No. _____

IN THE

Supreme Court of the United States

SHERHONDA GOLDEN,

Applicant,

v.

NBCUNIVERSAL MEDIA, LLC,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

APPLICATION FOR AN EXTENSION OF TIME

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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 Sherhonda Golden respectfully requests that the time to file a petition for a writ of certiorari in this case be extended by fifty-eight days to September 18, 2026. The Court of Appeals for the Second Circuit entered a summary order and judgment on April 23, 2026. App. 1a–8a. That order is available at 2026 WL 1098473 and is included in the Appendix to this Application. Absent an extension of time, the petition would be due on Wednesday, July 22, 2026. Petitioner has filed this application on July 1, 2026, 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. Ms. Golden submits that this case warrants the Court's review because there is a clear, acknowledged, and entrenched circuit split on the meaning of "personally identifiable information" in the Video Privacy Protection Act. 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). And that standard accounts for a video tape service provider's actual knowledge of the recipient's capabilities. In other words, it is necessarily "reasonably foreseeable" that a recipient will understand disclosed information if the provider knows the recipient will

understand it. *See, e.g.*, *id.* (explaining disclosed information is "personally identifiable information" when the provider "knows" the recipient will link that information "to a certain person by name, address, phone number, and more"); *United States v. Basilici*, 138 F.4th 590, 598 (1st Cir. 2025) (explaining that reasonable foreseeability is "broader than knowledge"). The Second Circuit, meanwhile, has joined the Third and Ninth Circuits in imposing the "ordinary person" test. *See Solomon v. Flipps Media Inc.*, 136 F.4th 41, 52–54 (2d Cir. 2025); *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). This standard, at least as applied by the Second Circuit, ignores a provider's actual knowledge in favor of examining whether a hypothetical "ordinary person" would understand the disclosed information. *See, e.g.*, *Solomon*, 136 F.4th at 52, 54–55 (replacing the technologically sophisticated recipient of disclosed information with an "ordinary person," and then asking whether that "ordinary person" would have understood the disclosure); *Hughes v. Nat'l Football League*, No. 24-2656, 2025 WL 1720295, at *3 (2d Cir. June 20, 2025) (explaining that it does not matter whether or how the actual recipient understands the disclosed information or whether the provider knew it would; the sole question is "whether an ordinary person would be able to understand the actual underlying code communication itself").

3. Under the First Circuit's test, Ms. Golden's VPPA claim would have survived because she alleged NBCUniversal had actual knowledge that Facebook—the recipient of the disclosures at issue here—would understand those disclosures to identify Ms. Golden's video-watching history. This allegation makes good sense. After all, Facebook created the Pixel, which NBCUniversal used to effectuate the disclosures, specifically to track and disclose user's video-watching histories. In effect, Facebook asked NBCUniversal to communicate the information this way. But, in the Second Circuit, NBCUniversal's actual knowledge does not matter. Under its test, Ms. Golden's claim must be dismissed solely because an "ordinary person" who did not receive the disclosed information would not have understood it the way Facebook undisputedly did understand it. *See* App. 4a–5a (explaining that "information transmitted to Facebook" that contains "both a URL conveying information on video content watched by a user and a unique ID number tied to that user's Facebook profile" was not personally identifiable information because "an ordinary person could not, 'with little or no extra effort,' identify a user's video watching habits on the basis of the code conveyed to Facebook").

4. The Second Circuit's imposition of the "ordinary person" test is wrong as a matter of law. Indeed, it violates the most basic intuition about human communication—namely, know your audience. It starts by replacing a known recipient with an unknown (and possibly unknowable) "ordinary person." It then

examines a counterfactual scenario in which the disclosed information travels to this hypothetical "ordinary person" instead of to the known and actual recipient. And it concludes by permitting disclosures of information the actual recipient understands as identifying a person as having requested or obtained specific video materials—the very thing the definition of "personally identifiable information" "includes," 18 U.S.C. § 2710(a)(3)—so long as the "ordinary person" would not *also* understand those disclosures. Perhaps not surprisingly, the "ordinary person" test conflicts with this Court's precedents in numerous ways.

5. For example, the "ordinary person" test conflicts with this Court's refusal to impose tests beyond what a federal statute's text requires. *See, e.g.*, *Blanche v. Lau*, 609 U.S. ----, 2026 WL 1791339, at *4 (June 23, 2026) (rejecting a clear-and-convincing-evidence rule because "[n]othing in the [Immigration and Nationality Act] required the border officer to have clear and convincing evidence"); *Flowers Foods, Inc. v. Brock*, 146 S. Ct. 1358, 1363–64 (2026) (rejecting an argument that one "must either cross state lines or interact with a vehicle that does" to be "engaged in interstate commerce" under the Federal Arbitration Act because "[n]othing in [that statute's] terms requires an individual to cross state lines or interact with a vehicle that does"); *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 233 (2025) (rejecting a minimum-contacts test because "nothing in the text of [the statute] requires a minimum-contacts analysis" and, instead, the phrase

"minimum contacts" was "[n]otably absent" from the statute). Nothing in the VPPA requires courts to consider what an "ordinary person" might understand about disclosed information. In fact, the Second Circuit admitted this point. *Solomon*, 136 F.4th at 52 (acknowledging 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"). Critically, the phrase "ordinary person" is "[n]otably absent" from the entire VPPA.

6. The "ordinary person" test also conflicts with this Court's refusal to draw distinctions the statutory text does not itself draw, particularly concerning language as broad as "any person." *See, e.g.*, *A.J.T. v. Osseo Area Schs., Ind. Sch. Dist. No. 279*, 605 U.S. 335, 345–46 (2025) (rejecting a "bad faith or gross misjudgment standard" some circuits applied only to educational-services claims brought under the Americans with Disabilities Act because that statute's "any person" language applied to "*every*" person, "without distinction or limitation"); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 309–10 (2025) (rejecting the "background circumstances" test some circuits imposed on majority-group plaintiffs bringing Title VII claims because the statute's "any individual" language "draws no distinctions between majority-group plaintiffs and minority-group plaintiffs," thereby leaving "no room for courts to impose" distinctions of their own making). Here, the VPPA prohibits knowing disclosures of information that identifies a person

as having requested or obtained video materials to "any person," 18 U.S.C. §§ 2710(a)(3), (b)(1), without distinction or limitation. But the "ordinary person" test draws a distinction among recipients based on their technological sophistication, and then it permits disclosures only the particularly savvy understand.

7. Given those overlapping concerns, it is no wonder that several courts have described the "ordinary person" test as atextual. *See, e.g.*, *Damrau v. Colibri Grp., LLC*, No. 4:24-cv-01441, 2026 WL 198712, at *4–5 (E.D. Mo. Jan. 23, 2026) (describing the test as both "unnecessary" and "extra-textual"); *Banks v. CoStar Realty Info., Inc.*, No. 4:25-cv-00564, 2025 WL 2959228, at *6 (E.D. Mo. Oct. 20, 2025) (same); *Manza v. Pesi, Inc.*, 784 F. Supp. 3d 1110, 1119 (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 is "a judicial construct" that does not arise from the statute's text).

8. As yet another example, the "ordinary person" test conflicts with this Court's refusal to create exceptions alongside those Congress has specified. *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[.]"). As the Second Circuit has acknowledged, the "ordinary person" test "effectively shut the door for Pixel-based VPPA claims." *Hughes*, 2025 WL 1720295, at *2. 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. Instead, Congress enacted six narrow exceptions to the VPPA's broad prohibition of unauthorized disclosures of personally identifiable information. *See* 18 U.S.C. § 2710(b)(2)(A)–(F). These exceptions are exhaustive. The judicially created exception for Pixel-based disclosures, or—more broadly—for those not readily understood by an "ordinary person," conflicts with this Court's precedents.

9. The fact that the "ordinary person" test reads actual knowledge out of Section 2710(b)(1)'s "knowingly" requirement—replacing it wholesale with a constructive knowledge formulation—is itself inconsistent with this Court's precedents. *See, e.g.*, *Schutte v. Supervalu Inc.*, 598 U.S. 739, 742–43, 748–50 (2023) (holding the False Claim Act's "knowingly" requirement refers to one's actual "knowledge and subjective beliefs—not to what an objectively reasonable

person may have known or believed" and explaining the word "knowingly" necessarily includes one's "actual knowledge"); *id.* at 753 (rejecting a rule that rendered the "defendants' subjective beliefs . . . irrelevant to their scienter"); *id.* at 755 (likewise rejecting a "purely objective" test for whether a person has acted "knowingly," even if that term might contain an objective standard *in addition to* a subjective one).

10. Finally, this case is an ideal vehicle to answer the question because it was resolved as a matter of law at the motion-to-dismiss stage. As a result, it involves no factual disputes and resulted in a final judgment. Moreover, it does not involve a single alternative ground for dismissal. No such alternative was presented or preserved below. And both lower courts relied exclusively on the "ordinary person" test. As such, this single, purely legal issue concerning a matter of federal statutory interpretation is outcome-determinative.

11. Good cause exists for the requested extension of time. 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 April 23, 2026, undersigned counsel has drafted multiple briefs, including an opening merits brief in *Johns v. Morris*, No. 26-1210

(4th Cir.), and argued an appeal in *Salazar v. National Basketball Association*, No. 25-2478 (2d Cir.). Undersigned counsel also has a reply brief due in this Court in *Salazar v. Paramount Global*, No. 25-459, on July 23, 2026—just one day after the current deadline for a petition for certiorari in this case. 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. Ms. Golden 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.

12. Before filing this application for an extension, undersigned counsel conferred with NBCUniversal's counsel and confirmed that NBCUniversal does not oppose the requested extension.

CONCLUSION

For the foregoing reasons, Ms. Golden 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 September 18, 2026.

Dated: July 1, 2026

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APPENDIX

25-2226
Golden v. NBCUniversal Media

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 TO 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 23rd day of April, two thousand twenty-six.

PRESENT:

SUSAN L. CARNEY,
BETH ROBINSON,
MYRNA PÉREZ,
Circuit Judges.

SHERHONDA GOLDEN, Individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

v. No. 25-2226

NBCUNIVERSAL MEDIA, LLC,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT: JOSHUA HAMMACK (Michael L. Murphy, *on the brief*), Bailey & Glasser, LLP, Washington, D.C.

FOR DEFENDANT-APPELLEE: BENJAMIN THOMASSEN (Jeffrey Landis, *on the brief*), ZwillGen PLLC, Washington, D.C.

Appeal from a judgment of the United States District Court for the Southern District of New York (Engelmayer, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment entered on September 3, 2025, is **AFFIRMED**.

Plaintiff-Appellant Sherhonda Golden appeals the judgment of the district court that dismissed her Fourth Amended Complaint against Defendant-Appellee NBCUniversal Media, LLC ("NBC"). Golden alleged that NBC violated the Video Privacy Protection Act ("VPPA"), 18 U.S.C. § 2710, by sharing personally identifiable information about her video-watching activity with third parties without her consent. In particular, she alleges that in its website, Today.com, NBC embedded a "Facebook Pixel" that caused a tracking code reflecting her unique Facebook identification number along with the specific videos she had watched to be transmitted to Facebook. The district court granted NBC's motion to dismiss

on the basis of this Court's decision in *Solomon v. Flipps Media, Inc.*, 136 F.4th 41 (2d Cir. 2025), *cert. denied*, 146 S.Ct. 885 (Dec. 8, 2025), which held that factually similar allegations failed to state a VPPA claim. *See Golden v. NBCUniversal Media, LLC*, No. 22-cv-9858, 2025 WL 2530689, at *5–7 (S.D.N.Y. Sep. 3, 2025).[1] We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

"We review the grant of a motion to dismiss under Rule 12(b)(6) without deference to the district court's reasoning." *Marcus & Cinelli, LLP v. Aspen American Insurance Co.*, 158 F.4th 333, 340 (2d Cir. 2025).[2] "If, accepting all factual allegations in the complaint as true and drawing all reasonable inferences in favor of the plaintiff, the complaint fails to plausibly state a claim, then dismissal under Rule 12(b)(6) is warranted." *Id.*

Under the VPPA, "[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).

[1] Golden also brought a state law claim for unjust enrichment premised on the same facts. The district court dismissed the unjust enrichment claim as duplicative of Golden's VPPA claim. *See Golden*, 2025 WL 2530689, at *8. Golden does not challenge this ruling on appeal.

[2] In quotations from caselaw, this summary order omits all internal quotation marks, footnotes, and citations, and accepts all alterations, unless otherwise noted.

"Personally identifiable information" is defined in the VPPA to include "information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider." *Id*. § 2710(a)(3).

In *Solomon*, this Court recently considered for the first time whether the information disclosed to Facebook through the Facebook Pixel constitutes "personally identifiable information" for purposes of the VPPA. 136 F.4th at 47–55. Based on the text and context provided by other provisions of the statute, and fortified by the legislative history and guidance from other Circuits' decisions, we determined 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." *Id.* at 52. We concluded that this ordinary person test best aligns with the statute's text and purpose because it ties liability to what the disclosing party "knowingly discloses," 18 U.S.C. § 2710(b), and not to what a technologically savvy third party may do with that information. *See Solomon*, 36 F.4th at 52.

Applying that test, we concluded that the information transmitted to Facebook by the Facebook Pixel tracking code, containing both a URL conveying information on video content watched by a user and a unique ID number tied to

that user's Facebook profile, was not personally identifiable information. *See id*. at 54–55. We reasoned that an ordinary person could not, "with little or no extra effort," identify a user's video watching habits on the basis of the code conveyed to Facebook. *Id.* at 54.

The district court here rightly determined that *Solomon* compels dismissal of Golden's claims, which are based on substantially the same allegations as in *Solomon*.

Golden does not dispute that *Solomon* is dispositive. Rather, she argues that *Solomon* is no longer good law in light of intervening Supreme Court precedent. In particular, she cites a series of recent decisions that she contends compel a different analysis: *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223 (2025) and *A. J. T. ex rel. A. T. v. Osseo Area Schools, Independent School District No. 279*, 605 U.S. 335 (2025).[3]

A prior decision of this Court is "binding authority from which we cannot deviate, unless and until it is overruled either by an en banc panel of our Court or

[3] In addition, in a March 30, 2026 letter submitted to the Court under Fed. R. App. P. 28(j), Golden identified a fourth case that she claims supports her argument: *Rico v. United States*, 607 U.S. ---, 146 S. Ct. 947 (2026). There, the Supreme Court held that the Sentencing Reform Act does not authorize a rule adopted by the Ninth Circuit automatically extending a defendant's period of supervised release if the defendant violates the conditions of her supervision by absconding. *Id*. at 952–53. Nothing in that case alters our analysis.

by the Supreme Court." *Gilead Community. Services, Inc. v. Town of Cromwell*, 112 F.4th 93, 100 (2d Cir. 2024). A narrow exception to that principle applies when "an intervening Supreme Court decision casts doubt on the prior ruling—that is, where the Supreme Court's conclusion in a particular case broke the link on which we premised our prior decision." *Id.* That exception applies only if there is a "conflict, incompatibility, or inconsistency between this Circuit's precedent and the intervening Supreme Court decision," and we "resort to this exception cautiously," as "less-than-stringent application of the standards for overruling prior decisions not only calls into question a panel's respect for its predecessors but also increases uncertainty in the law by revisiting precedent without cause." *Id.*

None of the Supreme Court decisions Golden cites creates a "conflict, incompatibility, or inconsistency" with *Solomon*. *Id.* In each case, the Supreme Court concluded that, in applying a statute, the Court of Appeals had adopted requirements that went beyond what the statutory text required or allowed. In *Ames*, the Court held that Title VII does not make or allow for any distinction between discrimination claims brought by majority-group plaintiffs and those brought by minority-group plaintiffs. 605 U.S. at 309–311. In *CC/Devas*, the Court

rejected the Ninth Circuit's imposition of a minimum contacts requirement on top of the two enumerated requirements for personal jurisdiction in the Foreign Sovereign Immunities Act. 605 U.S. at 232–36. And in *A. J. T.*, contrary to the Eighth Circuit's view, the Court concluded that nothing in the text of the Americans with Disability Act or the Rehabilitation Act requires that discrimination claims based on educational services be subject to a distinct, more demanding analysis than disability discrimination claims brought in other contexts. 605 U.S. at 344–49.

Far from announcing new rules that conflict with this Court's decision in *Solomon*, these cases simply apply longstanding principles that a statute's text is the lodestar for its interpretation, and other considerations may not be used to reach an interpretation at odds with the statutory text. That is exactly the approach taken by *Solomon*. Thus, Golden has not demonstrated that the decisions she cites warrant this panel taking the extraordinary step of seeking to overrule our precedent, regardless of any disagreement Golden may have with the merits of our prior decision. *See Gilead*, 112 F.4th at 100 (holding that overruling precedent was unwarranted where none of the cited Supreme Court decisions addressed the statute at issue, and the decisions counseled "that we must interpret individual

statutes on the basis of their particular text, structure, and history, and caution[ed] against unreflective application of rules from one statute to another"). Indeed, the panel *could not* do so absent agreement by a majority of the active judges of this Court that the narrow exception discussed above applies. *See U.S. v. Peguero*, 34 F.4th 143, 158 n.9 (2d Cir. 2022) ("[A] three-judge panel may overrule Circuit precedent if it first follows a mini-*en banc* procedure—*i.e.*, if the panel circulates its opinion among all active judges and receives no objections to its filing.").

Because Golden's factual allegations are materially indistinguishable from the claims we decided in *Solomon*, and because *Solomon* is binding precedent in this Circuit, the district court properly dismissed her claims.

* * *

For the above reasons, the judgment is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court