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

The National Basketball Association writes to respond to the August 27, 2025, letter from Petitioner Detrina Solomon in *Solomon v. Flipps Media*, No. 25-228, contending that the Court should delay consideration of the petition in this case (*Salazar*) to consider this case and *Solomon* at the same conference, and the related contention in the *Solomon* petition that the Court should grant review in *Solomon* and hold the petition here. The Court should reject that suggestion and promptly grant review in this case, where both sides agree that there is a deepening, 2–2 circuit split on an important Video Privacy Protection Act (VPPA) question, and that the pending Ninth Circuit case will soon make that split 3–2. *See* NBA Suppl. Br. 3. Solomon's contrary, self-serving position is as shortsighted as it is aggressive.

First, the 2–2 (and soon to be 3–2) circuit split on the question presented in this case proves that the question is both important and outcome-determinative. Solomon says the Court should grant review in her case first and then see what happens. But the fully briefed question presented in this case is the one rapidly driving different outcomes in different courts across the country. Indeed, since the Second Circuit's decision in *Solomon*, the D.C. Circuit has deepened the split on the question presented here, belying Solomon's claim that the Court should wait to consider this petition until it also can consider *Solomon*. Put differently, the courts of appeals continue to resolve online VPPA cases more frequently on the question presented in this case than on the *Solomon* question presented. Solomon invokes efficiency. But the efficient course is to promptly resolve the fully briefed

petition and address the issue that has proven outcome-determinative across multiple circuits.

Second, and relatedly, postponing consideration of the question presented here and then granting review in *Solomon* and holding this case makes no sense on Solomon's own premise. The *Solomon* question (what constitutes personally identifiable information under the VPPA) and the question here (who is a "consumer" under the VPPA) are distinct and independent questions, and each can be resolved without deciding the other (as the Second Circuit's decisions in both cases make clear). If the Court grants review in *Solomon* and Solomon prevails, the NBA's petition in this case will remain just as critically certworthy, because whether Salazar's claim can proceed will continue to turn on the question presented here—just as that question presented will remain outcome-determinative in the other circuits in the split and in many other cases, too. And if the Court grants review in *Solomon* and Solomon loses, then Salazar, as he has promised, will argue that *Solomon* doesn't control and try to plead around it. Simply put, there's no reason to think that Solomon's suggested approach will be efficient—just the opposite. To be sure, Solomon needs the Court to grant review to give her any chance of proceeding with her suit, but that doesn't mean everybody whose case turns on an important question on which the courts have split 2–2 should have to wait for her.

Third, the proper and efficient course in *Solomon* is percolation anyway. No court of appeals has had the opportunity to consider the Second Circuit's reasoning in *Solomon*, and the opportunity to do so could resolve Solomon's alleged split. Solomon claims that there is a 3–1 split, with the First Circuit as the outlier. *See* Pet. at i, *Solomon*, No. 25-228. There is every reason

to believe that the First Circuit, which issued the first, and outlier, decision in the alleged split almost a decade ago, would reassess its reasoning when confronted with the more recent decisions of three other courts of appeals. What's more, if this Court grants review and reverses in this case, resolving the deepening circuit split and determining the outcome of many cases, the *Solomon* issue will also diminish in importance. There is no reason to delay review in this case when, as noted, the question presented here has proven outcome-determinative in a deepening split.

The Court should grant review without delay.

Respectfully submitted.

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August 29, 2025