

No. 23A-_____

IN THE
Supreme Court of the United States

JONATHAN WALKER,

Applicant,

v.

STATE OF ARKANSAS,

Respondent.

On Petition for a Writ of Certiorari
to the Arkansas Court of Appeals

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

TO: The Honorable Brett Kavanaugh, Associate Justice of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Under this Court's Rules 13.5 and 22, Applicant Jonathan Walker requests an extension of fifty-eight (58) days in which to file a petition for a writ of certiorari in this case. The Court of Appeals of Arkansas issued its decision on May 17, 2023. *See Walker v. State*, 669 S.W.3d 243 (Ark. Ct. App. 2023); App. 1. The Arkansas Supreme Court denied Mr. Walker's petition for review on September 21, 2023. App. 26. Unless extended, the time to file a petition for certiorari will expire on December 20, 2023. With the requested extension, the petition would be due on February 16, 2024.

This application is being filed more than 10 days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a). In support of this application, Applicant states:

1. This case is a serious candidate for review. It concerns whether police officers violate the Fourth Amendment when they open an image uploaded to a private, online web storage platform without a warrant. The court below found that the officers' conduct fell within the "private search exception" to the Fourth Amendment because the private web storage platform had flagged the image based on an automated assessment. But as then-Judge Gorsuch explained in a similar case, "the warrantless opening

and examination of (presumptively) private correspondence that could have contained much besides potential contraband for all anyone knew” would “seem[] pretty clearly to qualify as exactly the type of trespass to chattels that the framers sought to prevent when they adopted the Fourth Amendment.” *United States v. Ackerman*, 831 F.3d 1292, 1307 (10th Cir. 2016) (Gorsuch, J.).

2. This case began when Microsoft, as required by federal law, reported to the National Center for Missing and Exploited Children (NCMEC) that an image uploaded from Mr. Walker’s computer matched the “hash value” of a known instance of child pornography. App. 2-3. NCMEC then sent the image to the Arkansas State Police. App. 3. No one at either Microsoft or NCMEC opened or viewed the file. App. 2-3, 7. An agent at the Arkansas State Police Department opened and viewed the file. *Id.* Based on his review of the image, the police officer sought and received a search warrant for Mr. Walker’s apartment and computers. App. 3-4.

3. Based on the material found on Mr. Walker’s computers, Mr. Walker was charged with distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. App. 5. He moved to suppress the illicit images found on his computer during the search. App. 7. He argued that the basis for the warrant was an Arkansas State Police Department officer’s viewing of the uploaded image, which was done without a warrant. App. 7-8. The State argued that, although it had not sought a

warrant prior to viewing the image flagged by Microsoft, the act of viewing that file fell within the “private search exception” to the Fourth Amendment’s warrant requirement. App. 8-9. Under that exception, where the government simply confirms information gleaned in a private search, that confirmation does not constitute a subsequent search. *Id.*; see *United States v. Jacobsen*, 466 U.S. 109, 126 (1984). Here, the State argued, the police officer simply confirmed the information gleaned by Microsoft pursuant to the hash value match. App. 8-9. The trial court sided with the State and admitted the evidence uncovered pursuant to the search warrant. *Id.*

4. Based entirely on evidence uncovered pursuant to that warrant, a jury convicted Mr. Walker of distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child and sentenced him to 450 years in prison. App. 4, 7.

5. Mr. Walker appealed, and the Court of Appeals of Arkansas affirmed. It concluded that “under the private-search doctrine,” the “opening of the file did not violate Walker’s constitutional right against unreasonable searches and seizures.” App. 15. It thus held that the trial court had not erred in denying Mr. Walker’s motion to suppress and affirmed Mr. Walker’s conviction. *Id.* The Arkansas Supreme Court denied Mr. Walker’s petition for review. App. 26.

6. This case raises an important question of law on which the courts of appeals are divided. In at least the Ninth Circuit, where a law enforcement

officer views an email attachment that no private actor has opened, he has exceeded the limits of the private search exception to the warrant requirement, even where the private actor has reported a “hash value” match of the image. *See United States v. Wilson*, 13 F.4th 961 (9th Cir. 2021). In at least the Fifth and Sixth Circuits, like the Arkansas court below, a law enforcement officer performing exactly the same act falls within the private search exception, such that no warrant is necessary. *United States v. Reddick*, 900 F.3d 636, 640 (5th Cir. 2018); *United States v. Miller*, 982 F.3d 412, 430 (2020); *see also* App. 10-14. The Arkansas Court of Appeals acknowledged that the Ninth Circuit had reached “a different result than” the Fifth and Sixth Circuits “on similar facts” and explained that it was siding with the Fifth and Sixth Circuits because it was “persuaded by the analysis” of those courts. App. 14 n.8.

7. Due to the split among the courts on this issue, there is a reasonable prospect that this Court will grant the petition, such that it warrants additional time for these important questions to be fully addressed.

8. This application for a fifty-eight-day extension seeks to accommodate applicant’s legitimate needs. Applicant recently affiliated counsel at the Stanford Supreme Court Litigation Clinic. The extension is needed for members of the Clinic to fully familiarize themselves with the record, the decisions below, and the relevant case law. In light of the Clinic’s

many other obligations, the Clinic would face difficulties completing all those tasks by the current due date.

For these reasons, applicant requests that the due date for his petition for a writ of certiorari be extended to February 16, 2024.

Respectfully submitted,

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