

No. 26-60

IN THE
Supreme Court of the United States

DANIEL DEFENSE, LLC; FAB DEFENSE, INC.; FAB MANUFACTURING & IMPORT OF INDUSTRIAL EQUIPMENT LTD; BRAVO COMPANY USA, INC.; LOYAL 9 MANUFACTURING, LLC; FOSTECH, INC.; HEARING PROTECTION, LLC; CENTURION ARMS, LLC; MAGPUL INDUSTRIES CORP.; FEDERAL CARTRIDGE CO.; FIOCCHI OF AMERICA, LLC; SUREFIRE, LLC; TORKMAG, INC.,
Petitioners,

v.

KAREN LOWY, individually and as parent and next friend to N.T.; ANTONIO HARRIS,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Circuit correctly held that Respondents' complaints survive dismissal at the pleading stage because they plausibly allege that Petitioners' deceptive and unfair marketing practices (1) had the predictable effect of influencing a third party to use their products to injure Respondents, or alternatively (2) had a determinative or coercive effect on the third party's use of their products to injure Respondents.

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INTRODUCTION

The petition urges this Court to grant review to determine “[w]hether plaintiffs can satisfy the traceability requirement of Article III by alleging that the criminal acts of a third party are traceable to social media posts and other speech that they do not allege the third party ever saw.” Pet. i. It is a provocative question, but as Petitioners eventually concede, Pet. 23-24, it is not presented by this case. Respondents’ complaints expressly allege that the third party who injured them “was exposed to and influenced by [Petitioners’] deceptive and unfair marketing acts and practices while researching and planning” the attack. JA81, 165.¹ The complaints support that allegation with details about the third party’s online activity and the similarities between his execution of the attack and Petitioners’ advertisements—details that, while limited at the pleading stage to information that is publicly available or that Respondents were able to obtain through FOIA requests, make the alleged causal connection plausible.

The actual dispute between the parties is whether, as Petitioners contend, Respondents also had to identify at the pleading stage which specific websites the third party visited and which specific advertisements he viewed. *See* Pet. 24. This question was already answered in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992): “At the pleading stage, general factual allegations of injury resulting from

¹ JA” refers to the Joint Appendix in the Fourth Circuit, No. 24-1833, Doc. No. 65.

the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* at 561 (quotation and brackets omitted). As the Fourth Circuit recognized, this rule is especially salient where, as here, relevant evidence is likely in Petitioners' possession and inaccessible to Respondents without discovery. *See* App-37.

Perhaps recognizing that a factbound dispute governed by settled law is not the stuff of Supreme Court review, Petitioners purport to identify a circuit split over the traceability standard for claims involving third-party conduct. According to the petition, some circuits require that the third party's injurious action be a predictable effect of the defendant's alleged misconduct, while others require that the effect be determinative or coercive. Pet. 15-23. But this argument is not a basis for the Court's review either, as it makes no difference to this case: The Fourth Circuit held that Respondents' allegations suffice under both formulations. App-32-37. The split is also illusory. Consistent with this Court's precedent, the courts of appeals all recognize that plaintiffs satisfy the traceability requirement in third-party conduct cases when they show either that the injurious action was a predictable effect of the defendants' alleged misconduct *or* that the misconduct was determinative or coercive.

The petition's assertions of exceptional importance are equally illusory. Petitioners speculate about the dire consequences that might result if traceability required only that the defendants' conduct "may have had some indirect effect on some unrelated third

party’s injurious acts,” Pet. 34, but neither the Fourth Circuit nor any other court of appeals has suggested such a standard. Under either formulation of the traceability test, the effect is always related to the third-party action because it is an *effect* of the defendants’ alleged misconduct—i.e., it requires “*de facto* causality” between the misconduct and the injurious action. *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019) (quotation omitted). That the effect is “indirect” is the reason this Court developed traceability tests for third-party conduct claims. *See id.* at 768 (traceability is satisfied where the injury was “the predictable effect of [the defendants’ misconduct] on the decisions of third parties”); *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025) (where traceability depends on third-party reactions to the alleged misconduct, “a court must conclude that third parties will likely react ... in predictable ways that will likely cause ... the plaintiff’s injury” (quotation omitted)); *California v. Texas*, 593 U.S. 659, 661 (2021) (to establish traceability, “the plaintiff must show at the least that third parties will likely react in predictable ways” (quotation omitted)).

Finally, this Court’s review would be premature even by Petitioners’ own account, as Petitioners believe that Respondents’ claims should and will be dismissed at the pleading stage under the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* *See* Pet. 2. Their motions seeking such dismissal are now fully briefed and awaiting the district court’s adjudication. Moreover, the complaints underlying Petitioners’ argument have been superseded by a consolidated amended complaint with additional

details supporting traceability, so the dispute below over the adequacy of Respondents' allegations is now outdated. Review at this time would thus be a waste of the Court's resources.

The Court should deny the petition.

STATEMENT OF THE CASE

I. Factual Background

On April 22, 2022, Respondents Karen Lowy and Antonio Harris were shot and critically injured in a sniper-style attack outside the Edmund Burke School in Washington, D.C., where Lowy's daughter was a student and Harris worked as a security officer. App-2. The attack was executed by 23-year-old Raymond Spencer with an arsenal of assault rifles, magazines, and ammunition manufactured, marketed, and sold by Petitioners. App-4-5; Pet. 4. The background statement below reflects the factual allegations in Respondents' complaints, which are "accept[ed] as true" at the pleading stage. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 n.1 (2002).

A. Petitioners Intentionally Market Their Assault Rifles, Magazines, and Ammunition to Civilian Men Interested in Inflicting Combat-Like Mass Violence.

Petitioners market assault rifles, magazines, and ammunition that are designed to kill as many people as possible as quickly as possible. See JA38-39. The weapons "incorporate[] into their design specific features that enable shooters to spray ('hose down') a large number of bullets over a broad killing zone,

without having to aim at each individual target.” JA39.

Although these weapons were designed for the battlefield, Petitioners now promote them to civilians who fantasize about war. *See* JA38; *see also* JA41 (finding by the U.S. House of Representatives Oversight and Reform Committee that “[n]inety percent of [Daniel Defense]’s sales are direct to civilian consumers, but the company’s marketing emphasizes the tactical nature of its products”). Petitioners’ advertisements convey that while their weapons and weapon accessories are ready for active combat in war, they are also appropriate for civilians to use for offensive combat-like missions. JA41.

Petitioners intentionally and specifically market their products to appeal to the impulsive, risk-taking tendencies of civilian adolescent and post-adolescent males attracted to violence. JA30. For example, Petitioners regularly promote their weapons and accessories to civilian audiences through advertisements featuring imagery of soldiers in the field and men in military fatigues and tactical gear with captions such as “Saturdays are for the boys” (Daniel Defense), “Heading out of the office like...” (Daniel Defense), and “Ready ... for the weekend” (Bravo Company or “BCM”). JA42-47. Fiocchi has promoted the use of its product from what appears to be the balcony of a home or office, rather than at a shooting range or in a game hunting setting. JA49. One of FAB’s ads depicts men carrying its weapons in what appears to be a school building, with lockers lining the walls. *Id.*

These advertisements encourage civilians, and particularly “boys” and young men like Spencer—who

joined the U.S. Coast Guard but was discharged before completing basic training, JA41—to reenact military-style offenses with weapons of war. Petitioners’ marketing strategies are designed to exploit adolescents’ and young adults’ attraction to impulsive, thrill-seeking behavior and their insecurities about their futures. JA58-59. Petitioners also make blatant appeals to youth and young adults by using graphic novel- and video game-like imagery in their advertisements. JA58-68. Daniel Defense jointly advertises its assault weapons with Call of Duty, a video game that simulates the experience of shooting at others and that attracted several young men who then went on to commit the Sandy Hook, Parkland, Uvalde, and El Paso. JA60-61.

Petitioners’ advertisements unmistakably encourage young men like Spencer to use their products in urban combat and illegal activity. JA70-77. BCM tells its social media followers they can achieve what they want by force, explaining that with its weapons in their hands, “[t]here’s no obstacles, just opportunities.” JA48. BCM touts one of its rifles as a “120ish yard hole puncher” that will shoot through cars—something that no law-abiding civilian would ever need to do. JA71. Loyal 9 Manufacturing, LLC (“SOLGW”) advertises the fully automatic setting on its weapons as the “no fucks” setting. JA74-75. And just over a month before the shooting, in an Instagram post captioned “Rooftop ready, even at midnight,” Daniel Defense promoted an image of a rifle with a scope on a rooftop, targeting a car on a public street. JA70-71. An Instagram user asked in response to the post, “Is this an assassins setup? And can I buy this?” *Id.* Daniel Defense’s official account responded

that this setup is “adaptable to anyone” and that it “is live on our site right now!” *Id.*

From January 2012 through July 2022, seven of the ten mass shootings with the highest counts of gunshot injuries and deaths were perpetrated by male shooters aged 18–26. JA78. Despite knowing that mass shootings have been repeatedly perpetrated by young men armed with assault rifles, Petitioners continued to intentionally market their weapons in ways that targeted troubled young men attracted to violent combat, increasing the risk that these young men will use Petitioners’ deadly weapons, weapon accessories, and ammunition to perpetrate mass violence. JA41.

Petitioners did not take even the simplest steps to prevent or discourage young, impulsive would-be mass shooters from acquiring and using their weapons to inflict harm. JA31. They did not warn consumers about the dangers of assault rifles or avoid advertising illegal modifications to and uses of weapons. JA31. To the contrary, Petitioners have ridiculed the idea that their advertising should not promote and encourage violence. JA40-41.

B. Exposed to and Influenced by Petitioners’ Promotion of Their Products for Combat-Like Mass Violence, Spencer Executes His Attack Using Petitioners’ Assault Weapons and Accessories.

Raymond Spencer chose Petitioners’ products to execute his attack at the Burke School: assault weapons made by Daniel Defense, FOSTECH, Hearing Protection, SOLGW, and Centurion Arms; an AR-15-style rifle and M-Lok system made by Bravo Company

USA; a buttstock made by FAB Defense; a high-capacity drum from Magpul Industries; magazines from Daniel Defense, Surefire, and Torkmag; and ammunition from Federal Cartridge Company and Fiocchi of America. JA119-20.

Spencer “was exposed to and influenced by Petitioners’ marketing” while researching and planning the attack. JA81. Spencer purchased many of his weapons and accessories online, exposing him to Petitioners’ advertisements in a variety of forums. *Id.* Indeed, Spencer had an active online presence, including during the attack: He livestreamed the shooting on social media using his own name, and as police searched for him, he posted taunting messages like “Your taxes pay for these incompetent fools.” JA80, 118. He also had a Wikipedia account identifying himself as “an AR-15 aficionado,” which he used to update the Burke School’s page immediately after the shooting. JA80. And Spencer’s execution of the attack closely mimicked Petitioners’ advertisements, such as Daniel Defense’s “Rooftop Ready” promotion of its “assassin’s setup” to shoot at cars on public streets from a building rooftop, JA70-71; a Fiocchi ad depicting a man using one of its rifles from a building balcony, JA137; and BCM’s promotion of its “120ish yard hole puncher” next to a car covered in bullet holes, JA156. *Cf.* JA29 (Spencer opened fire from an apartment window above the school in a sniper-style attack); JA70 (Spencer targeted Lowy’s car with a scope and riddled it with bullets).

Petitioners’ deceptive marketing—including the promotion of illegal activity—increased the level of violence of the Burke shooting by persuading Spencer to execute the attack with Petitioners’ weapons and

accessories, which Petitioners promoted for civilian use in inflicting mass violence and which made it possible for Spencer to fire more than 200 shots at children and their caregivers. JA29, 81.

Karen Lowy and N.T. On the afternoon of the shooting, Lowy was waiting in her car in the school pick-up line for her daughter, N.T. JA29. Without warning, Spencer opened fire from his apartment window on children leaving school and the parents waiting for them, firing at least 239 rounds before dying by suicide. *Id.* Several AR-15 rounds shredded through Lowy's car. *Id.*

N.T. heard gunshots from inside the school. *Id.* Her teacher yelled at the students to flee to safety. *Id.* N.T. remained barricaded inside the school until late evening, when she was transported to a reunification center where she waited, hoping her mom would arrive on a bus that had transported adult survivors of the shooting. *Id.*

Lowy was not on the bus. *Id.* Secret Service agents responding to the shooting found her lying in the street critically injured. JA82. Her heart stopped as she was rushed to a local trauma center. *Id.* She was resuscitated twice. *Id.* Emergency room physicians cut Lowy's chest open in the trauma bay—performing an emergency thoracotomy due to her cardiac arrest from the gunshots. *Id.* Lowy was then raced to the operating room to control her hemorrhaging. *Id.*

In the weeks and months following her initial hospitalization, Lowy attended countless doctors' appointments and physical and occupational therapy sessions. JA83. To this day, Lowy continues to require

ongoing medical care as a consequence of the shooting. *Id.* She has been diagnosed with an anoxic brain injury, post-traumatic stress disorder, and major depression. *Id.* Like her mother, N.T. has suffered severe emotional distress as a result of the shooting. JA84. N.T. struggled to return to the classroom and ultimately switched schools because it was too difficult to relive the shooting every day. *Id.*

Antonio Harris. As he had done for years since retiring from his 26-year career as a D.C. police officer, Harris arrived at the school around 3 p.m. on April 22 for his shift as a security guard. JA117. Within minutes, Spencer opened fire from above. *Id.* Harris quickly yelled for students to get back in the building. *Id.* As he tried to take cover, he was shot in the abdomen. *Id.* Eventually, as the shooting subsided, he was rushed to a local hospital where he underwent a series of emergency procedures to stem his bleeding and save his life. *Id.*

Harris's survival is nothing short of a miracle. He sustained immense blood loss, his jaw was shattered when he fell to the ground, and he lost his right kidney and a large portion of his liver. JA166. He spent a week in a medically induced coma and nearly two months in the hospital receiving intensive treatment. JA166-67. Only with heroic effort and determination did he re-learn how to walk, write, and eat. JA167. To this day, Harris continues to suffer effects of the shooting on a daily basis and to require medical care. *Id.*

II. Procedural History

Respondents filed suit against Petitioners alleging that their deceptive marketing constituted negligence

and violated Virginia’s False Advertising Statute and Consumer Protection Act, and that certain Petitioners had committed negligence per se by violating the National Firearms Act and Virginia Uniform Machine Gun Act. App-2-3. Petitioners moved to dismiss the complaints on various grounds. App-19-20.

The district court scheduled argument on Petitioners’ motions to dismiss but cancelled it two days before the scheduled date and later dismissed all of Respondents’ claims. App-20. The court held that Respondents failed to allege sufficient facts to establish that their injuries were “fairly traceable” to Petitioners’ marketing practices, as necessary for Article III standing. App-80-84. The court also held that the Protection of Lawful Commerce in Arms Act of 2005 (“PLCAA”), 15 U.S.C. § 7901 *et seq.*, posed an absolute bar because Respondents had not established that Petitioners’ wrongful conduct proximately caused their injuries. App-84-90.

On appeal, the Fourth Circuit reversed the district court’s standing determination. App-2-49. The court of appeals explained that at the pleading stage, “where a causal relation between injury and challenged action depends upon the decisions of an independent third party,” App-30 (quoting *California v. Texas*, 593 U.S. 659, 675 (2021)), Article III traceability is satisfied if the plaintiffs allege “that the defendants’ actions had a ‘predictable effect ... on the decisions of third parties,’” *id.* (quoting *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019)), or that “the ‘injury [was] produced by determinative or coercive effect’” of the defendants’ conduct on the actions of third parties, *id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 169 (1997)).

The Fourth Circuit first held that the district court erred in applying only the *Bennett* “determinative or coercive effect” test, without considering the *Department of Commerce* “predictable effect” test. App-29-31. But, the court of appeals further held, even “if *Bennett* announced an exclusive test for cases such as this,” Respondents’ allegations sufficed to establish traceability at the pleading stage. App-31-32.

The court explained that Respondents’ complaints included “detailed and thorough factual allegations” that Petitioners “deliberately designed their advertisements to appeal to impulsive, risk-seeking young men”; that Petitioners’ advertisements “promote the use of military-style weapons (i.e., AR-15s) to civilians who have no lawful reason to use them as advertised”; and that Petitioners “knew or should have known that marketing their products in such a manner would have an impact on the Shooter’s decision to amass and use [Petitioners’] weapons and accessories to heinously injure” Respondents. App-32-33. The complaints further alleged, upon information and belief, that in researching and planning his massacre, Spencer was exposed to and influenced by Petitioners’ marketing, App-19, 36, an allegation supported by other allegations about Spencer’s online activity and the way Spencer “closely mirrored the imagery included in the defendants’ advertisements” when he executed the attack, App-36.

Taken together, the court of appeals held, these allegations sufficed to establish at the pleading stage that Spencer’s decision to use Petitioners’ assault weapons and accessories to execute a sniper-style civilian attack was a predictable effect of Petitioners’

marketing and that Petitioners’ marketing had a “determinative or coercive effect” on Spencer’s actions. App-32-36.

The court of appeals identified two additional errors in the district court’s reasoning. First, the district court misunderstood the “determinative or coercive effect” standard, which does not require that the complaints “specifically allege that the ‘defendants’ advertising coerced [Spencer] to attack the ... school,” App-36 (quoting App-84), but rather “is satisfied when the defendant publishes information which leads a third party to conclude that it should proceed in a manner that injures a plaintiff,” App-35 (citing *Lansdowne on the Potomac Homeowners Ass’n, Inc. v. OpenBand at Lansdowne, LLC*, 713 F.3d 187, 197 (4th Cir. 2013)).

Second, the district court improperly rejected Respondents’ allegations predicated on “information and belief.” App-37. The court of appeals explained that, consistent with Federal Rule of Civil Procedure 11(b)(3), “[o]ur sister circuits have consistently agreed that factual allegations that are pleaded on ‘information and belief’ are not to be rejected under [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),] where ‘the facts are peculiarly within the possession and control of the defendant, *or* where the belief is based on factual information that makes the inference of culpability plausible.” App-38 n.12 (quoting *Arista Recs. LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)). This is because, in some contexts, “robust evidentiary support ... may not be available to [the plaintiffs] before discovery.” *Id.* (quoting *Ahern Rentals, Inc. v. EquipmentShare.com, Inc.*, 59 F.4th 948, 954 (8th Cir. 2023)).

Here, “information supporting [Respondents’] claims may well be in [Petitioners’] possession, given that [Petitioners] control and/or have access to their own social media, online platforms, and mailing lists.” App-37 (quoting Appellants’ Br. 33). And, the court of appeals further observed, the complaints contain numerous non-speculative factual allegations about Spencer’s online activity and about the similarities between his execution of the attack and Petitioners’ advertisements, which sufficed to support the allegations pleaded by Respondents upon information and belief. App-40-41.

With respect to the district court’s alternate holding that the PLCAA bars Respondents’ claims, the Fourth Circuit held that the district court erred in adjudicating Petitioners’ PLCAA defense after it had already ruled that it lacked Article III jurisdiction over the suit. App-43-47. The court of appeals thus vacated that portion of the district court’s decision and remanded for further proceedings. App-48-49.

Judge Quattlebaum dissented from the panel’s decision, explaining that in his view the district court was correct in both its standing analysis and in alternatively dismissing Respondents’ complaints on PLCAA grounds. App-50-77.

On remand, Petitioners renewed their motions to dismiss under the PLCAA. Those motions are now fully briefed and awaiting the district court’s decision. Meanwhile, Respondents filed a consolidated amended complaint that includes additional details about Spencer’s social media activity, including similarities between Petitioners’ advertisement imagery and the video footage Spencer livestreamed from his apartment during the attack, Doc. 289 at 52-54, and

evidence that Spencer made dozens of online and in-person purchases in the months before the attack, including directly from Petitioners FOSTECH and Torkmag, *id.* at 6. The amended complaint also alleges that Spencer’s laptop computer was recovered by law enforcement and is currently in the custody of the Federal Bureau of Investigation. *Id.* at 54.

REASONS FOR DENYING THE PETITION

I. The Question Presented by the Petition is Not Presented by This Case.

The petition asks this Court to grant review to determine “[w]hether plaintiffs can satisfy the traceability requirement of Article III by alleging that the criminal acts of a third party are traceable to social media posts and other speech that they do not allege the third party ever saw.” Pet. i. But Respondents’ complaints do allege that Spencer saw Petitioners’ social media and other speech: “Upon information and belief, the Shooter was exposed to and influenced by Defendants’ deceptive and unfair marketing acts and practices while researching and planning the Shooting.” JA81, 165. The petition’s central premise is thus false, which is reason alone to deny review.

Petitioners briefly acknowledge these allegations toward the end of their petition but dismiss them as “conclusory.” Pet. 23-24. By Petitioners’ account, Respondents had to identify, at the pleading stage, which specific websites Spencer visited and which specific advertisements he viewed. *Id.* at 24.

This information is unavailable to Respondents without discovery. *See* App-37 n.11 (“[the defendants] ignore[] the fact that the relevant information about

the Shooter’s interactions with the defendants is held by them and other third-parties, such as law enforcement—not by the plaintiffs”). Respondents accordingly followed the well-settled practice of generally alleging “upon information and belief” that Spencer was “exposed to and influenced by” Petitioners’ marketing practices when he researched and planned the attack—thereby alleging “a causal connection between the injury and the conduct complained of,” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)—and they supported that allegation with publicly available information sufficient to make it plausible:

- Spencer purchased many of his weapons and accessories online, exposing him to Petitioners’ advertisements in a variety of forums. JA81, 165.
- Spencer had an active online presence, as evident from his livestream of the shooting and taunting messages on social media as police searched for him, as well as his Wikipedia account identifying himself as “an AR-15 aficionado,” which he used to update the Burke School’s page immediately after the shooting. JA80, 164-65.
- Spencer’s execution of the attack mimicked Petitioners’ advertisements. *Compare* JA70-71 (Daniel Defense’s “Rooftop Ready” promotion of its “assassin’s setup” to shoot at cars on public streets from a building rooftop) *and* JA137 (a Fiocchi ad depicting a man using one of its rifles from a building balcony), *with* JA29 (Spencer opened fire from an apartment window

above the school in a sniper-style attack); *compare* JA156-57 (BCM’s promotion of its “120ish yard hole puncher” next to a car covered in bullet holes), *with* JA70 (Spencer targeted Lowy’s car with a scope and riddled it with bullets).

Petitioners cannot contest the propriety of pleading facts “on information and belief” given that it is laid out in the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 11(b)(3) (permitting the practice where “the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery”). Consistent with this Rule, the circuits have “consistently agreed that factual allegations that are pleaded on ‘information and belief’ are not to be rejected under *Twombly* where ‘the facts are peculiarly within the possession and control of the defendant, *or* where the belief is based on factual information that makes the inference of culpability plausible.” App-38 n.12 (quoting *Arista Recs. LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)).

The Fourth Circuit correctly concluded that Respondents’ “information and belief” allegations easily pass muster under either of these conditions. Petitioners do not deny that “information supporting [Respondents’] claims may well be in [Petitioners’] possession, given that [Petitioners] control and/or have access to their own social media, online platforms, and mailing lists.” App-37 (quoting Appellants’ Br. 33). And even if that were not so, the more specific allegations described above, which reflect what Respondents were able to glean from publicly available sources and through FOIA requests, suffice to render

it plausible that Petitioners’ marketing influenced Spencer’s decision to use their products to maximize the violence inflicted by the attack. Indeed, as Respondents allege, it is improbable that in 2022, a young man could have purchased online and assembled Petitioners’ products without having consumed any of the avalanche of suggestive social media and advertisements they published. JA81; *cf. Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 116 (2025) (in assessing causation, “commonsense inferences may be drawn”).

In short, Petitioners have no basis for contending, *see* Pet. 23-24, that Respondents’ claims must be dismissed unless they include specific details in their complaints about which advertisements Spencer saw where and when. That is precisely what discovery is for. *See* App-38 (“robust evidentiary support ... may not be available to [the plaintiffs] before discovery” (quoting *Ahern Rentals*, 59 F.4th at 954)). “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.” *Lujan*, 504 U.S. at 561 (quotation and brackets omitted).

Respondents’ complaints satisfy that standard. To hold otherwise “would render the plaintiff’s ability to obtain judicial review dependent on the happenstance of whether” evidence held by the defendants and third parties is accessible to the plaintiff without discovery. *Diamond Alt. Energy*, 606 U.S. at 121. “Such a rule would create incentives for gamesmanship and could make it difficult or impossible to establish standing in

cases where the standing analysis should be straightforward.” *Id.*

II. The Petition Misconstrues This Court’s Traceability Precedent.

The petition argues that the Fourth Circuit erred under this Court’s precedent when it held that Respondents could establish traceability at the pleading stage by alleging that Spencer’s decision to use Petitioners’ assault weapons and accessories to enhance the violence inflicted by the attack was a predictable effect of Petitioners’ marketing activities. Pet. 23-31. By Petitioners’ account, traceability can only be satisfied by establishing that the defendants’ alleged misconduct had a determinative or coercive effect on the third-party action that resulted in the plaintiff’s injury. *See* Pet. 27.

As an initial matter, Petitioners’ argument regarding the legal standard is not a basis for the Court’s review because it makes no difference to this case. The Fourth Circuit held that Respondents’ complaints also suffice under Petitioners’ preferred formulation of the legal test, *see* App-32-36, and correctly so: Respondents’ plausible allegations that Petitioners’ marketing influenced Spencer to use their products to execute the attack, *see supra* pp. 16-17, are adequate to establish that the marketing had a determinative effect on Spencer’s injurious actions. To require more would transform traceability into a proximate cause requirement, which this Court squarely rejected in *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997).

But Petitioners are also wrong in contending that the “determinative or coercive” traceability test is

exclusive. This Court has consistently recognized that traceability requires only “*de facto* causality,” *Dep’t of Com.*, 588 U.S. at 768, which is satisfied where the third-party action that injures the plaintiff is a predictable effect of the defendant’s misconduct.

In *Bennett*, this Court rejected the government’s argument that the petitioners lacked standing to challenge an opinion issued by the Fish and Wildlife Service because a different agency retained ultimate responsibility for the action that allegedly injured the petitioners. In observing that traceability does not require proximate causation, the Court explained that while “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.” 520 U.S. at 169 (emphasis in original; citation omitted). Noting that the petitioners’ burden was “relatively modest at [the pleading] stage,” the Court found it “not difficult to conclude” that their allegations sufficed to establish that the challenged opinion had a “powerful coercive effect on the action agency.” *Id.* at 169-71.

Nothing in *Bennett* suggests that the “determinative or coercive effect” standard is the *only* way to establish traceability in third-party conduct cases, nor has this Court so held in subsequent decisions. To the contrary, the Court has repeatedly recognized that traceability is also satisfied where the plaintiffs’ standing theory “relies ... on the predictable effect of [the defendants’ action] on the decisions of third parties.” *Dep’t of Com.*, 588 U.S. at 768 (quotation omitted); see, e.g., *Diamond Alt. Energy*, 606 U.S. at 112 (where traceability depends on third-

party reactions to the alleged misconduct, “a court must conclude that third parties will likely react ... in predictable ways that will likely cause ... the plaintiff’s injury” (quotation omitted)); *California v. Texas*, 593 U.S. 659, 675 (2021) (to establish traceability, “the plaintiff must show at the least that third parties will likely react in predictable ways” (quotation omitted)).

To be sure, “distant (even if predictable) ripple effects” requiring multiple steps may be too speculative to establish traceability, as in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 383 (2024).² But where, as here, the question is whether the third party’s injurious action is directly traceable to the defendants’ misconduct, the “*de facto* causality” required by Article III is satisfied where the injurious action is a predictable effect of the misconduct. *Dep’t of Com.*, 588 U.S. at 768.

Murthy v. Missouri, 603 U.S. 43 (2024), is instructive. This Court held that the plaintiffs failed to establish that the social media companies’ censorship of the plaintiffs’ posts was a “predictable effect” of alleged government misconduct because the

² See *All. for Hippocratic Med.* 602 U.S. at 386, 390-91 (explaining that the plaintiff’s traceability argument involved a “complicated causation theor[y]”: the FDA’s regulation of mifepristone would increase the number of women using the drug, increasing the number of women who would experience complications from it, increasing the number of women who would present with complications in the emergency room, increasing the likelihood that some of the physician-plaintiffs would have to treat them, diverting resources from other patients, exposing the physicians to liability for those other patients’ treatment and ultimately driving up the cost of malpractice insurance).

companies had already begun censoring similar conduct before the alleged government action took place. *Id.* at 60. The dissent agreed with the majority that “it was enough for [the plaintiffs] to show that one predictable effect of the officials’ action was that Facebook would modify its censorship policies in a way that affected” them, but disagreed with the majority that none of the plaintiffs’ allegations sufficed. *Id.* at 92 (Alito, J., dissenting). Neither the majority nor dissenting opinion suggested that, even if the censorship was a predictable effect of the alleged misconduct, the plaintiffs would also have to show that the misconduct was determinative or coercive.

In arguing that *Murthy* supports their position, Petitioners misunderstand the Court’s reasoning. *Murthy* did not, as Petitioners claim (Pet. 27-28), reverse the Fifth Circuit’s holding that traceability is satisfied where the plaintiff’s injury is “likely attributable at least in part” to a third party’s reaction to the defendant’s alleged misconduct. *Murthy*, 603 U.S. at 60 (quotation omitted). Rather, the “overly broad assertion” the Court rejected was the Fifth Circuit’s conclusion that the plaintiffs had made that showing, given that the social media companies’ censorship activities began well before the alleged government directives. *Id.* Although the dissent viewed the majority’s assessment of the evidence as imposing a “new and heightened” traceability standard, *id.* at 95 (Alito, J., dissenting), Petitioners do not and cannot point to any indication in the majority opinion that the “*de facto* causality”

the Court has recognized as establishing traceability, *Dep't of Com.*, 588 U.S. at 768, no longer suffices.

As to *Murthy's* assessment of the plaintiffs' evidence, the analog here would be if Respondents alleged traceability based on Petitioners' marketing activities post-dating Spencer's attack. Of course, they have done no such thing: As described above, *supra* pp. 7-9, the complaints allege that Spencer was "exposed to and influenced by" Petitioners' marketing *while* he was researching and planning the attack, and that this influence—i.e., prompting Spencer to use Petitioners' weapons and accessories to execute and enhance the violence inflicted during the attack—was a predictable effect of Petitioners' marketing activities.³ And Respondents support that allegation with details about Spencer's online activity and execution of the attack—details that, while limited at the pleading stage to information that is either publicly available or that Respondents obtained through FOIA requests, suffice to make the alleged causal connection plausible. *See supra* pp. 16-17.

Finally, Petitioners make much of the fact that the plaintiffs in *Department of Commerce* "put on proof" of the likely effect of the challenged citizenship

³ Petitioners suggest that Spencer could not have been influenced by their marketing if he was researching and planning the attack when he was exposed to it, *see* Pet. 28-29, but it is commonsense that marketing can influence a potential consumer's decision-making even if they already have an inchoate interest in undertaking an action. Respondents allege that Petitioners' marketing persuaded Spencer to use their weapons and accessories to increase the deadliness of his attack, resulting in Respondents' injuries, JA81, which comports with the causation timeline.

question on the responsiveness of noncitizens to the census. Pet. 29-30. Yes, those plaintiffs had put on proof—because the case came to this Court *after* a bench trial. *Dep’t of Com.*, 588 U.S. at 765. Notably, none of the Supreme Court cases relied upon by Petitioners involved dismissal based on failure to allege traceability at the pleading stage. *See Murthy*, 603 U.S. at 50 (addressing standing to obtain a preliminary injunction); *All. for Hippocratic Med.*, 602 U.S. at 377 (same); *California*, 593 U.S. at 668 (the district court made its standing determination “[a]fter taking evidence”); *Diamond Alt. Energy*, 606 U.S. at 120 n.5 (addressing standing based on “the totality of record evidence”).⁴

Petitioners find no support in this Court’s precedent for requiring the sort of detailed evidence of traceability they insist is necessary in a complaint. As explained above, *supra* p. 18, the Court has held the opposite: “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.”

⁴ This Court’s precedent also rebuts Petitioners’ assertion, Pet. 34, that a third-party effect is necessarily unpredictable or non-determinative if it only occurs a small percentage of the time. In *Department of Commerce*, the Court held that if “noncitizen households [we]re undercounted by as little as 2%,” standing would be satisfied so long as the plaintiff states suffered a concrete injury as a result. 588 U.S. at 767. Put differently, it made no difference to the Court’s Article III analysis if in 98 percent of cases, the citizenship question would not have the “predictable effect” of causing noncitizen households not to participate in the census; it was enough that it was predictable that a small subset of households would not participate.

Lujan, 504 U.S. at 561 (quotation omitted). Indeed, although Petitioners repeatedly criticize the Fourth Circuit for describing Respondents’ burden as “relatively modest,” Pet. 8, 26, that description comes verbatim from *Bennett*: “[I]t is not difficult to conclude that petitioners here have met their burden—which is relatively modest at this stage of the litigation—of alleging that their injury is ‘fairly traceable’ to [the defendant’s misconduct].” 520 U.S. at 170-71. So, too, here.

III. Petitioners’ Asserted Circuit Split is Illusory and Not Presented by the Decision Below.

Petitioners assert that the question they present—whether “the criminal acts of a third party are traceable to social media posts and other speech that [the plaintiffs] do not allege the third party ever saw,” Pet. i—is the subject of a circuit split that warrants the Court’s review. *See* Pet. 15-23. This claim fails four times over.

First, as explained above, *supra* pp. 15-17, Respondents have in fact alleged that Spencer saw and was influenced by Petitioners’ marketing activities in researching and planning his attack, so even if the question presented implicated a circuit split, it would not be implicated by this case.

Second, the circuit decisions cited by Petitioners likewise do not involve social media posts that “the third party [n]ever saw”—none of them even involves the traceability of third-party criminal conduct to the defendants’ marketing activities. Petitioners’ Fifth Circuit case, for example, is a challenge to the Treasury Department’s failure to promote fair

housing through a federal subsidy program, *see* Pet. 17 (citing *Inclusive Cmtys. Project, Inc. v. Dep’t of Treasury*, 946 F.3d 649 (5th Cir. 2019)), and their Eleventh Circuit case involves the traceability of a Panamanian money laundering prosecution to a pair of State Department opinion letters, *see* Pet. 18 (citing *Berrocal v. Att’y Gen.*, 136 F.4th 1043 (11th Cir. 2025)).

Petitioners argue that these cases nonetheless address their question presented because they show general disagreement among the courts of appeals over whether traceability in cases involving third-party conduct requires the plaintiff to allege that “the defendants’ alleged misconduct had a determinative or coercive effect on the third party’s injurious actions,” Pet. 15 (quotation omitted), or instead that the third party’s injurious action was “a predictable effect” of the defendants’ alleged misconduct, Pet. 13 (quotation omitted).

But this pivot just creates a third problem for Petitioners: As noted above, *supra* pp. 11-13, the Fourth Circuit found that Respondents’ allegations suffice to establish traceability under *both* tests. App-29-32. So even if Petitioners’ question presented were reframed to pose a general debate over the proper articulation of the traceability standard, the answer would not change the Fourth Circuit’s conclusion. Petitioners’ failure to assert an outcome-determinative split is yet another reason to deny the petition.

The fourth fatal problem is that Petitioners’ purported circuit split does not exist. Consistent with this Court’s precedent, the courts of appeals all recognize that plaintiffs satisfy the traceability

requirement in third-party conduct cases when they show either that the injurious action was a predictable effect of the defendants' alleged misconduct *or* that the misconduct was determinative or coercive. Petitioners purport to identify three circuits—the Fifth, Sixth, and Eleventh—that reject the “predictable effect” test. None do so.

Fifth Circuit. In the primary Fifth Circuit case relied upon by Petitioners, *Inclusive Communities Project v. Department of Treasury*, the plaintiff, a “fair housing focused nonprofit organization with families seeking access to housing,” sued the Treasury Department for allegedly failing to regulate the federal Low-Income Housing Tax Credit (“LIHTC”) program in a way that promoted fair housing in low-income areas. 946 F.3d at 652-53. The plaintiff asserted that it was injured by this failure because it had to spend additional resources to find housing for its clients. *Id.* at 656. Relying on *Bennett*, the plaintiff argued that this injury was traceable to the federal government because it had statutory authority to coerce local housing authorities to more fairly allocate credits to specific affordable housing projects. *Id.* at 656-58.

In rejecting that argument, the Fifth Circuit described the “coercive or determinative” standard as one way to establish traceability: “Causation, for example, isn’t precluded where the defendant’s actions produce a ‘determinative or coercive effect upon the action of someone else,’ resulting in injury.” *Id.* at 655 (quoting *Bennett*, 520 U.S. at 169).

The court of appeals then explained why the plaintiff was wrong that *Bennett* supported its traceability argument. The court observed that

“[u]nlike this case,” which was at the summary judgment stage, “*Bennett* was reviewed on a motion to dismiss,” which meant that the Supreme Court was “obligated to accept” the petitioner’s “general factual allegations of injury.” *Id.* at 658 n.16. Here, the Fifth Circuit “face[d] no similar requirement.” *Id.* That meant that the court did not have to accept the plaintiff’s assertion that “Treasury ha[d] plenary authority over the LIHTC program,” including the regulatory power to recapture tax credits from investors who violated the Fair Housing Act. *Id.* at 656. Instead, the court found that state and local authorities determined the allocation of credits, and then the recipients of the credits decided how and where to use them. *Id.* at 657-58. And although the plaintiff offered a trickle-down theory of how Treasury regulations might eventually lead to more housing projects in the plaintiff’s preferred location, both links in the chain of causation were “entirely speculative.” *Id.* at 657-58.

As the plaintiff did not separately argue traceability based on predictable effect,⁵ the court’s decision does not separately address it, but an “entirely speculative” chain of causation is of course not predictable either. In any event, not a word in the

⁵ See Appellant’s Br. at 10, 47-55, *Inclusive Cmty. Project, Inc. v. Dep’t of Treasury*, No. 19-10377 (5th Cir. June 25, 2019).

decision suggests that the court intended to reject the possibility of traceability based on predictable effect.⁶

Putting to rest Petitioners' contrary characterization of *Inclusive Communities*, the Fifth Circuit has at least twice found traceability based on predictable effect, without considering whether that effect was also determinative or coercive. In *Texas Corn Producers v. EPA*, 141 F.4th 687 (5th Cir. 2025), the court of appeals held that the petitioners had standing to challenge the EPA's promulgation of a new equation for calculating vehicle fuel economy because "the predictable response" of automobile manufacturers to the new equation would be to increase the fuel efficiency of their vehicles, which in turn would predictably lead to less demand for gasoline, thereby injuring the petitioners' members whose businesses depend on gasoline sales. *Id.* at 696-700. The court recognized the possibility that automakers would respond to the new equation in ways that would not decrease gasoline demand, *id.* at 697-98, but nonetheless concluded that the chain of causation asserted by the petitioners was sufficiently predictable to establish the "*de facto* causality" required by Article III, *id.* at 700 (quoting *Dep't of*

⁶ The petition cites *Reule v. Jackson*, 114 F.4th 360 (5th Cir. 2024) as "holding similarly" to *Inclusive Communities*. Indeed, the plaintiffs in *Reule* likewise offered an entirely speculative (and therefore unpredictable) theory of causation, *see id.* at 367-68; and the court likewise said nothing suggesting that a non-speculative, predictable effect would be inadequate to establish traceability, *see id.* at 367 (describing "determinative or coercive effect" test as a way causation "can be satisfied").

Com., 588 U.S. at 768). The words “determinative” and “coercive” appear nowhere in the decision.

So, too, in *Texas v. United States*, 126 F.4th 392 (5th Cir. 2025), where the Fifth Circuit held that Texas had standing to challenge the Deferred Action for Childhood Arrivals (DACA) program because it was “predictable” that “absent DACA, some recipients would leave the United States,” thereby reducing the state’s costs. *Id.* at 412. Again, the court made no mention of the “determinative or coercive” standard; to the contrary, the panel relied on an earlier Fifth Circuit decision recognizing that many DACA recipients would remain in the state even in the absence of DACA, *see id.* (citing *Texas v. United States*, 50 F.4th 498, 518-20 (5th Cir. 2022)).

Sixth Circuit. Prior to this Court’s decision in *Murthy*, the Sixth Circuit addressed a factually similar challenge in *Changizi v. Department of Health and Human Services*, 82 F.4th 492 (2023). Like this Court, the court of appeals concluded that the plaintiffs failed to demonstrate traceability because the social media company at issue, Twitter, “created and enforced its first COVID-19 policy long before the Biden Administration made any public statements and, in fact, before there was a Biden Administration.” *Id.* at 497.⁷ The Sixth Circuit thus

⁷ The petition suggests that the Sixth Circuit observed that “the timing of Twitter’s actions’ was arguably consistent with ‘an inference’ that HHS had some influence with respect to Twitter’s decision to suspend or expel the plaintiffs.” Pet. 16 (quoting *Changizi*, 82 F.4th at 497). The quoted language, however, comes from the court’s description of the plaintiffs’ argument; in the next paragraph, the court rejects that contention, and in the
(*cont’d*)

found that the plaintiffs’ “timeline discrepancy” meant that the government’s alleged misconduct could not have had a determinative or coercive effect on the policy. *Id.* at 497-98.

In articulating the traceability requirement, the court of appeals used language suggesting that a plaintiff “must” show a coercive or determinative effect, *id.* at 497, but there is no indication in the opinion that the court gave any consideration to the predictable effect standard,⁸ let alone rejected it as Petitioners urge. Nor would it have made a difference to the outcome: As *Murthy* explains, the timing discrepancy meant that any censorship of the plaintiffs’ posts was also not a predictable effect of any government misconduct. *See* 603 U.S. at 60.

The Sixth Circuit, moreover, has relied on the predictable effect test to find standing in other decisions. In *Rieves v. Town of Smyrna*, 67 F.4th 856 (6th Cir. 2023), the Sixth Circuit articulated the predictable effect standard as sufficient to establish traceability: “[T]he plaintiff need not prove that the defendant was the sole cause of his injury as long as

paragraph after that, the court rejects the plaintiffs’ rebuttal that they should be able to obtain discovery to determine if there were “behind the scenes communications” that would “remedy their timeline discrepancy.” 82 F.4th at 497-98. The Sixth Circuit’s rationale for refusing discovery is inapplicable here because Respondents’ traceability allegations are temporally coherent and plausible based on publicly available information about Spencer and the attack.

⁸ The plaintiffs’ briefing argued that they established a coercive or determinative effect, and did not mention predictable effect. *See* Appellants’ Br. at 16-17, 19, 32-33, *Changizi v. U.S. Dep’t of Health & Hum. Servs.*, No. 22-3573 (6th Cir. Nov. 28, 2022).

the harm is a ‘predictable effect’ of the defendant’s actions on the decisions of third parties.” *Id.* at 862 (quoting *Dep’t of Com.*, 588 U.S. at 768). Consistent with that articulation, the court did not consider whether the alleged misconduct of the defendants had a determinative or coercive effect on the third party who directly inflicted the plaintiff’s injury. Rather, because the plaintiff’s injury “was a predictable outcome” of the assistance the defendants had provided to the third party that inflicted the injury, “the traceability requirement [wa]s satisfied.” *Id.*

Similarly, in *Christian Healthcare Center, Inc. v. Nessel*, 117 F.4th 826 (6th Cir. 2024), the Sixth Circuit held that the plaintiff organizations had standing to challenge a state public accommodations law that permitted citizens to file discrimination complaints because the plaintiffs alleged an intention to violate the discrimination law and it was predictable that someone would file a complaint in response, thereby initiating an investigatory process. *See id.* at 852-53. The court did not require the plaintiffs to show that the law coerced citizens to file complaints or otherwise had a determinative effect; the sole traceability question was whether the plaintiffs had “show[n] that the third party will likely act ‘in predictable ways.’” *Id.* at 852 (quoting *All. for Hippocratic Med.*, 602 U.S. at 383). *See also Rubicon Real Est. Holdings, LLC v. City of Pontiac*, 179 F.4th 431, 444 (6th Cir. 2026) (finding traceability where the plaintiff landlord’s tenants will “predictably react” to the defendant’s interference with their

business licenses by not paying rent, with no mention of coercive or determinative effect).

Eleventh Circuit. In *Berrocal v. Attorney General*, the plaintiff sought a declaratory judgment that the defendant federal officials had erred in communicating to Panamanian officials that prosecuting the plaintiff for certain crimes would not violate the Panama–United States bilateral extradition treaty. *See* 136 F.4th at 1046. The plaintiff argued that Panama’s decision to prosecute him was traceable to the defendants’ communication based on a blended test: The prosecution “was ‘predictable’ given the determinative or coercive effect” of the communication. *Id.* at 1050.

The court of appeals accordingly focused its analysis on whether, like the petitioners in *Bennett*, the plaintiff had shown that the defendants’ communication “ma[de] it difficult for [the prosecutors] to contravene [their] guidance.” *Id.* at 1051. The answer was no: The defendants had simply provided a non-binding legal opinion in response to a request by a separate sovereign. *Id.* The decision did not contemplate, let alone decide, whether predictable effect alone suffices for traceability. *See id.* at 1050 (articulating the traceability test as whether “the third party reacted in predictable ways when it caused him harm”) (alterations and quotation omitted); *id.* at 1051 (describing *Bennett* as simply holding that coercive or determinative conduct “could” demonstrate traceability).

Second and Ninth Circuits. As the petition acknowledges, the Second and Ninth Circuits have found traceability based on the predictable effect test, without considering determinative or coercive effect.

Pet. 19-21 (citing *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344 (2d Cir. 2023), and *Ctr. for Biological Diversity v. EPA*, 168 F.4th 1164 (9th Cir. 2026)).

The petition’s criticisms of those determinations are mostly directed at the application of that legal standard to the facts, rather than the standard itself. *See id.* As explained above, *supra* pp. 20-34, the predictable effect standard is well established in this Court and across the circuits, and this case is not a vehicle for resolving Petitioners’ quibbles with the fact-bound application of that standard in other cases.

IV. The Question Presented Does Not Warrant Review.

As is evident by now, the problems with the petition are legion: It asks the Court to decide a question not presented by this case, *supra* Part I; it rests on a misunderstanding of this Court’s precedent, *supra* Part II; and it asserts a circuit split that does not exist and would not have had any bearing on the outcome below even if it did, *supra* Part III. Making the petition’s vehicle problems even worse, the complaints underlying Petitioners’ argument have been superseded by a consolidated amended complaint with additional details supporting traceability, *see supra* pp. 14-15, so the dispute below over the adequacy of Respondents’ allegations is now outdated.

But even aside from those fatal flaws, the petition fails to identify any legal issue sufficiently important to merit this Court’s review. The petition ends with bold warnings of dire consequences that apparently are entirely hypothetical, given Petitioners’ failure to cite any data or real-world examples to support them.

See Pet. 31-34. This Court and the courts of appeals have applied the predictable effect test to find traceability for years, *see supra* pp. 20-25—surely if a “floodgate” had opened as a result, Pet. 34, Petitioners would have more to offer than conjecture. Indeed, Petitioners confirm that their asserted concerns are unwarranted when they acknowledge that the PLCAA provides gun manufacturers with robust immunity from tort liability for injuries inflicted by their products, with only limited predicate exceptions. *See* Pet. 2.

Petitioners’ conjecture is elucidating, though, with respect to the fundamental false premise of their petition: No one—not Respondents, or this Court, or the Fourth Circuit, or any of the other courts of appeals—has suggested that the predictable effect standard allows for traceability “just because [the defendants’] conduct may have had some indirect effect on some unrelated third party’s injurious acts.” Pet. 34. A predictable effect is always related to the third-party action because it is an *effect* of the defendants’ alleged misconduct—i.e., it requires “*de facto* causality” between the misconduct and the injurious action. *Dep’t of Com.*, 588 U.S. at 768. That the effect is “indirect” is the whole reason for the inquiry; as this Court has held time and time again, *see supra* pp. 20-21, traceability can be established for third-party inflicted injuries where the indirect effect of the defendant’s misconduct is predictable.

Petitioners cannot seriously dispute that if, as Respondents allege, Spencer saw Petitioners’ deceptive and unfair marketing and it influenced him to use their assault weapons and accessories to enhance the

violence inflicted during his attack, *see supra* pp. 7-9, then there is at least a *de facto* causal connection between their alleged misconduct and Spencer's use of their products to injure Respondents. That is all that Article III requires at the pleading stage. If discovery fails to substantiate Respondents' allegations, Petitioners can move for summary judgment then. Indeed, this Court's review would be premature even by Petitioners' own account, as Petitioners believe that Respondents' claims should and will be dismissed at the pleading stage under the PLCAA. *See* Pet. 2; *supra* p. 14. Their motions seeking such dismissal are now fully briefed and awaiting the district court's adjudication.

Review by this Court at this time and in this posture would be a waste of the Court's resources.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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