Chicago instead alleged otherwise lawful sales of firearms created a public nuisance, including by supplying too many firearms to retailers *outside* of

Chicago. *Id.* Daly argued that firearms "should not be on the streets, not only in Chicago, but in America." *Id.* The strategy, as Daly put it, was "to hit [the firearms industry] where it hurts, in the wallet." *Id.*

Dozens more cities and politicians piled on. For example, the small city of Bridgeport, Connecticut sued in early 1999. Fred Musante, *After Tobacco, Handgun Lawsuits*, N.Y. TIMES (Jan. 31, 1999). That suit even targeted trade associations for promoting the idea that handgun ownership is an effective means of personal protection. *Id.* Bridgeport's mayor proudly proclaimed he was "creating law with litigation" because other views prevailed in the legislature and "kept [his preferred] laws from being passed." *Id.*

The courts ultimately rejected the New Orleans, Chicago, and Bridgeport lawsuits, but only after years of litigation. *Morial* v. *Smith & Wesson Corp.*, 785 So. 2d 1 (La. 2001); *City of Chi.* v. *Beretta U.S.A. Corp.*, 821 N.E.2d. 1099 (Ill. 2004); *Ganim* v. *Smith & Wesson Corp.*, 780 A.2d 98 (Conn. 2001). And the tidal wave of lawsuits had the desired effect. Manufacturers were dropped by their insurers, some closed, and many drowned in legal bills. Sharon Walsh, *Gun Industry Views Pact as Threat to Its Unity*, WASH. POST (Mar. 17, 2000). A Washington lawyer involved in the city suits stated the obvious: "The legal fees alone are enough to bankrupt the industry." *Id.* HUD Secretary Andrew Cuomo famously told the firearms industry that those who did not fall into line would suffer "death by a thousand cuts." PLCAA: Hr'g Before the Subcomm. on Comm. & Admin. Law of the Comm. on the Judiciary, Ser. No. 109-21 (Mar. 15, 2005) at 30 (statement of Lawrence Keane).

The defense costs were staggering. In early 2005, Congress heard testimony that the firearms industry had spent over $200 million defending against those lawsuits, many of which were carefully drafted to take them "outside liability insurance coverage in order to apply maximum pressure." Ser. No. 109-21, at 30. That was in addition, of course, to the ever-present risk that "[o]ne abusive lawsuit … could destroy a national industry and [effectively] deny citizens nationwide the right to keep and bear arms guaranteed by the Constitution." 151 Cong. Rec. H8993 (Oct. 20, 2005).

3. Congress responded with PLCAA, Pub. L. 109-92, 119 Stat. 2095. PLCAA's sponsor explained that "[b]ecause the anti-gun community didn't get it their way, they … determined that they could use the legal system, the court system, to bypass and suggest that the third party, or the manufacturer, even though he or she was a law-abiding company and produced under the auspices of the Federal laws in responsible ways in that those products were sold through federally licensed firearms dealers, that wasn't good enough." 151 Cong. Rec. S9218 (July 28, 2005). "As a result, these legal, law-abiding manufacturers and citizens have increasingly had to pay higher and higher legal costs to defend themselves in lawsuit after lawsuit … largely by municipalities who, obviously frustrated by gun violence in their communities, chose this route." *Id.* "Instead of insisting that their communities and prosecutors and law enforcement go after the criminal element, they … looked for an easy way out." *Id.*

In findings enacted as part of PLCAA, Congress specifically referred to "[l]awsuits [that] have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek … relief for the harm caused by the misuse of firearms by third parties, including criminals." 119 Stat. at 2095 (codified at 15 U.S.C. § 7901). Congress made clear that it sought to eliminate those lawsuits. It found that the firearms industry is "heavily regulated," firearms businesses "are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products … that function as designed and intended," the liability theories underlying those lawsuits were not "a bona fide expansion of the common law," and acceptance of them "by a maverick judicial officer" "would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment." *Id.* at 2095-96. And Congress found that "us[ing] the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce" raised grave "separation of powers," "federalism," and "State sovereignty" concerns. *Id.*

So Congress prohibited lawsuits "against a manufacturer or seller of a [firearm], or a trade association, for damages … or other relief, resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party." *Id.* at 2096-97 (codified at 15 U.S.C. §§ 7902, 7903). Opponents made clear the breadth of PLCAA's prohibition:

> Essentially, this bill prohibits any civil liability lawsuit from being filed against the gun industry for damages resulting from the criminal or unlawful misuse of a gun by a third party, with a number of narrow exceptions.
>
> * * * * *
>
> Countless experts have now said that this bill would stop virtually all of the suits against gun dealers and manufacturers filed to date which are based on distribution practice, many of which are vital to changing industry practice ….

109 Cong. Rec. S9070 (July 27, 2005).

II. The Court should grant the petition to enforce PLCAA and definitively address the scope of its exceptions.

PLCAA's broad prohibition should have ended the politically motivated lawsuits against the firearms industry. To be sure, it's the reason many lawsuits pending in 2005 were dismissed. *See, e.g.*, *Ileto* v. *Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009). But antigun activists continue to seek leverage through the judiciary, filing complaints that try to squeeze the same theories Congress targeted with PLCAA into the Act's narrow exceptions.

1. This is one such case. Antigun activists partnered with Mexico in yet another attempt to circumvent PLCAA. They first argued that Mexico wasn't subject to PLCAA at all. As Mexico would have it—unlike American citizens and governmental entities—a foreign sovereign could haul the American firearms industry into court seeking redress for purely extra-

territorial harms caused by third-party criminal conduct, all without even considering PLCAA. The First Circuit correctly rejected that argument. *Estados Unidos Mexicanos* v. *Smith & Wesson Brands, Inc.*, 91 F.4th 511, 526 (1st Cir. 2024). But the First Circuit accepted Mexico's alternative argument that its claims fit into one of PLCAA's exceptions: the predicate exception. *Id.* That provision exempts from PLCAA "an action in which a manufacturer or seller of a [firearm] 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." 15 U.S.C. § 7903(5)(A)(iii).

Focusing on the proximate cause requirement, the First Circuit acknowledged it was splitting with the Third Circuit's holding that essentially identical theories—with a far shorter causal chain—lacked proximate cause. *Smith & Wesson*, 91 F.4th at 536 (discussing *City of Phila.* v. *Beretta U.S.A. Corp.*, 277 F.3d 415 (3d Cir. 2002)). The Third Circuit disposed of those claims without the benefit of PLCAA. It concluded "gun manufacturers do not exercise significant control over the [ultimate] source of the interference with the public right," such that the causal chain was "too attenuated." *City of Phila.*, 277 F.3d at 422. The First Circuit simply disagreed.

2. Here, Mexico relies on an expansive understanding of proximate causation, with the causal chain far more attenuated than the one the Third Circuit found insufficient in *City of Philadelphia*. Mexico also relies on a sleight of hand by artfully pleading around its own actions.

Take the actions of Mexico's executive. Mexico focuses on the increase in the number of gun-related homicides between 2003 and 2019. *Smith & Wesson*, 91 F.4th at 516. But gun violence in Mexico decreased in the three years after the Assault Weapons Ban expired, and it didn't increase until "the [Mexican] government's crackdown on the cartels." David B. Kopel, *Mexico's Gun-Control Laws: A Model for the United States?*, 18 TEX. REV. L. & POL. 27, 42–44 (2013). The *Wall Street Journal* explained that "[t]urf wars among drug cartels escalated after former President Felipe Calderon deployed the army against them in 2006, a get tough policy that continued under his successor Enrique Pena Nieto." Juan Montes, *Mexico's 'Hugs Not Bullets' Crime Policy Spreads Grief, Murder, Extortion*, WALL ST. J. (Feb. 25, 2024). "The army arrested hundreds of drug kingpins, and cartels splintered into smaller, warring groups." *Id.*

The fire lit, Mexican politicians suddenly reversed course. President Andres Manuel Lopez Obrador has long-advocated a non-confrontational policy of "hugs not bullets." *See, e.g.*, Catherine E. Shoichet, *Mexican Election Could Mean Drug War Strategy Shift, U.S. Officials Say*, CNN.COM (June 26, 2012). And after he took office, he implemented that policy. Arrests by Mexico's national guard, created under Obrador to replace federal police, fell from 21,700 in 2018 to just 2,800 in 2022. That's according to Mexico's own government statistics. Montes, *supra.* Not surprisingly, the State Department now warns that "[v]iolent

crime—such as homicide, kidnapping, carjacking, and robbery—is widespread and common in Mexico."[2]

Further complicating things, "some cartels now fund the election campaigns of allies, in addition to eliminating officials who oppose them." Montes, *supra*. More disturbing are reports that the U.S. Drug Enforcement Administration investigated President Obrador for accepting campaign contributions from drug cartels in exchange for promises of favorable policies. It's beyond dispute, however, that Obrador has scoffed at cartel-driven violence. He argued against "demonizing" cartels and said that "we also take care of the lives of the gang members, they are human beings." Mark Stevenson, *Mexico's President Says He Won't Fight Drug Cartels on US Orders, Calls it a 'Mexico First' Policy*, APNEWS.COM (Mar. 22, 2024), https://perma.cc/A55Y-B326. Indeed, in June 2023, Obrador said of one gang that had abducted 14 police officers: "I'm going to tell on you to your fathers and grandfathers," suggesting they should get a good spanking. *Id.*

More definitive reports make clear that Mexico's government has been infiltrated by the cartels. In 2020, Mexico's former defense minister, General Salvador Cienfuegos, was indicted in the Eastern District of New York for taking bribes from drug gangs. Jose de Cordoba & David Luhnow, *U.S. to Hand Back to Mexico Ex-Defense Minister*, WALL ST. J. (Nov. 17, 2020). According to his indictment, U.S. law enforcement intercepted thousands of BlackBerry messages between the general and gang leaders. *Id.* He was

[2] U.S. Dep't of State, Bureau of Consular Affs., *Mexico Travel Advisory*, (Aug. 22, 2023), https://perma.cc/ND8X-AXQ7.

returned to Mexico after the U.S. Department of Justice concluded "important foreign policy considerations outweigh the government's interest in pursuing the prosecution." *Id.* An expert correctly predicted that General Cienfuegos "will be freed, returned to Mexico, they will fake an investigation, not find evidence and declare him innocent." *Id.*

3. Both academics and the press widely accept the policy-driven explanation for Mexican violence. Mexico simply avoids it in favor of a Rube Goldberg-esque causal chain. But rather than appreciate the complexity and speculative nature of that rickety causal contraption, the First Circuit analogized it to a precisely predictable mechanical connection between a ship's helm and the ship's rudder. *Smith & Wesson*, 91 F.4th at 534. That was error.

Amici States dispute the facts in Mexico's complaint, but that's not the point. Rather, it's that rigorous enforcement of the proximate causation requirement is necessary to ensure appropriate allocation of responsibility and a judicially manageable proceeding. That's nothing novel. Limitations on proximate causation have long been a part of tort law through doctrines like contributory negligence and superseding causation. "The general tendency of the law, in regard to damages at least, is not to go beyond the first step." *S. Pac. Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918).

4. The First Circuit's analysis errs in a larger sense, too. "In construing provisions … in which a general statement of policy is qualified by an exception," this Court "usually read[s] the exception narrowly in order to preserve the primary operation of the provision."

Comm'r v. *Clark*, 489 U.S. 726, 739 (1989). The First Circuit did the opposite. It engaged in a hyperfine reading of the predicate exception to give it broad scope. It then concluded the exception covers "aiding and abetting illegal downstream sales" as evidence by manufacturers merely being "[a]ware of the significant demand for their guns among the Mexican drug cartels," being able to "identify which of their dealers are responsible for the illegal sales that give the cartels the guns" and "know[ing] the unlawful sales practices those dealers engage in to get the guns to the cartels." *Smith & Wesson*, 91 F.4th at 530. The remaining key allegations identified by the First Circuit are "that even with all this knowledge and even after warnings from the U.S. government, defendants continue to supply the very dealers that they know engage in straw sales and large-volume sales to traffic guns into Mexico, that they design military-style weapons and market them as such knowing that this makes them more desirable to the cartels, and that they place serial numbers on their weapons in a manner that facilitates their removal, as preferred by the cartels." *Id.* But that's merely a recitation of non-feasance, not active participation.

The First Circuit looked to *Direct Sales Co.* v. *United States*, 319 U.S. 703 (1943), as the relevant analogy. Petitioners rightly explain why that analogy fails. Pet. for Writ of Cert., at 31-32, No. 23-1141 (U.S. Apr. 18, 2024). Amici States submit the more appropriate analogy is to *City of Chicago*, 821 N.E.2d at 1106-09, and *Ganim*, 780 A.2d at 108-09, the factual allegations of which closely track Mexico's. In *City of Chicago*, the Illinois Supreme Court held that, despite

allegations of knowledge, "defendants' lawful commercial activity, having been followed by harm to person and property caused directly and principally by the criminal activity of intervening third parties, may not be considered a proximate cause of such harm." 821 N.E. 2d at 1136 (quoting *Spitzer* v. *Sturm, Ruger & Co.*, 761 N.Y.S. 2d 192, 201 (2003)). The Connecticut Supreme Court reached much the same conclusion in *Ganim*. *See* 780 A.2d at 121. It explained that "[b]ecause the consequences of an act go endlessly forward in time and its causes stretch back to the dawn of human history, proximate cause is used essentially as a legal tool for limiting a wrongdoer's liability only to those harms that have a reasonable connection to his actions." *Id.* at 130. Bridgeport's causal chain—like Mexico's—was simply too attenuated.

Given the parallels to *City of Chicago* and *Ganim*, the First Circuit's analysis also deviates from Congress's purpose in enacting PLCAA. Broadly put, Congress sought to halt cases like *Morial*, *City of Chicago*, and *Ganim*, each of which relied on allegations essentially identical to Mexico's. But the First Circuit's opinion so thoroughly neuters PLCAA as to render it a mere pleading-exercise in such cases. The Court should act to enforce PLCAA and definitively address the scope of its exceptions.

III. Mexico's sovereign power undercuts any claim of proximate causation.

Finally, Mexico's proximate causation theory contains a glaring defect. Mexico is a sovereign nation. It controls its own borders. Mexico could simply close—indeed, militarize—its border with the United States if it chose to do so. *Cf.* 8 U.S.C. § 1182(f). Doubtless

the closure would be painful, and Mexico has chosen to do otherwise. Indeed, Mexico has flung its border open and sought to extort billions of dollars from the United States to even attempt to manage the resulting chaos. Anders Hagstrom, *Mexican President Demands $20B, Work Permits for 10M Hispanics in Exchange for Immigration Help*, FOX NEWS (Jan. 8, 2024). Mexico should not be permitted to exert de facto control over the rights of American citizens to alleviate the consequences of its own policy choices.

CONCLUSION

The Court should grant Smith & Wesson's petition for a writ of certiorari.

Respectfully submitted.

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