No. __

IN THE
SUPREME COURT OF THE UNITED STATES

LINKEDIN CORPORATION,

Applicant,

v.

HIQ LABS, INC.,

Respondent.

APPLICATION TO THE HON. ELENA KAGAN FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, LinkedIn Corporation ("Applicant") hereby move for an extension of time of 32 days, to and including March 9, 2020, for the filing of a petition for a writ of certiorari. The United States Court of Appeals for the Ninth Circuit issued its opinion on September 9, 2019 (Exhibit 1), and issued an order denying panel rehearing and rehearing en banc on November 8, 2019 (Exhibit 2). Unless an extension is granted, the deadline for filing the petition for certiorari will be February 6, 2020. Applicants are filing this application at least ten days before that date. See Sup. Ct. R. 13.5. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

1. This case presents a recurring and important question on which the

courts of appeals are divided: whether an entity that deploys anonymous computer "bots" that circumvent technical barriers and mass-harvests individuals' personal data from computer servers—even after the entity's permission to access those servers has been *expressly denied* by the website owner— "intentionally accesses a computer without authorization" under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. 1030(a)(2).

2. Applicant is LinkedIn Corporation, an online professional social networking site. Respondent hiQ Labs Inc. is a company whose business model is to scrape and harvest LinkedIn member data and repackage and sell it to employers to, *e.g.*, alert them regarding which particular employees are likely looking for a new job. hiQ circumvented various technical measures that LinkedIn had put in place to prevent bots from scraping data. After LinkedIn sent hiQ a cease-and-desist letter communicating to hiQ that its bots did not have permission to access and scrape LinkedIn's servers, hiQ sued LinkedIn in a declaratory judgment action asserting various state law claims. The district court granted a preliminary injunction to hiQ, holding that hiQ had presented "serious questions" regarding one of its state law claims, and rejecting as a matter of law LinkedIn's argument that the CFAA preempted hiQ's affirmative state law claims.

3. The Ninth Circuit affirmed. It noted that the key question under the CFAA was whether hiQ had accessed LinkedIn's servers "without authorization" when it scraped data after evading technical measures and after LinkedIn sent its cease-and-desist letter. The Ninth Circuit held that although LinkedIn had "ban[ned]" HiQ from its servers, a ban was distinct from refusing authorization, and

that accessing publicly-available sections of a website could never be "without authorization" under the CFAA. Ex. 1, at 26. The Ninth Circuit further held that any privacy interests that LinkedIn members held in their personal data was outweighed by hiQ's interests in maintaining its business model. *Id.* at 16.

4. The issue presented here is the subject of disagreement among the circuits. The Ninth Circuit's decision conflicts directly with a decision of the First Circuit, which held that where a publicly-accessible website bans data scrapers, further access by those scrapers is without authorization. *See EF Cultural Travel BV v. Zefer Corp.*, 318 F.3d 58, 60-63 (1st Cir. 2003). Moreover, every district court to have considered the question has agreed with the First Circuit that a publicly available website can be accessed "without authorization" under the CFAA.

5. Good cause exists for this application. During the interval allotted for preparing a petition for a writ of certiorari in this matter, undersigned counsel has been required to devote time to numerous matters, including *United States v. Blaszczack* (2d Cir. Nos. 18-2811, 18-2825, 18-2867, 18-2878) (petition for panel rehearing or rehearing en banc due on February 3, 2020); *Wells Fargo Bank, N.A. et al. v. Estate of Phyllis M. Malkin* (11th Cir. No. 19-14689) (opening brief due February 5, 2020); *United States House of Representatives v. Texas* (S. Ct. No. 19-841) (reply in support of certiorari due shortly after brief in opposition, which is due on February 3, 2020); *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, (3d Cir. Nos. 18-2797, 18-3124, 18-2889) (petition for certiorari due February 19, 2020). The requested extension of time will allow counsel the additional time that is necessary to prepare a well-researched and comprehensive petition. The requested extension will also allow

additional time for consultation with potential *amici*.

For the foregoing reasons, Applicant requests that an extension of time to and including March 9, 2020 be granted, within which time Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

/s/ Donald B. Verrilli, Jr.

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