

No. 25-949

IN THE
Supreme Court of the United States

JOHN DOE, *et al.*,

Petitioners,

v.

X CORP., FKA TWITTER, INC.,

Respondent.

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

**BRIEF OF *AMICI CURIAE* CHILD USA,
CHILDREN'S JUSTICE INTERNATIONAL,
AMERICAN ASSOCIATION FOR JUSTICE, AWK
SURVIVOR ADVOCATE ATTORNEYS, AND MARSH
LAW FIRM IN SUPPORT OF PETITIONERS**

JAMES R. MARSH
MARSH LAW FIRM PLLC
31 Hudson Yards, 11th Floor
New York, NY 10001

BRUCE PLAXEN
President
JEFFREY R. WHITE
Sr. Associate General Counsel
AMERICAN ASSOCIATION
FOR JUSTICE
777 6th Street, NW #300
Washington, DC 20001

HILLARY M. NAPPI
Counsel of Record
AWK SURVIVOR ADVOCATE
ATTORNEYS, PLLC
1133 Westchester Avenue, N224
White Plains, NY 10601
(914) 468-4840
hnappi@awk-saa.com

Counsel for Amici Curiae

121006



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(800) 274-3321 • (800) 359-6859

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INTERESTS OF *AMICI CURIAE*¹

CHILD USA is a 501(3)(c) dedicated to advancing the civil rights of children. Through legal analysis and socialscience research, CHILD USA develops evidencebased policies to prevent sexual abuse and online exploitation and to ensure meaningful access to justice for victims. Unlike servicedelivery organizations, CHILD USA provides the data, research, and legal expertise relied upon by policymakers, courts, and institutions to strengthen child protection nationwide. Its interest in this case aligns directly with its mission: ensuring that children are protected from sexual exploitation and that survivors are not denied redress by overly broad interpretations of immunity statutes. The outcome of this case will significantly affect the effectiveness of childprotection laws and the accountability of technology companies whose platforms facilitate abuse.

Children’s Justice International (“CJI”) works to protect children, support survivors of online exploitation, and pursue accountability for harms inflicted through digital platforms. Its work centers on securing justice for victims whose abuse is enabled or amplified by modern technologies. The organization has a substantial interest in the questions presented in *Doe v. Twitter*, which concern the scope of civil liability when the internet is used to facilitate sexual exploitation. The Court’s resolution will determine whether survivors can obtain meaningful civil

1. Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part, and no person other than amicus and their counsel made a monetary contribution to its preparation or submission. The parties received timely notice of our intention to file.

remedies and whether federal law is interpreted in a manner that deters future harm.

The American Association for Justice (“AAJ”) is a national bar association founded in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those wrongfully injured. With members across the United States and abroad, AAJ is the world’s largest plaintiff trial bar. Its members regularly represent survivors of sexual abuse, trafficking, and exploitation, including cases involving the possession or distribution of child sexual abuse material (“CSAM”)². AAJ has a strong interest in ensuring that immunity provisions—particularly those arising under Section 230—are not expanded beyond their intended scope in ways that foreclose meritorious claims and prevent survivors from seeking justice before a jury.

Hillary Nappi, Esq., James Marsh, Esq., and the attorneys at AWK Survivor Advocate Attorneys and Marsh Law Firm have decades of collective experience representing victims of sexual violence and online exploitation. They are experts on the immediate and longterm harm suffered by childvictims whose imagery is trafficked online, the ways digital platforms exacerbate that abuse, and the legislative measures Congress has enacted to hold such platforms accountable.

2. While the term child pornography is used in federal statutes, this brief will use the term child sexual abuse material (“CSAM”) instead, as it more accurately reflects the abuse depicted in these images and videos and the resulting trauma to the child.

Collectively, *Amici* are deeply concerned that the decision below, if allowed to stand, would shield powerful internet companies from accountability while leaving the child victims of sex trafficking and online exploitation unprotected and without meaningful recourse and with no access to civil justice.

SUMMARY OF THE ARGUMENT

Sex trafficking and the spread of childsexualabuse material (CSAM) inflict devastating, lifelong harm and threaten the integrity of our legal system. Yet platforms like Twitter have allowed these crimes to flourish while invoking an unjustifiably broad reading of Section 230 of the Communications Decency Act (“CDA”). The immunity Twitter claims—and the court below accepted—cannot be reconciled with Congress’s clear intent to combat trafficking, protect children, and hold those who profit from exploitation accountable. Nor does Section 230 shield violations of federal childexploitation law.

Congress never intended Section 230 to operate as a blanket shield for internet service providers (“ISPs”). Its narrow purpose was to prevent ISPs from being treated as the publisher or speaker of thirdparty content. Petitioners’ claims fall far outside that protection: they seek to hold Twitter liable for its own misconduct—misconduct that, if proven, reflects knowing participation in and financial benefit from criminal exploitation.

If left intact, the decision below would gut the rights Congress deliberately created for victims of CSAM and sex trafficking. It would deny Petitioners—and countless future victims—the chance even to discover the truth

about Twitter's role in enabling their abuse. Such a result defies the statutory text and undermines the very laws Congress enacted to protect children and punish those who facilitate their exploitation.

This Court should grant certiorari to ensure that victims of technology companies that knowingly or recklessly enable their exploitation are not shut out of the justice system.

ARGUMENT

I. THE ESCALATING CRISIS OF ONLINE CHILD SEXUAL EXPLOITATION DEMANDS THAT SECTION 230 BE INTERPRETED IN A MANNER THAT ACCOUNTS FOR ITS HUMAN IMPACT AND PRESERVES ACCOUNTABILITY FOR ISPS

The history of online child sexual exploitation and trafficking shows that the tech industry, and social media companies like Twitter specifically, have been unwilling to prioritize child safety over profits—a position that the lower court has tacitly endorsed by granting immunity from liability for their own illegal conduct. Such a broad grant of immunity ensures that the marketplace for CSAM will continue to thrive to the detriment of current victims, future children, and society.

A. The Online Marketplace for CSAM Has Reached Epidemic Proportions

The expansion of the internet and widespread use of mobile digital technologies have facilitated an explosive growth in the online marketplace for the production and

trafficking of CSAM.³ The sophistication of the CSAM ecosystem continues to grow alongside technological advances. Reporting on AI-generated CSAM shows that new technologies are enabling more realistic, scalable, and harder to detect abusive content, intensifying the threat and overwhelming existing safety systems.⁴ In the last two decades, online exploitation and abuse of children has increased by a staggering 422%.⁵ At any given time, there are at least one million child sex offenders searching for CSAM online.⁶ Millions of individual users consume more than 15 million child sexual abuse images in a market currently valued between \$3 and \$20 billion dollars annually.⁷ Unfortunately, there are no signs that the market is slowing down.

3. U.S. DEP'T OF JUSTICE, REPORTS FROM THE SURVIVOR MENTOR EXPERT WORKING GROUP (2023), https://www.justice.gov/d9/2023-06/sme_wg_reports_combined_2.pdf (last visited Mar. 10, 2026).

4. *AI-Generated CSAM Surge: The Dark Side of Technological Advancement*, OPENTOOLS, <https://opentools.ai/news/ai-generated-csam-surge-the-dark-side-of-technological-advancement> (last visited Mar. 10, 2026).

5. U.S. SENT'G COMM'N, FEDERAL SENTENCING OF CHILD PORNOGRAPHY: PRODUCTION OFFENSES 3 (2021), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211013_Production-CP.pdf.

6. EUR. PARLIAMENTARY RSCH. SERV., CURBING THE SURGE IN ONLINE CHILD ABUSE: THE DUAL ROLE OF DIGITAL TECHNOLOGY IN FIGHTING AND FACILITATING ITS PROLIFERATION 2 (Nov. 2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659360/EPRS_BRI\(2020\)659360_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659360/EPRS_BRI(2020)659360_EN.pdf).

7. Michael H. Keller & Gabriel J.X. Dance, *The Internet Is Overrun with Images of Child Sexual Abuse. What Went Wrong?*, N.Y. TIMES (Sept. 29, 2019), <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html?msclkid=531b2a24a55511ec9733999ed45d40bd>.

Before the digital age, CSAM could only be shared physically thus making it risky to find, and costly to produce and duplicate.⁸ Today, the availability of encrypted messaging platforms, peer-to-peer networks, and the like have made it easier and cheaper for perpetrators to produce CSAM and to connect, collaborate, and exchange such materials with individual users—and to do so with virtual anonymity.⁹ The COVID-19 crisis created a “perfect storm” for CSAM to mushroom as children spent more time online. In 2020, 65.4 million images and video files of CSAM were reported to the National Center for Missing and Exploited Children’s (“NCMEC”) CyberTipline, the highest number of reports ever received in a single year.¹⁰ As of 2018, there was a backlog of millions of suspected CSAM images and videos in need of review while police reported being overwhelmed by the increase in overall cases *and* the increased volume and severity of CSAM in each case.¹¹

8. Ricardo Barroso et al., *Child Sexual Abuse Material (CSAM): A Systematic Review of Risk Profiles, Risk Factors, and Typologies of Users*, 14(1) *SEXUAL MEDICINE REVIEWS* qeaf081 (Jan. 2026), <https://doi.org/10.1093/sxmrev/qeaf081>.

9. *See supra* note 7.

10. *Overview*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (2020). <https://www.missingkids.org/gethelpnow/cybertipline>.

11. ECPAT INT’L TRENDS IN ONLINE CHILD SEXUAL ABUSE MATERIAL 32 (2018), <https://ecpat.org/wp-content/uploads/2021/05/ECPAT-International-Report-Trends-in-Online-Child-Sexual-Abuse-Material-2018.pdf>

B. CSAM Victims Suffer Significant Short- and Long-Term Harms

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims both in the short-term and throughout their lifetimes.¹² Child sexual abuse takes a significant toll on victims' overall health, increasing the risk not only for depression, anxiety, substance abuse, post-traumatic stress disorder, and suicidal ideation, but also physical ailments such as high blood pressure and chronic illness.¹³ The paradigm shift from tangible to digital CSAM has exacerbated these effects.¹⁴ A victim's mere knowledge of the presence and distribution of their abusive imagery causes intense feelings of shame, humiliation, and powerlessness.¹⁵ As explained by NCMEC, "[o]nce these images are on the internet, they are irretrievable and can continue to circulate forever. The child is re-victimized as the images

12. *See generally*, BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (Viking 2014).

13. *See* DIVISION OF VIOLENCE PREVENTION, CTRS. FOR DISEASE CONTROL & PREVENTION, *SEXUAL VIOLENCE PREVENTION RESOURCE FOR ACTION: A COMPIATION OF THE BEST AVAILABLE EVIDENCE 8* (Jan. 20, 2025), https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fsexualviolence%2Fconsequences.html.

14. Julia Von Weiler, Annette Haardt-Becker, & Simone Schulte, *Care and Treatment of Child Victims of Child Pornographic Exploitation (CPE) in Germany*, 16 *J. OF SEXUAL AGGRESSION* 211, 216 (2010).

15. *Id.*

are viewed again and again.”¹⁶ Sadly, these feelings usually persist and even intensify over time.¹⁷ The problem has taken on a new dimension as CSAM involves increasingly younger victims and is becoming more violent and graphic over time.¹⁸

Victims are traumatized not only by the permanence of CSAM but also by its reach. Once their images circulate online, many experience intense, ongoing anxiety about who has seen them—family, coworkers, or strangers—and become preoccupied with how and why those images are being viewed.¹⁹ The most difficult part of their revictimization is victims’ knowledge that their images may be used to groom future victims and to normalize the abusive behavior.²⁰ Often, perpetrators strategically

16. JANIS WOLAK, DAVID FINKELHOR, & KIMBERLY J. MITCHELL, CHILD PORNOGRAPHY POSSESSORS ARRESTED IN INTERNET-RELATED CRIMES: FINDINGS FROM THE NATIONAL JUVENILE ONLINE VICTIMIZATION STUDY (2005), <https://www.unh.edu/ccrc/sites/default/files/media/2022-03/child-pornography-possessors-arrested-in-internet-related-crimes-findings-from-the-national-juvenile-online-victimization-study.pdf>.

17. U.S. DEP’T OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION AND PREVENTION AND INTERDICTION, 11 at D-12 (2010), available at <http://www.justice.gov/pse/docs/natstrategyreport.pdf> (finding that almost ninety-five percent of CSAM victims suffer lifelong psychological damage and may never overcome the harm, even after lifelong therapy).

18. *Id.*

19. See M. M. Leonard, *I Did What I Was Directed to Do But He Didn’t Touch Me: The Impact of Being a Victim of Internet Offending*, 16 J. OF SEXUAL AGGRESSION 249, 254 (2010).

20. *Id.*

produce CSAM in which victims are seen smiling, leading victims to worry that others will assume the victim's enjoyment or complicity in their own abuse.²¹ In fact, it is common for victims to feel as though they were an active participant in their abuse, which compounds a range of psychological difficulties.²² These concerns are not entirely unjustified as the possession and viewing of CSAM drives market demand and results in further exploitation and sexual abuse of children.²³

II. WELL-SETTLED PRECEDENT AND DECADES OF CONGRESSIONAL MANDATES WERE DESIGNED TO PROTECT VICTIMS OF SEXUAL EXPLOITATION AND ABUSE—NOT TO IMMUNIZE PLATFORMS THAT FACILITATE IT

Immunity conferred on Twitter simply defies Congress's clearly expressed intent and would strip Petitioners—and future CSAM victims—of the legal

21. See TINK PALMER & LISA STACEY, *JUST ONE CLICK: SEXUAL ABUSE OF CHILDREN AND YOUNG PEOPLE THROUGH THE INTERNET AND MOBILE PHONE TECHNOLOGY* (2004).

22. Jennifer Steel et al., *Psychological Sequelae of Childhood Sexual Abuse: Abuse-Related Characteristics, Coping Strategies and Attributional Style*, 28 *CHILD ABUSE & NEGLECT* 785 (2004) coping strategies and attributional style, 28 *Child Abuse and Neglect* 785 (2004).

23. See, e.g., *United States v. Williams*, 444 F.3d 1286, 1290 (11th Cir. 2006) (“Our concern is not confined to the immediate abuse of the children depicted in these images but is also to enlargement of the market and the universe of this deviant conduct that, in turn, results in more exploitation and abuse of children.”).

recourse federal law guarantees them. For more than two decades, Congress has repeatedly affirmed that the CDA was never meant to bar civil actions against ISPs that facilitate CSAM or childsextrafficking offenses. The ruling ignores the narrow purpose of Section 230's limited defense, disregards the TVPRA's mandate to hold traffickers and those who enable them accountable, and undermines Masha's Law, which was enacted to remedy the ongoing harm caused by the redistribution of CSAM. Any contrary interpretation nullifies the protections Congress strengthened through Allow States and Victims to Fight Online Sex Trafficking Act ("FOSTA") and permits Twitter to continue profiting from the exploitation of children on its platform.

A. Section 230 of the CDA Was Never Intended to Immunize ISPs That Facilitate and Profit from CSAM and Sex Trafficking Crimes

Congress enacted the CDA in 1996 for the clear purpose of ensuring that the internet, then in its infancy, would be "a safe place for our children and our families."²⁴ The same interest in protecting children online prompted Congress to enact the amendment titled "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material," that eventually became Section 230 of the CDA.²⁵ Together, their purpose is twofold: to restrict children's access to sexually explicit and otherwise harmful content online and to incentivize the development of technologies

24. 141 Cong. Rec. S8087 (daily ed. June 9, 1995) (statement of Sen. Exon).

25. *See, e.g.*, 141 Cong. Rec. S8089 (daily ed. June 9, 1995) (statement of Sen. Exon).

that would allow parents and users to filter out such materials. To that end, Congress provided a limited defense from liability for their “good faith” attempts at restricting user access to obscene and indecent materials on their platforms.²⁶ The statutory text contains two key exceptions to Section 230’s limited defense: (1) that it shall have “no effect on criminal law” including chapter 110 of Title 18 (relating to sexual exploitation of children) or “any other Federal criminal statute,”²⁷ and (2) that “[n]othing in this section shall be construed to impair...any claim in a civil action brought under 18 U.S.C. § 1595” (relating to sex trafficking).²⁸ Congress clearly intended to retain liability for ISPs with knowledge of illegal conduct on their platforms and others acting in bad faith.²⁹

26. 141 Cong. Rec. (daily ed. Aug. 4, 1995). (statement of Rep. Goodlatte); H.R. Conf. Rep. 104-458 at 194 (1996).

27. 47 U.S.C. § 230(e)(1)

28. 47 U.S.C. § 230(e)(5)(A).

29. *See, e.g.*, 141 Cong. Rec. S8345 (daily ed. June 14, 1995) (commentary by Sen. Coates) (explaining that the CDA permitted liability for “someone who, among other things, manages the prohibited or restricted material, charges a fee for such material”, provides instructions on how to access such material or provides an index of the material); 141 CONG. REC. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Goodlatte) (“Congress has a responsibility to help encourage the private sector to protect our children from being exposed to obscene and indecent material on the Internet.”).

B. Congress Enacted the TVPA and TVPRA to Ensure Broad Accountability for All Who Enable or Profit from Sex Trafficking

Online sex trafficking was widespread by the early 21st century.³⁰ To combat the proliferation of this “modern day slavery,” Congress passed the Trafficking Victims Protection Act (“TVPA”), the first federal law to independently recognize child sex trafficking as a crime.³¹ Since federal recognition of sex trafficking in 2000, Congress has continuously expanded the scope of liability for sex trafficking. First, in 2003, the TVPRA allowed victims to bring civil suits against their traffickers and other co-defendants, regardless of whether there was a criminal action arising out of the same facts. And again, in 2008, Congress amended the TVPRA to lower the requisite *mens rea* under § 1595 so that third-party beneficiaries, like Twitter, with constructive knowledge of illegal content on their platforms could be held appropriately accountable.³²

When Congress passed the TVPRA, it was focused on empowering victims and providing a sense of agency over their cases.³³ Congress expanded the TVPRA to

30. U.N. OFF. ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2020 (Jan. 2021), https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

31. Pub. L. No. 106-386, 114 Stat. 1464, 1486–88 (Oct. 28, 2000).

32. P.L. 108-193, § 4(a)(4)(A); 18 U.S.C. §1595(a).

33. See Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked*

ensure victims could bring civil suits against ISPs like Twitter that facilitate and profit from the trafficking of CSAM. Indeed, reports reviewing 20 years of TVPRA litigation show that Congress repeatedly broadened civil remedies to ensure victims could pursue damages against a wide range of actors who facilitate or profit from trafficking. As the number of cases has continued to grow, so has the diversity of sectors and types of defendants. More than 90 percent of these cases involved at least one corporate or institutional defendant, including hotels, motels, hospitality franchises, banks, and internet service providers.³⁴ Yet, courts have struggled to reconcile Section 230's narrow, decadesold defense with the TVPRA's broad remedial mandate.

C. Congress Enacted Masha's Law to Guarantee CSAM Victims a Meaningful Right to Redress

Congress recognized the grave injuries suffered by victims of CSAM when it passed the Adam Walsh Child Protection and Safety Act of 2006.³⁵ As Congress emphasized, “[e]very instance of viewing images of child pornography represents a renewed violation of the privacy

Persons in the United States, 16 HASTINGS WOMEN'S L.J. 1, 17 (2004).

34. Ashlyn Phelps, Using Civil Litigation to Combat Human Trafficking: Federal Human Trafficking Civil Litigation (2024 Data Update) 17-18 (Human Trafficking Legal Ctr. ed., May 2025), <https://htlegalcenter.org/wp-content/uploads/2024-Civil-Litigation-Report-FINAL.pdf>.

35. Pub. L. No. 109-248, § 501(2)(D), 120 Stat. 587, 624 (2006).

of the victims and a repetition of their abuse”³⁶ and “[t]he illegal production, transportation, distribution, receipt, advertising and possession of child pornography . . . is harmful to the physiological, emotional and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole.”³⁷ Finally, Congress declared that “[t]he government has a compelling State interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography *at all levels in the distribution chain.*”³⁸

Notably, Congress passed Masha’s Law, which it later incorporated into the Adam Walsh Child Protection and Safety Act, to address the revictimization of child exploitation victims when their images are redistributed online.³⁹ Specifically, Masha’s Law provides CSAM victims the right to sue not only those who initially produced the abusive material, but also those who perpetuate the exploitation by possessing and distributing their imagery.⁴⁰ To prevail under Masha’s Law, a victim need only establish that the defendant committed a federal “child pornography” or child exploitation crime, and that

36. *Id.*

37. *Id.* at § 501(1)(A), 120 Stat. at 623.

38. *Id.* at § 501(2)(C), 120 Stat. at 624 (emphasis added).

39. James R. Marsh, *Masha’s Law: A Federal Civil Remedy for Child Pornography Victims*, 61 SYRACUSE L. REV. 459, 460 (2011).

40. 18 U.S.C. § 2255.

they suffered personal injury as a result.⁴¹ It permits victims to seek redress without distinguishing between individuals and entities, such as ISPs.

The legislation’s history together with the lack of any exclusionary language in the statute is evidence of Congress’s intent that victims be compensated, not only by direct perpetrators of their sexual abuse and exploitation, but also by distributors, receivers, and facilitators of their CSAM, including ISPs. Federal courts have increasingly recognized this textual omission as evidence of Congressional intent for broad liability. In *G.M. v. Choice Hotels International, Inc.*, the Southern District of Ohio emphasized that “the text of the statute is the ultimate reflection of Congress’s intent” and noted that “Congress has revised § 2255 several times and not seen fit to add language specifying that only offenders or perpetrators of the criminal predicate may be liable, despite apparent awareness of the issue.”⁴² This reasoning reflects a fundamental principle of statutory interpretation that Congressional silence following repeated opportunities to address a specific issue demonstrates intentional omission rather than oversight.

D. Congress Passed FOSTA to Clarify That Section 230 Does Not Immunize ISPs That Facilitate and Profit from CSAM Hosted and Trafficked on Their Platforms

In the years after the TVPRA’s enactment, platforms that hosted or profited from sextrafficking content

41. *Id.*

42. *G.M. v. Choice Hotels International, Inc.*, 725 F. Supp. 3d 766 (2024)

increasingly invoked Section 230 as a shield to avoid civil accountability and liability.⁴³ The most prolific violator, the now defunct Backpage.com, had been so successful in utilizing Section 230 as a defense against liability for their knowing facilitation of child sex-trafficking through their posting and advertising procedures, that Congress launched a formal investigation into the problem⁴⁴ and the Department of Justice launched a remissions program to compensate victims trafficked through ads on Backpage.com.⁴⁵ Although Section 230 was supposed to encourage self-regulation, Congress found that many websites had instead become “reckless” in allowing for the sex trafficking of children on their platforms and that website owners did little to prevent it.⁴⁶ In direct response to this egregious misapplication of Section 230 immunity, Congress passed FOSTA in 2018. With the desire to ensure websites like Backpage could not use Section 230 as a shield for their *own illegal conduct*, FOSTA amended Section 230 to include an express exemption from claims under the TVPRA to the expansive immunity for ISPs that courts have read into the CDA.⁴⁷ As Congress clarified, Section 230 “does not prohibit the enforcement against

43. Danielle Citron & Benjamin Wittes, *The Internet Won't Break*, 86 FORDHAM L. REV. 401, 404 (2017).

44. *See Backpage.com's Knowing Facilitation of Online Sex Trafficking: Hearing Before the Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affs.*, 115th Cong. (2017).

45. *Backpage Remission*, U.S. DEP'T OF JUST., <https://backpagemission.com/en> (last visited Mar. 10, 2026).

46. *Id.*

47. 47 U.S.C. §230(e)(5)(A).

providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking” because it “was never intended by Congress to provide legal protection to websites that unlawfully promote and facilitate prostitution and contribute to sex trafficking.”⁴⁸

Congress’s investigation may have begun with Backpage, but neither FOSTA’s text nor its legislative history confines the law’s immunity exception to any single platform. Congress expressly rejected such a limitation, emphasizing that FOSTA enables “vigorous criminal enforcement against all badactor websites, not just Backpage.com,” by creating a new federal offense and authorizing states to enforce parallel criminal laws.⁴⁹ FOSTA merely “close[d] the loophole,” so that victims could “bring to justice” online platforms that were found to be facilitating online exploitation and abuse.⁵⁰

Federal courts consistently recognize that remedial statutes like 18 U.S.C. § 2255 should receive interpretation that advances their protective purposes. This interpretive approach favors broad liability that encompasses all actors who contribute to the harm Congress sought to

48. H.R. Rep. No. 115-572 (2018) (emphasis added); *see also* Pub. L. No. 115-164 § 4, 132 Stat. 1253, 1254 (containing the section header “ensuring ability to enforce federal and state criminal and civil law relating to sex trafficking”); 164 Cong. Rec. S 1827, 1829 (Blumenthal) (explaining that the law was designed to hold tech companies accountable “that identify sex trafficking ads and then leave them up in order to continue profiting from them.”).

49. H. Rep. No. 115-572, pt. 1, at 5.

50. *Id.*

address. The District Court for the Northern District of Alabama’s decision in *Doe #1 v. MG Freesites, LTD* exemplifies this approach.⁵¹ The court held that website operators who materially contribute to CSAM distribution face civil liability under §§ 1595 and 2252/2252A (child pornography statutes), even when they are not direct perpetrators.⁵² The court found that defendants who “encourage and materially contribute to the development, optimization, and advertising of CSAM” fall within the statutes’ intended scope.⁵³ This material contribution standard reflects courts’ recognition that modern child exploitation networks involve sophisticated technological intermediaries who facilitate distribution and monetization of CSAM. The *MG Freesites* court emphasized that defendants did “more than just provide a place to host third-party CSAM” but rather actively facilitated illegal content through features like specialized tags, categories, and revenue-sharing arrangements.⁵⁴

Twitter’s decision to profit from illegal content on its platform does not insulate it from liability for its own criminal conduct. FOSTA was enacted precisely to foreclose that argument and to ensure that platforms cannot hide behind their business model to escape accountability.

51. *Doe #1 v. MG Freesites, LTD*, 676 F.Supp.3d 1136 (2022)

52. *Id.*

53. *Id.*

54. *Id.*

III. SECTION 230 SHOULD BE APPLIED IN LINE WITH ITS TEXT AND ITS CHILDPROTECTION PURPOSE TO PREVENT FURTHER INJUSTICE AND PRESERVE VICTIMS’ ACCESS TO JUSTICE

At the core of Section 230 is subsection (c) which addresses certain limitations on liability for ISPs. It states, in relevant part, that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁵⁵ Thus, by its own terms, Section 230 creates a limited defense from liability only for those defendants who can establish that “the cause of action inherently requires the court to treat the defendant as the ‘publisher or speaker’ of content provided by another.”⁵⁶ The proper Section 230 inquiry focuses on the claimant’s cause of action and asks whether the defendant’s conduct—the source of the alleged harm—extends beyond traditional editorial functions.⁵⁷ That is, “Section 230(c)(1) limits liability *based on the function the defendant performs, not its identity*.”⁵⁸ Twitter is not being sued for posting the CSAM itself, but for its own misconduct—designing a platform that enabled

55. 47 U.S.C. § 230(c)(1).

56. *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 175 (2d Cir. 2016); *see also Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009) (holding that § 230(c)(1) does not create an immunity).

57. *See Bauer v. Armslist, LLC*, 572 F. Supp. 3d 641, 664 (E.D. Wis. 2021) (describing Section 230 as a “definitional provision” requiring a “fact-based inquiry”).

58. *Force v. Facebook, Inc.*, 934 F.3d 53, 81 (2d Cir. 2019).

criminal exploitation, profiting from the distribution of the Petitioners' CSAM, and refusing to report or remove it despite clear notice. "When a plaintiff brings a claim that is based not on the content of the information shown" but rather on the defendant's own violations of federal and state criminal and civil laws "the CDA does not and should not bar relief."⁵⁹

A. ISPs Are Subject to Liability When They Breach Their Duties to Consumers and the Public as Manufacturers of Products

The internet has changed in unimaginable ways since Congress passed Section 230 as part of the CDA in 1996. Modern tech companies like Twitter are vastly larger, wealthier, and more powerful than were the online service providers of almost three decades ago, and the activities in which they engage are less obviously about speech.⁶⁰ The functional transformation from a rudimentary internet into a virtual world filled with a plethora of cybernetic products and services has changed the way online platforms relate with third-party content, such that online platforms frequently have duties to their users beyond their role as publisher. These are different in kind and severable from traditional publisher functions.

59. *Force*, 934 F.3d at 82; see also *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1204 (Tymkovich, J.) (10th Cir. 2009).

60. See Shira Ovide, *Big Tech Has Outgrown This Planet*, N.Y. TIMES (Oct. 12, 2021), <https://www.nytimes.com/2021/07/29/technology/big-tech-profits.html>.

While an ISP may be primarily designed for posting and exchanging content, that fact alone does not sweep all decisions made by the platform within the scope of its publishing function. As the Ninth Circuit has explained with respect to Section 230 preemption, “[p]ublishing activity is a but-for cause of just about everything [Defendant] is involved in,” however, “the CDA does not provide a general immunity against all claims derived from third-party content Congress has not provided an all-purpose get-out-of-jail-free card for businesses that publish user content on the internet, though any claims might have a marginal chilling effect on internet publishing businesses.”⁶¹ Further the Ninth Circuit notes that the duty alleged in a products liability claim “differs markedly from the duties of publishers as defined in the CDA. Manufacturers have a specific duty to refrain from designing a product that poses an unreasonable risk of injury or harm to consumers. Meanwhile, entities acting solely as publishers—*i.e.*, those that review material submitted for publication, perhaps edit it for style or technical fluency, and then decide whether to publish it—generally have no similar duty.”⁶²

Here, Petitioners allege that Twitter violated its duty as a designer and manufacturer of products when, upon knowledge of CSAM on its platform, it not only refused to take any responsibility to stem its flow but in fact affirmatively propelled the illicit content to drive user engagement and increase revenue with little to no regard to the collateral consequences. By granting Twitter

61. *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 852-53 (9th Cir. 2016).

62. *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021).

immunity, the fact that the alleged harm stemmed from Twitter’s affirmative deployment of its own unreasonably dangerous product and not from the contents of any posts by a third-party predator is completely disregarded. Dismissal of such claims at the pre-discovery phase is especially problematic as it not only prevents victims from seeking any meaningful redress, but it also prevents the public from learning about what these powerful companies know about the potential harms to children on their platforms. If accepted, this interpretation of Section 230 would allow social media platforms to eschew their responsibilities to consumers and then to sidestep accountability when their products cause serious harm.

B. ISPs Are Subject to Liability When They Violate Their Statutory Duty to Report CSAM

As part of a cohesive national effort to “reduce the proliferation of online child sexual exploitation and to prevent the online sexual exploitation of children,” Congress passed the Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (“PROTECT Our Children Act”) which, among other things, requires ISPs in knowing possession of CSAM to make a timely report to NCMEC’s CyberTipline.⁶³ The statutory duty imposed on ISPs under the PROTECT Our Children Act exists independent of the duties required of ISPs when acting in their capacity as publishers.

63. 18 U.S.C. § 2258A(a)(1)(A).

Petitioners in this case have not raised a claim related to the initial distribution of their CSAM on Twitter or Twitter’s failure to effectively moderate its platform to locate and remove the same. Instead, Petitioners’ negligence per se claim arises from Twitter’s *own* choice to violate federal law by failing to timely report victims’ CSAM to NCMEC’s CyberTipline after having actual knowledge that it was in possession of the same.^{64, 65} As a result of Twitter’s breach of its statutory duty, Petitioners’ abusive imagery was permitted to remain on Twitter’s platform for nine days and to accumulate hundreds of thousands of additional engagements causing further harm.

Thus, the District Court’s broad interpretation of Section 230 creates a perverse incentive for online platforms to behave knowingly or recklessly in pursuit of profit. As Justice Lewis questioned in his incisive dissent in *Doe v. America Online*,

[w]hat conceivable good could a statute purporting to promote ISP self-policing efforts do if, by virtue of the courts’ interpretation of that statute, an ISP which is specifically made aware of child pornography being distributed by an identified customer through solicitation

64. *See* 18 U.S.C. § 2258(A) (creating a “duty to report”).

65. The Revising Existing Procedures on Reporting via Technology (REPORT) Act requires online service providers to submit reports of suspected crimes against children, including sex trafficking and other forms of online exploitation. This is illustrative of the continued congressional intent that ISPs face liability for their own wrongdoing.

occurring on its service, may, with impunity, do absolutely nothing, and reap the economic benefits flowing from the activity?⁶⁶

Indeed, Twitter should not be permitted to bury its head in the sand and feign ignorance over its knowing receipt and continued ongoing possession of CSAM. Section 230 cannot and does not shield Twitter from liability for such acts and omissions. Without an obligation for ISPs to address harmful activities on their platforms, no matter how easily they could do so, and no requisite standard of care by which to conform their conduct, consumers—especially children and victims of abuse—are left to bear the consequences.

C. ISPs Are Subject to Liability for Their Knowing Operation as a Distributor in the Modern CSAM Marketplace

Section 230 unambiguously proclaims that “it is the policy of the United States to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.”⁶⁷ Petitioners are plainly trafficking victims whose exploitation was carried out through Twitter, a platform that knowingly enabled and contributed to the online CSAM marketplace.

This Court has repeatedly recognized that the marketplace for CSAM must be broadly targeted and

66. 783 So.2d 1010, 1024-25 (Fla. 2001) (Lewis, J., dissenting).

67. 47 U.S.C. § 230(5).

eliminated.⁶⁸ The Court has further stated, “everyone who reproduces, distributes, or possesses the images of the victim’s abuse...plays a part in sustaining and aggravating this tragedy.”⁶⁹ Twitter not only facilitates the “traffic in images depicting a child’s sexual abuse,” it is part of the modern “mass distribution system for child pornography.”

Recognizing the severity of such offenses and the States’ interest in protecting the wellbeing of children, this Court went so far as to carve-out an exception to First Amendment protections for the production and distribution of child pornography.⁷⁰ The *Ferber* Court extensively discussed the unique harms borne by CSAM victims, finding that the traffic in images depicting sexual abuse “poses an even greater threat to the child victim than does sexual abuse or prostitution” because the victim must “go through life knowing that the recording is circulating within the mass distribution system for child pornography.”⁷¹ This reasoning—that the very existence of CSAM inflicts ongoing harm—makes clear that anyone who possesses such material further injures the child, regardless of whether they committed the underlying abuse and regardless of whether the possessor is an ISP like Twitter.

Congress, legislating against the backdrop of *Ferber* and its progeny—and as reflected throughout Section

68. See, e.g., *Osborne v. Ohio*, 495 U.S. 103, 107 (1990); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 249 (2002).

69. *Paroline v. United States*, 572 U.S. 434, 457 (2014).

70. See generally *New York v. Ferber*, 458 U.S. 747 (1982).

71. *Ferber*, 458 U.S. at 759 n.10.

230(5), Chapter 110, and related federal statutes—never intended to shield platforms like Twitter from liability for their role in sustaining the modern CSAM marketplace. The statutory framework makes clear that Congress sought to ensure accountability, not to immunize entities that knowingly facilitate the continued circulation and monetization of childsexualabuse material.

CONCLUSION

For the foregoing reasons, *Amici* respectfully submit that this Court should grant the petition for writ of certiorari.

Respectfully submitted,

JAMES R. MARSH
MARSH LAW FIRM PLLC
31 Hudson Yards, 11th Floor
New York, NY 10001

BRUCE PLAXEN
President
JEFFREY R. WHITE
Sr. Associate General Counsel
AMERICAN ASSOCIATION
FOR JUSTICE
777 6th Street, NW #300
Washington, DC 20001

HILLARY M. NAPPI
Counsel of Record
AWK SURVIVOR ADVOCATE
ATTORNEYS, PLLC
1133 Westchester Avenue, N224
White Plains, NY 10601
(914) 468-4840
hnappi@awk-saa.com

Counsel for Amici Curiae

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