No. 25-949

In the Supreme Court of the United States

JOHN DOE 1 AND JOHN DOE 2,
Petitioners,

v.

X CORP., FKA TWITTER, INC.,
Respondent.

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY

Twitter opposes certiorari—no surprise. But opposing certiorari by eliding the knowing and deliberate criminal wrongdoing that sets this case apart—that comes as quite a surprise.

Twitter had actual knowledge it possessed child pornography. And Twitter made the deliberate decision to distribute it and profit from it anyway. These are crimes for which Congress expressly allows Petitioners—the victims of those crimes—to seek civil remedies. After Twitter knowingly distributed criminal content showing their coerced sex acts, John Doe 1 repeatedly alerted Twitter. App.184a-91a. His mother repeatedly alerted Twitter. *Id.* Their complaints were not lost in a sea of other complaints. Twitter specifically responded. *Id.* Twitter asked for John Doe 1's ID, which confirmed he was a minor, "reviewed the content," and then made the deliberate and shocking decision that "no action will be taken at this time." *Id.* The criminal content proliferated. App.191a-92a. It took a Department of Homeland Security official to convince Twitter to change course. App.192a.

Twitter never contests those knowing criminal acts. Instead, Twitter restates the questions presented, reframing this petition as just another petition about "not removing more quickly allegedly unlawful third-party conduct." BIO.i. Twitter reduces the petition to a dispute about how "swiftly" it acted. BIO.25. Twitter even claims the petition is a poor vehicle because its criminal wrongdoing did no harm. BIO.31-32.

Try as it might to paint this petition as one about some unknowing publisher, Twitter acted knowingly and deliberately. Those criminal acts led John Doe 1 to consider ending his life. App.183a. Those criminal acts prompted a DHS official to intercede. App.192a; *see also* NCMEC Amicus Br.10 n.3. Petitioners are still suffering from them. The National Center for Missing and Exploited Children continues to receive complaints about the criminal content exploiting Petitioners. NCMEC Amicus Br.10. NCMEC "has received over 60 reports from law enforcement and over 900 CyberTipline reports." *Id.* The latest report came just last month. *Id.* NCMEC believes that criminal and exploitive content came from Twitter. *Id.* at 10-11.

This petition is the straightforward vehicle to address the outermost limit of §230 immunity. This case is not about what steps some internet company should take to monitor content that it is unwittingly hosting. It is about the company's own knowing and deliberate acts. Do federal laws prohibit Twitter from knowingly possessing, distributing, and profiting from child pornography—like everyone else? Or does §230 put Twitter above the law?

Twitter offers no good reason to deny review. Twitter's siren song about a "consensus interpretation" or its speculation that Congress silently ratified a get-out-of-jail-free card for Twitter are arguments Twitter can present when the case is heard on the merits. *See* BIO.24. This Court is not bound by any supposed "consensus" that the deliberate distribution of child pornography can be likened to some fledgling internet company that unknowingly publishes

defamatory statements. *Compare* App.20a (acknowledging Twitter's "actual knowledge" that it was possessing and distributing child pornography), *with Zeran v. America Online, Inc.,* 129 F.3d 327, 331-34 (4th Cir. 1997). As members of this Court have observed, questions of §230's meaning have percolated in the lower courts long enough. Pet.14-17. It is now time for this Court to consider §230's text and history. *Id.* This case is the right opportunity to do so.

Nothing about this case makes it a "poor vehicle." *Contra* BIO.30. The case is not interlocutory in the way Twitter suggests. The time to review whether §230 precludes the federal claims is now. Without those federal claims in Petitioners' federal case, the remaining state-law claims will be dismissed. Pet.36-37; *see infra* at 11.

Nor is there anything "down-the-middle" (*contra* BIO.15) about the Ninth Circuit's view that §230 precludes the federal claims but not some state-law claims. The stated rationale for giving second-class status to the federal claims only further confirms that this Court's review is necessary and warranted. *See* Pet.18-20. The Ninth Circuit blinded itself to Twitter's actual knowledge for the federal claims but then relied on that "actual knowledge" for the state-law claims. App.20a. That led the court to conclude the knowing failure to report child pornography was not immune but the deliberate and profitable distribution of that criminal content was. *See* Pet.18-20. By that logic, Twitter need only report child pornography on its site while continuing to distribute it—knowingly—to hundreds of millions of users. *Id.*

Twitter says there is nothing "remarkable" about that decision. BIO.24. Reading federal law as an open invitation for social-media companies to knowingly possess, profit from, and distribute child pornography is more than remarkable. It is "egregious." *Contra* BIO.32. The immunity divined by the decision below—the supposed "consensus" that Twitter presumes Congress and this Court have blessed—is foreign to the common law. Pet.21-25. It has no basis in §230's text. Pet.12-15. It is begging for this Court's review.

I. The Ninth Circuit does not get the last word on an indisputably important question of federal law.

A. Twitter does not dispute that the petition presents an important question of federal law. Today, internet companies play an outsized role in the lives of Americans. Pet.16. And yet, because of what Twitter calls "consensus" in the lower courts, BIO.2, §230 has become a "get-out-of-jail-free card" for companies like Twitter. *Doe v. Snap, Inc.*, 144 S. Ct. 2493, 2494 (2024) (Thomas, J., joined by Gorsuch, J., dissenting from the denial of cert.). Whether Twitter can refuse to answer for knowingly possessing, profiting from, and distributing child pornography is undoubtedly "an important question of federal law that has not been, but should be, settled by this Court." S. Ct. Rule 10(c). Members of this Court have already joined the growing chorus calling on the Court to clarify the reach of §230 and whether its immunity for "Good Samaritan" acts extends to wrongdoing by the internet company itself. *See* Pet.15.

B. What Twitter disputes is the correctness of the decision below. Twitter insists the Ninth Circuit should have the last word, even if it means putting §230 at war with Congress's prohibitions on child pornography and profiting from coerced sex acts between minors. *But see Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018). There is a supposed "consensus," Twitter says. BIO.17-20. Congress has silently ratified that consensus, Twitter speculates. BIO.22-24. And it would be "destabilizing," Twitter insists, for this Court to disagree. BIO.1.

Twitter can argue that this Court should adopt that supposed "consensus" view when the case is heard on the merits. But there is no textual or historical basis for Twitter's premature presumption, offered as a basis for denying certiorari, that this Court would interpret §230 as Twitter does. *See* Pet.18-34. Indeed, Twitter presumes every "court in the country" would side with Twitter and conclude §230 immunizes its deliberate distribution of child pornography. BIO.3 (faulting Petitioners, erroneously, for "not suggest[ing] that any court in the country would have decided those claims differently").

Surely this Court counts as a "court." *Contra id.* And there is every reason to think this Court would approach Petitioners' case differently. *See* Pet.18-34. Members of this Court have already doubted the far-reaching immunity applied by lower courts. *See Snap*, 144 S. Ct. 2493 (Thomas, J., joined by Gorsuch, J.); *Doe v. Facebook, Inc.*, 142 S. Ct. 1087 (2022) (Thomas, J., respecting the denial of cert.); *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13

(2020) (Thomas, J., respecting the denial of cert.). This Court is not beholden to any lower court's decision. It is beholden to the statutory text. *See, e.g.*, *BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230, 244 (2021) ("This Court bears no 'warrant to ignore clear statutory language on the ground that other courts have done so.' Our duty is to follow the law as we find it, not to follow rotely whatever lower courts once might have said about it." (citation omitted)). And with that text and history as the Court's north star, Petitioners' federal claims undoubtedly make it past a motion to dismiss. *See* Pet.20-34.

Detailed in the petition, §230's text makes a modest departure from the common-law rule making publishers strictly liable for their *unknowing* acts. Pet.23. It does not abandon all common-law background rules. Pet.23-24. And it does not eschew the application of other laws to an internet company's own knowing and deliberate conduct, lest social-media companies be left to operate in a law-free zone. Pet.25-30. "Congress adopted Section 230 to codify the distinction between distributors and publishers, not to create a blanket shield for corporations that knowingly distribute child pornography." Sen. Josh Hawley Amicus Br.17.

None of Twitter's quibbling with those arguments addresses what sets this petition apart from the rest. This is not a case about "screening all [third-party] content" or "imperfect" content moderation or otherwise policing third-party content that Twitter unknowingly hosts. *Contra* BIO.21, 27. It is a case about Twitter's total failure to police itself. Twitter's *own*

knowing and deliberate acts, violating multiple Title 18 prohibitions, are the basis for Petitioners' federal claims.

On those facts, the Court need only decide this important threshold question: Does §230's "Good Samaritan" immunity displace the longstanding common-law rule that distributors—be it a bookseller or an internet platform—cannot knowingly and deliberately distribute criminal content? That question warrants this Court's review. *See* Pet.20-34.

1. As for any supposed "consensus" in the lower courts, Twitter overstates it. Twitter again sanitizes the petition as one "about whether to remove or retain third-party content." BIO.27.

No case in Twitter's cited authorities (at 1 n.2) rivals Twitter's actual knowledge of its own violations of the federal criminal code's prohibitions on the "sexual exploitation of children," 47 U.S.C. §230(e)(1). Few authorities involve criminal-level wrongdoing and lack similar allegations of actual knowledge. *See, e.g.*, *Doe v. Internet Brands, Inc.*, 824 F.3d 846 (9th Cir. 2016); *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019). Nearly all involve arguably unknowing acts, defamation, or other torts. *See, e.g.*, *Johnson v. Arden*, 614 F.3d 785 (8th Cir. 2010) (inaccurate statements about cat breeding); *Ben Ezra, Weinstein, & Co. v. Am. Online Inc.*, 206 F.3d 980 (10th Cir. 2000) (inaccurate statements about stock price and share volume). Remarkably, Twitter omits *G.G. v. Salesforce*, which cuts against any supposed "consensus" that there is an "immunity" for knowing acts. 76 F.4th 544, 566 (7th

Cir. 2023).

The drumbeat of Twitter's opposition is *Zeran*, involving only "defamatory messages" that remained on AOL after a user complained. 129 F.3d at 328. *But see Malwarebytes*, 141 S. Ct. at 15-16 (Thomas, J.) (criticizing *Zeran* for conflating publisher liability with distributor liability). That pales in comparison to Twitter's knowing and deliberate decision to possess, profit from, and distribute criminal child pornography, outlawed in Title 18 of the U.S. code, even after Twitter engaged with the victim, confirmed he was a minor, learned a police report had been filed, and "reviewed the content" for itself. App.184a-91a.

The version of §230 that Twitter advances is not a product of "consensus." It is a problem of groupthink. No text or history can explain that ever-expanding view of §230 immunity, where even Twitter's knowing and deliberate criminal-level wrongdoing is "perforce immune." App.10a. Section 230 immunizes an internet company's *unknowing* decision to host objectionable content. Pet.23-24. Nothing in §230 immunizes the deliberate conduct at issue here. Pet.20-34; *see Snap*, 144 S. Ct. at 2493-94 (Thomas, J.). The Ninth Circuit conflated the two—immunizing not only the unknowing publisher but also the knowing and deliberate wrongdoer. *See* App.29a. Twitter repeats that error, recasting this case as one about "screening." BIO.21. This is not a dispute about a "monitoring obligation." *Contra* App.10a. It is a challenge to Twitter's deliberate acts. *Supra* at 1-2.

2. Nor is there any basis for Twitter's speculation that Congress silently ratified that capacious version of §230 immunity for knowing and deliberate wrongdoing. This Court has rejected the idea that "congressional silence should be interpreted as acceptance" of judicial decisions. *Boys Markets, Inc. v. Retail Clerks Union, Loc. 770*, 398 U.S. 235, 241 (1970). Even more so here, where "the text and structure of the statute are to the contrary." *BP P.L.C.*, 593 U.S. at 244; *see Girouard v. United States*, 328 U.S. 61, 69 (1946) ("It is at best treacherous to find in Congressional silence alone the adoption of a controlling rule of law.").

The very reason for the Communications Decency Act was protecting children online. *See Reno v. ACLU*, 521 U.S. 844, 849 (1997). Section 230 itself says the statute should not "be construed to impair the enforcement" of the laws "relating to sexual exploitation of children" in "title 18." 47 U.S.C. §230(e)(1). Petitioners' federal claims allege violations of those very laws. Petitioners seek civil remedies expressly authorized by Congress as a means of enforcing those laws. *See* Pet.29-30. The statute "must be read against the backdrop of Congress's endorsement of [those] civil remedies as essential in the fight against child sexual exploitation." NCMEC Amicus Br.12.

Congress has said enough to reject the version of §230 embraced by the decision below, cloaking Twitter's deliberate wrongdoing with impunity. "Congress has never protected platforms that knowingly publish or distribute child pornography." Sen. Josh Hawley Amicus Br.7. It is time for the Court to interpret §230 "according to its terms." *Jimenez v. Quarterman*, 555

U.S. 113, 118 (2009). "Millions of images of child sexual abuse material will continue proliferating unchecked online if the Court does not clarify Section 230's scope" in this most extreme case. Sen. Josh Hawley Amicus Br.21.

3. Nor are Twitter's policy arguments a reason to deny certiorari. *See, e.g.*, *Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 59 (2023) ("[E]ven the most formidable policy arguments cannot overcome a clear textual directive." (cleaned up)); *Caminetti v. United States*, 242 U.S. 470, 485 (1917) ("[T]he sole function of the courts is to enforce [a statute] according to its terms."). While Twitter contends "the digital economy has relied" on sweeping interpretations of §230 "for nearly 30 years," BIO.1, the American legal system has expected compliance with federal criminal laws for 250 years. The notion that it would be "destabilizing," *id.*, to require Twitter to answer for its knowing and deliberate criminal wrongdoing is farcical.

C. As for the second question presented regarding FOSTA's scope, Twitter cannot reduce that question to an "afterthought" or a request for "error correction." BIO.4. That question, also not yet settled by this Court, warrants this Court's review. *See* Pet.30-34. The meaning of FOSTA's carve-out, recently added in §230(e), goes hand in hand with the first question presented regarding §230's surrounding provisions. *Id.*

On the merits, Twitter argues that since the coerced sex acts happened in 2017, Twitter cannot be faulted for its conduct in subsequent years. BIO.30 (quoting 18 U.S.C. §1591(a)). But not even the district

court was persuaded by that argument initially. *See* App.123a n.6. As Twitter had conceded then, "the posting of child pornography is a commercial sex act." App.124a n.6.; *accord Doe #1 v. MG Freesites, LTD*, 676 F. Supp. 3d 1136, 1166 (N.D. Ala. 2022) (similar). Exactly right—the carve-out applies when an internet company, with actual knowledge, financially benefits by allowing videos of coerced sex acts to proliferate on its platform. Twitter earns substantial sums for that content. App.165a. That the videos "were being re-tweeted on a massive scale while they remained" on Twitter "raise[s] a plausible inference that Twitter's failure to remove the Videos would result in *future* commercial sex trafficking." App.124a n.6. The district court had it right the first time.

II. This case is the right vehicle to begin clarifying §230's scope.

The posture of this case is not interlocutory as Twitter suggests. The Ninth Circuit's treatment of the state-law claims only confirms this Court's review is warranted.

A. With all of Petitioners' federal claims dismissed, the state-law claims will not be "proceeding," at least not in federal court. *Contra* BIO.4. Twitter offers no response to the petition's observation (at 36-37) that federal courts ordinarily decline to exercise supplemental jurisdiction over state-law claims when no federal claims remain. *See Artis v. District of Columbia*, 583 U.S. 71, 74 (2018) ("When district courts dismiss all claims independently qualifying for the exercise of federal jurisdiction, they ordinarily dismiss as well all related state claims."); *see also Royal Canin*

U.S.A., Inc. v. Wullschleger, 604 U.S. 22, 27 (2025). This case is effectively final for this Court's review. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.").

B. The Ninth Circuit's disparate treatment of the federal- and state-law claims only confirms certiorari is warranted. While Twitter contends the Ninth Circuit pitched it "down-the-middle," BIO.15, the Ninth Circuit threw a splitter. After concluding §230 precluded the federal claims despite Twitter's actual knowledge, the Ninth Circuit concluded §230 did *not* preclude state-law negligence claims—emphasizing Twitter's "actual knowledge." App.15a, 20a. The upshot of that decision offends federal laws protecting children from sexual exploitation: Twitter can claim immunity for knowingly possessing, distributing, and profiting from criminal child pornography—as long as it files a report about it. *See* App.20a.

C. This petition is a superior vehicle than past petitions. *Contra* BIO.30-33; *see* Pet.34-36. With Twitter's own knowing and deliberate wrongdoing at issue, the Court can take an important first step to clarify §230's outermost limits. There is no reason for delay. Whatever "consensus" exists in the lower courts, it is dangerous, harmful, and atextual, leaving the Good Samaritan behind. *See Snap*, 144 S. Ct. at 2494 (Thomas, J.).

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

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