No. A25-

IN THE

Supreme Court of the United States

BRANDON HUGHES, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Applicant,

v.

NATIONAL FOOTBALL LEAGUE,

Respondent.

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

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

JOSHUA I. HAMMACK
Counsel of Record
BAILEY & GLASSER, LLP
1055 Thomas Jefferson Street N.W.,
Suite 540
Washington, DC 20007
(202) 463-2101
jhammack@baileyglasser.com

Counsel for Applicant

387481

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit:

1. Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.3, 13.5, 22, and 30, Applicant Brandon Hughes respectfully requests that the time to file a petition for a writ of certiorari in this case be extended by fifty-eight days to January 16, 2026. The Court of Appeals for the Second Circuit issued an order denying Mr. Hughes's petition for rehearing en banc on August 21, 2026. App. 8a. A panel had earlier entered a summary order and judgment on June 20, 2025. App. 1a–7a. That order is available at 2025 WL 1720295, and both documents are included in the Appendix. Absent an extension of time, the petition would be due on Wednesday, November 19, 2025. Petitioner has filed this application on November 7, 2025, more than ten days before the due date. *See* S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Second Circuit's decision.

2. Mr. Hughes submits that this case warrants the Court's review because it applies an admittedly atextual "ordinary person" test to the statutorily defined term "personally identifiable information" in the Video Privacy Protection Act ("VPPA"). *See* 18 U.S.C. § 2710(a)(3) (defining "personally identifiable information" to include information that "identifies a person as having requested or obtained specific video materials or services from a video tape service provider"); App. 4a (noting that, in *Solomon v. Flipps Media, LLC*, 136 F.3d 41 (2d Cir. 2025), the Second Circuit "held that 'personally identifiable information' encompasses information that would allow an ordinary person to identify a consumer's video-watching habits, but

not information that only a sophisticated technology company could use to do so," even when the disclosure went to a sophisticated technology company that did understand it); *Solomon*, 136 F.3d at 52 (acknowledging, despite its holding, that "the words of the [statutory] definition" can "be read to encompass computer code and digital identifiers decipherable only by a technologically sophisticated third party").

3. Several other courts have described the "ordinary person" test as atextual. *See, e.g.*, *Banks v. CoStar Realty Info., Inc.*, No. 4:25-cv-00564, 2025 WL 2959228, at *6 (E.D. Mo. Oct. 20, 2025) (describing the test as "extra-textual"); *Manza v. Pesi, Inc.*, 784 F. Supp. 3d 1110, 1123 (W.D. Wis. 2025) (noting that courts applying the test do not "rely on the text" of the statute and "have identified little textual basis for the limitation they impose"); *Goodman v. Hillsdale Coll.*, No. 1:25-cv-417, 2025 WL 2941542, at *8 (W.D. Mich. Oct. 17, 2025) (similar); *Lee v. Springer Nature Am., Inc.*, 769 F. Supp. 3d 234, 260 (S.D.N.Y. 2025) (explaining that the test does not arise from the statute's text and is instead "a judicial construct"). This fact should come as no surprise. The VPPA never once mentions an "ordinary person." And it never distinguishes between "ordinary" and "sophisticated" recipients of disclosures. Instead, it prohibits disclosures to "any person," 18 U.S.C. § 2710(b)(1), of whatever kind, without distinction or limitation. *See A.J.T. v. Osseo Area Schs., Ind. Sch. Dist. No. 279*, 605 U.S. 335, 345 (2025) (noting that "any" person, as appears in Section 2710(b)(1), means "every" person, "without distinction or limitation"); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 309–10 (2025) (confirming "any" means "every"); *Patel v. Garland*, 596 U.S. 328, 338 (2022) (holding "any" has "an expansive meaning,"

such that "any judgment" includes judgments "of whatever kind"); *SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 359 (2018) ("In this context, as in so many others, 'any' means 'every.'").

4. About a month after the Second Circuit decided *Solomon*, and mere days before it decided this case, this Court issued a trio of unanimous decisions that flatly prohibit the imposition of atextual tests—that is, judicially created tests that impose limitations or requirements that go beyond what a statute's text requires—on federal statutory claims. *See Ames*, 605 U.S. at 309 (rejecting the "background circumstances" test five circuits imposed on majority-group plaintiffs bringing Title VII claims because the statute "draws no distinctions between majority-group plaintiffs and minority-group plaintiffs" and because the test could not "be squared with the text of Title VII"); *id.* at 313, 326 (Thomas, J., concurring) (explaining that "atextual legal rules and frameworks" of this sort "have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts," ultimately generating "erroneous results"); *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 145 S. Ct. 1572, 1576, 1579–81 (2025) (rejecting the Ninth Circuit's imposition of *International Shoe*'s familiar "minimum contacts" standard on the Foreign Sovereign Immunities Act's personal jurisdiction provision because it was an "additional requirement" that "goes beyond the text of the FSIA" and holding that courts should enforce federal statutory "provisions as written"); *A.J.T.*, 605 U.S. at 343–45 (rejecting the "bad faith or gross misjudgment" standard some circuits applied to claims concerning "educational services" under the

Americans with Disabilities Act because there was "no textual indication" the test should apply). As such, the Second Circuit's atextual "ordinary person" test is in direct conflict with intervening precedent from this Court.

5. Given this irreconcilable conflict, this case is a possible candidate for this Court's "grant, vacate, and remand" ("GVR") practice. *See, e.g.*, *Lawrence v. Chater*, 516 U.S. 163, 166–70 (1996) (explaining that GVRs are appropriate where "intervening developments"—including this Court's decisions—reveal some potentially dispositive issue the courts below "did not fully consider"); *Stutson v. United States*, 516 U.S. 193, 194 (1996) (using a GVR "in light of potentially pertinent matters which it appears that the lower court may not have considered"); *Stutson v. United States*, 516 U.S. 163, 180–81 (Scalia, J., dissenting) (agreeing "the largest category of 'GVRs' that now exists" involves situations where "an intervening event (ordinarily a postjudgment decision of this Court) has cast doubt on the judgment rendered by a lower federal court or a state court concerning a federal question" (emphasis omitted)). Neither the summary order nor the order denying rehearing mentions this Court's decisions in *Ames*, *Antrix*, or *A.J.T.* Nor do they address the rule against judicially created atextual tests. It is clear the Second Circuit did not fully consider the impact of this Court's intervening decisions here.

6. The Second Circuit's order is inconsistent with other, older precedent from this Court as well. For example, as the panel here acknowledged, the Second Circuit's atextual "ordinary person" standard "effectively shut the door for Pixel-based VPPA claims." App. 4a. But Congress did not place the Pixel (*i.e.*, a bit of

surveillance software developed by Facebook)—or any other technology—beyond the VPPA's reach. Indeed, the statute never mentions *how* the prohibited disclosures might occur at all. Instead, Congress enacted six narrow exceptions to the VPPA's broad prohibition of all unauthorized disclosures of personally identifiable information. *See* 18 U.S.C. § 2710(b)(2)(A)–(F). These exceptions are not illustrative; they are exhaustive. In other words, when Congress enacted six specific exceptions, it "left no room," *Ames*, 605 U.S. at 309, for courts to impose still more. *See, e.g.*, *United States v. Johnson*, 529 U.S. 53, 58 (2000) ("When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference, and the one we adopt here, is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth."); *United States v. Smith*, 499 U.S. 160, 167 (1991) ("Congress' express creation of these two exceptions convinces us that the Ninth Circuit erred in inferring a third[.]"). The judicially created exception for Pixel-based disclosures, or—more broadly—for those not readily understood by an "ordinary person," also conflicts with this Court's precedent. And it predictably distorts the VPPA.

7. Moreover, there is a clear circuit split on the meaning of "personally identifiable information." The First Circuit has adopted a "reasonable foreseeability" standard. *See Yershov v. Gannett Satellite Info. Network, Inc.*, 820 F.3d 482, 486 (1st Cir. 2016). The Second Circuit, meanwhile, has joined the Third and Ninth Circuits in imposing the "ordinary person" test. *See Solomon*, 136 F.4th at 52–54; *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 985 (9th Cir. 2017); *In re Nickelodeon*

Consumer Priv. Litig., 827 F.3d 262, 267 (3d Cir. 2016). Under the First Circuit's test, Mr. Hughes's VPPA claim would have survived because it was "reasonably foreseeable" that Facebook—the recipient of the disclosures at issue here—would have understood those disclosures to identify Mr. Hughes's video-watching history. After all, Facebook itself created the Pixel, which the National Football League used to effectuate the disclosures, specifically for the purpose of incorporating users' video-watching histories into detailed profiles for targeted advertising. But, in the Second Circuit, Mr. Hughes's claim did not survive solely because an "ordinary person" who did not receive the disclosures would not have understood them.

8. Finally, this case is an ideal vehicle to resolve the question because it was resolved as a matter of law at the motion-to-dismiss stage and involves a final judgment. And it does not even arguably involve an unappealed alternative ground for dismissal. *See, e.g.*, Brief in Opposition at 18–21, *Solomon v. Flipps Media, Inc.*, No. 25-228 (S. Ct. Oct. 27, 2025) (arguing Ms. Solomon failed to appeal an independent ground for her complaint's dismissal, which Flipps Media believes is a "fatal" vehicle problem). As such, this single, purely legal issue concerning a matter of federal statutory interpretation is outcome-determinative.

9. Good cause exists for the requested extension of time. *First*, a petition for writ of certiorari is currently pending in *Solomon v. Flipps Media, Inc.*, No. 25-228. That petition does not raise the conflict with this Court's intervening precedent and, instead, focuses exclusively on the circuit split. And its question presented is limited to whether the "reasonable foreseeability" test or the "ordinary person" test

is correct. Because *both* tests are atextual, however, Mr. Hughes does not agree with Ms. Solomon's framing of the issue. The VPPA prohibits "knowing" disclosures, not "reasonably foreseeable" ones. 18 U.S.C. § 2710(b)(1). And it prohibits such disclosures to "any person," not to "any ordinary person." *Id.* Still, extending the deadline to January 16, 2025, may conserve the Court's and the parties' resources. For example, if the Court grants certiorari in *Solomon*, it could simply hold Mr. Hughes's petition pending disposition of that case on the merits. And, if it GVRs *Solomon*, as Mr. Hughes believes it should, it should do the same here.

10. *Second*, due to case-related and other reasons, additional time is necessary for counsel to prepare a clear, concise, and comprehensive petition for certiorari that will assist the Court in deciding whether to grant review in this case. The press of other matters has made and will continue to make the submission of the petition difficult absent an extension. For example, since August 21, 2025, undersigned counsel has drafted and filed two supplemental briefs to this Court in *Nat'l Basketball Ass'n v. Salazar*, No. 24-994 (S. Ct.); a petition for certiorari with this Court in *Salazar v. Paramount Glob.*, No. 25-459 (S. Ct.); a responsive brief in *Bennett v. Siffin*, No. 25-50217 (5th Cir); an opening brief in *Golden v. NBCUniversal Media, LLC*, No. 25-2226 (2d Cir.); a petition for rehearing en banc in *Pileggi v. Washington Newspaper Publ'g Co.*, No. 24-7022 (D.C. Cir.); an opposition to a motion to dismiss in *Salazar v. Nat'l Basketball Ass'n*, No. 1:22-cv-07935 (S.D.N.Y.); a responsive brief in *Johnson v. Mine Safety Appliances Co.*, No. 2025-ca-0115 (Ky. Ct. App.); and an administrative claim (for wrongful death) under the Virginia Tort

Claims Act to the Virginia Department of Transportation. These competing deadlines and obligations have made it difficult and will continue to make it difficult to meet the current deadline for filing a petition for certiorari in this case. Mr. Hughes respectfully submits that counsel's need for additional time to prepare the petition given the press of existing business constitutes good cause for an extension of time.

CONCLUSION

For the foregoing reasons, Mr. Hughes respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by fifty-eight days, up to and including January 16, 2026.

Respectfully submitted,

/s/ Joshua I. Hammack
JOSHUA I. HAMMACK
Counsel of Record
BAILEY & GLASSER, LLP
1055 Thomas Jefferson Street N.W.,
Suite 540
Washington, DC 20007
(202) 463-2101
jhammack@baileyglasser.com

Counsel for Petitioner

APPENDIX

TABLE OF CONTENTS

Page

24-2656
Hughes v. Nat'l Football League

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of June, two thousand twenty-five.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
JON O. NEWMAN,
RICHARD J. SULLIVAN,
Circuit Judges.

BRANDON HUGHES, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff-Appellant,

ISRAEL JAMES,
Plaintiff,

v. 24-2656

NATIONAL FOOTBALL LEAGUE,

Defendant-Appellee.

For Plaintiff-Appellant: JOSHUA I. HAMMACK, (Michael L. Murphy, *on the brief*), Bailey & Glasser, LLP, Washington, D.C.

For Defendant-Appellant: HILARY L. PRESTON, (Marisa Antonelli, Matthew X. Etchemendy, *on the brief*), Vinson & Elkins LLP, New York, NY.

Appeal from an order and judgment of the United States District Court for the Southern District of New York (Rochon, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order and judgment of the district court is **AFFIRMED**.

Plaintiff-appellant Brandon Hughes appeals from an order and judgment of the United States District Court for the Southern District of New York (Rochon, *J.*), entered on September 5 and 6, 2024, respectively, granting defendant-appellee National Football League's (the "NFL") motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). On appeal, Hughes initially asked us to vacate and remand in light of our decision in *Salazar v. Nat'l Basketball Ass'n*, 118 F.4th 533 (2d Cir. 2024), which post-dated the district court's order and judgment. Thereafter, we decided *Solomon v. Flipps Media, Inc.*, 136 F.4th 41 (2d Cir. 2025). Now, Hughes argues that "*Solomon* does not alter the outcome here," dkt. 44 at 1, and continues to ask us to vacate and remand, while the NFL argues that *Solomon* "is binding and dispositive of this case", dkt. 45 at 1, and asks us to affirm. Because we agree with the NFL, we affirm the district court's decision to dismiss this case. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Hughes alleges that the NFL violated the Video Privacy Protection Act ("VPPA") by installing the Facebook Pixel (the "Pixel") onto its website and app. The Pixel is a string of code that can be installed onto a website/app and shares certain information about users with Facebook.

J. App'x at 269-70. The principal question now is whether Hughes can still plead a viable VPPA claim against the NFL in light of our decision in *Solomon*.[1] We conclude that he cannot.

We review de novo a district court's grant of a motion to dismiss under Fed. R. Civ. P. 12(b)(6), accepting all factual allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor. *See, e.g.*, *O'Donnell v. AXA Equitable Life Ins. Co.*, 887 F.3d 124, 128 (2d Cir. 2018). To survive a motion to dismiss, a complaint must contain sufficient factual allegations to state a claim for relief that is plausible on its face. *See, e.g.*, *id.*

Both *Salazar* and *Solomon* were decided after the district court granted the NFL's motion to dismiss in this case. "Ordinarily, where circumstances have changed between the ruling below and the decision on appeal, the preferred procedure is to remand to give the district court an opportunity to pass on the changed circumstances, *unless the new situation demands one result only*." *New England Merchs. Nat. Bank v. Iran Power Generation & Transmission Co.*, 646 F.2d 779, 783-84 (2d Cir.) (internal quotation marks omitted) (emphasis added), *certified question answered sub nom. Iran Nat'l Airlines Corp. v. Marschalk Co.*, 453 U.S. 919 (1981). This case presents such a situation.

[1] The NFL also argues that the district court improperly concluded that Hughes had standing to bring his claim. The NFL is mistaken. The crux of its argument is that Hughes lacks Article III standing to pursue a VPPA claim because he supposedly consented to the disclosures in question. Not so. As a threshold matter, there is a factual dispute as to whether Hughes actually consented to the disclosure of his information. *Compare* J. App'x 263 (alleging that "[p]laintiff never gave [d]efendant express written consent to disclose his [p]ersonal [v]iewing [i]nformation") *with* Appellee's Br. at 25 (arguing that plaintiff "consented to the disclosures at issue" by "agree[ing] to the NFL's Privacy Policy when he created his account on NFL.com"). In particular, the parties disagree as to whether the NFL's Privacy Policy informed users that their information may be *disclosed* rather than merely *collected*. In *Salazar*, we concluded that this type of question "should be left for the district court to address in the first instance given that its resolution will require detailed examination of the [relevant] Privacy Policy and [plaintiff's] factual allegations showing his acceptance of that policy." *Salazar*, 118 F.4th at 539 n.4. So too here. Moreover, as the district court correctly observed, the NFL's argument at most establishes an affirmative defense and calls for an analysis of the merits of plaintiff's VPPA claim. Since the "threshold inquiry into standing 'in no way depends on the merits,'" such an analysis is inappropriate at this stage. *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1118 n.7 (9th Cir. 2022) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

The VPPA provides that "[a] video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person[.]" 18 U.S.C. § 2710(b)(1). In *Solomon*, we held that "'personally identifiable information' encompasses information that would allow an ordinary person to identify a consumer's video-watching habits, but not information that only a sophisticated technology company could use to do so." 136 F.4th at 52; *see also In re Nickelodeon Consumer Priv. Litig.*, 827 F.3d 262, 290 (3d Cir. 2016) (adopting the "ordinary person" standard); *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 985 (9th Cir. 2017) (same).

Solomon effectively shut the door for Pixel-based VPPA claims. As is the case here, *Solomon* involved a plaintiff who brought a VPPA claim against a defendant that had installed the Pixel on its website. The plaintiff's complaint included the following "exemplar" which showed an example of the type of transmission that was sent to Facebook via the Pixel:

Solomon, 136 F.4th at 46. We concluded in *Solomon* that:

> The exemplar depicts some twenty-nine lines of computer code, and the video title is indeed contained in Box A following the GET request. The words of the title, however, are interspersed with many characters, numbers, and letters. It is implausible that an ordinary person would look at the phrase "title%22%3A%22-

> %E2%96%B7%20The%20Roast%20of%- 20Ric%20Flair" . . . and understand it to be a video title. It is also implausible that an ordinary person would understand, "with little or no extra effort," the highlighted portion to be a video title as opposed to any of the other combinations of words within the code, such as, for example, "%9C%93%20In%20the%20last%20weekend%20of%20-July%2C."
>
> . . .
>
> [I]t is [also] not plausible that an ordinary person, without [] annotation . . . , would see the "c_user" phrase on [a] server[] and conclude that the phrase was a person's [Facebook ID ("FID")].

Id. at 54 (internal citations omitted).

The same holds true here. Hughes' complaint includes a similar screenshot depicting a "single communication session sent from [a] device to Facebook" via the Pixel:

J. App'x at 273. While Hughes asserts that a viewer's FID can be identified based on the string of numerals following the "c_user" field, *id.*, it "is not plausible that an ordinary person, without [] annotation . . . , would see the 'c_user' phrase on [this communication] and conclude that the phrase was a person's FID." *Solomon*, 136 F.4th at 54. And while the district court may not have had the benefit of our decision in *Solomon* when it ruled on the NFL's motion to dismiss, "[w]e are free to affirm on any ground that finds support in the record, even if it was not the ground upon which the trial court relied." *Beijing Neu Cloud Oriental Sys. Tech. Co. v. Int'l Bus. Machines Corp.*, 110 F.4th 106, 113 (2d Cir. 2024) (internal quotation marks omitted).

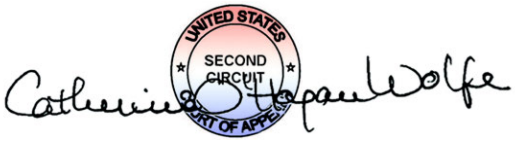
Hughes argues that, if permitted to amend his complaint, he would allege that: (1) Facebook receives communications from the Pixel "in a way that is automatically translated into a readable format and is displayed (or is displayable) on a user interface as plain text"; (2) an ordinary person could plug the code into "ubiquitous internet-based tools like ChatGPT" to "translate the code to reveal the Facebook ID and video title in plain English"; and (3) 75% of Americans have a Facebook account. Dkt. 44 at 3. None of these arguments supports a VPPA claim post-*Solomon*. In *Solomon,* we focused on whether an ordinary person would be able to understand the actual underlying code communication itself, regardless of how the code is later manipulated or used by Facebook. *Solomon*, 136 F.4th at 52 ("'[P]ersonally identifiable information' encompasses information that would allow an ordinary person to identify a consumer's video-watching habits, *but not information that only a sophisticated technology company could use to do so*." (emphasis added)). The existence of tools like ChatGPT, which were also prevalent at the time *Solomon* was decided, would not alter our conclusion in this case. Finally, the ubiquity of Facebook accounts has no bearing on the ability of ordinary people to

interpret the Pixel communications depicted in Hughes' complaint. Accordingly, we see no basis for remanding because amendment would likely be futile.

* * *

We have considered appellant's remaining arguments and find them to be without merit. Accordingly, the order and judgment of the district court are **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of August, two thousand twenty-five.

Brandon Hughes, Individually and on behalf of all others similarly situated,

Plaintiff - Appellant,

Israel James,

Plaintiff,

v.

National Football League,

Defendant - Appellee.

ORDER

Docket No: 24-2656

Appellant, Brandon Hughes, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc.*

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk