No. 25-___

IN THE

Supreme Court of the United States

GOOGLE LLC, ET AL.,

Petitioners,

v.

EPIC GAMES, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JESSICA L. ELLSWORTH
REEDY C. SWANSON
NATALIE SALMANOWITZ
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, D.C. 20004

JOHANNAH CASSEL-WALKER
HOGAN LOVELLS US LLP
4 Embarcadero Ctr.
Suite 3500
San Francisco, CA 94111

NEAL KUMAR KATYAL
Counsel of Record
SAMANTHA K. ILAGAN
MILBANK LLP
1101 New York Ave., NW
Washington, D.C. 20005
(202) 835-7500
nkatyal@milbank.com

KATHERINE B. WELLINGTON
HOGAN LOVELLS US LLP
125 High St., Suite 2010
Boston, MA 02110

Counsel for Petitioners

(Additional Counsel Listed on Inside Cover)

BRIAN C. ROCCA
SUJAL J. SHAH
MICHELLE PARK CHIU
LEIGHA BECKMAN
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear St. Tower
San Francisco, CA 94105

JONATHAN I. KRAVIS
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave., NW
Suite 500E
Washington, D.C. 20001

GLENN D. POMERANTZ
KURUVILLA OLASA
MUNGER, TOLLES & OLSON LLP
350 South Grand Ave.
Fiftieth Floor
Los Angeles, CA 90071

JUSTIN P. RAPHAEL
DANE P. SHIKMAN
MUNGER, TOLLES & OLSON LLP
560 Mission St.
Twenty Seventh Floor
San Francisco, CA 94105

Counsel for Petitioners

QUESTIONS PRESENTED

In this antitrust case, the court instructed the jury that it could find Google liable for antitrust violations even if no less restrictive alternative existed for accomplishing the procompetitive goals of Google's conduct, and then entered an unprecedented, nationwide antitrust injunction that goes far beyond ceasing the challenged anticompetitive conduct. These rulings conflict with established law in this Court and other Circuits and upend the distribution of Android apps for over a hundred million non-party consumers and hundreds of thousands of non-party app developers—all at the request of a single private plaintiff and competitor.

The questions presented are:

1. Whether under the Rule of Reason, an antitrust plaintiff is required to prove that less restrictive alternatives could accomplish the procompetitive benefits of the challenged conduct, as three circuits have held, or whether there is no such requirement, as six circuits have held.

2. Whether a court may impose a duty on an antitrust defendant to deal directly with its competitors without first determining that such court-mandated dealings will remedy the consequences of conduct found to violate the antitrust laws.

3. Whether the court must assess a private plaintiff's Article III standing with respect to each proposed remedy before awarding injunctive relief.

PARTIES TO THE PROCEEDING

Petitioners are Google LLC, Google Payment Corp., Google Commerce Ltd., Google Ireland Ltd., and Google Asia Pacific Pte. Ltd. (collectively, "Google").

Respondent is Epic Games, Inc. ("Epic").

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, the undersigned counsel certifies the following:

Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock.

Google Payment Corp. is a subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock.

Google Commerce Ltd. is an indirect subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company owns more than 10% of Alphabet Inc.'s stock.

Google Ireland Ltd. is an indirect subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company owns more than 10% of Alphabet Inc.'s stock.

Google Asia Pacific Pte. Ltd. is an indirect subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company owns more than 10% of Alphabet Inc.'s stock.

STATEMENT OF RELATED PROCEEDINGS

U.S. Supreme Court:

Google LLC, et al. v. *Epic Games, Inc.*, No. 25A354 (Oct. 6, 2025)

U.S. Court of Appeals for the Ninth Circuit:

Epic Games, Inc. v. *Google LLC et al.* (*In re Google Play Store Antitrust Litig.*), Nos. 24-6256, 24-6274, 25-303 (9th Cir. July 31, 2025) (reported at 147 F.4th 917) (stay denied Sept. 12, 2025) (rehearing denied Sept. 12, 2025)

U.S. District Court for the Northern District of California:

In re Google Play Store Antitrust Litig., No. 3:21-md-02981-JD (order on renewed motion for judgment as a matter of law issued July 3, 2024) (order on UCL claim and injunctive relief issued Oct. 7, 2024) (permanent injunction issued Oct. 7, 2024) (judgment issued Jan. 9, 2025)

Epic Games, Inc. v. *Google LLC et al.*, No. 3:20-cv-05671-JD (order on renewed motion for judgment as a matter of law issued July 3, 2024) (order on UCL claim and injunctive relief issued Oct. 7, 2024) (permanent injunction issued Oct. 7, 2024) (judgment issued Jan. 9, 2025)

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Pages

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

No. 25-___

GOOGLE LLC, ET AL.,

Petitioners,

v.

EPIC GAMES, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The Ninth Circuit's opinion (App. 1a-66a) is reported at 147 F.4th 917. The Ninth Circuit's order modifying the permanent injunction in part and denying a stay pending certiorari (App. 141a-146a) is reported at 152 F.4th 1078. The Ninth Circuit's order denying rehearing *en banc* (App. 139a-140a) is unreported.

The District Court's permanent injunction (App. 67a-71a) is unreported. The District Court's opinion regarding its permanent injunction (App. 72a-96a) is unreported but available at 2024 WL 4438249. The District Court's order denying

Google's motion for judgment as a matter of law or for a new trial (App. 97a-138a) is unreported but available at 2024 WL 3302068.

JURISDICTION

The Ninth Circuit entered judgment on July 31, 2025. App. 2a. The court denied Google's rehearing petition on September 12, 2025. App. 140a. Google timely filed this petition on October 27, 2025. *See* Sup. Ct. R. 13.1, 13.3. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Sherman Act provides, in relevant part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

15 U.S.C. § 1.

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony * * * .

15 U.S.C. § 2.

INTRODUCTION

Less than five years ago, this Court unanimously reiterated the fundamental antitrust rule that "judges make for poor 'central planners' and should never aspire to the role." *Nat'l Collegiate Athletic Ass'n* v. *Alston*, 594 U.S. 69, 103

(2021) (citation omitted). Defying that precedent, the Ninth Circuit here approved a sweeping antitrust injunction appointing a single district court judge in San Francisco as superintendent over the markets for mobile apps and purchases on all Android mobile devices in the United States.

The injunction was entered at the request of a single private plaintiff, Epic Games, yet it compels Google to change its conduct toward over *half-a-million* non-party app developers—even though both lower courts refused to even rule on whether Epic has Article III standing to seek such a broad injunction. That injunction requires Google to develop and offer entirely new services for rivals of its app store, Play. Specifically, the injunction mandates that Google create a mechanism to give Play's catalog of millions of apps to competitor app stores and create infrastructure to distribute competitor app stores through the Play store. That is akin to a court mandating that Wal-Mart provide its entire product catalog to Kohls, Dollar General, and Macy's, and letting those stores set up shop on Wal-Mart's sales floor.

This nationwide injunction rests on an equally flawed liability verdict. Although Google strenuously argued at trial that the challenged conduct was necessary to ensure that Google could remain competitive with Apple and other Android stores, the District Court allowed the jury to hold Google liable without finding that less restrictive alternatives were available to achieve those procompetitive goals.

The Ninth Circuit's opinion on these issues is on the wrong side of three different circuit splits.

If left in place, it would invite "mistaken condemnations of legitimate business arrangements" and encourage courts to exceed "the practical limits of judicial administration." *Alston*, 594 U.S. at 99, 102.

The crux of this case is the fierce competition between Google and its Android operating system and Apple and its iOS operating system for mobile devices and the app stores that make those devices useful. Over the last two decades, that competition has delivered immense innovation and value for consumers.

The two companies have taken different approaches to persuading consumers to purchase mobile devices and download apps. Apple operates as a closed "walled garden." Consumers who want iOS have one choice, the iPhone, and cannot access any app store other than Apple's App Store. Google, in contrast, both sells its own line of Android mobile devices and offers the Android operating system for free for other manufacturers to access, modify, and distribute. Phone manufacturers can preload any Android app store of their choosing on an Android device, and users of Android devices can download any additional Android app stores from the internet that they want on their device.

Android's open ecosystem offers choice to consumers, but comes with a consequence: Google must work harder to maintain security and provide users with a seamless experience than it would have to in a closed system. Google has therefore entered into contracts with device manufacturers, mobile carriers, and others to help

ensure that Android devices are secure and ready to use out-of-the-box.

Plaintiff Epic Games, a multibillion-dollar company, sought to compel Google and Apple to distribute Epic's gaming apps without compensating Google or Apple for their services. Epic lost its antitrust claims against Apple, after the Ninth Circuit affirmed that Apple's "walled garden" approach was a form of lawful competition against Google and other Android app stores. *Epic Games, Inc.* v. *Apple, Inc.*, 67 F.4th 946 (9th Cir. 2023). In this case, however, the Ninth Circuit affirmed a verdict holding Google liable for the very policies designed to allow Google to effectively compete with Apple. The court then affirmed a sweeping injunction compelling Google to create services specifically for its competitors and alter its billing and other policies as to *all* developers, not just Epic.

Three aspects of the Ninth Circuit's decision warrant this Court's review because they split from decisions in other circuits and conflict with this Court's precedents.

First, following circuit precedent, the Ninth Circuit held that the jury was properly instructed that it could find Google liable even if there was no less restrictive way for Google to achieve its procompetitive purposes. The Second, Sixth, and Tenth Circuits disagree. In those circuits, Epic would have been *required* to prove that there was a less restrictive alternative before Google could be held liable. Five other circuits have taken the Ninth Circuit's approach.

This case presents an ideal opportunity to resolve this longstanding split and clarify that under the Rule of Reason, the plaintiff *must* show that there is a less restrictive alternative to achieve the defendant's procompetitive purposes. The Ninth Circuit's contrary rule creates an unacceptable risk of condemning "competition that promotes the consumer interests that the Sherman Act aims to foster." *Copperweld Corp.* v. *Independence Tube Corp.*, 467 U.S. 752, 767 (1984). The erroneous instruction here, moreover, gutted Google's trial defense that the challenged conduct was vital to Google's ability to compete with Apple.

Second, the injunction imposes extraordinary duties on Google to deal directly with its competitors. Google must first provide its catalog of millions of apps to its competitors, and then make available its competitors' app stores for download on Play. Neither Epic nor the courts below have ever cited *any* case requiring a defendant to deal so extensively with direct competitors.

The Ninth Circuit held that these remedies could be imposed to diminish Google's existing competitive advantages, *even if* those advantages were not a "consequence" of Google's anticompetitive conduct. That holding departs from the D.C. Circuit's pathmarking precedent in the *Microsoft* antitrust litigation, which holds that "the fruits of a violation must be identified before they may be denied." *Massachusetts* v. *Microsoft Corp.*, 373 F.3d 1199, 1232 (D.C. Cir. 2004) (*en banc*). The Ninth Circuit's ruling also creates an

end-run around this Court's precedents constraining the role of antitrust law in imposing duties to deal. *See, e.g.*, *Verizon Commc'ns Inc.* v. *Law Offices of Curtis V. Trinko LLP*, 540 U.S. 398 (2004).

Third, the Ninth Circuit held that Epic bore *no* burden to prove Article III standing for each of the remedies ordered by the District Court. That ruling would be wrong in any case, but it is particularly troubling here, where the District Court imposed remedies impacting over one hundred million consumers and hundreds of thousands of app developers without ever evaluating if the sole plaintiff had Article III standing to seek those remedies. The Fourth, Fifth, and Sixth Circuits have explicitly rejected the Ninth Circuit's approach and hold that a plaintiff must show Article III standing for each remedy imposed by the court. The Ninth Circuit's refusal to follow this Court's standing precedents threatens to turn private plaintiffs in the Nation's largest circuit into de facto regulators—a problem that extends far beyond antitrust cases.

Each question presented is exceptionally important, and each has divided the circuits, warranting this Court's review. Review is also critical given the enormous impact of the District Court's injunction on consumers and app developers. Former national security officials, developers, academics, and others have all warned that the injunction makes users and developers less safe by hobbling Google's ability to address dynamic cybersecurity threats and by propping up app stores that have no capacity or incentive to

invest in appropriate security infrastructure. Finally, the injunction sets a precedent that is bad for competition. As then-Judge Gorsuch presciently warned, "[f]orcing firms to help one another" ultimately reduces incentives "to innovate, invest, and expand." *Novell, Inc.* v. *Microsoft Corp.*, 731 F.3d 1064, 1073 (10th Cir. 2013).

Exactly so. This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

A. Legal Framework

Sections 1 and 2 of the Sherman Act bar unreasonable restraints on trade and unlawful monopolization. 15 U.S.C. §§ 1-2; *see also Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877, 885 (2007) (Section 1); *Pac. Bell Tel. Co.* v. *linkLine Commc'ns, Inc.*, 555 U.S. 438, 447 (2009) (Section 2). Courts consider "the circumstances, details, and logic" of the challenged conduct "to ensure that it unduly harms competition before [the] court declares it unlawful." *Alston*, 594 U.S. at 97 (quotation marks omitted). "[A]ntitrust courts must give wide berth to business judgments before finding liability." *Id.* at 102.

Congress "did not intend the text of the Sherman Act to delineate the full meaning of the statute or its application." *Nat'l Soc'y of Pro. Eng'rs* v. *United States*, 435 U.S. 679, 688 (1978) (*NSPE*). Instead, courts frequently rely on the "Rule of Reason" to gauge the boundaries of antitrust liability. *Id.*; *Alston*, 594 U.S. at 88.

This Court has articulated a three-step, burden-shifting framework for the Rule of Reason. First, a plaintiff must "prove that the challenged restraint has a substantial anticompetitive effect." *Ohio* v. *Am. Express Co.*, 585 U.S. 529, 541 (2018) (*Amex*). If the plaintiff carries that burden, the "burden [then] shifts to the defendant to show a procompetitive rationale for the restraint." *Id.* Finally, if the defendant makes this showing, the burden "shifts back to the plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means." *Id.* at 542; *accord Alston*, 594 U.S. at 96-97.

In general, antitrust law does not impose liability for a firm's refusal to deal with its competitors because doing so is in "tension with the underlying purpose of antitrust law," as it "may lessen the incentive for the monopolist, the rival, or both to invest." *Trinko*, 540 U.S. at 407-408. Forced sharing also stretches courts beyond "the practical limits of judicial administration," *Alston*, 594 U.S. at 102, and "requires antitrust courts to act as central planners, identifying the proper price, quantity, and other terms of dealing—a role for which they are ill suited." *Trinko*, 540 U.S. at 408. Although the Court first articulated these principles in cases concerning antitrust liability, the Court has since clarified that "[s]imilar considerations apply when it comes to [a] remedy." *Alston*, 594 U.S. at 102.

B. Factual Background

1. Google and Apple have long competed over all aspects of their mobile ecosystems. Apple

launched iOS as a walled garden—a self-contained ecosystem where Apple retains control over its devices and ecosystem. 5-ER-1082-84; 5-ER-1154-55.[1] In contrast with Apple's approach, Google has created and maintained an open ecosystem that is publicly available and free for anyone to access, modify, and distribute. 5-ER-1060; 6-ER-1302-03. The competitive dynamic between Apple and Google ultimately benefits consumers: When either Google or Apple innovates, the other responds to better their own offerings by modifying content, features, and pricing. 5-ER-1003-06; 5-ER-1022-23; 5-ER-1107-09; 6-ER-1313-18; 6-ER-1351-57; 6-ER-1410-11.

The companies' differing philosophies affect how they compete. Android's openness creates greater user choice in the competition over mobile devices. Because multiple equipment manufacturers can use Android as the operating system for their devices, users can choose from a range of Android products, with a variety of features, at every price point. 5-ER-1064-66. Apple does not license iOS to anyone, which allows it to enjoy a price premium because it is the only manufacturer and distributor of its devices.

This competitive dynamic extends to apps and app stores. Apple's closed system means that the Apple App Store is the *only* iOS app store in the United States, granting Apple full control over user security. 5-ER-1082-83; 6-ER-1369-71. Apple decides which apps are preloaded on every iPhone,

---

[1] Citations to the "ER" are to the Excerpts of Record filed in the Ninth Circuit.

allowing Apple to prioritize its own apps and give every iOS user the same out-of-the-box experience. 5-ER-1073-74. And Apple controls how all iOS users make in-app purchases, making the process streamlined and secure. 6-ER-1370-71.

By contrast, Android's open ecosystem, built on Android's open-source operating system, allows users to download apps from a variety of sources, including Google Play, hundreds of third-party app stores, like Samsung's Galaxy store, and the open Internet (via a web browser through a process known as "sideloading"). 2-ER-427-428; 5-ER-1009-10. Investment, innovation, and strategic partnerships have been essential in allowing Google's open ecosystem to compete with Apple without compromising safety and security. Google has negotiated with manufacturers to ensure that apps are compatible across all Android devices, that users promptly receive the latest security updates for the Android software, and that Android devices come equipped with a set of high-quality apps and at least one trustworthy app store (Google Play) for downloading additional apps. 5-ER-1054-55; 5-ER-1066-68; 5-ER-1071-73; 7-ER-1612-34. Google also informs users about the risks of sideloading. 5-ER-1010-11; 5-ER-1139-40. Google has also continually innovated to attract users and developers to Play by, among other things, investing heavily in Play's security and being attuned to the user and developer experience. 7-ER-1639; *see also* 6-ER-1241-42; 6-ER-1256; 5-ER-1097.

2. Epic Games, a multibillion-dollar gaming developer and app store operator, wanted to take

advantage of Play's app distribution services without paying Google for them. 5-ER-1183; 5-ER-1201. Google, like Apple and others in the industry, had a policy requiring developers that charge users to download an app or purchase a digital good or service within the app to use Google Play Billing to complete the transaction and pay a service fee (generally 15-30%). 5-ER-1195-97; 6-ER-1404-05; 6-ER-1274. This approach has furthered Google's continuous investment and its ability to offer free services to the 97% developers who offer only free apps with no digital content sales. 5-ER-1096; 5-ER-1173; 6-ER-1296.

Epic, however, realized that it could increase its own revenue by "billions" if it could avoid paying service fees to Play for in-app content on its popular game *Fortnite*. 5-ER-1215-16. Epic therefore launched a "highly choreographed attack on Apple and Google," dubbed "Project Liberty," seeking to impose "systematic change[s]" on each company that would result in "tremendous monetary gain and wealth" for Epic. *Epic Games, Inc.* v. *Apple Inc.*, 559 F. Supp. 3d 898, 935 (N.D. Cal. 2021); *see also* 5-ER-1216. Epic pretended to release *Fortnite* on Play in compliance with Play's policies but later released secret code allowing users to make purchases using Epic's payment solution and allowing Epic to circumvent Play's service fee. 5-ER-987-988; 5-ER-991-992; 5-ER-1203-08. Google removed *Fortnite* from Play for violating the store's terms of service. 5-ER-991; 6-ER-1288.

C. Procedural Background

1. As part of Project Liberty, Epic filed this lawsuit, raising claims against Google under the Sherman Act. 4-ER-935-952.[2] Epic challenged as anticompetitive a range of policies and agreements that Google used to keep Android and Play secure and competitive with Apple. 4-ER-935-951.

At trial, Google stressed the ways that the challenged conduct allowed it to compete with Apple while maintaining its commitment to an open ecosystem. Google's sideloading warnings, for example, enhanced safety on Android by providing guardrails against the inadvertent installation of malware. 5-ER-1010-11. Google's partnerships with app developers helped ensure that the same popular games and apps available in other stores, including the App Store, were also available on Play. 5-ER-1000-05. And Google's requirement that apps charging for digital goods or services use Google Play Billing facilitated Google's ability to provide its services for free to the 97% of developers who offered their apps at no charge to users. 6-ER-1393-97.

Ninth Circuit precedent allowed the jury to return a verdict for Epic, even when Google's

---

[2] Epic also raised claims under the California Cartwright Act and California's Unfair Competition Law (UCL). 7-ER-1728. The parties and the court treated the Cartwright Act claims "as being coterminous with the Sherman Act claims for purposes of both liability and remedy." App. 80a n.4. The trial court similarly resolved Epic's UCL claim based entirely on the antitrust jury verdict. App. 80a-81a. As a result, neither state-law claim provides an independent basis for the judgment or injunction.

conduct was the least restrictive option for achieving these procompetitive benefits. *See Apple*, 67 F.4th at 994. The District Court instructed the jury to simply "balance" those procompetitive benefits against "any competitive harms [the jury] found" despite Google's argument that any balancing "should not occur unless a less restrictive alternative has been proven," 4-ER-803. App. 168a (Section 2 instruction); App. 172a, 176a (Section 1 instruction). Applying this framework, the jury found in Epic's favor without explaining how it resolved each step of the Rule of Reason. 1-ER-52-57.

The District Court entered an injunction requiring fundamental changes to the Play store. App. 67a-71a, 72a-96a. Most relevant here, the injunction requires Google to share its catalog of apps with competitors and to distribute directly competing app stores through Play. App. 69a-70a (¶¶ 11-12). The District Court held that these remedies were justified by Google's "network effects," but concluded it was not "salient" whether Google's anticompetitive conduct actually caused those effects. App. 85a-90a. The injunction also bars Google from prohibiting developers from providing external links to download apps and make payments (¶¶ 9-10) and from requiring developers to use Google Play Billing for in-app transactions on Play (¶ 9). App. 69a.

2. In expedited proceedings, a Ninth Circuit panel affirmed. App. 4a, 11a. On the Rule of Reason, circuit precedent barred the panel from considering whether Epic was required to prove that Google could achieve its procompetitive goals

with less restrictive alternatives. App. 33a n.10; *see also Apple*, 67 F.4th at 993; CA9 Opening Br. at 52.

Regarding the injunction, the panel held that ordering Google to give its competitors access to Play's catalog and to distribute third parties' stores were permissible antitrust remedies. App. 40a-52a. The panel held that the District Court could impose these remedies to diminish Google's purported network effects, even absent a finding that those effects were actually caused by Google's violation. App. 45a-47a. In the panel's view, an antitrust remedy need not "only touch the consequences of a defendant's conduct." App. 46a. The panel also concluded that *Trinko*'s limitations on forced sharing were not relevant at the remedial phase. App. 42a-45a.

Finally, the panel altogether sidestepped the issue of Epic's standing. Google argued that Epic lacked an ongoing or threatened injury justifying billing and app-distribution remedies because it has no apps on Play and no plans to return to the Play store. CA9 Opening Br. 90-92; *see City of Los Angeles* v. *Lyons*, 461 U.S. 95, 105-106 (1983). Google also argued that Epic had failed to meet its burden of providing evidence that hundreds of thousands of non-parties would react to the injunction's duty-to-deal remedies in a way that would redress an injury to Epic. CA9 Opening Br. 89-91; *see Murthy* v. *Missouri*, 603 U.S. 43, 57-58, 69-72 (2024). Rather than assess whether Epic had established standing to seek these remedies, the panel dismissed Google's jurisdictional arguments as "merits" disputes and upheld the

District Court's "exercise of discretion in crafting the injunction." App. 66a.

3. The Ninth Circuit denied Google's petition for rehearing. App. 140a. The panel also denied Google's motion for a stay pending this petition. App. 142a. Google then sought a partial stay from this Court, which the Court denied.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT'S APPROACH TO THE RULE OF REASON CONFLICTS WITH THIS COURT'S PRECEDENTS AND EXACERBATES AN EXISTING CIRCUIT SPLIT.

The Rule of Reason plays a critical role in antitrust law: It distinguishes between conduct "with anticompetitive effect[s] that are harmful to the consumer" and conduct "stimulating competition that [is] in the consumer's best interest." *Alston*, 594 U.S. at 81 (quoting *Amex*, 585 U.S. at 541). The third step of this framework requires the plaintiff "to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means." *Amex*, 585 U.S. at 542; *accord Alston*, 594 U.S. at 96-97.

Yet the Ninth Circuit allowed Google to be held liable even where Epic failed to meet its burden at step three based on the jury's view of whether the competitive harms of Google's conduct outweighed the procompetitive benefits—essentially doing away entirely with step three. App. 33a n.10; 6-ER-1435-36, 6-ER-1444. That holding conflicts with this Court's clear guidance on the Rule of

Reason and takes the wrong side of a pronounced circuit split.

1. Six circuits, including the Ninth Circuit, permit a factfinder to proceed to a free-for-all balancing step even where the plaintiff has failed to meet its burden under step three—effectively eliminating that step.

The Ninth Circuit first adopted this approach in *Apple*, which held that "where a plaintiff's case comes up short at step three, the [factfinder] must proceed to step four and balance the restriction's anticompetitive harms against its procompetitive benefits." 67 F.4th at 994. By denying rehearing in this case, the Ninth Circuit has cemented its position that step three is optional.

The D.C. Circuit's decision in *United States* v. *Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (*en banc*), follows this approach. There, the court held that the plaintiff must first demonstrate that the defendant's conduct has an anticompetitive effect. *Id.* at 58-59. If the plaintiff can make that showing, then the defendant must offer a "procompetitive justification" for its conduct. If the "procompetitive justification stands unrebutted, then the plaintiff must demonstrate that the anticompetitive harm of the conduct outweighs the procompetitive benefit." *Id.* at 59. The court cited no case to support its suggestion that the Rule of Reason requires going directly to this subjective balancing step without first requiring a showing that there was a less restrictive alternative available. *See id.*

Several other circuits mirror the Ninth and D.C. Circuits. The Third and Seventh Circuits

expressly adopt the *Microsoft* Rule-of-Reason framework. *Mylan Pharms., Inc.* v. *Warner Chilcott Pub. Ltd. Co.*, 838 F.3d 421, 438 (3rd Cir. 2016); *Viamedia, Inc.* v. *Comcast Corp.*, 951 F.3d 429, 463-64 (7th Cir. 2020).

The First Circuit also permits a plaintiff to sidestep its step-three burden. In *United States* v. *American Airlines Group Inc.*, 121 F.4th 209 (1st Cir. 2024), the court stated that at step three, the plaintiff bears the burden of showing that "procompetitive efficiencies could be reasonably achieved through less anticompetitive means, *or* that on balance, the restraint's harms outweigh its benefits." *Id.* at 220 (emphasis added) (quotation marks and citations omitted).

The Fifth Circuit takes a similar approach: If the plaintiff "fails to demonstrate a less restrictive alternative way to achieve the procompetitive benefits," then "the court must balance the anticompetitive and procompetitive effects of the restraint." *Impax Laboratories, Inc.* v. *FTC*, 994 F.3d 484, 492 (5th Cir. 2021).

By contrast, the Second, Sixth, and Tenth circuits have adhered to this Court's articulation of the Rule of Reason. The Second Circuit has held that to prevail on a Sherman Act claim, a plaintiff "*must* show that a less restrictive alternative exists that achieves the same legitimate competitive benefits." *1-800 Contacts, Inc.* v. *FTC*, 1 F.4th 102, 120-122 (2d Cir. 2021) (per curiam) (emphasis added). Likewise, the Sixth and Tenth Circuits require the plaintiff to show a less restrictive alternative at step three. *E.g.*, *Expert Masonry, Inc.* v. *Boone County*, 440 F.3d 336, 343

(6th Cir. 2006) (plaintiff "must show" a less restrictive alternative) (quotation marks omitted); *Buccaneer Energy (USA) Inc.* v. *Gunnison Energy Corp.*, 846 F.3d 1297, 1310 (10th Cir. 2017) (plaintiff "must prove" a less restrictive alternative).[3]

Epic has argued that the Second, Sixth, and Tenth Circuits do not actually fall on the minority side of the circuit split. Stay Opp. 27-29. But the Second Circuit has repeatedly ruled for defendants when the plaintiff failed to make the step-three showing. *See, e.g.*, *Virgin Atl. Airways Ltd.* v. *British Airways PLC*, 257 F.3d 256, 265 (2d Cir. 2001); *N. Am. Soccer League, LLC* v. *U.S. Soccer Fed'n, Inc.*, 883 F.3d 32, 45 (2d Cir. 2018). The Second Circuit cases that Epic says excused the step-three burden did no such thing, and in any event, predated this Court's decision in *Amex*. *See New York ex rel. Schneiderman* v. *Actavis PLC*, 787 F.3d 638, 658 (2d Cir. 2015) (conducting balancing only in dicta); *Geneva Pharms. Tech. Corp.* v. *Barr Laboratories Inc.*, 386 F.3d 485, 509-510 (2d Cir. 2004) (reversing grant of summary judgment where the district court had not even reached step three). Since *Amex*, the Second Circuit has heeded this Court's guidance that the plaintiff's step-three burden is mandatory. *See, e.g.*, *1-800 Contacts*, 1 F.4th at 120-121.

---

[3] The Eleventh Circuit has arguably conflicting precedent on this issue. *Compare, e.g.*, *Schering-Plough Corp.* v. *FTC*, 402 F.3d 1056, 1065 (11th Cir. 2005) (using mandatory language), *with OJ Com., LLC* v. *KidKraft, Inc.*, 34 F.4th 1232, 1247 (11th Cir. 2022) (suggesting the less-restrictive-alternatives element is not mandatory).

Likewise, the Sixth and Tenth Circuits have consistently used mandatory language to describe the step-three requirement. *See Care Heating & Cooling, Inc.* v. *Am. Standard, Inc.*, 427 F.3d 1008, 1012 (6th Cir. 2005); *Nat'l Hockey League Players' Ass'n* v. *Plymouth Whalers Hockey Club*, 325 F.3d 712, 718 (6th Cir. 2003); *Gregory* v. *Fort Bridger Rendezvous Ass'n*, 448 F.3d 1195, 1205 (10th Cir. 2006); *Law* v. *Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1010, 1019 (10th Cir. 1998). Epic has cited no case in which those circuits described the plaintiff's step-three burden as optional or allowed liability where a plaintiff failed to meet that burden.

2. The Ninth Circuit's rule is wrong on the merits because it undermines the fundamental aims of the Rule of Reason. The third Rule-of-Reason step is designed to ensure courts "give wide berth to business judgments before finding liability." *Alston*, 594 U.S. at 102; *accord Eastman Kodak Co.* v. *Image Tech. Servs., Inc.*, 504 U.S. 451, 483 (1992) ("Liability turns * * * on whether 'valid business reasons' can explain [the defendant's] actions." (citation omitted)). Courts are "ill-equipped and ill-situated for [economic] decision-making [and cannot] analyze, interpret, and evaluate the myriad of competing interests and * * * endless data" involved. *United States* v. *Topco Assocs., Inc.*, 405 U.S. 596, 611-612 (1972). And this Court has repeatedly warned that "mistaken condemnations of legitimate business arrangements 'are especially costly, because they chill the very' procompetitive conduct 'the antitrust laws are designed to protect.'" *Alston*, 594 U.S. at 99 (quoting *Trinko*, 540 U.S. at 414).

The third step thus guards against stifling procompetitive innovations that have no less restrictive alternatives.

The Ninth Circuit's approach ignores this Court's guidance and allows a plaintiff to prevail even where it has flunked its crucial step-three burden. The Ninth Circuit in *Apple* doubted the correctness of its approach, questioning "the wisdom of superimposing a totality-of-the-circumstances balancing step onto a three-part test that is already intended to assess a restraint's overall effect." 67 F.4th at 994. That skepticism was well-founded. The Ninth Circuit's approach means that "[a]ny one factor might or might not outweigh another, or all of the others," which "offers no help to businesses planning their conduct." Frank H. Easterbrook, *The Limits of Antitrust*, 63 Tex. L. Rev. 1, 12 (1984); *see also* Herbert Hovenkamp, *The Rule of Reason*, 70 Fla. L. Rev. 81, 133 (2018) (raising similar critiques).

The Ninth Circuit nominally linked its approach to *Alston*, but nothing in *Alston*'s statement "that the first three steps of the Rule of Reason are not a 'rote checklist'" suggests that a plaintiff can entirely flunk the third step and still prevail. *Apple*, 67 F.4th at 994 (quoting *Alston*, 594 U.S. at 97). Rather, in context, that language makes clear that a plaintiff's success on the first three steps does not guarantee that the plaintiff will ultimately prevail, because the circumstances of a case may provide good reason not to declare the defendant's conduct an antitrust violation. Thus, *Alston* emphasized that "[t]he whole point of the rule of reason is to furnish 'an enquiry meet for

the case, looking to the circumstances, details, and logic of a restraint' *to ensure that it unduly harms competition before a court declares it unlawful*." 594 U.S. at 97 (emphasis added).

Epic has suggested that without balancing, a defendant could evade liability for "wildly" harmful conduct by identifying a "meager" procompetitive benefit. Stay Opp. 21. But this attacks a straw man. In the hypothetical scenario Epic posits, it would not be difficult for a plaintiff to show a less restrictive alternative. Thus, the properly formulated Rule of Reason already accounts for Epic's concerns.

3. This case is an ideal vehicle to bring the circuits into alignment on a fundamental question of antitrust law. The erroneous jury instruction upheld by the Ninth Circuit—permitting the jury to bypass step three—was at the heart of Google's trial defense, which rested on the argument that Google's conduct was necessary to compete with Apple and maintain its open ecosystem. *See supra* pp. 11-13. Epic's evidence on less restrictive alternatives, in contrast, was exceedingly thin. Although Epic contended that Google could have better tailored its sideloading warnings, D. Ct. Dkt. 867 at 3381:13-3382:13, it offered zero evidence of any meaningful alternatives to the other challenged conduct. As Google stressed in closing arguments, Epic had given the jury "no alternative way for Google to partner with phone manufacturers to build high-quality competitive phones at a lower cost" or to "keep the[] developers in the Play Store in some other way." *Id.* at 3412:24-3413:2, 3419:7-10. Allowing the jury to

overlook Epic's failure to show less restrictive alternatives thus allowed Epic to sidestep a critical weakness in its case.

All this makes it particularly likely that the Ninth Circuit's legally flawed instruction proved decisive. Because the jury verdict form provides no indication as to how the jury resolved the Rule-of-Reason analysis, 1-ER-53, 1-ER-55, it is impossible to "negate" the possibility the verdict rests on this legally impermissible ground. *See Spectrum Sports, Inc.* v. *McQuillan*, 506 U.S. 447, 459-460 (1993). This Court should grant certiorari and reverse.

II. THE NINTH CIRCUIT'S APPROVAL OF DUTY-TO-DEAL REMEDIES CREATES A CIRCUIT SPLIT AND DEFIES THIS COURT'S PRECEDENT.

Building on its incorrect approach to liability, the Ninth Circuit approved an unprecedented injunction requiring Google to deal directly with its competitors. The District Court purported to impose these extraordinary remedies to diminish Google's "network effects"—meaning, that because Google has a "greater * * * number of developers" it attracts a "greater * * * number of users, and vice versa." App. 85a. But, as the court itself recognized, network effects "are a feature of any two-sided market" consisting of both sellers and buyers, like an app store. App. 86a. Thus, the critical question should have been whether the Play store's network effects resulted from Google's anticompetitive conduct, or were instead the product of lawful innovation and investment. The Ninth Circuit refused to conduct that analysis,

holding instead that antitrust remedies need not be limited to addressing the "consequences" of anticompetitive conduct. App. 46a. This holding directly conflicts with the D.C. Circuit's approach in *Microsoft* and this Court's precedents.

1. The D.C. Circuit in *Microsoft* made clear that a court cannot target competitive advantages as an antitrust remedy unless those competitive advantages resulted from the anticompetitive conduct. That makes sense: A court should not seek to undo a company's lawfully obtained competitive position. The D.C. Circuit's initial opinion thus explained that the district court was required to determine whether there was "a sufficient causal connection between Microsoft's anticompetitive conduct" and the court's "remedial goal." *Microsoft*, 253 F.3d at 105-106 (quotation marks omitted).

Reviewing the revised decree after remand, the D.C. Circuit repeatedly rejected the argument that the district court should have imposed relief that went beyond remedying the harms of the specific conduct at issue. *See Massachusetts* v. *Microsoft Corp.*, 373 F.3d 1199 (D.C. Cir. 2004) (*en banc*). Most relevant here, the D.C. Circuit held that the district court would have abused its discretion if it had ordered Microsoft to make disclosures that would have effectively "enable[d] competitors to 'clone' Windows." *Id.* at 1218-20. Such remedies, the court recognized, would unlawfully "deny Microsoft the returns from its investment in innovation" rather than address the consequences of Microsoft's anticompetitive conduct. *Id.* at 1219 (quotation marks omitted).

Similarly, the D.C. Circuit held that the district court properly declined to compel Microsoft to alter its coding practices to make things easier for its competitors, recognizing that Microsoft's competitive advantages were due in part "to 'positive network effects'" that did not result from anticompetitive conduct. *Id.* at 1210-12. And the D.C. Circuit rejected the appropriateness of various other remedies that "went beyond the liability" determination. *Id.* at 1215. As the D.C. Circuit explained, "it does not follow that, because a proposed requirement could reduce the * * * barrier[s] to entry, it must be adopted." *Id.* at 1226. Even where a barrier existed "in part because of Microsoft's unlawful practices," the issue had to be addressed "in a manner traceable to" the liability determinations. *Id.* As the court summarized, "the fruits of a violation must be identified before they may be denied." *Id.* at 1232.

The lower courts' approach in this case stands in stark contrast to the D.C. Circuit's rule. The District Court held that the question of "whether Google's anticompetitive conduct caused the network effects" was not "the salient question" when considering whether to impose a remedy seeking to undo those network effects. App. 87a. Instead, the District Court assumed that the jury's finding on a different question—whether Google's challenged conduct "had the consequence of entrenching and maintaining its monopoly power in a two-sided market"—meant that a remedy addressing network effects was appropriate. *Id.* That is the opposite of the *Microsoft* decision, which required identifying the consequences of the challenged anticompetitive conduct.

The Ninth Circuit embraced the District Court's approach, again departing from the D.C. Circuit. Citing *Microsoft*, Google argued that the District Court was required to *first* find that Google's network effects in fact resulted from anticompetitive conduct *before* the District Court could issue an injunction targeting those network effects. The Ninth Circuit disagreed, faulting Google for "misconstru[ing] the responsibility of the district court" by asserting that an injunction should "only touch the consequences of a defendant's conduct." App. 45a-46a. It held there was no such requirement, and that a trial court could approve any antitrust remedy that is connected to "the creation or maintenance of * * * monopoly power," regardless of whether the relevant competitive advantage resulted from anticompetitive conduct or legitimate competition. App. 45a-47a. Thus, in the Ninth Circuit, once a company has been adjudged to violate antitrust law, the court may strip the company of any competitive advantage, even if that advantage was lawfully gained.

Comparing the district court's ruling in *Microsoft* with the District Court's ruling in this case confirms the divergence between these two approaches. The *Microsoft* district court issued detailed, remedy-by-remedy findings spanning over a hundred pages, including an assessment of whether the proposed remedies "contribute[d] to the elimination of the consequences of Microsoft's illegal conduct." *New York* v. *Microsoft Corp.*, 224 F. Supp. 2d 76, 173 (D.D.C. 2002); *see also id.* at 151-266. The Ninth Circuit, in stark contrast, held that the District Court here "fulfilled [its]

obligation" to assess whether Epic's proposed remedies were warranted by citing the jury's verdict in a single sentence of its opinion, App. 48a, even though the verdict made no findings whatsoever about Google's network effects and whether those effects were the result of anticompetitive conduct, 1-ER-53-56.

The Ninth Circuit thus approves exactly what the D.C. Circuit condemns: imposition of a remedy targeting the *lawful fruits* of a company's "investment in innovation" rather than the fruits of unlawful conduct. *Massachusetts*, 373 F.3d at 1219 (quotation marks omitted).

2. The D.C. Circuit's approach on this issue is more faithful to this Court's precedents and the goals of antitrust law. The Court has long directed that antitrust remedies should target the "fruits" of a violation. *Int'l Salt Co.* v. *United States*, 332 U.S. 392, 400 (1947). This means remedies should be aimed at "eliminating the consequences of the illegal conduct." *NSPE*, 435 U.S. at 698. And the Court has stressed that antitrust laws must not "lessen the incentive for the monopolist, the rival, or both to invest" and innovate. *Trinko*, 540 U.S. at 407-408. As *Trinko* explained, the "mere possession of monopoly power" and even the "charging of monopoly prices[] is not only not unlawful; it is an important element of the free-market system." *Id.* at 407. "The opportunity to charge monopoly prices—at least for a short period—is what attracts 'business acumen' in the first place; it induces risk taking that produces innovation and economic growth." *Id.*

The Ninth Circuit's rule also creates an obvious end-run around this Court's precedents that sharply curtail when firms may be compelled "to share the source of their [competitive] advantage" directly with rivals. *Id.* This Court has recognized that only in "limited circumstances" may a defendant be held liable for a "refusal to deal with its rivals"—circumstances that, Epic has never disputed, are not present here. *Pac. Bell*, 555 U.S. at 448; *accord* 1-ER-156. Yet the Ninth Circuit's rule makes it easy for courts to simply find an antitrust violation on some other basis and then impose a duty-to-deal remedy that could not have been the basis for liability by concluding that it would reduce the defendant's competitive advantages, even if those competitive advantages are *not* related to the violation.

The Ninth Circuit concluded that this Court's duty-to-deal precedents were irrelevant in assessing antitrust remedies, holding that *Trinko* dealt with liability, "*not* the legality of compelling a defendant already found liable under that statute to deal with its competitors." App. 42a-43a (emphasis in original). But this Court stressed in *Alston* that "[s]imilar considerations apply" at *both* the liability and remedial phases of the case, 594 U.S. at 102, a holding that the Ninth Circuit simply ignored. *See* App. 42a-43a. Indeed, the primary reason this Court held that Sherman Act liability does not flow from a refusal to deal with rivals is that courts are ill-suited to impose or enforce such a remedy. *See, e.g.*, *Trinko*, 540 U.S. at 408.

3. This case presents an ideal vehicle to address the conflict between the D.C. and Ninth Circuits on a crucial question of antitrust law. Epic did not present any evidence establishing that Google's "network effects" were at all attributable to the anticompetitive conduct at issue. In fact, the opposite was true: The *only* mention of network effects anywhere in the liability trial shows that Google already had substantial network effects *before* Epic claims that Google's anticompetitive conduct began. *See* App. 45a-47a, 87a.

The Ninth Circuit echoed the District Court's statement that Google's network effects were "unfairly enhanced * * * in a way that would not have happened but for [Google's] anticompetitive conduct." App. 46a (quoting App. 87a). But the District Court did not conduct any analysis on that point, and instead merely assumed this must be true based on the jury's liability verdict in Epic's favor. *See* App. 87a. The jury, however, was asked only whether a Sherman Act violation occurred—not whether Google's network effects (which were not addressed at trial) were the result of a Sherman Act violation. *See* 1-ER-53-55. Under these circumstances, it was all the more urgent for the District Court to abide by the D.C. Circuit's requirement that "the fruits of a violation must be identified before they may be denied." *Massachusetts*, 373 F.3d at 1232.

It is exceptionally important for this Court to delineate the fundamental limits on an antitrust court's remedial authority. Indeed, this Court has previously explained that its practice "is to examine [a] District Court's [antitrust injunction]

closely" and that it has "felt an obligation to intervene in" the remedial "phase of the case when [it has] concluded there were inappropriate provisions in the decree." *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 323 (1961) (quotation marks omitted). That is especially critical here, given the unprecedented nature of the injunction: Neither the court below, nor Epic, has cited any case from this Court or any other imposing such sweeping obligations to deal directly with competitors on judicially set terms, much less in a case brought by a single competitor. The Ninth Circuit's standard, if left standing, would mean that courts in that circuit—which are handling many critical antitrust cases—would be free to issue an antitrust injunction targeting a company's *lawfully obtained* competitive advantage. The Court should grant certiorari.

III. THE NINTH CIRCUIT'S REFUSAL TO ASSESS EPIC'S STANDING TO SEEK NATIONWIDE RELIEF WARRANTS THIS COURT'S REVIEW.

The Ninth Circuit's refusal to assess whether Epic had Article III standing to seek the far-reaching remedies imposed by the trial court conflicts with the decisions of this Court and at least three other circuits. This Court should grant certiorari to clarify a court's duty to assess Article III standing at every stage of a case.

1. The Ninth Circuit's understanding of Article III's role at the remedial phase violates this Court's precedents. The plaintiff in this case is a single app developer, Epic. But the injunction imposed remedies extending far beyond Epic, restructuring Google's interactions with hundreds

of thousands of non-party developers, mobile carriers, and equipment manufacturers. To seek such relief, Epic had to prove those remedies would likely redress a prospective injury-in-fact suffered by Epic. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). But the District Court made *no* findings regarding Epic's standing, and did not even acknowledge Article III's basic requirements, despite Google's emphatic request that the court not impose remedies beyond those necessary to redress injuries to Epic. *See generally* 3-ER-434-572; 2-ER-220-374; 1-ER-7-23.

The Ninth Circuit refused to reverse the District Court's failure to assess Article III standing with respect to each form of injunctive relief imposed. App. 64a-66a. Instead, the Ninth Circuit concluded that challenges to the scope of an injunction are "merits" questions, not "jurisdictional" questions requiring an Article III standing analysis. *Id.* (citing *Seattle Pac. Univ.* v. *Ferguson*, 104 F.4th 50, 63 (9th Cir. 2024) and *Kirola* v. *City & County of San Francisco*, 860 F.3d 1164, 1175-76 (9th Cir. 2017)).

The Ninth Circuit's position is deeply wrong. Plaintiffs bear the burden at every stage of the case to establish standing for each form of relief sought. *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). That requirement applies just as much at the outset of the case as "when judgment is entered." *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 291-292 (2021). That is why this Court routinely evaluates

the nature and scope of a plaintiff's requested relief as a jurisdictional question under Article III.

Lewis v. *Casey*, 518 U.S. 343 (1996), is a prime example. There, this Court addressed the "proper scope" of an injunction entered against prison officials after a three-month trial, concluding that the inmates who brought the suit had failed to establish standing with respect to certain provisions in the injunction. *Id.* at 358. Because some of the injunction's provisions were "directed" at "the inmate population at large," they did not target the plaintiffs' actual injuries found by the court "[a]fter the trial," and thus "were not the proper object of th[e] District Court's remediation." *Id.* The relief issued, the Court explained, "must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Id.* at 357.

This Court has carefully hewed to that rule. In *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332 (2006), for instance, this Court vacated a lower court's invalidation of a state law for failure to address the plaintiffs' lack of standing to seek that requested remedy. *Id.* at 340, 354. The Court stressed that plaintiffs must "separately" demonstrate standing "for each form of relief sought," and that courts must "limit[]" the remedy to the specific injuries the plaintiffs "established." *Id*. at 352-353 (quotation marks omitted). Likewise, in *Gill* v. *Whitford*, 585 U.S. 48 (2018), this Court vacated an injunction for lack of standing and instructed the district court to "tailor[]" the "plaintiff[s'] remedy" to "redress [any] particular injury" proved based on the evidence

presented on remand. *Id.* at 73. And in *Murthy* v. *Missouri*, 603 U.S. 43 (2024), this Court reversed the Fifth Circuit for "affirm[ing] a sweeping preliminary injunction" where the plaintiffs failed to prove that "the judicial relief requested"—which depended on the reactions of independent non-parties—would redress "the injury suffered." *Id.* at 49, 73 (quotation marks omitted).

2. The Ninth Circuit's outlier position conflicts with the Fourth, Fifth, and Sixth Circuits.

The Fourth Circuit recently rejected the precise reasoning the Ninth Circuit employed here. In *Maryland* v. *U.S. Department of Agriculture*, 151 F.4th 197 (4th Cir. Sept. 8, 2025), the Fourth Circuit struck down a preliminary injunction based on a "fatal disconnect between the plaintiffs' alleged injury and the sweeping relief they requested." *Id.* at 211. This was not "an error on the merits as to the 'scope of relief' granted by the district court," the Fourth Circuit explained, but "a redressability problem" under Article III. *Id.* When a plaintiff's "requested relief [is] ultimately aimed at vindicating the rights" of non-parties, the Fourth Circuit explained, Article III precludes courts from extending relief "far beyond the 'inadequacy that produced [the] injury in fact.'" *Id.* at 214 (citation omitted). This decision directly conflicts with the Ninth Circuit's conclusion that the scope of an injunction is solely a "merits" question. App. 64a-66a.

The Fifth and Sixth Circuits are in accord. The Fifth Circuit has invalidated broad injunctions that "accomplish more than remedying [the plaintiff's] injury." *Carter* v. *Local 556, Transp.*

Workers Union of Am., — F.4th — , 2025 WL 2924513, at *26 (5th Cir. Oct. 15, 2025). Such overbroad injunctions, the court observed, violate federal courts' "constitutionally prescribed role * * * to vindicate the individual rights of the people appearing before it." *Id.* (quoting *Gill*, 585 U.S. at 72-73). Similarly, the Sixth Circuit has repeatedly struck down—as a jurisdictional matter—injunctions that are not properly "limited to the inadequacy that produced" the plaintiff's injury. *See, e.g.*, *Universal Life Church Monastery Storehouse* v. *Nabors*, 35 F.4th 1021, 1031-34, 1037-38 (6th Cir. 2022) (quoting *DaimlerChrysler*, 547 U.S. at 353); *Tennessee Conf. of NAACP* v. *Lee*, 139 F.4th 557, 567-570 (6th Cir. 2025).

The Ninth Circuit's departure from these circuits is much more than "academic." Stay Opp. 40. When a court approaches the scope of a requested remedy under Article III, the question is whether the plaintiff has proved, with "specific facts," that its requested relief will likely redress a concrete, particularized injury that the plaintiff is currently suffering (or will imminently suffer). *See Lujan*, 504 U.S. at 561-562 (quotation marks omitted). That issue is reviewed de novo on appeal. *Columbia Basin Apartment Ass'n* v. *City of Pasco*, 268 F.3d 791, 796-797 (9th Cir. 2001). By contrast, when a court approaches the scope of relief as a merits issue, the question is whether the district court acted within its discretion to fashion equitable relief, subject only to deferential appellate review. *See, e.g.*, *Ford Motor Co.* v. *United States*, 405 U.S. 562, 573 (1972); App. 66a.

3. This case is an excellent vehicle to correct the Ninth Circuit's errant approach. The ruling below affirms a sweeping injunction impacting hundreds of thousands of non-parties at the behest of a single plaintiff who never purported to represent a Rule 23 class—with no court having squarely considered whether that plaintiff proved standing to obtain each form of relief.

That Epic failed to prove its standing is not a close call. The injunction—per Epic's request—requires Google to make sweeping changes to its billing and anti-steering policies, which apply *only* to apps distributed through Play. *See, e.g.*, 5-ER-1008; 6-ER-1272-73. Yet Epic does not offer apps on Play and offered no evidence that it plans to offer apps on Play in the future. *See, e.g.*, 5-ER-976; 5-ER-991. Epic thus lacks any Article III injury-in-fact redressable by the injunction's required changes to Google's billing and anti-steering policies.

Epic likewise lacks Article III standing with respect to the injunction's requirement that Google offer its entire app catalog to every app store distributed in the country, and allow Google's customers to download rival app stores from Play. Whether those remedies in fact lessen Google's network effects—and thus benefit Epic in any way—depends on the reactions of third-party app stores, developers, equipment manufacturers, and users. 4-ER-771; 4-ER-775-777. For this remedy to benefit Epic, consumers and developers would need to alter their behavior in ways that ultimately lead to Epic receiving more business. But Epic presented *no* factual evidence showing

that rational consumers would likely respond to its proposed measures in such a way. *Id.*

Because Epic cannot show Article III standing to obtain these remedies, the District Court should never have imposed them. *See, e.g.*, *Murthy*, 603 U.S. at 57-58, 73. But the District Court declined to assess standing. *See generally* 3-ER-434-572; 2-ER-220-374; 1-ER-7-23. And following Ninth Circuit precedent, the panel below declined to address standing too. App. 64a-66a. With respect to Google Play's billing policies, the Ninth Circuit made no attempt to assess whether Epic had proven a "real and immediate threat of repeated injury" in "the near future," *Murthy*, 603 U.S. at 58 (quotation marks omitted); it noted only that Epic had suffered a single injury *in the past*, App. 65a. Nor did the Ninth Circuit identify any findings to support Epic's standing to seek the anti-steering remedy. *Id.* (noting only that the district court found anti-steering restrictions hindered competition in the defined markets). And the panel expressly refused to evaluate Epic's standing to seek the duty-to-deal remedies. *Id.*

The ramifications of the Ninth Circuit's errors extend well beyond this case. This is not the first time the Ninth Circuit has dismissed standing concerns about the scope of relief as mere merits questions. *See, e.g.*, *Seattle Pac. Univ.*, 104 F.4th at 63. Left uncorrected, the Ninth Circuit's approach would enable private antitrust plaintiffs to seize control of entire markets, without any need to establish that its requested relief redresses any ongoing injury to itself.

This error risks infecting the Ninth Circuit's cases far beyond the antitrust context, allowing plaintiffs who prevail at trial to secure wide-ranging relief free from Article III's strictures. This Court routinely reviews standing questions in cases with far-reaching consequences. *See, e.g.*, *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 417-418 (2021); *Murthy*, 603 U.S. at 48-50. This Court should do the same here.

IV. THE QUESTIONS PRESENTED ARE OF EXCEPTIONAL, NATIONWIDE IMPORTANCE.

The questions presented are exceedingly important and transcend the parties by orders of magnitude. The nationwide injunction in this case impacts over 100 million Android users and over 500,000 Android developers. Because the case was not litigated as a class action, those non-parties had no voice or representation in the proceedings below. This Court's review is warranted to ensure that such a sweeping injunction is lawful.

The duty-to-deal provisions in the District Court's injunction harm the public by creating a more dangerous mobile ecosystem—a platform that is increasingly targeted by our Nation's adversaries. Br. Amicus Curiae of Former National Security Officials at 4-11.

The catalog access remedy grants unfettered access to Google's catalog of millions of apps, allowing anyone with an internet connection to "set up a shell third-party 'store' and populate it with apps." 1-ER-208. As computer security experts have explained, this remedy will allow substandard and malicious app stores to "proliferat[e]," compromising users' ability to

gauge a store's legitimacy by reviewing its catalog, and burdening developers with the job of policing countless stores for the unauthorized distribution of their apps. CA9 Dkt. 229.1 at 12; *see also* Br. Amicus Curiae of ACT at 4-7 (discussing burdens on developers).

The store-distribution provision then requires Google to host stores that might be full of harmful content because of malicious or unsophisticated store operators. 2-ER-209-213; CA9 Dkt. 229.1 at 15. The injunction's provision allowing Google to engage in some vetting of third-party stores does not alleviate these risks. The allowance is hobbled by a requirement that screening measures be "strictly necessary and narrowly tailored," App. 70a—a standard that is antithetical to screening systems that "err on the side of protecting users from potentially dangerous content." 2-ER-211.

The decision below is also bad for competition—"[t]he heart of our national economic policy" and a driver of innovation. *NSPE*, 435 U.S. at 695 (quotation marks omitted). The largest circuit in the country now permits a single, private plaintiff to establish antitrust liability for conduct by a competitor that is procompetitive and lacks any less restrictive alternative. A plaintiff may then leverage its verdict to secure nationwide relief that (1) extends far beyond any injury asserted or proven, (2) requires the defendant to act as a supplier and distributor for its direct competitors, and (3) lacks a causal connection to the conduct challenged. Absent correction, other courts may follow suit, leaving companies unable to gauge what procompetitive conduct they may lawfully

pursue, threatening nationwide market instability, and reducing companies' incentives to innovate. This Court's review is necessary to curb the judicial overreach encouraged by the Ninth Circuit's decision.

CONCLUSION

The petition should be granted.

Respectfully submitted,

JESSICA L. ELLSWORTH
REEDY C. SWANSON
NATALIE SALMANOWITZ
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, D.C. 20004

JOHANNAH CASSEL-WALKER
HOGAN LOVELLS US LLP
4 Embarcadero Ctr.
Suite 3500
San Francisco, CA 94111

BRIAN C. ROCCA
SUJAL J. SHAH
MICHELLE PARK CHIU
LEIGHA BECKMAN
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear St. Tower
San Francisco, CA 94105

NEAL KUMAR KATYAL
Counsel of Record
SAMANTHA K. ILAGAN
MILBANK LLP
1101 New York Ave., NW
Washington, D.C. 20005
(202)-835-7500
nkatyal@milbank.com

KATHERINE B. WELLINGTON
HOGAN LOVELLS US LLP
125 High St., Suite 2010
Boston, MA 02110

GLENN D. POMERANTZ
KURUVILLA OLASA
MUNGER, TOLLES & OLSON LLP
350 South Grand Ave.
Fiftieth Floor
Los Angeles, CA 90071

JONATHAN I. KRAVIS
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave., NW
Suite 500E
Washington, D.C. 20001

JUSTIN P. RAPHAEL
DANE P. SHIKMAN
MUNGER, TOLLES & OLSON LLP
560 Mission St.
Twenty Seventh Floor
San Francisco, CA 94105

Counsel for Petitioners

October 2025