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 COMPANY; 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 Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF

ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
CAMILO GARCIA*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

* Supervised by principals of the firm who are members of the Virginia bar

Counsel for Petitioners

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REPLY BRIEF

The decision below greenlights an effort to hold more than a dozen members of the firearms industry liable for a shooting committed by a deeply disturbed individual, on the implausible theory that the shooter's actions were caused by dozens of marketing materials and social-media posts that the plaintiffs do not even allege he saw. That lawsuit never should have made it out of the gate under *any* test for Article III traceability. But it most certainly would not have survived in the Fifth, Sixth, or Eleventh Circuits, which all faithfully follow this Court's cases requiring a showing that the defendant's conduct had a determinative or coercive effect on whoever actually caused the plaintiff's injuries. The Fourth Circuit reached a contrary conclusion by positing that this Court "has disavowed" its precedent requiring that "the defendants' conduct had a 'determinative or coercive effect'" on the actions of the third party who actually injured the plaintiff. Pet.App.29-30. In doing so, the Fourth Circuit explicitly aligned itself with "the Second Circuit," which (along with the Ninth) likewise has held that "the 'determinative or coercive effect' standard 'overstates the showing that is required' for Article III standing." Pet.App.31 n.10 (quoting *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 352 (2d Cir. 2023)). The Fourth Circuit thus not only deepened a circuit split, but embraced a "predictable effects" test so toothless as to sanction virtually any effort to hold a defendant liable for injuries inflicted by someone else. That makes this case a prime candidate not only for certiorari, but for the strong medicine of summary reversal.

With little to say in defense of the Fourth Circuit's decision, respondents quibble about how to read their allegations and implore this Court to stay its hand because petitioners might still prevail on other grounds. That plea for patience rings hollow. Until this Court clarifies the appropriate traceability standard, courts in at least three circuits will continue to adjudicate cases over which they have no jurisdiction, and members of industries disfavored in certain parts of the country will be forced to continue defending themselves against efforts to hold them liable for injuries they did not inflict. None of that is consistent with Article III or this Court's precedents. The Court should grant certiorari.

I. The Decision Below Conflicts With Decisions From Other Courts Of Appeals.

Respondents come up far short in trying to deny the circuit split over the proper standard for Article III traceability in cases where third parties are directly responsible for the plaintiff's injuries. The Fifth, Sixth, and Eleventh Circuits hold that plaintiffs lack standing to sue a defendant that did not directly injure them unless the defendant's conduct had a determinative or coercive effect on the third party that did, as "an injury that results from [a] third party's voluntary and independent actions does not establish traceability." *Changizi v. HHS*, 82 F.4th 492, 497 (6th Cir. 2023); *accord Inclusive Cmtys. Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019); *Berrocal v. Att'y Gen.*, 136 F.4th 1043, 1051 (11th Cir. 2025); Pet.15-19. The Second, Fourth, and Ninth Circuits, by contrast, have squarely rejected the determinative-or-coercive effects test. *See* Pet.19-22.

Respondents try to distinguish the Fifth, Sixth, and Eleventh Circuits' decisions on the ground that they "do not involve social media posts" or "the traceability of third-party criminal conduct to the defendants' marketing activities." BIO.25. But the contours of Article III do not vary depending on the nature of the defendant's challenged conduct. Proving the point, respondents nowhere deny that their suit would fail for lack of standing in each of those circuits. Nor could they, as the notion that dozens of different ads from more than a dozen different manufacturers somehow all coerced Raymond Spencer to open fire on a school full of innocent children beggars belief.

Respondents posit that the cases on the right side of the split did not "g[i]ve any consideration to the predictable effect standard" because the plaintiffs did not argue that they satisfied it. BIO.28-33. But the obvious reason why the plaintiffs did not try to rely on a *lower* pleading standard is because the Fifth, Sixth, and Eleventh Circuits do not share the Fourth Circuit's lax view of the traceability standard.

Respondents are thus left insisting that although the circuits *think* they are split, they are really just saying the same thing in (wildly) different ways. But their efforts to bridge the gap between the two sides of the split do not withstand scrutiny. For instance, respondents claim that the Eleventh Circuit applied "a blended test" in *Berrocal*, holding that the Panamanian prosecution "'was 'predictable' given the determinative or coercive effect' of the [defendants' challenged] communication." BIO.33 (quoting 136 F.4th at 1050). But the sentence they selectively quote said that the plaintiff "*argue*[*d*] that he established

traceability because Panama's prosecution of him was 'predictable' given the determinative or coercive effect of Heinemann's letter." 136 F.4th at 1050 (emphasis added). The court rejected that argument—not because it rejected the premise that the prosecution was predictable, but because the federal defendants did nothing "to coerce the Panamanian officials or predetermine their conduct." *Id.* at 1051.

Respondents' efforts to muddy the waters in the Fifth and Sixth Circuits are no more availing. *Rieves v. Town of Smyrna*, 67 F.4th 856 (6th Cir. 2023), held that a shop owner could sue the county officials that he claimed "assigned roles for the operation" that culminated in law enforcement unconstitutionally seizing his lawful products. *Id.* at 861-62. The only disputed standing issues on appeal were whether it mattered that the county officials "dispute[d] their [alleged] role" (no; that "is relevant to the merits") or that they were not alleged to be "the sole cause of his injury" (again no). *Id.* at 862. While the court quoted *Department of Commerce*'s "predictable effect[s]" language, *id.*, it played no role in the court's analysis—likely because no articulation of the standard could defeat standing. As for *Christian Healthcare Centers, Inc. v. Nessel*, 117 F.4th 826 (6th Cir. 2024), the only third-party "reaction" at issue there was the filing of an administrative complaint—a lawful act that the statute itself invited—by persons directly affected by the plaintiffs' own announced conduct. *Id.* at 852-53. That bears no resemblance to respondents' theory that various manufacturers' advertisements caused a stranger to commit a premeditated atrocity.

The story is the same with the Fifth Circuit cases respondents invoke. In *Texas Corn Producers v. EPA*, 141 F.4th 687 (5th Cir. 2025), "the *core purpose* of the" challenged regulations was "to reduce gasoline fuel consumption," and "reducing fuel demand" would ineluctably cause the plaintiffs pocketbook injury "because their businesses depend on gasoline sales." *Id.* at 696-98. The court thus had no trouble finding a "tight link" between the challenged regulations and the all-but-compelled reactions of third parties. *Id.* at 700. *Texas v. United States* (*Texas III*), 126 F.4th 392 (5th Cir. 2025), is similar. A prior panel had held that Texas had standing to challenge DACA because "DACA recipients impose over $750 million in annual costs on the state, those costs are traceable to and exacerbated by [it], and a favorable judgment against DACA would at least partially alleviate Texas's harm." *Id.* at 406. The *Texas III* panel declined to disturb that holding for many reasons, including because Texas "put[] forward sufficient, unrebutted evidence to support the 'common-sense assertion' that, absent DACA, some recipients would leave the United States," which "'would reduce [Texas's] costs.'" *Id.* at 412. Once again, it was not merely predictable, but certain, that remedying the challenged action (DACA) would alleviate the plaintiff's injuries (expenditures on DACA recipients).

As a last-ditch effort, respondents contend that the circuit split is not implicated here because the Fourth Circuit said in dictum that it found the determinative-or-coercive-effect test satisfied too. BIO.19, 26. But respondents cannot bring themselves to argue that disparate ads by more than a dozen different companies somehow collectively "coerc[ed]

the shooter into committing the atrocities" he committed. Pet.App.60-61 (Quattlebaum, J., dissenting); *see* BIO.8-9, 23 n.3 (suggesting only that challenged speech may have "increased the level of violence"). Nor could they make that argument when their complaints do not contain any allegations that the shooter ever saw the marketing materials and social-media posts they challenge. CA4.JA.81; *see* BIO.23 n.3. If anything, then, the fact that the Fourth Circuit claimed *both* standards were satisfied underscores the need for this Court to step in and clarify what Article III really requires.

II. The Decision Below Is Egregiously Wrong.

On the merits, respondents try to rewrite their complaints and this Court's precedents. Their efforts on both fronts are unavailing. Starting with the former, respondents insist that they did in fact "allege that Spencer saw Petitioners' social media and other speech." BIO.15. But despite repeating that claim again and again, respondents do not identify even one allegation that Spencer actually saw a single thing petitioners said, much less that he saw all of the dozens of social-media posts and marketing materials they challenge. That is because no such allegation exists. Their complaints, including their joint amended complaint, allege only that Spencer at some undefined point was "exposed to and influenced by" not just (or even specifically) *petitioners'* "marketing acts and practices," but those of the "gun industry at large." Lowy Dkt.1 ¶123; Harris Dkt.1 ¶121; Lowy Dkt.289 ¶¶14, 126.

What respondents really seem to be saying, then, is that although they did not *actually* allege that

Spencer saw any of the challenged speech, the allegations they did make support the inference that he saw all of it. They do not. Respondents note, for instance, their allegation that Spencer "purchased many of his weapons and accessories online," which they claim must have "expos[ed] him to Petitioners' advertisements in a variety of forums." BIO.8. But the bare fact that Spencer bought products online does not begin to support the inference that he was exposed to every single ad available anywhere online for every single one of those products. That is doubly true given that none of the complaints alleges that the challenged speech was even available on the sites where Spencer made his purchases, which were primarily if not exclusively sites of third-party vendors. All the speech instead comes from social-media services. Yet the complaints do not even allege that Spencer had accounts on all of those services. *See* Pet.23-24.

Respondents also suggest that Spencer must have seen all the speech they challenge because his "attack closely mimicked Petitioners' advertisements." BIO.8. But respondents have only made that allegation as to a handful of the dozens of ads and posts they challenge (which is understandable, since most are just prosaic promotions of core Second Amendment activity). And even as to the few that they do claim somehow resemble Spencer's actions, any suggestion that someone who opened fire on schoolchildren must have been inspired by an ad that showed someone holding a rifle on a balcony or "a car covered in bullet holes," BIO.17, falls far short of the plausible line.

Respondents try to shift the blame for their pleading failures, intimating that the information

their complaints lack "is likely in Petitioners' possession and inaccessible to Respondents without discovery." BIO.2, 17. But respondents had no trouble obtaining details about Spencer's "active online presence" on Wikipedia. BIO.16. And, like the Fourth Circuit, they never explain why petitioners would have any more information than they do about Spencer's use of social-media services. After all, information as basic as whether an individual has a social-media account is generally public—and certainly not in the hands only of parties who manufacture firearms and firearm components. Any information about the websites of third-party vendors likewise resides with those entities, not with petitioners. To the extent respondents declined to seek that information before filing their blunderbuss suits, that is hardly a reason to "unlock the doors of discovery" against petitioners. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

In all events, respondents' inability to allege that Spencer actually saw the speech they claim drove him to try to commit mass murder is just the beginning of their problems. Their standing argument suffers from the equally fundamental problem that they cannot even plausibly allege that Spencer's shocking conduct was a "predictable effect" of the speech they challenge when none of the thousands of other individuals who saw it reacted the way he did. Like the Fourth Circuit, respondents instead cling to the notion that that their burden to establish standing is a "modest" one. Pet.App.29; BIO.20. But that conflates the procedural posture in which the issue arises with the substantive standards for Article III standing. It is certainly true that a plaintiff's burden at the pleading stage is

"relatively modest" compared to her burden later on, *Bennett v. Spear*, 520 U.S. 154, 171 (1997), because a court at that stage must presume that non-conclusory allegations are true, *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). But the substantive standard for standing remains the same at every stage.

So, while plaintiffs need not *prove* at the pleading stage that the challenged conduct caused their injury, they must at least plausibly allege that it did. When (as here) a third party not before the court is the one that actually injured them, that means plausibly alleging that the defendant's conduct had a "determinative or coercive effect" on that third party. *Bennett*, 520 U.S. at 169; *see also Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (noting that the Court has "been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment"); *Lujan*, 504 U.S. at 562. *Contra* BIO.20. At the very least, it requires plausibly alleging a "predictable effect." Yet respondents have not plausibly alleged that any—let alone all—of petitioners' speech had any effect on Spencer at all.

Neither *Murthy* nor *Department of Commerce v. New York*, 588 U.S. 752 (2019), supports respondents' contrary argument. Even accepting their (mis)reading of *Murthy*, *but see* Pet.27-28, the complaints here suffer from the exact problem they identify as dooming standing there: Spencer's plans to commit horrific crimes were hatched "well before" any theoretical exposure to petitioners' speech. BIO.22. Respondents admit that Spencer already had "an inchoate interest" before he even had the possibility of being influenced by the challenged

speech. BIO.23 n.3. And their vague assertion that petitioners' speech somehow "persuaded Spencer to use [his] weapons and accessories to increase the deadliness of his attack," *id.*, not only stacks speculation upon speculation, but ignores *Murthy*'s teaching that "plaintiffs must demonstrate standing for each claim that they press *against each defendant*." 603 U.S. at 61 (emphasis added). Which of the many petitioners' many advertisements had that effect? And how? And how much owes to the marketing of the "other entities" in the industry that respondents also try to blame? *See* Lowy Dkt. 126 ¶14. Respondents have no answers, and neither did the Fourth Circuit. That is because they asked the wrong question.

Department of Commerce is no more helpful. Again, even assuming Spencer actually saw any of petitioners' speech, in no world is it predictable that seeing ads depicting military uses of firearms will drive someone to open fire on innocent schoolchildren. Nothing in the complaints begins to plausibly establish such a counterintuitive chain, which is itself notable given the long history of firearm manufacturers advertising their lawful products by touting military imprimatur. *See* NRA.Amicus.Br.5, 13-18. If such commonplace advertisements truly "unmistakably encourage[d] young men … to use their products in urban combat and illegal activity," BIO.6, then one would expect millions of individuals to act as the shooter here did. That 99.99% of firearm owners do not confirms the obvious: It is not remotely predictable that such innocuous advertising for products that everyone knows have long been used by civilians and military alike will lead "civilians … to reenact military-style offenses." *Contra* BIO.5-6.

Only by applying an exceedingly lax traceability standard could the Fourth Circuit embrace its incredulous conclusion to the contrary.

III. This Case Is An Excellent Vehicle For Deciding This Exceptionally Important Question.

The decision below distorts "perhaps the most important" Article III bulwark against judicial overreach. *Allen v. Wright*, 468 U.S. 737, 750 (1984). In so doing, the Fourth Circuit invites federal courts to become "forums for the ventilation of public grievances." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982). That is reason enough to grant certiorari, but the dangers of the decision below do not end there. *See* States.Amicus.Br.21; NSSF.Amicus.Br.10-12. Indeed, respondents' filing identifies the next potential target of their false-advertising theory: producers of videogames like Call of Duty. BIO.6. And there is no reason to think it will stop there. When respondents are openly supplying a blueprint for other plaintiffs to exploit a departure from the Constitution's requirements and this Court's cases enforcing them, it is time for the Court to step in.

Respondents assert that review now would be premature because they recently filed an amended complaint. BIO.34. But they fail to identify a single allegation in their amended complaint that they think would alter the analysis—because there is none. Respondents also contend that this Court should deny review because petitioners may prevail on the merits under the Protection of Lawful Commerce in Arms

Act. BIO.36. But respondents certainly do not throw in the towel on that issue. And they conveniently ignore the fact that the Fourth Circuit gratuitously vacated petitioners' alternative victory on PLCAA grounds before remanding to a different district court judge. At any rate, it is hardly unusual that a defendant in a standing case may still prevail on other grounds. That is thus no excuse to let lower courts evade the confines of their Article III jurisdiction—especially via a decision that is indefensible even under the legal standard it purported to apply.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
CAMILO GARCIA*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

* Supervised by principals of the firm who are members of the Virginia bar

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