No. 24-

IN THE

Supreme Court of the United States

JOHN DOE, AN INDIVIDUAL,

Petitioner,

v.

GRINDR INC. AND GRINDR LLC,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

CARRIE GOLDBERG
Counsel of Record
NAOMI LEEDS
ROXANNE RIMONTE
ZAYNAH CHAUDHURY
KATIE MCKAY
LAURA HECHT-FELELLA
C.A. GOLDBERG, PLLC
16 Court Street, 33rd Floor
Brooklyn, NY 11241
(646) 666-8908
carrie@cagoldberglaw.com

Counsel for Petitioner

381595

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Does Section 230(c)(1) of the Communications Decency Act immunize apps from liability for their own conduct in marketing and designing defective products and without providing sufficient warnings?

2. Are the following activities traditional publishing functions that justify dismissal on a Rule 12(b)(6) motion on Section 230(c)(1) of the Communications Decency Act grounds:

   (a) Determining who is offered access to an app?

   (b) Extracting unpublished location data from users?

   (c) Algorithmically recommending nearby strangers to one another for in-person encounters?

3. Is a sex hookup app not liable for trafficking pursuant to 18 U.S.C. § § 1591, 1595 even if it knowingly profits from intentionally marketing to children and recommending them to nearby adults for sex?

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *John Doe v. Grindr, et al.,* No. 24-475 (9th Cir.), judgment entered on February 18, 2025.

- *John Doe v. Grindr, et al.,* No. 2:23-cv-02093 (C.D. Cal.), judgement entered on December 28, 2023.

There are no related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES:

Page

Cited Authorities

Page

Page

Page

CONSTITUTIONAL PROVISIONS:

Page

STATUTES:

JUDICIAL RULES:

Page

CONGRESSIONAL RECORD:

OTHER AUTHORITIES:

PETITION FOR A WRIT OF CERTIORARI

Petitioner John Doe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit affirming dismissal of his case with prejudice and finality.

OPINIONS BELOW

The published opinion of the United States Court of Appeals for the Ninth Circuit (App. 1a) is reported at 128 F.4th 1148. The U.S. District Court for the Central District of California's order granting motion to dismiss without leave to amend (App. 15a) is reported at 709 F.Supp.3d 1047.

JURISDICTION

The Ninth Circuit issued its opinion on February 18, 2025. On May 16, 2025, Justice Kagan extended the time within which to file until June 18, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The appendix to this Petition reproduces the relevant provisions of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230") (App. 35a); Sex trafficking of children or by force, fraud, or coercion, 18 U.S. Code § 1591 (App. 37a); and Civil remedy, 18 U.S. Code § 1595 (App. 38a).

INTRODUCTION

This Court has already determined that the parameters of publisher immunity under Section 230 of the Communications Decency Act ("CDA") require review. For thirty years, lower courts have chaotically interpreted Section 230, expanding it beyond credulity in most circuits while (rarely) cabining it closer to its original text in others. Meanwhile, platforms' insistence that Section 230 "confer[s] sweeping immunity" has licensed industry-wide neglect for responsible product design, distribution and overall safety. This abdication of responsibility by platforms is exactly what Congress enacted Section 230 to *prevent,* yet it has turned into a license to unleash harm in the name of profit. The circuit courts remain divided and confused; with judges hamstrung by precedent developed from a time when platforms were text-based, bearing little resemblance to today's domination by complex social products in everybody's palm, with their complex addictive algorithms and artificial intelligence (AI).

This is the perfect case for the Court to finally bring order to the law by crafting a cohesive interpretation of Section 230. The Court now has the opportunity to do what it could not in *Gonzalez* and *Taamneh.* Before the Court are viable allegations of platform misconduct and platform defects which undeniably caused Petitioner's harms. A sex "hookup" app was marketed to children; that the hookup app knowingly profited from offering memberships to children, including fifteen-year-old John Doe; the hookup app recommended children to nearby adults for offline sex; and Doe was raped by four adults over four consecutive days immediately following his enrollment as a member.

While Section 230 generally protects publishing functions, this case is not about that. John Doe's case was dismissed even though the theories of liability stem *only* from the sex hookup platform's own acts and omissions, none of which involve publishing functions. Yet, in a surprising departure from its own case law, the Ninth Circuit affirmed dismissal without leave to amend because it seems to have interpreted what it means to "treat as a publisher" so broadly as to encompass literally any act, as long as it is committed by an app with members. The Ninth Circuit's decision exemplifies what Justice Thomas has repeatedly lamented with escalating urgency as "a capacious conception of what it means to treat a website operator as [a] publisher or speaker." *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 592 U.S. ____ (2020) (Statement of Thomas, J., respecting denial of certiorari).

For various reasons the Court has denied certiorari on the urgent and recurring controversy of platform liability. *See, e.g.*, *Jane Doe v. Facebook, Inc.*, 595 U.S. ____ (2022) (Statement of Thomas, J., respecting denial of certiorari), where a fifteen-year-old who was repeatedly raped, beaten, and trafficked for sex sued Facebook "for its *own* 'acts and omissions'" in deliberately structuring a website to facilitate illegal human trafficking, but the decision for review was not a "final judgment or decree"; *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 2761 (2020), where Facebook was granted full immunity for recommending content by terrorists; *Herrick v. Grindr LLC*, 765 F. App'x 586 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 221 (2019), where a sex hookup application was granted full immunity for product liability claims that it was defectively designed for

facilitating the stalking and harassment by a user who sent over 1,100 strangers to his ex's home and workplace; *Doe v. Snap*, 603 U.S. ___ (2024) (Statement of Thomas, J., with Gorsuch, J., joining, dissenting from denial of certiorari), where a science teacher used Snapchat's self-deleting product to groom a fifteen-year-old student for a sexual relationship; *Est. of Bride by and through Bride v. Yolo Techs., Inc.*, 112 F.4th 1168 (9th Cir. 2024), *cert. denied* (2025), where a one-sided anonymizing messaging app marketed to children was defectively designed to promote extreme harassment and bullying and misrepresented its ability to unmask abusers.

This case presents the Court with a straightforward opportunity to draw the line around what constitutes "treatment as a publisher." Despite the pleadings being concerned solely with the platform's own heinous misconduct, the platform has invoked Section 230 to evade liability in a quintessential example of why review of this statute's interpretation is necessary. Grindr, a complex social media product, insists it is nothing more than a forum for speech and that therefore the First Amendment protects its right to "make content available online." If this case were about the content of a profile on a sex hookup app, that would be an apt argument. However, in arguing that all of Doe's claims are based on harms from content published by third party users, Grindr paradoxically argues that its right to manage who has access to content is its *own* protected speech *and* that of its users. The trial and circuit courts endorsed Grindr's arguments and dismissed Doe's serious case on a Rule 12(b)(6) motion without leave to amend. Doe's injuries are not a one-off. Throughout the country, children are targeted by social media companies as revenue-generating cash cows, and the social media sites employ methods to make kids

develop an addiction to their products, and in many cases, sexual exploitation is a result. In his operative complaint, Doe presented extensive evidence about how Grindr recruits children, knows that it is full of child users, and how criminal sexual assaults that befell these young users are foreseeable. At oral argument in the Ninth Circuit, Grindr said they need not impose age restrictions or bar child-adult hookups even if it were cheap to implement (which it is).

This case is an optimal vehicle for addressing the dire questions presented on whether Section 230 immunizes apps for their own conduct in marketing and designing defective products, the limits for what constitutes "treatment as a publisher," and if an online hookup platform that profits off recruiting child users is immune from trafficking lawsuits by child rape victims.

The Supreme Court's guidance is needed now. Section 230 was passed in 1995 to make the Internet safer. Instead, it created a hunting ground for predators, and a goldmine for amoral companies who need not invest in providing safe products. Delay will guarantee more victims.

The petition for a writ of certiorari should be granted.

STATEMENT

I. Congress enacts Section 230 to disinhibit responsible oversight by platforms.

In 1995, publishers were held to a higher legal standard than distributors of defamatory or illegal content because publishers had the ability to exercise editorial

control. Distributors, by contrast, were only liable if they knew or should have known the content was unlawful. Then came the Internet and online message boards.

In an early New York case, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, the court held that the online bulletin board Prodigy could be treated as a publisher, not just a distributor, because it exercised some editorial control over user content by setting guidelines, enforcing them, and using software to screen offensive language. No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995). This case conflicted with the 1991 federal decision in *Cubby, Inc. v. CompuServe Inc.,* which determined that online service providers should be treated as distributors. 776 F. Supp. 135 (S.D.N.Y. 1991). The key difference, according to the *Stratton* court, was that Prodigy actively moderated the content that its users published—removing and censoring posts that conflicted with its community guidelines—unlike the more passive CompuServe platform, which took a hands-off approach to moderation. Concerned that nascent Internet companies would either face endless lawsuits or stop moderating content to avoid publisher liability, Congress intervened.

On August 4, 1995, Representatives Christopher Cox (R-CA) and Ron Wyden (D-OR) regaled their fellow elected officials about this "absolutely brand-new technology" (i.e., the world wide web) securing a 420-4 vote in favor of a bill called the Internet Freedom and Family Empowerment Act for "computer Good Samaritans," which aimed to nurture emerging Internet business while also removing disincentives for platforms to self-regulate harmful content. 141 Cong. Rec. H8470 (daily ed. Aug 4, 1995) (statement of Rep. Christopher Cox).

Later, in 1996, the provision was tacked on as Section 230 of the Communications Decency Act ("CDA"), an anti-pornography bill. When the following year, the Supreme Court struck down the rest of the CDA as an unconstitutional restriction on speech, Section 230 was the only portion to survive. *Reno v. American Civil Liberties Union,* 521 U.S. 844 (1997).

The dicta in the first case to interpret Section 230, *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997), has had an outsized influence on the interpretation of Section 230. In *Zeran*, an online troll impersonated a Seattle man on the AOL bulletin board making it appear he was selling merchandise that glorified the recent Oklahoma City bombing. Although AOL phone operators assured Mr. Zeran that the posts would be removed, and they were, the content had already drawn the attention of a local radio host who incited listeners to harass him. Seven months after the harassment subsided, Mr. Zeran sued AOL for negligence, arguing that message boards have a duty to refrain from distributing material they knew or should have known was defamatory.

Mr. Zeran attempted to avoid the strictures of Section 230 by disguising a defamation claim, which clearly would treat AOL as a publisher or speaker, as a negligence claim. Then-Chief Judge Wilkinson, not imagining the future possibilities of Internet harms, ruled that Section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Id.* at 330. From this, courts have latched onto the "federal immunity" phrase and used the "any cause of action" language to dismiss all varieties of claims (e.g., product

liability, negligence, child sex abuse material, trafficking), thereby eradicating the delimiting language contained in Section 230, which required that a defendant be "treated as a publisher or speaker" for liability to attach. *Zeran* remains one of the most relied-upon cases in dismissing cases against interactive computer services. *See, e.g.*, *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006), *Jones v. Dirty World Entertainment Recordings LLC*, 755 F.3d 398, 406 (6th Cir. 2014); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008); *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418–19 (1st Cir. 2007); *Batzel v. Smith*, 333 F.3d 1018, 1026–30 (9th Cir. 2003); *Green v. AOL*, 318 F.3d 465, 471 (3d Cir. 2003); *Ben Ezra Weinstein & Co., Inc. v. AOL*, 206 F.3d 980, 984–85 (10th Cir. 2000).

Zeran also birthed a "but-for" rule that many courts, including the trial court here, have interpreted as requiring dismissal when, but-for third party content, plaintiff would not have been harmed. App. 22a. *See also Herrick,* 765 F. App'x at 590–91 (finding that but-for the app's geolocation feature extracting latitude and longitude the extreme stalking would not have occurred; finding failure to warn claims were "inextricably linked" to Grindr's handling of third party content); *Doe v. Backpage.com,* 817 F.3d 12, 20 (1st Cir. 2016) (finding there would be no harm without the content advertising sex trafficked victims); *Jackson v. Airbnb, Inc.,* No. 2:22-cv-3084-DSF (JCX), 2022 WL 16753197, at *2 (C.D. Cal. Nov. 4, 2022) (finding there would be no harm without the content unlawfully selling guns). The but-for rule is a dead-in-the-water proposition for plaintiffs because all tech-facilitated injuries involve content in some way or form.

Today's Internet bears little resemblance to what Congress envisioned in the mid-1990s or what the *Zeran* court confronted. A few online platforms have consolidated into the nation's largest and most powerful companies. Platforms no longer function as rudimentary forums for publishing third party content but are now complex products that do more to extract Americans' data and manipulate behavior than to publish content. With advanced algorithms, artificial intelligence, and machine learning, platforms now intrude into every segment of modern life-how people communicate, access media, and live their daily lives. But alongside these innovations, platforms have also become instruments of great social injury–spreading child sexual abuse material, facilitating the sale of lethal drugs, enabling suicide and human trafficking, radicalizing terrorists, and creating marketplaces for child exploitation like Grindr.

II. Grindr releases an online "hookup app," recruits children, and recommends them to nearby adults for sex.

Grindr benefits from the creeping case law that has continually expanded immunity for online platforms. Thirteen years after Section 230 was enacted, in 2009, tech entrepreneur Joel Simkhai launched an iOS mobile app called Grindr. It was the first successful app-only online dating product, using mobile devices to extract members' location data and recommending members to one another based on proximity. App. 16a. For this reason, Grindr was initially marketed for dating, but in reality was treated as a "hookup" app, intended for random and rapid sexual encounters. Grindr makes its money through tiered subscriptions and in-app advertisements. App. 16a. Like with social media, the more people who use the

product and the more time they spend on it, the more money Grindr makes. Unlike other forms of social media, Grindr is intended not only to keep people addicted to the app, but to do so by promoting (and gamifying) in-person, casual sex. Arranging in-person sex is Grindr's only true purpose.

To set up a Grindr account, Grindr asks for an email address and a birth date. App. 16a. Grindr claims its users must be over age eighteen but allows users to choose whatever birth date and year they want, with no controls in place to detect false reporting. It markets the Grindr App to children, and allows children to create accounts without parental permission or supervision. App. 4a. Grindr then matches the children with adult users for in-person, sexual encounters. App. 7a. In other words, Grindr serves to set up rape. Grindr has long known that its product matches children and adults for sexual encounters. It has been the subject of various lawsuits, government investigations, and news articles. In 2018, the Journal of Adolescent Health reported that more than half of sexually active gay and bisexual boys had their first sexual experience with adults they'd met on Grindr.[1] By 2015, over 100 people across the United States—including police officers, priests, and teachers—faced charges related to sexually assaulting minors or attempting sexual activity with youth they met on Grindr.[2]

1. Kathryn Macapagal et al., "Hookup App Use, Sexual Behavior, and Sexual Health Among Adolescent Men Who Have Sex With Men in the United States," 62 J. OF ADOLESCENT HEALTH 708 (2018).

2. Jenifer McKim, "How Grindr, a Popular Gay dating App, Poses Exploitation Risk to Minors," NPR (Aug. 3, 2021), available at https://www.npr.org/2021/08/03/1024108203/how-grindr-a-popular-gay-dating-app-poses-exploitation-risk-to-minors.

Grindr has seemingly digested this alarming information about youth using its product not as an impetus to make its product safer and to restrict access or separate adults and children, but as a marketing opportunity to recruit more users and younger ones. Grindr uses social media to target its marketing to children, in part, through the large followings it has cultivated on social media platforms populated by youth—TikTok and Instagram. Grindr uploads its own videos of adolescent-appearing people in middle and high school settings for its hundreds of thousands of followers.[3]

Over the years, Grindr has faced extensive litigation for its abject failure at public safety. Most is related to its welcoming of minors on its app and recommending them to adults for rape. *See, e.g.*, *Saponara v. Grindr,* 93 F. Supp. 3d 319, 324 (D.N.J. 2015)*, Mother Doe v. Grindr, et al.,* 5:23-cv-193 (M.D. Fla. 2023); *Doe v. Grindr, LLC et al.,* No. 1:2021cv04589 (E.D.N.Y. 2022). Rather than fix its known defects, Grindr has perverted Section 230 into a shield so it can continue injuring the public without consequence because it makes more money that way. Grindr even convinced one trial court judge that it could allow a predator to hijack its app to send approximately 1,100 strangers to his ex's home and work to carry out so-called rape fantasies. *Herrick v. Grindr LLC,* 306 F. Supp. 3d 579, 594 (S.D.N.Y. 2018), *aff'd*, 765 F. App'x 586 (2d Cir. 2019). In that case, the court said the victim, who made 100 pleas to Grindr for help, could not meet an "extreme

3. Everything in this paragraph was alleged in Doe's First Amended Complaint, including screenshots of the TikTok videos from Grindr's own profiles, which featured lighthearted children in high school or middle school settings – making it clear that these were typical Grindr users.

and outrageous" pleading standard because Section 230 entitled Grindr to do nothing. "Grindr had a good faith and reasonable basis to believe (correctly, it turns out) that it was under no obligation to search for and remove the impersonating profiles." *Id.* at 594.

Like other platforms, Grindr's success in dismissing so many cases at the Rule 12 stage has empowered it to continue injuring people with abandon and has furnished it with an escape from the ordinary discovery stage of litigation, which will undoubtably shed light on their knowledge of the harms occurring on their platform.

III. Grindr recommends John Doe, a minor, to strangers for sex, and he is raped by four adults over four days.

In April 2019, John Doe, a fifteen-year-old boy living with autism and ADHD, isolated in a small town, fell victim to Grindr's social media marketing campaign. Grindr promoted itself on Instagram and TikTok with campaigns aimed at attracting minors to the platform. App. 17a. He was desperate to meet other likeminded kids and naively thought he could find friends on Grindr. *Id.* Without his parents' knowledge or permission, he downloaded the app, complied with a prompt that told him he needed to be 18 or older, and created a profile. *Id.* This child was never asked to provide any sort of age verification. *Id.* Instead, he was asked about his kinks and preferred sex positions. Grindr extracted Doe's latitude and longitude from his phone and then offered nearby adult members to Doe and offered Doe to nearby adults. App. 22a. The day Doe downloaded Grindr, he was matched with an adult nearby his school. The man demanded Doe send a photo and come over. Doe, a vulnerable autistic child, did as he was

told and was orally and anally raped that night. Stunned, traumatized, and confused, Doe returned to Grindr. Over the next three consecutive days, Grindr recommended Doe to more adults, three of whom raped him, each with varying degrees of force and violence.[4] App. 17a. Three of the four were criminally convicted for crimes against Doe. *Id.* Doe experienced significant trauma and distress from the rapes, causing him to attempt suicide, drop out of school, and require inpatient hospitalization.

IV. This lawsuit.

On March 10, 2023, Doe filed a case against Grindr in California Superior Court alleging six causes of action against Grindr under theories of strict products liability, negligence, negligent misrepresentation, and trafficking under 18 U.S.C. § 1595(a). Shortly thereafter, as a matter of right, Doe filed a First Amended Complaint ("FAC"), the operative complaint.

The FAC's six causes of action were strict product liability claims for defective design, manufacturing, and warnings, negligence, negligent misrepresentation, and trafficking pursuant to U.S.C. § 1595(a). Doe explained that the Grindr app is defective in that it recommends

4. The fact that the minor was compelled to continue to use the product and reenter a high-risk situation illustrates why the product should not be available to minors. Research shows that minor victims of sexual abuse often lack the frame of reference to understand the abuse and will often return to the source of the harm repeatedly, unable to understand or process the harm. Children who experience sexual abuse can suffer a range of psychological and behavioral effects in both the short term and long term.

adults and children for in-person sexual encounters that are criminally illegal. Doe described how Grindr markets intentionally to children and has long known from news articles, peer reviewed journals, lawsuits, and criminal cases about the ubiquity of child rape on its platform. Yet, Grindr continues to invite children to its platform, offers them membership, and extracts location data from their phones to algorithmically recommend them to the nearest adults for offline sexual encounters. When new users become members, Grindr informs users that the minimum age is eighteen and then asks them their age. If a user indicates they are under eighteen, they can simply assert a new age.

All the breached duties alleged by Doe in the FAC were independent of Grindr's duties as a publisher. The duties of manufacturers and designers differ markedly from those of a publisher. Manufacturers and designers have a specific duty to refrain from designing or manufacturing a product that poses an unreasonable risk of injury or harm to consumers when used as intended or in a reasonably foreseeable way. *See Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1092 (9th Cir. 2021) ("Manufacturers have a specific duty to refrain from designing a product that poses an unreasonable risk of injury or harm to consumers.") (citing Dan B. Dobbs, et al., *Dobbs' Law of Torts* §478 (2d ed., June 2020 Update)). Instead of designing a reasonably safe product, Grindr implemented geolocation features that allow strangers to locate minors, recommends minors to adults for sexual encounters, provides no opt-out option for sharing users' proximity, offers its product to children without age verification or parental controls, and fails to separate adult and minor users. In contrast, the duty of a publisher is to review material submitted for publication,

edit for style or technical fluency and then decide whether to publish it. *Id.*

Likewise, the duty to warn of known hazardous conditions—that child users are at risk of sexual assault if they use the product as intended—is not a publishing function. Nor do the negligence-based claims invoke traditional editorial functions. Instead, they require Grindr to exercise reasonable care to not increase the risk of child sexual exploitation and rape (negligence) and in communicating or obtaining information (negligent misrepresentation). Grindr negligently represented its product as a "safe space," and through its marketing to children, it communicated that the product was safe for minors.

On March 21, 2023, Grindr removed the case to the Central District of California and, on April 28, 2023, filed a motion to dismiss all six of Doe's claims. Grindr argued that Doe's claims were barred because Section 230 provides broad immunity to online services for claims stemming from the publication of content created by third parties, Doe failed to state a claim under 18 U.S.C. §§ 1591 and 1595, and that Grindr is protected by the First Amendment. Doe opposed the motion to dismiss, explaining that Doe's claims do not treat Grindr as a publisher or speaker of third-party content and the duty breached does not relate to a publishing function. *See Lemmon*, 995 F.3d 1085; *HomeAway.com, Inc. v. City of Santa Monica,* 918 F. 3d 676 (9th Cir. 2019); *Doe v. Internet Brands,* 824 F.3d 846 (9th Cir. 2016). Doe supported its 18 U.S.C. §§ 1591 and 1595 claims by relying on the factually similar *A.M. v. Omegle.com LLC,* No. 3:21-cv-01674-MO, 2023 WL 1470269 (D. Or. Feb. 2, 2023), which carefully

distinguished *Does 1–6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022), concluding that a platform's ad revenue and paid subscription tiers establish a "commercial sex act" for beneficiary liability. Where a platform, one engaged in advertising, is aware its child members engage in sexual conduct through its platform and that multiple news articles, 100+ criminal cases, several civil cases, and peer-reviewed studies detailed stories of minors being exploited or abused through the platform prior to the plaintiff's harm, it is sufficient to show the platform knew or recklessly disregarded that children used its platform, establishing direct liability as a trafficking venture. *Id.*

On December 28, 2023, the District Court dismissed all claims in the FAC with prejudice. App. 16a. Eschewing the Ninth Circuit's well-worn, duty-based test, the District Judge instead relied on Second and Fifth Circuit law. The District Court reasoned that but-for user content, none of the harm would have befallen John Doe. App. 22a. ("If Grindr had not published that user-provided content, Doe and the adult men would never have met and the sexual assaults never occurred."). The District Court wrongly regarded the location data automatically extracted from Grindr users' mobile devices for Grindr's algorithm to recommend users to one another as third-party content even though this material was published nowhere. Thus, according to the District Court, Grindr was entitled to Section 230 immunity for five claims. Doe's sixth claim, trafficking, was also dismissed because, per the District Court, Doe misrepresented his age in order to use the app and Doe's allegations amount to nothing more than that Grindr "'turned a blind eye' to the unlawful content posted on its platform, not that it actively participated in sex trafficking." App. 32a, quoting *Reddit,* 51 F.4th at 1145.

On February 18, 2025, the Ninth Circuit affirmed the dismissal. App. 1a. However, it couched its Section 230 argument differently. It said that at heart, Doe was seeking to hold Grindr liable for "facilitating communication among users" and thus treating Grindr as a publisher. App. 6a. The idea, then, is that Grindr makes editorial decisions in deciding who can use its products. According to the Ninth Circuit, Doe's product liability and negligence claims hinged on the suppression of communications between adults and children. Grindr's categorization as a publisher also was fatal to Doe's failure to warn claim: "Grindr's role as a publisher of third-party content does not give it a duty to warn users of 'a general possibility of harm' resulting from the App." App. 9a. Ignoring Doe's extensive allegations about Grindr's active recruitment of children, the Ninth Circuit largely adopted the district court's conclusion that Grindr's conduct vis-à-vis the trafficking was too attenuated. App. 12a.

The Ninth Circuit did not apply this Court's 2024 *Moody* decision as the Eleventh Circuit had done in *Anderson v. TikTok* six months prior, despite both cases involving a platform's algorithmic recommendations.

The Ninth Circuit's treatment of Doe's claims as though they pertained to nothing more than Doe receiving content he did not want to see is woefully inaccurate and ignores Grindr's extensive affirmative conduct, as well as its very business purpose, which is to facilitate in-person sex between nearby strangers, including minors.

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeal are divided on the questions presented.

a. The Circuits are a mess regarding the scope of Section 230.

There is pronounced division among circuit courts on how to interpret the scope of Section 230, especially when it comes to deciding what it means to treat a platform as a publisher and whether content is a platform's own or that of third parties.

Starting in 1997, the lower courts began to textually expand the scope of Section 230 so that immunity swelled beyond publishing decisions.

The first appellate court to address Section 230's scope was the Fourth Circuit in *Zeran*, which rejected the plaintiff's argument that while Section 230 eliminates publisher liability, other forms of liability, such as distributor liability, remain intact. 129 F.3d 327. Rejecting the text and purpose of the statute, other circuits took instruction from *Zeran.* "The majority of federal circuits have interpreted the CDA to establish broad 'federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.'" *Almeida,* 456 F.3d at 1321 (quoting *Zeran*); *see also Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019) ("As courts uniformly recognize, § 230 immunizes internet services for third-party content that they publish…

against causes of action of all kinds."); *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 406 (6th Cir. 2014) ("Although § 230(c)(1) does not explicitly mention immunity or a synonym thereof, this and other circuits have recognized the provision to protect internet service providers for the display of content created by someone else.") (citing, inter alia, *Zeran*); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) ("Courts have construed the immunity provisions in § 230 broadly in all cases arising from the publication of user-generated content.") (citing, inter alia, *Zeran*); *Batzel v. Smith,* 333 F.3d 1018, 1030–31 & n.19 (9th Cir. 2003); *Green v. Am. Online (AOL),* 318 F.3d 465, 471 (3d Cir. 2003); *Ben Ezra Weinstein & Co., Inc. v. Am. Online Inc.,* 206 F.3d 980, 984–86 (10th Cir. 2000).

The Seventh Circuit has long been an outlier, resisting *Zeran's* bloat. It has repeatedly recognized that Section 230 does not create immunity at all. *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003) ("Why not read § 230(c)(1) as a definitional clause rather than as an immunity from liability…"). In the Seventh Circuit's view, Section 230(c)(1) forecloses any liability that depends on deeming an information content provider ("ISP") a publisher—defamation being the cardinal example of such liability—while permitting the states to regulate platforms in their capacity as intermediaries. *Id.*; *see also City of Chicago, Ill. v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010). As one Seventh Circuit panel explained, the other circuits' broad interpretation of Section 230 would immunize websites designed to help people steal music or other material in copyright, a position "incompatible" with this Court's opinion in *MetroGoldwyn–Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005). *Chicago Lawyers'*

Comm. for C.R. Under L., Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008).

The Ninth Circuit, the most prolific at interpreting Section 230, has been a hodgepodge of decisions with zero consistency or predictability. Its general rule is to evaluate whether the duty that the plaintiff alleges was breached involves publishing functions. The courts look at "whether the duty would necessarily **require** an internet company to monitor third-party content." *HomeAway.com,* 918 F.3d at 682 (emphasis added). One Ninth Circuit panel recently clarified how narrow immunity is even when there is a legal duty to remove content: "moderation must be more than one option in [the platform's] menu of possible response; it must be the only option." *Bride,* 112 F.4th at 1177 n.3. With the exception of this case, the Ninth Circuit has found that when the duty breached pertains to functions other than publication, Section 230 does not apply. *See*, *e.g.*, *Barnes v. Yahoo! Inc.,* 570 F.3d 1096, 1107 (9th Cir. 2009), as amended (Sept. 28, 2009) (where duty breached was as a promisor); *Doe v. Internet Brands*, Inc., 824 F.3d 846, 851 (9th Cir. 2016) (where duty breached was to warn of known hazard, a sexual predator on the platform); *Lemmon,* 995 F.3d at 1092 (where duty breached had nothing to do with the platform's editing, monitoring, or removing the content that its users generate, but instead sprang from its duty to take "reasonable measures to design a product more useful than it was foreseeably dangerous.").

Despite its rule-heavy approach to Section 230, when it comes to injuries it feels are caused by algorithms and recommendations, the Ninth Circuit bends over backwards to shield platforms from liability. *See, e.g.*,

Dyroff v. Ultimate Software Grp., Inc., 934 F.3d 1093, 1098 (9th Cir. 2019) (finding that that features, functions, and algorithms which handle user content and make recommendations or send notifications are "tools meant to facilitate the communication and content of others").

The Fourth Circuit has its own confusing spin that pertains to the propriety of the content itself. In *Henderson v. Source for Pub. Data, L.P.*, the Fourth Circuit held that "for §230(c)(1) protection to apply, we require that liability attach to the defendant on account of some improper content within their publication." 53 F.4th 110, 122 (4th Cir. 2022) (where the defendant owed a duty to provide consumers the information required under the Fair Credit Reporting Act).

In 2024, the Third Circuit made a cataclysmic departure from all circuits, including its own. In *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024), the Court seemingly overturned its earlier decisions relying on *Zeran* and held that Section 230 did not bar claims relating to TikTok's own algorithmic design. The Court determined that TikTok's algorithm—which recommended third-party content that the decedent viewed and was inspired to mimic, to deadly result—was its own "expressive activity," and thus the platform's own first-party speech. *Id.* at 184. Although the Third Circuit recognized "that TikTok's first-party speech captures third-party speech," it found that that TikTok's exercising of editorial discretion in the selection and presentation of content qualifies as speech activity, whether the content comes from third parties, or it does not. *Id.* at n.11 (citing *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024)). *Anderson* was the first time a circuit court had applied this Court's decision in *Moody*, which

examined algorithms in the First Amendment context and held a platform's algorithm reflects "editorial judgments" about "compiling the third-party speech it wants in the way it wants," to a Section 230(c)(1) controversy. Interestingly, the Third Circuit recognized its decision was "in tension" with *Green*, where it held that Section 230 immunized an interactive computer service ("ICS") from any liability for the platform's failure to prevent certain users from "transmit[ting] harmful online messages" to other users. 318 F.3d at 468. However, the Court justified its pivot by noting that *Green* did not involve an ICS's content recommendations via an algorithm and pre-dated *Moody*. *Id*. at n.13.

Anderson is an important sequel to the issues this Court engaged with in oral arguments in *Gonzalez*, where there was discussion about a user affirmatively searching for content versus being fed it. The holding is a drastic departure from other circuits. *See*, *e.g.*, *Dyroff*, 934 F.3d at 1098 ("[R]ecommendations and notifications . . . are not content in and of themselves."); *Force*, 934 F.3d at 70 ("Merely arranging and displaying others' content to users of Facebook through such algorithms—even if the content is not actively sought by those users—is not enough to hold Facebook responsible as the "develop[er]" or "creat[or]" of that content."); *Doe v. Backpage.com*, 817 F.3d at 20 (concluding that Section 230 immunity applied because the structure and operation of the website, notwithstanding that it effectively aided sex traffickers, reflected editorial choices related to traditional publisher functions); *Jones*, 755 F.3d at 407 ("traditional editorial functions" are immunized by Section 230); *Klayman v. Zuckerburg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014) (immunizing a platform's "decision whether to print or retract a given piece of

content"); *Johnson v. Arden,* 614 F.3d 785, 791–92 (8th Cir. 2010) (adopting *Zeran*); *Doe v. MySpace, Inc.*, 528 F.3d at 420 (rejecting an argument that Section 230 immunity was defeated when the allegations went to the platform's editorial functions).

The bloat of Section 230(c)(1) has received panicked dissent from circuit judges.

In *Force v. Facebook*, the Second Circuit Chief Judge Katzman resisted the majority's expansion of Section 230 immunity, insisting that the text and legislative history of the statute "does not protect Facebook's friend and content-suggestion algorithms." 934 F.3d at 82 (Katzmann, J., concurring in part). He cautioned that Facebook cannot be immune from claims arising from its own content and its own conduct. *Id.* at 77–84 (urging the majority to resist extending a law that "was designed to encourage computer service providers to shield minors from obscene material so that it now immunizes those same providers for allegedly connecting terrorists to one another").

In *Gonzalez v. Google LLC,* Ninth Circuit Judges Berzon and Gould "join[ed] the growing chorus of voices calling for a more limited reading of the scope of Section 230 immunity." 2 F.4th 871, 913 (9th Cir. 2021), *vacated and remanded*, 598 U.S. 617 (2023), and *rev'd sub nom. Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023) (Berzon, J., concurring) (Gould, J., concurring in part and dissenting in part). In her concurrence, Judge Berzon lamented that "if not bound by Circuit precedent, [she] would hold that" Section 230(c)(1) does not protect "activities that promote or recommend content or connect content users

to each other" like the recommendation algorithms on modern platforms. *Id.* at 913. She wrote "[n]othing in the history of [S]ection 230 supports a reading of the statute so expansive as to" include "targeted recommendations and affirmative promotion of connections and interactions among otherwise independent users" as "traditional" publisher functions. *Id.* at 914–15. Judge Gould went much farther. He dissented from the majority's immunity findings, attaching the entirety of Chief Judge Katzmann's "cogent and well-reasoned opinion" in *Force* to his dissent. *Id.* at 920, 938–52. Judge Gould said Section 230 should not be interpreted to "give social media platforms total immunity" for all claims involving user-generated content, and especially not the claims before the court where the plaintiffs were not "seek[ing] to treat Google as a publisher speaker of the ISIS video propaganda." *Id.* at 920–21.

In the Fifth Circuit, Judge Elrod led seven judges calling for change to its sweeping platform immunity. In *Doe through Roe v. Snap, Inc.*, the district court and the Fifth Circuit found Snap, Inc. immune in a case where a John Doe sought to hold Snap liable for its "own conduct" in defectively designing its social media application and for knowingly distributing harmful content. 88 F.4th 1069 (5th Cir. 2023). These judges, dissenting from denial of *en banc* rehearing, voted to "revisit [the Fifth Circuit's] erroneous interpretation of Section 230" that granted "sweeping immunity for social media companies." *Id.* at 1069–73 (Elrod, J., dissenting, joined by Circuit Judges Smith, Willett, Duncan, Engelhardt, Oldham, and Wilson) ("It is once again up to our nation's highest court to properly interpret the statutory language enacted by Congress.").

Had Doe's negligence and product claims been evaluated according to legislative intent or the statutory

text they would have survived Grindr's 12(b)(6) motion because none of his claims treat Grindr as a publisher. Case law in the Third, Seventh and even the Ninth also support denial of dismissal. The parameters of publisher immunity under Section 230 require review and this Court's guidance is needed now.

b. Circuits are split applying trafficking claims to platforms.

Section 230 immunity cannot immunize otherwise-protected defendants from certain civil claims arising from alleged sex trafficking. 47 U.S.C. § 230(e)(5)(A). In 2018, Congress passed the Allow States and Victims to Fight Online Sex Trafficking Act ("FOSTA"), which amended Section 230 to clarify that "[n]othing in [Section 230]…shall be construed to impair or limit…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 1595 of the Trafficking Victims Prevention and Protection Reauthorization Act ("TVPRA") provides a civil cause of action for violations of federal trafficking laws, while section 1591 enumerates two independent theories of criminal liability: for "[w]hoever knowingly (1) recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person," or "(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1)." 18 U.S.C. § 1591(a). Section 1591 thereby creates two alternate paths to liability: (i) direct venture liability under section (a)(1), or (ii) beneficiary liability under (a)(2),

which requires a separate violation of (a)(1), from which the defendant violating (a)(2) knowingly benefits. After FOSTA, if a defendant otherwise immunized from liability by operation of Section 230 violates either provision of TVPRA's section 1591, then it may be held civilly liable for that conduct pursuant to section 1595 of the same.

FOSTA was specifically enacted to address the limitations of Section 230 in holding online platforms accountable for facilitating sex trafficking. H.R. Rep. No. 115-527, pt. 1, at 3 (2018). In passing FOSTA, Congress recognized that Section 230 had created significant barriers to both state-level criminal prosecutions and civil claims against bad-actor websites. *Id.* A key example cited during legislative debates was the 2014 *Backpage.com* litigation, where the Second Circuit dismissed the case under Section 230, despite acknowledging that plaintiffs had plausibly alleged that Backpage structured its platform to facilitate sex trafficking. *Id.* at 5. The dismissal underscored the expansive immunity conferred by Section 230, even in the face of compelling allegations of platform-enabled exploitation.

The circuits that have interpreted trafficking claims under the TVPRA against platforms are split. As this case demonstrates, in *Does v. Reddit*, the Ninth Circuit dismissed trafficking claims where a general interest online bulletin board accidentally hosted child sexual exploitation material that third parties had posted. 51 F.4th at 1145. Only beneficiary liability was pleaded and the court found insufficient allegations that Reddit knowingly participated in or benefitted from sex trafficking. Instead, by not timely removing the content, Reddit merely "turned a blind eye" to the unlawful content. Crucially, the Ninth

Circuit interpreted the language in the TVPRA to require that a platform's "own conduct" constitute the underlying violation of either §§ 1591(a)(1) or (a)(2), rather than that of its third-party users.

With the instant case, the Ninth Circuit relied on *Reddit* and again dismissed claims for failure to plead any conduct by the platform itself more active than "turn[ing] a blind eye." App. 12a. Unlike in *Reddit,* John Doe alleged not only beneficiary liability but also direct venture liability. *Id.* Doe's factual allegations included numerous departures from the mere inaction in *Reddit*. Doe alleged Grindr actively recruited children, presented them to adults for sex by using its algorithms and location extractions, profited from charging subscriptions and selling advertisements, and possessed both actual and constructive knowledge about the ubiquity of children on its app based on the glut of complaints, articles, criminal cases, civil cases, and journals cited in Doe's complaint.

In contrast, the Fifth Circuit found that providing general cloud-based software tools to a company accused of publishing advertisements for sex, satisfies the elements for beneficiary liability. *A.B. v. Salesforce,* No. 23-20604 (5th Cir. 2024). A First Circuit decision which inspired the FOSTA/SESTA exception to Section 230 seems to accept that Backpage's online publishing activities in the "Escorts" section of its website satisfied the TVPRA elements when it came to its use by minors and that only Section 230 (and not outrageously high pleading requirements) stood in the way of liability. *Doe, et al., v. Backpage.com, LLC* No. 15-1724 (1st Cir. 2016). In that case, the First Circuit condemned Backpage's defective age verification system, which allowed users to easily

circumvent age requirements, whereas the Ninth Circuit takes the stance that so long as a platform purports to be for people eighteen and up, any facts about child assault are nullified. *See* App. 1a. ("The FAC's allegation that Grindr 'knowingly introduces children to adults for in-person sexual encounters,' is not supported by any plausible factual allegations. To the contrary, the FAC asserts that Grindr matches users who represented to the App that they are over eighteen years old.").

An unfortunately kindred spirit to the Ninth Circuit, the Eleventh Circuit contorts itself to protect platforms that engage in trafficking and even introduces a higher *mens rea* especially for platform defendants. *M.H. ex rel. C.H. v. Omegle.com LLC,* 122 F.4th 1266, 1275 (11th Cir. 2024) ("FOSTA's imposition of an actual knowledge standard places a higher burden on sex trafficking victims seeking civil relief against interactive computer services than those seeking relief against other kinds of defendants."). In that case, which examined beneficiary liability, the Eleventh Circuit affirmed dismissal of a case involving child sex exploitation on a platform with a chief use of matching adults and children for live-streaming sexual abuse.

Had Doe's trafficking claims been evaluated according to the text of the statute or legislative intent they would have survived Grindr's Rule 12(b)(6) motion. The claims likely would also have succeeded in the Fifth and First Circuits. This circuit split underscores the need for this Court's guidance.

II. The decision below is wrong.

a. The Ninth Circuit granted sweeping immunity contrary to law.

The Ninth Circuit's decision eviscerates the natural reading of Section 230(c)(1).

During oral argument, Grindr convinced a panel of three Ninth Circuit judges that it bears no duty to keep children off its platform and that *even if* some simple and effective mechanism for age verification existed, Grindr could never have the obligation to incorporate it. Grindr adopts the repulsive notion that a product's infrastructure to exclude minors simply boils down to censoring content and takes the extreme position, ultimately a position the Ninth Circuit accepted, that human beings themselves are "content," and whom it allows to use a product is an editorial decision.

In its decision, the Ninth Circuit blurred the line between protecting speech and enabling harm, not only disregarding the language of the statute and policy behind Section 230 but also ignoring its own precedent by failing to conduct the required duty analysis. The *Barnes* test requires the court to "ask whether the duty plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.' If it does, Section 230(c)(1) precludes liability." 570 F.3d at 1102. Clarifying *Barnes* further, the Ninth Circuit had recently adopted a two-part analysis that requires examining the right from which the duty springs: (1) does the duty spring from the platform's status as a publisher or from somewhere else? (2) does that duty require the

ISP to moderate content? If moderation is the *only* way to fulfill the duty, then Section 230 immunity attaches.

In this case, the *Barnes* test establishes that Grindr breached its duty not to release a product that poses a foreseeable risk to users when used as intended or in a reasonably predictable manner. It failed to warn of a known danger: that minors using the app are at serious risk of sexual exploitation and assault. Grindr further violated its duty to exercise reasonable care by actively facilitating child sexual abuse and falsely marketing its platform as a "safe space." These duties are independent of any role Grindr may have as a publisher. Critically, Grindr had a range of non-editorial, common-sense measures at its disposal—none of which required content moderation. These included implementing robust age verification, disabling default proximity-sharing, offering opt-outs for geo-ranking, verifying user identities, issuing safety warnings, avoiding marketing to minors, using geofencing to block access near schools and playgrounds, and working with distributors like the App Store and Google Play to enforce age restrictions. Moreover, Doe alleges more than "'a general possibility of harm' resulting from the App." App. 9a., quoting *Bride,* 112 F.4th at 1181. Doe pleads that Grindr knowingly recommended and matched children to adults for in-person sex and sets forth extensive information about the ubiquity of the problem on Grindr. That Doe experienced it four times in four days shows there was more than a "general possibility of harm."

The Ninth Circuit also distorts Doe's claims as "fault[ing] Grindr for facilitating communication among users for illegal activity, including the exchange of child sexual abuse material" and that Grindr had a duty to "prevent the harmful sharing of messages between

users that could lead to illegal activity." App. 6a-7a. While Doe was in fact a victim of child pornography on Grindr's application, none of his claims pertain to that type of exploitation. Doe's claims do not center on illegal activity happening on the Grindr app itself, but rather on Grindr's liability for marketing and designing a product that matches strangers for *offline* sex, including between children and adults. Underscoring just how much Doe's claims do not center around third-party content, Doe makes no representations that the sharing of messages between users breached any duties. Rather, Grindr breached its duties by recruiting children, extracting location data to offer kids to nearby adults, and by failing to offer any warnings about the risks. These are boardroom decisions—not content-related ones.

Finally, the Ninth Circuit invents the notion that a failure to warn allegation requires that a defendant have "independent knowledge of a conspiracy." App. 9a. Failure to warn claims derive from product liability jurisprudence. The Ninth Circuit points to no authority that requires a failure to warn claim include the element of conspiracy.

Although the extent to which *Moody* applies to cases involving personal injuries against platforms is unclear, the Ninth Circuit failed to apply *Moody* where algorithmic recommendations were central to Doe's case and where Grindr made contradictory arguments—asserting, on one hand, that all liability arose from third-party content, while also claiming entitlement to First Amendment protections on the grounds that the speech at issue was its own.

b. The Ninth Circuit also misapplied federal anti-trafficking law.

The Ninth Circuit similarly mishandled Doe's sex trafficking claims. In the FAC, Doe alleged in detail that Grindr intentionally markets to children. Doe included screenshots of the advertisements published directly by Grindr on its official TikTok and Instagram accounts that featured child models depicted in middle and high school settings, such as in Physical Education classes and recess, clearly designed to appeal to underage users. Doe further cited extensive evidence documenting Grindr's awareness of underage sexual abuse on its platform. This included: (1) a dozen news articles on the persistent crisis of children being sexually assaulted after using Grindr; (2) a 2019 U.K. government investigation criticizing Grindr's lax age verification; (3) the first civil lawsuit in 2014 involving a minor's rape; (4) a report documenting over 100 criminal cases of child assault linked to the app; and (5) a 2018 *Journal of Adolescent Health* study revealing that over half of sexually active gay teen boys met adults for sex through Grindr.

Disregarding nearly all the allegations outlined above, the Ninth Circuit concluded that Grindr's conduct was too attenuated to satisfy the pleading standard for sex trafficking. The court analogized Grindr to Reddit—a general-purpose publishing platform that had been sued for failing to remove child sexual abuse material. However, unlike Reddit, Grindr's core function and primary source of revenue is facilitating sexual encounters between strangers.

The Ninth Circuit's cardinal mistake was conflating the knowledge standards for beneficiary liability under § 1591(a)(2) and venture liability under § 1591(a)(1). Doe pleaded both. Reddit was concerned only with beneficiary liability and found there was none because Reddit "turned a blind eye to the unlawful content posted on its platform, not that it had actively participated in sex trafficking." App. 32a.

But when a defendant is "facilitating matches between adults and minors," that alone is enough to satisfy the elements of venture liability under § 1591(a)(1) where Grindr's recruitment, enticement, solicitation, and advertising acquired minor users for commercial sex acts. When it comes to advertising conduct, Grindr need only be in "reckless disregard" of the trafficking. App. 37a. The term "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." § 1591(e)(3). App. 38a. Doe clearly alleges Grindr's monetization of its members who download the app in exchange for being marketed to and/or pay premium membership rates. Grindr not only advertised to recruit more child users, but through its recommendations, it advertised Doe himself.

III. The question of platform liability is recurring, urgent, and important.

It's no small matter for an entire global industry—one of the most powerful in human history, serving billions—to be shielded from responsibility for the injuries it causes. The enactment of Section 230, followed by thirty years of judicial bloat, has done just that. Only the Supreme Court can correct this. Congress, with its theatrical hearings of

tech titans, has proven slow and indecisive about amending Section 230. A single amendment in three decades, to clarify that sex trafficking is not publishing, still authorizes platforms to "turn a blind eye" and continue profiting from knowingly facilitating child-adult in-person rape, as this case proves.

The questions presented here are particularly important, as tech companies recruit younger and younger children, and influence all aspects of daily living. Unfurling upon us is a new world of artificial intelligence and machine learning. Soon, the Internet of today may appear as outdated as the dial-up web of 1995. The absence of clear and guiding case law has neutered the public from taking action when it has empowered companies like Grindr to injure with impunity, never fearing the stare of a jury.

Platforms have gotten more brazen with every lower court decision wrongly dismissed under Section 230. This is not a one-off case. The issues presented are recurring and increasingly urgent. As platforms target child users and become embedded in every facet of human life, the cost of judicial inaction grows. If this Court does not draw the line now, it may never get the chance to do so again.

CONCLUSION

For the above reasons, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

DATED this 21st day of May 2025.

Respectfully submitted,

Carrie Goldberg
Counsel of Record
Naomi Leeds
Roxanne Rimonte
Zaynah Chaudhury
Katie McKay
Laura Hecht-Felella
C.A. Goldberg, PLLC
16 Court Street, 33rd Floor
Brooklyn, NY 11241
(646) 666-8908
carrie@cagoldberglaw.com

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED FEBRUARY 18, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-475
D.C. No. 2:23-cv-02093-ODW-PD

JOHN DOE, an individual,

Plaintiff-Appellant,

v.

GRINDR INC.; GRINDR LLC,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Argued and Submitted December 3, 2024
Pasadena, California

Before: Jay S. Bybee, Sandra S. Ikuta, and
Bridget S. Bade, Circuit Judges.

Filed February 18, 2025

Appendix A

OPINION

IKUTA, Circuit Judge:

Under § 230 of the Communications Decency Act of 1996, interactive computer service providers are immune from state law liability when plaintiffs seek to treat those providers as publishers of third-party content. *See* 47 U.S.C. § 230(c)(1). John Doe alleges that Grindr Inc. and Grindr LLC (collectively "Grindr"), the owners and operators of the Grindr application (referred to herein as the "App"), are liable for injuries that Doe incurred as an underage user of the App. Doe also brings a federal sex trafficking claim under the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595(a). Grindr argues that it is immunized from liability under § 230.

We hold that the district court properly dismissed each of Doe's claims as barred by § 230. Because Doe's state law claims necessarily implicate Grindr's role as a publisher of third-party content, § 230 bars those claims. Doe fails to state a plausible TVPRA claim, so Doe cannot invoke a statutory exception to § 230 immunity. Therefore, we affirm the district court's dismissal of Doe's claims in their entirety.[1]

1. We grant the motion to file an untimely amicus curiae brief filed by the Public Health Advocacy Institute. Dkt. No. 25.

Appendix A

I

Under § 230 of the Communications Decency Act, "[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). "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with" § 230. *Id.* § 230(e)(3). Although § 230 is broad, it does not provide "a general immunity from liability deriving from third-party content." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009). As applied to state law claims, it "only protects from liability (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *Id.* at 1100–01. There is no dispute that Grindr is an interactive computer service provider, so we consider only the remaining two prongs.

The second and third prongs of *Barnes* require us to consider each cause of action alleged "to determine whether a plaintiff's '*theory of liability* would treat a defendant as a publisher or speaker of third-party content.'" *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 740 (9th Cir. 2024) (quoting *Barnes*, 570 F.3d at 1101). The second prong requires us to ask whether plaintiff claims that the defendant breached a duty that "derives from the defendant's status or conduct as a publisher or speaker." *Id.* (internal quotation marks omitted). If the duty does not derive from such status or conduct, but

rather from another source, then § 230 does not immunize the defendant. *Id.* The third prong requires us to ask whether the cause of action targets "content provided by another." *Barnes*, 570 F.3d at 1102. A defendant loses its immunity to the extent that the cause of action seeks to treat the defendant "as the publisher or speaker of its *own* content—or content that it created or developed in whole or in part—rather than [as] the publisher or speaker of entirely third-party content." *Calise*, 103 F.4th at 744.

II

Grindr is the owner and operator of the App, which is its namesake dating App for gay and bisexual men. The App matches users based on proximity, and it allows matched users to send direct messages to each other. The App requires users to be over 18, but it does not verify users' ages. Grindr has marketed the App on Instagram and TikTok, social media platforms that are popular with minors. The App is free to download and use; Grindr makes money from the App through ads and paid subscriptions, which provide users with enhanced features.

In the spring of 2019, John Doe was a 15-year-old boy residing in Canada. Doe downloaded and signed up for the App. To use the App, Doe represented that he was over 18 years old. From April 4 through April 7, 2019, the App matched Doe with four adult men. Doe alleges that each adult man raped him on consecutive days. Three of those men later received criminal sentences for their crimes against Doe, while the fourth remains at large.

Appendix A

Doe's First Amended Complaint ("FAC") against Grindr, the operative complaint on appeal, alleged the following six causes of action:

> (1) Defective design, as the App's geolocation function matched adults and children for illegal sexual activity, and safer alternative designs were feasible,
>
> (2) Defective manufacturing, as the App matched adults and children for illegal sexual activity,
>
> (3) Defective warning, as the App did not adequately instruct users about known risks of child sexual abuse,
>
> (4) Negligence, as Grindr owed Doe a duty to avoid matching Doe with adult men who would rape him,
>
> (5) Negligent misrepresentation, as Grindr negligently misrepresented that the App was designed to create a safe and secure environment for its users, and,
>
> (6) Violation of the TVPRA, 18 U.S.C. § 1595, as Grindr directly and knowingly participated in a sex trafficking venture, and knowingly benefitted financially from trafficking.

Grindr moved to dismiss the FAC, arguing that § 230 barred all of Doe's claims.[2] The district court dismissed the FAC with prejudice, on the ground that all of Doe's state law claims were barred by § 230. The district court also held that Doe failed to state a TVPRA claim. Doe timely appealed.

III

A

We have jurisdiction to review a final judgment under 28 U.S.C. § 1291. "We review de novo the district court's decision to grant" a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Est. of Bride ex rel. Bride v. YOLO Techs., Inc.*, 112 F.4th 1168, 1174–75 (9th Cir. 2024).

B

Each of Doe's state law claims necessarily implicates Grindr's role as a publisher of third-party content. The theory underpinning Doe's claims for defective design, defective manufacturing, and negligence faults Grindr for facilitating communication among users for illegal activity, including the exchange of child sexual abuse material. Doe claims that Grindr had a duty to suppress matches and communications between adults and children, so as

2. Grindr also argued to the district court, and argues again on appeal, that the First Amendment barred Doe's state law claims, and that Doe's state law claims were inadequately pleaded. Because we affirm on the § 230 ground reached by the district court, we do not address Grindr's alternative arguments.

to prevent the harmful sharing of messages between users that could lead to illegal activity. These claims necessarily implicate Grindr's role as a publisher of third-party content, because discharging the alleged duty would require Grindr to monitor third-party content and prevent adult communications to minors.

In *Dyroff v. Ultimate Software Group*, we held that § 230 barred similar state law claims. *See* 934 F.3d 1093, 1097 (9th Cir. 2019). In *Dyroff*, the defendant publisher operated a website that allowed its users to anonymously interact through online communities. *Id.* at 1094–95. A victim purchased tainted drugs from a fellow website user, which led to the victim's fatal overdose. *Id.* at 1095. The plaintiff, victim's mother, alleged that the defendant was liable because its website allowed users to engage in illegal activity, that its algorithm promoted those communications, and that it failed to expel users who engaged in illegal activity. *Id.* We affirmed the dismissal of plaintiff's claims as barred by § 230. *Id.* at 1097–98. Though defendant "used features and functions, including algorithms, to analyze user posts on [the website] and recommended other user groups," these neutral features were "meant to facilitate the communication and content of others" and were "not content in and of themselves." *Id.* at 1098. Because the defendant acted as a publisher, and third-party communications caused the harm to the victim, the defendant was immune from liability under § 230.

Doe's theory of liability is that Grindr breached its duty not to design or manufacture defective products by failing to prevent a minor from being matched with

predators, by matching users based on geographic data it extracted from them, and by allowing Doe to communicate with abusive adults. But, as in *Dyroff*, Doe used "features and functions" of Grindr that were "meant to facilitate the communication and content of others," and the features and functions were "content neutral" on their own. *Id.* at 1098, 1100. Therefore, as in *Dyroff*, § 230 bars the defective design, defective manufacturing, and negligence claims.

Doe's attempts to compare his claims to those in *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1092–93 (9th Cir. 2021), are unpersuasive. In *Lemmon*, plaintiffs alleged a product defect flowing from "the interplay between [the defendant's] reward system" and a feature on the defendant's app which allowed users to overlay their real-life speed over shared media; this interplay allegedly encouraged users to drive at dangerous speeds. *Id.* at 1088–89, 1092. Defendant allegedly violated a duty to design a reasonably safe product. *Id.* at 1093. We concluded that defendant's alleged violation of this duty had "nothing to do with its editing, monitoring, or removing of the content that its users generate through" the app. *Id.* at 1092 (internal quotation marks omitted). The duty to avoid designing a product that encouraged dangerous driving was "fully independent of [defendant's] role in monitoring or publishing third-party content," and it did not "seek to hold [the defendant] responsible as a publisher or speaker." *Id.* at 1093. By contrast, the challenged features of the App are not independent of Grindr's role as a facilitator and publisher of third-party content.[3]

3. It is analytically insignificant whether Doe's injuries would not have occurred "but for" Grindr's role as a publisher. *See, e.g.*, *Est. of Bride*, 112 F.4th at 1176 n.2 ("[W]e have explicitly

Nor can Grindr be held liable for failure to warn. This theory of liability is that Grindr had a duty to warn Doe about the risks of child sexual exploitation on the App. We have held that an interactive computer service provider has a duty to warn a user when the provider is aware of a "known conspiracy operating independent of the site's publishing function." *Est. of Bride*, 112 F.4th at 1181 (citing *Internet Brands*, 824 F.3d at 851). In *Internet Brands*, the plaintiff alleged that the defendant, the owner and operator of a website, knew that two men were using the website to identify targets for a rape scheme. 824 F.3d at 848–49. The plaintiff's failure-to-warn claim was not based on the defendant's failure to remove any user content or on the defendant's publishing or monitoring of third-party content. *Id.* at 851. Rather, the plaintiff faulted the defendant for "failing to warn her about information it obtained from an outside source." *Id.*; *see id.* at 853. We concluded that the plaintiff's claim did not seek to hold the defendant liable as a publisher or speaker of third-party content. *Id.* at 851. Here, by contrast, Doe does not allege that Grindr had independent knowledge of a conspiracy, and Grindr's role as a publisher of third-party content does not give it a duty to warn users of "a general possibility of harm" resulting from the App. *Est. of Bride*, 112 F.4th at 1181. Therefore, § 230 bars this claim.

Nor can Grindr be held liable for negligent misrepresentation. This theory faults Grindr for stating that it would maintain a "safe and secure

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disclaimed the use of a 'but-for' test because it would vastly expand § 230 immunity beyond Congress'[s] original intent.") (citing *Doe v. Internet Brands*, 824 F.3d 846, 853 (9th Cir. 2016)).

environment for its users" on the App but failing to do so. We have held that § 230 does not bar causes of action seeking to enforce contracts or promises unrelated to a defendant's role as a publisher or speaker of third-party content. In *Barnes*, 570 F.3d at 1099, a defendant promised to take down indecent profiles impersonating a plaintiff, and in *Estate of Bride*, 112 F.4th at 1173, a defendant promised to unmask the identities of users sending harassing messages. In each case, the plaintiff sought to hold the defendant accountable for a specific promise or representation, "not for failure to take certain moderation actions," *id.* at 1178–79; *see also Barnes*, 570 F.3d at 1107–09. By contrast, Grindr's general statement that the App is "designed to create a safe and secure environment for its users," is not a specific promise, but a description of its moderation policy, and thus protected from liability under § 230. Moreover, compared to the aforementioned promises, the statement that an interactive computer service provider will create a safe and secure environment is too general to be enforced.

C

Doe also brings a federal claim under the civil remedy provision of the TVPRA, 18 U.S.C. § 1595(a), which allows an "individual who is a victim of a violation of this chapter" to bring a civil action against either a perpetrator of sex trafficking, or "whoever knowingly benefits, or attempts or conspires to benefit," from "participation in a venture which that person knew or should have known" was engaged in sex trafficking.

To allow TVPRA lawsuits against online enterprises to go forward, Congress enacted an exception to § 230(c) in the Allow States and Victims to Fight Online Sex Trafficking Act of 2018 ("FOSTA"). *See* 47 U.S.C. § 230(e)(5). As applicable here, the FOSTA exception provides that nothing in § 230 (other than an inapplicable subsection) shall impair or limit any civil action brought under 18 U.S.C. § 1595, "if the conduct underlying the claim constitutes a violation of section 1591 of that title." *See id.* § 230(e)(5)(A). In turn, 18 U.S.C. § 1591 provides in relevant part that any defendant who "knowingly" engages in child sex trafficking, or benefits financially by doing so, shall be punished.

A plaintiff bringing an action under 18 U.S.C. § 1595, as allowed by 47 U.S.C. § 230(e)(5)(A), must plausibly allege that the defendant either was a knowing perpetrator of sex trafficking, or was a person that knowingly benefitted from the sex trafficking. The defendant's "own conduct" must violate 18 U.S.C. § 1591. *Does v. Reddit, Inc.*, 51 F.4th 1137, 1141 (9th Cir. 2022). "Mere association with sex traffickers is insufficient absent some knowing 'participation' in the form of assistance, support, or facilitation." *Id.* at 1145 (citing 18 U.S.C. § 1591(e)(4)).

A defendant's own conduct violates 18 U.S.C. § 1591 when the defendant "actually engaged in some aspect of the sex trafficking." *Id.* (internal quotation marks omitted). Not only must the defendant have actual knowledge of the sex trafficking, but there must be "a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit." *Id.* (citation omitted);

see also A.B. v. Salesforce, Inc., 123 F.4th 788, 798–99 (5th Cir. 2024) (holding that the plaintiff's showing that defendant provided "back-office business services to a company it knew (or should have known) was engaged in sex trafficking" was sufficient to show that defendant knowingly benefitted from and assisted in sex trafficking). But turning a blind eye to trafficking that may occur on a platform does not constitute active participation in sex trafficking. *Reddit*, 51 F.4th at 1145–46.

Here, Doe fails to state a TVPRA claim, and therefore FOSTA's carveout to § 230 immunity for such claims does not apply. Doe must plausibly allege that Grindr "knowingly" sex trafficked a person by a list of specified means. 18 U.S.C. § 1591(a)(1). But the FAC merely shows that Grindr provided a platform that facilitated sharing of messages between users. The FAC's allegation that Grindr "knowingly introduces children to adults for in-person sexual encounters," is not supported by any plausible factual allegations. To the contrary, the FAC asserts that Grindr matches users who have represented to the App that they are over eighteen years old. The allegation that Grindr "recruits both children and adults to use" the App does not plausibly allege that Grindr's own conduct perpetrated sex trafficking; rather, it alleges general advertising of the App on social media. At most, the FAC shows only that Grindr "turned a blind eye" to facilitating matches between minors and adults, which is insufficient to show even beneficiary liability. *Reddit*, 51 F.4th at 1145.

Doe's beneficiary theory of TVPRA liability also fails, as the FAC does not plausibly allege that Grindr benefitted

from the alleged sex trafficking beyond generally receiving advertising revenues. An interactive computer services provider is not liable as a beneficiary if it merely turns a blind eye to the source of its revenue; there must be "actual knowledge and a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit." *Id.* (internal quotation marks omitted). Doe's references to Grindr's constructive knowledge of child sexual abuse on its platform do not plausibly allege Grindr's active participation in a sex trafficking venture. The FAC does not causally connect Grindr's advertising revenues with any affirmative conduct by Grindr that furthered the sex-trafficking venture alleged in this case. At most, it alleges that Grindr turned a blind eye to sex trafficking on the App and generally benefitted from sex traffickers' use of the App. Thus, the FAC does not plausibly allege a claim under the TVPRA and the carveout in FOSTA.[4]

In sum, the district court correctly held that Doe's "TVPRA claim, whether direct or beneficiary, fails." Because Doe cannot "plausibly allege that [Grindr's] own conduct violated [18 U.S.C. §] 1591," Doe cannot "invoke FOSTA's immunity exception" to § 230 immunity. *Id.* at 1141. Therefore, § 230 bars Doe's TVPRA claim.

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4. Our conclusion comports with a recent decision of our sister circuit. *See M.H. ex rel. C.H. v. Omegle.com LLC*, 122 F.4th 1266, 1276 (11th Cir. 2024) (per curiam) (holding that the plaintiff failed to plausibly allege that defendant benefitted from participating in a sex trafficking venture because it failed to allege either defendant's actual knowledge or overt participation in sex trafficking).

IV

The district court properly dismissed all of Doe's claims as barred by § 230. Therefore, we affirm the dismissal of Doe's FAC.

AFFIRMED.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED DECEMBER 28, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No 2:23-cv-02093-ODW (PDx)

JOHN DOE,

Plaintiff,

v.

GRINDR INC. et al.,

Defendants.

Filed December 28, 2023

ORDER GRANTING MOTION TO DISMISS [37]

I. INTRODUCTION

"This is a hard case—hard not in the sense that the legal issues defy resolution, but hard in the sense that the law requires that [the Court] deny relief to [a plaintiff] whose circumstances evoke outrage." *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 15 (1st Cir. 2016). The facts of this case are indisputably alarming and tragic. No one should endure what Plaintiff has. However, after careful review and consideration of the facts and applicable

law, the Court ultimately determines that Plaintiff's claims are precluded by the Communications Decency Act ("CDA"), 47 U.S.C. § 230. Consequently, as discussed below, the Court **GRANTS** Defendants' Motion to Dismiss the First Amended Complaint ("Motion"). (Mot., ECF No. 37.)[1]

II. BACKGROUND[2]

Grindr Inc. and Grindr LLC (collectively, "Grindr") own and operate a geosocial dating application for LGBTQ+ individuals (the "Grindr App" or "App"). (First Am. Compl. ("FAC") ¶¶ 3, 22, ECF No. 36.) The App is free to download and use; Grindr earns revenue through in-app advertisements and tiered subscriptions. (*Id.* ¶¶ 7, 24.) Grindr users must be over eighteen years old, but Grindr markets the App to minors as well as adults. (*Id.* ¶¶ 29, 35–41.) To sign up for an account, users must first provide an email address and verify they are over eighteen years old. (*Id.* ¶¶ 26, 29.) They may then create a unique user profile with their interests and geolocation. (*Id.* ¶¶ 30–32.) Using this information, the App matches geographically proximate users with one another. (*Id.* ¶ 32.) The matched users may then communicate using

1. Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

2. All factual references derive from Plaintiff's First Amended Complaint, and well-pleaded factual allegations are accepted as true for purposes of this Motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

direct messaging features, like private messages, texts, and photos. (*Id.* ¶ 33.)

In the spring of 2019, John Doe was fifteen years old and lived in a small town in Nova Scotia, Canada. (*Id.* ¶¶ 9, 45.) Doe knew he was gay but was too ashamed to tell his parents. (*Id.* ¶ 10.) Seeking queer community, Doe installed the Grindr App, misrepresented that he was over eighteen years old, and created a user profile. (*Id.* ¶¶ 11, 48–49.) Grindr did not verify Doe's age. (*Id.* ¶ 50.) Over a four-day period, the App matched Doe with four geographically proximate adult men. (*Id.* ¶ 11.) Doe and the men exchanged direct messages, personal information, and explicit photographs. (*Id.* ¶¶ 53–57 (April 4—Noah Zwicker), 59–60 (April 5—Clarence Butler), 61 (April 6—"Matt"), 62–63 (April 7—Scott Hazelton).) Doe met each man in person and was sexually assaulted and raped. (*Id.* ¶¶ 57, 60, 61, 63.) After Doe's mother confronted him about sneaking out, Doe told her he signed up for Grindr, that the App matched him with the adult men, and that the men had raped him. (*Id.* ¶ 64.) Three of the men are now in prison for sex crimes, while the fourth remains at large. (*Id.* ¶¶ 11, 66.)

Doe brings this lawsuit against Grindr for child sex trafficking and a defective product, asserting claims of strict product liability, negligence, negligent misrepresentation, and violation of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. §§ 1591, 1595. (*Id.* ¶¶ 89–174.) Doe contends that Grindr's App is an inherently dangerous software product. He asserts that Grindr knows that minors use the App and

that sexual predators use it to target minors. (*Id.* ¶ 78.) On this basis, he alleges that Grindr facilitates sex crimes against children through the defective App. (*Id.* ¶¶ 4, 98.) Grindr moves to dismiss the First Amended Complaint pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6). (Mot. 4–5.)

III. LEGAL STANDARD

A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To survive a dismissal motion, a complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual "allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). That is, the complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

The determination of whether a complaint satisfies the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. A court is generally limited to the pleadings and must construe all "factual allegations set forth in the complaint . . . as true and . . . in the light most favorable" to the

plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). However, a court need not blindly accept conclusory allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Where a district court grants a motion to dismiss, it should generally provide leave to amend unless it is clear the complaint could not be saved by any amendment. *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Leave to amend may be denied when "the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Thus, leave to amend "is properly denied . . . if amendment would be futile." *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

IV. DISCUSSION

Grindr moves to dismiss Doe's claims, arguing that they are all barred by the CDA and the First Amendment, and that Doe fails to adequately state his claims against Grindr. (*See* Mot. 1–2.) The Court finds Doe's claims are barred by § 230 of the CDA ("Section 230"), and therefore does not reach Grindr's other arguments.

A. Section 230 of the CDA

Section 230 of the CDA immunizes "certain internet-based actors from certain kinds of lawsuits." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099 (9th Cir. 2009). The

statute provides, in relevant part, 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). Additionally, "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* § 230(e)(3).

The Ninth Circuit has developed a three-prong test for determining whether Section 230 immunity applies: "Immunity from liability exists for '(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider.'" *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019) (quoting *Barnes*, 570 F.3d at 1100–01). "When a plaintiff cannot allege enough facts to overcome Section 230 immunity, a plaintiff's claims should be dismissed." *Id.* (citation omitted).

1. Interactive Computer Service

Doe does not challenge Grindr's status as an "interactive computer service" provider within the meaning of Section 230.[3] (*See* Opp'n 2–11, ECF No. 38.)

3. Section 230 defines "interactive computer service" to mean "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." 47 U.S.C. § 230(f)(2).

Courts interpret the term "'interactive computer service' "expansively." *Dyroff*, 934 F.3d at 1097. "[P]roviders of interactive computer services include entities that create, own, and operate applications that enable users to share messages over its internet-based servers," like Grindr. *Bride v. Snap Inc.*, No. 2:21-cv-06680-FWS (MRWx), 2023 U.S. Dist. LEXIS 5481, 2023 WL 2016927, at *4 (C.D. Cal. Jan. 10, 2023) (citing *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1091 (9th Cir. 2021)). The Court finds the first prong of the *Barnes* test is met.

2. Publisher or Speaker

The second prong of the *Barnes* test requires courts to ask "whether the claims 'inherently require[] the court to treat the defendant as the "publisher or speaker" of content provided by another.'" *Dyroff*, 934 F.3d at 1098 (alteration in original) (quoting *Barnes*, 570 F.3d at 1102). "The broad construction accorded to [S]ection 230 as a whole has resulted in a capacious conception of what it means to treat a website operator as the publisher or speaker of information provided by a third party." Backpage.com, 817 F.3d at 19. "[M]any causes of action might be premised on the publication or speaking of what one might call 'information content.'" *Id.* (quoting *Barnes*, 570 F.3d at 1101). A court must therefore look to "what the duty at issue actually requires:" i.e., "whether the duty would necessarily require an internet company to monitor third-party content." *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019).

Grindr argues Doe's claims seek to hold Grindr liable as a publisher or speaker of information provided by

another. (Mot. 6–9.) Doe contends his claims do not treat Grindr as a publisher or speaker because he seeks to hold Grindr liable for the design, development, and sale of a defective product—the App—that matches children with adults for in-person sexual encounters and facilitates the exchange of sexually explicit material. (Opp'n 3–5; FAC ¶¶ 96, 98, 111, 122, 131, 152.) Ultimately, although Doe frames Grindr's minimal age verification and user matching functions as a product defect, Doe's claims seek to hold Grindr liable based on its publishing of user content.

The root of Doe's claims is that, through the Grindr App, Doe and adult men were matched based on their user profiles and geographical proximity, allowing Doe and the adult men to exchange direct messages and personal information, leading to the in-person meetings and sexual assaults. But Grindr's match function relies on and publishes a user's profile and geolocation data, which is third-party content generated by the user. *See Dyroff*, 934 F.3d at 1098 (finding that an app's features, functions, and algorithms that analyze user content and recommend connections "are tools meant to facilitate the communication and content of others"); *Herrick v. Grindr LLC*, 765 F. App'x 586, 590, 591 (2d Cir. 2019) (summary order) (recognizing that Grindr's geolocation feature is based on a user's mobile device longitude and latitude). Grindr received the user content from Doe and the adult men and published it via the match feature's notification. If Grindr had not published that user-provided content, Doe and the adult men would never have met and the sexual assaults never occurred. *See Doe v. MySpace, Inc.*,

528 F.3d 413, 419–20 (5th Cir. 2008) (rejecting as artful pleading plaintiffs' contention that their negligence claims were predicated on the lack of basic social media safety features to protect minors from communicating with predators). Thus, Doe's claims require the Court to treat Grindr as a publisher of user content.

Doe relies on *Lemmon v. Snap*, in which the Ninth Circuit held Section 230 immunity inapplicable to the alleged product liability claims, to argue Doe's product liability claims here are not barred. (Opp'n 4–5.) In *Lemmon*, the plaintiffs' claims turned on the defendant's design of Snapchat, specifically a particular filter available to users called the "Speed Filter." 995 F.3d at 1091. Snapchat's Speed Filter encouraged users to drive at excessive speeds and simultaneously post content. *Id.* at 1091–92. The harm—fatal reckless driving—flowed directly from the design defect—the Speed Filter. *See id.* at 1092. Whether the user posted content for Snapchat to publish was immaterial. *Id.* at 1092–93. The Ninth Circuit held that the product liability claims alleged did not treat the defendant as a publisher or speaker because the defendant could fulfill its duty by changing the filter, which did not involve third-party content. *Id.*

Doe argues, à la *Lemmon*, that his claims do not treat Grindr as a publisher because Grindr could fulfill its alleged duty by changing its App features without involving third-party content. (Opp'n 5.) But the facts here differ from *Lemmon* and warrant a different result. The harm Doe alleges does not flow solely from the product software. Rather, the harm animating Doe's claims is

directly related to the geolocation and content provided by users, which facilitates the match, direct messages, in-person meetings, and ultimately here, Doe's assaults. Unlike *Lemmon*, where the harm from reckless fast driving could occur independently of any publishing or editing, here, Doe's assaults could not have occurred without Grindr's publication via the match of user geolocation and profile data. See Backpage.com, 817 F.3d at 20 (finding there would be no harm without the content advertising the trafficked victims); *Jackson v. Airbnb, Inc.*, 639 F. Supp. 3d 994, 2022 WL 16753197, at *2 (C.D. Cal. 2022) (finding there would be no harm without the content unlawfully selling guns).

Ultimately, the alleged "defect" here is only relevant to Doe's injury to the extent it made it easier or more difficult for other users to communicate with Doe, and thus Doe seeks to hold Grindr liable for its failure to regulate third party content. *See Herrick*, 765 F. App'x at 590 ("Grindr's alleged lack of safety features is only relevant to Herrick's injury to the extent that such features would make it more difficult for his [harasser to post content] or make it easier for Grindr to remove [it]." (internal quotation marks omitted)). Furthermore, the Ninth Circuit considers a defendant website's functions, operations, and algorithms—like Grindr's match feature here—to be editorial choices, made to facilitate the communication of others. *See Dyroff*, 934 F.3d at 1098 (holding that features, functions, and algorithms which analyzed user content and recommended connection "are tools meant to facilitate the communication and content of others"); *see also Twitter, Inc. v. Taamneh*, 598 U.S.

471, 499, 143 S. Ct. 1206, 215 L. Ed. 2d 444 (2023) (noting that Twitter's "'recommendation' algorithms are merely part of [its] infrastructure").

As Doe's claims in essence seek to impose liability on Grindr for failing to regulate third-party content, they require that the Court treat Grindr as a publisher or speaker. As such, the Court finds the second prong of the *Barnes* test is met.

3. Third-Party Content

Under the third prong of the *Barnes* test, courts must determine whether a plaintiff's allegations demonstrate that the published material came from a third-party content provider. *Dyroff*, 934 F.3d at 1097 (citing *Barnes*, 570 F.3d at 1100–01). If "the defendants are 'responsible in part, for the creation or the development of the offending content on the internet,'" they are not entitled to Section 230 immunity. *L.W. v. Snap Inc.*, No. 22-cv-619-LAB-MDD, 675 F. Supp. 3d 1087, 2023 U.S. Dist. LEXIS 97798, 2023 WL 3830365, at *5 (S.D. Cal. June 5, 2023) (quoting *Lemmon*, 995 F.3d at 1093).

Grindr contends the "genesis of [Doe's] injuries is user-generated content . . . that [Doe] claims he should not have been permitted to send or receive." (Mot. 8.) In response, Doe argues that Grindr materially contributed to Doe's assaults by matching geographically proximate children with adults on the Grindr App. (Opp'n 10–11.) This addresses neither the third *Barnes* prong nor Grindr's moving argument. As discussed above, the match function

utilizes third-party content provided by App users, namely the geolocation data and user profiles. Accordingly, the Court finds that Grindr is not an "'information content provider[] because [it] did not create or develop information' but rather 'published information created or developed by third parties.'" *See Bride*, 2023 U.S. Dist. LEXIS 5481, 2023 WL 2016927, at *6 (quoting *Dyroff*, 934 F.3d at 1098).

Doe's negligence and defective warning claims are not materially different from the product liability claims in this regard, as they also rely on published content from App users. Had third parties, including Doe, refrained from sharing geolocation data and communications, the claims that Grindr failed to warn users of the risk of sexual exploitation or negligently misrepresented the App's safety would not be cognizable. *See id.* (finding the nature of the plaintiff's legal claim did not alter the conclusion that plaintiff's claims were all predicated on content developed by third parties); *see also Herrick*, 765 F. App'x at 591 (finding failure to warn claim was "inextricably linked" to Grindr's alleged failure to monitor and regulate third-party content).

Accordingly, the Court finds the third prong of the *Barnes* test is met.

4. Doe's Claims

Doe asserts six claims, for defective product design, defective product manufacturing, defective product warning, negligence, negligent misrepresentation, and

violation of TVPRA. As discussed above, each of these claims is predicated on Grindr's failure to monitor and regulate user's profiles and content, and thus "attempt[s] to hold [Grindr] liable for failing to provide sufficient protections to users from harmful content created by others." Backpage.com, 817 F.3d at 21. Doe cannot sue Grindr "for third-party content simply by changing the name of the theory." *Barnes*, 570 F.3d at 1102. Thus, these claims are barred by Section 230 immunity.

This result is consistent with courts' treatment of Section 230 immunity, in the Ninth Circuit and elsewhere. For instance, the Fifth Circuit in *Doe v. MySpace* found Section 230 immunity barred suit in circumstances very similar to those here, where a minor claimed to have been sexually assaulted by someone she met through the defendant's website, and sought to hold the website operator liable for failing "to implement basic safety measures to protect minors." 528 F.3d at 419–20. The court in *MySpace* found Section 230 immunity applied because the plaintiffs' claims in essence sought to hold the website operator liable for its "role as a publisher of online third-party-generated content." *Id.* Similarly, the First Circuit in *Jane Doe No. 1 v. Backpage.com* found that Section 230 immunity barred claims against a website operator, where the plaintiffs claimed to have been trafficked through postings on the website. 817 F.3d at 17, 21. The court in Backpage.com held that "a website operator's decisions in structuring its website and posting requirements are publisher functions entitled to section 230(c)(1) protection." *Id.* at 22.

Closer to home, here in the Central District of California, a district court applying Ninth Circuit precedent in *Bride v. Snap* found that Section 230 immunity barred claims against a website operator for bullying and harassment online, even though plaintiffs framed their claims as premised on defendant's defective design feature that allowed anonymous posting. 2023 U.S. Dist. LEXIS 5481, 2023 WL 2016927, at *1, 5. The court in *Bride* found that each of the plaintiffs' claims were barred by Section 230 because the plaintiffs sought to hold defendants liable for "failing to adequately regulate end-user's abusive messaging" and the claims "[we]re directed at [d]efendants' content moderation policies." 2023 U.S. Dist. LEXIS 5481, [WL] at *6–7; *see also Jackson*, 639 F. Supp. 3d 994, 2022 WL 16753197, at *1–2 (dismissing claims as barred by Section 230 immunity, where plaintiffs sought to hold defendant liable for failing to curb the illegal sale of guns on its platform).

In this case, "third-party content is like Banquo's ghost: it appears as an essential component of each and all of [Doe's] claims." Backpage.com, 817 F.3d at 22. As each of Doe's claims rests on activity protected by Section 230, he cannot "plead around Section 230 immunity." *Dyroff*, 934 F.3d at 1098.

B. Section 1595 of the TVPRA

Doe argues that even if the Court finds that Section 230 applies to the present suit, his TVPRA claim is excepted from that immunity. (Opp'n 11.)

Appendix B

As discussed above, Section 230 generally immunizes interactive computer service providers from liability for user content. *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022), *cert denied sub nom. Doe v. Reddit, Inc.*, 143 S. Ct. 2560, 216 L. Ed. 2d 1180 (2023). "However, pursuant to the Allow States and Victims to Fight Online Sex Trafficking Act of 2018 (FOSTA), [S]ection 230 immunity does not apply to [civil] child sex trafficking claims" brought under 18 U.S.C. § 1595, "*if* the 'conduct underlying the claim' also violates 18 U.S.C. § 1591, the criminal child sex trafficking statute." *Id.* (quoting 47 U.S.C. § 230(e)(5)(A)). FOSTA thus provides an exception to Section 230 immunity for some sex trafficking claims. *See id.*

Section 1595 of the TVPRA provides a civil cause of action for violations of federal trafficking laws. *See* 18 U.S.C. § 1595. Section 1591 is the federal criminal child sex trafficking statute and "covers both perpetrators and beneficiaries of trafficking." *Reddit*, 51 F.4th at 1141. To state a claim for direct perpetrator liability, a plaintiff must allege the defendant knowingly (1) "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person," knowing or recklessly disregarding that the person may be a minor and "will be caused to engage in a commercial sex act." 18 U.S.C. § 1591(a)(1). A claim for beneficiary liability requires allegations that the defendant knowingly "(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1)." *Id.* § 1591(a)(2).

Appendix B

The Ninth Circuit recently addressed the interplay of Section 230 immunity and the FOSTA exception for sex trafficking claims in *Does 1-6 v. Reddit*. The court concluded that, "for a plaintiff to invoke FOSTA's immunity exception, []he must plausibly allege that the website's own conduct violated section 1591." *Id.* at 1141.

> [T]he defendant must have actually engaged in some aspect of the sex trafficking. To run afoul of § 1591, a defendant must knowingly benefit from and knowingly assist, support, or facilitate sex trafficking activities. Mere association with sex traffickers is insufficient absent some knowing participation in the form of assistance, support, or facilitation. The statute does not target those that merely turn a blind eye to the source of their revenue. And knowingly benefitting from participation in such a venture requires actual knowledge and a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit.

Id. at 1145 (internal alterations, citations, and quotation marks omitted).

Grindr contends Doe cannot evade Section 230 immunity through the FOSTA exception because Doe fails to state a claim under § 1591. (Mot. 9–14.) Doe argues that he plausibly states a claim for direct and beneficiary

TVPRA liability under § 1591, so Section 230 does not bar his sex trafficking claim. (Opp'n 11–15.)

In support of this claim, Doe asserts that Grindr knowingly recruits minors, including Doe, to use the App, (Opp'n 11), and Grindr knows that sexual predators target App users based on media reports, lawsuits, and an academic study reporting that many gay people used the Grindr App when they were minors, (FAC ¶¶ 78–81, 158). Doe alleges "Grindr knowingly benefits financially and by increasing traffic to its platform and collecting ad revenue therefrom in a venture which" results in sex trafficking, (*id.* ¶ 146), and that "[t]he sex acts occasioned by children through Grindr constitute commercial sex acts insofar as Grindr profits from all users through the sale of ads," (*id.* ¶ 156; *see also* Opp'n 15 (arguing that Grindr "knew, or recklessly disregarded, that it caused sex acts between minors and adults . . . and that Grindr financially benefitted from those sex acts through advertising revenue").)

The Court first notes that Doe expressly alleges he informed Grindr he was over eighteen, (*see* FAC ¶ 49), so his direct perpetrator claim fails on this record because he cannot now assert that Grindr knew or should have known that *Doe* was a minor. *See* 18 U.S.C. § 1591(a)(1) (providing direct perpetrator liability where a defendant knowingly recruits a person for a commercial sex act knowing or recklessly disregarding that the person is a minor).

More importantly, "*Reddit* is explicit that attenuated allegations like [Doe's] are insufficient to plausibly suggest

that [Grindr] knowingly participated in or benefited from a sex trafficking venture." *See L.W.*, 2023 U.S. Dist. LEXIS 97798, 2023 WL 3830365, at *7 (citing *Reddit*, 51 F.4th at 1145). That Grindr may have had constructive knowledge of lawsuits or media accounts concerning sexual predators using the Grindr App in their predations, (*see* FAC ¶ 158), or that it derived revenue "from all users through the sale of ads," (*id.* ¶ 156), does not establish that Grindr violated § 1591 "by directly sex trafficking" *Reddit*, 51 F.4th at 1145, or "knowingly benefit[ed] from knowingly participating in child sex trafficking," *Doe #1 v. Twitter, Inc.* (*Twitter*), Nos. 22-15103 & 22-15104, 2023 U.S. App. LEXIS 10808, 2023 WL 3220912, at *1 (9th Cir. May 3, 2023) (unpublished) (applying *Reddit*). Doe's well pleaded allegations simply do not implicate Grindr in a "causal relationship between" its own "affirmative conduct furthering the sex-trafficking venture" and its receipt of resulting ad revenues. *See Reddit*, 51 F. 4th at 1145–46 (finding allegation that defendant makes money from advertising on its site insufficient to connect the child pornography posted with the revenue generated). Here, just as in *Reddit*, "[t]aken as true, [Doe's] allegations suggest only that [Grindr] 'turned a blind eye' to the unlawful content posted on its platform, not that it actively participated in sex trafficking." 51 F.4th at 1145.

Because Doe does not allege that Grindr's own conduct violated § 1591, his TVPRA claim, whether direct or beneficiary, fails.

C. Leave to Amend

Section 230 immunizes Grindr from Doe's claims, and Doe fails to state a claim that Grindr violated § 1591. Accordingly, all of Doe's claims are subject to dismissal.[4]

Under Rule 15(a), leave to amend "shall be freely given when justice so requires," but the "decision of whether to grant leave to amend nevertheless remains within the discretion of the district court." *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). The liberal leave to amend under Rule 15 does not apply when it is clear amendment would be futile. *Ebner v. Fresh, Inc.*,

4. In opposing Grindr's Motion, Doe relies extensively on a pair of district court decisions out of Oregon, *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814 (D. Or. 2022), and the subsequent *A.M. v. Omegle.com LLC*, No. 3:21-cv-01674-MO, 2023 U.S. Dist. LEXIS 17581, 2023 WL 1470269 (D. Or. Feb. 2, 2023). The court in *Omegle.com* found, under similar facts, that the plaintiff's product liability and sex trafficking claims were not barred. To the extent the Court's conclusions herein differ from those in Omegle.com, the Court must respectfully disagree. Regarding the product liability claims, Section 230 immunity is "quite robust." *See, e.g., Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003). The Court cannot escape that the claims here turn on Grindr's treatment of third-party provided content, bringing them within the robust immunity provided by Section 230, and outside the excepted product liability claims recognized in *Lemmon*, 995 F.3d 1085. Regarding the sex trafficking claims, the Court reads the statute and the Ninth Circuit's decisions in *Reddit* and *Twitter* to require something more than the attenuated allegations of TVPRA liability pleaded here. *See Reddit*, 51 F.4th at 1145; *Twitter*, 2023 U.S. App. LEXIS 10808, 2023 WL 3220912, at *1.

838 F.3d 958, 968 (9th Cir. 2016). Here, in light of the robust immunity provided by Section 230 and because the Court finds the core theory underlying all of Doe's claims seeks to treat Grindr as a "publisher or speaker" of third-party content provided by App users, the Court finds that amendment would be futile. *See Bride*, 2023 U.S. Dist. LEXIS 5481, 2023 WL 2016927, at *8 (citing *Sikhs for Just., Inc. v. Facebook, Inc.*, 697 F. App'x 526 (9th Cir. 2017) (affirming district court's dismissal with prejudice because leave to amend would have been futile where plaintiff's claim was barred by the CDA)). Accordingly, dismissal is with prejudice and without leave to amend.

V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Grindr's Motion to Dismiss and dismisses the First Amended Complaint with prejudice and without leave to amend. (ECF No. 37.)

IT IS SO ORDERED.

December 28, 2023

/s/ Otis D. Wright
OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

APPENDIX C — RELEVANT STATUTORY PROVISIONS

The relevant portions of the Communications Decency Act ("CDA"), 42 U.S.C. §230, are:

. . .

(b) Policy

It is the policy of the United States –

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in

obscenity, stalking, and harassment by means of computer

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or any information provided by another information content provider.

. . .

. . .

(e) Effect on other laws

. . .

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit –

(A) any claim in a civil action brought under Section 1595 of title 18, if the conduct underlying the claim constitutes a violation of 1591 of that title;

. . .

Appendix C

(f) Definitions

. . .

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet or any other interactive computer service.

18 U.S. Code §1591

(a) Whoever knowingly –

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains, advertises, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2),

or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

. . .

(e) In this section:

. . .

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "participation in a venture" means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

. . .

(6) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

18 U.S. Code §1595

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by

receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.