

## Supreme Court Grants Certiorari in Web Scraping Case *hiQ v. LinkedIn*

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On June 14, the United States Supreme Court issued a summary disposition in *hiQ Labs, Inc. v. LinkedIn Corp.* granting certiorari, vacating the Ninth Circuit's previous judgment, and remanding the case for additional consideration in light of the high court's ruling in *Van Buren v. United States*.<sup>1</sup> The *Van Buren* ruling was issued less than two weeks ago and limited the reach of the Computer Fraud and Abuse Act (CFAA).<sup>2</sup>

The data analytics company hiQ relies on access to publicly available data provided by LinkedIn members to conduct its business. In 2017, LinkedIn sent hiQ a letter demanding hiQ cease and desist scraping data from LinkedIn. Additionally, LinkedIn began blocking hiQ's access and ability to scrape data from public LinkedIn profiles. After the U.S. District Court for the Northern District of California granted hiQ injunctive relief, LinkedIn appealed to the Ninth Circuit, which ruled that LinkedIn could not block hiQ from scraping data viewable to the general public.

While the Ninth Circuit's ruling may be considered beyond its jurisdiction, a definitive U.S. Supreme Court ruling regarding the merits of LinkedIn's claims (and the legality of data scraping generally) would be binding precedent for all lower courts throughout the country. Given the increased prevalence of data scraping across industries for analytic purposes, such a ruling would have a sweeping impact felt by many businesses. LinkedIn's previous discovery that

an archive of 500 million of its users' profiles had been scraped and posted for sale on the internet illustrates the impact data scraping can have on businesses like theirs.<sup>3</sup>

In its petition for certiorari, LinkedIn argued that although certain profile data is publicly available, hiQ's software bots harvest data on a larger scale than any human could.<sup>4</sup> Further, LinkedIn argued that although the decision in *Van Buren* provided certainty around the reach of the CFAA when a potential violator has "exceeded" their authorized access, the high court did not provide clarity on whether a CFAA violation may occur when the potential violator has no access authorization at all.

It is possible that the high court views this as an opportunity to distinguish between exceeding authorized access and a private company's ability to deny access altogether. Many are watching this case, and a definitive decision will likely reshape the landscape of data scraping.

<sup>1</sup> [https://www.supremecourt.gov/orders/courtorders/061421zor\\_6j36.pdf](https://www.supremecourt.gov/orders/courtorders/061421zor_6j36.pdf)

<sup>2</sup> [https://www.supremecourt.gov/opinions/20pdf/19-783\\_k53l.pdf](https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf)

<sup>3</sup> <https://www.reuters.com/technology/linkedin-says-some-user-data-extracted-posted-sale-2021-04-09/>

<sup>4</sup> [https://www.supremecourt.gov/DocketPDF/19/19-1116/147933/20200716141411953\\_19-1116 - Cert Reply.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1116/147933/20200716141411953_19-1116 - Cert Reply.pdf)

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