

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-1333

REYNALDO GONZALEZ, ET AL., PETITIONERS

v.

GOOGLE LLC

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,  
ENLARGEMENT OF ARGUMENT, AND DIVIDED ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case, that the time for oral argument be enlarged to 70 minutes, and that the time be allotted as follows: 20 minutes for petitioners, 15 minutes for the United States, and 35 minutes for respondent. Petitioners and respondent both consent to this motion.

This case concerns a federal statute commonly known as Section 230 of the Communications Decency Act of 1996, 47 U.S.C.

230, that provides certain protections to websites and other online service providers. The specific provision at issue, Section 230(c)(1), states that “[n]o 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.” 47 U.S.C. 230(c)(1). The question presented is whether this language bars petitioners’ claims that respondent Google LLC violated the Antiterrorism Act of 1990 (ATA), 18 U.S.C. 2331 et seq., by hosting on its YouTube platform, and providing targeted recommendations for, videos created by a foreign terrorist organization.

The United States has filed a brief as amicus curiae in support of vacatur, arguing that while Section 230(c)(1) precludes petitioners’ ATA claims to the extent they seek to hold YouTube (and thus Google) liable for YouTube’s alleged failure to block or remove videos from its platform, the statute does not bar ATA liability to the extent it is based on YouTube’s alleged targeted recommendations of terrorist content through algorithms. Such a theory of ATA liability would not seek to hold YouTube liable as a “publisher or speaker” of third-party content, 47 U.S.C. 230(c)(1), because it is not based on YouTube’s mere dissemination of such content. Rather, a recommendation-based theory of liability would target YouTube’s own conduct in designing its recommendation algorithms and YouTube’s own communications to users. Because the court of appeals held that Section 230(c)(1)

barred even that claim, it did not consider whether petitioners have adequately pleaded the elements of ATA liability on that narrower theory. The government's brief argues that the case should be remanded so that the court may do so in the first instance.

The United States has a substantial interest in this case. Congress enacted Section 230 "to promote the continued development of the Internet," 47 U.S.C. 230(b)(1), by protecting online service providers from unwarranted liability. However, an overly broad reading of Section 230(c)(1) -- such as that adopted in many of the courts of appeals with respect to the statute's "publisher or speaker" element -- would undermine the enforcement of other important federal statutes by both private plaintiffs and federal agencies.

This case presents the Court's first opportunity to interpret Section 230(c)(1) and delineate the bounds of its protections. The position of the United States -- informed by the text of Section 230(c)(1), its statutory background and context, a significant body of precedent in the lower courts, and federal agencies' experience analyzing and litigating Section 230 issues -- does not fully align with the arguments of either party. The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

Respectfully submitted.

BRIAN H. FLETCHER  
Acting Solicitor General\*  
Counsel of Record

JANUARY 2023

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\* The Solicitor General is recused in this case.