No. 24-1494

United States Court of Appeals

for the

Fourth Circuit

DIANA MEY, on behalf of herself and
a class of others similarly situated,

Plaintiff-Appellee,

– v. –

WILLIAM PINTAS; P&M LAW FIRM, LLC;
P&M LAW FIRM (PR), LLC,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

BRIEF OF APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Fourth Circuit Local Rule 26.1, P&M Law Firm, LLC and P&M Law Firm (PR), LLC provide the following corporate disclosure statement:

P&M Law Firm, LLC and P&M Law Firm (PR), LLC are not publicly held corporations or other publicly held entities. There is no other publicly held corporation that has a direct financial interest in the outcome of this litigation. P&M Law Firm, LLC and P&M Law Firm (PR), LLC are not trade associations, and this case does not otherwise arise out of bankruptcy proceedings.

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JURISDICTIONAL STATEMENT

The District Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367. The District Court issued its Order Granting Anti-Suit Injunction on May 17, 2024, and this appeal timely followed on May 28, 2024. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1292(a)(1), insofar as it is an interlocutory appeal from an order of the District Court "granting . . . [an] injunction[]" under the Anti-Injunction Act. *See* 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

(1) Whether Plaintiff Diana Mey has Article III standing to sue in federal court and pursue a claim under the Telephone Consumer Protection Act of 1991 (the "TCPA") when she utilized a fake pseudonym during the allegedly unwanted calls, repeatedly invited the calls, and otherwise did not allege in her Complaint *any* personal harm or injury suffered as a result of the calls?

(2) Whether the District Court erroneously issued an unprecedented and extraordinary injunction under the Anti-Injunction Act (the "AIA") of ongoing state court proceedings in the Commonwealth of Puerto Rico, which predated the filing of this federal court action by more than 10 months, because the District Court concluded that the Puerto Rico Lawsuit was "burdensome," "vexatious," and filed in "bad faith," and that the Puerto Rico Court otherwise lacked personal and subject matter jurisdiction?

(3) Whether the District Court erroneously determined that Mey was "not required" to post bond for the issuance of an unprecedented injunction?

INTRODUCTION

In issuing a remarkable and unprecedented injunction under the Anti-Injunction Act, 28 U.S.C. § 2283 (the "AIA"), which enjoins the parties to this federal court action from participating in a previously filed lawsuit that was well underway in the Commonwealth of Puerto Rico, the District Court described Plaintiff Diana Mey—a serial and prolific litigant in the Northern District of West Virginia and, in particular, a frequent filer in the Wheeling Division—as a "consumer advocate who has been *waging a war* against violators of the Telephone Consumer Protection Act [the "TCPA"] . . . for over two decades." JA666 (emphasis added). Much like Mey's so-called "war" against telemarketers, the District Court's backing of Mey's improvident request for an Anti-Suit Injunction wages war against our Nation's revered system of federalism.

As explained in further detail below, the District Court's Order Granting Anti-Suit Injunction (the "Anti-Suit Injunction") must be **REVERSED** for three reasons. ***First***, Mey does not possess Article III standing to sue in federal court because she has not personally suffered an injury-in-fact that is concrete and particularized. As a result, Mey cannot seek the extraordinary injunctive relief that she demands under the AIA, and **DISMISSAL** of this action is warranted.

Second, assuming Mey does possess Article III standing to sue, the Anti-Suit Injunction must nevertheless be **REVERSED** and this case **REMANDED** for further proceedings. The AIA's "in aid of jurisdiction" exception—or any other judicially improvised exception fashioned by the District Court—does not allow for the issuance

of an injunction simply because the District Court views an ongoing, previously filed lawsuit in another forum as being "burdensome, vexatious, and intended to deprive Ms. Mey of her day in court in the proper venue." JA678, JA710. Nor does the AIA's "in aid of jurisdiction" exception permit an injunction if the District Court concludes—without any legal authority to do so—that the Puerto Rico Court lacks personal jurisdiction over Mey or subject matter jurisdiction over the previously filed lawsuit.

Third, the District Court's Anti-Suit Injunction should be **REVERSED** because, contrary to well-established Fourth Circuit precedent, the District Court summarily concluded that Mey was "not . . . required" to post a bond. JA679.

STATEMENT OF FACTS

A. The Camp Lejune Justice Act is enacted by Congress in 2022 to provide compensation to veterans and civilian family members previously exposed to contaminated water at Marine Corps Base Camp Lejune.

Passed by Congress and signed into law by President Biden, the Camp Lejune Justice Act of 2022—part of a larger bill commonly known as the PACT Act—was designed to give U.S. veterans and their civilian family members the ability to seek compensation for health issues incurred as a result of exposure to contaminated water at Camp Lejune in Jacksonville, North Carolina. *See* Honoring our PACT Act of 2022, Pub. L. 117-168. Specifically, Section 804 of the PACT Act authorizes a new federal cause of action for those veterans and family members exposed to contaminated water at Camp Lejune. Prior to the enactment of this provision, only *exposed* veterans could seek compensation as a Veterans Affairs ("VA") disability benefit, in light of prior

federal court rulings suspending a veteran's right to sue under the Federal Tort Claims Act. *See In re Camp Lejune N.C. Water Contamination Litig.*, 263 F.Supp.3d 1318 (N.D. Ga. 2016). Following the law's enactment, William Pintas, P&M Law Firm (PR), LLC, and P&M Law Firm, LLC (collectively, the "P&M Defendants") began assisting impacted veterans and their dependents in obtaining benefits under the Act. Or so they thought.

B. In early 2023, professional TCPA plaintiff Diana Mey—using the fake identity of "Rhonda Nicholson"—receives and then invites telephone calls regarding potential compensation under the Camp Lejune Act.

On February 8, 2023, at 12:54 PM EST, professional TCPA plaintiff Diana Mey—who alleges that she is an "individual residing in Wheeling, West Virginia," *see* JA10—apparently received an unsolicited telephone call regarding potential benefits and compensation under the Camp Lejune Justice Act.[1] While Mey alleges that the telephone number in question was on the National "Do Not Call" Registry, *see* JA10, JA13, JA20, call recordings supplied by Mey indicate that the call was, in no uncertain terms, consensual, if not invited. Importantly, it was *not* Mey—the named plaintiff in this lawsuit—that answered the call that February morning. Rather, it was answered by a woman who confidently identified herself as "Rhonda Nicholson." *See* JA13.[2]

[1] All telephone calls were either made or placed by other defendants in this action, including Reliance Litigation LLC, and James Ryder Interactive, LLC. The P&M Defendants placed no such calls nor had any responsibility for generating calls.

[2] As would later be revealed through Mey's own allegations in the Complaint, "Rhonda Nicholson" was not Mey's relative, friend, or even her house guest. Rather, "Rhonda Nicholson" *was* Diana Mey, who was merely using a fraudulent imposter pseudonym and engaging the callers solely to deceive and manufacture TCPA claims.

During this allegedly initial call about potential benefits under the Camp Lejune Justice Act, "Rhonda" represented to the caller that she lived in Bensenville, Illinois—not Wheeling, West Virginia. JA168-169. After confirming that "Rhonda" had not previously signed a retainer agreement with another law firm, the caller informed "Rhonda" that she would be receiving a follow-up call from an individual named "David Smith," who would ask her a series of questions about potential compensation under the Camp Lejune Justice Act. JA168-169. Toward the end of the call, instead of "Rhonda" informing the caller of her true identity and explaining that her number was listed on the National "Do Not Call" Registry, "Rhonda" *invited* a second call. JA169.

From there, Mey's fraudulent and deceptive ruse blossomed. On February 8, 2024, at 1:54 PM EST, Mey—still cosplaying as "Rhonda Nicholson" from Illinois—received a second call. JA170. This time, "Rhonda" represented to the caller that *she* lived at Camp Lejune from 1978 to 1981 and was subsequently diagnosed with cancer. JA170. Then, at 2:02 PM EST, "Rhonda" received another call, this time holding the line for a few minutes before telling the caller that it was "okay" for them to call back in approximately 10 to 15 minutes due to apparent technical difficulties. JA173.

A few minutes later, at approximately 2:10 PM EST, "Rhonda" received another call. This time, "Rhonda" held the line for a few moments before the call unexpectedly was disconnected. JA174. At 3:58 PM EST, "Rhonda" answered the phone once again, this time offering up to the caller a home address of "2541 West Drive" in Bensenville, Illinois. JA263. "Rhonda" also provided the caller with her email address and

confirmed her date of birth. JA263. The caller then instructed "Rhonda" that she would soon receive a link via email to fill out certain paperwork. As a later call at 4:09 PM EST confirms, however, the link never arrived in "Rhonda's" email inbox—indeed, Rhonda and the caller even shared a moment of laughter about the situation. JA266.

The next day, on February 9, 2023, "Rhonda" received another call at approximately 10:14 AM EST. *See* JA195-196. The caller immediately asked for "Rhonda Nicholson," and "Rhonda" quickly confirmed that she was, in fact, speaking. JA195. The caller informed "Rhonda" that she was once again calling about a potential claim for benefits under the Camp Lejune Justice Act. Confirming her email address so that "Rhonda" could receive paperwork and retain legal counsel to represent her, "Rhonda" affirmatively stated it was "alright" for the caller to call back. JA196.

Heeding the unequivocal consent of "Rhonda," four more calls were placed to "Rhonda" on February 9, 2023. *See* JA196, JA199, JA209, JA216. Notably, during a call at 12:30 PM EST, "Rhonda"—again supplying a fake Illinois address and discrete e-mail—indicated that she was exposed to the water at Camp Lejune and was subsequently diagnosed with breast cancer. JA203. As a result of her cancer diagnosis, "Rhonda" represented to the caller that doctors previously "cut off her breasts" in the early 1990s. JA203. The caller then informed "Rhonda" that they were going to ask her a number of "quality assurance questions." JA205. This included (1) whether anyone had instructed "Rhonda" to lie or provide false information about a claim for benefits under the Camp Lejune Justice Act ("Rhonda" answered "no"); (2) whether anyone

offered "Rhonda" money in exchange for lying ("Rhonda" again answered "no"); and (3) whether the information that "Rhonda" provided on the call was the "truth and nothing but the truth" ("Rhonda" lied, however, and answered "yes"). JA205-206.[3]

On February 10, 2023, "Rhonda" received six additional telephone calls about potential compensation under the Camp Lejune Justice Act. Like a predator focusing in on its prey, "Rhonda" began peppering the callers with questions about the law firms that were evidently behind the calls. Finally, at 4:07 PM EST on February 10, 2023, "Rhonda" spoke with a gentleman named "Chuck" from Reliance Litigation. JA217-225. Yet again, "Rhonda" falsely informed "Chuck" that she was a resident of Bensenville, Illinois, supplying an address of 2541 West Drive. "Rhonda" also furnished detailed medical information about previous healthcare providers and misrepresented that she had moved from West Virginia to Illinois just a few years prior. JA221.

Eventually, the caller informed "Rhonda" that, if she signed a retainer agreement and consented to legal representation, "Pintas & Mullins" would be handling her claim for benefits under the Camp Lejune Justice Act. JA223-224. When tendered with an engagement letter to sign, however, "Rhonda" indicated that she was not going to execute the document because she purportedly did not request the initial call placed on

[3] Despite it being illegal to submit a request for government benefits using false information, *see, e.g.*, 31 U.S.C. § 3729 *et seq.*, this type of discreet, yet direct, lying makes no sense other than to either perpetrate a fraud or generate TCPA claims.

February 8, 2023. Rather, "Rhonda" explained she was only engaging the calls in an effort to "identify the law firm behind the illegal cold calls about Camp Lejune." JA224.[4]

C. After Mey sought to extract an exorbitant and outrageous settlement, the P&M Law Firm (PR), LLC—which is located in Puerto Rico—commenced a fraud and declaratory judgment action against Mey in the Commonwealth of Puerto Rico's Court of First Instance.

Instead of immediately filing suit as "Rhonda Nicholson" in the Northern District of West Virginia—or, for that matter, in the Northern District of Illinois, where "Rhonda Nicholson" supposedly resided—Diana Mey sought to extract an exorbitant settlement from the P&M Defendants in the amount of $130,000.[5] On March 15, 2023—this time as Diana Mey and *not* the cosplayer "Rhonda Nicholson"—Mey emailed William Pintas ("Pintas") and visited the website of P&M Law Firm, LLC (the "Chicago Law Firm"), a separate and distinct entity from the Puerto Rico Law Firm. In her communications, Mey detailed what she described as "*her* claims under federal and West Virginia telemarketing laws and offered a settlement." JA151 (emphasis added).[6]

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[4] "Rhonda" supposedly received three additional calls from Reliance Litigation and/or James Ryder Interactive—one on February 13, 2023, at 10:55 AM EST; one on February 13, 2023, at 1:11 PM; and a final call on February 14, 2023, at 5:36 PM EST.

[5] Under the TCPA, in the event of a violation, a subscriber is permitted to sue for up to $500 per each violation, *see* 47 U.S.C. § 227(b)(3)(a), or seek recovery of $1,500 per each violation in the event of a willful violation, 47 U.S.C. § 227(b)(3)(a).

[6] About half an hour before emailing Pintas, Mey also sent an e-mail to the Attorney Registration and Disciplinary Commission ("ARDC") of the Supreme Court of Illinois. Mey lodged a "formal bar complaint against the law firm of Pintas & Mullins . . . for violations of Rule 7.3 involving solicitation of prospective clients"—that is, the same telephone calls of which she now complains. JA251-254. On March 17, 2023, the (Continued)

While the parties briefly contemplated resolving Mey's alleged claims,[7] in response to her inordinate demand—and upon learning more of Mey's brazenly deceptive practices—on April 4, 2023, P&M Law Firm (PR), LLC (the "Puerto Rico Law Firm") filed suit against Mey in the Commonwealth of Puerto Rico's Court of First Instance. JA57 (the "Puerto Rico Lawsuit").[8] Chiefly, the Puerto Rico Lawsuit alleges that Mey committed common-law fraud against the Puerto Rico Law Firm. JA63. For instance, by the "FIRST CAUSE OF ACTION," the Puerto Rico Law Firm alleges that Mey made several material and false oral and written representations, solely to induce telephone calls to her. JA76. Meanwhile, the remaining claims asserted in the Puerto Rico Lawsuit, styled as the "SECOND" through "FIFTH CAUSES OF ACTION," ask for declaratory relief on the TCPA-related issues of "consent," "solicitation," "residential subscriber," and "identification requirements," respectively. JA77-81.

ARDC announced that it would not initiate an inquiry, nor would it seek a response from William Pintas, the Chicago Law Firm, or the Puerto Rico Law Firm. JA249-250.

[7] The District Court made much of the fact that Mey and counsel for the P&M Defendants had been actively discussing potential settlement, while at the same time the Puerto Rico Law Firm filed suit and sought default only *after* Mey evaded personal service at her home in Wheeling. But as discussed *infra*, this is all a complete sidecar and red herring since Mey—through her able lawyers in Puerto Rico—successfully had the default lifted. But even so, parties will frequently dual track litigation and settlement.

[8] 48 U.S.C. § 737 addresses privileges and immunities in the Commonwealth of Puerto Rico. That statute provides that "[t]he rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of section 2 of article IV of the Constitution of the United States." For purposes of this interlocutory appeal, Puerto Rico is a "state" under the AIA.

D. Although Mey successfully evaded service of process in Wheeling and the Puerto Rico Law Firm obtained a default judgment, Mey ultimately succeeded in having the default lifted and then consented to discovery.

Mey alleges that the Puerto Rico Law Firm initially sent her an email with a copy of the complaint—in Spanish—that had been filed in the Puerto Rico Lawsuit. JA19. Mey claims that she "assumed" the email was "mere spam" and deleted it. JA19.

Otherwise using procedures established under Puerto Rican law, the Puerto Rico Law Firm actually arranged with Legal Process Service & Investigations, LLC, in Miami, Florida ("LPSI"), for personal service on Mey in her true hometown of Wheeling, West Virginia.[9] LPSI attempted to serve Mey six (6) separate times: once on April 6, 2023, twice on April 7, 2023, once on April 8, 2023, and then twice on April 10 at Mey's address in Wheeling. Despite these efforts, Mey successfully evaded service of process, as reflected in the Verified Return of Non-Service, notarized by Debbie L. Hall of Gold, Khourey & Turak Law, located at 510 Tomlinson Avenue, Moundsville, WV 26041. JA438. Because of Mey's evasion, the Puerto Rico Law Firm sought leave to serve the complaint via publication. JA105. Eventually, a "summons by edict" was published in the "Primera Hora," a Puerto Rico-based publication written in Spanish. JA339.

[9] The Puerto Rico Law Firm served process on Mey in accordance with the Rules of Civil Procedure of the Commonwealth of Puerto Rico. *See* P.R. Civ. P. R. 4.4 (personal service); P.R. Civ. P. R. 4.6 (service by publication). Those rules closely mirror West Virginia's own rules related to service of process, *see* W. Va. R. Civ. P. 4, along with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 4.

Due to Mey's positive efforts in avoiding service of process, a default judgment was eventually entered by the Puerto Rico Court. JA105. After becoming aware of her default, on June 27, 2023, Mey retained counsel to defend her interests in the Puerto Rico Lawsuit. Mey's Puerto Rico counsel elected to file a motion to dismiss the Puerto Rico Lawsuit for lack of personal jurisdiction. JA152, JA472-498.[10] The Puerto Rico Court scheduled a hearing on Mey's motion to dismiss in January 2024. Right before that hearing, the Puerto Rico Court convened an in-chambers meeting with counsel to discuss the status of the case. JA670. Based on her counsel's advice, and in exchange for having the default lifted, Mey agreed to withdraw her motion to dismiss, answer the complaint, conduct discovery, and reserve any jurisdictional defenses. JA670.

Soon thereafter, the Puerto Rico Law Firm promptly served interrogatories, requests for production of documents and other attendant records, and similarly noticed depositions of Mey and her husband, Mark, to be conducted in Puerto Rico. On April 9, 2024, the judge in Puerto Rico also entered a comprehensive Scheduling Order, setting forth specific case management deadlines. JA353-355.

E. Ostensibly seeking to undo her consent to litigate the Puerto Rico Lawsuit, Mey hastily files suit in the Northern District of West Virginia.

Around the time that the Puerto Rico Law Firm had served its discovery requests on Mey (despite the fact that she expressly agreed to litigate and defend her interests in

[10] It is worth pointing out that Mey did *not* seek to remove the action to the United States District Court for the District of Puerto Rico.

the Puerto Rico Lawsuit), Mey filed a federal court action against the Puerto Rico Law Firm—along with William Pintas personally and the Chicago Law Firm, nonparties to the Puerto Rico Lawsuit—in the Northern District of West Virginia, at Wheeling. JA9-29.[11] By her Complaint, pursued both individually and on behalf of others similarly situated, Mey alleges a class-wide claim under the TCPA, along with the following individual claims: (1) fraudulent legal process; (2) abuse of process; (3) intentional infliction of emotional distress; and (4) injunctive relief under the AIA. JA23-27.

F. Without properly serving the P&M Defendants, Mey files a Motion for Temporary Restraining Order and Preliminary Injunction under the Anti-Injunction Act to enjoin the Puerto Rico Lawsuit in its entirety.

Of course, Mey's Complaint and moving papers make much of the fact that the Puerto Rico Law Firm supposedly did not effectuate proper service of process in the Puerto Rico Lawsuit (which it did and, in any event, is beside the point since Mey had the default judgment lifted). Ironically, at 4:12 PM on Friday, April 26, 2024, without first effectuating service of process on *any* of the named defendants in the West Virginia Lawsuit, Mey's lawyer simply emailed a copy of a Motion for Temporary Restraining Order and Preliminary Injunction to Carlos Baralt, counsel for the Puerto Rico Law Firm in the Puerto Rico Lawsuit. JA153. Minutes later, the District Court issued an order setting a hearing on Mey's temporary restraining order request for Tuesday, April 30, 2024, at 10:30 AM, in Wheeling. JA83. The District Court also commanded Mey to

[11] It bears emphasizing that Mey waited approximately 9 months *after* she began defending the Puerto Rico Lawsuit *before* initiating the West Virginia Lawsuit.

effectuate "actual service" on each defendant—and to file returns showing proof of the same—by no later than 12:00 PM EST on Monday, April 29, 2024. JA83.

G. With only one business day's notice, the District Court conducts a TRO hearing, immediately relieves Mey of her burden of proof, and improperly grants Mey's request for Temporary Restraining Order.

Contrary to the Supreme Court's instruction that Rule 65 of the Federal Rules of Civil Procedure "implies a hearing in which the defendant is given a *fair opportunity* to oppose the application and to *prepare* for such opposition," *see Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 433, n.7 (1974) (emphasis added), on April 30, 2024, the District Court conducted a hearing on Mey's TRO request. JA84-102 (the "TRO Hearing"). The TRO Hearing occurred notwithstanding Mey's failure to furnish proof of "actual service" on each defendant by no later than 12:00 PM on April 29, 2024.

Irrespective of the fact that the P&M Defendants and their counsel were given inadequate time to prepare for the TRO Hearing or file an opposition to Mey's TRO request, the outcome was *fait accompli*. Indeed, the District Court's first substantive remark at the hearing tells much of the story—the Court asked the P&M Defendants' counsel, "why shouldn't I grant a TRO?" JA86. That question was posed to the P&M Defendants even though Mey bore the burden of showing why such extraordinary

relief—for which she waited *months* before pursuing in federal court—was appropriate or justified. *See, e.g.*, *Manning v. Hunt*, 119 F.3d 254, 263 (4th Cir. 1997).[12]

Based solely on Mey's self-serving declaration and moving papers, the District Court ruled from the bench and issued a TRO. JA100. The next day, on May 1, 2024, the District Court rendered a nine-page written decision (the "TRO Ruling"), thereby enjoining the P&M Defendants from "proceeding in any way with the lawsuit in the Commonwealth of Puerto Rico Court of First Instance until a hearing on the Preliminary Injunction is heard on Monday[,] May 13, 2024, at 10:00 a.m." JA103.[13]

The TRO Ruling also set forth a briefing schedule in advance of the preliminary injunction hearing. JA111. Mey had until 5:00 PM on Monday, May 6, 2024, to file an opening brief. The P&M Defendants then had until 5:00 PM on Friday, May 10, 2024, to respond. Mey then had until 9:00 AM on Monday, May 13, 2024, to file a reply.[14]

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[12] The TRO Hearing was riddled with other signs that the outcome for the P&M Defendants was *fait accompli*. Indeed, toward the outset of the TRO Hearing, Carlos Baralt—counsel for the P&M Defendants and himself a native Spanish speaker—began addressing the District Court's questions about why the complaint filed in the Puerto Rico Lawsuit was written in Spanish. Quickly chiding Mr. Baralt's reasoned explanation as to why Spanish was an appropriate language for the proceedings in Puerto Rico, the District Court interjected and exclaimed that "*you people* have been acting in bad faith." JA89 (emphasis added). The District Court also remarked that it "[did not] care what the Puerto Rico" Rules of Civil Procedure provided as to service of process. JA89.

[13] At the request of the P&M Defendants, the TRO Ruling was modified to allow the P&M Defendants to "file non-substantive motions in the Commonwealth of Puerto Rico Court of First Instance to obtain hearing[] records and transcripts." *See* JA154.

[14] Mey did not file her opening brief by Monday, May 6, 2024, at 5:00 PM. Instead, just before close-of-business on May 6 and without conferring with counsel (Continued)

By her opening brief, Mey advanced the novel and provocative argument that the District Court could enjoin the Puerto Rico Lawsuit under the guise of the AIA to "act in aid of its jurisdiction." *See* 28 U.S.C. § 2283. Based entirely on a flawed, tortured reading of the Supreme Court's decision in *Atlantic Coast Line Railroad Company v. Board of Locomotive Engineers*, 398 U.S. 281, 295 (1970), Mey argued that the Puerto Rico Lawsuit—filed almost a *year before* the West Virginia Lawsuit—was now "interfering" with the District Court's consideration of Mey's newly filed TCPA claim. JA27.

Mey's brief also advanced a second argument (perhaps even more radical than the first): that the District Court could enjoin the Puerto Rico Lawsuit because (1) the Puerto Rico Law Firm was "insisting on taking the deposition of Mey's long-time attorney" (even though such a deposition had not been noticed); and (2) the Puerto Rico Lawsuit "serves no legitimate purpose . . . other than to harass Mey and cost undue expense" and constitutes "abusive and vexatious litigation." JA52. In other words, based solely on speculative fears and rank conjecture, Mey invited the District Court to engage in wholesale judicial improvisation and create a "fourth" exception to the AIA.

In response to Mey's arguments, the P&M Defendants maintained that the District Court had no power—either expressly authorized by the AIA or otherwise—

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for the P&M Defendants, Mey unilaterally sought a one-day enlargement of time to file an opening brief by no later than Tuesday, May 7, at 5:00 PM. JA5. Although the District Court granted Mey an extension, JA5, when the P&M Defendants made a commensurate request, JA6 the District Court immediately rejected it. JA6. This short-changed the P&M Defendants by reducing the amount of time to respond by a day.

to enjoin the then-ongoing Puerto Rico Lawsuit. The P&M Defendants explained that the AIA—which must be "narrowly construed," *Casa Marie, Inc. v. Superior Court of Puerto Rico for Dist. of Arecibo*, 988 F.2d 252, 261 (1st Cir. 1993)—"is to be used sparingly and only in the most critical and exigent circumstances." *See Brown v. Gilmore*, 533 U.S. 1301, 1303 (2001) (Rehnquist, C.J., in chambers); *see also Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1203–04 (7th Cir. 1996). As to the second exception—the "in aid of jurisdiction" exception (and the *only* exception upon which Mey relied)—the P&M Defendants noted that it applies only in two *narrow* circumstances, neither of which cover or address the facts of this case: (1) "when the case is removed from state court" *or* (2) "where the federal court has in rem or quasi in rem jurisdiction over specific property." *See Hanover Am. Ins. Co. v. Tattooed Millionaire Entertainment, LLC*, 38 F.4th 501, 508 (6th Cir. 2022); *see also Signal Properties, Inc. v. Farha*, 482 F.2d 1136, 1140 (5th Cir. 1973).

H. The District Court grants Mey's Motion for Preliminary Injunction and enjoins the parties from proceeding with the Puerto Rico Lawsuit.

A few days after the Preliminary Injunction Hearing, on Friday, May 17, 2024, the District Court granted Mey's request for an anti-suit injunction and halted the Puerto Rico Lawsuit in its tracks. JA666-679 (the "Anti-Suit Injunction"). Praising Mey as a "consumer advocate who has been waging war against [TCPA] violators . . . for over two decades," JA666, the District Court initially concluded—well beyond the scope of its power, *cf. Atlantic Coast Line*, 398 U.S. at 297 (concluding in context of AIA that a "lower federal court[] possess[es] no power to sit in direct review of state court

decisions")—that "[t]here can be little doubt that the Puerto Rico [C]ourt lacked personal jurisdiction over Ms. Mey," JA668. The District Court further determined—again, without authority to do so—that the "Puerto Rico territorial court lacks the subject matter jurisdiction to handle and decide TCPA cases." JA677. That was so despite the fact that the Puerto Rico Court had yet to address or resolve these issues.

Putting these effective jurisdictional rulings aside, the District Court nevertheless acknowledged that the AIA's three exceptions for enjoining state court proceedings "'are construed narrowly, . . . and are not [to] be enlarged by loose statutory construction.'" JA704 (quoting *Employers Res. Mgmt. Co., Inc. v. Shannon*, 65 F.3d 1126, 1130 (4th Cir. 1995)). Despite recognizing the existence of such limitations, the District Court resolved that an anti-suit injunction was proper under the AIA. According to the District Court, that was so because the Puerto Rico Lawsuit "is tantamount to a SLAPP proceedings," JA676, and otherwise "is burdensome, vexatious, and intended to deprive Ms. Mey of her day in court in the proper venue," JA678.[15] As a result, without requiring Mey to post bond, the District Court "issue[d] an injunction . . . [prohibiting] the parties . . . from proceeding in any way with the underlying lawsuit in the Commonwealth of Puerto Rico Court of First Instance." JA679.

[15] It is worth emphasizing that these findings of fact were rendered despite the complete *lack* of competent evidence supporting such a conclusion.

I. The P&M Defendants noticed this interlocutory appeal of the District Court's Order Granting Anti-Suit Injunction and otherwise asked the District Court to stay the *proceedings* pending appeal.

On May 28, 2024, the P&M Defendants timely noticed an interlocutory appeal of the Anti-Suit Injunction to this Court. JA680. Later that day, the P&M Defendants also asked the District Court to stay the underlying *proceedings* pending this appeal, to allow the Puerto Rico Lawsuit and the West Virginia Lawsuit to proceed on parallel tracks, in the event this Court were to reverse the Anti-Suit Injunction. JA683-687.[16]

On June 24, 2024, the District Court denied the P&M Defendants' Motion for Stay of Proceedings Pending Interlocutory Appeal. *See Mey v. Pintas et al.*, No. 5:24-cv-00055 (N.D. W. Va. June 24, 2024), ECF No. 70. As the primary basis for its decision, the District Court explained that, "[s]hould defendants prevail on appeal, the Puerto Rican lawsuit will simply proceed in tandem with this case." *Id.* at 3. Without addressing the P&M Defendants' contention that the absence of a stay could lead to inconsistent

[16] A few weeks after the P&M Defendants noticed this interlocutory appeal, on June 14, 2024, the District Court entered an order denying the P&M Defendants' Motion to Dismiss, as filed pursuant to Rules 12(b)(1) and 12(b)(6). JA696-725. As discussed *infra*, while the propriety of that ruling is not sqaurely before this Court, the issue of Article III standing—which the District Court concluded, in one paragraph, that Mey possesses—may be addressed in the posture of this appeal. *See, e.g.*, *Disability Rights of S.C. v. McMaster*, 24 F.4th 893, 899 (4th Cir. 2022) (on interlocutory appeal, declining to reach question of whether preliminary injunction was properly issued and instead deciding whether the plaintiff possessed Article III standing to sue). That is so because "[w]hen a question of standing is apparent," this Court has an obligation "to . . . decide the issue," irrespective of whether it was "raised or addressed in the lower court." *See Benham v. City of Charlotte*, 635 F.3d 129, 134 (4th Cir. 2011) (citing *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 480 (4th Cir. 2005)).

discovery rulings, the District Court remarked that "discovery will be necessary in any event" and "defendants won't suffer irreparable harm absent a stay." *Id.* Finally, adopting the balance of Mey's arguments nearly verbatim, the District Court remarked that "a stay would prejudice Mey and the putative class insofar as delay would likely lead to the loss of critical evidence—in particular, class call records, which can be particularly ephemeral in TCPA cases," and that Mey would otherwise be "prevent[ed] . . . from prosecuting her claims against the remaining defendants, Reliance Litigation LLC and James Ryder Interactive LLC, who have no interests" in this appeal. *Id.* at 4.[17]

SUMMARY OF THE ARGUMENT

The District Court's Anti-Suit Injunction must be overruled for three reasons.

First, Mey lacks Article III standing to sue in federal court because she has not suffered an injury-in-fact that is "concrete" and "particularized" as to her personally. In *Spokeo v. Robbins*, the Supreme Court of the United States explained that a plaintiff seeking to invoke a federal court's jurisdiction must demonstrate that she suffered "an invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent," as opposed to merely "conjectural or hypothetical." *See* 578 U.S. 330, 338 (2016). Specifically, *Spokeo* stands for the proposition that an injury must affect the plaintiff "in a *personal* and *individual* way." *Id.* at 339 (emphasis added).

[17] The P&M Defendants have filed with this Court a Motion for Stay of District Court Proceedings and Motion to Expedite. *See* ECF No. 12. Part of that motion is still pending before this Court. The P&M Defendants respectfully request that it be granted.

Mey freely admits that she used the "Rhonda Nicholson" fake identity to generate TCPA claims. While "Rhonda" may have suffered an injury-in-fact that would confer Article III standing for "Rhonda" to sue in federal court, Mey has not suffered *any* personal injury at all. To the contrary, the allegations in the Complaint show that Mey is operating a business enterprise, invites telemarketing calls, and *benefits* handsomely from any allegedly illegal calls. Put simply, Mey has not been "injured."

Second, if this Court determines that Mey does possess Article III standing, then on this record, the AIA's "in aid of jurisdiction" exception simply does not permit the issuance of an injunction because the District Court views an *ongoing* lawsuit in another forum as being "burdensome, vexatious, and intended to deprive Ms. Mey of her day in court in the proper venue." JA678. Nor does the AIA's "in aid of jurisdiction" exception permit an injunction if the District Court believes that the state court lacks personal jurisdiction over Mey or subject matter jurisdiction over the lawsuit itself.

On that score, the District Court failed to articulate *why* or *how* the AIA's second exception—which should apply in two limited circumstances—justifies the issuance of the Anti-Suit Injunction. Nor could it. The AIA does *not* authorize a federal court to enjoin legitimate, ongoing state court proceedings (filed well before the commencement of the federal court action) simply because the federal court feels like it should.

Using judicial improvisation and creating a "fourth" AIA exception out of whole cloth, the District Court issued an unprecedented injunction against an *ongoing* state proceeding based solely on a moving party's self-serving declaration and papers. This

standardless approach impermissibly enlarges the AIA by loose statutory construction. Otherwise, it runs counter to the AIA's plain text and the Supreme Court's command in *Atlantic Coast Line*. Perhaps most importantly, if left unchecked, it will needlessly desecrate our Nation's system of federalism, which the AIA is designed to protect.

Third, contrary to well-established circuit precedent, *see, e.g.*, *Hoechst Diafoil*, 174 F.3d at 421; *District 17, UMWA v. A & M Trucking, Inc.*, 991 F.2d 108, 110 (4th Cir. 1993) ("[F]ailure to *require* a bond upon issuing injunctive relief is reversible error."), the District Court summarily concluded that Mey was "not . . . required" to post bond for the Anti-Suit Injunction, JA679. This alone constitutes reversible error.

STANDARD OF REVIEW

This Court reviews legal questions regarding Article III standing de novo. *See Piney Run Pres. Ass'n v. County Comm'rs of Carroll County, Md.*, 268 F.3d 255, 262 (4th Cir. 2001). Otherwise, the decision to grant injunction under the AIA is reviewed for an abuse of discretion. *See In re American Honda Motor Co., Inc., Dealerships Relations Litigation*, 315 F.3d 417, 434 (4th Cir. 2003). To that end, "an error of law by a district court is by definition an abuse of discretion." *See Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 150 (4th Cir. 2002). And "[a] district court per se abuses its discretion when it makes an error of law or clearly errs in its factual findings." *See Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 317 (4th Cir. 2006); *accord Claiborne v. Greenville S.C.*, 746 Fed. App'x 213, 214 (4th Cir. 2018) (citing *United States v. Welsh*, 879 F.3d 530, 536 (4th Cir. 2018)).

ARGUMENT

I. Mey does not possess Article III standing to sue in federal court—and thus lacks the ability even to seek an injunction under the AIA—because she has not suffered a cognizable "injury-in-fact" that is both "concrete" and "particularized" as to her individually.

First and foremost, Mey does not possess Article III standing to sue in federal court. Specifically, as to her TCPA claim, Mey does not allege that she *personally* suffered an "injury" that confers Article III standing, let alone an injury that is "concrete and particularized." Nor can she. And this is fatal to Mey's request for an injunction under the AIA, which seeks to enjoin the Puerto Rico Lawsuit *because of* her TCPA claim.

As this Court has recognized, the concept of Article III standing "depends not upon the merits, but on whether the plaintiff is the proper party to bring the suit." *See McBurney v. Cuccinelli*, 616 F.3d 393, 401 (4th Cir.2010) (quoting *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 460 (4th Cir.2005)). Most recently, in *Disability Rights South Carolina v. McMaster*, this Court explained that the "'judicial Power' extends *only* to 'Cases' and 'Controversies.'" *See* 24 F.4th 893, 899 (4th Cir. 2022) (quoting U.S. Const. art. III, § 2). Indeed, "[s]tanding to sue is a doctrine rooted in the traditional understanding of a case or controversy" that "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *See Spokeo,* 578 U.S. at 338.

"To satisfy the *irreducible constitutional minimum* of standing, a plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *See*

Deal v. Mercer Cnty. Bd. of Educ., 911 F.3d 183, 187 (4th Cir. 2018) (internal quotation marks omitted) (emphasis added).[18] Notably, standing is not "dispensed in gross," and as a result, a plaintiff must demonstrate standing for each claim "[s]he seeks to press and for each form of relief that is sought." *See Davis v. FEC*, 554 U.S. 724, 734 (2008).

"As no case or controversy exists without injury-in-fact, it is the '[f]irst and foremost' element of Article III standing." *See Baehr v. Creig Northrop Team, P.C.*, 953 F.3d 244, 252 (4th Cir. 2020) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998)). Writing for the Court in *Baehr*, Judge King explained as follows:

> [i]n order to establish injury-in-fact, a plaintiff must show that she suffered "an invasion of a legally protected interest"—i.e., an injury—that is "concrete and particularized." *See Lujan*, 504 U.S. at 560. Crucially, concreteness and particularization are distinct requirements for injury-in-fact; the former is "quite different" from the latter. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016). An injury is particularized if it "affect[s] the plaintiff in a personal and individual way." *Id.* And an injury is concrete if it is "de facto"—that is, if it "actually exist[s]." *Id.*

Id. (cleaned up).

Of great importance to these proceedings, the *Baher* Court recognized post-*Spokeo* that "a statutory violation is not necessarily *synonymous* with an *intangible harm* that constitutes injury-in-fact" for purposes of Article III standing. *See* 953 F.3d at 252

[18] Ultimately, if this Court determines that Mey's "lack of standing deprived the district court of jurisdiction" (which it should), then it still has "jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *See Benham*, 635 F.3d at 134 (internal quotation marks omitted).

(emphasis added). "For that reason," this Court concluded, "when a plaintiff sues to vindicate a statutory right, she still must establish that she suffered a concrete injury from the violation of that right." *Id.* "That is, a plaintiff cannot merely allege a 'bare procedural violation, divorced from any concrete harm' and 'satisfy the injury-in-fact requirement of Article III.'" *Id.* (quoting *Spokeo*, 578 U.S. at 341); *see also Leyse v. Bank of Am., N.A.*, 856 Fed. App'x 408, 409 (3d Cir. 2021) (ruling that TCPA plaintiff lacked Article III standing to sue in federal court because "a bare procedural violation that resulted in no harm" is not a sufficient injury-in-fact under *Spokeo*).[19]

In these circumstances, Mey has suffered no harm and thus no injury. Article III standing is lacking. To be sure, if there were a harm or injury sufficient to confer standing arising out of the supposedly unwanted calls, it would perhaps be an injury to "Rhonda Nicholson." *See* JA13; *but see Myers v. Loudon Cnty. Public Schools*, 418 F.3d 395, 400 (4th Cir. 2005) (recognizing that "[t]he right to litigate for *oneself*, however, does not create a coordinate right to litigate for *others*"). But "Rhonda Nicholson" is *not* a real

[19] In denying the P&M Defendants' Motion to Dismiss on Article III standing grounds, the District Court merely cited to this Court's decision in *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 653 (4th Cir. 2019), for the general proposition that a party has standing to bring a TCPA claim in federal court if—and only if—an unwanted call is received *by the subscriber*. While that may be so for non-professional TCPA plaintiffs, it is worth underscoring that the Court in *Krakauer* was also not confronted with these *unprecedented* facts. That is, a serial TCPA litigant (*i.e.,* Diana Mey) utilizing a fake imposter identity to misleadingly solicit benefits under the Camp Lejune Justice Act of 2022, only to then turn around and weaponize a supposed statutory violation to extract a settlement that is 260 times the amount of the statutory penalty, even though the plaintiff's imposter identity consented to and invited the supposedly unwanted "telemarketing" calls. The District Court simply chose to ignore these facts.

person and Mey cannot pursue TCPA claims on "Rhonda's" behalf. That is especially so since it was Mey who generated the "Rhonda" cosplay fraud in the first place; "Rhonda" was otherwise the "actual recipient" of the calls. *See, e.g.*, *Leyse v. Bank of Am. Nat. Ass'n*, 804 F.3d 316, 326 (3d Cir. 2015) (recognizing that "[i]t is the *actual recipient*, intended or not, who suffers the nuisance and invasion of privacy" (emphasis added)).[20]

Setting aside for a moment the fact that "Rhonda" received and answered the calls (and not Mey), Count I of the Complaint is also devoid of *any* factual allegations that Mey herself *personally* suffered an injury-in-fact necessary to confer Article III standing. The Complaint merely alleges that "Mey did not consent to receive the calls, nor did she have any established business relationship with any of the Defendants." JA24.[21] There are *no* other factual allegations in Count I—or anywhere else in the Complaint, for that matter—that Mey *personally* suffered any harm or injury as a result of the calls. *See Ali v. Hogan*, 26 F.4th 587, 596 (4th Cir. 2022) (recognizing that Article III injury-in-fact analysis is governed by the "factual allegations" in the complaint). Consequently, Mey lacks Article III standing to pursue this TCPA claim in federal court.

[20] The Complaint is replete with references to Mey "receiving" or "answering" calls. JA13-17. But that is contradicted by Mey's own allegation that "Rhonda Nicholson" received and answered all of the subject calls. JA13.

[21] Mey's false allegations (which are conflicted by the call recordings that she produced to the District Court) have a tinge of ironic truth to them—Mey did not consent to receive the calls, but her fake imposter persona, "Rhonda Nicholson," did.

See Baehr, 953 F.3d at 252 (recognizing that a "bare procedural violation, divorced from any concrete harm," does not "satisfy the injury-in-fact requirement of Article III").[22]

If anything, the allegations in the Complaint—and the District Court's own gratuitous characterization of Mey being a "consumer advocate" who has been "waging a war" against telemarketers, JA666—demonstrate that the inverse is true: Mey *benefits handsomely* from these allegedly "unwanted" telemarketing calls. Indeed, Mey describes herself as "a tenacious consumer advocate with a reputation for honesty and integrity." JA11.[23] And through these so-called advocacy "efforts"—which include use of pre-suit threats and demands to extract *individual* settlements—Mey herself has otherwise recovered "millions of dollars for numerous nationwide classes." JA12.

Because Mey lacks Article III standing to sue in federal court on her TCPA claim, she equally lacks Article III standing to seek injunctive relief under the AIA, as set forth in Count V of the Complaint. By Count V, Mey alleges that "the fraud claim and

[22] Nor would Mey's supposed injuries, if she suffered any (which she did not), be "fairly traceable" to the P&M Defendants' conduct. As the Eight Circuit recognized in *St. Louis Heart Center, Inc. v. Nomax, Inc.*, 899 F.3d 500 (8th Cir. 2018), when a TCPA plaintiff expressly *consents* to unwanted facsimiles (or here, telephone calls), any alleged injuries are not "fairly traceable" to the alleged misconduct. *Id.* at 504-05.

[23] Of course, Mey's self-anointed status as a "consumer advocate" does nothing, in and of itself, to confer the requisite Article III standing to sue in federal court. *See Leyse*, 804 F.3d at 323 (recognizing that "[s]omeone with a generalized interest in punishing telemarketers, for example, would not qualify on that basis alone," insofar as "only certain plaintiffs will have suffered the *particularized injury* required to maintain an action in federal court for a statutory violation" (emphasis added)).

declarations sought in the [Puerto Rico Lawsuit] ask a Puerto Rican territorial court to determine questions of law and fact that are dispositive of Mey's TCPA claims [sic] in West Virginia." JA27. Put differently, Mey's request for injunctive relief is tethered *only* to her TCPA claim, for which she does not possess Article III standing to sue in federal court. So, Count V of the Complaint should likewise fail for this same reason.[24]

II. Assuming that Mey does possess Article III standing to sue in federal court, the District Court's Anti-Suit Injunction is nevertheless erroneous as a matter of law—the AIA does *not* permit an anti-suit injunction here.

Assuming, for the sake of argument, that Mey does possess Article III standing to bring this TCPA claim in federal court (which she does not), the District Court's Anti-Suit Injunction plainly runs afoul of the AIA. Reversal is thus warranted.

For background, the federal All Writs Act empowers district courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *See* 28 U.S.C. § 1651. The authority the All Writs Act imparts to district courts is sharply circumscribed, however, by the Anti–Injunction Act (the "AIA"), which prohibits injunctions "to stay proceedings in a State court *except* [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." *See* 28 U.S.C. § 2283. As the

[24] While not tethered to her request for injunctive relief under the AIA, Mey lacks Article III standing to pursue her remaining claims—that is, Count II (fraudulent legal process); Count III (abuse of process); and Count IV (intentional infliction of emotional distress). As the Complaint makes clear, these claims all relate back to the TCPA claim. As discussed *supra*, Mey does not possess Article III standing to bring such a claim.

Third Circuit recognized, "[t]he two statutes act in concert, and if an injunction falls within one of [the AIA's] three exceptions, the All-Writs Act provides the *positive authority* for federal courts to issue injunctions of state court proceedings." *See In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liab. Litig.*, 369 F.3d 293, 305 (3d Cir. 2004) (internal quotation marks omitted) (emphasis added).[25]

At its core, the AIA plays a vital role in safeguarding our national system of federalism. As this Court has previously observed, "[f]or over two-hundred years, the Anti-Injunction Act has helped to define our nation's system of federalism." *See Employers Res. Mgmt. Co., Inc. v. Shannon*, 65 F.3d 1126, 1130 (4th Cir. 1995) (internal quotation marks omitted).[26] The Supreme Court has long recognized that the AIA "is designed to prevent conflict between federal and state courts." *See Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977); *see also Leiter Minerals v. United States*, 352 U.S. 220, 225 (1957); *Denny's Inc. v. Cake*, 364 F.3d 521, 531 (4th Cir. 2004) (recognizing that "the basic harm the [AIA] was intended to prevent was not the liberal granting of protective orders, per se, but the needless friction between state and federal courts"). Leading

[25] "[T]he fact that an injunction *may issue* under the Anti–Injunction Act does *not* mean that it *must* issue." *See Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 151 (1988) (emphasis added). That is, "principles of comity, federalism, and equity always restrain federal courts' ability to enjoin state court proceedings." *In re Diet Drugs*, 369 F.3d at 306 (citing *Mitchum v. Foster*, 407 U.S. 225, 243(1972), and 17 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 4226, at 551 (2d ed.1995)).

[26] As *Employers Resource* makes abundantly clear, "[t]he Fourth Circuit 'take[s] *seriously* the mandate in the Anti-Injunction Act." 65 F.3d at 1130 (emphasis added).

commentators and legal scholars have similarly opined that "[t]he underlying idea [of the AIA] is that a federal injunction of ongoing state proceedings is likely to breed resentment and hostility in the state judiciaries and even risk disobedience of the federal court's orders." *See* Erwin Chemerinsky, *Federal Jurisdiction* § 11.2 (7th ed. 2016).

Because of these decided and substantial concerns regarding federalism principles, the AIA's three exceptions "are construed narrowly, . . . and are not [to] be enlarged by loose statutory construction." *See Employers Res.*, 65 F.3d at 1130 (internal quotation marks omitted). In *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, the Supreme Court recognized that the AIA "is an *absolute prohibition* . . . against enjoining state court proceedings, *unless* the injunction falls within one of three specifically defined exceptions." *See* 398 U.S. 281, 286 (1970) (emphasis added).[27]

Here, the District Court determined that the Puerto Rico Lawsuit must be enjoined under the AIA because it "is tantamount to a SLAPP proceeding," JA676, "is burdensome, vexatious, and intended to deprive Ms. Mey of her day in court in the proper venue," JA678, and that the Puerto Rico Court lacks personal and subject matter jurisdiction, JA668, JA677. Simply put, the District Court has gotten it *all* wrong.

[27] The Supreme Court also concluded that "the prohibition of § 2283 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results of a completed state proceeding." *See Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970). That is, "[t]his prohibition extends to indirect injunctions against parties." *In re Am. Honda Motor Co. Inc., Dealerships Relations Litig.*, 315 F.3d 417, 439 (4th Cir. 2003). In this case, the District Court's Anti-Suit Injunction enjoined the parties from participating in the Puerto Rico Lawsuit.

A. The District Court's Anti-Suit Injunction is improper under the AIA's "in aid of jurisdiction" exception, the *only* exception relied on by Mey.

Starting off, as to the second AIA exception—colloquially referred to as the "necessary in aid of its jurisdiction" exception, and otherwise the *only* exception relied on by Mey—this Court has gone so far as to observe that it "is widely understood to apply most often when a federal court was the first in obtaining jurisdiction over a res in an *in rem* action and the same federal court seeks to enjoin suits in state courts involving the same *res*." *See In re Am. Honda*, 315 F.3d at 439. Although this Court hinted in dicta at the possibility that "support for a broader application of the [second AIA] exception can be found in the Supreme Court's statement that both this exception and the third exception to the [AIA] allow federal injunctive relief against state court proceedings where it is 'necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case,'" such an expansion here would surely run afoul of this Court's prior command that the AIA's exceptions "are not [to] be enlarged by loose statutory construction." *See Employers Res. Mgmt.*, 65 F.3d at 1130.

Rather, as the United States Court of Appeals for the Sixth Circuit has recognized, the "necessary in aid of jurisdiction" of the AIA exception applies *only* in two situations: (1) "when the case is removed from state court" or (2) "where the federal court has *in rem* or *quasi in rem* jurisdiction over specific property." *See Hanover Am. Ins. Co. v. Tattooed Millionaire Entertainment, LLC*, 38 F.4th 501, 508 (6th Cir. 2022);

In re: Prudential Ins. Co. of Am. Sales Practice Litig., 261 F.3d 355, 365 (3d Cir. 2001). In light of this, the second AIA exception does not apply. This is not an instance in which Mey has removed an action from state court to federal court.[28] Nor is this an instance where the District Court has *in rem* or *quasi in rem* jurisdiction over specific property.

Resisting this straightforward conclusion, the District Court decidedly chose to engage in impermissible "loose statutory construction." *See Employers Res. Mgmt.*, 65 F.3d at 1130. Relying on selected language from the Seventh Circuit's decision in *Winkler v. Eli Lilly & Co.*, the District Court reasoned that the Anti-Suit Injunction is proper to aid its jurisdiction because the AIA "should be construed to empower the federal court to enjoin a concurrent state proceeding that might render the exercise of the federal court's jurisdiction nugatory." *See* 101 F.3d 1196, 1202 (7th Cir. 1996). According to the

[28] Note that Mey could have—but failed to—remove the Puerto Rico Lawsuit to the United States District Court for the District of Puerto Rico. For its part, the District Court took the odd position that Mey was somehow precluded from removing the Puerto Rico Lawsuit to federal court because of the entry of default judgment. Not so. As federal courts have long recognized, "a defendant has the ability to remove a case to federal court where an entry of default or default judgment has been entered in state court." *See Hawes v. Cart Prods., Inc.*, 386 F.Supp.2d 681, 686 (D.S.C. 2005); *see also Matter of Meyerland Co.*, 960 F.2d 512, 526 (5th Cir. 1992) ("In prior decisions we have allowed the removal of a case subsequent to a state court default judgment where Rule 60(b) relief was still available."); *Munsey v. Testworth Labs.*, 227 F.2d 902, 903 (6th Cir. 1955) ("Prior to removal, the state court judgment was concededly subject to being set aside in state court. It was subject to the same hazard in federal court after removal."). Suffice it to say, Mey *could* have filed a notice of removal in Puerto Rico within 30 days after receipt of a copy of the initial pleading, as required by 28 U.S.C. § 1446.

District Court, the existence of parallel proceedings in Puerto Rico threatened its ability to decide Mey's later-filed lawsuit (and in particular, her TCPA claim).[29]

The District Court's reliance on *Winkler* is sorely misplaced. For starters, the Seventh Circuit in *Winkler* reversed that district court's issuance of an injunction under the AIA. *Id.* In so ruling, the *Winkler* Court emphasized that "[l]itigants who engage in forum-shopping, or otherwise take advantage of our dual court system for the specific purpose of evading the authority of a federal court, have the potential 'to seriously impair the federal court's flexibility and authority to decide that case.'" *Id.* at 1203 (quoting *Atlantic Coast Line*, 398 U.S. at 295). Separately, *Winkler* involved management of complex multi-district litigation, which is certainly not a concern in this case. *Id.*

Rather, contrary to *Winkler*, when it initiated the Puerto Rico Lawsuit in April 2023, the Puerto Rico Law Firm was clearly not seeking to "evade[] the authority" of the District Court. *See Winkler*, 101 F.3d at 1202. Nor could it have done so—at the time the Puerto Rico Law Firm filed the Puerto Rico Lawsuit, the District Court had *no*

[29] Case after case make it abundantly clear that the mere existence of a parallel action in state court is *insufficient* to invoke the in-aid-of-jurisdiction exception under the AIA and permit federal injunctive relief to stay the state court case, even when the state court action threatens to preclude the federal court from reaching the same issue through res judicata or collateral estoppel. *See, e.g.*, *Lou v. Belzberg*, 834 F.2d 730, 740 (9th Cir.1987) ("The mere existence of a parallel action in state court does not rise to the level of interference with federal jurisdiction necessary to permit injunctive relief under the 'necessary in aid of' exception."). Rather, the AIA "is an absolute prohibition against any injunction of any state-court proceeding, unless the injunction falls within one of the three specifically defined exceptions in the Act." *See Vendo Co.*, 433 U.S. at 630.

authority over any pending action. Rather, the District Court's "authority" was generated by a forum shopper, Mey, solely to derail the ongoing Puerto Rico Lawsuit.

At bottom, the "in aid of jurisdiction" exception to the AIA does not apply on this record. The District Court's Anti-Suit Injunction must therefore be reversed.

B. There is no "fourth" extra-statutory exception to the AIA.

1. An anti-suit injunction is not permissible simply because the District Court believes that the Puerto Rico Lawsuit is "burdensome, vexatious, and intended to deprive Ms. Mey of her day in court in the proper venue."

Perhaps realizing that these facts do not fit effortlessly within the tight contours of AIA's "in aid of jurisdiction" exception, the District Court passingly cited—without any meaningful analysis of the authorities—a string of cases for the general proposition that, "[t]o the extent that the impending state court suits [are] vexatious and harassing, [a federal court's] interest in preserving federalism and comity with the state courts is not significantly disturbed by the issuance of injunctive relief." JA642 (quoting *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 335 (2d Cir. 1985), and *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1335 (5th Cir. 1981)). Again relying on a stray line from this Court's 2003 decision in *In re American Honda*, the District Court said it could "enjoin[] a state court proceeding to rectify the injustice [it] found [the plaintiffs] had perpetrated by engaging in misconduct in order to defeat such jurisdiction." JA675 (quoting *In re Am. Honda*, 315 F.3d at 437).

Legally, the authorities relied on by the District Court do *not* stand for the unfettered proposition that an anti-suit injunction can issue under the AIA without a

specific link to one of the AIA's three statutory exceptions. *See In re Baldwin-United Corp.*, 770 F.2d at 337-38 (concluding that federal MDL court injunction of later-filed state court lawsuits was "necessary or appropriate in aid of the federal court's jurisdiction" because "[t]he existence of multiple and harassing actions by the states . . . frustrate[d] the district court's efforts to craft a settlement in the multidistrict litigation before it"); *In re Corrugated Container*, 659 F.2d at 1333-35 (concluding that federal MDL court injunction of later-filed state court lawsuits was necessary under "protection" exception to AIA because later-filed state court lawsuits threatened "federal judgments that approve some of the settlements and that control the further litigation . . . [of the] cause of action"); *In re Diet Drugs*, 369 F.3d at 306 (concluding that federal MDL court injunction of later-filed state court lawsuits was necessary under "in aid of jurisdiction" exception since the district court retained jurisdiction to enforce the MDL settlement).

Separately, these cases are also distinguishable on the facts—in each, the state court proceedings (deemed to be "vexatious," "burdensome," or filed in "bad faith") post-dated and threatened *ongoing* federal court litigation (mainly, multi-district litigation involving administration of complex settlements). Yet here, the exact opposite is true: the Puerto Rico Lawsuit began well in advance of the West Virginia Lawsuit. And the West Virginia Lawsuit was filed by a disgruntled party seeking refuge in her preferred forum *solely* for the purpose of threatening the progress and viability of the Puerto Rico Lawsuit. Such a result cannot and should not be countenanced under the AIA.

The facts of this case are more akin to *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977). There, the Supreme Court remarked that it "never viewed parallel *in personam* actions as interfering with the jurisdiction of either court." *Id.* at 642. So, too, here. The Puerto Rico Lawsuit and the West Virginia Lawsuit are both *in personam* actions. As in *Vendo*, the District Court *should* have simply proceeded with administration of the West Virginia Lawsuit, and the Puerto Rico Court could have continued on with the Puerto Rico Lawsuit. But the District Court refused this legally correct path.

Meanwhile, as to the District Court's critical, errant remark that the Puerto Rico Lawsuit is "burdensome, vexatious, and intended to deprive Ms. Mey of her day in court in the proper venue," JA678, the Court's findings of fact in that regard are clearly erroneous. Distilled to the core, the District Court rooted this attenuated conclusion in the following: (1) that the Puerto Rico Lawsuit was being conducted in Spanish; and (2) that the Puerto Rico Law Firm obtained a default judgment against Mey after using purportedly "underhanded methods" to effectuate service of process. JA676. But these findings of fact are unsupported in the record and otherwise entirely irrelevant.

First, proceedings in Puerto Rico are conducted in Spanish *because* that is the primary language spoken in Puerto Rico and utilized in its court system. JA148, JA325. The District Court's baseless fears about potential language barriers (which mimic Mey's proffered invective regarding Puerto Rico) run contrary to the fact that Mey—through able Spanish-speaking lawyers in Puerto Rico—filed documents in Spanish and defended the Puerto Rico Lawsuit in Spanish. It also runs contrary to the simple notion

that while defending the Puerto Rico Lawsuit, Mey never once—through counsel or otherwise—raised concerns about the proceedings being conducted in Spanish.

Second, the District Court's hyper-fixation regarding supposedly "underhanded" service methods and the default judgment in the Puerto Rico Lawsuit are immaterial distractions from the fact that Mey ultimately *succeeded* in having the default judgment lifted in Puerto Rico. Not only that, but the Puerto Rico Law Firm effectuated service of process by utilizing procedures that are *required* under the Puerto Rico's Rules of Civil Procedure. *See, e.g.*, P.R. Civ. P. R. 4.4 (personal service); P.R. Civ. P. R. 4.6 (service by publication). Yet as the District Court made known, it "[did not] care what the Puerto Rico" Rules of Civil Procedure provided with respect to service of process. *See* JA89.[30]

Without drawing a connection to the AIA's second exception, the District Court lacked any sound legal basis to enjoin the Puerto Rico Lawsuit based on unfounded, unsupported concerns that it is "vexatious" or "burdensome" litigation.

2. An anti-suit injunction is not permissible because the District Court decided for the Puerto Rico Court it lacked personal jurisdiction over Mey or subject matter jurisdiction over the Puerto Rico Lawsuit.

Seeking to bolster its flawed rationale for enjoining the Puerto Rico Lawsuit well outside the parameters of the AIA's three *narrow* exceptions, the District Court also rendered what are effective rulings as to the Puerto Rico Court's personal jurisdiction over Mey and subject matter jurisdiction over the action. As to personal jurisdiction,

[30] Puerto Rico's rules closely mirror West Virginia's rules for service of process, *see* W. Va. R. Civ. P. 4, along with the Federal Rules, *see* Fed. R. Civ. P. 4.

the District Court concluded that "[t]here can be little doubt that the Puerto Rico Court lacked personal jurisdiction over Ms. Mey." JA668. Meanwhile, as for subject matter jurisdiction, the District Court propounded that "the Puerto Rico territorial court lacks the subject matter jurisdiction to handle and decide TCPA cases." JA677.

Stated most simply, the District Court's jurisdictional rulings are erroneous. As the Supreme Court unmistakably recognized in *Atlantic Coast Line*, "[w]hile the lower federal courts were given certain powers in the 1789 Act, they were not given *any power* to review directly cases from state courts, and they have not been given such powers since that time. Only the Supreme Court was authorized to review on direct appeal the decisions of state courts." *See* 398 U.S. at 286 (emphasis added); *Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734, 737 (4th Cir. 1990). Rather, a federal district court's jurisdiction is "strictly original." *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

On this record, it is clear the District Court not only disregarded this ironclad rule, but it went well beyond that and issued *preemptive* rulings as to unresolved issues in the Puerto Rico Lawsuit. JA668, JA677. Before the Puerto Rico Court had occasion to decide whether it had personal jurisdiction over Mey or subject matter jurisdiction over the Puerto Rico Lawsuit, a federal judge in West Virginia already had concluded that the Puerto Rico Court had neither. That notwithstanding, any concerns about the Puerto Rico Court's jurisdiction—either personal over Mey or subject matter over the Puerto Rico Lawsuit—must be resolved by the Puerto Rico Court. Indeed, that was the parties' expressed agreement *before* Mey initiated the West Virginia Lawsuit. JA350-351.

* * *

At the end of the day, there can be *no doubt* that the District Court's Anti-Suit Injunction is legally unsupported and based on clearly erroneous findings of fact. Findings of fact, indeed, that are unsubstantiated by any competent evidence and based solely on Mey's own speculation and conjecture. This cannot support an award of injunctive relief. *See Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1204 (7th Cir. 1996) ("[A]n injunction based on nothing but *speculation* and *conjecture* is as much an abuse of discretion as an injunction based on clearly erroneous facts." (emphasis added)).

Not only that, but it blesses Mey's abusive efforts at forum shopping so she can return home to Wheeling and litigate the jurisdictional and merits-based issues of the Puerto Rico Lawsuit in the Northern District of West Virginia. Such gamesmanship cannot be tolerated. If it is, then "[l]itigants who [foresee] the possibility of more favorable treatment in one or the other system [will] predictably hasten to invoke the powers of whichever court it was believed would present the best chance of success. Obviously this dual system could not function if state and federal courts were free to fight each other for control of a particular case." *See Atlantic Coast Line*, 398 U.S. at 286.

Perhaps most strikingly, if the District Court's Anti-Suit Injunction is left uncorrected, this dangerous precedent "lies about like a loaded weapon," *see Korematsu v. United States*, 323 U.S. 214, 207 (1944) (Jackson, J., dissenting), ready for the hand of *any* disgruntled state court defendant who thinks she can convince a federal court—

even one located thousands of miles away—that ongoing state court litigation is "vexatious" or "burdensome." To preserve federalism, this cannot be the standard.

Of course, if this Court harbors "*any* doubt" whatsoever regarding the propriety of the District Court's irregular and abnormal Anti-Suit Injunction, then such doubts "must be resolved *against* the finding of an exception" to the AIA's prohibition. *See Vendo Co.*, 433 U.S. at 643 (emphasis added). That is especially so when the District Court's ruling in this case amounts to "judicial improvisation" and is merely a *post hoc* attempt at creating a "fourth" extra-statutory exception to the AIA's prohibition against enjoining state court proceedings. *See, e.g.*, *Amalgamated Clothing Workers of Am. v. Richman Bros.*, 348 U.S. 511, 514 (1955) ("Congress made clear beyond cavil that the [AIA] prohibition is not to be whittled away by judicial improvisation[.]").

C. The District Court offered no explanation as to why Mey should not have been required to post security, pursuant to Fed. R. Civ. P. 65(c).

After issuing an extraordinary injunction under the AIA, the District Court summarily excused Mey from Federal Rule of Civil Procedure 65(c)'s requirement of posting bond. *See Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411 (4th Cir. 1999) (recognizing that posting bond is "*required* by Rule 65(c)" (emphasis added)). Specifically, the District Court reasoned—in one sentence tucked away at the end of its ruling—that "[s]ecurity *will not be required* as [the P&M Defendants] will not suffer financial burden in compliance with such injunctive relief." JA679 (emphasis added). But that is *not* the standard—security is *required*. This alone constitutes reversible error.

As this Court recognized nearly 25 years ago in *Hoechst Diafoil*, Rule 65(c) is "mandatory and unambiguous." *See Hoechst Diafoil*, 174 F.3d at 421; *District 17, UMWA v. A & M Trucking, Inc.*, 991 F.2d 108, 110 (4th Cir. 1993). To that end, "[a]lthough the district court has discretion to set the bond *amount* 'in such sum as the court deems proper,' it is not free to *disregard the bond requirement altogether*." *See Hoechst Diafoil*, 174 F.3d at 421 (quoting Fed. R. Civ. P. 65(c)) (emphasis added). That is why a district court's "failure to require a bond upon issuing injunctive relief is reversible error." *Id.*

Contrary to circuit precedent, the District Court ruled that security was "not required." JA679. This amounts to reversible error. *See Hoechst Diafoil*, 174 F.3d at 421.[31]

CONCLUSION

Pursuant to the foregoing, this Court should conclude that Mey lacks Article III standing to sue in federal court, **REVERSE** the District Court's Anti-Suit Injunction, and **DISMISS** this case. Alternatively, if this Court concludes that Mey does possess Article III standing, then it should **REVERSE** the District Court's Anti-Suit Injunction and **REMAND** for further proceedings, to allow the Puerto Rico Lawsuit to proceed concurrently—or, in parallel—with the West Virginia Lawsuit. Finally, **REVERSAL** is also warranted on account of the District Court's failure to require Mey to post bond.

[31] Of course, the District Court could have—but failed to—fix the bond amount at "zero." *Hoechst Diafoil* contemplated as much, so long as the District Court engaged in the requisite analysis and explained *why* that would be appropriate. *See* 174 F.3d at 421 n.3. Even with that being so, Mey should have been required to post bond to pay the costs and damages that the P&M Defendants have incurred as a result of being wrongfully enjoined and restrained from proceeding with the Puerto Rico Lawsuit.

REQUEST FOR ORAL ARGUMENT

The P&M Defendants respectfully request oral argument in this case. This Court's decisional process would be significantly aided by oral argument, given the importance of the issues surrounding Article III standing and the Anti-Injunction Act.

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Dated: July 10, 2024

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 10th day of July, 2024, I caused this Brief of Appellants and Joint Appendix to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on this 10th day of July, 2024, I caused a copy of the Media Volume of the Joint Appendix to be served, via U.S. Mail, upon counsel for the Appellee, at the above address.

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