No. 24-994

In the Supreme Court of the United States

NATIONAL BASKETBALL ASSOCIATION, PETITIONER

v.

MICHAEL SALAZAR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Salazar's supplemental brief confirms that the Court should grant review. And additional developments drive the point home.

1. As Salazar explains, the D.C. Circuit has just sided with the Sixth Circuit, meaning "the circuits are now split 2–2 on the meaning of 'goods or services from a video tape service provider' in 18 U.S.C. § 2710(a)(1)'s definition of 'consumer.'" Suppl. Br. 1, 6; *see Pileggi v. Washington Newspaper Publishing Co., LLC*, No. 24-7022, 2025 WL 2319550, at *1 (D.C. Cir. Aug. 12, 2025). And that split, as Salazar continues, "is real, acknowledged, and deepening." Suppl. Br. 6.

2. Despite the increasingly obvious need for the Court's intervention, Salazar conclusorily claims that "this case has vehicle problems" and that the "Court should deny the NBA's petition and await a petition in a case that involves a final judgment." *Id.* Tellingly, Salazar doesn't even approach his word limit in explaining *why* he thinks this case is a bad vehicle, even after the NBA explained in its reply (at 1-2, 5-9) why his arguments make no sense.

They still don't. In fact, they make even less sense now given what Salazar doesn't address in his supplemental brief.

Start with Salazar's plan for his *own* cert petition from the Sixth Circuit decision in the split. Just two weeks ago, Salazar asked this Court for a 60-day extension of time to file a cert petition. *See Salazar v. Paramount Global, dba 247Sports*, No. 25A410, *seeking review of Salazar v. Paramount Global*, 133 F.4th 642 (6th Cir. 2025). For whatever reason, Salazar would prefer that the Court take up the same question presented in this case in his *other* case. But he wants

the Court to do so after he waits two months to petition, forces Paramount to respond, and drags this Court through another review process. He doesn't say why that dilatory and convoluted approach is better—for the Court, the parties in any case, or the development of the law—than the Court's granting review now in this case.

That's because there's no good explanation. After all, Salazar's own self-defeating "vehicle" arguments here about *Solomon v. Flipps Media, Inc.*, 136 F.4th 41 (2d Cir. 2025), apply equally to his own planned cert petition in *Paramount*. If the question whether the MetaPixel conveys personally identifiable information poses an issue in *this* case under *Solomon*—and, of course, Salazar speaks out of both sides of his mouth on this point, as the reply explained (at 2)—then he's in the same trouble in *Paramount*. Nothing is stopping Paramount from raising the *Solomon* argument on remand assuming the Court grants cert on the consumer question in that case and Salazar wins. Put differently, whether the Court takes up Salazar's NBA case or his Paramount case, if he wins, he has the same fight on remand.

Of course, the argument isn't a vehicle problem at all—the question presented remains outcome-determinative in both cases; if Salazar loses in either, his case is over, and the Court's guidance will apply in both cases and beyond. But what is very clear is that Salazar has no argument that *Paramount* is a better vehicle—only a desire to run the clock, at the obvious expense of judicial resources.

Salazar has the same problem with his final judgment argument. Salazar clings to his mantra that the Court shouldn't grant cert here because the judgment

isn't final. As the NBA explained (Reply 6-7), the Court routinely grants certiorari to review legal questions decided when a court of appeals reverses a district court's grant of a motion to dismiss. For a few more examples, see *Health & Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166, 174 (2023); *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 454-55 (2022); *Houston Community College System v. Wilson*, 595 U.S. 468, 473 (2022); *Facebook, Inc. v. Duguid*, 592 U.S. 395, 401 (2021); *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 267 (2019). More importantly, there is zero relevant difference between this case and Salazar's *Paramount* case when it comes to why final judgment supposedly matters. In either case, if Salazar wins, the case continues in the district court and there is no final judgment; if Salazar loses, there is final judgment. So *Paramount* isn't a better vehicle in this respect, either.

* * *

This case is a straightforward grant. Salazar has conceded that there's a real, acknowledged, and deepening 2–2 split. For whatever reason, though, he just doesn't want the Court to take up the important question presented in *this* case. Never mind that whatever the Court says in this case would clearly resolve not just this case but *also* the D.C., Sixth, and Seventh Circuits' cases, as well as the pending Ninth Circuit case. *See Gardner v. Me-TV National Limited Partnership*, 132 F.4th 1022 (7th Cir. 2025); *Heather v. Healthline Media, Inc.*, No. 24-4168 (9th Cir.) (oral argument heard on August 12, 2025). The rational thing to do is to grant cert here and hold petitions in the other cases for the Court's decision here. Indeed, that's exactly what the applicant in the Seventh Circuit case has suggested. *See* Application for Extension

of Time 4-5, *Me-TV National Limited Partnership v. Gardner*, No. 25A138. The alternative is to throw more parties' resources and poolmemos at the same question presented, for no apparent reason.

The Court should put an end to the gamesmanship and grant the NBA's petition.

Respectfully submitted.

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