No. 24-453

In the Supreme Court of the United States

EMMANUEL G. LOUIS and TAMARAH C. LOUIS,
Petitioners,

v.

BLUEGREEN VACATIONS UNLIMITED, INC., and
BLUEGREEN VACATIONS CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF IN SUPPORT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

REPLY BRIEF FOR PETITIONERS

Bluegreen's brief in opposition only confirms that certiorari is warranted here. The company spends much of its brief defending its loan. But the question presented here is not whether Bluegreen's loan complied with the Military Lending Act's disclosure requirements. It's whether plaintiffs who have paid money under a void contract have Article III standing to challenge the enforcement of that contract and seek restitution of their payment.

That is an important question that has divided the circuits. The Second, Eighth, and Ninth Circuits have held that payment on a void contract is sufficient for standing; the Eleventh Circuit has held it is not. Although Bluegreen tries to muddy the waters, it cannot credibly dispute that the circuits have adopted different legal rules. And the Eleventh Circuit's rule cannot be squared with this Court's precedent—or the long history of Anglo-American courts hearing cases just like this one.

Bluegreen also cannot credibly dispute that this issue is important enough for this Court to weigh in now. Military and veterans' organizations representing hundreds of thousands of members have urged this Court to grant certiorari. *See* Military Amicus Br. 1-4. That's because predatory lending threatens not just the financial security of service members, but their ability to serve—and, in turn, the strength of our national defense. Service members' ability to prevent predatory lenders from trying to collect on loans that they have no right to collect should not depend on where the service member is stationed. But absent this Court's intervention, that's exactly what is happening. This Court should grant certiorari.

I. The circuits are split.

It is difficult to deny that the circuits are divided. In the Second, Eighth, and Ninth Circuits, a plaintiff's allegation that they paid money on a void contract is sufficient for Article III standing. *See* Pet. 10-12. But in the Eleventh Circuit, that's not enough: The plaintiff's injuries must also be traceable to the specific legal violation that rendered the contract void. *See* App. 5a-6a (requiring "causation between the alleged payments and the alleged violations"); *id.* at 4a-5a (rejecting standing because the Louises' "claimed injuries … cannot be fairly traced to Bluegreen's alleged violations of the MLA").[1]

1. Bluegreen can't dispute that the circuits articulate different legal rules, so instead it tries to manufacture factual distinctions between the cases. But these distinctions are either irrelevant, nonexistent, or both. Bluegreen contends (at 17–20) that in the Second, Eighth, and Ninth Circuit cases, the plaintiffs entered contracts *because* of the defendants' statutory violations. But that assertion is dubious, at best. Nobody enters a contract *because* the company offering it is unlicensed or failed to include provisions required by statute. *See, e.g.*, BIO 18.

Bluegreen also hypothesizes (at 18–19) that perhaps the defendants in those cases could only offer their contracts because they violated the law. But the same is true here. The Military Lending Act prohibits companies from providing loans to service members that misrepresent the true cost of credit; waive a service member's legal rights; lack written disclosures; and are

[1] Unless otherwise specified, all internal citations, quotation marks, and alternations are omitted from quotations. The reference to Gov't Br. is to the Government's brief below. The other references to amicus briefs are to the briefs filed in this Court.

not properly orally explained. 10 U.S.C. § 987. Bluegreen's loan violates each of these prohibitions. *See* Pet. 9. The company therefore could not offer it without violating the law. Thus, the factual distinctions that Bluegreen emphasizes aren't distinctions at all.

More importantly, they are irrelevant. Neither the Second, Eighth, or Ninth Circuit relied on any of the "factual [or] legal specifics" that Bluegreen complains (at 21) the petition "glosses over." Indeed, they didn't even mention them in their analysis. They didn't need to. That's because the rule in those circuits is that paying money on a void contract is itself sufficient for standing. No other factual or legal specifics matter.

Eighth Circuit. Take, for example, the Eighth Circuit's decision in *Graham*. The Eighth Circuit's analysis of the question presented here did not even mention the specific statutory violations the defendant committed—let alone hold that they were somehow relevant. *Graham v. Catamaran Health Sols. LLC*, 940 F.3d 401, 408 (8th Cir. 2017). To the contrary, the court held that if a contract "is deemed void *ab initio* due to non-compliance with state law, then [the plaintiff] *will* have suffered a compensable economic injury fairly traceable to the defendants' actions." *Id.* (emphasis added). In other words, payment on a void contract is sufficient for standing—nothing else is needed. *See id.*

Second Circuit. The same is true of the Second Circuit's decision in *Dubuisson*. Bluegreen suggests (at 18-19) that the Second Circuit granted standing in that case because the defendants' statutory violations caused the plaintiffs to enter the contract. But the Second Circuit never said that. *See Dubuisson v. Stonebridge Life Ins. Co.*, 887 F.3d 567, 574 (2d Cir. 2018). In arguing otherwise,

Bluegreen seizes on a single sentence in the court's decision: "Where a plaintiff alleges a concrete, economic injury resulting from a defendant's violation of a statutory provision, the plaintiff has alleged a sufficient injury to establish Article III standing." *Id.* But that sentence cannot bear the weight Bluegreen tries to give it.

The Second Circuit explained that the way in which the plaintiffs' injuries were caused by the defendants' statutory violations was that those violations rendered their contracts "illegal under New York law and … therefore void *ab initio*." *Id.* And because their contracts were void *ab initio*, the plaintiffs paid money they did not owe and got nothing in return. *See id.*

Exactly the same is true here. Because Bluegreen violated the Military Lending Act, its contract was void *ab initio*. The Louises, therefore, paid Bluegreen money they did not owe and got nothing in return. Thus, in the Second and Eighth Circuits, they would have standing to bring the lawsuit that the Eleventh Circuit dismissed.

Ninth Circuit. The Ninth Circuit would also hear their claims. As Bluegreen concedes (at 20), the Ninth Circuit held that a plaintiff has "standing to seek relief for [a defendant's] wrongful possession of his money resulting from purchases [that the plaintiff] contends were void *ab initio*." *V.R. v. Roblox Corp.*, 2023 WL 8821300, at *2 (9th Cir. Dec. 21, 2023). Contrary to Bluegreen's assertion (at 19–20), the court did not suggest that this standing depends on whether the defendant's statutory violation caused the plaintiff to make the purchase in the first place. *See id.*

Bluegreen's contrary argument relies on the Ninth Circuit's separate rejection of an entirely different theory of standing: that a plaintiff—whose contract was *not*

initially void, but who later disaffirmed that contract—had standing to seek a refund that he never previously asked for. *V.R.*, 2023 WL 8821300, at *1. But that theory failed precisely because the contract was *not* void *ab initio*, so the defendant was entitled to collect money under it. *See id.*

It's not clear how Bluegreen thinks this discussion of contracts that are not void *ab initio* is relevant. But what is clear is that in the Ninth Circuit—as in the Second and Eighth Circuits—a plaintiff who has paid money under a contract that *is* void *ab initio* has standing to sue the defendant that took it. Nothing more is needed. There's no real dispute that's what happened here. So if the Louises had sued in the Second, Eighth, or Ninth Circuits, they would have had standing.

2. Bluegreen fares no better trying to recharacterize the Louises' injury. Bluegreen asserts (at 17) that the Louises seek standing based solely on a procedural statutory violation, whereas the plaintiffs in the Second, Eighth, and Ninth Circuit cases alleged "actual injury." But the Louises' injury is not simply that Bluegreen violated a statute. It's that Bluegreen took money from them that it had no right to take. That is exactly the same "actual injury" that the plaintiffs in *Graham*, *Dubuisson*, and *V.R.* alleged.

Indeed, the defendants in *Graham* and *Dubuisson* made a virtually identical argument. *See* Appellees' Br., *Graham v. Catamaran Health Sols. LLC*, 2016 WL 1317602, at *47 (8th Cir. 2016) ("Merely pleading the alleged statutory violations at issue is not sufficient to confer standing."); Appellees' Br., *Dubuisson v. Stonebridge Life Ins. Co.*, 2017 WL 396024, at *36 (2d Cir. 2017) (arguing that standing cannot be based on a statute

rendering the contract void). And, while the Eleventh Circuit accepted this argument, the Second and Eighth Circuits rejected it.

Thus, ultimately, Bluegreen cannot get around the fact that had this case been brought in the Second, Eighth, or Ninth Circuits, the Louises would have had standing. *See also* Gov't Br. 22 (explaining that the Louises would have had standing in the Second and Eighth Circuits). But in the Eleventh Circuit, they did not.

3. Bluegreen does not contest that this case is an ideal vehicle to resolve the split. It cleanly tees up the question presented in the context in which it is most important: the protection of service members—and our national defense—from predatory lending.

Bluegreen briefly mentions that the decision below is unpublished. But there's no dispute that it accurately reflects the law of the Eleventh Circuit. Indeed, it relies on a published Eleventh Circuit decision. App. 5a (relying on the standard set forth in *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1271 (11th Cir. 2019)).

And as the military amici explain, this Court should not wait to resolve this conflict. Military Amicus Br. 21. "Financial threats to military families could not come at a worse moment for the armed forces"—as the Department of Defense faces "its most challenging recruitment environment in 50 years." *Id.* at 18.

Service members depend on uniform protections. *See id.* at 21. There is no reason that service members stationed in California, Missouri, or New York should be able to enforce the Military Lending Act's protections while those stationed in Florida, Georgia, or Alabama cannot.

II. The decision below is wrong.

Not only has the Eleventh Circuit's decision created intolerable division in the courts of appeals, it is wrong. Pet. 14-18. Bluegreen's arguments to the contrary directly conflict with this Court's standing precedent—and a centuries-long tradition of American courts hearing cases just like this one.

1. Bluegreen does not dispute that Anglo-American courts, including this one, have been hearing challenges to void contracts for hundreds of years—including in cases where there is no connection between the plaintiff's injury and the statutory violation that rendered the contract void. Pet. 14. Nor can it dispute that service members who pay money under a void contract satisfy the traditional standing requirements: They suffer a concrete injury (the payment of money they do not owe), that is traceable to the defendant's conduct (taking money it is not entitled to), and redressable by the court (through rescission and restitution). Indeed, it is hard to imagine a more "personal stake in [a] dispute" than where a defendant took money from the plaintiffs that it had no right to take, refuses to give it back, and continues to try to take more. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024).

Nevertheless, Bluegreen insists that this Court's case law supports the Eleventh Circuit's decision to impose an additional standing requirement: that the plaintiff's injury be caused not just by the defendant's conduct, but by the "statutory violation" that renders that conduct illegal. BIO 12-14. But as the company itself concedes, this Court has explicitly held that standing does "*not* require a causal connection to the specific statutory provision" that the

defendant violated. BIO 14 (emphasis added) (discussing *Collins v. Yellen*, 594 U.S. 220, 240-43 (2021)); Pet. 16-18.

Bluegreen cannot identify any distinction between the Eleventh Circuit's rule and the statutory nexus requirement that this Court has repeatedly rejected. So instead, the company argues (at 12-14) that isolated phrases taken out of context from this Court's case law *implicitly* re-impose the very requirement that this Court *explicitly* rejected. That can't be right. To be sure, this Court has sometimes used loose language to describe the traceability requirement. *See* BIO 12 (citing examples). But that loose language cannot overcome this Court's explicit instruction.

Bluegreen claims (at 13) that it would be "a breathtaking expansion of" federal-court jurisdiction if "a plaintiff's injury need only be traceable to the defendant not the specific statutory provision that the defendant violated." But that has always been the law. *See* Pet. 14-18. "The whole purpose of the traceability requirement is to ensure that … the asserted injury was the consequence of the defendants' actions, rather than of the independent action of a third party." *Murthy v. Missouri*, 603 U.S. 43, 68 n.8 (2024). That purpose is served as long as the injury is traceable to the defendant's conduct.

By requiring more, the Eleventh Circuit's rule forces courts to abdicate their "virtually unflagging" "obligation" to "hear and decide" cases over which they have jurisdiction. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). And, in the Military Lending Act context, it enables companies to take money from service members that Congress has forbidden them from taking.

Bluegreen complains (at 13) that absent the Eleventh Circuit's additional standing requirement, "any plaintiff

that has signed a contract with a defendant" could get into federal court to assert "[l]egal, moral, ideological, [or] policy objections, … even where the plaintiff has not suffered any legally cognizable harm caused by a defendant's conduct." But standing already requires a legally cognizable harm traceable to the defendant's conduct. The Eleventh Circuit's additional requirement is therefore unnecessary.

And if a plaintiff tries to raise "moral, ideological, [or] policy objections," rather than legal ones, their case will be dismissed on the merits, potentially with sanctions. Courts should not read unwritten limitations into the Constitution to address problems that are already solved by the Federal Rules of Civil Procedure.

2. Falling back, Bluegreen tries (at 14–16) to analogize this case to cases like *Thole* or *TransUnion* in which the plaintiffs suffered no concrete injury at all. But a plaintiff who pays money under a contract that is void *ab initio* has suffered the "the quintessential tangible injury: monetary loss." Gov't Br. 23; *see* Pet. 11–12. They have paid money they do not owe and gotten nothing in exchange.

Bluegreen emphasizes (at 14) that the provision declaring contracts that violate the Military Lending Act void *ab initio* is in a section entitled "Penalties and Remedies." But that doesn't change the nature of the provision. Voidness is not like statutory damages; it is not merely a remedy available to those who file a lawsuit. A loan that violates the Military Lending Act is "void *from the inception*." 10 U.S.C. § 987(f)(3) (emphasis added). No lawsuit necessary. The lender who issued it, therefore, *never* has any right to take money from the service member—regardless of whether that service member ever sues.

3. Perhaps recognizing the difficulty of justifying the Eleventh Circuit's standing rule, Bluegreen spends much of its opposition trying to defend its loan. But "standing in no way depends on the merits of the plaintiff's contention that [the defendant's] conduct is illegal." *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 298 (2022). Rather, courts evaluating standing must "accept as valid the merits" of the plaintiff's claim. *Id.*

III. The question presented is important.

Bluegreen argues (at 21) that this Court need not resolve the circuit split because it "does not compromise the [Military Lending Act]'s protections." Service members and veterans disagree. *See* Amicus Br. for Mil. & Vets. Orgs. 1–2, 18–22. So does the government. Gov't Br. 28–30.

This case is a perfect example. Bluegreen's loan—more than $25,000 to purchase vacation points—is precisely the kind of low-value loan that Congress sought to prevent companies from targeting at service members. And although the Military Lending Act requires lenders to orally provide a loan's true terms, Bluegreen instead gave the Louises an hours-long sales presentation designed to "trick" and "trap" them into entering it. Pet. 8. When Private Louis was finally able to actually read the loan paperwork and understand Bluegreen's scheme, it was too late: Bluegreen had already taken his money and refused to give it back. Pet. 9.

Bluegreen's loan has many of the hallmarks that Congress and the Department of Defense identified as characteristic of predatory loans. *See* Pet. 9. But although the loan was void from inception, Bluegreen took the Louises' money and, even now, continues to try to collect more—threatening not only Private Louis's credit, but his

military service. *See id*; Military Amicus Br. 8 (explaining that service members can face discipline for unpaid debts).

That is precisely what the Military Lending Act was enacted to avoid. Pet. 5-7; Military Amicus Br. 4-11. Yet the Louises cannot get into court to stop it. And if the Eleventh Circuit's decision is allowed to stand, the hundreds of thousands of other service members stationed there will be prime targets for the same conduct.

And the Military Lending Act is not the only statute with prohibitions so important that contracts that violate them are void from inception. *See* Pet. 18; Center Amicus Br. 9-12 (collecting statutes). The Eleventh Circuit's rule undermines all of these statutes: A party can take money under a contract Congress has decided cannot exist, and it is *unconstitutional* for federal courts to do anything about it. Bluegreen does not argue otherwise.

Nor does Bluegreen dispute that this is the perfect vehicle for this Court to decide whether Article III authorizes the Eleventh Circuit's additional traceability requirement. This Court should grant certiorari.

CONCLUSION

This Court should grant the petition for certiorari.

January 10, 2025

Respectfully submitted,

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