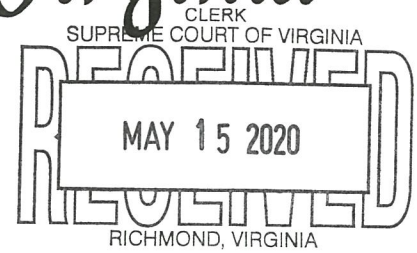


COPY

In The
Supreme Court of Virginia

RECORD NO. 191129



FAIRFAX COUNTY POLICE DEPARTMENT, ET AL.,

Appellants,

v.

HARRISON NEAL,

Appellee.

BRIEF OF *AMICI CURIAE* ELECTRONIC FRONTIER FOUNDATION
AND BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL
IN SUPPORT OF APPELLEE HARRISON NEAL

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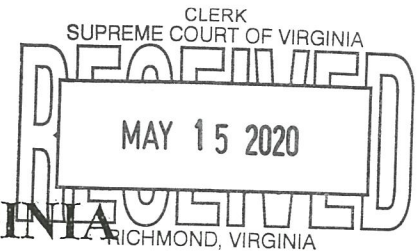
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COPY
IN THE
SUPREME COURT OF VIRGINIA



RECORD NO. 191129

FAIRFAX COUNTY POLICE DEPARTMENT and
COLONEL EDWIN C. ROESSLER, JR., CHIEF OF POLICE,

Appellants,

v.

HARRISON NEAL,

Appellee.

**UNOPPOSED MOTION OF THE ELECTRONIC FRONTIER
FOUNDATION AND BRENNAN CENTER FOR JUSTICE TO FILE A
BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT**

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Counsel for Amici Curiae Electronic Frontier Foundation and Brennan Center for Justice

May 15, 2020

Proposed *Amici Curiae* the Electronic Frontier Foundation and Brennan Center for Justice hereby move this Court for leave to file a brief in support of Appellee Harrison Neal. The proposed *Amici* respectfully submits that *amicus* briefing is appropriate in this case. The brief is being submitted on May 15, 2020.

I. INTEREST OF *AMICI CURIAE*

The Electronic Frontier Foundation (EFF) is a member-supported, nonprofit civil liberties organization that has worked to protect privacy and free speech rights for nearly 30 years. With more than 35,000 active dues-paying members nationwide, including many in Virginia, EFF represents the interests of its members in both court cases and broader policy debates surrounding the application of the law in the face of emerging technologies. EFF has served as *amicus* in numerous U.S. Supreme Court cases involving the application of constitutional principles to location-tracking technologies, including *Carpenter v. United States*, 138 S. Ct. 2206 (2018); *Riley v. California*, 134 S. Ct. 2473 (2014); *United States v. Jones*, 565 U.S. 400 (2012). EFF has also served as counsel or *amicus* in numerous cases involving privacy in location data at all levels of the federal and state court systems, including previously in *Neal v. Fairfax*, 812 S.E.2d 444 (Va. 2018) (“*Neal I*”).

The Brennan Center for Justice at NYU School of Law (the Center) is a nonpartisan law and policy institute that seeks to improve our systems of

democracy and justice. The Center's Liberty and National Security (LNS) Program uses innovative policy recommendations, litigation, and public advocacy to advance effective national security policies that respect the rule of law and constitutional values. The LNS Program is particularly concerned with domestic intelligence gathering policies, including the dragnet collection of Americans' communications and personal data, and the concomitant effects on First and Fourth Amendment freedoms. As part of its work in this area, the Center has filed numerous amicus briefs on behalf of itself and others in cases involving electronic surveillance and privacy issues, including *Carpenter*, 138 S. Ct. 2206; *Riley*, 134 S. Ct. 2473; *Jones*, 132 S. Ct. 945; *United States v. Ackerman*, No. 17-3238, 2020 WL 916073 (10th Cir. February 26, 2020); *United States v. Kolsuz*, 890 F.3d 133 (4th Cir. 2018); *In re Warrant to Search a Certain E-Mail Account Controlled and Maintained by Microsoft Corporation*, 829 F.3d 197 (2d Cir. 2016), *cert. granted*, 138 S. Ct. 1186 (2018); *United States v. Ganius*, 824 F.3d 199 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 569 (2016); *United States v. Houston*, 813 F.3d 282 (6th Cir. 2016), *petition for reh'g en banc denied* (Apr. 14, 2016); *United States v. Graham*, 824 F.3d 421 (4th Cir. 2016), *petition for cert. docketed*, No. 16-6308 (Oct. 4, 2016); *United States v. Davis*, 785 F.3d 498 (11th Cir. 2015); *Neal I*, 812 S.E.2d 444; and *Alasaad v. Nielsen*, 419 F.Supp.3d 142 (D. Mass 2019). The Brennan Center also publishes scholarship on the privacy of personal data, including but not

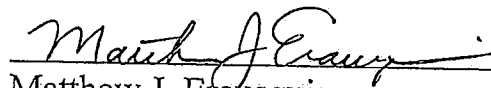
limited to automatic license plate reader data; *see, e.g.*, Rachel Levinson-Waldman, *Cell Phones, Law Enforcement, and the Right to Privacy* (2018); and Rachel Levinson-Waldman, *Hiding in Plain Sight: A Fourth Amendment Framework for Analyzing Government Surveillance in Public*, 66 Emory L.J. 537 (2017).

II. THE PARTIES CONSENT TO THE FILING OF THIS BRIEF

Prior to the filing of this motion, *Amici* contacted counsel for the parties to ascertain the position of each with respect to the proposed filing of this *amicus curiae* brief. Mr. Neal has consented to the filing of this brief. Fairfax County Police Department and Colonel Edwin C. Roessler, Jr., Chief of Police, Fairfax County Police Department have also consented to the filing of this brief.

Dated: May 15, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this May 15, 2020, a true and correct copy of the foregoing was served by first class mail, postage prepaid to the following:

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IN THE SUPREME COURT OF VIRGINIA

HARRISON NEAL,)
)
Appellant,)
) RECORD NO. 191127
v.)
)
FAIRFAX COUNTY POLICE)
DEPARTMENT, and COLONEL)
EDWIN C. ROESSLER, JR.,)
CHIEF OF POLICE,)
)
Appellees.)
_____)
)
FAIRFAX COUNTY POLICE)
DEPARTMENT, and COLONEL) RECORD NO. 191129
EDWIN C. ROESSLER, JR.,)
CHIEF OF POLICE,)
)
Petitioners,)
)
v.)
)
HARRISON NEAL,)
)
Respondent.)

ORDER

Upon consideration of the Motion of the Electronic Frontier Foundation and the Brennan Center for Justice to file brief *amicus curiae*, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the brief be entered onto the docket as BRIEF OF *AMICI CURIAE* ELECTRONIC FRONTIER FOUNDATION AND BRENNAN CENTER FOR JUSTICE IN SUPPORT OF APPELLANT HARRISON NEAL.

Dated this _____ day of _____, 2020.

The Honorable Donald Wayne Lemons
Chief Justice of the Supreme Court of Virginia