Nos. 19-381, 19-382

IN THE

United States Court of Appeals for the Fourth Circuit

BRENNAN M. GILMORE,
Plaintiff–Respondent,

v.

ALEXANDER JONES, ET AL.,
Defendants–Petitioners.

On Petition for Interlocutory Appeal from the United States District Court for the Western District of Virginia, Case No. 3:18-cv-00017, Hon. Norman K. Moon

CONSOLIDATED ANSWER TO PETITIONS FOR PERMISSION TO APPEAL PURSUANT TO 28 U.S.C. § 1292(b)

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Plaintiff-Respondent Brennan Gilmore files this consolidated answer to Petitioners' petitions for permission to appeal, pursuant to 28 U.S.C. § 1292(b), an order of the district court entered March 29, 2019, Dkt. No. 123. For the following reasons, the petitions should be denied.

INTRODUCTION

In August 2017, Brennan Gilmore was filming a peaceful counter-protest to a white supremacist rally in Charlottesville, Virginia, when he happened to capture on his phone video of a car driving into the crowd, killing one protestor. Gilmore posted the video on Twitter. After the post went viral, Petitioners in this case authored articles and created videos that claimed that Gilmore was part of an elaborate conspiracy to stage the Charlottesville events, including the white supremacist rally and the murder of an innocent counter-protester, and that he subsequently conspired to cover up the conspiracy. Because Petitioners posted these Virginia-focused articles and videos online where they would reach Virginia readers, Gilmore's reputation was irreparably tarnished.

Gilmore brought this defamation action against Petitioners in Virginia, the place where he lives and works and where the events featured in Petitioners' stories took place. Petitioners moved to dismiss, challenging among other things the court's personal jurisdiction over them. The district court denied that motion in a carefully reasoned opinion, explaining as to each Petitioner that "the focal point of [the]

publications was a Virginia event and citizen" and the resulting harm "occurred in Virginia, where [Gilmore] lives and works." *E.g.*, Dkt. No. 123, at 22-23 (quotation omitted). Petitioners now seek to file interlocutory appeals pursuant to 28 U.S.C. § 1292(b) to challenge the district court's personal-jurisdiction decision.

This Court should deny these petitions because there is no substantial ground for a difference of opinion on the personal-jurisdiction question. Rather, this case is materially identical to the Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984). There, the Court held that a California court could exercise personal jurisdiction over the author and editor of an allegedly defamatory story in an out-of-state publication with nationwide circulation because the story focused on California events and the harm was felt in California, where the plaintiff lived and worked. This case is indistinguishable. Petitioners created and published defamatory videos and articles that focused on Gilmore's activities at a Virginia event concerning a Virginia controversy; they highlighted Gilmore's connection to Virginia politics; and they caused injury to Gilmore in Virginia, where he lives and works. This case presents a straightforward application of binding Supreme Court precedent, so there is no ground—let alone substantial ground—for a difference of opinion.

Moreover, the district court's decision is entirely consistent with this Court's decision in *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2003). There, this Court held that a Virginia court could not exercise personal jurisdiction over

local Connecticut newspapers that published articles concerning a Virginia prison because the articles focused on a Connecticut prison-transfer controversy and were read mostly by Connecticut readers. *Id.* at 263-64. There is no similar focus on another state in this case: here, Virginia is both the focus of Petitioners' stories *and* the location of the harm they caused. Notably, Petitioners have not offered a single case where a story's focus and the harm it generated were in a forum-state, but the court nonetheless declined to exercise personal jurisdiction. Respondent is aware of *no* such case.

In sum, Petitioners wish to delay the resolution of this litigation in order to debate an issue that the Supreme Court decided 35 years ago. And Petitioners make this extraordinary request without pointing to a single court that has validated their extreme position. Interlocutory appeals, however, "should be used sparingly," *United States ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d 330, 340 (4th Cir. 2017) (quoting *Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989)), reserved for only "exceptional circumstances [that] justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment," *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978) (quotation omitted). The personal-jurisdiction issue in this case cannot possibly meet that heavy burden, and this Court should deny these petitions.

FACTUAL BACKGROUND[1]

Brennan Gilmore lives in Albemarle County, Virginia, where he currently serves as Executive Director of a non-profit advocacy organization focused on renewable energy and utility issues. He was previously chief of staff for Tom Perriello during Perriello's 2017 Virginia gubernatorial campaign. Dkt. No. 123, at 2.

On August 12, 2017, Gilmore was in Charlottesville filming a group of peaceful counter-protesters at the Unite the Right white supremacist rally, which was organized by white supremacist groups "as a response to the Charlottesville City Council's decision to remove a statue of Confederate General Robert E. Lee from a city park and change that park's name from 'Lee Park' to 'Emancipation Park.'" *Id.* at 5. At the counter-protest, Gilmore happened to film with his cell phone James Alex Fields, Jr., driving into a crowd of protestors, killing Heather Heyer and injuring many others. *Id.* at 1. Gilmore posted that video on Twitter, where it went viral. *Id.*

In the days following that event, Petitioners published a slew of articles and videos about Gilmore falsely portraying him as "a 'Deep State operative' who helped orchestrate the violence in Charlottesville." *Id.* at 6. Each of these articles and videos focused particularly on Virginia.

[1] Because Petitioners seek an appeal at the motion-to-dismiss stage, this Court must "accept the factual allegations of the complaint as true and construe them in the light most favorable to the nonmoving party." *Rockville Cars, LLC v. City of Rockville*, 891 F.3d 141, 145 (4th Cir. 2018).

First, on August 13, 2017, Scott Creighton published an article entitled "Charlottesville Attack, Brennan Gilmore and . . . the STOP KONY 2012 Psyop? What?," which noted Gilmore's "rather suspicious positioning" among counter-protesters in Charlottesville. *Id.* at 21. According to Creighton, it was "almost as if [Gilmore] knew [a car] would run into them rather than simply brake and sit and wait." *Id.* Creighton stated that Gilmore "'was also part of' Tom Perriello's 2017 Virginia gubernatorial campaign, describing Perriello's record and ideological views at length." *Id.* Creighton concluded that Gilmore did not "just HAPPEN[] to be there" at the "particular moment" of Field's attack because Creighton was "not into" such "coincidence theories," and he wrote that "Gilmore, like Tom [Perriello], seem[s] particularly invested in undermining the 'alt-right' in the lead-up to the next round of elections." *Id.*

Similarly, on August 14, 2017, Jim Hoft published an article entitled "Random Man at Protests Interviewed by MSNBC, NY Times Is Deep State Shill Linked to George Soros." *Id.* at 24. Hoft wrote that Gilmore, the "random Charlottesville observer," is in fact a "deep state shill with links to George Soros," and that "[i]t looks like the State Department was involved in Charlottesville rioting and is trying to cover it up." *Id.* Hoft also noted that Gilmore was "Chief of Staff for liberal Rep. Tom Perriel[l]o," and "embedded screenshots of articles about Gilmore and Perriello from *Augusta Free Press*, a news-site covering Waynesboro, Staunton, and Augusta

County, Virginia, and the *Richmond Times Dispatch*." *Id.* Hoft then quoted a Reddit thread as saying that "the former Chief of Staff for Tom Perriel[l]o who ran in the Virginia gubernatorial election . . . also happened to go viral and was interviewed because he just happened to be close to the Charlottesville event." *Id.* Hoft wrote that "[t]he media knows exactly who he is yet played it off like a casual observer" to "fool the American people." *Id.*

On August 15, 2017, *InfoWars* published an interview with Lee Stranahan by Lee Ann McAdoo in which Stranahan "made several comparisons between [an] alleged Ukrainian coup and the Unite the Right rally, describing the rally as 'an agitation situation like we saw in Ukraine in 2013 and 2014.'" *Id.* at 25-26. McAdoo similarly said that "these white nationalists in Charlottesville were chanting" the "exact same slogan, the blood and soil," and they "had the same tiki torches" as "paid protesters" in Ukraine. *Id.* Stranahan also mentioned Gilmore, describing him as "with the US State Department" and having "worked for a Democratic representative," and then displaying screenshots of Gilmore's Twitter page where Gilmore had posted "a picture of the young woman who was murdered" with the caption "martyr." *Id.* Stranahan noted that protestors in Ukraine also "needed martyrs" or "someone dead," and later stated that "someone really needs to investigate." *Id.*

Alex Jones similarly posted a video on August 21, 2017, entitled "Breaking: State Department / CIA Orchestrated Charlottesville Tragedy," which purported to

"break[] down shocking revelations into the Charlottesville riots including who was behind the attack and why they did it." *Id.* at 28. In the video, Jones asserted that the violence in Charlottesville was orchestrated by "known CIA and State Department officials in Charlottesville" and "[t]he mayor" of Charlottesville, and the video features the supposed testimony of a Charlottesville police officer who claimed the Charlottesville violence was a "set up to further the agenda of the elites." *Id.* The video then mentions Gilmore, stating that it is "fishy" that "the first man on the scene whose tweet went viral and who was later interviewed on mainstream news as a witness just happened to be a State Department insider with a long history of involvement in psy-ops." *Id.*

Finally, on August 19, 2017, Derrick Wilburn and Michele Hickford published an article entitled "BOMBSHELL: New evidence suggests Charlottesville was a complete SET-UP," which included a supposed statement from a Charlottesville police officer that "if true," according to the article, reveals that the Mayor of Charlottesville and "possibly other city officials" were implicated "in the death of a citizen." *Id.* at 29-30. The article also contained commentary about Gilmore that was identical to portions of the Alex Jones video, describing Gilmore's presence at the Charlottesville counter-protest as "fishy" and stating that Gilmore was "presented as an accidental witness." *Id.* at 30.

PROCEDURAL BACKGROUND

In March 2018, Gilmore filed suit against Petitioners in Virginia alleging that he was defamed by the articles and videos they had published about him and the Unite the Right rally in Charlottesville. *See* Dkt. No. 1. Petitioners filed motions to dismiss, arguing among other things that a Virginia court could not exercise personal jurisdiction over them. *See* Dkt. Nos. 56, 58.

On March 29, 2019, the district court issued a carefully reasoned opinion rejecting most of Petitioners' arguments, including that the court lacked specific personal jurisdiction over Petitioners. *See* Dkt. No. 123. The court analyzed each article and video and determined that the "'general thrust'" of each was "sufficiently targeted at a Virginia audience such that [Petitioners] should have 'anticipate[d] being haled into court in' Virginia to defend [their] statements." *Id.* at 22 (quoting *Young*, 315 F.3d at 263, and *Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016)). Specifically, the court explained that the articles and videos focused on "a Virginia event and a Virginia citizen"—noting the repeated descriptions and explanations of Gilmore's presence at the Charlottesville event as well as the discussion of Gilmore's ties to Virginia gubernatorial candidate Tom Perriello—and this made the publications "of particular interest to a Virginia audience." *Id.* (analyzing Creighton's article); *see id.* at 24 ("Hoft's article was exclusively about a particular Virginia citizen's participation in a Virginia event."); *id.* at 26-27 (Stranahan's and

McAdoo's video "connect[ed] [the Ukrainian] 'coup' to the Unite the Right rally," and "the video transcript is littered with discussion of the rally . . . and Gilmore."); *id.* at 29 ("Jones's video was exclusively focused on a Virginia event," including "particular Virginia citizens' alleged roles in that event," and "Jones's discussion of Perriello further reinforces the video's Virginia-specific focus."); *id.* at 30 ("Wilburn's article is focused on a Virginia event and, in part, on a Virginia citizen's role in that event."). Moreover, the court noted that "the harm [Gilmore] suffered as a result . . . occurred in Virginia, where he lives and works." *Id.* at 22-23.[2]

Petitioners filed two motions asking the district court to reconsider its personal-jurisdiction decision or certify the personal-jurisdiction issue for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The district court declined to reconsider its decision and declined to certify a question regarding the scope of Virginia's long-arm statute, but it certified the following question for interlocutory appeal:

> Where an online journalist or publisher with a national audience purposefully and primarily focuses their coverage underlying the suit-related conduct on forum-state events and persons, is such conduct sufficient for a forum court to assert specific personal jurisdiction over that journalist or publisher?

Dkt. No. 163, at 1. Petitioners now seek this Court's permission to file an

[2] The court declined to exercise personal jurisdiction over Defendant Allen B. West because Gilmore failed to allege that West "played any direct role in writing, editing, or developing Wilburn's article, or that West generally exerted editorial control over AllenBWest.com." Dkt. No. 123, at 32.

interlocutory appeal on the personal-jurisdiction question.[3]

ARGUMENT

THE PETITIONS FOR INTERLOCUTORY APPEAL SHOULD BE DENIED BECAUSE THERE IS NO SUBSTANTIAL GROUND FOR A DIFFERENCE OF OPINION ON THE PERSONAL-JURISDICTION QUESTION.

1. "The general rule is that 'a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of district court error at any stage of the litigation may be ventilated.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (citation omitted). In extraordinary circumstances, however, this Court may certify an order for interlocutory appeal if it concerns (1) a "controlling question of law" (2) "as to which there is substantial ground for difference of opinion," and (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). All three elements must

[3] If this Court determines that interlocutory review is warranted, it should agree to address only the question the district court certified in its order. *See* Dkt. No. 163, at 1. Some Petitioners argue that this Court should also certify a question about the scope of Virginia's long-arm statute. *See* Petition for Permission to Appeal Pursuant to 28 U.S.C. § 1292(b), No. 19-382, at 2. However, as the district court recognized in concluding that there is no substantial ground for difference of opinion regarding that question, *see* Dkt. No. 163, at 13, this Court has long held that "Virginia's long-arm statute extends personal jurisdiction to the extent permitted by the Due Process Clause," so "the statutory inquiry necessarily merges with the constitutional inquiry, and the two inquiries essentially become one," *Young*, 315 F.3d at 261 (citation omitted); *see English & Smith v. Metzger*, 901 F.2d 36, 38 (4th Cir. 1990) ("the purpose of the Virginia long-arm statute is to extend jurisdiction to the extent permissible under the due process clause"). Petitioners "identify no Virginia precedent contrary to this approach." Dkt. No. 163, at 13.

be present for the Court to grant certification of an interlocutory appeal. *See Butler v. DirectSAT USA, LLC*, 307 F.R.D. 445, 452 (D. Md. 2015). Moreover, "certification by a district court . . . does not require [this Court] to grant leave to appeal." *Fannin v. CSX Transp., Inc.*, No. 88-8120, 1989 WL 42583, at *2 (4th Cir. Apr. 26, 1989). "The immediate appeal of a certified question is an extraordinary remedy, which may be granted or denied at the sole discretion of the court of appeals." *Id.*; *see In re Trump*, 928 F.3d 360, 372 (4th Cir. 2019) ("The proper operation of § 1292(b) thus occurs only when *both* the district court *and* the court of appeals exercise their independently assigned discretion.").

The second prong of § 1292(b)—requiring a substantial ground for difference of opinion on a question of law—is typically satisfied when a decision "involves a new legal question or is of special consequence." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). Thus, this Court recently held that interlocutory review was appropriate when a district court order was the "first ever" to permit a party to sue the President under the Emoluments Clauses, *In re Trump*, 928 F.3d at 369; it directly conflicted with a decision of another district court, *id.* at 370; and it raised in this Court's view "extraordinary" issues of "national significance" like the "intrusion into the duties and affairs of a sitting President," *id.* at 368. Barring special circumstances like these, however, this Court has insisted that certification "should be used sparingly," *Michaels*, 848 F.3d at 340 (quoting *Myles*, 881 F.2d at 127), and

certification is considered "improper if it is simply 'to provide early review of difficult rulings in hard cases,'" *Butler*, 307 F.R.D. at 452 (quoting *City of Charleston v. Hotels.com, LP*, 586 F. Supp. 2d 538, 548 (D.S.C. 2008)).

2. These petitions for interlocutory appeal should be denied because Petitioners have failed to show that there is substantial ground for a difference of opinion on the personal-jurisdiction question.[4] Rather, this case presents a straightforward application of binding Supreme Court precedent, and it hardly raises the type of novel legal issue or special circumstance that merits interlocutory review.

The facts in this case are materially indistinguishable from those in the Supreme Court case *Calder v. Jones*. In *Calder*, the Court held that the author and editor of a story in the National Enquirer—a nationwide publication with national readership—should have "'reasonably anticipate[d] being haled into court [in California]'" because California was "the focal point both of the story and of the harm suffered." 465 U.S. at 790, 789 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). First, the Court explained that "the allegedly libelous story concerned the California activities of a California resident" because it "impugned the professionalism of an entertainer whose television career was

[4] For the reasons described in Gilmore's Consolidated Opposition to Defendants' Motions for Reconsideration or Certification for Interlocutory Appeal in the district court, *see* Dkt. No. 145, Petitioners have also failed to meet the other two prongs of the interlocutory-appeal standard.

centered in California." *Id.* at 788. Second, "the brunt of the harm, in terms both of [the plaintiff's] emotional distress and the injury to her professional reputation, was suffered in California." *Id.* at 789. In short, as this Court later described it, *Calder* held that "a California court could constitutionally exercise personal jurisdiction over a Florida citizen whose only material contact with California was to write a libelous story in Florida, directed at a California citizen, for a publication circulated in California, knowing that the 'injury would be felt by [the Californian] in the State in which she lives and works.'" *ALS Scan, Inc. v. Dig. Serv. Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002) (quoting *Calder*, 465 U.S. at 789-90).

This holding plainly applies here. First, the articles and videos at issue focused principally on Virginia. Each one concerned a Virginia resident's activities at a Virginia event: namely, Gilmore's presence at the counter-protest in Charlottesville, the video he took there, and his supposed participation in a conspiracy to plan the Charlottesville events. Those events concerned a Virginia controversy: the renaming of a Charlottesville park and the resulting Unite the Right rally in protest of that decision. And many of the articles and videos also detailed Gilmore's prior employment as chief of staff to Virginia gubernatorial candidate Tom Perriello, apparently to support their claims that Gilmore participated in a conspiracy to stage the Charlottesville events.

Second, each article and video caused harm to Gilmore in Virginia, the place

where he lives and works. As the complaint alleged, Gilmore "experienced irreversible personal and professional damage in Virginia, including reputational harm, the loss of business opportunities in Virginia, irreparable damage to his career as a Foreign Service Officer, and the loss of friendships with individuals in Virginia." Am. Compl. ¶ 6. In short, Virginia was "the focal point both of the story and of the harm suffered," *Calder*, 465 U.S. at 789.

To be sure, as Petitioners emphasize, the *Calder* Court noted that the National Enquirer had its "largest circulation" in California. *Id.* at 790; *see* Petition for Permission to Appeal Pursuant to 28 U.S.C. § 1292(b), No. 19-381 ("FSS Petition"), at 11-12. But as the Supreme Court also made clear, the National Enquirer was "a national magazine," 465 U.S. at 784, with only 11.4% of its total circulation in California, *id.* at 785 n.2. In noting that the magazine's largest circulation was in California, the Court was simply making the point that the defendants in that case should have known that their article "would have a potentially devastating impact" on the plaintiff, who lived and worked in California, *id.* at 789. The same is true here. Gilmore alleged that "a significant portion of viewers of each website are Virginia residents," Am. Compl. ¶ 9—an allegation that makes sense given Virginia's size—and so Petitioners should have anticipated being haled into court in Virginia, which was the focal point of their stories and the location of the injury that Gilmore suffered.

3. Significantly, each of the objections that Petitioners raise to the district court's decision was rejected by the Supreme Court in *Calder*. First, Petitioners complain that the district court's holding means it could exercise specific personal jurisdiction over the author of a story focusing on Virginia events "even when the publication was directed to a national audience, the events were of interest to a national audience, and the defendants had no other relevant contacts with the forum state." FSS Petition 1. But the same was true in *Calder*: the National Enquirer was a "national weekly newspaper with a total circulation of over 5 million," only 11.4% of which was in California, and the article was obviously of interest to a nationwide audience. 465 U.S. at 785 & n.2. Moreover, aside from two trips, defendant Calder "ha[d] no other relevant contacts with California." *Id.* at 786. Nonetheless, the Supreme Court held that the court could properly exercise personal jurisdiction over Calder because California was the focal point of the story and the place where the harm was felt.

Petitioners also suggest that "commentary concerning matters of *national interest*, even when addressing events in a particular forum," is not probative of an author's intention to target a particular state "because it sheds no light on where the writer or publisher intended to target its publication." FSS Petition 3. Again, *Calder* forecloses this argument. Despite the fact that the National Enquirer was a nationwide publication and the article about a nationally known entertainer was of national

interest, the Court reasoned that the defendants "knew that the brunt of th[e] injury would be felt by [the plaintiff] in the State in which she lives and works." 465 U.S. at 789-90. The district court below therefore got it right: "*Calder* establishes that an article with broad national appeal can nonetheless be aimed at an audience in a particular state." Dkt. No. 123, at 22-23 n.26.

Petitioners also argue that "the district court's holding authorizes the exercise of jurisdiction over any person who comments on Virginia events in an Internet publication or on social media." FSS Petition 9. The district court, however, simply concluded that it could exercise personal jurisdiction over a story's authors and publishers in Virginia courts if the story focuses primarily on Virginia and the harm is felt in Virginia. Petitioners may not like this rule, but it is the rule the Supreme Court established in *Calder*.

Finally, Petitioners suggest that this case "implicates overriding First Amendment concerns." *id.* at 2. But the *Calder* Court "reject[ed] the suggestion that First Amendment concerns enter into the jurisdictional analysis." 465 U.S. at 790. Indeed, "the potential chill on protected First Amendment activity stemming from libel and defamation actions is already taken into account in the constitutional limitations on the substantive law governing such suits," and "[t]o reintroduce those concerns

at the jurisdictional stage would be a form of double counting." *Id.*[5]

At every turn, *Calder* answers the objections that Petitioners raise. To merit interlocutory review, Petitioners must establish that there is substantial ground for a difference of opinion, and they cannot establish such a ground over a question the Supreme Court has already answered.

4. Significantly, Petitioners have also failed to offer a single factually analogous case that was decided differently. First of all, the district court's decision is entirely consistent with this Court's decision in *Young v. New Haven Advocate*, 315 F.3d 256. There, two local Connecticut newspapers mentioned a Virginia-based plaintiff in the context of articles that had a "focus" on "the Connecticut prisoner transfer policy and its impact on the transferred prisoners and their families back home in Connecticut." *Id.* at 263. In declining to exercise personal jurisdiction, this Court highlighted that "[t]he articles reported on and encouraged a public debate *in Connecticut* about whether the transfer policy was sound or practical for *that state* and its citizens." *Id.* at 263-64 (emphasis added). "Connecticut, not Virginia, was

[5] Petitioners note, in passing, that their motion before the district court argued that they "did not know, at the time [they] produced the video[s], that Plaintiff was a Virginia resident," FSS Petition 5, but they do not argue in this Court that this fact is relevant to the personal-jurisdiction analysis. In any event, there is reason to question this assertion, given that Petitioners' articles and videos repeatedly discussed Gilmore's prior history working in Virginia politics. At the motion-to-dismiss stage, these types of factual questions should be "construe[d] . . . in the light most favorable to the nonmoving party." *Rockville Cars*, 891 F.3d at 145.

the focal point of the articles." *Id.* at 264. In contrast, Virginia—and no other state—is the focal point of Petitioners' defamatory publications: Petitioners made a Virginia resident and his activities at a prominent Virginia event addressing a Virginia controversy, as well as his connections to Virginia politics, the centerpiece of their articles and videos.

Moreover, in *Young*, the content of the two websites at issue was "decidedly local": the newspapers "maintain[ed] their websites to serve local readers in Connecticut, to expand the reach of their papers within their local markets, and to provide their local markets with a place for classified ads." *Id.* at 263. That is not the case here. Instead, as in *Calder*, there is a national readership for the outlets in which these defamatory articles and videos were published, with a "significant portion of viewers" in Virginia, Am. Compl. ¶ 9. In short, this case squarely presents the "[s]omething more than posting and accessibility," *Young*, 315 F.3d at 263, that this Court concluded was lacking in *Young*.

The district court's decision also abides by this Court's admonition that "a person who simply places information on the Internet does not subject himself to jurisdiction in each State into which the electronic signal is transmitted and received," *ALS Scan*, 293 F.3d at 714. Virginia is not just *a* state in which "the electronic signal [was] transmitted and received." Rather, Virginia is *the* state in which the events described in the articles and videos took place and the harm was suffered.

Indeed, Gilmore has consistently argued that Virginia is *the only state* in which a court could properly exercise specific personal jurisdiction over Petitioners for the articles and videos at issue in this case. *See* Dkt. No. 70, at 20.

Finally, in granting the certification motion, the district court suggested that "[d]istrict courts within the Fourth Circuit are . . . in disagreement on how *Calder*'s 'effects test' applies to Internet publishers with a national focus, who nonetheless target forum states with state-specific coverage." Dkt. No. 163, at 11. But the cases it cited are inapposite, and the court itself acknowledged that "these cases can be distinguished from this case on their facts," *id.* at 11 n.7.

In *FIREClean, LLC v. Tuohy*, an allegedly defamatory article about a Virginia gun oil manufacturer "never reference[d] Virginia and d[id] not focus on [the manufacturer's] Virginia origin or affiliations." No. 16-0294, 2016 WL 3952093, at *7 (E.D. Va. July 21, 2016). "Instead, the articles and comments plainly focus[ed] on [a product's] chemical composition, recommended uses for [it], and product testing performed outside Virginia," and therefore "had no special appeal for Virginia readers." *Id.* Similarly, in *Fertel v. Davidson*, the allegedly defamatory post at issue—about a company called MarriageMax—did not mention Maryland activities or events, but rather focused on the company's marriage-counseling product, which was available nationally online. No. 13-2922, 2013 WL 6842890, at *4 (D. Md. Dec. 18, 2013). Thus, the court concluded that the post "was not focused on

Maryland; rather, the only mention of Maryland came from including Marriage-Max's address," which happened to be in Baltimore. *Id.* And in *Edwards v. Schwartz*, the court explained that none of the communications at issue "targeted a particular forum, let alone Virginia," that they "were [not] of special interest to Virginia readers," and that there were no "facts indicating" that anyone in Virginia "was even aware of the communications in question." No. 18-378, 2019 WL 1295055, at *14 (W.D. Va. Mar. 20, 2019). In short, as the district court reasoned, those cases involved "only glancing references to the forum state," while Petitioners' articles and videos "are predominantly, if not exclusively, focused on Virginia." Dkt. No. 123, at 23 n.29.

Indeed, cases from jurisdictions around the country demonstrate that the district court's decision was well within the broad consensus of courts applying *Calder* to factually analogous circumstances. *See, e.g.*, *Gubarev v. Buzzfeed, Inc.*, 253 F. Supp. 3d 1149, 1158-59 (S.D. Fla. 2017) (publication of content of national importance supports specific personal jurisdiction in Florida because it defamed a Florida plaintiff who sustained harm in Florida); *Lostutter v. Olsen*, No. 16-1098, 2017 WL 3669557, at *10 (M.D.N.C. Aug. 24, 2017) (exercising specific personal jurisdiction in defamation case because although "the audience for the website as a whole may have been nationwide . . . much of the content was aimed toward a North Carolina store with North Carolina customers"); *Hawbecker v. Hall*, 88 F. Supp. 3d 723,

725, 728 (W.D. Tex. 2015) (Colorado resident is subject to personal jurisdiction in Texas when she made a Facebook page indicating that the Texas plaintiff sexually abused children); *Jones v. Dirty World Entm't Recordings, LLC*, 766 F. Supp. 2d 828, 830-36 (E.D. Ky. 2011) (personal jurisdiction over Arizona defendants who refused to remove an allegedly libelous post claiming the plaintiff, a citizen of Kentucky and a cheerleader for the Cincinnati Bengals, "has slept with every other Bengal Football player" and contracted sexually transmitted diseases).

* * *

There is no "substantial ground for difference of opinion" regarding the district court's personal-jurisdiction holding. Petitioners' objections to the district court's decision are foreclosed by binding Supreme Court precedent, the district court's decision is consistent with this Court's precedents, and Petitioners have failed to offer a single factually analogous case that reached a different result. Petitioners have failed to meet the heavy burden that 28 U.S.C. § 1292(b) imposes.

CONCLUSION

For the foregoing reasons, the petitions for interlocutory review should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 5(c)(1) because it contains 5,186 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word, 14-point Times New Roman font.

Executed this 7th day of October, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on October 7, 2019.

I certify that all parties except *pro se* Defendant Lee Stranahan are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. I further certify that, on this date, I caused a true and accurate copy of the foregoing document to be served, by electronic mail and Federal Express overnight delivery, on the following:

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