No. 23-961

IN THE

# Supreme Court of the United States

JOHN DOE, THROUGH NEXT FRIEND JANE ROE,
*Petitioner,*

v.

SNAP, INC., DBA SNAPCHAT, L.L.C., DBA SNAP, L.L.C.,
*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## BRIEF FOR THE STATES OF MISSISSIPPI, ALABAMA, ALASKA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, IOWA, KANSAS, LOUISIANA, MISSOURI, MONTANA, NEBRASKA, NEW HAMPSHIRE, NEW MEXICO, NORTH DAKOTA, OHIO, OKLAHOMA, PENNSYLVANIA, SOUTH DAKOTA, TEXAS, AND UTAH AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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## INTRODUCTION AND INTEREST OF AMICI CURIAE*

Did Congress pass a law that allows online platforms to inflict widescale misery and escape liability for it? Lower courts have held that the answer is yes. This Court should grant certiorari to decide whether Congress really embraced such a damaging view.

The law at issue is 47 U.S.C. § 230(c), enacted as part of the Communications Decency Act. Section 230(c) does two things. First, section 230(c)(1) says that an online platform shall not be "treated as the publisher or speaker of any information" that was "provided by" a third party. Second, section 230(c)(2) says that an online platform shall not be "held liable" for "good faith" efforts to remove "objectionable" content. On its face, section 230(c) has an important but targeted scope: it prevents an online platform from being held strictly liable as the publisher of content that it had no part in creating (subsection (c)(1)) and it provides a defense for good-faith efforts to take down objectionable content (subsection (c)(2)). Yet lower courts have held that section 230(c) reaches far more broadly, granting online platforms sweeping immunity from liability for almost all claims involving online content.

That highly consequential view has made section 230(c) operate as an engine of human misery. Lower courts have heard countless cases seeking to hold online platforms accountable for their part in

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* Counsel of record for all parties received notice of undersigned counsel's intent to file this brief at least ten days before the brief's due date. S. Ct. R. 37.2.

inflicting pain. Plaintiffs have gone after platforms for their role in sex trafficking and abuse, the proliferation of child pornography, cyberbullying and harassment, terrorism, trafficking illegal drugs and guns, and more. Courts have mostly blocked such lawsuits under section 230—largely at the pleadings stage, when a plaintiff's allegations, in all their horror, are taken as true (as we take them in this brief). As companies have racked up victory after victory, year after year, they have become increasingly brazen in condoning and aiding dangerous and illegal conduct on their platforms.

This case typifies the problem. Fifteen-year-old John Doe was groomed by his high-school teacher using Snapchat, a popular messaging app that automatically deletes messages. The teacher sent Doe explicit content to coerce him into an abusive sexual relationship built on drug use. Doe sued Snapchat for facilitating this abuse through its app's defective design. Applying the dominant view of section 230, the lower courts blocked Doe's lawsuit.

Everything about this case is horrific. But it is not unusual. Online platforms play a major role in many cases involving serious harm—often to children. Deterring and combatting such harm is of great importance to amici curiae, the States of Mississippi, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, and Utah and the District of Columbia. Amici have an overriding interest in their citizens' health, safety, and welfare. The dominant lower-court view of section 230 undercuts that interest. Amici can and do protect their citizens by

enforcing criminal laws and pursuing bad actors. But our legal system also relies on tort liability and similar remedies to deter destructive conduct and to make victims whole. Lower courts' application of section 230 has left a gaping hole in the law.

This state of affairs is especially problematic because it is unlikely that Congress intended it. Section 230(c) is part of the Communications *Decency* Act, it affords (as its title says) "Protection for 'Good Samaritan[s],'" and it nowhere bestows breathtaking immunity on online platforms that themselves inflict grievous harm. Yet lower courts have read a statute designed to encourage platforms to combat "offensive material" into a mechanism allowing platforms to make people suffer without facing legal consequences. This Court should grant certiorari to decide whether that is what the law truly demands.

## SUMMARY OF ARGUMENT

As written, section 230(c) is a modest provision that prevents online platforms from being held strictly liable as the publisher of content that they had no part in creating, while providing a defense for platforms that in good faith take down or restrict access to objectionable content. Yet courts have read section 230(c) to grant platforms sweeping immunity for almost all claims involving online content. As a result, section 230(c) operates as an engine of human misery. Courts have deployed section 230(c) to thwart countless victims—of sex trafficking and abuse; of child sexual abuse material; of cyberbullying, harassment, and dangerous internet trends; of terrorism; of illegal trafficking in drugs and guns—from holding online platforms accountable for their part in inflicting pain. This Court should grant

certiorari to decide whether this is the law that Congress enacted.

## REASONS FOR GRANTING THE PETITION

### I. Lower Courts Have Read Section 230 To Give Online Platforms Sweeping Immunity From Liability—Even When Those Platforms Play A Major Role In Inflicting Harm.

On its face, 47 U.S.C. § 230(c) is modest. Titled "Protection for 'Good Samaritan' blocking and screening of offensive material," it has two parts.

Section 230(c)(1) says: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." "Traditionally," publishers and speakers ("like newspapers") were "strictly liable for transmitting illegal content" because of the "editorial control" they exercise. *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 141 S. Ct. 13, 14 (2020) (statement of Thomas, J., respecting denial of certiorari). But distributors ("like newsstands and libraries"), which generally act as "mere conduit[s]" of information without "editorial control," were liable "only when they knew (or constructively knew) that content" they distributed "was illegal." *Ibid.* Section 230(c)(1) prohibits treating online platforms as "the publisher[s] or speaker[s]" of third-party content ("information provided by another information content provider") simply for hosting or distributing that content. But section 230 does not prohibit treating a platform as the publisher or speaker when the platform itself develops the content (when it is "responsible, in whole or in part, for [content] creation

or development"). 47 U.S.C. § 230(f)(3). And although section 230(c)(1) precludes treating online platforms as publishers or speakers of third-party content, it says nothing that affects their liability as distributors of that content. *City of Chicago v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010) (Easterbrook, C.J.) (section 230(c)(1) "limits" only "who may be called the publisher of information that appears online").

Section 230(c)(2) says: "No provider or user of an interactive computer service shall be held liable on account of" either "any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be ... objectionable" or "any action taken to enable or make available ... the technical means to restrict access to" objectionable material. Under section 230(c)(2), online platforms enjoy a defense to liability when they make good-faith efforts to pull down harmful content.

Nothing in section 230(c) grants blanket immunity to online platforms for claims involving online content. Yet lower courts have read section 230(c)—and generally section 230(c)(1)—to grant online platforms sweeping immunity from legal liability.

To start, courts have ruled that section 230(c)(1) "foreclose[s]" holding online platforms liable as "distributors." *Zeran v. America Online, Inc.*, 129 F.3d 327, 332 (4th Cir. 1997). Online platforms thus have enjoyed immunity for knowingly hosting or transmitting illegal content. That is so even though section 230(c)(1) says nothing about distributor liability.

Next, courts have held platforms immune from liability even when they "alter[ ]" content alleged to be unlawful. *Zeran*, 129 F.3d at 330. Courts have thus

bestowed "broad immunity" on platforms even when they were "'responsible'" "'in part'" for creating or developing unlawful content. *Jones v. Dirty World Entertainment Recordings LLC*, 755 F.3d 398, 410, 413 (6th Cir. 2014) (quoting 47 U.S.C. § 230(f)(3)).

Courts have also held platforms immune from claims about their defective design and operation—even though such claims fault the platform's own misconduct. *Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 21 (1st Cir. 2016) (a platform's "design and operation" are "editorial choices ... within the purview of traditional publisher functions"). Courts have rejected product-liability claims even though the "duty to refrain from designing a product that poses an unreasonable risk" "differs markedly from the duties of publishers"—section 230's focus. *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1092 (9th Cir. 2021).

Last, courts have held online platforms immune from claims about their use of algorithms to curate, promote, and deliver content. Such algorithms recommend content based on targeted, individualized assessments and fall "well outside the scope of traditional publication" functions. *Gonzalez v. Google LLC*, 2 F.4th 871, 914 (9th Cir. 2021) (Berzon, J., concurring), *vacated and remanded,* 143 S. Ct. 1191 (2023) (per curiam). Yet courts have ruled that algorithms merely "facilitate the communication" of third-party content and section 230(c) thus blocks claims about them. *Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019).

All told, and despite its targeted text, lower courts have read section 230(c) "to establish broad federal immunity to any cause of action that would make

service providers liable for information originating with a third[ ]party." *Jones*, 755 F.3d at 407.

## II. As Read By Lower Courts, Section 230 Operates As An Engine Of Human Misery.

The dominant lower-court view of section 230(c) had a commendable aim: allowing a young internet to prosper so that it could usher in the many benefits that we all enjoy today. But that view has come with a dark side. It has blocked countless victims—of sex trafficking and abuse; of child sexual abuse material; of cyberbullying, harassment, and dangerous internet trends; of terrorism; of illegal trafficking in drugs and guns—from holding online platforms accountable for their part in inflicting misery on a wide scale.

### A. Sex Trafficking and Sexual Abuse

Sex traffickers use online platforms to lure the vulnerable, advertise them for sex, and connect them to abusers. Claiming that online platforms were designed in ways that facilitate trafficking and abuse, victims have tried to hold platforms accountable for their own misconduct in offering dangerous products and refusing to take steps to protect users. Courts have blocked such efforts under section 230.

Start with the futile efforts against Backpage.com, once the "leading online marketplace for commercial sex" and a "hub" for "the trafficking of minors." Staff, U.S. Senate Permanent Subcommittee on Investigations, 115th Cong., Backpage.com's Knowing Facilitation of Online Sex Trafficking 1 (2017). In one case, three 15-year-old girls were trafficked through Backpage ads. One girl was offered for sex in hundreds of ads using euphemisms for child

prostitution and was raped over 1,000 times. The second girl was trafficked in ads that ran half a dozen times a day and was raped over 900 times in two years. The third girl was raped by men who responded to ads describing her as "new," "sweet," and "playful." Second Amended Complaint ¶¶ 71-89, 90-99, 100-07, 112, Dkt. 22, *Doe v. Backpage.com, LLC*, No. 14-13870 (D. Mass. Dec. 29, 2014). The girls alleged that Backpage designed its website to promote and benefit from sex trafficking by dispensing with features (such as age- and identify-verification) that discourage predators and aid law enforcement.

The First Circuit affirmed the pleadings-stage dismissal of the girls' lawsuit. *Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12 (1st Cir. 2016). The court reasoned that Backpage's "overall design and operation of [its] website," and any "fail[ure] to provide sufficient protections to users from harmful content," were "editorial choices that fall within the purview of traditional publisher functions" that enjoy immunity under section 230(c). *Id.* at 21. That view of section 230 thwarted many efforts to hold Backpage accountable for its involvement in sex trafficking. As another court put the view, section 230 "establish[es] broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user." *M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1048 (E.D. Mo. 2011). The court therefore dismissed a case involving a 14-year-old girl who was raped and assaulted after being trafficked through Backpage. Although she sought to hold Backpage liable for its "creation and maintenance" of a platform that facilitated sex trafficking, the court ruled that section 230(c) blocked suit anyway. *Id.* at 1046.

This outcome—the judicial blocking of efforts to hold platforms accountable for their part in sex trafficking and sexual abuse—extends well beyond Backpage. In Florida, 15-year-old L.H. met a man online who promised to help her escape her abusive uncle. That man turned out to be a sex trafficker. He posted ads on the website craigslist and used the site's messaging system to sell L.H. for sex. Over a 10-year period, L.H. was drugged, beaten, burned with cigarettes, and forced into sex with hundreds of men. Second Amended Complaint ¶¶ 118-46, Dkt. 37, *L.H. v. Marriott Int'l, Inc.*, No. 21-cv-22894 (S.D. Fla. Nov. 1, 2021). L.H. sued craigslist for its part in her abuse, alleging that it knew that its platform was used for trafficking thousands of victims yet it used defective user-verification measures, an anonymized messaging system, and other features that allowed traffickers to evade law enforcement. *Id.* ¶¶ 89-125. The court dismissed the case, holding that craigslist enjoyed section 230 immunity because L.H. did not allege that craigslist itself was "proactively creating and developing the illegal postings"—despite the flaws that craigslist knew about that allowed sex trafficking to flourish on its platform. *L.H. v. Marriott Int'l, Inc.*, 604 F. Supp. 3d 1346, 1366 (S.D. Fla. 2022).

Courts have applied this same approach to immunize mainstream social-media platforms—used by hundreds of millions of children each day—against claims that they are negligently designed and operated to facilitate sex trafficking. Take Facebook—the world's most popular social-media platform with over 3 billion users. In Texas, predators used Facebook and its Instagram app to lure, groom, and traffic three girls who were age 14 or 15. *In re Facebook, Inc.*, 625 S.W.3d 80, 84-85 (Tex. 2021). The

girls claimed that Facebook failed to warn about or combat known dangers from traffickers on its platforms. *Id.* at 85, 93. The Texas Supreme Court ordered dismissal of nearly all claims against Facebook, invoking "the prevailing judicial interpretation" of section 230—that it "bar[s]" claims about a platform's "design and operation" and "lack of safety features." *Id.* at 84, 93-94.

Courts have turned away many such defective-design claims against platforms in trafficking cases. Although these lawsuits have pointed to the platforms' own conduct in facilitating sex trafficking and abuse—usually through failing to design and operate the platforms safely—courts have ruled that section 230 insulates platforms from liability by treating platform design as a section-230-immunized editorial choice. *See*, *e.g.*, *V.V. v. Meta Platforms, Inc.*, No. X06-UWY-CV-23-5032685-S, 2024 WL 678248 (Conn. Super. Ct. Feb. 16, 2024) (dismissing claims of 12-year-old girl sexually assaulted by sex offenders using Snapchat, despite allegations that platform lacked identify- and age-verification and connected adult predators with minors); *M.L. v. craigslist, Inc.*, No. C19-6153 BHS-TLF, 2022 WL 1210830 (W.D. Wash. Apr. 25, 2022) (dismissing tort claims against craigslist involving girl who was trafficked and raped from age 12 to 26, despite allegations that platform was designed to facilitate sex trafficking); *J.B. v. G6 Hospitality, LLC*, No. 19-CV-07848-HSG, 2020 WL 4901196 (N.D. Cal. Aug. 20, 2020) (dismissing claims about platform's part in sex trafficking a 15-year-old girl); *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561 (Cal. Ct. App. 2009) (affirming dismissal of claims by 13-, 14-, and 15-year-old girls assaulted through MySpace, despite allegations that platform dispensed

with age, privacy, and other precautions); *Doe v. MySpace, Inc.*, 528 F.3d 413 (5th Cir. 2008) (same for 14-year-old girl).

### B. Child Sexual Abuse Material

The internet contains hundreds of millions of images and videos depicting child sexual abuse material (also called CSAM or child pornography). Mainstream social-media platforms have helped to spread this material. And courts have deployed section 230 to insulate those platforms from liability as knowing distributors of CSAM and from claims that design defects allow CSAM to proliferate.

Start with distributor liability. Courts have long read section 230(c) to immunize platforms for liability as distributors of unlawful third-party content—even though the statute is silent on distributor liability. Thus, in *Doe v. Bates*, No. 5:05-CV-91-DF-CMC, 2006 WL 3813758 (E.D. Tex. Dec. 27, 2006), a court applied section 230(c)(1) to dismiss allegations that Yahoo! "knowingly hosted" and "profited from the trafficking of illegal child pornography." *Id.* at *1, 3. The plaintiffs alleged that a neighbor took explicit photos of their minor son and posted them to the "Candyman E-group," a Yahoo!-hosted "forum for sharing, posting, emailing, and transmitting hard-core, illegal child pornography." *Id.* at *5. The court held Yahoo! immune from liability despite its allegedly knowing or intentional conduct. Rejecting such a suit, in the court's view, aligned with "Congressional policy against civil liability for internet service providers." *Id.* at *4. As another court put it, section 230 immunizes platforms even when they make it "easy to share child pornography," "highlight[ ]" pages "that feature child pornography to sell advertising,"

"allow[ ] users who share child pornography to serve as [content] moderators," and "fail[ ] to remove child pornography even when users report it." *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1145 (9th Cir. 2022).

Next consider victims' efforts to hold platforms accountable for design features that facilitate the creation and distribution of child pornography. Take 11-year-old C.H.'s experience with Omegle, a now-defunct platform that randomly paired users for real-time text, audio, and video chats. C.H. was randomly placed in a video chatroom with an anonymous user—"John"—who threatened to hack C.H. and her family if she did not "remove all her clothing" and "touch, fondle, and masturbate her naked genitals in front of the camera." John recorded the encounter, "forever memorializing" C.H.'s abuse and trauma. Second Amended Complaint ¶¶ 54-65, Dkt. 75, *M.H. v. Omegle.com LLC*, No. 21-cv-00814 (M.D. Fla. Sept. 29, 2021). C.H.'s parents sued Omegle, alleging that it "created a forum that harbored, enticed, and solicited child sex trafficking." *M.H. v. Omegle.com, LLC*, No. 8:21-CV-814-VMC-TGW, 2022 WL 93575, at *5 (M.D. Fla. Jan. 10, 2022) (now on appeal). They claimed that the platform knew that sexual predators took advantage of its features to target children, yet chose not to have user-screening, age-verification, or other features to protect minor users. *Id.* at *1. The court dismissed the case, ruling that "[m]erely providing the forum where harmful conduct [takes] place" cannot "serve to impose liability" in light of section 230. *Id.* at *5.

That turning away of design-defect claims in CSAM cases is widespread. A court in California rejected the claims of three young girls who were abused by predators using Snapchat—the popular

messaging app (at issue in this case) that automatically deletes messages after short periods. Each girl, at age 11 or 12, began conversing with predators who pressed them to share explicit content, including videos showing one girl masturbating and penetrating herself with foreign objects. The predator responsible said he used Snapchat because he "kn[e]w the chats will go away." Amended Complaint ¶¶ 1-41, 42-67, 68-82, 87, Dkt. 43, *L.W. through Doe v. Snap Inc.*, No. 22-cv-00619 (S.D. Cal. Aug. 22, 2022). The girls sued Snapchat, alleging that its ephemeral design feature and failure to adopt tools to detect CSAM resulted in an unreasonably dangerous product. *L.W. through Doe v. Snap Inc.*, 675 F. Supp. 3d 1087, 1097 (S.D. Cal. 2023). The court dismissed the claims, ruling that the girls' harms were "related to the posting of third-party content" and thus section 230 blocked their claims. *Ibid.*; *see also Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1252 (S.D. Fla. 2020) (dismissing claims by minor who was coerced into sharing explicit photos and holding that platform's failure to warn about its dangerous design "is precisely the type of claim" barred by section 230).

### C. Cyberbullying, Harassment, And Dangerous Internet Trends

Online platforms provide convenient forums for bad actors to launch cyberbullying and harassment campaigns. And the press of a button can spread viral content that often convinces people (mostly young children) to risk their safety by following dangerous internet trends. Courts have applied section 230 to immunize platforms from claims that their defective design choices allowed harmful content to spread, and

even against claims that the platforms promoted and channeled such content to specific, vulnerable users.

First take cyberbullying. It has led kids to suicide. Consider the case of 16-year-old Carson Bride. For months Carson was bombarded with threatening, obscene, and humiliating comments on the anonymous messaging apps YOLO and LMK. It became too much: Carson took his life in 2020. Other minors using YOLO and LMK "routinely received" horrific and threatening messages. Faced with such abuse, an alarming number have, like Carson, committed suicide. Amended Complaint ¶¶ 1-11, 35, 85-104, 188, Dkt. 113, *Bride v. YOLO Technologies, Inc.* (C.D. Cal. June 27, 2022). Carson's parents claimed that YOLO and LMK structured their platforms around anonymization (despite its risks to children), falsely told the public that they would protect users from abuse, and failed to act on reports of harassment. *Id.* ¶¶ 3-9. They sought to hold the companies "liable for their own conduct." *Id.* ¶ 17. The court dismissed their claims, reasoning that a platform's "decisions about [its] structure and operation" enjoy section 230 "immunity." *Bride v. Snap Inc.*, No. 2:21-cv-06680-FWS-MRW, 2023 WL 2016927, at *5 (C.D. Cal. Jan. 10, 2023) (now on appeal).

Courts have similarly held platforms immune from claims that they lack basic safety features to prevent harassment, impersonation, and similar abuse. Courts thus held a dating app immune from claims that its defective design allowed someone to impersonate, and direct hundreds of others to harass, an ex-boyfriend. *Herrick v. Grindr LLC*, 765 F. App'x 586, 588-91 (2d Cir. 2019). Similar efforts to hold platforms accountable for their part in harassment

have been turned away under section 230. *E.g.*, *Grossman v. Rockaway Township*, No. MRS-L-1173-18, 2019 WL 2649153, at *2, 14 (N.J. Super. Ct. June 10, 2019) (Snap immune from claims arising from suicide of 12-year-old girl after "pervasive and persistent bullying"); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1120-22 (9th Cir. 2003) (dating site Matchmaker immune from claims that it enabled "a cruel and sadistic identity theft" leading to the harassment of an actress and her family).

Beyond targeted harassment campaigns, online platforms also help to spread dangerous internet trends. Dangerous trends (often framed as "challenges") are made accessible to young children "through social media platforms"—particularly the short-form-video-sharing platform TikTok. Alisha Rahaman Sarkar, TikTok's 'Blackout' Challenge Linked to Deaths of 20 Children in 18 Months, Report Says, Independent (Dec. 1, 2022), bit.ly/3wQxKJm. Recent trends include: the Blackout Challenge, which encourages children to choke themselves until they pass out; the Benadryl Challenge, which involves guzzling the antihistamine Benadryl to achieve hallucinogenic effects; the Skull Breaker Challenge, which involves flipping and falling on one's head; the Cha-Cha Slide Challenge, where people swerve while driving; the Tooth Filing Challenge, which involves filing down one's teeth with a nail file; and the Fire Challenge, which involves dousing oneself in a flammable liquid and lighting oneself on fire. Complaint ¶¶ 63, 64, Dkt. 1, *Anderson v. TikTok, Inc.*, No. 22-cv-01849 (E.D. Pa. May 12, 2022). The Blackout Challenge alone was tied to the deaths of at least 20 children in 2021 and 2022—most of them age 12 or under. Sarkar, TikTok's 'Blackout' Challenge.

Notably, these cases often involve platforms that not only distribute dangerous content but actively promote it in a targeted way through algorithms. Take the case of 10-year-old Nylah Anderson, who in 2021 asphyxiated herself with a purse strap while attempting the Blackout Challenge. Complaint ¶¶ 1-2, 84. Nylah saw the challenge on her TikTok "For You Page," which displays algorithmically selected content that "is unique and tailored to [a] specific individual" based on factors including age. *Id.* ¶¶ 3, 53. Nylah's mother sued the platform over its "own independent conduct" in designing the "dangerously defective TikTok app and algorithm." *Id.* ¶ 104. The court accepted that TikTok made the Blackout Challenge "readily available" and that its algorithm "promot[ed]" the challenge and brought it "to [Nylah's] attention." *Anderson v. TikTok, Inc.*, 637 F. Supp. 3d 276, 282 (E.D. Pa. 2022) (now on appeal). Yet the court dismissed the case, ruling that TikTok's algorithm is "inextricably linked to" the publication of "third-party user content"—"exactly" what section 230 "shields from liability." *Id.* at 281-82.

**D. Terrorism**

Terrorist groups use online platforms to recruit and train members, spread propaganda, and launch attacks. Victims have claimed that online platforms' algorithms channel terrorist content to sympathetic users. Courts have applied section 230 to immunize platforms for promoting such content.

In a well-known case, several U.S.-citizen victims of Hamas terrorist attacks in Israel sued Facebook in federal court. The victims included a U.S. Army veteran who was stabbed to death while heading to dinner, a 16-year-old boy who was kidnapped then

fatally shot, a 3-month-old girl who was mowed down by a terrorist who rammed a car into a train platform, and a 76-year-old grandfather of eight who was murdered by Hamas operatives on a public bus. Second Amended Complaint ¶¶ 225-89, 290-402, 485-511, 553-75, Dkt. 53-1, *Force v. Facebook Inc.*, No. 16-cv-05158 (E.D.N.Y. June 15, 2017). The victims' families and an attack survivor sued Facebook, claiming that its algorithms served "as a broker or match-maker" that linked Hamas members and supporters, brought together "like-minded" users interested in terrorism, and "actively encourage[d] users to attend [terrorist] events." *Id.* ¶¶ 611, 614; *see id.* ¶¶ 599-622. Thus, the plaintiffs claimed, Facebook's algorithms "substantially assisted" Hamas in carrying out terrorist attacks. *Id.* ¶ 662. Applying a "broad[ ]" view of section 230 "immunity," the Second Circuit affirmed the dismissal of the case. *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d Cir. 2019). The court viewed Facebook's use of friend- and content-suggestion algorithms as mere publication of third-party content: "arranging and distributing third-party information inherently forms 'connections' and 'matches' among speakers, content, and viewers," the court said, which is "an essential result of publishing." *Id.* at 66.

That approach is, again, widespread. In another case, Nohemi Gonzalez, a 26-year-old student from California, was killed by ISIS terrorists along with 129 other civilians in coordinated attacks across Paris. Third Amended Complaint ¶¶ 1, 299, 471-81, Dkt. 111, *Gonzalez v. Google, Inc.*, No. 16-CV-3282 (N.D. Cal. Nov. 6, 2017). Nohemi's family sued Google under a federal antiterrorism law, 18 U.S.C. § 2333, claiming that its YouTube platform recommended

ISIS content to sympathetic users and thus "facilitat[ed] social networking among jihadists." *Id.* ¶¶ 542-53, 558-66. The Ninth Circuit affirmed the dismissal of the case. *Gonzalez v. Google LLC*, 2 F.4th 871 (9th Cir. 2021). It reasoned that the "algorithms d[id] not treat ISIS-created content differently than any other third-party created content, and thus [were] entitled to [section] 230 immunity." *Id.* at 894. This Court granted certiorari to review the Ninth Circuit's "application" of section 230. *Gonzalez v. Google LLC*, 143 S. Ct. 1191, 1192 (2023) (per curiam). But this Court ultimately vacated the Ninth Circuit's judgment based on a related case narrowing section 2333 liability, *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (2023). So the Court was not able to address a view of section 230 that has prevented terrorist victims from being made whole.

Because the broad view of section 230 remains dominant, many victims find the courthouse closed to them. *E.g.*, *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 876, 888-92 (N.D. Cal. 2017) (claims that Twitter, Google, and Facebook promoted terrorist content linked to the ambush killing of five police officers in Dallas); *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116, 1118, 1119 (N.D. Cal. 2016) (claims that Twitter aided ISIS's murder of U.S. contractors), *aff'd*, 881 F.3d 739 (9th Cir. 2018); *cf. Crosby v. Twitter, Inc.*, 921 F.3d 617, 627 n.7 (6th Cir. 2019) (noting that section 230 would be a "substantial hurdle" for victims seeking to hold Twitter, Facebook, and Google liable for allegedly facilitating the Pulse Night Club shooting).

### E. Illegal Drugs And Firearms

Online platforms provide vast marketplaces for selling legitimate products and services. But those

platforms also provide forums for selling illicit items, including illegal drugs and guns. Section 230 has shielded platforms from liability for such sales, even against claims that the platforms themselves facilitated lawbreaking and caused harm.

Section 230 has, for example, thwarted plaintiffs alleging that online platforms were designed to promote drug trafficking and abuse. Take the case of Wesley Greer. After a knee injury in college, Wesley was overprescribed opioid painkillers. He became addicted to painkillers and then to heroin. He searched the internet for heroin and was directed to the Experience Project, an anonymity-based social-networking website that connected him with a drug dealer in Florida. That dealer sold Wesley heroin that was laced with fentanyl. Wesley died of fentanyl toxicity the next day. Complaint ¶¶ 12, 18-19, 43-57, Dkt. 1-1, *Dyroff v. Experience Project*, No. 17-cv-05359 (N.D. Cal. Sept. 15, 2017). Wesley's mother sued the Experience Project, claiming that it let drug traffickers operate on the site and steered users to groups dedicated to illegal drug sales. The platform's data-mining algorithms, she claimed, directed vulnerable addicts to communities such as "I Am a Drug Addict," "I Can Help With [Drug] Connect In Orlando FL," "I Am a Heroin Addict," "I Miss Using Heroin," and "Heroin Heroin and more Heroin." *Id.* ¶¶ 2, 3. Despite all this, the Ninth Circuit affirmed the dismissal of the case, ruling that the platform merely "facilitate[d] the communication and content of others," so it was immune "as a publisher of third-party content." *Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1098, 1099 (9th Cir. 2019).

Similarly, section 230 has thwarted plaintiffs alleging that online platforms were designed to

promote illegal gun sales. *E.g.*, *Stokinger v. Armslist, LLC*, No. 1884CV03236F, 2020 WL 2617168, at *3, 7 (Mass. Super. Ct. Apr. 28, 2020) (dismissing claims brought by a police officer shot by an illegal-gun buyer, despite allegations that online marketplace's "design and operational features facilitate[d] illegal firearms sales"). In one case, Zina Daniel Haughton obtained a restraining order against her abusive husband, Radcliffe, which barred him from possessing a gun. Radcliffe turned to the website armslist.com to buy a handgun for $500 in a McDonald's parking lot. The next day Radcliffe shot and killed Zina and two others, wounded four more, and killed himself. Zina's daughter sued Armslist, claiming that its site was "specifically designed" to facilitate illegal gun sales. *Daniel v. Armslist, LLC*, 926 N.W.2d 710, 714-16 (Wis. 2019). Affirming the dismissal of the case, the Wisconsin Supreme Court summed up the dominant view—that section 230 immunizes a platform even when it "knows" that its design features are "being used for illegal purposes." *Id.* at 721-22; *see id.* at 716.

## III. This Court Should Grant Review To Decide Whether Congress Adopted Section 230 To Operate As An Engine Of Human Misery.

As shown above, the dominant lower-court view of section 230 has produced a tragic state of affairs under which victims can rarely be made whole by online platforms that participate in harming them. Victims of sex trafficking, sexual abuse, harassment, terrorism, and other horrors have been shut off from the remedies the law provides to address egregious harm—often at the early stages of litigation when their allegations must be taken as true.

It defies belief that Congress sought to accomplish this when it enacted section 230. Section 230(c)(1) takes the important but modest step of ensuring that an online platform does not become strictly liable as "the publisher" of "third-party content" "simply by hosting or distributing" it. *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 141 S. Ct. 13, 14 (2020) (statement of Thomas, J., respecting denial of certiorari). Together with section 230(c)(2)'s targeted defense for Good Samaritan platforms, section 230(c) "promote[s] the continued development of the Internet" while "remov[ing] disincentives" for "blocking and filtering" harmful content. 47 U.S.C. § 230(b)(1), (4). Yet courts have read section 230 to immunize platforms for knowingly distributing unlawful and dangerous content, for promoting harmful content to targeted users, and for operating products that expose users to known dangers. Courts have thus extended section 230 "far beyond anything that" Congress "plausibly could have ... intended." 1 Rodney A. Smolla, Law of Defamation § 4:86 (2d ed. updated Nov. 2023). And in doing so they have encouraged platforms to become more and more brazen in inflicting misery.

This does not mean that every plaintiff who sues an online platform has a winning claim. Such claims (including some described above) may fail for many reasons. But given the stakes, plaintiffs should not have their claims rejected out of hand based on a view that "read[s] extra immunity into [a] statute[ ] where it does not belong." Pet. App. 42a (Elrod, J., dissenting from denial of rehearing en banc).

The time has come for this Court to decide whether lower courts are right to attribute this damaging view of section 230 to Congress. Over more than a quarter

century, that view has emboldened online platforms to continue inflicting pain on a wide scale. The issue could not be more important. And try as the amici States do, they cannot fully make up for the critical role that tort and other legal remedies play in combatting bad conduct and making victims whole. Those mechanisms are vital—and section 230, as lower courts have viewed it, largely blocks those mechanisms from operating against online platforms for harms inflicted with online content. This Court should decide whether Congress really placed beyond the law those who cause so much pain.

## CONCLUSION

The petition should be granted.

Respectfully submitted.

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