No. 24-

IN THE

Supreme Court of the United States

MINISTER LOUIS FARRAKHAN,
AND THE NATION OF ISLAM,

Petitioners,

v.

ANTI-DEFAMATION LEAGUE, JONATHAN GREENBLATT, SIMON WIESENTHAL CENTER, AND ABRAHAM COOPER,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Second Circuit failed to follow this Court's precedent when it held that representational standing does not exist in claims alleging a violation of 42 U.S.C. § 1983?

2. Whether a First Amendment claim is actionable against a quasi-governmental actor whose policies and active partnership with a government entity and actor led to the issuance of a threat of arrest and prosecution aimed at suppressing First Amendment protections that are disfavored as being anti-Semitic?

3. Whether a public threat of arrest and prosecution by a government official against an unnamed yet identifiable group of people constitutes a concrete and particularized injury for purposes of establishing Article III standing and whether the lack of knowledge of which statute the government official intends to use to effectuate said threat prevents the ability to establish an injury sufficient for purposes of Article III standing?

PARTIES TO THE PROCEEDINGS

Petitioners are Minister Louis Farrakhan ("Minister Farrakhan") and the Nation of Islam. ("N.O.I.") Petitioners were the plaintiffs in the district court and appellants in the United States Court of Appeals for the Second Circuit.

Respondents are the Anti-Defamation League ("ADL"), Jonathan Greenblatt, Simon Wiesenthal Center, and Rabbi Abraham Cooper. Respondents were the defendants in the district court and respondents in the United States Court of Appeals for the Second Circuit.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioner, N.O.I., for corporate and legal purposes, is registered as Muhammad's Holy Temple of Islam, Inc., under the not-for-profit corporation laws of the State of Illinois; it has no parent corporation and issues no stock.

DIRECTLY RELATED PROCEEDINGS

This case arises from the following directly related proceedings:

- *Minister Louis Farrakhan and The Nation of Islam v. Anti-Defamation League, Jonathan Greenblatt, individually, and in his official capacity as CEO and National Director of the Anti-Defamation League, Simon Wiesenthal Center, and Rabbi Abraham Cooper, individually and in his official capacity as Director of Global Social Action Agenda for the Simon Wiesenthal Center,* No. 24-1237-CV, United States Second Circuit Court of Appeals. (Summary Order affirming the district court's judgment, is dated January 3, 2025).

- *Minister Louis Farrakhan and The Nation of Islam v. Anti-Defamation League, Jonathan Greenblatt, individually, and in his official capacity as CEO and National Director of the Anti-Defamation League, Simon Wiesenthal Center, and Rabbi Abraham Cooper, individually and in his official capacity as Director of Global Social Action Agenda for the Simon Wiesenthal Center,* No. 23-cv-9110, United States District Court, Southern District of New York (Opinion, Order and Judgment granting Defendants' 12(b)(1)(6) Motions to Dismiss, dated April 5, 2024).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

CORPORATE DISCLOSURE STATEMENT iii

DIRECTLY RELATED PROCEEDINGS iv

TABLE OF CONTENTS v

TABLE OF APPENDICES viii

TABLE OF CITED AUTHORITIES ix

CITATIONS OF OPINIONS BELOW 1

BASIS FOR JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 4

I. Introduction 4

II. Legal Background 5

III. Factual Background 7

IV. Decisions Below 8

Table of Contents

Page

REASONS FOR GRANTING THE WRIT 9

I. The Second Circuit's Ruling Conflicts with this Court's Precedent and Reinforces a Split Among the Circuits on the Justiciability of Associational Standing in § 1983 Cases 9

A. This Court Allows Representational Standing in 42 U.S.C. § Cases Contrary to What the Second Circuit Held 9

B. The Second Circuit stands alone and apart from other circuits that have followed this Court's precedent 14

II. A Novel Federal Question Exists With Respect to the Viability of a First Amendment Claim Against a Quasi-governmental Actor Who Disfavors First Amendment Freedoms 16

III. A Novel Federal Question Exists with Respect to a Public Threat of Arrest and Prosecution Constituting a Concrete and Particularized Injury 21

A. A particularized injury exists even when the target of a threat is unnamed 27

Table of Contents

Page

B. A concrete injury exists even when the statute challenged is unidentified 33

CONCLUSION 37

TABLE OF APPENDICES

Page

APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JANUARY 3, 2025 . . . . . 1a

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED APRIL 5, 2024 . . . . . 11a

TABLE OF CITED AUTHORITIES

Page

U.S. Supreme Court Cases

Abrams v. United States,
250 U.S. 616 (1919) 4

Allee v. Medrano,
416 U.S. 802 (1974) 12

Babbitt v. United Farm Workers Nat'l Union,
442 U.S. 289 (1979). 24, 26, 34, 36

Bantam Books, Inc. v. Sullivan,
372 U.S. 58 (1963). 5, 19, 20

Bennett v. Spear,
520 U.S. 154 (1997). 33, 34

Brentwood Academy v. Tennessee Secondary School Athletic Association,
531 U.S. 288 (2001). 16

Clapper v. Amnesty Int'l USA,
568 U.S. 398 (2013). 22, 27

Davis v. F.E.C.,
554 U.S. 724 (2008). 25

Food & Drug Administration v. Alliance for Hippocratic Medicine,
602 U.S. 367 (2024). 12

Page

Hartman v. Moore,
547 U.S. 250 (2006). 16

Holder v. Humanitarian Law Project,
561 U.S. 1 (2010) 25, 26

Hunt v. Washington State
Apple Advertising Commission,
432 U.S. 333 (1977). 10

Laird v. Tatum,
408 U.S. 1 (1972) 5

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992). 22, 23

MedImmune, Inc. v. Genentech, Inc.,
549 U.S. 118 (2007). 22

Moody v. NetChoice, LLC,
603 U.S. 707 (2024). 6

National Rifle Association of America v. Vullo,
602 U.S. 175 (2024) 17-20

Perry v. Sindermann,
408 U.S. 593 (1972). 16

Rosenblatt v. Baer,
383 U.S. 75 (1966). 31

Page

Sorrell v. IMS Health Inc.,
564 U.S. 552 (2011) 6

Spokeo, Inc. v. Robins,
578 U.S. 330 (2016) 22

Steffel v. Thompson,
415 U.S. 452 (1974) 23, 24, 26, 34, 36

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College; Students for Fair Admissions, Inc. v. University of North Carolina, et al.,
600 U.S. 180 (2023). 10

Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014) 22, 23, 26, 34, 36

TransUnion LLC v. Ramirez,
594 U.S. 413 (2021) 22

Virginia v. American Booksellers Ass'n, Inc.,
484 U.S. 383 (1988). 24, 25, 34

Warth v. Seldin,
422 U.S. 490 (1975). 9

Page

Federal Circuit Court Cases

American Fed'n of State, Cty. & Mun. Emps. Council 79 v. Scott, 717 F.3d 851 (CA11 2013). 15

Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd., 627 F.3d 547 (CA5 2010) 14

Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay, 868 F.3d 104 (CA2 2017) 25, 26, 36

Do No Harm v. Pfizer Inc., 126 F.4th 109 (CA2 2025). 16

Heartland Acad. Cmty. Church v. Waddle, 427 F.3d 525 (CA8 2005) 15

Memphis American Federation of Teachers, 534 F.2d 699 (CA6 1976) 14

Nnebe v. Daus, 644 F.3d 147 (2d Cir. 2011). 12, 13

Constitutional Provisions

U.S. Const. amend. I 2, 4-9, 11, 16-20, 28, 32, 34

U.S. Const. amend. XIV, § 1. . . . . .2, 4

Cited Authorities

Page

Federal Statutes

28 U.S.C. § 1254(1). 1, 3

28 U.S.C. § 1331 9

28 U.S.C. § 1332. 9

28 U.S.C. § 1367 9

28 U.S.C. § 2202. 9

42 U.S.C. § 1983. . . . . 2, 3, 9, 11-16, 27

Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008, Section 702 27

Federal Rules

Fed. R. Civ. P. 12(b)(1). 3, 8, 27

Fed. R. Civ. P. 12(b)(6). 3, 8

Other Authorities

Restatement of Torts § 564 (Am. Law Inst. 1938) 31

CITATIONS OF OPINIONS BELOW

The United States Court of Appeals for the Second Circuit's January 3, 2025, Summary Order is not reported. It is reproduced in the Petitioners' Appendix ("Pet. App.") at 1a. It may be cited as an unofficial report as *Farrakhan et al. v. The Anti-Defamation League, et al.* 24-1237 (CA2 2025).

The United States district court for the Southern District of New York's April 5, 2024, order and judgment is not reported. It is reproduced in the Pet. App. at 11a. It may be cited as an unofficial report as *Farrakhan, et al. v. The Anti-Defamation League, et al.* No. 23-cv-9110 (DLC), 2024 WL 1484449 (S.D.N.Y. Apr. 5, 2024).

BASIS FOR JURISDICTION

The United States Court of Appeals for the Second Circuit entered judgment on January 3, 2025. See Pet. App. 1a.

On March 13, 2025, an Application (24A894) to extend the time to file a petition for a writ of certiorari from April 3, 2025, to June 2, 2025, was submitted to Justice Sonia Sotomayor. On March 18, 2025, Justice Sotomayor granted the Application (24A894) and extended the time to file the petition until June 2, 2025.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. I.

Fourteenth Amendment

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § **1**

Section 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within

> the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . .

42 U.S.C. § 1983

Courts of appeals; certiorari; certified questions

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . .

28 U.S.C. § 1254(1)

Federal Rule of Civil Procedure 12(b)(1)(6)

> Fed. R. Civ. P. 12(b)(1): "Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (1) lack of subject-matter jurisdiction; . . . (6) Failure to state a claim upon which relief can be granted. . . . "

Fed.R.Civ.P. 12(b)(1)(6)

STATEMENT OF THE CASE

I. Introduction

The First Amendment to the U.S. Constitution provides that the government must not abridge certain freedoms, which have long been considered pillars of a democratic society. In explaining its importance, Justice Oliver Wendell Holmes, Jr. declared that "the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . ." Dissenting opinion, *Abrams v. United States*, 250 U.S. 616, 630 (1919).

The *sine qua non* of the American system of jurisprudence is to redress grievances in a structured, fair, and formal format. Incorporated in the redress of grievances is the prevention of gross social and civic injustices that were so prevalent in the colonies prior to the Declaration of Independence that the Founding Fathers risked their lives to combat it.

This Court grants individuals and entities standing to seek preemptive redress of grievances by those who could suffer injuries by policies and/or practices of others that infringe upon rights secured by the Constitution.

Any false claim, especially one made by a governmental or quasigovernmental actor, that can and does deprive a person of his or her constitutional rights and livelihood excoriates the meaning of the First and Fourteenth Amendments, which affords the protection of due process prior to being deprived of property, property interests, and/or constitutionally protected rights.

In today's society, the terms "anti-Semite" and "anti-Semitic" have been used to exact social, reputational, political, and economic punishment on those who are falsely labeled as such. In circumstances where they are applied legitimately, particularly because of threats of harm and physical violence against Jewish people and synagogues, it is acceptable. When, however, they are applied falsely and result in injury to the accused, it should be redressable.

Critiques—rooted in religious, humanitarian, moral, and legal concerns—are not expressions of antisemitism but of political and theological dissent. Yet, those who voice legitimate criticism increasingly face swift and severe backlash, often through the reflexive and stigmatizing false accusations of antisemitism which often result in injury to both persons and institutions.

II. Legal Background

Constitutional violations can arise from the deterrent, or "chilling," effect of governmental regulations. *Laird v. Tatum*, 408 U. S. 1, 11 (1972). After all, "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation" may cause self-censorship in violation of the First Amendment just as acutely as a direct bar on speech. *Bantam Books, Inc. v. Sullivan*, 372 U. S. 58, 67 (1963).

A governmental entity or actor "may not interfere with private actors' speech to advance its own vision of ideological balance. States (and their citizens) are of course right to want an expressive realm in which the public has access to a wide range of views. That is, indeed, a fundamental aim of the First Amendment. But

the way the First Amendment achieves that goal is by preventing the government from 'tilt[ing] public debate in a preferred direction.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 711(2024), citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–579 (2011).

" . . . [Government] cannot prohibit speech to improve or better balance the speech market. On the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana. That is why [this Court has] said in so many contexts that the government may not 'restrict the speech of some elements of our society in order to enhance the relative voice of others.' That unadorned interest is not 'unrelated to the suppression of free expression,' and the government may not pursue it consistent with the First Amendment." (Internal Citations Omitted.) *Moody,* 603 U.S. at 741-42. The same principles extend to the right of people to exercise their religion and to freely associate with whom they choose.

The fundamental freedoms formulated in the First Amendment upon which this nation grew into the world superpower that it is today is being tragically eroded by the failure to foster a robust free marketplace of ideas. Whether it is a world leader, like Minister Farrakhan, who has been hindered in the delivery and expression of his faith because of being falsely labeled an "anti-Semite" or a class president who can no longer deliver a commencement speech because of being labeled "anti-Semitic" because she offered her ideas in the former free marketplace of ideas, the sacrosanct First Amendment is suffering seismically and if it is not corrected truly with all deliberate speed, this entire system of jurisprudence is likely to follow.

III. Factual Background

Minister Farrakhan is the National Representative of the Honorable Elijah Muhammad and the N.O.I. Since September of 1977, Minister Farrakhan has continually traveled across America and the world to preach the Teachings of the Honorable Elijah Muhammad. While millions of people have been drawn to him with love and admiration, such as the nearly two million Black men who attended the Million Man March in Washington, D.C. on October 16, 1995, others have taken vehement and vociferous issue with his constitutionally protected First Amendment freedoms. One such group is the Anti-Defamation League ("ADL") and another is the Simon Wiesenthal Center ("SWC").

The animus began to crescendo on November 11, 1983, when a group called "JEWS AGAINST JACKSON" took out a full-page ad in the *New York Times* seeking to "ruin" the presidential run of then candidate Reverend Jesse Jackson. When Reverend Jackson began receiving death threats, Minister Farrakhan assigned unarmed male members of the N.O.I. to guard and protect the life of Reverend Jesse Jackson and his family.

On February 25, 1984, Minister Louis Farrakhan held a rally in support of Reverend Jackson and appealed to the group to stop the violence and threats against Reverend Jackson's life and asked for them to meet for a dialogue. The request went unanswered.

As a result of that rally, Mr. Nathan Pearlmutter, Executive Director of the ADL and Mr. Nat Hentoff, columnist for the Village Voice immediately began referring to Minister Farrakhan as the "New Black

Hitler." Dkt. 71, 11-12, ¶¶ 61-69. They did not refer to him as that because he ever called for the death of Jews but because he dared to come to the aid of Reverend Jackson and because he espoused a different theological and ideological viewpoint than the ADL.

Several months later, on September 14, 1985, members of the ADL openly protested a speech Minister Farrakhan was delivering in Los Angeles, California, at the L.A. Forum. Those members of the ADL, who were initially confined to a protest area some distance from the L.A. Forum, broke through the police barricade, pushed their way to the front doors of the venue, and began chanting loudly, "Who do you want? Farrakhan. How do you want him? Dead." *Id.* at 16, ¶ 90.

From that moment until now, the ADL has sought to abridge, if not utterly destroy, Minister Farrakhan's ability to exercise his First Amendment freedoms by falsely labeling him an "anti-Semite." Said efforts now encompass threats of arrest and prosecution.

IV. Decisions Below

On January 3, 2025, the Second Circuit affirmed the district court's April 5, 2024, ruling wherein it: 1) granted Respondents' Rule 12(b)(1) motions with respect to the constitutional claims for lack of standing, 2) granted Respondents' Rule 12 (b)(6) motions with respect to Petitioner's defamation claims holding that the statements complained of were nonactionable opinion, or, even if actionable, were not adequately alleged to be false or to have been made with actual malice, 3) declined to exercise jurisdiction over Petitioners' claims for declaratory

judgment, and 4) denied Petitioners' request for injunctive relief.

The basis for federal jurisdiction in the first instance was: 1) 28 U.S.C. §1331 because the action presents a federal question for violation of rights under the First Amendment of the United States Constitution, 2) 42 U.S.C. § 1983 because Defendants acted under color of state law, 3) 28 U.S.C. §1332 because the action involves parties of different states and the amount in controversy was $4.8 billion, 4) 28 U.S.C. § 2202 because declaratory relief was sought, and 5) supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state law claims.

REASONS FOR GRANTING THE WRIT

I. The Second Circuit's Ruling Conflicts with this Court's Precedent and Reinforces a Split Among the Circuits on the Justiciability of Associational Standing in § 1983 Cases.

A. This Court Allows Representational Standing in 42 U.S.C. § Cases Contrary to What the Second Circuit Held.

This Court has held that an association may have standing to sue as the representative of its members, "[e]ven in the absence of injury to itself." *Warth v. Seldin*, 422 U.S. 490, 511 (1975).

In addition, this Court has held that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are

germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977).

More recently, this Court affirmed an organization's standing to represent the interest of its members in *Students for Fair Admissions v. President and Fellows of Harvard College v. University of North Carolina, et al.*, 600 U.S. 180 (2023). Therein, a nonprofit organization dedicated "to defend human and civil rights secured by law, including the right of individuals to equal protection under the law[,]" filed suit on behalf of its members for declaratory and injunctive relief alleging the universities' raced based admissions programs violated the Equal Protection Clause, Title VI of the Civil Rights Act, and federal statutes prohibiting racial discrimination in contracting. *Id.* at 197.

This Court determined it had jurisdiction to hear the matter under the principle of standing. This Court reaffirmed that an organization's standing can be satisfied in one of two ways. It can assert a claim that it suffered an injury directly or it can assert a claim of injury on behalf of its members. *Id.*, at 199. This Court then restated the elements of representational or organizational standing as succinctly articulated in *Hunt*.

This Court held that the plaintiff met the standing requirements to bring its claims against the defendants on behalf of its members because it is "indisputably a voluntary membership organization with identifiable members . . . and represents them in good faith[.]" *Id.* at 201.

Petitioner N.O.I. is also a voluntary membership-based type of association and brought claims of injury on behalf of itself and its members alleging abridgment of certain First Amendment protections through 42 U.S.C. § 1983. See Pet. Second Amended Complaint ("SAC") Dkt. 71, 80-81, ¶¶422-29, 84-93, ¶¶443-94, 96-98, ¶¶510-25.

Generally, Petitioner N.O.I. alleged on behalf of itself and its members unlawful infringement on the free exercise of its and their religion. *Id.* at 85-86, ¶¶445-55. Specifically, on behalf of itself, Petitioner N.O.I. alleged impairment to reputation (*Id.* at 85-86, ¶¶464-67), threat of sanctions (*Id.* at 88-89, ¶¶468-70), and chilling effect on holding national events in New York (*Id.* at 89-90, ¶¶471-72).

Additionally, Petitioner N.O.I. alleged on behalf of its members' unlawful threat of arrest and prosecution (*Id.* at 89, ¶¶474-79), chilling effect on wearing readily identifiable uniforms and garments (*Id.* at 91, ¶¶480-87), and chilling effect on spreading the Teachings of the faith. *Id.* at 92-93, ¶¶488-94.

Notably, in the SAC, Petitioner N.O.I. articulated the actual standard this Court has promulgated in establishing representational standing on behalf of its members when it stated that it "asserts the claim stated herein on behalf of its members because: 1) each member would otherwise have standing to individually assert said claim on his or her own behalf, 2) the interests asserted herein are germane to the N.O.I.'s purposes, and 3) neither the claim asserted nor the relief requested requires the participation of any individual member in this lawsuit." *Id.* at 87, ¶459.[1]

1. Petitioner N.O.I. maintains it did allege with enough specificity "a predictable chain of events leading from the

Moreover, in *Allee v. Medrano*, this Court recognized the legitimacy of representational standing specifically in claims alleging violation of 42 U.S.C. § 1983. 416 U.S. 802 (1974). In *Allee*, plaintiff United Farmworkers Organizing Committee ("UFOC"), among others, filed a civil rights action pursuant to, *inter alia*, § 1983 on behalf of its members alleging the unlawful deprivation of certain rights protected by the First and Fourteenth Amendments. *Id*. at 804.

This Court affirmed the part of the lower court's ruling for UFOC's representational standing on behalf of its members and held that its claims for relief were not moot because they were no longer engaging in the actions that resulted in the deprivation since the cessation of the actions was the result of the infringing acts. *Id.* at 809-11. In fact, this Court acknowledged in a footnote that the judgment it was affirming "was also rendered for all members of the plaintiff United Farmworkers Organizing Committee. . . ." *Id.* at 805, Footnote 3.

Thus, this Court has held that representational standing exists in cases sounding in 42 U.S.C. § 1983.

The Second Circuit, however, declined to follow this Court's precedent when it affirmed the district court's ruling where in it noted, "an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983," because the rights secured by § 1983 are "personal to those purportedly injured." Pet. App. 1a , citing *Nnebe v. Daus*, 644 F.3d

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government action to the asserted injury. . . ." *Food and Drug Administration, et al., v. Alliance for Hippocratic Medicine, et al.,* 602 U.S. 367, 385 (2024).

147, 156 (2d Cir. 2011)(citation omitted). In the case at bar, the Second Circuit has chosen to follow its own precedent in *Nnebe* and in contravention to the precedent of this Court.

Furthermore, what is telling about the Second Circuit's ruling in *Nnebe* is that it began that same sentence by declaring, "[i]t is the law of *this Circuit* that an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983. . . ." (Emphasis added.) That isolationist statement is a tacit declaration from the Second Circuit that it has chosen to chart its own course with respect to how it addresses representational standing.

This failure to follow this Court's precedent not only disadvantages litigants in the Second Circuit, but it can only lead to further incursions into this Court's precedent for purposes of reformulating standards based upon its own palate and thinking.

The Second Circuit further demonstrated a failure to follow this Court's precedent with respect to what constitutes a sufficient injury for establishing the "chilling effect" of a constitutionally protected right.

In the case at bar, Petitioner N.O.I. not only asserted a "subjective chill" based upon "government regulation [it finds] inappropriate," but Petitioner also alleged "a risk of objective harm." As noted herein, the SAC specifically identified as the basis of the claims of abridgment of specific constitutionally protected rights the literal threat of arrest and prosecution of an insular and discrete class of people who the ADL has intimated, inferred, and described as the "feeders of antisemitism," of which

Petitioners, according to the ADL, are the "leading promoter[s]" of, by the mayor of New York. *Infra*.

Here, again, the Second Circuit failed to follow the precedent of this Court and granted dismissal of Petitioners' SAC even though both elements were specifically and sufficiently alleged to meet the low burden appurtenant to the pleading stage of litigation.

B. The Second Circuit stands alone and apart from other circuits that have followed this Court's precedent.

The circuit split on this point is highlighted by rulings in other Circuits that do follow this Court's precedent.

For example, the Fifth Circuit held that the Association of American Physician and Surgeons had standing to bring this suit against the Texas Board of Medical Examiners on behalf of its members under 42 U.S.C. § 1983. *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 549 (CA5 2010).

The Sixth Circuit held that the *Memphis American Federation of Teachers* had standing as a named plaintiff to sue under 42 U.S.C. § 1983 for the abridgement of the constitutional rights of its members "since a union can act only through its members [and the] actions by state or local officials which allegedly deny the constitutional rights of its members impede equally the rights of the union." *Memphis American Federation of Teachers, Local 2032 v. Board of Education of Memphis City of Schools*, 534 F.2d 699, 702 (CA6 1976).

The Eighth Circuit has stated unequivocally, "[t]he Supreme Court has never held (and neither have we) that associational standing is not available to § 1983 plaintiffs. . . ." *Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525, 532 (CA8 2005).

The Eleventh Circuit has held in a case brought pursuant to 42 U.S.C. § 1983 that the American Federation of State, County, and Municipal Employees Union "had standing to challenge an executive order mandating suspicionless drug testing of state employees on the basis that it violates their Fourth Amendment rights[.]" *American Fed'n of State, Cty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 861 n.1 (CA11 2013).

The foregoing illustrates the brightline distinction between the Second Circuit and multiple other Circuits when determining whether an organization has standing to bring a § 1983 claim on behalf of its members. If any association or organization that seeks to bring a § 1983 claim on behalf of its members has the unfortunate occasion to make its claim in the Second Circuit, it will not, at present, receive the due consideration it deserves from a Circuit that follows this Court's precedent.

Consequently, this conflict can reasonably be expected to continue without the intervention and unequivocal declaration by this Court on the state of associational standing on behalf of its members when presenting claims pursuant to § 1983.

Considering the Second Circuit's failure to follow this Court's precedent and the split that has resulted, the question of whether an association has standing to sue on

behalf of its members for any claim justiciable under 42 U.S.C. § 1983 is ripe to resolve.[2]

II. A Novel Federal Question Exists With Respect to the Viability of a First Amendment Claim Against a Quasi-governmental Actor Who Disfavors First Amendment Freedoms.

This Court has long held that the First Amendment prohibits government actors from retaliating against individuals for their protected speech. See *Hartman v. Moore*, 547 U.S. 250, 256 (2006); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). This Court has also held that "the deed of a private organization or individual is to be treated sometimes as if a State had caused it to be performed. Thus, we say that state action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" (Internal Citations Omitted.) *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288, 295 (2001).

The question at present is whether the same governmental prohibition extends to quasi-governmental actors whose partnership with governmental actors results in the abridgment of First Amendment protections over First Amendment protections it disfavors and deems "anti-Semitic."

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2. Since the ruling in the case at bar, the Second Circuit appears to now have an intra-circuit split as well considering its ruling in *Do No Harm v. Pfizer Inc.*, wherein it held, "[a]n association may have standing to sue as the representative of its members, "[e]ven in the absence of injury to itself." (Internal Citations Omitted.) 126 F.4th 109, 117 (CA2 2025).

A case instructive on this point is *National Rifle Association of America v. Vullo*. 602 U.S. 175 (2024). Therein, this Court opened its analysis by affirming a decision from "six decades ago" which held that "Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors." *Id.* at 180. The novel federal question at issue here is whether a First Amendment claim is actionable against a quasi-governmental actor who partners with government officials to suppress protected speech the quasi-governmental actor deems to be anti-Semitic when it results in threats of arrest and prosecution by a government official against a party?

In *National Rifle Association of America* ("*NRA*"), the NRA alleged that the Defendant Vullo "allegedly pressured regulated entities to help her stifle the NRA's pro-gun advocacy by threatening enforcement actions against those entities that refused to disassociate from the NRA and other gun-promotion advocacy groups." *Id.* at 180. This Court unequivocally stated that if said actions were true, the NRA's allegations would "state a First Amendment claim." *Id.* at 191.

Specifically, the NRA offered various insurance programs to its members. Some actions of the insurance carriers who facilitated these programs were not in compliance with state regulations. After being made aware of such "compliance infirmities," Vullo, who was the head of the New York Department of Financial Services (DFS), which oversees insurance companies and financial services institutions doing business in New York, and who could "initiate investigations and civil enforcement actions against regulated entities, and can refer potential criminal

violations to the State's attorney general for prosecution," opened such an investigation. *Id.* at 175.

During the investigation, the tragic shooting occurred in Parkland, Florida, which resulted in "intense backlash" against the NRA and other gun-advocacy groups. *Id.* at 182. Insurance companies began severing ties with the NRA to avoid reprisals from New York state officials, particularly Vullo. *Id.* at 184.

Around that same time, Vullo began meeting with insurance company executives doing business with the NRA to present its "views on gun control and their desire to leverage their powers to combat the availability of firearms, including specifically by weakening the NRA." *Id.* at 197. As a result, certain insurance companies agreed to further sever ties with the NRA and Vullo issued letters to DFS-regulated that contained "guidance," but, for all intents and purposes, were veiled threats against such entities if they did not sever ties with the NRA.

The NRA sued for First Amendment violations. The only claims before this Court were those against Vullo alleging she "violated the First Amendment by coercing DFS-regulated parties to punish or suppress 'the NRA's pro-Second Amendment viewpoint' and 'core political speech.'" *Id.* at 185. The ultimate question was whether "the complaint states a First Amendment claim against Vullo." *Id*. at 186.

On review, this Court noted that "Vullo was free to criticize the NRA" but "[s]he could not wield her power . . . to threaten enforcement actions against DFS-regulated entities in order to punish or suppress the NRA's gun-promotion advocacy." *Id.* at 187. This Court determined

that the complaint plausibly alleged that Vullo did just that and held that "the NRA stated a First Amendment violation." *Id.*

At issue in NRA was the First Amendment's Free Speech Clause that prohibits "government entities and actors from 'abridging the freedom of speech.'" *Id.* at 187. At issue here is whether that same prohibition extends to quasi-government actors whose partnership with "government entities and actors" results in actions that abridge First Amendment freedoms.

In NRA, this Court noted that, "[a] government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others to follow her lead . . . What she cannot do, however, is use the power of the State to punish or suppress disfavored expression." *Id.* at 188.

In citing the precedent in *Bantam Books*, this Court's noted that it "stands for the principle that a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Id.* at 190.

This Court also noted that, "[t]o state a claim that the government violated the First Amendment through coercion of a third party, a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff 's speech." *Id.* at 191. In assessing NRA's complaint "as a whole," this Court found that it "plausibly alleges that

Vullo threatened to wield her power against those refusing to aid her campaign to punish the NRA's gun-promotion advocacy." *Id.* at 194.

This Court then noted that it was "not break[ing] new ground in deciding this case. It only reaffirms the general principle from *Bantam Books* that where, as here, the complaint plausibly alleges coercive threats aimed at punishing or suppressing disfavored speech, the plaintiff states a First Amendment claim." *Id.* at 197.

While this Court held in *NRA* that claims of First Amendment violations are actionable against government actors who use their authority to threaten others from engaging with a party for purposes of punishing that party and, in effect, suppressing that party's protected speech, the substance of the novel federal question in the case at bar inquires into whether the breadth of said holding covers when a quasi-governmental actor seeks to suppress First Amendment freedoms it determines, rightly or wrongly, to be anti-Semitic by using its partnership with a governmental entity and actor that results in a threat of arrest and prosecution of the actors it has deemed to be anti-Semitic.

To this point, as noted, the ADL has leveled serious unfounded accusations against Minister Farrakhan and the N.O.I. for the past 40 years and even publicly called for Minister Farrakhan's death.[3] Said public death threats renders the allegations against the ADL in the SAC as

3. Petitioners made this same allegation in the SAC and in subsequent pleadings. (See Pet. SAC, 17, ¶90). At no point did the ADL deny these allegations because they are provable as true.

plausible considering none of them rise to the extremely disturbing level of a death threat.

Petitioners were unaware of the State of New York's partnership with the ADL before Governor Kathy Hochul mentioned it in on her website. In addition, Petitioners were unaware of the City of New York's partnership with the ADL prior to Mayor Adams mentioning it during a press conference. In and of itself, a partnership is not unlawful. Advocating for Jewish people to be free from unprovoked physical violence and Jewish synagogues to be free from vandalism is admirable. When that advocacy, however, reaches over into the abridgment of the constitutional rights of others who are free to express ideas, perspectives, and facts as they, like the NRA, see them, said advocacy has reached its limits and requires intervention to protect what the Founding Fathers of this country risked their lives to establish.

III. A Novel Federal Question Exists with Respect to a Public Threat of Arrest and Prosecution Constituting a Concrete and Particularized Injury

Standing in General

The bedrock of the constitutional requirement of Article III standing is well-established and firmly rooted in the American system of jurisprudence. It requires a plaintiff to show: (1) an 'injury in fact,' which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical, (2) that there be a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and (3) that it be likely, as opposed

to merely speculative, that the injury will be redressed by a favorable decision. See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 134 S. Ct. 2334, 2336 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

An injury in fact must be "concrete," meaning that it must be real and not abstract. (*FDA*) See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021). "Central to assessing concreteness is whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or various intangible harms including (as relevant here) reputational harm." *Id.* at 417 citing, *Spokeo, Inc. v. Robins*, 578 U. S. 330, 340–341 (2016).

A recurring issue this Court has addressed is determining when the threatened enforcement of a law creates an Article III injury. This Court has held that a threatened injury rather than actual injury can satisfy Article III standing requirements. "A plaintiff threatened with future injury has standing to sue 'if the threatened injury is "certainly impending," or there is a "substantial risk that the harm will occur."' *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 134 S. Ct. 2334, 2342 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 & n.5 (2013))."

Where "threatened action by government is concerned," this Court does "not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat[.]" *MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128 (2007).

The burden for establishing standing at the pleading stage is lower. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (to establish standing at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice.")

In the context of pre-enforcement challenges to criminal statutes, imminent injury can be established by plausible allegations that a plaintiff "'inten[ds] to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by... statute, and there exists a credible threat of prosecution thereunder.'" *Susan B. Anthony List*, 573 U.S. at 159, (Internal Citations Omitted.)

In this vein, in *Steffel v. Thompson*, police officers threatened to arrest the petitioner and his companion for trespassing for distributing handbills protesting the Vietnam War in a certain area. *Steffel v. Thompson*, 415 U. S. 452, 455 (1974). Petitioner left to avoid arrest; his companion remained and was arrested and charged with criminal trespass. Petitioner sought a pre-enforcement declaratory judgment that the trespass statute was unconstitutional as applied to him.

This Court held that petitioner established Article III standing because he alleged a credible threat of enforcement: He had been warned to stop handbilling and threatened with prosecution if he disobeyed; he stated his desire to continue handbilling (an activity he claimed was constitutionally protected); and his companion's prosecution showed that his "concern with arrest" was not "' chimerical.'" *Id.* at 459. "[I]t is not necessary that petitioner first expose himself to actual arrest or

prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Id*.

In *Babbitt v. United Farm Workers Nat'l Union*, plaintiff brought a pre-enforcement challenge to a statute that made it an unfair labor practice to encourage consumers to boycott an "agricultural product . . . by the use of dishonest, untruthful and deceptive publicity.' " 442 U. S. 289, 301 (1979). The plaintiffs contended that the law "unconstitutionally penalize[d] inaccuracies inadvertently uttered in the course of consumer appeals." *Id.* at 290.

This Court explained that a plaintiff could bring a pre-enforcement suit when he "has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Id*. at 298.

In that case, the law "on its face proscribe[d] dishonest, untruthful, and deceptive publicity." *Id.* at 302. The plaintiffs had "actively engaged in consumer publicity campaigns in the past" and alleged "an intention to continue" those campaigns in the future. *Id.* at 301. And although they did not "plan to propagate untruths," they argued that "'erroneous statement is inevitable in free debate.'" *Id*. This Court concluded that the plaintiffs' fear of prosecution was not "imaginary or wholly speculative," and that their challenge to the consumer publicity provision presented an Article III case or controversy. *Id.* at 302.

In *Virginia v. American Booksellers Assn. Inc*., this Court held that booksellers could seek pre-enforcement review of a law making it a crime to "knowingly display

for commercial purpose" material that is "harmful to juveniles" as defined by the statute in question. 484 U. S. 383, 386 (1988) At trial, the booksellers introduced 16 books they believed were covered by the statute and testified that costly compliance measures would be necessary to avoid prosecution for displaying such books. This Court held that the "pre-enforcement nature" of the suit was not "troubl[ing]" because the plaintiffs had "alleged an actual and well-founded fear that the law will be enforced against them." *Id.* at 393.

In *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, plaintiff brought an action against the Town of Oyster Bay and John Venditto, the Town Supervisor at the time, after the passage of an ordinance that would have the likelihood of negatively impacting its ability to be unhindered in carrying out its mission. 868 F.3d. 104, 108-109 (CA2 2017). This Court noted, "[a] party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct." *Id.* at 110, citing, *Davis v. F.E.C.*, 554 U.S. 724, 734 (2008).

In *Holder v. Humanitarian Law Project*, this Court considered a pre-enforcement challenge to a law that criminalized "'knowingly provid[ing] mate-rial support or resources to a foreign terrorist organization.'" 561 U. S. 1, 8 (2010). The plaintiffs claimed that they had provided support to groups designated as terrorist organizations prior to the law's enactment and would provide similar support in the future. The Government had charged 150 persons with violating the law and declined to disavow prosecution if the plaintiffs resumed their support of the designated organizations. This Court held that plaintiffs had Article III standing because they faced a "'credible

threat' " of enforcement and "'should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.' " *Id.* at 15.

In *Susan B. Anthony List v. Driehaus*, plaintiffs made statements in previous election cycles and intended to make similar statements in future election cycles that would likely have violated the Ohio false statement law. 573 U.S. 149. Petitioners' intended future conduct is "arguably . . . proscribed by [the] statute" they wish to challenge. *Id.* at 162. In this pre-enforcement action, plaintiffs alleged that the threat of enforcement of said statute amounted to an Article III injury in fact. This Court agreed and held that plaintiffs alleged a credible threat of enforcement, which satisfied the injury prong of Article III.

This Court experienced no difficulty concluding that petitioners' intended speech was "arguably proscribed" by the law wherein a Commission panel here already found probable cause to believe that plaintiff *Susan B. Anthony List* violated the statute when it stated that the defendant had supported "taxpayer-funded abortion"—the same sort of statement petitioners plan to disseminate in the future. This Court held that, "[a]s long as petitioners continue to engage in comparable electoral speech regarding support for the [Affordable Care Act], that speech will remain arguably proscribed by Ohio's false statement statute." *Id.* at 2344.

This Court found standing existed in *Steffel*, *Babbitt*, *American Booksellers Assn. Inc.*, *Centro*, *Holder*, and *Susan B. Anthony*, all of which involved named targets of the threats.

Conversely, in *Clapper*, which is distinguishable from the case at bar, plaintiffs sought pre-enforcement standing to challenge Section 702 of the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008, which allowed the U.S. government to conduct surveillance of non-U.S. persons reasonably believed to be located outside the United States, with approval from the Foreign Intelligence Surveillance Court. 568 U.S. at 401. Plaintiffs alleged that their sensitive international communications were likely to be intercepted under this law, which forced them to take costly and burdensome steps to protect the confidentiality of their communications. *Id.*

This Court held that plaintiffs lacked Article III standing to challenge the act because their "theory of standing relie[d] on a highly attenuated chain of possibilities, does not satisfy the requirement that threatened injury must be certainly impending." *Id.* at 410–11. Such "attenuated chain of possibilities" is a non-issue when a public threat of arrest and prosecution is made against an unnamed and insular but identifiable group for exercising constitutionally protected freedoms by someone with the authority to enforce the threat.

A. A particularized injury exists even when the target of a threat is unnamed.

In the case at bar, the Second Circuit affirmed the District Court's dismissal of Petitioners' claims pursuant to Federal Rule of Civil Procedure 12(b)(1) citing, *inter alia*, that Petitioners failed to establish an injury in fact pursuant to its 42 U.S.C. § 1983 claim. See Pet. App. 1a.

Part of its rationale was that the ADL, through its partnership with the City of New York, did not specifically

name Minister Farrakhan, the N.O.I., and its members as the target of the public threat of arrest and prosecution. Therefore, as held by the Second Circuit, Petitioners did not have Article III standing to bring Count 5 in particular because it failed to allege a concrete and particularized injury.

Said ruling fostered the novel federal question for this Court, which is whether a public threat of arrest and prosecution by a top municipal government official against an unnamed insular and identifiable group of people as a result of their exercising protected First Amendment freedoms constitutes a concrete and particularized injury for purposes of helping to establish, particularly at the pleading stage, Article III standing?

For demonstrative purposes, in the case at bar, the District Court and the Second Circuit referenced the ADL's "years of advocacy" as the basis for its ability to label Minister Farrakhan, the N.O.I., and its members as "anti-Semites." Throughout their "years of advocacy," the ADL has referred to Minister Farrakhan and the N.O.I. as the "leading promoter of antisemitism in America today." See Pet. SAC, Dkt. 71, ¶¶409-12. Moreover, in those same "years of advocacy," the ADL has intimated that Minister Farrakhan and the N.O.I. are equivalent to "feeders of antisemitism" to others.

To this point, national director emeritus of the ADL, Mr. Abraham Foxman, in a 2022 article entitled, "Kanye and Kyrie Spread Farrakhan's Bigotry," stated in relevant part, "[d]uring my 50 years at the Anti-Defamation League, we frequently exposed and challenged Mr. Farrakhan's anti-Semitism, calling him the most prominent black anti-Semite in the modern era. . . ."

He went on to say, "Kanye West and Kyrie Irving have absorbed this anti-Semitism and now spread it as their own message. While Mr. Farrakhan no longer commands the numbers he once had for his hate, Messrs. West and Irving do it for him, poisoning the minds of some young blacks who see them as role models . . . We no longer have the option to ignore it."

Interestingly, in his own words, Mr. Foxman said he and the ADL did not ignore it during his 50 years with the organization. According to him, they "frequently . . . challenged [Minister] Farrakhan" on what they determined to be "anti-Semitism."

Clearly, Mr. Foxman and the ADL had and have something else in mind for Minister Farrakhan and members of the N.O.I. when he said, "[w]e no longer have the option to ignore it." This new approach to dealing with what it determines to be an old problem is likely what the Mayor of New York articulated when he said at a press conference that it is now time to use "law enforcement" to arrest and prosecute the "feeders of antisemitism."

It is this history of what is described as "advocacy" now coupled with its partnership with the City of New York that prompted the top municipal government official to claim the imminent arrest and prosecution of the "feeders of antisemitism." That designation is more insular than simply saying the city will pursue anyone who espouses antisemitism or engaging in such acts.

This insular group is who the city and its partner—the ADL—believe are "feeders of antisemitism." In no way do Petitioners concede, accept, or affirm that they hold

negative views of Jewish people because of their faith. Nevertheless, Minister Farrakhan, the N.O.I., and its members have been identified by the ADL as the "leading antisemites in America," and the ADL has alleged Minister Farrakhan and the N.O.I. are the "feeders" of anti-Semitic statements of others. See Pet. SAC, Dkt. 71, 78, ¶¶409-13.

The public threat of arrest and prosecution made by the mayor of New York was not made against any and every person who may have ever made a statement he and the ADL determine to be "anti-Semitic." He narrowed the target of the threat when he said he intended to use "law enforcement" to "stop the feeders of antisemitism" and to prosecute them "to the full extent of the law." *Supra*. The class of people and/or groups that fall into their designation as the "feeders of antisemitism" is an insular and discrete number.

Said statement by the mayor of New York, however, did not specifically identify Minister Farrakhan, the N.O.I., and its members by name, which undergirds the novel question of whether a public threat of arrest and prosecution by a top municipal government official against an unnamed insular and identifiable group of people as a result of their exercising protected First Amendment speech constitutes a concrete and particularized injury for purposes of helping to establish, particularly at the pleading stage, Article III standing?

This Court, in a defamation context, has articulated the premise that a party has standing to pursue a claim even when the party was unnamed in the defamatory declaration but identifiable to those with knowledge of the party so defamed.

In *Rosenblatt v. Baer*, a columnist of a local newspaper asked the question in an article, "What happened to all the money last year? and every other year?" The article did not mention the plaintiff by name, but it was known by many that he managed the financial operations of a publicly owned ski resort in New Hampshire. 383 U.S. 75, 77 (1966). In a defamation suit, the plaintiff alleged that the column implied he engaged in financial mismanagement.

This Court quoted tort law and stated, "[i]f the group is small enough numerically or sufficiently restricted geographically so that people reasonably think the defamatory utterance was directed to or intended to include the plaintiff, there may be a recovery.' (Internal Citations Omitted.) 383 U.S. at 98-99.

In citing the Restatement of Torts, §564, Comment c (1938), this Court noted, "[t]he size of the class may be so small as to indicate that the plaintiff is the person intended or at least to cast such grave suspicion upon him as to be defamatory of him." *Id.* at 99.

In this same vein, the Restatement (Second) of Torts, §564 Applicability of Defamatory Communication to Plaintiff reads, in part:

> . . . If the communication is reasonably understood by the person to whom it is made as intended to refer to the plaintiff, it is not decisive that the defamer did not intend to refer to him . . . It is not enough however, that the defamatory matter is actually understood as intended to refer to the plaintiff; the interpretation must be reasonable in the light

> of all the circumstances. It is not necessary that the plaintiff be designated by name; it is enough that there is such a description of or reference to him that those who hear or read reasonably understand the plaintiff to be the person intended. Extrinsic facts may make it clear that a statement refers to a particular individual although the language used appears to defame nobody. It is not necessary that everyone recognize the other as the person intended; it is enough that any recipient of the communication reasonably so understands it.

Thus, classic hornbook guidance in the First and Second Restatement of Torts supports the premise that it is not necessary to be named to be understood to be the target of a defamatory statement. This concept can be reasonably applied to a public threat of arrest and prosecution by a top municipal government official against an unnamed insular, yet identifiable group of people as a result of their exercising protected First Amendment speech constituting a concrete and particularized injury for purposes of helping to establish, particularly at the pleading stage, Article III standing.

Heretofore, however, the determination that an unnamed plaintiff has standing to sue has been primarily isolated to defamation claims. Novel to this Court is the determination of whether an unnamed party has standing to pursue claims for violations of First Amendment freedoms as a result of a governmental actor, in partnership with a quasi-governmental actor, threatening arrest and prosecution for the lawful exercise of said freedoms.

B. A concrete injury exists even when the statute challenged is unidentified.

This Court has intimated that a codified statute is not a *sine qua non* to a finding of a concrete injury when there is a threatened injury from a government actor. In fact, this Court has found Article III standing exists in pre-enforcement claims wherein a plaintiff challenged a governmental policy determination that would likely have resulted in injury to the plaintiff.

For example, in *Bennett v. Spear*, plaintiffs sued the U.S. Fish and Wildlife Service ("FWS") because a policy decision to not pursue a water project but instead to increase water levels in two reservoirs would have a negative impact on them considering they benefited from the water project. 520 U.S. 154, 157 (1997). Specifically, the plaintiffs claimed that the reduced water availability would harm their commercial, recreational, and aesthetic interests. *Id*. at 168.

This Court held that plaintiffs did have standing to seek judicial review. In so doing, this Court found that "[p]etitioners' complaint alleges facts sufficient to meet the requirements of Article III standing, and none of their ESA claims is precluded by the zone-of interests test." *Id.* at 179. This Court went on to note that even though the Bureau retained ultimate discretion over water allocation, the Court recognized that the FWS's Biological Opinion had a powerful, coercive effect: the Bureau was unlikely to disregard the Opinion due to the risk of substantial penalties for violating the Endangered Species Act. Therefore, the plaintiffs' injuries were not speculative but imminent and fairly traceable to the FWS's actions.

"Given petitioners' allegation that the amount of available water will be reduced and that they will be adversely affected thereby, it is easy to presume specific facts under which petitioners will be injured—for example, the Bureau's distribution of the reduction pro rata among its customers. The complaint alleges the requisite injury in fact." *Id.* at 168.

"While, as we have said, it does not suffice if the injury complained of is 'the result [of] the independent action of some third party not before the court,' that does not exclude injury produced by determinative or coercive effect upon the action of someone else." (Internal Citation Omitted.) *Id.* at 169.

What is established is that an articulated and codified statute, as in *Steffel*, *Babbitt*, *American Booksellers Assn. Inc.*, and *Susan B. Anthony*, as well as an articulated and written government policy, as in *Bennett*, can serve as the bases for a claim of concrete injury in fact for Article III standing purposes. What is yet to be clearly established is whether the statute a governmental actor uses as the basis for the threatened arrest and prosecution of a person exercising a constitutionally protected First Amendment right must be articulated and known prior to challenging the public threat.

The absence of the knowledge of which statute the government official intends to use to effectuate the public threat of arrest and prosecution against someone lawfully exercising a constitutional right should not prevent the determination of a concrete and immediate injury for purposes of establishing Article III standing particularly at the pleading stage.

The Article III injury resulting from a threat of arrest and prosecution is no less concrete when the statute threatened to be enforced is not articulated by the government official. In this vein, in the case at bar, the mayor of New York did not articulate which statute he intended to use to pursue, as he described them, the "feeders of antisemitism." What was clear in his public pronouncement, however, was that he intended to employ the use of "law enforcement" to "stop the feeders of antisemitism. That is why we've partnered with the ADL and other organizations . . . We know we have to stop the feeder of hate in our cities, in all the different groups in this city. And then we must have a real law enforcement response . . . we want the people apprehended, and we want to make sure that they're prosecuted to the full extent of the law." See Pet. SAC, Dkt. No. 71, 81, ¶¶426-28.

A pre-enforcement claim of unlawful abridgment of a constitutionally protected right should be justiciable even when a petitioner is unaware of which statute the government official intends to use to effectuate the threat. If the contrary was required, the mandate would contemplate that a Petitioner must know the precise thinking and plan of the government official prior to pursuing a pre-enforcement claim. By the time said statute is known, the arrest could have been effectuated and the prosecution could have commenced. Such a requirement would be untenable and practically unattained in nearly every occurrence.

The ADL alluded to Petitioners as causing others to hold and espouse anti-Semitic thoughts and words, the City of New York partnered with the ADL, and the mayor of New York publicly threatened "feeders of antisemitism"

with arrest and prosecution. Said threat by the mayor of New York as a result of its partnership with the ADL was neither "imaginary" nor "speculative." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298. The threat of arrest and prosecution is as equally concrete as the threats of arrest made in *Steffel*, *Susan B. Anthony*, and *Centro*. Moreover, the mayor has not disavowed that threat since he made it.

This question is ripe for review.

CONCLUSION

Petitioners respectfully request that this petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JANUARY 3, 2025 . . . . . 1a

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED APRIL 5, 2024 . . . . . 11a

APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JANUARY 3, 2025

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

24-1237-cv

MINISTER LOUIS FARRAKHAN,
NATION OF ISLAM,

Plaintiffs-Appellants,

v.

ANTI-DEFAMATION LEAGUE, JONATHAN GREENBLATT, INDIVIDUALLY, IN HIS CAPACITY AS CEO AND NATIONAL DIRECTOR OF THE ANTI-DEFAMATION LEAGUE, RABBI ABRAHAM COOPER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DIRECTOR OF SOCIAL GLOBAL ACTION AGENDA FOR SIMON WIESENTHAL CENTER, SIMON WIESENTHAL CENTER,

Defendants-Appellees.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of January, two thousand twenty-five.

Appendix A

PRESENT:

SUSAN L. CARNEY,
JOSEPH F. BIANCO,
WILLIAM J. NARDINI,
Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York (Denise Cote, *Judge*).

SUMMARY ORDER

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered on April 5, 2024, is **AFFIRMED**.

Plaintiffs-Appellants Minister Louis Farrakhan ("Farrakhan") and the Nation of Islam ("NOI") appeal from the district court's dismissal of their second amended complaint ("SAC") against Defendants-Appellees the Anti-Defamation League ("ADL"), Jonathan Greenblatt ("Greenblatt"), the Simon Wiesenthal Center ("SWC"), and Rabbi Abraham Cooper ("Cooper"). Plaintiffs' sprawling allegations in the 150-page SAC boil down to two types of claims: (1) First Amendment claims that focus on defendants' alleged speech-chilling activities against plaintiffs through third parties, and (2) defamation claims arising from defendants' various references to plaintiffs as anti-Semitic. The district court dismissed the First Amendment claims for lack of standing, pursuant

to Federal Rule of Civil Procedure 12(b)(1), and the defamation claims for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). *See generally Farrakhan v. Anti-Defamation League*, No. 23-cv-9110 (DLC), 2024 U.S. Dist. LEXIS 64187, 2024 WL 1484449 (S.D.N.Y. Apr. 5, 2024). The district court also declined to grant plaintiffs' requests for declaratory and injunctive relief. *Id.* We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, which we reference only as necessary to explain our decision to affirm.

"We review *de novo* a district court's dismissal of a complaint for lack of standing and for failure to state a claim on which relief can be granted." *Soule v. Conn. Ass'n of Sch., Inc.*, 90 F.4th 34, 44 (2d Cir. 2023) (en banc). In doing so, we "construe the complaint in plaintiff's favor and accept[] as true all material factual allegations contained therein." *Donoghue v. Bulldog Invs. Gen. P'ship*, 696 F.3d 170, 173 (2d Cir. 2012).

I. First Amendment Claims

We agree with the district court that plaintiffs lack standing to assert their First Amendment claims.

Standing requires a plaintiff to show "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d

568 (2021). The alleged injury must be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (alterations adopted) (internal quotation marks and citation omitted).

To the extent plaintiffs assert claims against defendants because third parties—Morgan State University and Vimeo—denied or rescinded plaintiffs' access to speech platforms, those alleged First Amendment injuries are not fairly traceable to the defendants' actions. "Standing requires more than mere speculation about the decisions of third parties and must rely instead on the predictable effect of [defendants'] action on the decisions of third parties." *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 352 (2d Cir. 2023) (internal quotation marks and citation omitted). Plaintiffs' allegations that ADL's general advocacy caused the third parties' decisions are unsupported by particularized factual assertions and, instead, rely on mere "[s]peculative inferences." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 45, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976).

Plaintiffs' remaining First Amendment claims do not state any injuries in fact. The SAC alleges that that ADL assisted in creating the "U.S. National Strategy [t]o Counter Antisemitism." App'x at 72, 84. However, such an allegation does not articulate a concrete and particularized injury. Although plaintiffs suggest that the National Strategy will provide a justification to arrest and prosecute Farrakhan, the SAC does not sufficiently plead

that such a threat is "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (internal quotation marks and citation omitted). Moreover, plaintiffs' claims that ADL's involvement with the New York government caused reputational harm to, and chilled the religious activities of, NOI and its members, and resulted in threatened sanctions from the state government, fail for similar reasons. At bottom, those claims rest on a tenuous chain of hypothetical events and do not show "an imminent threat of future harm or a present harm incurred in consequence of such a threat." *Hedges v. Obama*, 724 F.3d 170, 188-89 (2d Cir. 2013); *see also Laird v. Tatum*, 408 U.S. 1, 13-14, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972) ("Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.").

Accordingly, we affirm the district court's dismissal of plaintiffs' First Amendment claims for lack of standing.

II. Defamation Claims

We conclude that plaintiffs fail to state any plausible defamation claims[1] because the challenged statements are nonactionable opinions or, even if actionable, are not adequately alleged to be false or to have been made with actual malice.

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1. To be precise, because plaintiffs challenge written statements, their claims are for libel. *See Albert v. Loksen*, 239 F.3d 256, 265 (2d Cir. 2001) (noting that defamation "consist[s] of the twin torts of libel and slander," and that "written defamatory words are libel" (internal quotation marks and citations omitted)).

Appendix A

To recover for defamation under New York law, a plaintiff must establish five elements: "1) a written defamatory statement of fact concerning the plaintiff; 2) publication to a third party; 3) fault (either negligence or actual malice depending on the status of the libeled party); 4) falsity of the defamatory statement; and 5) special damages or per se actionability (defamatory on its face)." *Electra v. 59 Murray Enters., Inc.*, 987 F.3d 233, 259 (2d Cir. 2021) (internal quotation marks and citation omitted). "Expressions of opinion, as opposed to assertions of fact, are deemed privileged and, no matter how offensive, cannot be the subject of an action for defamation." *Mann v. Abel*, 10 N.Y.3d 271, 276, 885 N.E.2d 884, 856 N.Y.S.2d 31 (2008); *accord Elias v. Rolling Stone LLC*, 872 F.3d 97, 110 (2d Cir. 2017) ("Under New York law, (with some exceptions) statements that do not purport to convey *facts* about the plaintiff, but rather express certain kinds of *opinions* of the speaker, do not constitute defamation." (emphases in original) (internal quotation marks and citation omitted)).

In addition, because Farrakhan does not dispute that he is a public figure, he must plead that defendants made the alleged defamatory statements with actual malice—"that is, with knowledge that the statements were false or with reckless disregard as to their falsity." *Biro v. Condé Nast*, 807 F.3d 541, 544 (2d Cir. 2015). At the motion to dismiss stage, "a public-figure plaintiff must plead plausible grounds to infer actual malice by alleging enough facts to raise a reasonable expectation that discovery will reveal evidence of actual malice." *Id.* at 546 (alteration adopted) (internal quotation marks and citation omitted).

Appendix A

Plaintiffs challenge a number of defendants' statements that label plaintiffs in various ways as "anti-Semitic." Under New York law, these statements are nonactionable opinions. *See, e.g., Silverman v. Daily News, L.P.*, 129 A.D.3d 1054, 11 N.Y.S.3d 674, 675-76 (2d Dep't 2015) (holding that statements in articles referring to plaintiff's "racist writings" were nonactionable opinions); *Russell v. Davies*, 97 A.D.3d 649, 948 N.Y.S.2d 394, 395-96 (2d Dep't 2012) (holding that news stories describing plaintiff's essay as "racist" and "anti-Semitic" were nonactionable opinions); *see also, e.g., Rapaport v. Barstool Sports Inc.*, No. 22-2080-cv, 2024 U.S. App. LEXIS 556, 2024 WL 88636, at *3 (2d Cir. Jan. 9, 2024) (summary order) (concluding that "accusations of racism and fraud are non-actionable because they lack a clearly defined meaning and, in this context, are incapable of being objectively proven true or false.").

Plaintiffs also challenge statements made by defendants interpreting Farrakhan's own statements. The challenged statements were either accompanied by disclosures of Farrakhan's actual statements or were based on Farrakhan's statements that were widely reported by the media. For example, the letter sent by Greenblatt to Ticketmaster, in which Greenblatt states that Farrakhan is "one of the most notorious antisemites in the country," quotes multiple statements made by Farrakhan and provides hyperlinks to two articles on ADL's website that contain additional statements by Farrakhan. App'x at 306-07. Similarly, the headline of an article challenged by plaintiffs—"Farrakhan Predicts Another Holocaust"—is accompanied by an extensive quote from Farrakhan that, as the district court found, "could be fairly interpreted as

a reference to the Holocaust." *Farrakhan*, 2024 U.S. Dist. LEXIS 64187, 2024 WL 1484449, at *8. Those challenged statements therefore also constitute inactionable opinions. *See Elias*, 872 F.3d at 111 (dismissing defamation claims based on statements that "clearly represent [defendant's] interpretation of the Article based on the words in the Article and general knowledge" where "the statements do not imply that [defendant's] view is based on any undisclosed facts"); *Gisel v. Clear Channel Commc'ns, Inc.*, 94 A.D.3d 1525, 942 N.Y.S.2d 751, 752 (4th Dep't 2012) ("Because [defendant's] statements were based on facts that were widely reported by [relevant] media outlets and were known to his listeners, it cannot be said that his statements were based on undisclosed facts."); *see also Cooper v. Franklin Templeton Invs.*, No. 22-2763-cv, 2023 U.S. App. LEXIS 14244, 2023 WL 3882977, at *4 (2d Cir. June 8, 2023) (summary order) (rejecting plaintiff's argument that the challenged statements implied the existence of undisclosed facts because they were "based on the publicly available video of the incident" discussed in the statements).

Finally, plaintiffs challenge certain of defendants' factual statements. On *de nov*o review, we agree with the district court that the SAC fails to sufficiently allege the falsity of those statements. We further agree with the district court that the SAC did not contain "facts that would raise a reasonable expectation that discovery will reveal evidence that Greenblatt or the ADL made the statement with knowledge of or reckless disregard as to the statement's falsity." *Farrakhan*, 2024 U.S. Dist. LEXIS 64187, 2024 WL 1484449, at *8 (internal quotation marks and citation omitted).

In sum, we find that the district court, after analyzing each of the statements at issue in its thorough and well-reasoned opinion, correctly determined that none could serve as a plausible claim for defamation.

III. Declaratory and Injunctive Relief

The district court did not abuse its discretion in declining to exercise jurisdiction over plaintiffs' claims for declaratory judgment. "The Declaratory Judgment Act by its express terms vests a district court with discretion to determine whether it will exert jurisdiction over a proposed declaratory action or not." *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359 (2d Cir. 2003); *see* 28 U.S.C. § 2201(a). We have emphasized that the district court's discretion is "broad," and its exercise "is reviewed deferentially, for abuse of discretion." *Dow Jones*, 346 F.3d at 359. The district court properly exercised this broad discretion when it concluded that the requested declaratory judgments "would not serve a useful purpose" because each of plaintiffs' substantive claims failed to either establish standing or state a plausible claim. *Farrakhan*, 2024 U.S. Dist. LEXIS 64187, 2024 WL 1484449, at *8; *see Admiral Ins. Co. v. Niagara Transformer Corp.*, 57 F.4th 85, 99-100 (2d Cir. 2023) (stating that "whether the declaratory judgment sought will serve a useful purpose in clarifying or settling the legal issues involved" is one factor a district court may consider in exercising this broad discretion (alterations adopted) (internal quotation marks and citation omitted)).

The district court also properly denied plaintiffs' request for injunctive relief. *See Alexander v. United*

States, 509 U.S. 544, 550, 113 S. Ct. 2766, 125 L. Ed. 2d 441 (1993) ("[P]ermanent injunctions—*i.e.*, court orders that actually forbid speech activities—are classic examples of prior restraints."); *see also Citizens United v. Schneiderman*, 882 F.3d 374, 386 (2d Cir. 2018) ("[P]rior restraints constitute the most serious and the least tolerable infringement on our freedoms of speech and press." (internal quotation marks and citation omitted)).

* * *

We have considered plaintiffs' remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED APRIL 5, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

23cv9110 (DLC)

FARRAKHAN *et al.*,

Plaintiffs,

-v-

ANTI-DEFAMATION LEAGUE, *et al.*,

Defendants.

OPINION AND ORDER

DENISE COTE, District Judge:

Plaintiffs Louis Farrakhan and Nation of Islam ("NOI") brought suit against the Anti-Defamation League ("ADL"), its CEO Jonathan Greenblatt, the Samuel Wiesenthal Center ("SWC"), and Abraham Cooper, SWC's Associate Dean & Global Social Action Director. Plaintiffs allege defamation and, against the ADL, a variety of First Amendment violations. Defendants have moved to dismiss the plaintiffs' Second Amended Complaint ("SAC"). For the following reasons, the motions are granted.

Appendix B

Background

On January 4, 2024, plaintiffs filed the 150-page SAC, along with 672 pages of exhibits. The SAC, which details nearly a century's worth of grievances, alleges several instances of defamation and, as against the ADL, various violations of the plaintiffs' First Amendment rights. At their core, plaintiffs' claims are that by repeatedly referring to plaintiffs as antisemitic, defendants have defamed them and created a chilling effect on their religious practices. Plaintiffs seek $4.8 billion in damages as well as a declaratory judgment that the term "anti-Semite" is defamatory *per se* and that the ADL is a quasi-governmental actor that violated plaintiffs' First Amendment rights. Plaintiffs also seek to enjoin defendants from calling them antisemitic or taking any steps to urge third parties to disassociate with them.

The First Amendment claims allege that the ADL has taken steps to censor plaintiffs, including by pressuring Ticketmaster in a 2023 open letter not to sell tickets for NOI's yearly Savior's Day event, and by causing Morgan State University in 2023 to refuse NOI's request to use its facilities as a venue for an NOI event. Plaintiffs also allege that the ADL's work with various governmental actors to combat antisemitism has had a chilling effect on NOI, its members, and its prospective members, including by making NOI less willing to hold events in New York and its members less willing to sell NOI's religious newspaper or wear identifiable garments in public.

The defamation claims are centered around the 2023 Ticketmaster open letter and several blog posts and

articles posted to the ADL and SWC websites in 2022 and 2023. The defamation claims against the ADL and Greenblatt relate to three written communications, two of which concern NOI's annual Saviour's Day conference held in February 2023. The claims against SWC and Cooper relate to an article about the Saviour's Day conference posted on the SWC website in March 2023.

1. October 2022 Blog Post

The earliest ADL communication at issue is a blog post published on the ADL's website on October 20, 2022. The post is largely about the rapper Kanye West and his public statements, but it also refers to the "virulently antisemitic Nation of Islam and its leader, Louis Farrakhan."

2. Open Letter to Ticketmaster Before February 2023 NOI Event

The next ADL communication is an open letter to the CEO of Ticketmaster signed by Greenblatt as CEO and National Director of the ADL ("Ticketmaster Letter"). The Ticketmaster Letter was published on ADL's website on February 9, 2023, prior to the February 26 Savior's Day conference. The letter stated that the ADL was "not requesting any particular action from [Ticketmaster] as it relates to your commercial activities" but "would like to make you aware of Farrakhan's past behavior and statements."

The Ticketmaster Letter referred to Farrakhan as "one of the most notorious antisemites in the country." It also contained several direct quotes from Farrakhan's

prior Savior's Day speeches, including, *inter alia*, his 2019 statement that "[p]edophilia and sexual perversion institutionalized in Hollywood and the entertainment industries can be traced to Talmudic principles and Jewish influence"; his 2017 statement that "[t]hose who call themselves 'Jews,' who are not really Jews, but are in fact Satan. You should learn to call them by their real name: 'Satan'"; and his 1996 statement that "[y]ou are not real Jews . . . . You are the synagogue of Satan, and you have wrapped your tentacles around the U.S. government." Farrakhan does not challenge the accuracy of the direct quotes but instead challenges the portions of the Letter that refer to Farrakhan as an antisemite and state that Farrakhan has referred to "Jews as 'termites' and 'satanic.'"

3. February 2023 Blog Post

The next communication is a February 27, 2023 blog post published on the ADL website after the February 26 Savior's Day conference with the title "Farrakhan Predicts Another Holocaust, Espouses Antisemitism and Bigotry in Saviours' Day Speech." The post included direct quotes from the speech, such as "[t]he Synagogue of Satan has destroyed the country," as well as the following:

> A Jewish man said to me, 'You know, we say never again. Never again will we be in the oven. Never again.' I said, 'Hold it.' You can say that to men, but you can't say that to God. Because the Bible says, behold the day cometh that shall burn -- as a what? -- as an oven.

Again, Farrakhan does not challenge the accuracy of the direct quotes but rather the headline's statement that "Farrakhan Predicts Another Holocaust."

4. March 2023 SWC Article

The claims against SWC and Cooper involve an article published on the SWC website on March 1, 2023 "condemning [Farrakhan's] anti-Semitic and anti-Judaic diatribes during the Nation of Islam's annual conference in Chicago." Farrakhan challenges two statements in the SWC article: first, that "Farrakhan invoked the New Testament's 'Synagogue of Satan' to demonize Judaism and those who revere the Torah," and second, that SWC has "tracked and denounced Farrakhan and his . . . antisemitic incitement for four decades."

Plaintiffs filed their initial complaint, which was 76 pages long and contained 504 pages of exhibits, on October 16, 2023. On November 2, plaintiffs filed a 90-page amended complaint, along with 611 pages of exhibits. On December 12, 2023, the defendants moved to dismiss the First Amended Complaint. In response, the plaintiffs filed the 150-page SAC, and its 672 pages of exhibits, on January 5, 2024.[1] On January 19, the ADL defendants moved to dismiss the SAC pursuant to Fed. R. Civ. P. 8, 12(b)(1), and 12(b)(6). The SWC defendants moved to dismiss claims 8 to 10 of the SAC on the same day. The motions were fully submitted on February 9, 2024.

1. An Order of December 13, 2023 informed the plaintiffs that it was "unlikely" that they would have a further opportunity to amend.

Appendix B

Discussion

The defendants have moved to dismiss on several grounds: the prolixity of the SAC, the plaintiffs' lack of standing to bring claims 1 to 5, and the failure to state a claim with respect to any of the claims. This Opinion addresses defendants' arguments in that order.

I. Fed. R. Civ. P. 8

The ADL's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 8 ("Rule 8") is denied. The ADL argues that the SAC violates Rule 8(d)'s requirement that a complaint be "simple, concise, and direct," and Rule 8(a)'s requirement that the statement of a plaintiff's claims be "short and plain."

The SAC is unnecessarily voluminous and at times difficult to follow. "Unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage." *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988) (citation omitted). "Dismissal, however, is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Id.* Even though challenging, it is possible to comprehend the allegations and relief sought in the SAC; thus, the Court declines to dismiss the SAC on this basis.

II. Standing

The ADL argues that six claims -- claims 1 to 5 and 11 -- should be dismissed pursuant to Rule 12(b) (1) because plaintiffs allege no injury-in-fact in relation to those claims and therefore lack Article III standing. In these claims, the plaintiffs assert that the ADL is a federal and state actor that has violated the First and Fourteenth Amendments of the United States Constitution. Plaintiffs have not alleged sufficient facts to support standing for claims 1 to 5.[2] They are thus dismissed without prejudice. *See Clementine Company, LLC v. Adams*, 74 F.4th 77, 90 n.4 (2d Cir. 2023) (noting that dismissals for lack of Article III standing must be without prejudice).

Article III standing is "always an antecedent question, such that a court cannot resolve contested questions of law when its jurisdiction is in doubt." *Do No Harm v. Pfizer Inc.*, 96 F.4th 106, 2024 U.S. App. LEXIS 5428, 96 F.4th 106, 120-121 (2d Cir. 2024) (citation omitted). Further, "[a]s with any other matter on which the plaintiff bears the burden of proof, each element of standing must be supported with the manner and degree of evidence required at the successive stages of the litigation." *Id.* at 114 (citation omitted).

Where, as here, the defendants move to dismiss a complaint based on a "facial" challenge to the plaintiffs' standing (meaning that the defendants do not offer

2. Claim 11 is a request for declaratory judgment and is addressed *infra*.

any evidence of their own), the court must "determine whether, accepting as true all material factual allegations of the complaint, and drawing all reasonable inferences in favor of the plaintiffs, the complaint alleges facts that affirmatively and plausibly suggest that the plaintiffs have standing to sue." *New York v. Yellen*, 15 F.4th 569, 575 (2d Cir. 2021) (citation omitted). At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss" the court presumes "that general allegations embrace those specific facts that are necessary to support the claim." *New England Carpenters Guaranteed Annuity and Pension Funds v. DeCarlo*, 80 F.4th 158, 180 (2d Cir. 2023) (citation omitted). Finally, a plaintiff must demonstrate standing for each claim and form of relief sought. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 141 S. Ct. 2190, 2210, 210 L. Ed. 2d 568 (2021).

> To establish standing, a plaintiff must show that
>
> > (1) they suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, as opposed to conjectural or hypothetical; (2) there is a causal connection between the injury and the conduct complained of; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Do No Harm, 96 F.4th at 113 (citation omitted). An injury is "concrete" if it is "real, and not abstract." *Soule v. Connecticut Assoc. of Schools, Inc.*, 90 F.4th 34, 45 (2d Cir.

2023) (citation omitted). An injury is "actual or imminent" if it has actually happened or is "certainly impending." *Id.* (citation omitted).

The "causal connection" element of standing, which is also described as "the requirement that the plaintiff's injury be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court, does not create an onerous standard." *Atares Bais Yaakov Academy of Rockland v. Town of Clarkstown*, 88 F.4th 344, 352-353 (2d Cir. 2023) ("*ABY Academy*"). "It requires no more than *de facto* causality." *Id.* at 353. It does not require that the plaintiff plead facts to support an inference of proximate causation. *Id.*

Finally, "[t]o satisfy the redressability element of Article III standing, a plaintiff must show that it is likely, as opposed to merely speculative, that the alleged injury will be redressed by a favorable decision." *Soule*, 90 F.4th at 47 (citation omitted). A plaintiff need not show that a favorable decision will relieve their every injury. *American Cruise Lines v. United States*, 96 F.4th 283, 2024 U.S. App. LEXIS 6233, 96 F.4th 283, 286 (2d Cir. 2024). A remedy "that would serve to eliminate any effects of the alleged violation that produced the injury is sufficient." *Id.* (citation omitted).

A. Claim 1

The defendants contend that Claim 1 fails to allege an injury fairly traceable to ADL. Claim 1 relates to

Appendix B

Morgan State University's ("MSU") denial of Farrakhan's application to speak at its Fine Arts Center in 2023. The SAC alleges, "[u]pon information and belief," that after MSU allowed Farrakhan to speak at the Fine Arts Center in 2014, ADL "either put pressure on the administration, or threatened to lobby against funding for Morgan State, if the administration allowed Minister Farrakhan to associate and peaceably assemble" with the University's students. The SAC further alleges that ADL "used its power and authority derived from its close association with the federal government and caused Morgan State to reject the application" in 2023. In support of that theory, Farrakhan points to the Ticketmaster Letter and a 1994 ADL report that stated in relevant part that "[w]hat [ADL] can and should do is impose an obligation on those who deal with [Farrakhan], or, in the case of universities, give him a platform."

The SAC alleges "[i]n the alternative" that MSU rejected the 2023 application "because of the relentless misrepresentation of Minister Farrakhan by Defendant ADL as being, among other things, 'antisemitic.'" In other words, the ADL's "years of falsely labeling Minister Farrakhan as 'anti-Semitic' injured him in that it impaired his reputation to the degree that it caused the administration of Morgan State to not allow him to speak on its campus."

The SAC fails to plead that the plaintiffs' injury from MSU's 2023 refusal of its forum is fairly traceable to the ADL. Although the pleading standard for causation is not onerous, it requires allegations that support a finding of

de facto causality. The SAC's reliance on the ADL's years of advocacy does not suffice to meet this standard. If standing were found to be present here, then the plaintiffs would have standing to sue the ADL for virtually any refusal by a third party to conduct business with the plaintiffs.

B. Claim 2

The defendants assert that Claim 2 fails to allege a concrete and actual injury. Claim 2 alleges that by "actively assisting" in the development of the Biden administration's "U.S. National Strategy to Counter Antisemitism," which President Biden signed on May 25, 2023, the ADL "as a federal actor in concert with the federal government, has engaged in actions that infringe[] upon Minister Farrakhan's First Amendment right to free exercise of religion." The claim alleges that the "National Strategy will, on one hand, provide the legal justification to officially facilitate the continued infringement upon the free exercise of Minister Farrakhan's religion or, on the other hand, provide the legal justification to facilitate the imminent arrest, prosecution, and likely imprisonment of Minister Farrakhan."

Claim 2 fails to plead an injury in fact that is concrete and particularized. Moreover, nothing in the voluminous SAC comes close to demonstrating that the alleged threat of prosecution of Farrakhan is "actual or imminent, as opposed to conjectural or hypothetical." *Do No Harm v. Pfizer*, 96 F.4th at 113. It is noteworthy that the White House strategy document, which is attached as an exhibit

to the SAC, states that it "does not purport to alter or preempt existing statutes, regulations, policies, or the requirements of the Federal, state, or local agencies that enforce them." Accordingly, the plaintiffs do not have standing to claim that the ADL has violated its rights by assisting the federal government in its development of the National Strategy.

C. Claim 3

The defendants contend that Claim 3 fails to allege an injury fairly traceable to the ADL. Claim 3 alleges that Vimeo, an online video streaming service, cancelled NOI's user account due to violations of Vimeo's Terms of Service and Community Guidelines, including Vimeo's policies against sharing videos that are "hateful, harass others, or include defamatory or discriminatory speech." Vimeo's cancellation notice included a hyperlink to an ADL article titled "Farrakhan Remains Most Popular Antisemite in America." Claim 3 alleges that ADL "used its authority and sanctioning by the FBI to cause 'Vimeo' to cancel" its account. Claim 3 seeks monetary damages and an injunction preventing ADL from "seeking to interfere with the Nation of Islam's relationships with other social media platforms by having said platforms cancel Nation of Islam accounts."

While the plaintiffs have alleged an injury inflicted by a third party that is concrete, they have failed to plead that this injury is causally connected to ADL's advocacy. While the pleading of causation requires no more than allegations of *de facto* causality, mere citation by a third

party to ADL's general advocacy is insufficient. Any other finding would give the plaintiffs standing to sue ADL whenever a third party injures the plaintiffs and refers to the ADL's publications to justify its decision. The law of standing requires more linkage between a defendant's activities and a plaintiff's injury.

D. Claims 4 and 5

The ADL contends that Claims 4 and 5 must be dismissed because these claims do not plead an injury in fact or any causal link between its advocacy and any injury. Claims 4 and 5 allege that the ADL acted under color of state law to violate NOI's free exercise and freedom of association rights. The actions allegedly taken by ADL under color of state law are 1) transmitting data on hate and bias incidents to the New York State Division of Human Rights; 2) training the New York State Police in conducting hate crime investigations; and 3) serving as "the primary agent used by the State of New York to coordinate, implement, and oversee state departments and agencies in furtherance of their implementation of Defendant ADL's National Strategy to combat 'antisemitism.'" At its core, the allegation is that because 1) the ADL's definition of antisemitism has been officially adopted by the State of New York; 2) the ADL transmits information on "hate and bias incident[s]" to state actors; and 3) New York City and State officials have indicated an intention to prosecute hate crimes, NOI and its members face possible law enforcement sanctions that create a chilling effect on their rights of free exercise and association and cause reputational harm.

Appendix B

Claim 4 alleges three injuries to NOI: reputational harm, the threat of sanctions by the City of New York, and a chilling effect on NOI's desire to hold national events in New York. Claim 5 alleges possible "disassociation" of members due to impairment of reputation, a chilling effect on association with non-members, and the chilling effect of being targets of ADL surveillance.

None of the alleged injuries are cognizable. The threat of sanctions is, as with Claim 2, entirely speculative and thus not a sufficient basis for standing. As for the alleged chilling effect on NOI's desire to hold national events in New York, "[s]uch 'some day' intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the 'actual or imminent' injury" that standing requires. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Further, a

> chilling effect arising merely from the individual's knowledge that a governmental agency was engaged in certain activities or from the individual's concomitant fear that, armed with the fruits of those activities, the agency might in the future take some *other* and additional action detrimental to that individual

is not "an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 418, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013) (citation omitted).

Moreover, the reputational harm alleged in this claim does not suffice for standing purposes. The SAC alleges that ADL's "historical and contemporary actions of spying on and surveilling the Nation of Islam, coupled with its 'partner[ship] with the City of New York to guide its law enforcement departments in the apprehension and prosecution of people it determines [are] using 'hate,' serve[] to diminish the Nation of Islam's reputation in the community." In other words, the alleged reputational harm will occur only if NOI or its members commit and are then prosecuted for hate crimes. Because the injury alleged relies on speculative future actions by plaintiffs themselves along with New York State and City officials, it is not the "predictable effect" of ADL's own conduct. *ABY Academy*, 88 F.4th at 352 (citation omitted).

Claims 4 and 5 also allege injuries as to NOI's members. But "an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983," because the rights secured by § 1983 are "personal to those purportedly injured." *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011) (citation omitted).

III. 12(b)(6)

The ADL defendants moved to dismiss claims 6, 7, 10, and 11 pursuant to Fed. R. Civ. P. 12(b)(6), arguing that plaintiffs have failed to state a claim. The SWC defendants moved to dismiss the claims against them, claims 8 to 10, for the same reason. Defendants are correct. Plaintiffs have failed to state any claim upon which relief can be granted.

Appendix B

Under Rule 12(b)(6), a party "must plead enough facts to state a claim to relief that is plausible on its face." *Green v. Dep't of Educ. of N.Y.*, 16 F.4th 1070, 1076-77 (2d Cir. 2021) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Vengalattore v. Cornell Univ.*, 36 F.4th 87, 102 (2d Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). "In determining if a claim is sufficiently plausible to withstand dismissal," a court "accept[s] all factual allegations as true" and "draw[s] all reasonable inferences in favor of the plaintiffs." *Melendez v. City of New York*, 16 F.4th 992, 1010 (2d Cir. 2021) (citation omitted).

A. Defamation Claims

Farrakhan brings four claims for defamation based on eight challenged statements contained in four communications. Defendants argue that the challenged statements constitute non-actionable opinions and that Farrakhan has not pled actual malice. They are correct.

The elements of a cause of action for defamation under New York law are

> 1) a written defamatory statement of fact concerning the plaintiffs; 2) publication to a third party; 3) fault (either negligence or actual malice depending on the status of the libeled

> party); 4) falsity of the defamatory statement; and 5) special damages or per se actionability (defamatory on its face).

Electra v. 59 Murray Enterprises, Inc., 987 F.3d 233, 259 (2d Cir. 2021) (citation omitted).[3]

Farrakhan does not dispute that he is a public figure. As such, he must show that the statements were made with "'actual malice' -- that is, with knowledge that the statements were false or with reckless disregard as to their falsity." *Biro v. Condé Nast*, 807 F.3d 541, 544 (2d Cir. 2015). At the motion to dismiss stage, a plaintiff must "plead 'plausible grounds' to infer actual malice by alleging 'enough facts to raise a reasonable expectation that discovery will reveal evidence of actual malice." *Id.* at 546 (citation omitted).

Because falsity of the challenged statement is an element of the cause of action, "statements that do not purport to convey *facts* about the plaintiff, but rather express certain kinds of *opinions* of the speaker, do not constitute defamation." *Elias v. Rolling Stone LLC*, 872 F.3d 97, 110 (2d Cir. 2017) (citation omitted) (emphasis in original). In discerning whether a statement is one of fact

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3. Defendants cite New York law in their briefing. Plaintiffs do not dispute that New York law applies to this action. "[W]here the parties agree that [New York] law controls, this is sufficient to establish choice of law." *Insurance Company of the State of Pennsylvania v. Equitas Insurance Limited*, 68 F.4th 774, 779 n.2 (2d Cir. 2023).

or opinion under New York law, courts consider a non-exclusive list of factors that includes

> (1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal to readers that what is being read or heard is likely to be opinion, not fact.

Id. (citation omitted).

Even where a challenged statement contains an opinion, there is an "important distinction between a statement of opinion that implies a basis in facts which are not disclosed to the reader or listener and a statement of opinion that is accompanied by a recitation of the facts on which it is based or one that does not imply the existence of undisclosed underlying facts." *Id.* at 110-111 (citation omitted). Thus, although an "expression of pure opinion is not actionable, a statement of opinion that implies that it is based upon facts which justify the opinion but are unknown to those reading or hearing it, is a 'mixed opinion' and is actionable." *Stega v. New York Downtown Hospital*, 31 N.Y.3d 661, 674, 82 N.Y.S.3d 323, 107 N.E.3d 543 (2018) (citation omitted).

Appendix B

1. Non-Actionable Opinion

The challenged statements referring to Farrakhan as antisemitic are non-actionable statements of opinion. The communications in which they were published contain "a recitation of the facts on which [they are] based" -- namely, direct quotes from Farrakhan. *See Elias*, 872 F.3d at 110-111 (citation omitted). Thus, the statements calling Farrakhan antisemitic cannot be "reasonably understood as implying the assertion of undisclosed facts justifying the opinion." *Celle v. Filipino Reporter Enterprises, Inc.*, 209 F.3d 163, 178 (2d Cir. 2000) (citation omitted).

The challenged ADL blog post title ("Farrakhan Predicts Another Holocaust") appears at first blush to be a statement "capable of being proven true or false," *Elias*, 872 F.3d at 110 (citation omitted), but "the full context of the communication in which the statement appears [and] the broader social context and surrounding circumstances are such as to signal" to readers that what is being read "is likely to be opinion, not fact." *Id.* (citation omitted). The full title of the post, and its lede, indicate that its subject is the Savior's Day speech. The post contains direct quotes from that speech, including one that could be fairly interpreted as a reference to the Holocaust. The full context of the communication indicates that its title is an interpretation of the facts disclosed within the article. *See id.* at 111. The same is true for the statement in the SWC article that Farrakhan "invoked the New Testament's 'Synagogue of Satan' to demonize Judaism."

2. Statements of Fact

The portion of the Ticketmaster Letter that implies Farrakhan has referred to "Jews as 'termites' and 'satanic'" does have "a precise meaning which is readily understood." *Elias*, 872 F.3d at 110 (citation omitted). It is either true or false that Farrakhan has said so. For these statements, however, Farrakhan has not alleged facts allowing a reasonable inference of either falsity or actual malice.

As to the implication that Farrakhan has referred to Jews as satanic, the Ticketmaster Letter ends with the hyperlinked statement that "[y]ou can learn more about Louis Farrakhan and the Nation of Islam on our website." The words "Louis Farrakhan" are hyperlinked; clicking the link leads to a webpage on which further direct quotes from Farrakhan are listed and which is itself attached as an exhibit to the SAC. Several of those direct quote include Farrakhan's use of the phrase "satanic Jews." Thus, as to this challenged statement, Farrakhan has failed to allege falsity, an essential element of a defamation claim.

Finally, the SAC has not pled a defamation claim regarding Farrakhan's use of the word termites. As the SAC concedes, Farrakhan has stated the following: "When they talk about Farrakhan, call me a hater, you know how they do -- call me an anti-Semite. Stop it, I'm anti-termite!" Again, Farrakhan has not pled facts that would "raise a reasonable expectation that discovery will reveal evidence" that Greenblatt or the ADL made the statement with knowledge of or reckless disregard as

to the statement's falsity. Biro, 807 F.3d at 546 (citation omitted). To the contrary, the SAC itself alleges facts that would dispel any such expectation.

Thus, Farrakhan has not stated a defamation claim as to any of the challenged statements. The defamation claims are dismissed pursuant to Rule 12(b)(6).

IV. Declaratory and Injunctive Relief

The claims for declaratory and injunctive relief fare no better. Claim 11 seeks a declaratory judgment that the ADL is a "quasi-governmental entity of the federal government." Claim 10 seeks a declaratory judgment that the term "antisemite" and its variations are defamatory per se. Plaintiffs also seek an injunction precluding defendants from calling plaintiffs antisemites.

District courts have "broad discretion to decline jurisdiction" under the Declaratory Judgment Act ("DJA"). *Admiral Insurance Company v. Niagara Transformer Corporation*, 57 F.4th 85, 100 (2d Cir. 2023) (citation omitted); *see* 28 U.S.C. § 2201(a). This is so "even in circumstances when a declaratory judgment would serve a useful purpose in clarifying and setting the legal relations in issue or terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Id.* at 99 (citation omitted).

Here, the requested declaratory judgments would not serve a useful purpose. The plaintiffs lack standing on each claim that relies on the theory that the ADL is

a federal actor, and plaintiffs have not stated a claim for defamation regarding any of the challenged statements. As such, a declaratory judgment would not clarify any of the legal relations in issue. The Court therefore declines to exercise jurisdiction over claims 10 and 11.

Finally, enjoining defendants from expressing their beliefs regarding plaintiffs would amount to a "judicial order that suppresses speech . . . on the basis of the speech's content and in advance of its actual expression" -- in other words, a prior restraint on speech. *United States v. Farooq*, 58 F.4th 687, 695 (2d Cir. 2023). There is a "heavy presumption against the constitutional validity of any imposition of a prior restraint." *Id.* (citation omitted). Prior restraints constitute "the most serious and the least tolerable infringement" on our freedoms of speech. *Citizens United v. Schneiderman*, 882 F.3d 374, 386 (2d Cir. 2018) (citation omitted). Nothing in the SAC comes close to meeting the "unequalled power of the presumption against prior restraint." *Id.* at 387.

Conclusion

The January 19, 2024 motions to dismiss are granted. The SAC is dismissed in its entirety.

Dated: New York, New York
April 5, 2024

/s/ Denise Cote
DENISE COTE
United States District Judge