No. _____

In the
Supreme Court of the United States

JAVIER LUIS
PLAINTIFF-APPELLANT,

V.

JOSEPH ZANG, et al.
DEFENDANTS, and

AWARENESS TECHNOLOGIES
DEFENDANT-APPELLEE

APPLICANTS EMERGENCY APPLICATION FOR LEAVE TO FILE FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Javier Luis,
Applicant-Appellant
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To the Honorable Sonia Sotomayor, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Sixth Circuit: Applicant-Appellant, Javier Luis ('Applicant' or 'Appellant') respectfully requests an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The deadline for Applicant to file this petition is Thursday, July 18, 2019, which is ninety days from April 19, 2019 the date the Sixth Circuit Panel issued its ruling denying Appellant's *pro se* appeal over the district court's acceptance of the defendant's motion for summary judgment. Applicant asks for leave of court to file this despite the proximity to the filing deadline. Appellant found out only a few days ago Appellant that he can now continue this carry this fight. Also he has only within the last week found an appellate lawyer to represent him in the appellate process.

For good cause set forth herein, Applicant ask that this deadline be extended by a period of twenty to sixty days so that the new deadline would be somewhere within the range of Wednesday August 07, 2019, and Monday September 16, 2019.

BACKGROUND

Applicant, Javier Luis, a pro se Florida resident, appealed the district court's grant of summary judgment in favor of defendant Awareness Technologies ("Awareness") and the dismissal of his complaint. This lawsuit originated in divorce proceedings between Joseph and Catherine Zang, during which Catherine learned that Joseph had installed on their home computer spyware called WebWatcher, which was manufactured by Awareness. Joseph allegedly used WebWatcher to obtain emails and messages sent

between Catherine and Luis, and Joseph used these messages as leverage in the ensuing divorce proceedings. In 2012, Appellant filed suit in the United States District Court for the Middle District of Florida. That lawsuit was transferred to the Southern District of Ohio and consolidated with a companion case that was initiated by Catherine. The claims and parties in the companion case were later dismissed. Awareness's motion to dismiss Applicant's complaint was granted by the district court. The Panel reversed and remanded the case for further development of the record, finding that Applicant had sufficiently alleged facts supporting claims that Awareness had: (1) intercepted an electronic communication, in violation of 18 U.S.C. § 2511; (2) manufactured, marketed, sold, or operated a wiretapping device, in violation of 18 U.S.C. § 2512(1)(b); (3) violated the Ohio Wiretap Act; and (4) committed an invasion of privacy under Ohio common law. *Luis v. Zang*, 833 F.3d 619, 626-43 (6th Cir. 2016). The district court denied Applicant's permission to add additional claims and defendants, but allowed him to expand upon his existing claims in the "Corrected Second Amended Lead Complaint." Awareness filed a motion for summary judgment, to which Applicant responded. A magistrate judge recommended granting the motion. Over Appellant's objections, the district court adopted the report and recommendation of the magistrate judge and granted summary judgment in favor of Awareness. On appeal, Appellant argued that the district court's construction of the Wiretap Act is contrary to Congressional intent and more technically and constitutionally sound judicial interpretations of an "intercept," runs afoul of the technical realities of computer hardware and messages sent over the internet, and allegedly contributes to the erosion of personal privacy rights in the "ever changing Digital Age." Appellant particularly focuses on the concept of Random Access Memory

("RAM"), which he claims is not permanent storage. Apellant therefore argued that information copied from RAM should qualify as an "intercept" under 18 U.S.C. § 2510(4).

OPINIONS BELOW AND SUPPORTING DOCUMENTS

The Magistrate Court's grant of Tech's motion for summary judgment from April 2018 is reproduced at Appendix A. The District Court's Order Accepting the Magistrate Court's Recommendation on June 08, 2018 is reproduced at Appendix B. The Sixth Circuit Panel's ruling of April 4, 2019.is reproduced at Appendix C. The Sixth Circuit Panel's ruling of August 16, 2016 is reproduced at Appendix D. Appendix E aids in explaining the difficulty in finding representation in this area of law due to circuit court weakening of the FWA's intended second prong of defense of privacy. Appendix F reproduces a copy of a long term care Dr.'s observations of the complex problems that have caused the need for the extension. Appendix G (a relevant portion ofApplicant's Motion for rehearing) has been reproduced in support of Applicant's claims that this appeal is taken in good faith and the Panel has committed blatant, reversible and obvious errors.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

REASONS EXTENSION IS JUSTIFIED

Supreme Court Rule 13.5 provides that "An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified." Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified stem from a long term medical problem, and

a few unexpected but particularly significant developments over only the past few weeks. The reasons below deserve consideration by this Court while deciding whether or not to extend the filing date, as follows: 1) The most significant development as far as Appellant's need for an extension of time is medically related. A decades long medical issue related to a cognitive attention deficit disorder may have finally been resolved after many decades of futile attempts to properly address the issue. Appellant has long been devastated by his inability to treat what is normally a rather common cognitive disorder that has long impacted his working memory and recal.[1] Over the past few years, he had all but having given up hope to find appropriate treatment for the seemingly unique situation. After trying many different treatments, Appellant's newest therapist suggested he try one last thing that has only recently become practically accessible due to its historically prohibitive expense and lack of insurance coverage at this point: Pharmacogenomics. [2]Although exasperated from all the attempts to deal with this insidious problem, Appellant gave it one more try. Much to his shock, the genetic testing did reveal something significant to the Dr. about the reasons typical medical routines have never workeed well; a unique genetic variance indicating a significant resistance to the primary chemicals used to treat the disorder. Appellant was given a new medication

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1Appellant has suffered this malady since childhood, but it was not properly diagnosed until his late twenties because until then, he was able to compensate enough to fair decently well in school; that is until he entered law school in the 1990s. The problem has been well documented over a lengthy period of time within the lower forum. Appendix F. Treatment has problematic throughout and exacerbated by confusion among dozens of doctors over the exact nature of the disorder (nonetheless it has been long estimated to be ADHD but likely a complex variance thereof). The problem was only properly discovered after Appellant's access to the free medical clinic provided by his law school. Yet despite access to fantastic doctors, no particular treatment seemed to work and the disorder wreaked havoc during his law school years and far beyond.

2 *See Ex.,* article https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2413066/

routine centered around a medication whose chemical makeup showed no problems with his absorption of the medication. (Medical records available upon request) As such, the new medication now should better enable Appellant to better function within a field that demands much higher levels of concentration and memory recall than he has previously been able to experience. An extension allows Appellant to properly pursue his advocacy of the important privacy issues found within this case.

Additionally, Appellant tried desperately to find representation for this petition as well as for a rehearing in the Sixth Circuit but to no avail for reasons that are oddly inter related to the elements of this case; effectively creating a self perpetuating "safe house" for the corporate spyware industry because most attorneys do not bother to practice within this area of law. (Please see Appendix E) Nonetheless, the second reason an extension is justified 2) Appellant has only recently received an offer from an appellate attorney to represent his case; whether within the Sixth Circuit orin the Supreme Court if the petition for a writ is accepted. [3] While it was foreboding to consider going into an

3 Initially, Appellant pursued this case mostly as a way of advocating for abused and manipulated victims of corporate spyware and domestic abuse. Unfortunately, due to the almost insignificant damages made available in Wiretap Act cases, few attorneys were interested in representing the case and so Appellant pursued it as a *pro se* plaintiff. In August 2016, the Sixth Circuit overturned the lower forum's findings in its entirety. (included attachment) However, upon realizing the inexplicable continued resistance within the lower forum, Appellant could see the approaching end to the case once the Magistrate issued her decision in April 2018. While waiting for the District Court to either accept or reject that court's decision, Appellant could see the writing on the wall. Having fought for this cause since 2011 Appellant was finally considering letting the case go. However, appellate lawyers for one of the largest U. S. law firms contacted Appellant out of the blue expressing extreme interest in representing him in any appeal if the District Court accepting the Magistrate's ruling. In the interim they kept in touch every week for two months, calling for hours at a time and even ran conflict of interest protocols. They found none and stayed in touch encouraging him not to give up the battle. However, once the decision came, much to their noticeable shock and disdain, their corporate lawyer partners overrode their decision to represent the case concerned about

appeal pro se, knowing how poorly they tend to fare, the case had by then become about more than just the defense of improperly monitored citizens within domestic situations and into a case with a good chance to aid in bolstering critical privacy rights at a time when corporate interests have been building empires through the monetization of our digital data. Given the present situation within the Executive branch, Appellant felt he owed this country a duty to pursue this case. Appellant has been assured if the writ is granted, he will represent the case. has been prescribed but decided to give a new medical technique a try, having ordered a caused Appellant substantial problems in his attempts to submit a *pro se* petition. The issues seem to have finally been properly addressed only last week.

The requested extension also aids in allowing Appellant to explore his options as to his late filed motion for leave to file an out of time petition for a rehearing and/or en banc rehearing, but this time as a party that is hopefully[4] represented by a well respected appellate attorney. represented party. of an en banc rehearing by the Sixth Circuit. Appellant has fought for this cause for more than seven years of his life while facing some very difficult circumstances. Given the unexpected and drastic new developments that

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the firm being associated with a case that would negatively impact their corporate client's abilities to monetize our digital data. The attorneys were kind enough to find Appellant two more firms that were also interested in the case. Much to his incredulity, however, the same set of circumstance happened with both of the referred firms. The specific reasons the corporate partners within the firms overruled their appellate pro bono departments should perhaps not be delved into within a filing that is likely publicly accessible. However, the motivation behind those executive decisions – something the miffed attorneys were kind enough to inform Appellant about when they did not have to – would frighten alarm all privacy advocates everywhere.

4 The appellate attorney owns his own practice and so cannot be overruled by any partners. Also he has already had experience with this case, having taken over for the previous coordinator of the legal clinic once she departed to become a judge after Appellant's successful appeal in 2016.

have now made him much more able to finish this legal action in the manner it always should have ended; with a positive effect on one of the most critical issues facing this country today; our dwindling privacy rights in the ongoing Digital Age. Appellant hopes for a 60 day filing extension, but would truly appreciate any extension this Court deems appropriate. The extension in order to better co-ordinate and deal with the new developments prior to filing his petition. Applicants seek a sixty-day extension to cope with these demands.is necessary to accommodate pressing deadlines in Applicants' counsel's other matters.

CONCLUSION

In conclusion, the Sixth Circuit's recent decision warrants this Court's review because it involves critical technically related privacy facing issues within a notoriously difficult area of law whose dwindled protections are helping to endanger our society. Moreover the primary issue within (i.e. the "transit/storage dichotomy") has been the topic of a decade's old circuit court split. This Court has indirectly shown interest in a case such as the present when it revealed how critical it was for the nation's courts to adapt their interpretations to the rapid changes in technology when dealing with a high tech case whose findings could help bolster our privacy. Unfortunately such an approach was not taken by the Sixth Circuit who instead chose to side with a majority of courts that have inexplicably embraced inappropriate mechanistic approaches to complex issues that instead required the more normative approach advocated by this Court in *United States v. Carpenter* 138 S. Ct. 2206, 2220 (2018)– a wholistic approach long embraces by the minority courts. In sharp contrast the primary issues within this case concern privacy

defeating high-tech industry related rulings influenced by circuits using disfavored mechanistic approaches to the same issues contested herein. This has brought about a decision (albeit non published) that does nothing to bolster our already depleted privacy serves only to further weaken our privacy rights in the Digital Age. All of the elements listed above were specifically pointed to and discussed by multiple Justices within the citing*Carpenter* decision last year. Additionally, the specific form of long term constant surveillance and capture of digital data payload at issue presents a plain violation Wiretap Act as well as various other causes of actions implicated herein. Within this action, there lies many are critical issues that this Court should address once and for all within an arena of law that is holding all the cards as we march into the future within a corporate surveillance state.

For the foregoing reasons and good cause shown, Applicant respectfully requests that this Court grant this emergency application for an extension of time to file a petition for writ of certiorari.

Dated July 18, 2019

Respectfully Submitted,
/s/ Javier Luis
Javier Luis, Pro Se