No. 24-1202

In the Supreme Court of the United States

JOHN DOE,
Petitioner,

v.

GRINDR INC. AND GRINDR LLC,
Respondents.

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

BRIEF IN OPPOSITION

ADAM S. SIEFF
Davis Wright Tremaine LLP
350 S. Grand Avenue
27th Floor
Los Angeles, CA 90071

ALEXANDRA PERLOFF-GILES
Davis Wright Tremaine LLP
1251 Avenue of the
Americas, 21st Floor
New York, NY 10020

AMBIKA KUMAR
Counsel of Record
BIANCA G. CHAMUSCO
Davis Wright Tremaine LLP
920 5th Ave., Ste. 3300
Seattle, WA 98104
(206) 622-3150
ambikakumar@dwt.com

Counsel for Respondents

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

QUESTIONS PRESENTED

1. Whether Section 230 protects interactive computer services from negligence and product liability claims when those claims in substance seek to hold them liable as publishers of third-party content.

2. Whether Section 230 requires dismissal of claims that seek to hold an interactive computer service liable for: (a) moderating who can post profiles to the service; (b) publishing voluntarily shared user location information to other users; and (c) providing neutral tools that facilitate communication.

3. Whether Section 230 precludes federal sex trafficking claims against an internet service provider based on third-party users' misuse of the platform, where the provider prohibits minors and lacks knowledge of specific illegal activity.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that Grindr LLC is an indirect wholly owned subsidiary of Grindr Inc. (collectively "Grindr"), which is a publicly traded company with no parent corporation. No publicly held corporation owns 10% or more of Grindr Inc.'s stock.

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INTRODUCTION

Petitioner John Doe asks the Court to review questions about the scope of Section 230 and the Trafficking Victims Protection Reauthorization Act ("TVPRA") that have divided no courts and bear no relation to this case. Doe, who as a teenager misrepresented his age to gain access to an adults-only dating app, now seeks to hold the app liable for his encounters with criminals. But his legal theory has shifted so fundamentally between the proceedings below and this petition that the central question presented was never actually litigated.

Below, Petitioner disclaimed any intent to challenge Grindr's content, insisting his claims targeted only Grindr's "conduct," distinct from any publishing activity. Now he asks this Court to address the scope of Section 230's protection for "algorithmic recommendations"—a theory he forfeited, that appears nowhere in his complaint, and that misrepresents how the Grindr app functions. And even without Section 230, all of his claims would fail, as he cannot plead any plausible state-law claim related to Grindr's actions here.

This Court has already denied review in at least 28 Section 230 cases, including two this Term alone. Nothing about this case—with its waived theories, factual gaps, and independently deficient state-law claims—provides any reason for this Court to break that pattern.

The same goes for Petitioner's attempt to challenge the lower courts' holding that he failed to plausibly allege any violation of federal sex-trafficking laws. His passing attempt to identify a relevant split on this issue falls flat. And his fact-bound effort to

demonstrate error in the lower court's conclusions fails for several reasons—among them that he cannot plausibly allege Grindr *knowingly* engaged in prohibited sex trafficking when it attempted to *prevent* minors from accessing its platform.

The petition presents no circuit split, no urgent need for clarification, and no vehicle capable of generating useful guidance. Petitioner's tragic experience reflects the criminal conduct of his attackers, not any disharmony in federal law warranting this Court's intervention.

The Court should deny the petition.

STATEMENT

I. Factual Background

When Petitioner was fifteen years old, he misrepresented his age to create a user profile on Grindr, an adults-only social networking app for adult gay and bi men. Grindr's Terms of Service forbid minors from accessing the platform, and the app requires every user to enter a birthdate and certify that they are at least eighteen years old before they can create an account. ER-170–71 ¶¶ 26, 29. Petitioner deliberately circumvented this age-gate by falsely representing that he was an adult. ER-171 ¶ 28, ER-175 ¶ 49.

Through the app, he exchanged messages with four adult men, ultimately arranging in-person meetings that culminated in sexual assault. Pet. App. 17a. Three of the men are now serving prison sentences for their crimes; the fourth remains at large. *Ibid.*

II. Procedural Background

A. Petitioner sues Grindr for failing to block his access to the service.

Petitioner sued Grindr in the Central District of California, asserting claims for strict products liability, negligence, negligent misrepresentation, and violation of the TVPRA. He claimed Grindr was a defectively designed product because it failed to detect and block his unauthorized underage profile and failed to prevent him from communicating with his assailants on the platform.

The crux of Petitioner's theory was that Grindr should have implemented more robust age-verification mechanisms beyond requiring users to certify that they had reached the age of majority. ER-179 ¶¶ 75–77; ER-181–182 ¶¶ 83, 85–86; ER-185 ¶ 107; ER-193 ¶ 167. The complaint advanced no theories based on algorithmic amplification, content recommendation systems, or Grindr's alleged role as an information content provider. See generally ER-166–196.

Grindr moved to dismiss the complaint on multiple independent grounds. Most relevant here, it argued that Section 230 barred Petitioner's claims because they sought to impose liability for Grindr's publishing decisions about what content to display, block, or remove. And the Fight Online Sex Trafficking Act's ("FOSTA") amendments to Section 230, 47 U.S.C. § 230(e)(5)(A), could not save Petitioner's claim under the TVPRA, 18 U.S.C. §§ 1591, 1595, because Petitioner did not allege Grindr knew about his or his assailants' misuse of the service. ER-148–156.

Separately, Grindr also explained that Petitioner had failed to plead essential elements of each of his

state-law claims. The product liability claims failed because services like Grindr are not subject to product liability law in California. The negligence claims failed because California does not impose a duty on websites to protect users from other users' misconduct. The negligent misrepresentation claim also failed because Petitioner did not identify any actionable misrepresentation and failed to plead either his reliance or Grindr's intent. And *all* the state claims failed because Petitioner did not plausibly allege proximate causation. ER-158–164.

B. The district court dismisses the claims on Section 230 grounds.

The district court dismissed all claims against Grindr. It ruled that Section 230 barred Petitioner's state-law claims because they sought, at bottom, to "impose liability on Grindr for failing to regulate third-party content[.]" Pet. App. 25a. Petitioner's theory of harm, the court reasoned, was "directly related to the geolocation and content provided by users, which facilitates the match, direct messages, in-person meetings, and ultimately here, [Petitioner's] assaults." *Id.* at 24a. Unlike cases where product defects cause harm independent of published content, here the alleged "defect" was relevant to Petitioner's claimed injury only "to the extent it made it easier or more difficult for other users to communicate" with him. *Ibid.* That theory of liability—premised on Grindr's handling of third-party content—placed Petitioner's claims squarely within Section 230's sweep. *Ibid.* Because the court dismissed all state-law claims entirely on Section 230 grounds, it did not reach Grindr's alternative grounds for dismissal. Pet. App. 19a.

The district court also dismissed Petitioner's TVPRA claim, finding he failed to allege that Grindr knowingly participated in sex trafficking when he himself had "expressly allege[d] he informed Grindr he was over eighteen[.]" *Id.* at 31a.

C. The Ninth Circuit unanimously affirms.

On appeal, Petitioner maintained that his claims targeted only Grindr's *own conduct* in designing a product without adequate age verification. He expressly disavowed any theory based on the content on Grindr's platform, insisting that "content is not even at issue." C.A. Opening Br. 34. Consistent with that disavowal (and the allegations of his complaint), Petitioner did not argue in his opening or reply briefs that Grindr's algorithms constituted the platform's own expressive activity or that Grindr functioned as an information content provider. See generally C.A. Opening Br.; C.A. Reply Br.

In a unanimous opinion, the Ninth Circuit affirmed. First, the court held that Section 230 barred all of Petitioner's state-law claims. Pet. App. 6a–7a. Looking past pleading labels to the substantive duty each cause of action would impose, the panel held that Petitioner's claims "necessarily implicate[d] Grindr's role as a publisher of third-party content." *Id.* at 6a. As the court explained, discharging the duties Grindr had allegedly breached "would [have] require[d] Grindr to monitor third-party content and prevent adult communications to minors"—thus treating Grindr as a publisher within the meaning of Section 230. *Id.* at 7a. Because Petitioner had not raised any argument premised on Grindr's algorithm constituting its own expressive content, the Ninth Circuit did not address that theory. And like the district court,

the Ninth Circuit did not reach Grindr's independent grounds for dismissal of these claims. *Id.* at 6a n.2.

The court also affirmed dismissal of the TVPRA claim. Applying settled law, it concluded that Grindr's "[a]t most" constructive knowledge of minors on its platform could not support Petitioner's claim for either knowing perpetration or beneficiary participation in a scheme to traffic him. *Id.* at 11a–12a.

REASONS FOR DENYING THE PETITION

The petition raises no disputed question of law. It also presents an exceedingly poor vehicle for review of the questions presented.

I. The Section 230 Questions Do Not Warrant Review.

This Court has denied certiorari in at least 28 Section 230 cases—including two this Term alone.[1]

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[1] *Fyk* v. *Facebook, Inc.*, --- S. Ct. ----, 2025 WL 1727402 (June 23, 2025); *Est. of Bride* v. *Yolo Techs., Inc.*, 145 S. Ct. 1435 (2025); *Doe* v. *Snap, Inc.*, 144 S. Ct. 2493 (2024); *King* v. *Meta Platforms, Inc.*, 144 S. Ct. 1387 (2024); *Fyk* v. *Facebook, Inc.*, 143 S. Ct. 1752 (2023); *Domen* v. *Vimeo, Inc.*, 142 S. Ct. 1371 (2022); *Doe* v. *Facebook, Inc.*, 142 S. Ct. 1087 (2022); *Lewis* v. *Google LLC*, 142 S. Ct. 434 (2021); *Diez* v. *Google, Inc.*, 142 S. Ct. 139 (2021); *Fyk* v. *Facebook, Inc.*, 141 S. Ct. 1067 (2021); *Malwarebytes, Inc.* v. *Enigma Software Grp. USA, LLC*, 141 S. Ct. 13 (2020); *Dyroff* v. *Ultimate Software Grp., Inc.*, 140 S. Ct. 2761 (2020); *Force* v. *Facebook, Inc.*, 140 S. Ct. 2761 (2020); *Daniel* v. *Armslist, LLC*, 140 S. Ct. 562 (2019); *Herrick* v. *Grindr LLC*, 140 S. Ct. 221 (2019); *Beckman* v. *Match.com, LLC*, 139 S. Ct. 1394 (2019); *Hassell* v. *Yelp, Inc.*, 139 S. Ct. 940 (2019); *Silver* v. *Quora, Inc.*, 137 S. Ct. 2305 (2017); *O'Kroley* v. *Fastcase, Inc.*, 137 S. Ct. 639 (2017); *Jane Doe No. 1* v. *Backpage.com, LLC*, 137 S. Ct. 622 (2017); *Medytox Sols., Inc.* v. *Investorshub.com, Inc.*, 577 U.S. 869 (2015); *Klayman* v. *Zuckerberg*, 574 U.S. 1012 (2014); *Doe* v. *MySpace, Inc.*, 555 U.S. 1031 (2008); *Delfino* v. *Agilent Techs., Inc.*, 552

Nothing has changed since the Court last denied review of the sorts of questions Petitioner raises here.

Petitioner identifies no reason for this Court to grant certiorari. There is no circuit split, and the central arguments Petitioner raises here rest on a waived theory, making this case a poor vehicle to address Section 230's scope. And the underlying state-law claims fail independently of Section 230 in any event.

The Court should deny review.

A. This case does not implicate any split in authority.

At its core, this case involves user-to-user communications on an online platform, where Grindr's role was confined to providing the digital infrastructure for those interactions. There is no circuit split over Section 230's application in that context.

1. Every circuit court to consider Section 230's scope has concluded—correctly—that it means what it says: It precludes claims against interactive computer service providers seeking to impose liability for third-party content based on the provider's exercise of a publisher's traditional editorial functions. See, *e.g.*, *Monsarrat* v. *Newman*, 28 F.4th 314, 319 (1st Cir. 2022); *Force* v. *Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019); *Green* v. *Am. Online, Inc.*, 318 F.3d 465, 468 (3d Cir. 2003); *Zeran* v. *Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997); *Doe* v. *MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008); *Jones* v. *Dirty World Ent. Recordings, LLC*, 755 F.3d 398, 406–07 (6th Cir. 2014);

U.S. 817 (2007); *Batzel* v. *Smith*, 541 U.S. 1085 (2004); *Green* v. *Am. Online, Inc.*, 540 U.S. 877 (2003); *Ben Ezra, Weinstein, & Co.* v. *Am. Online Inc.*, 531 U.S. 824 (2000); *Zeran* v. *Am. Online, Inc.*, 524 U.S. 937 (1998).

Webber v. *Armslist LLC*, 70 F.4th 945, 956 (7th Cir. 2023); *Johnson* v. *Arden*, 614 F.3d 785, 791–92 (8th Cir. 2010); *Dyroff* v. *Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097–98 (9th Cir. 2019); *Ben Ezra, Weinstein, & Co.* v. *Am. Online Inc.*, 206 F.3d 980, 984–85 (10th Cir. 2000); *Almeida* v. *Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006); *Marshall's Locksmith Serv. Inc.* v. *Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019).

This case falls squarely within this consensus. Section 230 bars Petitioner's state-law claims because they seek, at their core, to hold Grindr liable for its decisions about user content: what to screen, block, publish, or remove. There is no conflict on that point. "[T]he uniform view of federal courts interpreting [Section 230] requires dismissal of claims alleging that interactive websites … should do more to protect their users from the malicious or objectionable activity of other users." *In re Facebook, Inc.*, 625 S.W.3d 80, 83 (Tex. 2021), *cert denied sub nom. Doe* v. *Facebook, Inc.*, 142 S. Ct. 1077 (2022) (Mem.). "[P]laintiffs may hold liable the person who creates or develops unlawful content, but not the interactive computer service provider who merely enables that content to be posted online." *Nemet Chevrolet, Ltd.* v. *Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009).

2. Petitioner cannot make good on his promise to show a "pronounced division among circuit courts" over the scope of Section 230. Pet. 18. By his own telling, the opposite is true: As he acknowledges, courts "uniformly recognize" that Section 230 "immunizes internet services for third-party content that they publish." *Id.* at 18–19 (quoting *Marshall's*, 925 F.3d at 1267). Indeed, "[c]ourts have construed the immunity provisions in § 230 broadly in all cases arising from

the publication of user-generated content." *Id.* at 19 (quoting *MySpace*, 528 F.3d at 418).

a. Against this uniform backdrop, Petitioner casts the Seventh Circuit as a lonely dissenter. *Ibid.* The purported split, however, dissolves upon inspection. The Seventh Circuit's approach differs only in that it eschews the term "immunity" in describing the claims Section 230 bars. See *Chicago Lawyers' Comm. for C.R. Under L., Inc.* v. *Craigslist, Inc.*, 519 F.3d 666, 669 (7th Cir. 2008), *as amended* (May 2, 2008). But it is not alone in noting that the word "immunity" does not appear in the statutory text. See *Jones*, 755 F.3d at 406 (observing that the statute does not contain the word "immunity"); *Barnes* v. *Yahoo! Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009), *as amended* (Sept. 28, 2009) (same).

This semantic quibble does not create any circuit split. Petitioner himself acknowledges the Seventh Circuit's holding that Section 230 "forecloses any liability that depends on deeming an [internet service provider] a publisher." Pet. 19 (citing *Doe* v. *GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003)). Strip away linguistic preferences, and the Seventh Circuit's functional approach mirrors the "analytical framework grounded in section 230's text" from *Barnes*, 570 F.3d at 1102–07, that is "consistent with the precedent of [its] sister circuits." *A.B.* v. *Salesforce, Inc.*, 123 F.4th 788, 794–97 (5th Cir. 2024). See *G.G.* v. *Salesforce.com, Inc.*, 76 F.4th 544, 567 (7th Cir. 2023) ("We agree with the Ninth Circuit that we must focus on whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a publisher or speaker." (quoting *Barnes*, 570 F.3d at 1102)) (internal quotation marks omitted); *Webber*, 70 F.4th at 956 (holding that

Section 230 "precludes liability whenever the cause of action treats an interactive computer service as the publisher of another's content").

Petitioner cannot show that the Seventh Circuit would reach a different outcome here. He relies primarily on *Doe* v. *GTE Corp.*'s dicta musing about a possible reading of Section 230 that would "permit[] the states to regulate platforms in their capacity as intermediaries." Pet. 19 (citing *GTE Corp.*, 347 F.3d at 660). Yet he omits the court's disclaimer that it did "not decide" which interpretation of Section 230's scope was "superior." *GTE Corp.*, 347 F.3d at 660. The difference would matter, the court explained, only where "some rule of state law *does* require [internet service providers] to protect third parties who may be injured by material posted on their services." *Id.* Because the plaintiff in *GTE Corp.* failed to allege such a duty, his claims failed independently of Section 230. *Id.* at 660–62.[2]

Petitioner's claims also fail under the reasoning of the two other Seventh Circuit decisions he cites. *City of Chicago* v. *StubHub!, Inc.*, considered whether Section 230 could block a city from taxing ticket sales. 624 F.3d 363 (7th Cir. 2010). Because the city's tax did not "depend on who 'publishes' any information or is a 'speaker,'" the court determined that Section 230 was "irrelevant." *Id.* at 366. Here, by contrast, Petitioner's legal theories *do* seek to hold Grindr liable for publishing the content of third parties. See Pet. App. 7a. And in *Chicago Lawyers' Committee for Civil Rights Under Law, Inc.* v. *Craigslist, Inc.*, the Seventh Circuit held that, given Section 230, a plaintiff "cannot sue the

[2] Petitioner's claims likewise fail on threshold state-law grounds, rendering any Section 230 analysis unnecessary. *Infra* § I.B.2.

messenger" for acting as a conduit for third-party messages. 519 F.3d at 672. Yet that is exactly what Petitioner seeks to do. Pet. App. 6a–7a. Petitioner cannot explain how the Seventh Circuit's functionally identical approach would have altered the outcome here.

b. Petitioner characterizes the Ninth Circuit's Section 230 decisions as a "hodgepodge" with "zero consistency or predictability." Pet. 20. Of course, any purported intra-circuit split would be a matter for the Ninth Circuit to resolve—not this Court. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties."). Regardless, Petitioner's description is puzzling considering his simultaneous charge that, "[w]ith the exception of this case," the Ninth Circuit has consistently held that Section 230 does not apply when claims do not seek to hold the platform liable as a publisher. Pet. 20.

In fact, the Ninth Circuit cases he cites all fit neatly into the same framework other circuits follow. In *Lemmon* v. *Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021), the Ninth Circuit allowed a negligent design claim to proceed against Snapchat based on its "Speed Filter"—a feature that rewarded users for driving at dangerous speeds. The defect was "independent" of any publishing activity because the danger lay not in sharing Speed Filter posts but in the filter's gamification of reckless driving. *Id.* at 1093–94. That risk existed whether or not users ever posted anything.

Similarly, *Doe* v. *Internet Brands, Inc.*, 824 F.3d 846 (9th Cir. 2016), allowed a failure-to-warn claim to proceed against a website that had actual knowledge from an "outside source" that two criminals were using its platform to identify rape victims. *Id.* at 848–49.

The plaintiff never alleged the website "transmitted any potentially harmful messages" between her and her attackers. *Id.* at 851–52. Because the website's duty to warn in these circumstances did "not arise from an alleged failure to adequately regulate access to user content," and would not affect how it "publishes or monitors such content," *id.* at 851, 853, Section 230 did not bar the claim.

These cases stand for the unremarkable proposition that Section 230 does not immunize platforms from liability unrelated to their publishing functions. No circuit disputes that principle, which has no application here.[3]

c. Petitioner fares no better in the Fourth Circuit. He cites *Henderson* v. *Source for Public Data, L.P.*, 53 F.4th 110, 123 (4th Cir. 2022), for its "confusing spin." Pet. 21. But *Henderson* held: (1) that Section 230 prohibits treating a defendant as a publisher of third-party content, and (2) that a claim treats a defendant as a publisher when it "bases the defendant's liability" on its exercise of a publisher's traditional editorial functions—regardless of how the plaintiff characterizes the claim. *Henderson*, 53 F.4th at 123. That is the

[3] A trio of recent decisions confirms that the Ninth Circuit continues to allow claims to proceed where the challenged conduct does not treat the internet service provider as a publisher. See, *e.g.*, *Est. of Bride ex rel. Bride* v. *Yolo Techs., Inc.*, 112 F.4th 1168, 1178–79, 1182 (9th Cir. 2024) (Section 230 did not bar claim against app for breaching promise to unmask anonymous users), *cert. denied*, 145 S. Ct. 1435 (2025); *Calise* v. *Meta Platforms, Inc.*, 103 F.4th 732, 743 (9th Cir. 2024) (allowing "[c]ontract liability" claim to proceed); *Doe 1* v. *Twitter, Inc.*, --- F.4th ----, 2025 WL 2178534, at *4 (9th Cir. Aug. 1, 2025) (allowing claim challenging reporting infrastructure for already-identified child sexual abuse material where it would not require Twitter to monitor content).

same rule that applies elsewhere. *Supra* § I.A.1; see also, *e.g.*, *Barnes*, 570 F.3d at 1102.

3. To the extent any conflict exists among the circuits regarding the scope of Section 230, it involves a single court's deviation on a narrow issue related to algorithmic publishing. Most courts remain broadly aligned that Section 230 bars liability for using "features and functions, including algorithms, to analyze user posts" and "recommend[] other user groups." *Dyroff*, 934 F.3d at 1098; see also *Force*, 934 F.3d at 65 ("us[ing] algorithms to suggest content to users, resulting in 'matchmaking,'" is protected editorial activity); *Marshall's*, 925 F.3d at 1271 (algorithms a "neutral means" and "automated editorial act" within Section 230's protections).

The sole exception is *Anderson* v. *TikTok, Inc.*, where the Third Circuit reasoned that a platform's recommendation algorithm may constitute its "own expressive activity," removing it from Section 230's protection. 116 F.4th 180, 184 (3d Cir. 2024). *Anderson*'s holding was, however, carefully cabined to its facts. The Third Circuit explained that it "reach[ed] this conclusion" that TikTok's algorithmic recommendations were the platform's own content "specifically because" the algorithmic output "was not contingent upon any specific user input." *Id.* at 184 n.12. It expressly disclaimed any broader ruling on whether "other algorithms" may fall within Section 230's scope. *Id.* at 183 n.10.

Recognizing *Anderson*'s limited reach, some courts have declined to read the case as a sea change in the law. One district court, distinguishing *Anderson*'s "distinct facts," concluded that it "d[id] not disturb the long-standing precedent that online service providers do not create content or lose Section 230

immunity simply by implementing content-neutral algorithms that generate related searches or user-uploaded content based on the users' own viewing activity." *Doe* v. *WebGroup Czech Republic, a.s.*, 767 F. Supp. 3d 1009, 1020 (C.D. Cal. 2025); see also *Doe # 1* v. *MG Freesites, LTD*, 2025 WL 1314179, at *7 (N.D. Ala. May 6, 2025) ("There is no current circuit split on this question."). Other courts have simply declined to follow it. See, *e.g.*, *Patterson* v. *Meta Platforms, Inc.*, 2025 WL 2092260, at *4–5 (N.Y. App. Div. July 25, 2025). Thus, if *Anderson* spawned any nascent disagreement over the treatment of recommendation algorithms, it would warrant further percolation in the lower courts.

But any split over the treatment of algorithmic recommendations is irrelevant here regardless. Neither the district court nor the Ninth Circuit reached the question here for a simple reason: Petitioner has never sought to hold Grindr liable as an information content provider. Nor could he, given that is not how the Grindr app works. Petitioner's complaint contains no allegations about the sort of algorithmic amplification at issue in *Anderson*. Indeed, in his briefing below, he disclaimed intent to hold Grindr liable for *any* content. C.A. Opening Br. 34 ("content is not even at issue"). The decision below thus creates no tension with *Anderson*'s holding that platform recommendation algorithms may constitute the platform's own expressive activity.

4. Unable to conjure any conflict in the courts of appeals, Petitioner resorts to quoting from dissenting opinions in the Second, Fifth, and Ninth Circuits. See Pet. 23–24. But "dissents are just that—dissents." *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356,

389 n.4 (2023) (plurality). They "do not speak" for any court. *Ibid.*

In sum, there is no genuine conflict among the courts of appeals regarding the scope of Section 230—and certainly none with any bearing on this case.

B. This case is a poor vehicle for addressing Section 230's scope.

Even if Petitioner had identified any questions regarding Section 230 that warranted this Court's attention, this petition is an especially poor vehicle for addressing these issues. First, although the petition presents questions about algorithmic recommendations, Petitioner never pleaded such a claim or presented this theory below. Second, because Petitioner's underlying state-law claims lack merit, there would be no need for this Court to reach the Section 230 questions in any event.

1. Petitioner asks this Court to decide whether certain algorithmic features constitute "traditional publishing functions" under Section 230. Pet. Question 2. But that question has nothing to do with this case as litigated. The complaint does not contain a single allegation that algorithmic features played any role—let alone a causal one—in the encounters at issue. Petitioner never advanced this theory before the district court. And when he reached the Ninth Circuit, Petitioner affirmatively *disclaimed* any attempt to hold Grindr liable as an information content provider, insisting that his claims targeted no content whatsoever—neither Grindr's own nor anyone else's. C.A. Opening Br. 34. His consistent theory has been that Grindr's "conduct"—distinct from any algorithmic or content-based activity—caused his injuries.

The Court "does not ordinarily decide questions that were not passed on below," *City & Cnty. of San Francisco* v. *Sheehan*, 575 U.S. 600, 609 (2015)—particularly where resolution would require factfinding "in the first instance[.]" *West* v. *Atkins*, 487 U.S. 42, 48 n.8 (1988). To grant certiorari here would be to decide a complex technological question on a barren record, without the benefit of any lower-court analysis. This is not an appropriate case in which to address these issues.

2. Even if Petitioner had raised these questions below, this case would be an unsuitable vehicle for resolving them. In this respect, the petition is *Gonzalez* v. *Google LLC* all over again. See 598 U.S. 617 (2023).

a. In *Gonzalez*, the plaintiffs alleged that Google used "computer algorithms to match and suggest content to users based upon their viewing history," which resulted in recommending ISIS videos to users likely to be sympathetic to the terrorist group's message. *Gonzalez* v. *Google LLC*, 2 F.4th 871, 881 (9th Cir. 2021), *vacated*, 598 U.S. 617 (2023) (per curiam). The Court granted certiorari to consider whether Section 230 protects internet service providers from liability "when they make targeted recommendations of information provided by another content provider, or only … when they engage in traditional editorial functions (such as deciding whether to display or withdraw) with regard to such information." *Gonzalez* v. *Google LLC*, No. 21-1333 (U.S.), *cert. granted* (Oct. 3, 2022).

But the Court never reached that question. Ultimately, the Court "decline[d] to address the application of § 230 to a complaint that appear[ed] to state little, if any, plausible claim for relief." *Gonzalez*, 598 U.S. at 622. Rather than grapple with Section 230's

scope in a case where it would not affect the outcome, the Court vacated and remanded for the Ninth Circuit to consider the claims' viability.

b. This case suffers from the same defect. Each of Petitioner's underlying state-law claims fails on its own terms, Section 230 notwithstanding.

First, the complaint fails to adequately plead proximate causation—a necessary element of every state-law claim Petitioner alleges. Petitioner claims he "would not have connected with the four men who raped him but for" content Grindr permitted him to share and receive, ER-184 ¶ 103. But it is not enough that Grindr provided the generally available communications service criminals allegedly used to injure him. Under California law, services that do "nothing more than create the condition that made [a plaintiff's] injuries possible" are "too remotely connected … to constitute their legal cause." *Modisette* v. *Apple Inc.*, 30 Cal. App. 5th 136, 154 (2018); see also *Fields* v. *Twitter, Inc.*, 881 F.3d 739, 749–50 (9th Cir. 2018) (failing to remove terrorist organization's content did not make Twitter a proximate cause of providing material support to that organization).

Second, each of Petitioner's state-law claims presuppose that Grindr is a product. But under California law, Grindr is a service, not a product subject to product liability law. See *Ziencik* v. *Snap, Inc.*, 2023 WL 2638314, at *4 (C.D. Cal. Feb. 3, 2023) (Snapchat "communication platform" is a service); *Jackson* v. *Airbnb, Inc.*, 639 F. Supp. 3d 994, 1011 (C.D. Cal. 2022) (Airbnb app is a service); *Jacobs* v. *Meta Platforms, Inc.*, 2023 WL 2655586, at *4 (Cal. Super. Ct. Mar. 10, 2023) ("a social media platform that connects its users" "is more akin to a service than a product"). And even if Grindr *were* a product, these claims fail

under California law because they seek relief for harms allegedly inflicted by the way Grindr "facilitates" the "exchange" of expression. ER-183–184 ¶¶ 98, 100, 102–103; ER 186 ¶ 111. Product liability law does not apply to "words and ideas" or a "publisher's role in bringing ideas and information to the public." *Winter* v. *G.P. Putnam's Sons*, 938 F.2d 1033, 1033–34, 1037 n.8 (9th Cir. 1991); accord *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 841–42 (N.D. Cal. 2023) (explaining that "ideas, content, and free expression have consistently been held *not* to support a products liability claim," collecting cases).

Third, Petitioner alleges no actionable duty in negligence. Duty is an "essential element" of any negligence claim under California law. *Modisette*, 30 Cal. App. 5th at 143. Petitioner alleges Grindr should have prevented communications between him and his attackers, but websites owe no legal duty when they "facilitate[] communication, in a content-neutral fashion, of [their] users' content." *Dyroff*, 934 F.3d at 1101 (applying California law). No "special relationship" exists between platforms and users that would create such a duty. *Id.* at 1100–01; *Beckman* v. *Match.com, LLC*, 743 F. App'x 142, 143 (9th Cir. 2018). Contending otherwise, Petitioner insisted he had pleaded a duty because Grindr itself allegedly created a risk of sexual abuse. ER-127–128. But the creation and operation of a communication platform does not by itself give rise to an actionable duty unless a tortfeasor's actions are a "necessary component" of the service. *Jane Doe No. 1* v. *Uber Techs., Inc.*, 79 Cal. App. 5th 410, 427 (2022). And Petitioner cannot meet this standard when he concedes Grindr expressly forbids minors from using its platform. Sexual encounters with minors are not a

"necessary component" of an adults-only dating service that prohibits underage users—they are a crime.

Finally, Petitioner alleges Grindr negligently "misrepresented that the Grindr App is designed to create a safe and secure environment for its users." ER-188 ¶ 135. But this statement is merely an "opinion" expressing Grindr's "judgment as to [the] quality" of its service for its intended adult userbase—not an actionable misrepresentation of fact. *Gentry* v. *eBay, Inc.*, 99 Cal. App. 4th 816, 835 (2002). Such marketing statements constitute puffery on which no reasonable person would rely. Pet. App. 10a (statements "too general to be enforced"); see also *Prager Univ.* v. *Google LLC*, 951 F.3d 991, 1000 (9th Cir. 2020) (statements that YouTube enables users to "speak freely" and "build community" not actionable).

As in *Gonzalez*, therefore, "much (if not all) of plaintiffs' complaint seems to fail" on the merits. 598 U.S. at 622. The Court's resolution of the Section 230 questions raised in the petition would change nothing.

C. The decision below is correct.

1. Petitioner's primary argument appears to be that the Ninth Circuit misapplied its own law to the facts of his complaint. See Pet. 30–31. Such fact-bound error correction does not merit this Court's attention.

Petitioner also identifies no error: The Ninth Circuit correctly concluded that Section 230 bars all of Petitioner's claims. The court recognized that Petitioner's claims require that Grindr screen, moderate, block, and remove third-party content. See *Barnes*, 570 F.3d at 1101–02.

Petitioner insists his 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." Pet. 31. But that argument ignores that a duty to age verify or prevent trespassing minors from meeting adults—the core duties underlying Petitioner's state-law claims—would necessarily force Grindr to alter its approach to monitoring, screening, and blocking user profiles. See *Barnes*, 570 F.3d at 1103 (Section 230 barred liability for allowing and then failing to remove user profiles); *Carafano* v. *Metrosplash.com, Inc.*, 339 F.3d 1119, 1121, 1125 (9th Cir. 2003) (same); accord *Herrick* v. *Grindr LLC*, 765 F. App'x 586, 590–91 (2d Cir. 2019) (same); *Doe II* v. *MySpace Inc.*, 175 Cal. App. 4th 561, 565, 572–74 (2009) (same); *Jane Doe No. 1* v. *Backpage.com, LLC*, 817 F.3d 12, 16, 16 n.2, 21 (1st Cir. 2016) (similar).

Courts in and outside the Ninth Circuit have uniformly rejected such product liability theories where, as here, the claims necessarily implicate traditional editorial functions. See, *e.g.*, *M.P.* v. *Meta Platforms Inc.*, 127 F.4th 516, 524–27 (4th Cir. 2025); *Est. of Bride ex rel. Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1178–79, 1182 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1435 (2025); *Doe ex rel. Roe* v. *Snap, Inc.*, 2023 WL 4174061, at *1 (5th Cir. June 26, 2023); *In re Facebook, Inc.*, 625 S.W.3d at 93–94; *Jane Doe No. 1*, 817 F.3d at 19; *Herrick*, 765 F. App'x at 590–91; *Doe II*, 175 Cal. App. 4th at 568–69, 572–73. That is because such claims—however styled—"treat[]" the platform "as the publisher or speaker" of "information provided by another information content provider." 47 U.S.C. § 230(c)(1). This application of settled law does not require this Court's intervention.

2. The Ninth Circuit's decision also accords with Congress' policy objectives in enacting Section 230.

Congress intended Section 230 to overturn *Stratton Oakmont, Inc.* v. *Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), a New York trial court decision holding online service Prodigy liable for defamatory comments posted by a user to one of its bulletin boards. See S. Rep. No. 104-230, at 194 (1996) (expressing intent to overrule *Stratton Oakmont* and "any other similar decisions"). Because Prodigy actively screened and edited bulletin board messages to prevent offensive content, the court applied common law publisher (rather than distributor) principles, meaning that Prodigy could be liable for posts even if it did not know or have any reason to know they were defamatory. *Stratton Oakmont*, 1995 WL 323710, at *5.

With Section 230, Congress eliminated the "grim choice" such a rule would present online services—those that voluntarily filter content would be responsible for all posts, while "providers that bury their heads in the sand and ignore problematic posts altogether [would] escape liability." *Fair Hous. Council of San Fernando Valley* v. *Roommates.com LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008) (en banc). Congress sought to "encourage service providers to self-regulate the dissemination of offensive material over their services." *Zeran*, 129 F.3d at 331.

Petitioner's theory of Section 230 would, however, resurrect the very dilemma Congress sought to eliminate. Each of Petitioner's claims—whether styled as product liability, negligence, or failure to warn—treats Grindr as a publisher because each exposes the platform to liability for trying but failing to *perfectly* screen and block all unauthorized content. This demand for perfect content moderation contradicts Section 230's core purpose: protecting even imperfect

moderation efforts, lest publishers instead choose to avoid any liability by forgoing content moderation altogether. See *Roommates.com*, 521 F.3d at 1163–64; *Zeran*, 129 F.3d at 330–31.

The Ninth Circuit thus correctly applied settled law to a straightforward, albeit tragic, case. Petitioner's injuries resulted from the criminal conduct of his attackers, not from any failure by Grindr. Section 230 channels liability to the actual wrongdoers—the criminals who assaulted him—and not the platform they exploited.

II. The FOSTA Question Does Not Warrant Review.

Petitioner's third question presented—in which Petitioner attempts to resurrect his federal sex trafficking claims—likewise does not warrant review.

In 2000, Congress passed the Trafficking Victims Protection Act, which created the criminal offense of "[s]ex trafficking of children." Pub. L. No. 106-386, div. A, 114 Stat. 1464, 1466 (2000) (codified as amended at 18 U.S.C. § 1591). Congress later, through the Trafficking Victims Protection Reauthorization Act, amended the statute to add a civil offense, which proscribes a somewhat broader range of conduct than the criminal prohibition. See Pub. L. No. 108-193, 117 Stat. 2875, 2878 (2003); Pub. L. No. 110-457, § 221, 122 Stat. 5044, 5067 (2008). In 2018, Congress enacted FOSTA, which balanced the interest in protecting minors from sex trafficking with the First Amendment's and Section 230's protections for online platforms hosting user-generated content. FOSTA reflects that balance by exempting from Section 230 "any claim in a civil action brought under section 1595" of the TVPRA, but only "if the conduct

underlying the claim constitutes a violation of section 1591" of that Act—i.e., the criminal sex-trafficking provision. 47 U.S.C. § 230(e)(5)(A).

18 U.S.C. § 1591, the criminal sex trafficking law, punishes only *knowing* misconduct. It provides for liability in two circumstances: (1) direct perpetrator liability, which lies when a defendant "knowingly … recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person," *id.* § 1591(a)(1), and (b) beneficiary liability, which lies when a defendant "knowingly … 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).

Here, the Ninth Circuit correctly held that Petitioner failed to plausibly allege that Grindr had violated this criminal prohibition. Pet. App. 12a–13a. Contrary to Petitioner's contentions, he would not have prevailed under any other Circuit's construction of these statutory provisions. And to the extent that Petitioner's complaint is that he should not have to satisfy the onerous requirements of 18 U.S.C. § 1591 (cf., *e.g.,* Pet. 9), his remedy is with Congress, not this Court. See *Does 1–6* v. *Reddit, Inc.*, 51 F.4th 1137, 1145 (9th Cir. 2022) (the "limited capacity … to hold websites accountable" under FOSTA "is a flaw, or perhaps a feature, that Congress wrote into the statute, and is not one we can rewrite by judicial fiat").

A. There is no circuit split on the scope of FOSTA or the meaning of the underlying TVPRA provisions.

Petitioner attempts to manufacture a circuit split where there is none. Every circuit court to have addressed FOSTA—including the D.C. Circuit, whose

decision in *Woodhull Freedom Foundation* v. *United States*, 72 F.4th 1286 (D.C. Cir. 2023), Petitioner ignores—has held that the FOSTA exception applies only where the plaintiff can establish the actual knowledge and affirmative conduct required to show a criminal sex-trafficking violation under Section 1591.

The Ninth Circuit was the first circuit court to consider FOSTA. In *Reddit*, it held that "for the immunity exception to apply," "a website's own conduct must violate 18 U.S.C. § 1591," either "by directly sex trafficking or, with actual knowledge, 'assisting, supporting, or facilitating' trafficking." 51 F.4th at 1143, 1145. As the court explained, "[t]he statute does not target those that merely 'turn a blind eye to the source of their revenue'"; "establishing criminal liability requires that a defendant knowingly benefit from knowingly participating in child sex trafficking." *Id.* at 1145 (internal citations and alterations omitted).

In *Woodhull Freedom Foundation*, the D.C. Circuit then rejected a constitutional challenge to FOSTA. 72 F.4th at 1304. In doing so, it summarized the consensus on the mens rea requirements for FOSTA and the underlying TVPRA provisions, noting that "[a]ll courts to have decided the issue thus far are now in alignment." *Id.* at 1304 n.6.

The Eleventh Circuit's decision in *M.H. ex rel. C.H.* v. *Omegle.com LLC* also expressly "comports with the Ninth Circuit's decision in *Reddit*." 122 F.4th 1266, 1275 (11th Cir. 2024). There, the court affirmed the dismissal of claims against a social media platform that placed plaintiff in a video chatroom where he was coerced into making child pornography. The Eleventh Circuit thus joined the consensus that

FOSTA requires "actual knowledge, not merely constructive knowledge, of sex trafficking." *Id.* at 1274.

Neither the First Circuit nor the Fifth Circuit has departed from that consensus. Contra Pet. 27–28. *Doe* v. *Backpage.com, LLC*—decided more than two years before Congress enacted FOSTA—is consistent with these decisions. There, while holding that Section 230 barred the relevant claims, the First Circuit noted that "a website conceivably might display a degree of involvement sufficient to render its operator both a publisher and a participant in a sex trafficking venture (say, that the website operator helped to procure the underaged youths who were being trafficked)." 817 F.3d at 21. But at most, this dicta simply shows that the First Circuit understood the TVPRA to require "an affirmative course of conduct," *id.* at 20—just as the Ninth Circuit does, see *Reddit*, 51 F.4th at 1145 (holding that beneficiary liability requires, *inter alia*, "affirmative conduct furthering the sex-trafficking venture").

Nor does the Fifth Circuit's decision in *A.B.* v. *Salesforce*, 123 F.4th at 788, give rise to any conflict. In that case, plaintiffs brought a civil TVPRA claim against Salesforce, alleging that it sold "its tools and operational support to Backpage even though it knew (or should have known) that Backpage was under investigation for facilitating sex trafficking." 123 F.4th at 797. The Fifth Circuit held that Salesforce's selling of tools and operational support was not "quintessentially related to a publisher's role" and therefore was not immunized by Section 230. *Ibid.* (citation omitted). Accordingly, the Fifth Circuit had no occasion to address whether FOSTA's exception to Section 230 applied, or to consider whether the plaintiff could

have satisfied the requirements of the TVPRA's criminal provision. See *id.* at 797–800.[4]

In sum, there is no circuit split on the scope of FOSTA or the application of the TVPRA to claims against platforms like Grindr. Even if there were any tension among these decisions—and there is not—further percolation in the lower courts would be warranted before this Court intervenes. The FOSTA exception that permitted application of that provision to online platform's publishing activities is less than a decade old. If the lower courts' further experience in interpreting and applying these statutes results in a legitimate circuit split, this Court may weigh in.

B. The Ninth Circuit faithfully applied settled law.

The Ninth Circuit's application of these accepted principles was also correct. As the court explained, to state a direct perpetrator claim under Section 1591(a)(1), or a beneficiary claim under Section 1591(a)(2), Petitioner was required to allege that Grindr acted with knowledge and "'actually engaged in some aspect of the sex trafficking.'" Pet. App. 11a (quoting *Reddit*, 51 F.4th at 1141). But Petitioner failed to plausibly allege that Grindr knowingly supported any sexual encounters between adults and minors—much less Petitioner's specific alleged encounters—or otherwise actively participated in sex trafficking. The court further held that the beneficiary liability claims failed for the additional reason that Petitioner failed to "plausibly allege that Grindr

[4] Likewise, the Seventh Circuit in *G.G.* v. *Salesforce.com* did "not reach questions raised about FOSTA's interpretation" because it "conclude[d] that Salesforce [could not] satisfy all the elements of Section 230's affirmative defense[.]" 76 F.4th at 565 n.21.

benefitted from the alleged sex trafficking beyond generally receiving advertising revenues." *Id.* at 12a–13a. Petitioner's failure to plausibly allege "a causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit" dooms his beneficiary liability claim. *Id.* at 13a.

Petitioner cannot identify any error in this reasoning.

First, Petitioner argues that the court should not have "analogized Grindr to Reddit" because Reddit is "a general-purpose publishing platform," while Grindr is focused specifically on "facilitating sexual encounters between strangers." Pet. 32. But Petitioner's complaint seeks to hold Grindr liable for failing to prevent him from creating a profile in violation of Grindr's age restriction, for publishing his profile and geolocation data to other users, and for failing to block communications between him and other users, see, *e.g.*, Pet. App. 22a—all activities that require Grindr to make decisions about third-party content and squarely implicate its role as a publisher.

Second, Petitioner contends that the Ninth Circuit "conflat[ed] the knowledge standards for beneficiary liability under § 1591(a)(2) and venture liability under § 1591(a)(1)."[5] Pet. 33. Petitioner appears to

[5] If anything, it is Petitioner who conflates the statutory provisions: Section 1591(a)(1) governs direct perpetrator liability, while Section 1591(a)(2), which imposes liability for knowingly benefitting "from participation in a venture which … has engaged in" a sex trafficking act, is known as either beneficiary or venture liability. See, *e.g.*, *Doe #1* v. *Crowley Maritime Corp.*, 2024 WL 1346947, at *6 (M.D. Fla. Mar. 29, 2024) ("These two liability theories are commonly referred to as (1) perpetrator liability and (2) beneficiary or venture liability.") (citations omitted).

suggest that Section 1591(a)(1) liability is a more easily satisfied standard, and that "facilitating matches between adults and minors" is "alone … enough to satisfy" that standard. *Ibid.* But direct liability requires a showing that the defendant actually "perpetrat[ed]" the sex trafficking, while beneficiary liability requires only "participation in a venture[.]" 18 U.S.C. § 1595(a). And at a minimum, both direct and beneficiary liability require knowledge that a specific victim is under 18 and will be caused to engage in a commercial sex act. 18 U.S.C. § 1591. There is no basis for concluding that the bar is lower for pleading direct liability claims.

Third, Petitioner suggests he satisfied the standard for direct perpetrator liability because he alleged that Grindr "facilitat[ed] matches between adults and minors[.]" Pet. 33. But again, direct perpetrator liability requires (among other things) "knowing … that *the person* has not attained the age of 18 years and will be caused to engage in a commercial sex act." 15 U.S.C. § 1591(a) (emphasis added). Since the complaint concedes that the only information Grindr possessed indicated that Petitioner's profile belonged to a person over the age of 18, Pet. App. 12a, 31a, Petitioner cannot plausibly allege that Grindr *knew* Petitioner "has not attained the age of 18 years," 15 U.S.C. § 1591(a), when it published his profile to other users.

CONCLUSION

The petition should be denied.

Respectfully submitted,

ADAM S. SIEFF
Davis Wright Tremaine LLP
350 S. Grand Avenue
27th Floor
Los Angeles, CA 90071

ALEXANDRA PERLOFF-GILES
Davis Wright Tremaine LLP
1251 Avenue of the Americas, 21st Floor
New York, NY 10020

AMBIKA KUMAR
Counsel of Record
BIANCA G. CHAMUSCO
Davis Wright Tremaine LLP
920 5th Ave., Ste. 3300
Seattle, WA 98104
(206) 622-3150
ambikakumar@dwt.com

Counsel for Respondents

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