No. 24-1299

IN THE

Supreme Court of the United States

PLANET GREEN CARTRIDGES, INC.,
A CALIFORNIA CORPORATION,

Petitioner,

v.

AMAZON.COM, INC., A DELAWARE CORPORATION;
AMAZON.COM SERVICES LLC, A DELAWARE LIMITED
LIABILITY COMPANY; AND AMAZON ADVERTISING LLC,
A DELAWARE LIMITED LIABILITY COMPANY,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

If Amazon's Opposition to Planet Green's Petition for *Certiorari* makes one thing abundantly clear, it is that this is the case in which the Court should address the scope of the immunity that Section 230 of the Communications Decency Act affords internet companies. As two Justices of this Court wrote just last year, internet companies, which are "some of the largest and most powerful companies in the world[,] . . . have increasingly used § 230 as a get-out-of-jail free card" to avoid being "held responsible for their own conduct." *Doe v. Snap*, 144 S. Ct. 2493, 2493-94 (2025) (Thomas, J., joined by Gorsuch, J., dissenting from the denial of *certiorari*). For that reason, they urged the Court to address the proper scope of Section 230 in an appropriate case and warned that there is "danger in delay." *Id.*

In this case, Amazon has unashamedly used Section 230 to avoid responsibility for its active and knowing role in the promotion, distribution, and sale of misrepresented printer ink cartridges. Presented with extensive evidence of sales of misrepresented cartridges over its website, which it investigated and never disputed, one might expect Amazon to have done the right thing and taken action to prevent the unlawful sales from continuing. Instead, after discussing the problem with Planet Green for over a year, Amazon ultimately took no effective action —repeatedly emphasizing that Section 230 shielded it from any liability— and sales of misrepresented cartridges on its website persist unabated to this day. Amazon has made millions from these sales, while Planet Green's business and the domestic remanufactured printer ink cartridge industry have been decimated.

Planet Green seeks to hold Amazon accountable for its own actions in the promotion, distribution, and sale

of misrepresented cartridges – including (a) using its algorithms to generate targeted advertising and product recommendations that Amazon sends to consumers over its website and other platforms and (b) Amazon's own sales of misrepresented cartridges – and knowing facilitation and profiting from sales of falsely labeled products that deceive consumers and damage competitors. Read correctly, as urged by numerous federal judges, including members of this Court, Section 230 presents no obstacle to Planet Green's claims and Amazon's contrary arguments, which prevailed in the courts below, should have been rejected.

This case is a paradigm of how Section 230 has been misread to allow a wealthy corporation to escape liability in ways that the statute's language and history cannot support. The issue is one that affects millions of consumers and businesses who participate in the United States e-commerce marketplace in which Amazon is a leading platform. Planet Green's Petition thus presents questions of exceptional importance and this case as an ideal vehicle for the Court to address the scope of a statute that affects the ability of so many Americans to protect themselves from unlawful sales of misrepresented products over the internet.

ARGUMENT

I. The Petition Presents Questions of Exceptional Importance On Which the Federal Judiciary Is Increasingly Divided

In its attempt to argue that the Petition does not present review-worthy issues, Amazon resorts to the straw-man argument that Planet Green has not demonstrated that the Courts of Appeal are split on the questions presented. The argument fails for two major reasons. First, Planet Green's principal basis

for seeking *certiorari* is that the petition presents "important question[s] of federal law that ha[ve] not been, but should be, settled by this Court," Supreme Court Rule 10(c), not a circuit split. And second, the federal judiciary is, indeed, increasingly divided on the scope of Section 230, and on both questions presented.

As Amazon appears to acknowledge, this Court recognized the importance of clarifying the scope of Section 230 immunity when it granted *certiorari* in *Gonzalez v. Google*, without regard for whether the Circuits were split on the issue. And two Justices have publicly expressed their view that it continues to be important enough to merit review. *See Doe v. Snap*, 144 S. Ct. 2493-94. *Gonzalez* focused specifically on whether the statute immunizes internet platforms from liability for their own conduct, including using algorithms to generate and promote recommendations of third-party content to website users, which is one of the questions Planet Green presents.

The question of whether algorithm-generated recommendations and promotions constitute a website's own speech, as opposed to the publication of third-party speech, and thus fall outside the scope of Section 230 immunity has divided the Circuits. The Second, Fourth, and Ninth Circuits have extended immunity to claims base on algorithmic outputs, reasoning that they arise from the further publication of third party content. *See Doe* v. *Grindr*, 128 F.4th 1148, 1153 (9th Cir. 2025); *M.P. ex rel. Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 526 (4th Cir. 2025); *Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019). Others, by contrast, have held that the algorithms generate first-party speech by the platforms about posts or products on their websites, which is not protected by Section 230. *See Anderson v. TikTok*, 116 F. 4th 180, 184 (3d Cir. 2024);

accord Webber v. *Armslist*, 70 F.4th 945, 956-57 (7th Cir. 2023) ("the CDA does not preclude liability against companies 'for creating and posting, inducing another to post, or otherwise actively participating in the posting of' content.") (citation omitted).

Moreover, the rising chorus of federal judges challenging the broad interpretation of Section 230 immunity that most Circuits have adopted have not limited their objections to the issue of liability for algorithm-based recommendations and promotions. They have also challenged the application of Section 230 to bar claims for knowing distribution of unlawful content, which is the other question this Petition presents. These jurists have cogently explained why this interpretation defies the text and history of the statute, which was, at most, intended to prevent internet platforms from being treated as publishers and subjected to negligence or strict liability for third-party content on their websites. *See* Petition, at 9-14, 22-26. Their critique has earned the endorsement of at least one Justice of this Court, *see Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13,15-16 (2020) (Statement of Thomas, J.), and a panel of the Fifth Circuit, *see A.B.* v. *Salesforce, Inc.*, 123 F.4th 788, 797 (5th Cir. 2024) (Section 230 did not protect website that "knowingly assisted, supported, and facilitated sex trafficking by selling its tools and operational support to [a company] it knew (or should have known) . . . was under investigation for facilitating sex trafficking.").

Regardless of whether we characterize the current state of Section 230 jurisprudence as a circuit split (which it clearly is), three things are clear. The federal judiciary is increasingly divided on the proper scope of the statutory immunity. The division implicates both

of the questions Planet Green presents for review. And numerous federal appellate judges, including two Justices of this Court and nearly half the active Fifth Circuit, have called for the Supreme Court to address these issues, which present questions of exceptional importance that the Court should address in this case.[1]

II. This Case Is An Excellent Vehicle To Resolve The Questions Presented

Amazon argues that this case is a poor vehicle in which to resolve the questions presented because the Ninth Circuit affirmed dismissal on the alternative ground that Planet Green did not assert actionable statements by Amazon, as the court held was required to allege most of its claims. Accordingly, in Amazon's view, this case is like *Gonzalez*, in which this Court dismissed *certiorari* after finding that a decision on the question of whether Section 230 immunized defendants from plaintiff's claims would not change the outcome of the case because the plaintiff did not allege plausible claims under the Justice Against Sponsors of Terrorism Act. *Gonzalez v. Google,* 598 U.S. 617 (2023); *see Twitter v. Taamneh*, 598 U.S. 471, 506-07 (2023). But this case is unlike *Gonzalez*. A decision

[1] Amazon attempts to reheat the tired argument that Congress is considering various amendments to Section 230 and this Court should therefore defer to Congress' judgment about whether the statute has been misinterpreted and requires revision. Suffice it to say that the Court rejected this exact argument when it granted *certiorari* to address the scope of Section 230 immunity in *Gonzalez, see* Brief in Opposition [to *Certiorari*], *Gonzalez v. Google*, No. 21-1333, at 18-20 (Jul. 5, 2022) ("This Court's intervention would also be premature because Congress currently has before it over a dozen proposals to modify section 230."), and literally nothing has changed in the subsequent three years that should alter that judgment.

in Planet Green's favor on Section 230 immunity would alter the course of the litigation below and allow Planet Green to proceed on actionable claims.

The decisions in *Gonzalez* (and *Twitter*) turned on this Court's interpretation of an underlying statute that imposed liability for knowingly and substantially assisting third party terrorist activity. The question of whether defendants' algorithm-generated recommendations of terrorist social media content constituted their own speech (and thus fell outside the scope of Section 230) did not affect the Court's determination about whether that speech constituted knowingly and substantially supporting terrorism. Accordingly, the Court dismissed *certiorari* to avoid issuing an advisory opinion.

This case is plainly distinguishable. Planet Green's underlying claims sound principally in unfair competition and false advertising and the dismissal of those claims turned exclusively on the question of whether Planet Green sufficiently alleged actionable statements by Amazon. This Court's determination that Amazon's algorithm-generated product recommendations and targeted promotions and advertising constitute its own speech, which Section 230 does not immunize, would have material implications for the decisions below. It would confirm that Planet Green indeed alleged actionable statements by Amazon that form the basis of its claims, which should be permitted to proceed to discovery.

Amazon wrongly contends that Planet Green waived any arguments about the Ninth Circuit's affirmance of the Rule 12(b)(6) decision by not expressly challenging that decision in the questions presented in this Petition. Of course, the second question in the petition —whether Section 230 immunizes Amazon from

liability for its own conduct, including algorithm-generated product recommendations and promotions—turns expressly on the issue of whether those recommendations and promotions constitute Amazon's own speech. If this Court finds that they do, that determination fundamentally alters the facts that form the basis of the dismissal of Planet Green's unfair competition and false advertising claims and further proceedings below in accordance with such a finding should revive those claims and permit the case to proceed.

Nor was Planet Green required to petition this Court on issues that are not review-worthy, like the requirements of unfair competition and false advertising claims, or to ask the Court to review the Complaint to determine whether it sufficiently alleges these commonplace torts. On remand, Planet Green can rely on this Court's determinations on the questions presented in the Petition, which are review-worthy (as the Court found in *Gonzalez*) and have the potential to eradicate the basis of the Ninth Circuit's Rule 12(b)(6) decision, if decided in Planet Green's favor.

On the second question, the Court should find that Planet Green alleged actionable statements by Amazon when it based its claims on Amazon's use of algorithms to generate targeted product recommendations and promotions. And on the first question, the Court should find that Amazon made those statements knowing that they were false and that the ink cartridges it recommended and promoted were misrepresented and not actually remanufactured. Those findings would change the outcome of both the Section 230 analysis and Amazon's challenge to the sufficiency of Planet Green's claims.

Amazon attempts to rewrite the record by arguing that Planet Green did not sufficiently develop its

arguments on the questions presented in the lower courts. But this case has always involved allegations that Amazon knew that printer ink cartridges sold on its website, and that Amazon itself sold, recommended, and promoted, were misrepresented as remanufactured when they were actually newly-manufactured replacement cartridges. Petition at 18-19. And Planet Green has always argued that Amazon's knowing participation in these sales and promotions vitiates any claim of immunity under Section 230. Amazon does not even attempt to argue to the contrary. *Id.*

Nor does Amazon contend that Planet Green has not consistently argued that Amazon's own speech and conduct formed the basis of its unfair competition and false advertising claims, including Amazon's use of algorithms to generate targeted recommendations and advertising. The point is raised in the Complaint and was argued in Planet Green's briefing below. *Id.*

Amazon characterizes Planet Green's argument that the text and history of Section 230 indicate that the statute does not immunize internet platforms from "distributor liability" for delivering content they know to be false or unlawful to users as "new." Of course, the argument is well-developed in the case law, including in opinions by Justice Thomas. *See* Petition at 1-2, 9-14. And the issue of Amazon's liability for knowing distribution of false and misleading product information was squarely presented to the courts below. Moreover, the Petition seeks review of issues in a decision on a motion to dismiss. This Court will review those issues *de novo* and has extensive judicial and scholarly authority available to assist in its decision, including on whether Section 230 immunity extends to "distributor liability." The questions presented have

been sufficiently developed and are ripe for this Court's consideration.

III. Amazon's Merits Arguments Rest On Obsolete Points And Inapposite Cases

Planet Green presented an overview of its position on the questions presented in its Petition, which it will not repeat here. Petition at 22-31. Amazon's response misrepresents the record below, makes obsolete points about Amazon's ability to avoid distributing, recommending, and promoting misrepresented products, and raises apocalyptic arguments about the consequences of Planet Green prevailing that ring hollow.

With respect to the first question presented —whether Section 230 confers immunity on internet platforms that knowingly permit, facilitate, and profit from sales of misrepresented products— Amazon complains that Planet Green's arguments would impose onerous obligations every time a user notified them of a misrepresented product. That is not what happened in this case. Nor is it a necessary consequence of Planet Green's arguments.

Planet Green did not merely allege sales of misrepresented printer ink cartridges or send a vague complaint to an Amazon email address with no response. To the contrary, Planet Green conducted an investigation and presented Amazon with two reports that detailed dozens of specific companies selling misrepresented cartridges on Amazon's website, which bore labels falsely indicating they were remanufactured on the physical products. Petition at 16-18. Amazon reviewed the reports and engaged in extensive discussions with Planet Green over the course of

a year, after which it took no effective action to prevent the continuing sales and distribution (from Amazon's own distribution centers) of misrepresented cartridges. *Id.* If this Court were to hold that Section 230 immunity does not extend to claims against internet platforms that knowingly facilitate and profit from sales of misrepresented products on their websites, *see A.B.* v. *Salesforce*, 123 F.4th at 797, it could choose to allow the lower courts to determine what evidence would establish the requisite knowledge. Regardless of the standard, Amazon's knowledge of the problem here can hardly be disputed.

Amazon protests that it cannot review the legitimacy of every post on its website. But Planet Green never asked for that. The Complaint suggests that Amazon could adopt a simple protocol (similar to one it uses to confirm that OEM sellers have documented sources of authentic products) to verify that sellers who claim to offer remanufactured products actually have remanufacturing facilities or bona fide sources. Petition at 17-18. No review of listings would be required.

Moreover, while reviewing large numbers of posts may have been impractical in the 1990s, when the Fourth Circuit found Amazon's argument persuasive, times have changed. Internet platforms now regularly use AI, machine learning, and human reviewers to moderate large volumes of online content for compliance with legal standards and website policies. Cho, Clare, *et al.*, *Social Media: Content Dissemination and Moderation Practices*, Congressional Resource Service (updated Mar. 20, 2025). And Amazon itself has boasted of investing over $1 billion in such technology and personnel to review listings and protect customers and selling partners from misrepresented products. Dharmesh Mehta, *How Amazon Uses AI Innovation to*

Stop Fraud and Counterfeits (2025), available at https://www.aboutamazon.com/news/policy-new-views/amazon-brand-protection-report-2024-counterfeit-products.

With respect to the second question presented, Amazon argues that using algorithms to sort listings is unavoidable and should not eliminate Section 230 immunity. But Planet Green's argument does not focus on sorting product listings. Planet Green argues that algorithm-driven product recommendations and promotions that Amazon sends to users are its own speech that falls outside the scope of Section 230. They may be informed by Amazon's analysis of information obtained from third-parties, but that is true of most recommendations, which are still considered the speech of the party making them. *See Force*, 932 F.3d at 77-79 (Katzmann, C.J.). Moreover, Amazon uses algorithms to recommend and promote products, which are not traditional publishing activities and also not covered by Section 230 for that reason. Amazon's counterargument is a nonsequitur.

Finally, a core problem that pervades Amazon's merits arguments is that they rely on cases about social media platforms. But Amazon is not a social media platform. It is an online marketplace. The listings on its website propose commercial transactions from which Amazon profits directly, unlike social media posts. Sellers must be approved by Amazon before they can list products on its website. First Amended Complaint ¶¶37-41, 43. And Amazon imposes rules on sellers, including on what they can say about whether their products are recycled. *Id.* ¶46. All of these points differentiate Amazon from social media companies in terms of its ability to control what content will appear on its website (often without reviewing specific listings) and the direct profit

motivation it has to assure that sellers can list products for sales from which Amazon takes a cut and earns hundreds of billions in profits.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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