

No. 22-695

IN THE
Supreme Court of the United States

JANE DOES NO. 1–6, ET AL.,
Petitioners,
v.
REDDIT, INC.,
Respondent.

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

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

This Court should grant review to resolve a question of statutory interpretation (1) that Respondent Reddit, Inc. (“Reddit”) does not dispute is “an important question of federal law that has not been . . . settled by this Court,” S. Ct. Rule 10(c); (2) that has arisen in numerous cases involving sex trafficking of children and will continue to recur; and (3) where the prevailing decisions of the lower courts are contrary to the plain text of the governing statute and frustrate Congress’ remedial legislation creating broad civil remedies for victims of sex trafficking on the Internet. If this Court does not step in, the law on the books will be wrong in eleven states and will prevent minor victims from seeking the justice they deserve. This Court respectfully should grant review.

I. This Case Presents an Excellent Vehicle for Resolving the Question Presented

Petitioners and their children are victims of sex trafficking under 18 U.S.C. § 1591 and Reddit “knowingly benefits” from “participation in a venture” that Reddit “knew or should have known has engaged” in the Section 1591 violation. *See* 18 U.S.C. § 1595(a). This case is particularly well suited for resolving the correct interpretation of Section 230(e)(5)(A), which abrogates Section 230 immunity for “any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title.” 47 U.S.C. § 230(e)(5)(A).

Section 1591 criminalizes “sex trafficking of children” by whoever commits the predicate act with knowledge or reckless disregard “that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act.” 18 U.S.C. § 1591(a). “Commercial

sex act” is defined broadly as “*any* sex act, on account of which *anything* of value is given to or received by *any* person.” 18 U.S.C. § 1591(e)(3) (emphasis added). Petitioners’ and their children’s experiences fall squarely within the definition of “commercial sex act.”

Jane Doe 1 was sixteen when her boyfriend recorded four videos of them engaging in sexual intercourse without her knowledge or consent. App. 106a (First Amended Complaint (“FAC”) ¶ 143). “On account of” those “sex acts” the boyfriend “received “anything of value”—the videos he recorded. That is a commercial sex act. As to the other underage victims, their trafficker(s) enticed them to provide sexually explicit photographs. App. 109a, 115a, 123a, 125a, 128a (FAC ¶¶ 156, 175, 203, 213, 224). “On account of” those “sex acts” the trafficker(s) “received” “anything of value”—the photographs. That is a commercial sex act. When these photos and videos were uploaded to Reddit’s website, Reddit knowingly benefited (and continues to benefit) through increased user traffic and ad revenue from the venture that “has engaged” in the Section 1591 violation. *See, e.g.*, App. 133a–134a (FAC ¶¶ 234–238).

Reddit asserts the “sex act” in Section 1591 requires “some form of physical sexual contact,” and therefore the creation of sexually explicit videos and photographs of children is outside the scope of Section 1591. Br. Opp. 20. That is not correct. The breadth of the statutory language covers a wide range of conduct that goes beyond physical sexual contact. *See, e.g.*, 18 U.S.C. § 1591(e)(3) (“any sex act,” “anything of value,” “any person”). “[R]ead naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)). At least one

court found a Section 1591 violation where there was no physical contact, but the trafficker convinced a 13-year-old girl to send images of her masturbating to him via the Internet. *See United States v. Tollefson*, 367 F. Supp. 3d 865, 878–80 (E.D. Wis. 2019). Here, underage victims were likewise coerced into taking and sharing sexually explicit photographs or videos. The plain meaning of “any sex act” brings Petitioners’ case and the creation of sexually explicit imagery within the ambit of Section 1591.

Faced with the expansive language in Section 1591(e)(3)’s definition of “commercial sex act,” Reddit relies on the definition of “sexual act” in 18 U.S.C. § 2246(2). Br. Opp. 20. Section 2246 provides definitions for Chapter 109A of Title 18—not Chapter 77, which covers Section 1591. *See* 18 U.S.C. § 2246 (stating that these definitions apply to terms “[a]s used in this chapter”). Courts have repeatedly rejected Reddit’s exact argument. *See, e.g., United States v. Taylor*, 44 F.4th 779, 789 (8th Cir. 2022) (declining “to restrict ‘sex act’ as used in 18 U.S.C. § 1591 (Chapter 77) by incorporating a definition set forth in 18 U.S.C. § 2246(2), which expressly limits its application to offenses in Chapter 109A”); *United States v. Bazar*, 747 F. App’x 454, 456 (9th Cir. 2018) (rejecting the “argument that [the court] should import the narrower definition of ‘sexual act’ from 18 U.S.C. § 2246(2) into section 1591(a)”); *United States v. Sebastian*, No. 20-cr-10170-DJC, 2023 WL 2187895, at *14 (D. Mass. Feb. 23, 2023) (holding “rules of statutory construction” prevent the court from interpreting “any sex act” under Section 1591 in accordance with 18 U.S.C. § 2246(2)); *Ardolf v. Weber*, 332 F.R.D. 467, 478 (S.D.N.Y. 2019) (refusing to “disregard the plain and ordinary definition of the term ‘any sex act,’ and instead use the definition of the term ‘sexual act’ in

18 U.S.C. § 2246(2)"); *Noble v. Weinstein*, 335 F. Supp. 3d 504, 522–23 (S.D.N.Y. 2018) (explaining that “[b]ecause 18 U.S.C. § 2246’s definition does not include the modifier ‘any’ before ‘sex act,’ . . . it is rejected as contrary to and incompatible with Section 1591’s plain language”). Reddit provides no explanation why its atextual argument should trump these well-reasoned decisions.

Reddit also suggests sexually explicit images can form the basis of a Section 1591 violation only if those images are used for prostitution, and in all other cases the creation and distribution of child pornography are covered by other state and federal statutes. Br. Opp. 19, 21–22. But more than one statute can criminalize the solicitation of minors for sexually explicit images. It is axiomatic that Congress may proscribe the same conduct in multiple statutes. *Cf. United States v. Batchelder*, 442 U.S. 114, 123–24 (1979) (“This Court has long recognized that when an act violates more than one criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants.”); *see also United States v. Gresham*, 118 F.3d 258, 264 n.9 (5th Cir. 1997) (“The Constitution permits Congress to prohibit the same conduct under multiple statutes, provided the prosecution does not violate the Double Jeopardy Clause.”).

And the fact that traffickers have used the Internet to post sexually explicit images when advertising victims for sexual services does not create a floor for allegations sufficient to allege a Section 1591 violation. *See* Br. Opp. 20 (citing cases involving posting of sexually explicit images in connection with advertisements for prostitution). Individuals who coerce minors into creating and sending sexually explicit images

can also be guilty of “recruit[ing],” “entic[ing]” or “obtain[ing]” a victim to “engage in a commercial sex act.” 18 U.S.C. § 1951(a).

II. This Case Presents an Important Question of Federal Law that Should Be Settled by the Court

Reddit does not dispute that Petitioners’ case involves “an important question of federal law that has not been . . . settled by this Court.” S. Ct. Rule 10(c). This provides an independent basis for review.

Section 230(e)(5)(A) provides that “any claim in a civil action brought under section 1595 of title 18” is not subject to immunity under Section 230(c)(1) provided that “the conduct underlying the claim constitutes a violation of section 1591 of that title.” Whether “conduct underlying” covers third-party conduct has significant implications. The Ninth Circuit read Section 230(e)(5)(A) to mean “a website can only be held liable if its own conduct—not a third party’s—violates 18 U.S.C. § 1591.” App. 10a. Accepting this reading, a victim must (1) prove that a website operator itself perpetrated a sex-trafficking crime; (2) satisfy an elevated *mens rea* requirement that precludes constructive knowledge or recklessness; and (3) satisfy a stricter, criminal standard for “participation in a venture,” even though the claim is only civil in nature. Imposing these high burdens on sex-trafficking victims effectively eliminates their civil remedies against the website companies with the most to gain from the flood of child sexual abuse material on the Internet. Reddit cannot dispute the overwhelming implications of the Ninth Circuit’s atextual reading.

Instead, Reddit suggests Petitioners’ request is based on Rule 10(a), which applies if there is a

“conflict” among decisions of courts of appeals “on the same important matter.” Br. Opp. 15–19. Petitioners do not seek relief under Rule 10(a); the Ninth Circuit is the only federal appellate court to have interpreted Section 230(e)(5)(A). That fact does not undermine the important question of federal law at-issue, the errors in the Ninth Circuit’s reasoning, and the considerable repercussions of that decision.

Reddit’s opposition brief fails to overcome the problems with the Ninth Circuit’s atextual reading. *First*, Reddit relies on *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27 (2015), Br. Opp. 23–24, without engaging with Petitioners’ arguments as to why *Sachs* does not support reading words into Section 230(e)(5)(A). Reddit’s argument proceeds in four steps: (1) “underlying” in Section 230(e)(5)(A) is synonymous with to be at the “basis” or “foundation” of; (2) *Sachs* considered what it means for a claim to be “based upon a commercially activity carried on in the United States” by a foreign state under the Foreign Sovereign Immunities Act; (3) *Sachs* concluded courts must look to that which, “if proven, would entitle a plaintiff to relief”; and (4) because Petitioners must prove “participation in a venture” to prevail on a Section 1595 beneficiary claim, Reddit’s “participation” conduct must violate Section 1591 for Section 230(e)(5)(A) to apply. Br. Opp. 23–24. In moving through these steps, Reddit makes several illogical leaps. *See* Pet. Br. 23–25. Most critically, *Sachs* states “the mere fact that” certain conduct “would establish a single element of a claim is insufficient to demonstrate that the claim is ‘based upon’ that conduct. 577 U.S. at 34. Reddit’s argument violates that rule. Reddit offers no justification why a single element—participation in a venture—forms the “basis” or “foundation” of Petitioner’s claim. As the petition explains, the foundation of Petitioners’ suit is

the third-party “venture” that violates Section 1591(a)(1). See Pet. Br. 23–24.

Second, Reddit relies on a strained reading of Section 230(e)(5)(B)–(C) to interpret Section 230(e)(5)(A). In Section 230(e)(5)(B)–(C), Congress carved out from immunity state criminal prosecutions where the “conduct underlying the charge” violates 18 U.S.C. § 1591 or 18 U.S.C. § 2421A. Reddit argues subsections (B) and (C) must be read “as requiring proof that *the defendant*, and not some third party, violated the criminal law” and therefore “conduct underlying the claim’ must mean the same thing in subsection (A).” Br. Opp. 25–26 (emphasis in original). Reddit cites no authority to support that the conduct underlying the state charges necessarily refers to a website defendant’s conduct. States may criminalize a defendant benefitting from third-party conduct if, for example, they have enacted the equivalent of 18 U.S.C. § 1591(a)(2) (“Whoever knowingly . . . benefits . . . from participation in a venture which has engaged in act described in violation of [18 U.S.C. § 1591(a)(1)]”).

There is also a key difference between the sections: (A) refers to a “claim” and (B)–(C) refer to a “charge.” Reddit argues the terms have the same basic meaning because they both “refer to what the prosecuting party must prove to secure relief.” Br. Opp. 26. But a claim encompasses “a legal remedy to which one asserts a right.” *Claim*, Black’s Law Dictionary (11th ed. 2019), and a charge means “a formal accusation of an offense as a preliminary step to prosecution.” *Charge*, Black’s Law Dictionary (11th ed. 2019). Claim refers to remedies sought and charge refers to the prosecuted person’s “offense”—meaning its conduct in “violation of the law.” *Offense*, Black’s Law Dictionary (11th ed. 2019). The principle that identical phrases in a statute

should normally be given the same meaning is inapplicable because “claim” and “charge” are not identical and have distinct meanings. *See Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932) (noting presumption that the same words or phrases in a statute should be given the same meaning “is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent”).

Third, Reddit mischaracterizes Petitioners as advocating for an interpretation that “*all* section 1595 claims would be exempt from section 230.” Br. Opp. 26–28 (emphasis in original). Not so. Under Petitioners’ reading, only Section 1595 beneficiary claims predicated on Section 1591 violations— as opposed to the myriad other prohibitions in Chapter 77 of Title 18, such as slavery or forced labor—fall within the scope of Section 230(e)(5)(A). The fact that an earlier draft of the statute stated nothing in Section 230 “shall be construed to impair the enforcement or limit the application of section 1595,” Br. Opp. 27 (quoting S. 1693, 115th Cong. § 3 (Aug. 1, 2017)), does not advance Reddit’s preferred reading. Congress enacted the statute with the language “if the conduct underlying the claim constitutes a violation of section 1591.” That addition does not state the *defendant’s own conduct* must violate Section 1591. Rather than prove Reddit’s reading, that language distinguishes between sex trafficking (Section 1591) and other Chapter 77 prohibitions that can give rise to a Section 1595 civil claim. Reddit’s attempt to read additional words into the statute is improper because “only the words on the page constitute the law adopted by Congress and approved by the President.” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020).

Finally, Reddit distorts the principle of statutory interpretation that remedial statutes should be construed broadly by implying that Petitioners are advocating for a purposive reading of the statute. Br. Opp. 28–30. It is a “familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes.” *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967). This canon of construction does not mean that courts should interpret a statute to pursue its stated purpose without consideration of the text. But where, as here, a remedial statute has a plain and unambiguous meaning, it should be read broadly. Section 230(e)(5)(A) addresses a complex societal problem—the explosion of child sex trafficking on the Internet—by creating civil remedies for victims against some of the largest companies in the world with the most to gain from the proliferation of child sexual abuse. The error below was in adopting a narrow, atextual reading that significantly curtails a victim’s private right of action when a broader reading is equally (or more) plausible.

III. *Gonzalez* Impacts this Case

Section 230(c)(1) provides immunity from suit only to the extent a claim “treat[s]” a defendant as a “publisher or speaker” of third-party information. 47 U.S.C. § 230(c)(1). In *Gonzalez v. Google LLC*, No. 21-1333, for the first time the Court will consider what it means for a claim to treat a defendant as a publisher or speaker. That decision will affect Petitioners’ case.

Claiming waiver, Reddit argues Petitioners are not entitled to the benefits of the rule announced in *Gonzalez* because the issue was not properly preserved. Br. Opp. 31–32. Before the Court of Appeals, Petitioners could not have pressed whether their claims treat Reddit as a publisher or speaker because

the panel had no authority to overrule Ninth Circuit precedent. Even if Petitioners could have done something else procedurally, “dry formalism” should not bar Petitioners from receiving “full and fair consideration” of their rights “in light of all pertinent considerations”—including any change in law created by *Gonzalez. Stutson v. United States*, 516 U.S. 193, 197 (1996); *cf. Youakim v. Miller*, 425 U.S. 231, 235 (1976) (remanding case for consideration of Supremacy Clause claim that had not been raised before the district court after intervening change in interpretation of federal law).

The heart of this litigation is how Reddit designs its website and the steps it takes, independent of its publishing or editorial function, to further and benefit from child sex trafficking. Petitioners allege Reddit has engineered a social media platform where child pornography proliferates by, among other things, declining to employ automated image-recognition technologies used for detecting child pornography and allowing users who traffic child pornography to serve as moderators. App. 95a, 99a–100a, 112a, 118a (FAC ¶¶ 110, 121–123, 165, 187). Reddit’s abdication of responsibility to police child sexual abuse images on its website goes beyond “editorial control’ over what third-party users post.” Br. Opp. 33 (quoting Brief for Petitioners at 5, *Gonzalez*, No. 21-1333 (U.S. Nov. 30, 2022), 2022 WL 17418474). If the *Gonzalez* decision clarifies what it means for a claim to treat a defendant as a “publisher or speaker,” that holding will require reconsideration of whether Reddit is entitled to the benefits of Section 230(c)(1) when Petitioners’ claims arise out of Reddit’s creation of a website that fosters child sex trafficking.

CONCLUSION

The petition for writ of certiorari respectfully should be granted or, in the alternative, the petition for writ of certiorari respectfully should be held pending the Court's disposition of the question presented in *Gonzalez* and then a GVR order should issue.

Respectfully submitted,

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