

No. 19-496

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**In the Supreme Court of the United States**

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DISH NETWORK L.L.C.,  
*Petitioner,*

v.

THOMAS H. KRAKAUER,  
on behalf of a class of persons,  
*Respondent.*

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

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**SUPPLEMENTAL BRIEF FOR RESPONDENT**

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November 19, 2019

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## SUPPLEMENTAL BRIEF FOR RESPONDENT

Our brief in opposition explains why the decision below does not conflict with *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019)—the only case on which Dish relies for its alleged split. Three days after we filed our brief, the Eleventh Circuit eliminated any doubt on this score. *See Cordoba v. DIRECTV*, — F.3d —, 2019 WL 6044305, \*6 (11th Cir. Nov. 15, 2019). It did so in a case involving TCPA claims based on a failure to maintain an internal do-not-call list, which are much more like the claims here than the single text-message claim in *Salcedo*. Like the court below, the Eleventh Circuit agreed with *Susinno v. Work Out World Inc.*, 862 F.3d 346 (3d Cir. 2017), and held that “[t]he receipt of more than one unwanted telemarketing call made in violation of the provisions enumerated in the TCPA is a concrete injury that meets the minimum requirements of Article III standing.” 2019 WL 6044305, at \*6; *see also id.* at \*11. The Eleventh Circuit explained that its earlier decision in *Salcedo*—which “focused heavily on the unique features of text messages” and “expressly distinguished receiving a text message from receiving an unwanted phone call”—supports this holding. *Id.* at \*6. “As we recognized in *Salcedo*, a phone call intrudes upon the seclusion of the home, fully occupies the recipient’s device for a period of time, and demands the recipient’s immediate attention.” *Id.* “This is enough to establish the injury in fact prong of standing for [the named plaintiff] and all of the absent class members who received [unlawful] calls.” *Id.*

The class in this case fits that description. It includes only people who received calls to a residential number of the do-not-call registry, in violation of the TCPA, and the jury so found. The decision below is thus plainly in harmony with Eleventh Circuit precedent.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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