

App. No. \_\_\_\_\_

In the  
Supreme Court of the United States

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Larry Klayman  
Petitioner,

v.  
Judicial Watch, Inc., et al  
Respondents

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ON APPLICATION FOR EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

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PETITIONER'S APPLICATION TO EXTEND TIME TO  
FILE A PETITION FOR WRIT OF CERTIORARI

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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Petitioner Larry Klayman respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty (60) days to February 14, 2022. The U.S. Court of Appeals for the District of Columbia Circuit ("Court of Appeals") denied Petitioner's Petition for Rehearing En Banc in the matter of *Klayman v. Judicial Watch, Inc, et al*, 19-7105 (D.C. Cir.) on September 15, 2021 (Exhibit A). The mandate issued on September 23, 2021. Without an extension, Petitioner's Petition for Writ of Certiorari Would Be Due on December 14, 2021.

Petitioner, given the continuing and largely unabated COVID-19 pandemic crisis, inadvertently and mistakenly believed that the automatic 150-day deadline for filing Petitions for Writ of Certiorari, as well as the staying of the requirement to file in booklet format due to COVID -19 was still in effect. It was only when checking the Supreme

Court's rules on another case on December 9, 2021 that Petitioner discovered that the Court had rescinded its COVID-19 orders on July 19, 2021. This was an unintentional error, and Petitioner is now unable to meet the December 14, 2021 deadline, particularly given the need to outsource the production of the requisite booklet format to an outside vendor.

This forthcoming Petition is of crucial importance, as it implicates a split in authority regarding the likelihood of confusion standard in trademark infringement cases, as well as other significant questions of law that would create an untenable precedent without review from this Court.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

#### **REASONS FOR GRANTING AN EXTENSION OF TIME**

The time to file a Petition for Writ of Certiorari should be extended for sixty days for the following reasons:

1. Petitioner, who is proceeding *pro se* had not previously anticipated requiring an extension of time prior to

December 9, 2021 as he inadvertently and mistakenly believed that the Court's COVID-19 protocols were still in effect. This need only arose when Petitioner was checking the Supreme Court's website for another case on December 9, 2021 and saw the Court's July 19, 2021 order rescinding the Court's COVID-19 protocols.

2. This case presents an extraordinarily critical split regarding the applicable standard for likelihood of confusion for trademark cases. This was recognized by the D.C. Circuit:

Klayman also argues that the district court failed to properly instruct the jury on an element of trademark infringement. Judicial Watch asserted that Klayman infringed on its trademarks "Judicial Watch" and "Because No One is Above the Law." To establish trademark infringement, Judicial Watch needed to prove, among other elements, that Klayman's use of its trademarks created a "likelihood of confusion" among consumers. *See Am. Soc'y for Testing and Materials v. Public.Resource.Org, Inc.*, 896 F. 3d 437, 456 (D.C. 2018). Klayman argues that the court erred by failing to instruct the jury that likelihood of confusion requires confusion by an "appreciable number" of consumers. But his only support for this proposition comes from two unpublished decisions of our district court, which are of course not precedential. *See In re Exec.*

*Office of President*, 215 F.3<sup>rd</sup> 20, 24 (D.C. Cir. 2000).

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**This circuit “has yet to opine on the precise factors courts should consider when assessing likelihood of confusion....** *Klayman v. Judicial Watch, Inc.*, No. 19-7105, 2021 U.S. App. LEXIS 22613, at \*33 (D.C. Cir. July 30, 2021) (emphasis added)

As the D.C. Circuit is considered the most precedent setting court, short of this Supreme Court, trademark law precedent is of crucial importance not just for Petitioner but other private and public interests in commerce. The split in authority in the D.C. Circuit is a major issue that will have widespread real-world ramifications, even apart from Petitioner.

This case also involves other substantial precedential issues of law including but not limited to (1) the ability of parties to “fair comment” and make substantially truthful statements in the context of defamation and/or disparagement cases, (2) admission of hearsay evidence, (3) lack of authentication of evidence, and (4) Lanham Act issues that must be reviewed by this Court to avoid setting untenable precedent.

3. Respondents and this Court would suffer no meaningful prejudice as a result of this extension of time for sixty (60) days.

### CONCLUSION

Based on the foregoing, the time to file a Petition for Writ of Certiorari, Petitioner respectfully requests that the time to file a petition for writ of certiorari be extended sixty (60) days to February 14, 2022.

Dated: December 10, 2021

Respectfully Submitted,

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