No. 20-1824

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT LUCAS,
Petitioner,

v.

TRICIA MOORE, MARCIA PHELPS, LICKING COUNTY, OHIO, AND THE CITY OF NEWARK, OHIO,
Respondents.

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

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PETITION FOR A WRIT OF CERTIORARI

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Petitioner

QUESTIONS PRESENTED

The Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §§2721-2725, prohibits the disclosure of "personal information" and "highly restricted personal information" from a motor vehicle record. However, because the government sometimes has a legitimate need to disclose such information, the DPPA contains government use and litigation use exceptions.

1. Is the scope of the disclosure relevant? Was the District Court and Sixth Circuit correct that if the government is justified in disclosing highly restricted personal information to just one person, the government may disclose the information to the entire world, or was the Seventh Circuit correct that the government must not "exceed the scope" of its statutory authorization?

Specifically, may a prosecutor, in a minor misdemeanor traffic case, release to the public a motor vehicle record that contains the driver's Social Security Number (SSN) and other "highly restricted personal information" when the prosecutor has no genuine use for making the SSN and other DPPA-privileged personal information available to the public?

2. Is the Seventh Circuit correct that when the government use exception is asserted, the court must do a balancing test to weigh the disclosure's "utility" to the government "against the potential harm" to the driver, or is the Sixth Circuit correct that no balancing test should be used?

3. Congress enacted the DPPA in order to stop criminals from obtaining personal information from a motor vehicle record. Should criminals be able to circumvent the DPPA by obtaining personal information that originates from a motor vehicle

record using a court website instead of from a department of motor vehicles?

LIST OF PARTIES

Plaintiff-Appellant: Vincent Lucas
Defendants-Appellees: Tricia Moore, in an individual capacity; Marcia J. Phelps, in an individual capacity and in her capacity as Clerk of Court for Licking County Municipal Court; Licking County, Ohio; and The City of Newark, Ohio.

LIST OF LOWER COURT PROCEEDINGS

U.S. District Court (S.D. Ohio):
Vincent Lucas v. Tricia Moore, et al., No. 2:18-cv-582, judgment entered 9/12/2019.

U.S. Court of Appeals (6th Cir.):
Vincent Lucas v. Tricia Moore, et al., No. 19-4010, judgment entered 1/20/2021, rehearing denied 3/30/2021.

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PETITION FOR WRIT OF CERTIORARI

I, Vincent Lucas, respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion is not in the Federal Reporter but is reported on PACER, ECF Doc. 23-2. App. 1a. The District Court's opinion on cross motions for summary judgment and motion to amend complaint is reported at 412 F.Supp.3d 749 (S.D. Ohio 2019). App. 9a. The District Court's opinion granting Licking County's motion to dismiss is reported on PACER, Doc. 32, and is quoted extensively at 412 F.Supp.3d. at 755. App. 30a.

JURISDICTION

The Sixth Circuit entered its decision on Jan. 20, 2021 and denied rehearing on March 30, 2021. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT STATUTORY PROVISIONS

The Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §§2721-2725, reproduced in Appendix E.

STATEMENT OF THE CASE

A. Factual background

Tricia Moore ("Moore") violated my privacy rights by disclosing my Social Security Number (SSN) to the

public when she filed a Department of Motor Vehicles ("DMV") record containing my SSN in a publicly-accessible court record. App. 11a. Moore was prosecuting a minor misdemeanor traffic case against me.[1] *Id.* Moore had no genuine reason for making my SSN available to the public. Moore could have just as effectively prosecuted the traffic case if she had filed the document under seal or redacted the SSN from the document she filed.

Moore's public disclosure of my SSN was not an accident. Moore testified that she publicized my full DMV record, with SSN intentionally not redacted, because it is her policy to do so. Moore Depo. 45-47. (Dist. Ct. Doc. 41.)

Separately, Marcia Phelps ("Phelps"), as clerk of the Licking County Municipal Court (LCMC), obtained my "personal information" (as defined in DPPA, 18 U.S.C. §2725(3)) from a motor vehicle record (Dist. Ct. Doc. 16-7), and made some of the information available to the public by placing it on the LCMC website (App. 10a). The website contains numerous search functions. For example, anyone who sees my license plate can find out my personal information by executing a search by license plate number on the LCMC website.[2] At first glance, this might seem harmless, but it actually exposes me to risk of serious crime. Numerous Congressional sponsors of the DPPA pointed out examples of crimes committed by using a license plate number to obtain personal information about the car owner. E.g. "In Iowa, a gang of teenagers copied down the license plate numbers of expensive cars, obtained the home addresses of the owners from the Department of

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[1] The filing was an exhibit to her discovery responses.

[2] http://connection.lcmunicipalcourt.com/awc/Court/Default.aspx

Transportation, and then robbed them at night." 103 Cong. Rec. S15763 (11/16/1993).

I sued under the DPPA's right of action, 18 U.S.C. §2724. "The DPPA regulates the disclosure of personal information contained in the records of state motor vehicle departments (DMVs). Disclosure of personal information is prohibited unless for a purpose permitted by an exception listed in 1 of 14 statutory subsections." *Maracich v. Spears*, 570 U.S. 48, 52 (2013). This Court has held that those 14 exceptions must be "read ... narrowly" and must not be construed in a manner that "contravene[s] the statutory design", namely Congress's broad intent to prevent unnecessary disclosure of personal information from a motor vehicle record. *Maracich* at 52. My SSN – which Moore disclosed to the public – is "highly restricted personal information" under the DPPA. 18 U.S.C. §2725(3).

Moore and Phelps are employees and agents of both the City of Newark and Licking County.

The DPPA is part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA was enacted because criminals were using personal information obtained from DMV records in order to commit serious violent crime, e.g. the murder of TV actress Rebecca Schaeffer by a stalker who obtained her personal information from DMV records; numerous instances of robbery and stalking committed by using a license plate number to obtain personal information from a DMV record. 103 Cong. Rec. S15763.

B. Proceedings below

The District Court granted Licking County's 12(b)(6) motion to dismiss, finding that Phelps's disclosure provides the public with "open access" to

court records and therefore is permitted under the government and litigation permissible use exceptions to the DPPA, §2721(b)(1) and (4).[3] App. 34a-35a. After discovery, that court granted the other defendants' motion for summary judgment and denied a motion to amend complaint. The court reaffirmed its prior conclusion regarding the Phelps's disclosure. App. 18a. Furthermore, the court held that the personal information is not protected by the DPPA because Phelps allegedly obtained the information from a traffic ticket, App. 19a-21a, although the original source of the information is a motor vehicle record.[4] The court rejected the rulings of other district courts that have held that "the DPPA protects any information that originates from a motor vehicle record." *Id.*

The court found that Moore's disclosure of my SSN to the public was permitted under the government and litigation permissible use exceptions. App. 21a-26a. The court found that the "range of people" to whom the information was disclosed is not relevant to whether the disclosure falls under the exception. App. 24a. It did not matter that the range of people (the entire world) vastly exceeded what was justified to achieve the government's asserted permissible use. Although I vigorously argued that the court should adopt the Seventh Circuit's balancing test, the court decided that any weighing of utility versus harm is not relevant. App. 21a-26a. The court acknowledged that

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[3] The court found *sua sponte* that date of birth is not "personal information" under the DPPA, although neither side had briefed the issue. App. 34a n.2. However, numerous other courts have found that date of birth is "personal information," e.g. *Senne v. Village of Palatine*, 695 F.3d 597, 608 (7th Cir. 2012).

[4] Namely, the police officer copied the information from a motor vehicle record to the traffic ticket.

I have "legitimate concerns" regarding Moore's publicizing of my personal data, especially my SSN, App. 23a, but found that the DPPA is an "ineffective tool" at stopping the government from disclosing any personal data, App. 26a.

The Sixth Circuit affirmed, agreeing with the District Court in all respects. App. 1a-7a. The Sixth Circuit found that Phelps's disclosure was permitted under the government and litigation use exceptions because the disclosure was "in connection with" a criminal proceeding. App. 5a. The court found that Moore's disclosure was permitted under the same exceptions, deciding that the range of people to whom the disclosure is made is not relevant, and rejecting my arguments that it should use a balancing test like the Seventh Circuit. App. 6a-7a.

REASONS TO GRANT CERTIORARI

Certiorari should be granted for these reasons:

1. Review by this Court is needed to resolve an important conflict between the Sixth and Seventh Circuits regarding the government use exception to the DPPA. The Seventh Circuit has adopted a balancing test approach, but the Sixth Circuit has rejected use of a balancing test. The Seventh Circuit held that when a government entity alleges that its disclosure falls under a permissible use, a court must do a balancing test of the "utility ... of the [government's disclosure of personal information] ... against the potential harm". *Senne v. Village of Palatine*, 784 F.3d 444, 447 (7th Cir. 2015), *cert. den.*, 136 S.Ct. 419 (2015). By contrast, under the Sixth Circuit's approach, any balancing is irrelevant. Under the Sixth Circuit's opinion, a government disclosure is permissible even when the disclosure results in severe

harm to the citizen but the benefit of the disclosure to the government is non-existent or negligible.

The Sixth and Seventh Circuits also fundamentally disagree regarding whether the scope of a disclosure is relevant. The Sixth Circuit and District Court found that scope, namely the range of people to whom the disclosure is made, is not relevant to whether the disclosure is permitted under the government use and litigation use exceptions, but the Seventh Circuit has held that a disclosure must not "exceed the scope" justified by the alleged government or litigation use. *Senne v. Village of Palatine,* 695 F.3d 597, 606 (7th Cir. 2012).

2. This case is of exceptional importance. The Sixth Circuit opinion eviscerates the privacy rights of every driver in the Sixth Circuit – over 23½ million people.[5] The Sixth Circuit has thus put 23½ million people at risk of the serious crimes that Congress enacted the DPPA to prevent: stalking, identity theft, robbery, murder, etc. This Court should not wait for some other day, some other case to fix this. This needs to be fixed urgently. Additionally, many more drivers will lose their privacy rights if other Circuits follow the Sixth Circuit's approach.

3. The results shock the conscience. The Sixth Circuit allowed a prosecutor to make a driver's Social Security Number available to the public when she had no legitimate need to do so.

4. The Sixth Circuit's opinion contravenes Congressional intent and effectively nullifies the DPPA. The DPPA was created in order to prohibit the government from making gratuitous, unnecessary disclosures of personal information from a motor

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[5] Bureau of Transportation statistics (2018). http://www.bts.gov/browse-statistical-products-and-data/state-transportation-statistics/state-transportation-numbers

vehicle record. The Sixth Circuit misconstrues the DPPA exceptions to allow the disclosures that Congress intended to prohibit. The District Court opinion even characterizes the DPPA as an "ineffective tool" for stopping the very disclosures the DPPA was intended to prevent. App. 26a.

5. The DPPA has rarely been reviewed by this Court. The DPPA provides very important rights that protect against violent crime. Yet, this Court has reviewed the DPPA just two times[6] and has never reviewed the contours of the government use exception.

6. Lack of review by this Court has led to bizarre results in the lower courts. The Sixth Circuit's opinion, allowing a prosecutor to make public a SSN, is just one of those bizarre results. Another example is that the Ninth Circuit held that a driver's license is not a motor vehicle record despite the fact that the DPPA explicitly says that it is. *Andrews v. Sirius XM Radio Inc.*, 932 F.3d 1253, 1260 (9th Cir. 2019); *compare with* 18 U.S.C. §2725(1). The Questions Presented provide this Court with an opportunity to set the lower courts straight.[7]

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[6] *Reno v. Condon*, 528 U.S. 141 (2000); *Maracich v. Spears*, 570 U.S. 48 (2013).

[7] The Sixth Circuit's opinion is particularly persuasive within the Circuit because it affirms a published decision and no other Sixth Circuit opinion has addressed the interpretation of 18 U.S.C. §2721(b)(1) and (4).

"[T]he Federal Judicial Center has found that Sixth Circuit judges are far more likely than those of other circuits to believe that unpublished opinions are helpful to decide cases." https://www.sixthcircuitappellateblog.com/news-and-analysis/case-management-in-the-sixth-circuit-unpublished-opinions/ (accessed 1/31/2021). "The court permits citation of any unpublished opinion[.]" 6th Cir.R. 32.1(a); Fed.R.App.P. 32.1(a). "[U]npublished opinions are widely read, often cited by attorneys

I. The writ should be granted to resolve a serious conflict between the Sixth and Seventh Circuits

A. The Seventh Circuit held that a court must balance the utility of a governmental disclosure against the harm

In *Senne v. Village of Palatine,* 784 F.3d 444 (7th Cir. 2015), *cert. den.*, 136 S.Ct. 419 (2015), the Seventh Circuit held that a balancing test must be done when the government asserts an exception under §2721(b)(1) or (4):

> [W]e need to balance the utility (present or prospective) of the [government's disclosure of] personal information ... against the potential harm. It's true that the Act does not state that a permissible use can be offset by the danger that the use will result in a crime or tort. But statutes have to be interpreted to avoid absurd results.

Senne, 784 F.3d at 447. The Seventh Circuit said that the DPPA would be violated if the government had disclosed highly restricted personal information on a parking ticket, such as a SSN. "[H]ad [the Village] placed on the tickets highly sensitive information such as the owner's social security number, the risk of a nontrivial invasion of personal privacy from the disclosure would be much greater and probably

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(even in circuits that forbid such citation), and occasionally relied on by judges (again, even in circuits that have imposed no-citation rules)." Memo. of Judge Alito as Chair, Advisory Comm. on Appellate Rules, regarding FRAP 32.1 (5/6/2005).

outweigh the benefits to law enforcement." [8] *Id.* at 448.[9]

B. The Sixth Circuit rejected the Seventh Circuit's balancing test in favor of an any-flimsy-governmental-excuse-will-do test

To anyone in the Sixth Circuit reading its opinion in this case, it is apparent that the Sixth Circuit has decided that no balancing test should be used. This is apparent from the facts described in the opinion (App. 2a) and its reasoning. If ever there was a case in which the balancing of utility to the government versus harm to the citizen weighed in favor of non-disclosure, it is this case. No legitimate government purpose is served by providing the public with my SSN. On the other hand, the public disclosure does great harm to me by putting me at risk of identity theft and other crime. The Sixth Circuit does not mention the harm to me, let alone compare it to the non-existent benefit to the government, because the Sixth Circuit considers that irrelevant. The Sixth Circuit's opinion makes crystal clear that any weighing or balancing is simply irrelevant to the analysis. The only thing the Sixth Circuit considers

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[8] Applying the balancing test to the facts in *Senne*, the Seventh Circuit found that the DPPA was not violated when a police officer placed a parking ticket containing limited personal information such as name and address, but not any "highly restricted personal information" such as SSN, face down on the windshield of a motor vehicle.

[9] The Seventh Circuit's reasoning applies also to the litigation use exception. If anything, the litigation use exception should be read more narrowly than the government use exception because the litigation use exception is available to any litigant in any case. Thus, a party to a civil case could use the litigation use exception to disclose highly restricted personal information for malicious reasons.

relevant is that Moore asserts that the disclosure is "in connection with" a court case. App. 6a. Hence, the Sixth Circuit's opinion makes clear to the courts of the Sixth Circuit that the Seventh Circuit's balancing test should not be used.

To further elaborate, Moore disclosed my full DMV record, which contains my SSN, to the public. Social Security Number is "highly restricted personal information" under the DPPA.[10] Moore could have redacted the personal information from the copy of the DMV record that she made available to the public, or she could have filed the DMV record under seal. If she would have done either of those things, her prosecution would not have been hindered in the slightest. The disclosure of my SSN (and other personal information) **TO THE PUBLIC** did not serve any legitimate governmental use.

Moore's disclosure would fail any balancing test. Under *Senne*, disclosure is permissible when "the potential harm of such disclosure is negligible but the benefits nonnegligible." *Senne* at 448. In this lawsuit, the opposite is true. The "benefits" of the disclosure are "negligible" (actually non-existent), because Moore could have easily avoided the disclosure to the public by redacting or sealing, without hindering her prosecution. The "potential harm" of disclosing a SSN to the public is very substantial. Moore put me at great risk of identity theft by publicizing my SSN. To criminals, SSNs are "keys to the kingdom," FTC, Security In Numbers (2008) (Dist. Ct. Doc. 48-2, PAGEID# 578), because a criminal can use a SSN to "open new [financial] accounts, access existing accounts, or obtain other benefits in the consumer's

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[10] So is medical information. The disclosed DMV record contains some medical information.

name," *id.*, obtain a fraudulent tax refund, steal unemployment or Social Security benefits, or commit other crimes, C. DiGangi, 5 Ways an Identity Thief Can Use Your Social Security Number, USA TODAY, Nov. 15, 2017 (Dist. Ct. Doc. 48-3).[11]

Moore's justification for why she disclosed my SSN and other personal information to the entire world, instead of just the judge, is that it is not her "common practice" to redact or file under seal, and that doing literally anything that deviates from her "common practice" could impede her prosecution, Moore Depo. at 37, but she could not explain how it would impede her prosecution, *id.* at 36-47, 68-69. The lower courts accepted her incredibly flimsy excuse for disclosing my sensitive personal information to the public.

C. The Sixth Circuit's any-flimsy-excuse-will-do approach means that the government is never prohibited from making disclosures

An any-flimsy-excuse-will-do test means that the government is never prohibited from disclosing "personal information" or "highly restricted personal information" because the government will always be able to make up some flimsy excuse to justify a disclosure.[12] Not even the DMV would be prohibited from disclosing highly restricted personal information because the DMV could say that providing public access to its records is one of its functions. Prior to the DPPA, DMVs often sold information from motor

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[11] *See also* Social Security Administration, Identity Theft and Your Social Security Number (2018) (Dist. Ct. Doc. 41-2)

[12] Unless a government employee makes a disclosure for purely personal malicious reasons in violation of the government's official policies, which has been the case in all or nearly all successful DPPA cases against the government for monetary damages to date.

vehicle records. Under any-flimsy-excuse-will-do, the DMV could argue that it is carrying out a government function by the disclosure of personal information because the disclosure provides revenue to be used to fund other government programs.

D. The Sixth and Seventh Circuits also fundamentally disagree regarding whether the scope of the disclosure is relevant

The Seventh Circuit has held that under the government use exception, the scope of the disclosure must not exceed what is justified in order to effectuate the government use.

> [W]hen the statutory language says that a disclosure is authorized "[f]or use ... in carrying out its functions," ..., that language means that the actual information disclosed — i.e., the disclosure as it existed in fact — must be information that is used for the identified purpose. When a particular piece of disclosed information is not used to effectuate that purpose in any way, the exception provides no protection for the disclosing party. In short, an authorized recipient, faced with a general prohibition against further disclosure, can disclose the information only in a manner that does not exceed the scope of the authorized statutory exception. The disclosure actually made under the exception must be compatible with the purpose of the exception.

Senne, 695 F.3d 597, 606 (7th Cir. 2012).

Scope includes to whom the disclosure is made. Moore exceeded the scope of the permissible use by disclosing my SSN and other personal information to the entire public instead of just disclosing it to the

judge. The disclosure to the public was not "used for the identified purpose", was not "used to effectuate that purpose in any way", "exceed[ed] the scope of the authorized statutory exception", and was not "compatible with the purpose of the exception." *Senne.*

By contrast, the District Court held that scope regarding the "range of people" to whom the disclosure is made is irrelevant and the Sixth Circuit affirmed. App. 24a. The Sixth Circuit held that because Moore was justified in disclosing the personal information and highly restricted personal information to one person (the judge), she is permitted to disclose the information to the entire world. This is an absurd result. Under Sixth Circuit reasoning, if the IRS requests a driver's personal information from the DMV for legitimate reasons, the DMV would be permitted to disclose the information to the IRS by posting the information on the DMV's public website.

II. In the Sixth Circuit, criminals can circumvent the DPPA by obtaining personal information originating from a motor vehicle record using government websites like Phelps's

A. This Court should clarify that providing information just for the sake of providing information is not a permissible use under the DPPA

The District Court found that Phelps's disclosure is permissible in order to provide the public "open access" to court records. App. 34a-35a. The Sixth Circuit agreed that providing public access to court records is sufficient justification, because the disclosure is "in connection with" a court proceeding. App. 5a.

Thus, the lower courts held that disclosing information to the public simply for the sake of disclosing information to the public was a legitimate government use under the DPPA exception. However, this cannot be a legitimate government use, because if it were, the DPPA would not prohibit any government disclosures at all. All government entities can claim that providing public access to government records is part of its governmental functions.[13] The DPPA would not even prohibit the DMV from disclosing any personal information, because the DMV could say that it is providing the public access to government records. This is an absurd result. Congress clearly intended for the DPPA to prohibit the DMV, and other entities, from disclosing personal information just for the sake of providing information to the public. It is true that prior to the DPPA, it was commonplace for DMVs, courts, and many other governmental bodies, to provide public access to personal information from motor vehicle records, but the DPPA was enacted precisely to place limits on governmental disclosures of personal information.

Another reason why this cannot be a legitimate government use is because the government use exception §2721(b)(1) permits disclosure of all personal information, including highly restricted personal information like SSNs. If the Sixth Circuit's ruling is not overturned, Phelps could also put my SSN, photo, and any other personal information on the court's public website. For example, the Franklin County, Ohio Municipal Court puts height, hair color, eye color, and weight on its public website, even in cases where the defendant is acquitted.[14] Under the

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[13] Many states have "sunshine laws" designed to provide public access to government records. E.g. Ohio Rev. Code §149.43

[14] http://www.fcmcclerk.com/case/search

Sixth Circuit's ruling, this superfluous disclosure of DPPA personal information is permitted.

B. Courts should not accept disingenuous excuses for publicly disclosing DPPA personal information

Phelps's stated justification — that she puts my personal information on the website for my benefit, to help me look up case information, make payments, see hearing dates, etc. — is facetious. App. 18a, citing Phelps Aff., Dist. Ct. Doc. 22-2. I could just as easily do every one of those things if my personal information were not on her website! Disclosing personal information like date of birth and full address, instead of just ZIP code[15], is not rationally related to her stated justification. Scope of disclosure is relevant, *supra.*, and if she provides the information for the benefit of a traffic case defendant, she could limit access to the information to the defendant. Moreover, Phelps refuses to remove my personal information from the website even though the traffic case has long been closed, the disclosure of the information has no conceivable benefit to me at this point, and she knows that I strongly object to the disclosure. She continues to disclose personal information of traffic defendants in cases that were closed more than twenty years ago. Dist. Ct. Doc. 25-2.

C. The Sixth Circuit conflicts with the Seventh Circuit on whether Phelps's disclosure is permissible

Under *Senne* (2015), Phelps's disclosure is not permissible.

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[15] The DPPA permits disclosure of ZIP code

> There is an argument for placing identifying information such as height and weight on a ticket placed face down under a windshield wiper, but **it would be at once unnecessary and an offensive invasion of privacy to place that information** in a newspaper, on a billboard, or **on the police department's website**. The balance between law enforcement and privacy favors allowing discreet disclosure of limited information of credible value to law enforcement, since the potential harm of such disclosure is negligible but the benefits nonnegligible.

Senne, 784 F.3d at 447-48 (emphasis added). The Seventh Circuit said that the Village would probably be liable "[h]ad the Village been making the information on parking tickets **publicly available over the Internet**." *Id.* at 448 (emphasis added). The exposure of my personal information is unlimited in time and audience.[16] My personal information remains on Phelps's website in perpetuity and the entire world can access the information via the internet.

D. Phelps's disclosure conflicts with Congressional intent because the disclosure allows criminals to obtain personal information from motor vehicle records to commit serious crimes, which is exactly what Congress intended to prevent

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[16] By contrast, *Senne* held that the DPPA was not violated when the exposure of the personal information was limited to the amount of time that a parking ticket remains on the windshield and limited to the people in the vicinity of the parking ticket.

Phelps's website allows the public to search for information by license plate number or other criteria. So, anyone who has my license plate number can find out my name, home address, and other personal information by doing a search by license plate on the court website.

That is exactly what Congress wanted the DPPA to stop. Congressional debate on the DPPA provides numerous examples of how criminals use personal information from motor vehicle records to commit serious crime. Congress's entire purpose in enacting the DPPA was to prevent crime by stopping criminals from having access to personal information from motor vehicle records. The court website lets criminals commit serious crimes in the same manner that Congress intended the DPPA to prohibit, but by obtaining personal information originating from a motor vehicle record using the court website instead of the DMV. Therefore, Phelps's disclosure cannot be a permissible use as intended by Congress.

Crime cited by Congress (103 Cong. Rec. S15763, S15766)	Crime the court website facilitates
In Iowa, a gang of teenagers copied down the license plate numbers of expensive cars, obtained the home addresses of the owners from the Department of Transportation, and then robbed them at night.	In Licking County, a gang of teenagers copied down the license plate numbers of expensive cars, obtained the home addresses of the owners by doing a search by license plate on the court website, and then robbed them at night.

[A] 31-year-old man copied down the license plate numbers of five women in their early twenties, obtained their home address from the DMV and then sent them threatening letters at home.	[A] 31-year-old man copied down the license plate numbers of five women in their early twenties, obtained their home address by license plate search on the court website and then sent them threatening letters at home.
[A] woman ... was shocked to discover ... [harassing] literature on her doorstep days after she had visited a health clinic .... Apparently, someone used her license plate number to track down personal information which was used to stalk her.	(Same)

As DPPA sponsor Sen. Boxer said in support of the DPPA:

> In 34 States, someone can walk into a State Motor Vehicle Department with your license plate number and a few dollars and walk out with your name and home address. Think about this. You might have an unlisted phone number and address. But, someone can find your name or see your car, go to the DMV and obtain the very personal information that you may have taken painful steps to restrict.

103 Cong. Rec. S15763. This is exactly what any criminal can do using the court website.

The DPPA's privacy protections are illusory in the Sixth Circuit. Anybody in the Sixth Circuit loses their DPPA privacy protections as soon as they are charged with a minor traffic infraction. Even if you are innocent and falsely charged, you lose your DPPA privacy protections, because the personal information can remain on the public website even after you are acquitted.[17] Congress intended that people should not be forced to choose between driving and privacy. The Sixth Circuit forces that choice. The only way to ensure your privacy is to never drive in the Sixth Circuit.

III. This issue is of exceptional public importance

A. The Sixth Circuit has eviscerated the privacy rights of 23½ million drivers and exposed them to risk of serious crime

This issue is of exceptional importance. The Sixth Circuit has eviscerated the DPPA privacy rights of the Sixth Circuit's 23½ million drivers. The Respondents claim that Ohio's five largest counties provide the same (or more) personal information as Phelps's website. Phelps's C.A. Brief at 18. Thus, the personal information for the majority of adult Ohioans can be obtained merely by searching the court records of Ohio's five most populous counties. By stripping drivers of DPPA privacy rights, the Sixth Circuit has exposed 23½ million people to the risk of stalking,

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[17] *See supra.* regarding the Franklin Co. court website.

robbery, identity theft, murder, ... all the crimes Congress enacted the DPPA to prevent.

B. Increasingly, the disclosure of home addresses and other personal information has been used as a means to harass and intimidate people because of their beliefs

The evisceration of DPPA privacy rights also threatens to chill free speech. A person taking offense to a political bumper sticker could use Phelps's court website to search by license plate number for the home address of the vehicle's owner to harass or intimidate the owner. The danger is serious. In recent years, politically motivated physical assaults have become more prevalent.[18]

"Doxing" is the public revealing of personal information, such as a home address, usually in order to harass or intimidate.[19] A home address is posted to the internet in order to encourage others to use that information to harass the victim. The term has become familiar because left and right extreme groups have increasingly resorted to doxing in an effort to silence and harass their opposition. For example, conservative commentator Tucker Carlson was harassed by Antifa activists at his home after his address was publicized.[20] A former Senate staffer exposed the private information of five Republican senators as an act of retaliation for their support of

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[18] E.g. https://www.newsweek.com/texas-teen-attacked-wearing-maga-hat-1008678. For many more examples, see Pl.'s Mot. Summ. J. at 6 n.7 (Dist. Ct. Doc. 16, PAGEID #82).

[19] https://www.kaspersky.com/resource-center/definitions/what-is-doxing

[20] https://www.cnn.com/2018/11/08/media/tucker-carlson-protestors/index.html (11/8/18)

Justice Kavanaugh's nomination to this Court.[21] Phelps's website gives doxers a tool to obtain personal information, e.g. home address, of the people that the doxers wish to harass.

All this illustrates why it is so reckless for the government to dox its own citizens who have been accused of some minor traffic infraction. The DPPA's privacy protections are needed now more than ever.

IV. This case gives this Court the opportunity to set the lower courts straight on several other DPPA issues

The parties dispute the source of the personal information on Phelps's court website. As soon as the traffic case was opened, Phelps obtained a copy of my motor vehicle record (Dist. Ct. Doc. 16-7), which contains all the personal information that Phelps put on her website. I contend that once Phelps became an authorized recipient of that motor vehicle record, she became subject to the DPPA prohibitions against disclosing any personal information contained in that record. However, the Respondents claim that Phelps obtained the personal information from the traffic ticket instead of that motor vehicle record, and the District Court accepted this claim. For argument's sake, if we accept this claim and that this somehow relieves her of her statutory obligation not to disclose the personal information contained in the motor vehicle record that she obtained, this case raises several important questions.

A. There is a conflict in the lower courts regarding whether information is protected by

[21] https://www.npr.org/2019/10/29/774386731/former-senate-aide-gets-probation-for-helping-dox-republicans-over-kavanaugh-hea

the DPPA if the information originates from a motor vehicle record and is transferred to another document

The ultimate source of the personal information on the traffic ticket is my motor vehicle records. The unrefuted evidence shows that the police officer copied verbatim name, address, height, weight, etc. from my driver's license to the ticket. Dist. Ct. Doc. 25-1.

There is a conflict in the lower courts regarding whether information is protected when the ultimate source is a motor vehicle record. *Pavone v. Law Offices of Anthony Mancini*, 205 F.Supp.3d 961, 964 (N.D. Ill. 2016) holds that "the DPPA protects any information that originates from a motor vehicle record." Thus, the personal information of the traffic ticket is protected because it originated from a motor vehicle record. However, the District Court explicitly rejected *Pavone* and held that the personal information is not protected because Phelps (allegedly) obtained it from the traffic ticket. App. 19a-21a.[22]

Pavone is correct. §2721(c) prohibits redisclosure of information obtained from a motor vehicle record. Thus, if a sheet of paper discloses information originating from a motor vehicle record, the DPPA prohibits redisclosure of personal information on that paper. *Pavone* is consistent with common sense and the intent of the DPPA.

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[22] The District Court cites *Whitaker v. Appriss, Inc.*, No. 3:13-CV-826-RLM-CAN, 2014 WL 4536559 (N.D. Ind. Sept. 11, 2014) in support of its contention, but actually *Whitaker* came to the opposite conclusion. *Whitaker* concluded that if the source of the information on a ticket is a motor vehicle record, the DPPA protects the information. "If the original source of the other government agency's information is the state department of motor vehicles, the DPPA protects the information throughout its travels." *Id.* at *4.

It is absurd to think that the protections of the DPPA can be evaded by one government actor copying information from a motor vehicle record onto a piece of paper and then another government actor disclosing the personal information from that paper instead of directly from the motor vehicle record. If that were permitted, Moore could evade the DPPA by asking a fellow prosecutor to hand copy the contents of my motor vehicle record, including my SSN, onto a sheet a paper, and then filing that paper instead of the original motor vehicle record.

B. Is the Ninth Circuit correct that a driver's license is not a motor vehicle record despite the fact that the DPPA explicitly says that it is?

18 U.S.C. §2725(1) defines "motor vehicle record."

> "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.

(Emphasis added). "Identification card issued by a department of motor vehicles" very obviously means a driver's license.

Yet, astonishingly, the Ninth Circuit has held that a driver's license is not a motor vehicle record. *Andrews v. Sirius XM Radio Inc.*, 932 F. 3d 1253, 1260 (9th Cir. 2019).

This result is especially bizarre in cases like this lawsuit where a driver was compelled by law to show the driver's license to a police officer.

C. Does "knowingly" in the DPPA require personal knowledge?

The term "knowingly" appears in §2721(a) and §2724(a). Phelps contends that she is not knowingly

disclosing personal information from a motor vehicle record because she did not personally witness the officer copy the information from a motor vehicle record to the traffic ticket.

Even if Phelps did not initially know that the source of the information is a motor vehicle record, she has learned it through the course of litigation[23], yet she continues to disclose my personal information on the website. She has no evidence to refute the contention that the information comes from a motor vehicle record.

Nothing in the language of the DPPA says that "knowingly" requires personal knowledge. The law recognizes many other sources of knowledge: second hand knowledge, constructive or inferential knowledge, deductive knowledge, etc. This Court should clarify that any of these can satisfy the DPPA's "knowing" requirement.

V. Certiorari should be granted in order for this Court to reinforce its own precedent in *Maracich v. Spears*

Last but not least, certiorari should be granted in order to enforce and amplify *Maracich*. *Maracich*, 570 U.S. at 60, held that the permissible uses in 18 U.S.C. §2721(b) must be read "narrowly in order to preserve the primary operation of the [DPPA]." The DPPA's primary operation is its "general prohibition against disclosure of 'personal information' and its ban on release of 'highly restricted personal information.'" *Id.* "It is true that the DPPA's 14 exceptions permit disclosure of personal information in a range of circumstances. Unless commanded by the text, however, these exceptions ought not operate to the

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[23] *See* Pl.'s C.A. Reply Br. (R. 22) at 21-22.

farthest reach of their linguistic possibilities if that result would contravene the statutory design." *Id.* (emphasis added). *Maracich* held that the DPPA was violated by lawyers who obtained personal information in order to solicit new clients for a lawsuit, although that use falls within a broad interpretation of the "in connection with" litigation exception §2721(b)(4).

The Sixth Circuit has not taken heed of *Maracich*. The Sixth Circuit has extended the government use and litigation use exceptions to the "farthest reach of their linguistic possibilities" in order to nullify the "primary operation of the statute" and lead to an absurd result where the DPPA does not even prohibit Moore from disclosing my SSN (which is supposed to be "highly restricted personal information") to the public when she has no genuine use for disclosing that information to the public. If the Sixth Circuit would have taken *Maracich* to heart, the Sixth Circuit would have "narrowly" read the DPPA exceptions and came to the opposite conclusion. Review by this Court is necessary to set the lower courts straight.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,
Vincent Lucas