

No. _____

In the
Supreme Court of the United States

FACEBOOK, INC.,

Petitioner,

v.

NOAH DUGUID, individually and on behalf of
himself and all others similarly situated,

Respondent,

and

UNITED STATES OF AMERICA,

Respondent-Intervenor

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Congress enacted the Telephone Consumer Protection Act of 1991 (“TCPA”) to prohibit calls made to a cell phone without consent using an “automatic telephone dialing system” (“ATDS”). That prohibition exempts calls made “to collect a debt owed to or guaranteed by the United States” or “made for emergency purposes.” 47 U.S.C. §227(b)(1)(A)(iii). Here, Petitioner was sued for violating this prohibition and defended on the grounds, *inter alia*, that the prohibition unconstitutionally discriminated on the basis of content and that the text messages at issue here did not involve an ATDS. The Ninth Circuit agreed that the TCPA was unconstitutional, but denied Petitioner any relief by taking the extraordinary step of rewriting the TCPA to prohibit more speech by eliminating the government-debt-collection exception. To make matters worse, the Ninth Circuit adopted a counter-textual and expansive definition of an ATDS that encompasses *any* device that can store and automatically dial telephone numbers—even if that device cannot store or produce them “using a random or sequential number generator,” as the statutory definition requires, *id.* §227(b)(1)(A). That holding—which conflicts with the Third and D.C. Circuits—sweeps into the TCPA’s prohibition almost any call or text made from any modern smartphone.

The questions presented are:

1. Whether the TCPA’s prohibition on calls made using an ATDS is an unconstitutional restriction of speech, and if so whether the proper remedy is to broaden the prohibition to abridge more speech.

2. Whether the definition of ATDS in the TCPA encompasses any device that can “store” and “automatically dial” telephone numbers, even if the device does not “us[e] a random or sequential number generator.”

PARTIES TO THE PROCEEDING

Facebook, Inc. is Petitioner here and was Defendant-Appellee below.

Noah Duguid, individually and on behalf of himself and all others similarly situated, is Respondent here and was Plaintiff-Appellant below.

The United States of America is Respondent-Intervenor here and was Intervenor-Appellee below.

CORPORATE DISCLOSURE STATEMENT

Facebook, Inc. is a publicly traded company and has no parent corporation. No publicly held company owns 10% or more of its stock.

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