No. 17-1542

IN THE
Supreme Court of the United States

KATHRINE MAE MCKEE,

Petitioner,

v.

WILLIAM H. COSBY, JR.,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether an actress who uses her celebrity status to gain access to national media outlets in order to publicly accuse an international entertainer—already in the midst of a public controversy concerning allegations against him—of additional misconduct is a limited-purpose public figure for purposes of defamation analysis.

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INTRODUCTION

Public figures—those persons who have "invite[d] attention and comment" to themselves, are assumed to have voluntarily accepted the "increased risk of injury from defamatory falsehood concerning them," and must therefore demonstrate constitutional malice in order to succeed on a defamation claim. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974). This well-established rule balances the competing interests of the public, the press, and the individual, and serves to protect the freedom of speech and press that "is the matrix, the indispensable condition, of nearly every other form of freedom." *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 149 (1967).

The petition at issue largely ignores these long-standing principles, and seeks review for the purposes of "clarify[ing] what criteria should be used to determine limited purpose public figure status." Pet. at 2. However, as the petition itself tacitly admits, the Court, through *Gertz* and its progeny, has announced clear rules regarding the distinction between private and public figures. *See* Pet. at 7 (discussing the rules announced by this Court and seeking review because of a purported "conflict in the courts of appeals as to how th[o]se rules are to be interpreted"). Those rules, which are sufficient to "guide both the press and the public," *Waldbaum v. Fairchild Publ'ns, Inc.*, 627 F.2d 1287, 1292 (D.C. Cir. 1980), were properly stated by the First Circuit. *See* Pet. at 7 (claiming error only as to the First

Circuit's interpretation of the rules). Review in this case is therefore not warranted. *See* U.S. Sup. Ct. R. 10. Additionally, the First Circuit's decision in this action is fully consistent with the decisions of this Court and other courts of appeals, and the petition should therefore be denied.

STATEMENT OF THE CASE

A. Ms. McKee Has Enjoyed Regular Access to the Media for Decades.

Petitioner Kathrine Mae McKee is an actress who has worked in the entertainment industry for more than fifty years. Pet. App. 84a. Over the course of her "lifetime career in show business," Ms. McKee has made dozens of television, film, and live-show appearances. Pet. App. 84a-85a. For example, in the 1970s alone, Ms. McKee hosted the talk show *Good Morning L.A.*, appeared on various primetime television programs—including *Sanford and Son*, *Good Times*, *Police Woman*, and *Saturday Night Live*—and starred in the feature film *Quadroon*. Pet. App. 84a-85a; *see* Pet. at 4.[1] Ms. McKee also toured with the world-famous Sammy Davis, Jr., performing as the "Mistress of Ceremonies" at many of his shows. Pet. App. 124a-125a.[2]

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[1] *See also Kathy McKee Biography*, IMDB, https://www.imdb.com/name/nm0571181/?ref_=tt_cl_t1 (last visited July 26, 2018); Kathy McKee Casting, http://www.kathymckeecasting.com/ (last visited July 26, 2018).

[2] *See also Kathy McKee Other Works*, IMDB, https://www.imdb.com/name/nm0571181/otherworks?ref_=nm_pdt_wrk_sm (last visited July 26, 2018).

As a celebrity, Ms. McKee has enjoyed regular access to the media, and has readily volunteered to the public information about both her career and her personal life, including her relationships with other entertainers. For example, Ms. McKee has published information about her relationship with her sister, Lonette McKee—an actress, composer, and songwriter—as well as her relationships with Mr. Davis and other internationally renowned entertainers. Pet. App. 81a & 106a (reciting Ms. McKee's prior published statements); *see, e.g.*, Kathy McKee & Rudy Maxa, *My Secret Life with Sammy Davis*, Penthouse (Sept. 1991); David Henry & Joe Henry, *Furious Cool: Richard Pryor and the World That Made Him* 68, 96, 184, 195 (2013) (quoting Ms. McKee regarding her relationships with her sister, Mr. Pryor, actress Pam Grier, and others).

B. Ms. McKee Used Her Access to the Media to Publicly Accuse Mr. Cosby of Misconduct.

In December 2014, after dozens of women had accused Mr. Cosby of misconduct—creating a highly public controversy—Ms. McKee used her longstanding celebrity status to again gain access to the media, this time giving an "exclusive" interview to the *New York Daily News* for the purposes of accusing Mr. Cosby of assaulting her decades earlier. Pet. App. 124a-128a. That interview was filmed, and resulted in the publication of a five-page article and two online videos. Pet. App. 124a-128a; *see* N.Y. Daily News, *Bill Cosby Took Advantage of Me in Detroit Hotel: Actress*, YouTube (Dec. 22, 2014), https://www.youtube.com/watch?v=7amCTdR2dzI&t=1s; N.Y. Daily News, *Bill Cosby Raped Me, and*

This Is Why I'm Coming Forward: Actress, YouTube (Dec. 22, 2014), https://www.youtube.com/watch?v=BcJuU-232j8 (hereinafter "*This Is Why I'm Coming Forward*").[3]

Within twenty-four hours, Ms. McKee's accusations had been republished by dozens of media outlets within the United States and abroad. *See, e.g.*, *Sammy Davis Jr.'s Ex: Bill Cosby Raped Me*, Fox News (Dec. 22, 2014), http://www.foxnews.com/entertainment/2014/12/22/sammy-davis-jr-ex-says-was-raped-by-bill-cosby.html; *Sammy Davis Jr.'s Ex-Girlfriend Katherine McKee Says Bill Cosby Raped Her*, CBS News (Dec. 23, 2014, 10:13 AM), https://www.cbsnews.com/news/sammy-davis-jr-s-ex-girlfriend-katherine-mckee-says-bill-cosby-raped-her/; Anthony Martin, *Katherine McKee: L'Ex de Sammy Davis Jr Accuse À Son Tour Bill Cosby de Viol*, Voici (Dec. 23, 2014, 12:52), https://www.voici.fr/news-people/actu-people/katherine-mckee-l-ex-de-sammy-davis-jr-accuse-a-son-tour-bill-cosby-de-viol-549555; Rebecca Pocklington, *Bill Cosby Rape Allegations: Sammy Davis Jr.'s Former Girlfriend Claims Cosby Raped*

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[3] Ms. McKee's petition fails to mention these videos, which were expressly referenced in the companion article yet omitted from Ms. McKee's appendix. *Compare* Nancy Dillon, *Exclusive: Bill Cosby Accused of Raping Ex-Girlfriend of Sammy Davis Jr.*, N.Y. Daily News (Dec. 22, 2014, 2:30 AM), http://www.nydailynews.com/news/national/bill-cosby-accused-raping-ex-girlfriend-sammy-davis-jr-article-1.2052890 ("'She has her head buried in the sand.' CLICK HERE TO SEE THE VIDEO. SEE THE SECOND VIDEO HERE. ndillon@nydailynews.com."), *with* Pet. App. 128a ("'She has her head buried in the sand.' ndillon@nydailynews.com."). In the original article, the italicized text at Pet. App. 125a also hyperlinks to the videos. *See* Dillon, *supra*.

Her in 1970s, The Daily Mirror (Dec. 22, 2014, 20:27; last updated Dec. 22, 2014, 20:58), https://www.mirror.co.uk/3am/celebrity-news/bill-cosby-rape-allegations-sammy-4858426.

Mr. Cosby's lawyer, Martin Singer, responded to Ms. McKee's dramatic and internationally publicized accusations by transmitting a confidential letter to the *New York Daily News*, criticizing that media outlet's failure to investigate Ms. McKee's claims. Pet. App. 74a-82a. Mr. Singer's letter cited to publicly available information—including Ms. McKee's own prior statements—in support of his opinion that Ms. McKee's claims were inaccurate and that the media outlet had published her accusations without using ethical investigative standards of journalism. Pet. App. 81a-82a.

According to the sworn declaration she submitted in opposition to Mr. Cosby's motion to dismiss, Ms. McKee learned of Mr. Singer's comments on or about December 23, 2014. Pet. App. 11a & 34a. Undeterred by that criticism, Ms. McKee would go on to make additional public statements about Mr. Cosby throughout 2015, providing interviews to *New York Magazine* as well as major television networks and other news organizations. *See* Pet. at 4-5 (describing participation in *New York Magazine* article).[4] Only after a year of participating

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[4] *See also Nancy Grace* (CNN television broadcast Jan. 8, 2015), *transcript available at* http://www.cnn.com/TRANSCRIPTS/1501/08/ng.01.html; Patricia Montemurri, *2 Detroiters Among Bill Cosby Accusers Speak Out*, Detroit Free Press (July 18, 2015, 11:27 PM; last updated July 22, 2015 9:18 AM), https://www.freep.com/story/life/2015/07/18/metro-detroit-cosby-accusers-find-strength-telling/30324319/; *Let It Rip Weekend* (Fox 2 Detroit television broadcast, July 26, 2015).

in the public debate about Mr. Cosby did Ms. McKee file suit against him.

C. The District Court and the Court of Appeals Correctly Determined That Ms. McKee Cannot State a Defamation Claim.

Ms. McKee asserted twenty-four defamation claims against Mr. Cosby, alleging that Mr. Singer's letter was defamatory as a whole, and further alleging that specific statements in the letter were defamatory. In reported decisions, the district court dismissed Ms. McKee's lawsuit in its entirety, and the First Circuit affirmed that dismissal. Although both courts determined that Ms. McKee is a limited-purpose public figure, Pet. App. 15a-16a, 65a, 70a-71a,[5] the First Circuit's decision did not rely exclusively upon that determination, as Ms. McKee suggests, but instead relied primarily upon its

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[5] While the determination of an individual's public-figure status is fact-specific, the courts of appeals uniformly hold that, as a constitutional issue, it is a question of law that must be resolved by the court. Pet. App. 15a; *accord Waldbaum*, 627 F.2d at 1293 n. 12 ("Whether the plaintiff is a public figure is a question of law for the court to resolve."); *Fitzgerald v. Penthouse Int'l, Ltd.*, 691 F.2d 666, 669 (4th Cir. 1982) ("[T]he issue of whether the plaintiff is a public figure is a question of law for the court."); *Brewer v. Memphis Publ'g Co.*, 626 F.2d 1238, 1247 (5th Cir. 1980) ("It was for the trial judge, not the jury, to determine whether the evidence showed that either plaintiff was a public figure."); *Lundell Mfg. Co. v. Am. Broad. Co.*, 98 F.3d 351, 362 (8th Cir. 1996) ("The determination of a plaintiff's status as a private or public figure is an issue of law."); *World Wide Ass'n of Specialty Programs v. Pure, Inc.*, 450 F.3d 1132, 1137 (10th Cir. 2006) ("The District Court's determination that World Wide is a limited-purpose public figure is a question of law.").

conclusion that the statements were nondefamatory. Pet. App. 6a-23a.

As to Ms. McKee's contention that the letter was defamatory as a whole, the First Circuit expressly affirmed the district court's determination that the letter "adequately disclosed the nondefamatory facts underlying [its] assertions, thereby immunizing them from defamation liability." Pet. App. 19a. The First Circuit likewise agreed with the district court that this reasoning disposed of the majority of Ms. McKee's individual defamation claims, and that other statements were nonactionable because they were either "subjective characterizations" of disclosed facts or did not "concern" Ms. McKee. Pet. App. 20a-22a.[6]

Like the district court, the First Circuit relied upon Ms. McKee's status as a public figure only with respect to the few claims alleging that Mr. Singer's letter had misquoted or misconstrued Ms. McKee's earlier statements. Pet App. 20a, 65a, 70a-71a. Even as to those claims, however, the First Circuit first recognized the letter's statements as being nondefamatory because "the quotations, themselves accurate, are immediately followed by a hyperlink to the source article, allowing readers to put McKee's statements into the proper context." Pet. App. 20a-21a. The First Circuit then added that the claims must be dismissed because Ms. McKee, as a limited-purpose public figure, was required to show

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[6] Because the First Circuit determined that these statements could not "meet the tests for falsity and for defamation," it did not reach the issue of whether the statements were made with constitutional malice. Pet. App. 17a.

constitutional malice and could not do so. Pet. App. 20a.

The First Circuit's determination that Ms. McKee is a limited-purpose public figure focused on the fact that she "deliberately came forward and accused Cosby . . . in an interview with a reporter, thereby engaging the public's attention and 'invit[ing] public scrutiny' of the credibility of her allegations." Pet. App. 16a. Like the district court, the court of appeals rejected Ms. McKee's attempt to characterize her accusations as "purely a matter of private concern,"[7] concluding that "the context in which McKee decided to reveal her [accusations] to the press in December 2014, following decades of silence," could only be read as a concerted effort "meant to influence the public's perception of whether Cosby [had], in fact," engaged in the misconduct of which he was accused. Pet. App. 15a-17a & 70a. In so doing, the First Circuit correctly applied the legal principles that have been announced by this Court, using analogous case law from other circuits for guidance. Pet. App. 14a-17a.

REASONS TO DENY CERTIORARI

The Court should deny Ms. McKee's petition for two reasons: First, review is not necessary here because the court of appeals correctly stated the

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[7] Ms. McKee has apparently abandoned the argument that her statements were made in a wholly "self-contained, private dispute," and now asserts that she should be afforded private-figure status because her engagement in the public controversy was limited to "identifying [her]self as a crime victim." Pet. at 2. This new argument drastically understates Ms. McKee's conduct. *See* Part I, *infra*.

legal rules developed by this Court in *Gertz* and its progeny, and appropriately applied the rules set forth in those cases to determine that Ms. McKee is a limited-purpose public figure. Second, contrary to Ms. McKee's assertions, there is no split among the courts of appeals, which uniformly hold that persons like Ms. McKee, who voluntarily and actively engage with the media on an issue of public controversy, are limited-purpose public figures.

I. The First Circuit Applied the Proper Rule of Law and Correctly Determined That Ms. McKee Is a Limited-Purpose Public Figure.

In *Gertz* and its progeny, the Court outlined a two-step process for determining whether a person is a limited-purpose public figure, looking first to whether there was a public controversy at the time of the allegedly defamatory statement, and second to "the nature and extent of [the plaintiff's] participation in the particular controversy giving rise to the defamation." *Gertz*, 418 U.S. at 352; *see Time, Inc. v. Firestone*, 424 U.S. 448, 454-55 (1976) (holding plaintiff was not a public figure because there was no public controversy); *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979) (holding plaintiff was not a public figure because there was no particular public controversy at issue and the plaintiff had not "assumed any role of public prominence" as to any controversy); *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 166 (1979) (holding plaintiff was not a public figure because he "played only a minor role in whatever public controversy there may have been"). There is no dispute that the First Circuit properly stated the law as follows:

> [A]n individual becomes a "limited-purpose" public figure if he "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues," the scope of which is determined by the "nature and extent of [his] participation in the particular controversy giving rise to the defamation." *Gertz*, 418 U.S. at 351-52[.]
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> * * *
>
> The critical questions for limited-purpose public figure status are whether a matter of "public controversy" existed prior to the alleged defamation, and whether the defamed individual deliberately "thrust [herself] into the vortex" of that controversy or otherwise "engage[d] the public's attention in an attempt to influence its outcome." *Gertz*, 418 U.S. at 351-52.

Pet. App. 14a-15a; *see* Pet. App. 16a (discussing *Firestone*) & 17a (discussing *Wolston*).

The First Circuit went on to correctly apply this rule of law to the facts before it. As to the first step of analysis, the court of appeals had no difficulty determining that the "web" of accusations that had been made against Mr. Cosby prior to December 2014, and the reactions thereto, constituted a public controversy. Pet. App. 15a-16a. Ms. McKee does not dispute that this analysis is correct, instead readily acknowledging that the accusations against Mr. Cosby impacted persons

other than Mr. Cosby and his accusers. Pet. at 2; *see Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1554 (4th Cir. 1994) (defining a "public controversy" as one "that in fact has received public attention because its ramifications will be felt by persons who are not direct participants").

As to the second step, the First Circuit considered Ms. McKee's argument that, under *Wolston*, a "private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." Pet. App. 16a. The court of appeals recognized that argument as being an accurate statement of law, but correctly determined:

> [I]n stark contrast to the plaintiff in *Wolston*, who was "dragged unwillingly into the controversy," [*Wolston*, 443 U.S.] at 166, and "never discussed th[e] matter with the press," *id.* at 167, McKee deliberately came forward and accused Cosby . . . in an interview with a reporter, thereby engaging the public's attention and "invit[ing] public scrutiny" of the credibility of her allegations.

Pet. App. 16a. Ms. McKee contends that the First Circuit erred in reaching this conclusion, arguing that she merely "confirm[ed] that she was one of Cosby's many [alleged] victims," and did not intend to put herself at the forefront of any public debate. Pet. at 8-9.

This contention is unfounded. Ms. McKee did far more than identify herself as an alleged victim on December 22, 2014—she participated in an interview

that resulted in both video and print publications, advocated for Mr. Cosby and others to take lie-detector tests, argued that it was "obvious[]" that Mr. Cosby's accusers were not lying, and spoke about the repercussions she wanted Mr. Cosby and other men in the entertainment industry to face. Pet. App. 126a-128a.[8] Courts routinely hold that such conduct—particularly by persons of Ms. McKee's stature who can use their access to the media to "disseminate [the] message that the critics do not have their facts straight"—is sufficient to make the defamation plaintiff a limited-purpose public figure. *Thomas M. Cooley Law Sch. v. Kurzon Strauss, LLP*, 759 F.3d 522, 531 (6th Cir. 2014); *see, e.g.*, *Street v. National Broad. Co.*, 645 F.2d 1227, 1235 (6th Cir. 1981) (determining that woman who identified herself as an assault victim was a public figure because she "gave press interviews and aggressively promoted her version of the case outside of her actual courtroom testimony . . . [,] played a major role, had effective access to the media[,] and encouraged public interest in herself"), *cert. granted*, 454 U.S. 815 (1981), *cert. dismissed*, 454 U.S. 1095 (1981); *Lerman v. Flynt Distrib. Co.*, 745 F.2d 123, 137 (2d Cir. 1984) (holding that a female author was a public figure because she "successfully invited public attention to her views and ha[d] maintained continuing access to the media"); *Douglass v. Hustler Magazine, Inc.*, 769 F.2d 1128, 1141 (7th Cir. 1985) (determining that "a

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[8] *See also This Is Why I'm Coming Forward*, *supra*, at 1:45-2:45; Dillon, *supra*; *Montgomery v. Risen*, 197 F. Supp. 3d 219, 257 (D.D.C. 2016) (rejecting defamation plaintiff's similar attempts to "strongly understate[] the content of the interview" and ignore the other aspects "of his participation in this aspect of the controversy").

successful actress and model" was "a public figure in a literal sense," based on the ease with which celebrities can "command[] the media's attention to efforts to rebut innuendoes about them"); *Stepnes v. Ritschel*, 663 F.3d 952, 964 (8th Cir. 2011) (holding that litigant became a public figure because his press appearances "went beyond defending himself" and included "media coverage" intended to "shape the message"); *Flowers v. Carville*, 310 F.3d 1118, 1130 (9th Cir. 2002) (determining that woman "who made the headlines in a national tabloid" became a public figure by holding a press conference to publicly announce her romantic relationship with the governor); *Turner v. Wells*, 879 F.3d 1254, 1272-73 (11th Cir. 2018) (holding that professional football coach who "took advantage of his familiarity with the media" by crafting response to public controversy was a limited-purpose public figure); *Waldbaum*, 627 F.2d at 1298 (determining that corporate executive was a public figure and noting that "[t]hose who attempt to affect the result of a particular controversy have assumed the risk that the press, in covering the controversy, will examine the major participants with a critical eye").

It makes no difference that Ms. McKee now claims she did not intend to become a public person. That is not the test. Instead, "[w]hen an individual undertakes a course of conduct that invites attention, even though such attention is neither sought nor desired, he may be deemed a public figure." *McDowell v. Paiewonsky*, 769 F.2d 942, 949 (3d Cir. 1985); *see id.* ("It is true that becoming a public figure generally involves some notion of voluntariness. But the voluntariness requirement may be satisfied even though an individual does not

intend to attract attention by his actions."); *see also Hatfill v. N.Y. Times Co.*, 532 F.3d 312, 324 (4th Cir. 2008) ("Through these media, Dr. Hatfill voluntarily thrust himself into the debate. He cannot remove himself now to assume a favorable litigation posture."); *Rosanova v. Playboy Enters., Inc.*, 580 F.2d 859, 861 (5th Cir. 1978) (recognizing that the purpose served by the public-figure test "would often be frustrated if the subject of the publication could choose whether or not he would be a public figure"); *Silvester v. Am. Broad. Cos.*, 839 F.2d 1491, 1496 (11th Cir. 1988) ("[I]t is no answer to the assertion that one is a public figure to say, truthfully, that one doesn't choose to be. It is sufficient . . . that [the plaintiff] 'voluntarily engaged in a course that was bound to invite attention and comment.'" (quoting *Rosanova*, 580 F.2d at 861)); *Waldbaum*, 627 F.2d at 1298 (explaining that the proper analysis must consider "the plaintiff's past conduct, the extent of press coverage, and the public reaction to his conduct and statements," not merely what role the plaintiff "was seeking to play").

The First Circuit, consistent with this Court's decisions and those of other courts of appeals, properly determined that Ms. McKee is a limited-purpose public figure. The petition should therefore be denied.

II. There Is No Circuit Split.

As the above discussion demonstrates, there is no circuit split on the issue of classifying persons as public or private figures. Ms. McKee's assertion to the contrary misconstrues the state of the law in each of the Fourth, Eighth, and Eleventh Circuits by focusing upon decades-old cases—including at least one case in which the plaintiff's private-figure status

was conceded[9]—and ignoring recent decisions with facts analogous to those at issue here.

Several of the cases cited by Ms. McKee dealt with the limited issue of whether an accused person can become a public figure simply by virtue of the accusations against that individual or any response he or she chooses to make. *See Foretich*, 37 F.3d at 1563 (grandparents' responses to accusations of child abuse); *Lundell Mfg. Co.*, 98 F.3d at 364 (accusations against manufacturer of garbage-processing machine); *Jenoff v. Hearst Corp.*, 644 F.2d 1004, 1007 (4th Cir. 1981) (accusations against a police informant). As an initial matter, those cases are distinguishable because the accused person in this case is Mr. Cosby—not Ms. McKee. Further, however, those cases involved defamation plaintiffs who were not famous, had not enjoyed access to the media prior to the accusations made against them, and did not seek out any opportunities to speak to the media. *See Foretich*, 37 F.3d at 1563 (explaining that the plaintiffs were not public figures because they "did not reach out to additional media outlets, and thereby to new audiences, in an effort to expand the circle of persons familiar with the controversy. Rather, they targeted their message toward those persons in whose eyes their reputations already had been (or soon would be) sullied."); *Lundell Mfg. Co.*, 98 F.3d at 364 (making determination based on fact that the plaintiff did not even "ha[ve] access to the media to refute the ABC report" that accused it of providing malfunctioning machines to

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[9] *See Straw v. Chase Revel, Inc.*, 813 F.2d 356, 361 n. 4 (11th Cir. 1987) ("At oral argument counsel for appellant conceded that Mr. Straw was a private figure.").

municipalities); *Jenoff*, 644 F.2d at 1007 (explaining that the plaintiff was not a public figure because he "enjoyed no special access to the media, other than that which may have been created by the defamatory publications. Similarly, he assumed no prominence in any public controversy, except as a result of the charges levelled against him."). These cases are not germane to the question of whether Ms. McKee—who took advantage of the media opportunities readily available to her as a celebrity—is a public figure.

The other cases Ms. McKee cites are similarly inapposite. *See In re IBP Confidential Bus. Documents Litig.*, 797 F.2d 632, 646 (8th Cir. 1986) ("Bagley conscientiously avoided the media, making no public comment."); *Long v. Cooper*, 848 F.2d 1202, 1206 (11th Cir. 1988) (determining that a company's advertising campaign did not cause it to become a public figure because there was "no evidence of unusual advertising practices").[10]

Further, recent cases from each of the Fourth, Eighth, and Eleventh Circuits show that those courts of appeals would have reached the same conclusion as the First Circuit in this case. *See, e.g.*, *Hatfill*, 532 F.3d at 324 (Fourth Circuit determination that scientist accused of unleashing a 2001 anthrax attack was a limited-purpose public figure because of his ready access to the media, which he repeatedly

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[10] While the holding in *Long* has no application here, the Eleventh Circuit's decision in that case relied upon earlier First Circuit analysis, underscoring the fact that those courts of appeals apply substantially similar analyses. *See* 848 F.2d at 1205-06 (relying upon *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583 (1st Cir. 1980)).

used to deny the accusations); *Carr v. Forbes, Inc.*, 259 F.3d 273, 280 (4th Cir. 2001) (determining that plaintiff was a limited-purpose public figure even as to issues he never discussed with the press because the media "[u]ndoubtedly" would have reported his views had he offered them); *Stepnes*, 663 F.3d at 964 (Eighth Circuit determination that litigant became a public figure because his conduct "went beyond defending himself" and included the use of a "public relations firm to 'shape the message' and 'turn a negative spin into a positive spin'")[11]; *Turner*, 879 F.3d at 1272-73 (Eleventh Circuit determination that professional football coach was a limited-purpose public figure because he "took advantage of his familiarity with the media" and engaged in a public controversy "even after it had made national news"); *Little v. Breland*, 93 F.3d 755, 758 (11th Cir. 1996) (finding that the plaintiff was a public figure, even if he did not put himself into a position to influence the outcome of the controversy, because he made "a voluntary decision to place himself in a situation where there was a likelihood of public controversy").

These recent cases demonstrate that each of the Fourth, Eighth, and Eleventh Circuits would have deemed Ms. McKee to be a public figure, based upon the nature of her contacts with the press, and, in

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[11] Another Eighth Circuit case illustrates how private figures who find themselves at the center of controversy may protect their private-person status. *See Cockram v. Genesco, Inc.*, 680 F.3d 1046, 1053 (8th Cir. 2012) ("When Cockram ultimately did agree to be interviewed, she insisted that her name not be used, thus indicating an intent to defend her reputation among those who knew that she was the subject of the reports while avoiding any additional exposure among those unaware of her involvement in the incident.").

particular, her decision to use the media to publicly announce her accusations against Mr. Cosby. Accordingly, there is no circuit split and review in this case is not warranted.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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