No. 20-1673

In the Supreme Court of the United States

ASHLEY NETTLES, PETITIONER

v.

MIDLAND FUNDING LLC
AND MIDLAND CREDIT MANAGEMENT, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a plaintiff has Article III standing to seek damages under the Fair Debt Collection Practices Act based on the mere receipt of an inaccurate collection letter in violation of the Act.

2. If not, whether a plaintiff's annoyance or time spent consulting an attorney regarding an inaccurate collection letter establishes Article III standing to seek damages under the Act.

CORPORATE DISCLOSURE STATEMENT

Respondents Midland Funding LLC and Midland Credit Management, Inc., are wholly owned subsidiaries of Encore Capital Group, Inc. Encore Capital Group, Inc., has no parent corporation, and no publicly held company holds 10% or more of its stock.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 983 F.3d 896. The district court's opinion denying respondent's motion to compel arbitration (Pet. App. 22a-32a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 21, 2020. The petition for a writ of certiorari was filed on May 20, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The petition in this case presents two questions concerning Article III standing to seek relief for alleged violations of the Fair Debt Collection Practices Act (FDCPA). The first question is whether a plaintiff has standing to seek damages for an alleged FDCPA violation based simply on the receipt of an inaccurate collection letter. The second question presented is whether, if the receipt of an inaccurate letter is insufficient to constitute concrete harm, a plaintiff's annoyance or time spent consulting an attorney will suffice.

After the petition was filed, this Court issued its decision in *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190 (2021). There, the Court held that a plaintiff cannot establish Article III standing to sue for the violation of a federal statute without showing that he or she suffered an injury that either is tangible or bears a close relationship to an intangible injury historically recognized as a basis for lawsuits in American courts. In reaching that conclusion, the Court rejected a reading of its earlier decision in *Spokeo, Inc.* v. *Robins*, 136 S. Ct. 1540 (2016), under which a plaintiff could demonstrate standing to seek damages for the violation of a federal statute based solely on a risk of future harm.

TransUnion eliminates any need for review of the questions presented as they come to the Court in this case. As for the first question presented: the complaint alleges no concrete harm beyond a bare violation of the FDCPA; petitioner has never argued that the receipt of an inaccurate collection letter is closely related to a historically cognizable injury; the court of appeals did not pass upon that issue below; and further review would be premature because other courts will need to reconsider their answer to the first question presented in light of *TransUnion*.

As for the second question presented: petitioner did not suggest that annoyance or time spent consulting an attorney constituted injuries in fact until oral argument before the court of appeals; petitioner never argued below that those harms have close historical analogues; the court of appeals again did not pass upon that issue; and the conflict that petitioner purports to identify is illusory. Because this case is an exceedingly poor vehicle for addressing any issues that even arguably remain open after *TransUnion*, the petition for a writ of certiorari should be denied.

A. Background

1. Article III of the Constitution vests "[t]he judicial Power of the United States" in the federal courts, but limits the exercise of that power to "Cases" and "Controversies." U.S. Const. Art. III, §§ 1-2. The doctrine of Article III standing implements that limitation by confining the federal courts to "the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law." *Summers* v. *Earth Island Institute*, 555 U.S. 488, 492 (2009).

To establish Article III standing, a plaintiff must demonstrate "(1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief." *Thole* v. *U.S. Bank N.A.*, 140 S. Ct. 1615, 1618 (2020). For purposes of the first requirement, a "concrete" harm is one that is "real," not "abstract"; it must "actually exist." *Spokeo*, 136 S. Ct. at 1548. "[T]angible injuries," such as physical injury and economic loss, readily qualify as cognizable concrete harms.

Id. at 1549. But "intangible" injuries can also qualify in some circumstances. See *ibid.*

"[B]oth history and the judgment of Congress play important roles" in determining whether an intangible injury qualifies as a concrete harm. *Spokeo*, 136 S. Ct. at 1549. As the Court recently explained in *TransUnion*, courts must afford "due respect" to Congress's decision to provide a private right of action to remedy the violation of a statutory obligation or prohibition. 141 S. Ct. at 2204. At the same time, Congress "may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." *Id.* at 2205 (citation omitted). Accordingly, even a plaintiff with a complete statutory cause of action cannot sue in federal court without showing "physical, monetary, or cognizable intangible harm traditionally recognized as providing a basis for a lawsuit in American courts." *Id.* at 2206.

2. Enacted in 1977, the FDCPA bars debt collectors—that is, entities that "regularly collect[] or attempt[] to collect, directly or indirectly," debts owed to another (or whose "principal purpose" is debt collection), 15 U.S.C. 1692a(6)—from engaging in certain practices. Specifically, the FDCPA bars debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," including "false[ly] represent[ing] * * * the character, amount, or legal status of any debt." 15 U.S.C. 1692e. It also bars debt collectors from using "unfair or unconscionable means to collect or attempt to collect any debt," including "collect[ing] * * * any amount" that is not "expressly * * * permitted by law." 15 U.S.C. 1692f. The FDCPA creates a private right of action for consumers

against debt collectors for actual damages, as well as statutory damages of up to $1,000 per violation, plus costs (including attorney's fees). See 15 U.S.C. 1692k.

B. Facts And Procedural History

1. Respondent Midland Funding LLC is a debt purchaser; respondent Midland Credit Management, Inc., services accounts for Midland Funding.

In 2016, Midland Funding purchased a credit-card debt owed by petitioner after her card issuer charged off the debt and sold it. Midland Funding then filed suit against petitioner in Michigan state court to collect the outstanding balance; the parties subsequently entered a consent judgment under which counsel for Midland Funding would automatically withdraw monthly installments from petitioner's bank account until the debt was paid. Pet. App. 3a-4a.

Counsel for Midland Funding withdrew the first three installments but ceased after the law firm dissolved. In June 2018, Midland Credit Management sent petitioner a letter stating that it would be servicing her debt on behalf of Midland Funding and that her current account balance was $643.59. According to petitioner's complaint, that amount was approximately $104 higher than the correct figure. Petitioner gave the letter to her attorney without attempting to contact respondents. Pet. App. 3a-4a; Pet. C.A. Br. 21.

2. On November 21, 2018, petitioner filed a putative class action against respondents in the Northern District of Illinois, alleging that the collection letter violated the FDCPA by overstating the balance due. Notably, the complaint did not allege that petitioner's receipt of the letter caused her any harm. Instead, it alleged only that respondents had violated the FDCPA and that petitioner

had a cause of action for actual and statutory damages under the Act. Pet. App. 4a, 7a; D. Ct. Dkt. 1.

Invoking an arbitration provision in petitioner's original credit-card agreement, respondents moved to compel arbitration of petitioner's claims. Pet. App. 4a. Petitioner opposed arbitration but also noted in her opposition that respondents had asserted that petitioner lacked Article III standing in their answer. D. Ct. Dkt. 25, at 5; see D. Ct. Dkt. 14, at 16. Petitioner disputed that proposition, arguing that she had Article III standing because respondents had violated her rights under the FDCPA. D. Ct. Dkt. 25, at 6-7.

The district court denied the motion to compel arbitration without addressing the question of standing. Pet. App. 22a-32a.

3. Respondents filed an interlocutory appeal under 9 U.S.C. 16. Then-Judge Barrett was a member of the panel assigned to the appeal. See Pet. App. 1a n.1.

a. In petitioner's brief on appeal, petitioner asked the court of appeals to revisit its earlier decision in *Casillas* v. *Madison Avenue Associates*, 926 F.3d 329 (7th Cir. 2019) (Barrett, J.), which held that a plaintiff cannot establish Article III standing to seek damages under the FDCPA merely by "pointing to [a] procedural violation" of the Act without identifying separate concrete harm. *Id.* at 333; see Pet. C.A. Br. 11-21.

In making that argument, petitioner admitted that her receipt of the collection letter from Midland Credit Management "did not technically affect her in any way." Pet. C.A. Br. 20 (internal quotation marks and alterations omitted). Petitioner further conceded that she had not alleged in her complaint that the collection letter confused her, caused her to overpay on her account, or led her to attempt to contact respondents regarding her account. See *id.* at 19-21. Petitioner maintained simply that she

had standing on the ground that a plaintiff seeking to vindicate a private statutory right need not demonstrate concrete harm beyond the defendant's violation of the right. See *id.* at 15-16 (citing *Spokeo*, 136 S. Ct. at 1553-1554 (Thomas, J., concurring)).

b. The court of appeals held that petitioner lacked Article III standing, with the remaining two members of the panel deciding the case after Justice Barrett's appointment to this Court. Pet. App. 1a-8a.

The court of appeals began from the premise that a plaintiff "does not automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." Pet. App. 5a-6a (quoting *Spokeo*, 136 S. Ct. at 1549). Rather, the court explained, "Article III requires a concrete injury even in the context of a statutory violation." *Id.* at 6a (citation omitted). The court observed that it had recently applied that principle in two cases involving the FDCPA, holding in each case that the plaintiff lacked standing because the complaint alleged no concrete harm beyond a bare violation of the Act. See Pet. App. 6a-7a (citing *Casillas*, *supra*, and *Larkin* v. *Finance System of Green Bay, Inc.*, 982 F.3d 1060 (7th Cir. 2020)).

The court of appeals concluded that the same result was warranted here. Pet. App. 7a. The court observed that petitioner's complaint "does not allege that the statutory violations harmed her in any way or created any appreciable risk of harm." *Ibid.* And petitioner "admit[ted]" that "the letter didn't affect her at all" and that "her only injury is receipt of a noncompliant collection letter." *Ibid.*

The court noted that, at oral argument, petitioner had suggested that "becoming annoyed" and "consulting an attorney" also qualify as concrete injuries. Pet. App. 7a. But the court viewed that argument as "something of an

afterthought," *ibid.*, perhaps because petitioner did not raise it in her briefing on appeal. See Pet. C.A. Br. 15-21. In any event, the court rejected that argument based on its precedent as well. Pet. App. 8a (citing *Gunn* v. *Thrasher, Buschmann & Voelkel, P.C.*, 982 F.3d 1069 (7th Cir. 2020)).

ARGUMENT

Petitioner seeks review of two questions regarding Article III standing to assert claims for violations of the FDCPA. After the petition was filed, however, this Court issued its decision in *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190 (2021), holding that a plaintiff cannot demonstrate concrete harm merely by pointing to the defendant's violation of a federal statute and Congress's creation of a private right of action. That decision is dispositive of the first question as it comes to the Court in this case; at a minimum, further percolation is warranted so that lower courts can consider the impact of *TransUnion*. As for the second question presented, this case is a poor vehicle to consider it because the question was never briefed and arose only in passing at oral argument before the court of appeals. There is also no genuine conflict among the courts of appeals over that question, and the decision in *TransUnion* alters the analysis required to resolve it in any event. Review is thus not warranted at this time, and the petition for a writ of certiorari should be denied.

A. The First Question Presented Does Not Warrant The Court's Review

The first question presented is whether a plaintiff has Article III standing to seek statutory damages under the FDCPA based on the receipt of an inaccurate collection letter in violation of the Act. The Court's recent decision in *TransUnion* resolves that question in respondents' favor, and further review is therefore unnecessary.

1. In *TransUnion*, this Court addressed the question whether a plaintiff can demonstrate Article III standing without showing any concrete harm beyond the defendant's violation of federal statute and Congress's creation of a private right of action to enforce the statute. The Court explained that "Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III." 141 S. Ct. at 2205. While Congress may "enact legal prohibitions and obligations" and "create causes of action," only a plaintiff "concretely harmed by a defendant's statutory violation" has Article III standing to seek redress from the defendant. *Ibid.* In short, "an injury in law is not an injury in fact." *Ibid.*

The Court acknowledged that Congress may enact statutes that "elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law." 141 S. Ct. at 2205 (citation omitted). But the Court reasoned that Congress may not "simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." *Ibid.* (citation omitted). For that reason, the Court explained, Congress's judgment is not dispositive of whether a particular harm qualifies as concrete. See *id.* at 2204. The Court concluded that a plaintiff must establish standing by showing either a concrete harm independent of the defendant's statutory violation, or a "close relationship" between the interest protected by the statute and a "harm traditionally recognized as providing a basis for lawsuits in American courts." *Ibid.*

In its earlier decision in *Spokeo*, *supra*, the Court suggested that a "risk of real harm" could qualify as concrete harm in some circumstances, such as where a plaintiff's "harms may be difficult to prove or measure." 136 S. Ct.

at 1549. The Court explained that, in those instances, "the violation of a procedural right granted by statute" could alone constitute injury in fact. *Ibid.* In *TransUnion*, however, the Court clarified that "*Spokeo* did not hold that the mere risk of future harm, without more, suffices to demonstrate Article III standing in a suit for damages"—a retrospective remedy designed to redress past harm. 141 S. Ct. at 2211. Instead, a "material risk of future harm can satisfy the concrete-harm requirement" only in a suit seeking "forward-looking[] injunctive relief." *Id.* at 2210.

2. *TransUnion* resolves the first question presented as that question comes to the Court in this case. As the court of appeals observed, petitioner did not contend that the alleged violations of the FDCPA "harmed her in any way or created any appreciable risk of harm to her." Pet. App. 7a. While petitioner opined that the letter "could" have "confuse[d] her" or "cause[d] her to pay an amount in excess of what she actually owed," she conceded that "none of th[o]se potential harms are alleged" in the complaint. Pet. C.A. Br. 19 & n.14.

Petitioner also failed to develop the argument that the receipt of an inaccurate collection letter bears a close relationship to any historically cognizable injury. In the district court, petitioner stated in a single sentence that her claims are "similar to a common law abuse of process claim," but offered no argument in support of that contention. D. Ct. Dkt. 25, at 6. Petitioner did not repeat that argument in her briefing at the court of appeals, see Pet. C.A. Br. 15-21, and the court of appeals did not address it, see Pet. App. 1a-8a. See also *id.* at 14a (counsel for petitioner stating in passing, at oral argument before the court of appeals, that "[s]eeking more money than owed is akin to the common-law tort of malicious prosecution").

Before this Court, petitioner argues only that the court of appeals erred by failing to appreciate the admonition in *Spokeo* that the "risk of real harm [can] satisfy the requirement of concreteness." Pet. 25 (emphasis and citation omitted). Yet even in *Spokeo*, this Court noted that it was "important" and "instructive" for courts to consider whether an intangible harm had a close relationship with a historically cognizable harm. See 136 S. Ct. at 1549. There is no reason for this Court to address that argument in the first instance, especially when petitioner has failed to preserve it. See, *e.g.*, *California* v. *Texas*, 141 S. Ct. 2104, 2116 (2021); *Brownback* v. *King*, 141 S. Ct. 740, 747 n.4 (2021).

Accordingly, as the case comes to the Court, the question presented is whether a bare allegation that respondents violated petitioner's rights under the FDCPA demonstrates concrete harm for purposes of Article III. As to that question, the Court has now squarely held that the answer is no. Even where Congress has provided a "statutory cause of action to sue a defendant over the defendant's violation of federal law," the plaintiff must show that he or she suffered some concrete harm. *TransUnion*, 141 S. Ct. at 2205. Only harms with a close historical analogue suffice, and that does not include a risk of future harm—at least where, as here, the plaintiff seeks damages and not injunctive relief. See *id.* at 2205, 2210; Pet. App. 4a. *TransUnion* thus compels the conclusion that a plaintiff lacks standing to seek damages under the FDCPA absent a showing of concrete harm.

3. At a minimum, even if the Court were uncertain whether *TransUnion* is dispositive, further percolation would be warranted in light of *TransUnion*.

Petitioner contends that six courts of appeals have held that a plaintiff can establish Article III standing merely by "alleging a violation of the FDCPA in regard to

the plaintiff." Pet. 14. But several of the decisions petitioner cites permit standing based solely on the presence of a "material risk of harm to the interests recognized by Congress in enacting the FDCPA." *Macy* v. *GC Services Limited Partnership*, 897 F.3d 747, 761 (6th Cir. 2018); see *Cohen* v. *Rosicki, Rosicki & Associates, P.C.*, 897 F.3d 75, 81-82 (2d Cir. 2018); *Sayles* v. *Advanced Recovery Systems, Inc.*, 865 F.3d 246, 250 (5th Cir. 2017); cf. *Pollard* v. *Law Office of Mandy L. Spaulding*, 766 F.3d 98, 103 (1st Cir. 2014) (permitting standing merely because the plaintiff's "personal right was violated" when she received a collection letter in violation of the FDCPA). All of those courts will need to reconsider their precedent in light of *TransUnion*. See pp. 9-10, *supra*; see also, *e.g.*, *Beaudry* v. *TeleCheck Services, Inc.*, No. 20-6018, 2021 WL 3173743, at *2 (6th Cir. July 27, 2021) (explaining that under Article III, statutory damages "cannot redress a 'risk of future harm, standing alone' ") (quoting *TransUnion*, 141 S. Ct. at 2210-2211); *Kale* v. *Procollect, Inc.*, Civ. No. 20-2776, 2021 WL 2784556, at *3 (W.D. Tenn. July 2, 2021) (noting that "[t]he Sixth Circuit's precedents applying risk-of-harm analysis are now clarified and modified by *TransUnion*").

Other decisions cited by petitioner involved the printing of information on an envelope sent to the plaintiff that could have revealed the plaintiff's status as a purported debtor. See *Donovan* v. *FirstCredit, Inc.*, 983 F.3d 246, 251 (6th Cir. 2020); *DiNaples* v. *MRS BPO, LLC*, 934 F.3d 275, 280 (3d Cir. 2019); *St. Pierre* v. *Retrieval-Masters Creditors Bureau, Inc.*, 898 F.3d 351, 355 (3d Cir. 2018). Those courts concluded that such a violation of the FDCPA was "closely related" to an "invasion of privacy." *E.g.*, *St. Pierre*, 898 F.3d at 357-358. But they did not consider whether the discrete harm alleged here—receipt of

an inaccurate collection letter—is closely related to a historically cognizable harm.

That leaves the Eighth Circuit's decision in *Demarais* v. *Gurstel Chargo, P.A.*, 869 F.3d 685 (2017). There, the court held that the receipt of a collection letter for a debt not owed closely resembled "the harm suffered by victims of the common-law torts of malicious prosecution, wrongful use of civil proceedings, and abuse of process." *Id.* at 691. That is the only decision on petitioner's side of the asserted conflict that addresses the type of FDCPA violation at issue here and employs the type of analysis required by *TransUnion*.

Most of the decisions on the opposite side of the asserted conflict, however, do not squarely reject the Eighth Circuit's conclusion. For example, neither the Fourth nor the Seventh Circuit conducted the historical inquiry called for by *TransUnion*, meaning that they did not consider whether the torts of malicious prosecution, wrongful use of civil proceedings, and abuse of process were the appropriate comparators. See Pet. App. 1a-8a; *Ben-Davies* v. *Blibaum & Associates, P.A.*, 695 Fed. Appx. 674, 676-677 (4th Cir. 2017). For its part, the Ninth Circuit considered only whether receipt of a misleading collection letter was analogous to common-law fraud. See *Adams* v. *Skagit Bonded Collectors, LLC*, 836 Fed. Appx. 544, 546 (2020). And the District of Columbia Circuit considered only whether the plaintiff had suffered informational injury. See *Frank* v. *Autovest, LLC*, 961 F.3d 1185, 1188-1190 (2020).

The only remaining case is the Eleventh Circuit's decision in *Trichell* v. *Midland Credit Management, Inc.*, 964 F.3d 990, 998 (2020). There, the majority focused on the question whether a misleading collection letter was analogous to "fraudulent or negligent misrepresentation."

Id. at 998. But the dissent contended that the proper historical comparator was instead the tort of "abuse of process." *Id.* at 1009 (opinion of Martin, J.). The majority rejected that comparator only in a footnote, stating that the tort of abuse of process "requires harm caused by the improper use of legal process," which the plaintiffs did not allege. *Id.* at 998 n.1.

At most, therefore, respondent has identified a potentially viable conflict between two courts of appeals on the question of Article III standing to seek damages under the FDCPA based solely on the receipt of an inaccurate collection letter. Given the recentness of this Court's decision in *TransUnion*, the Court should allow further percolation before weighing in on that question.

B. The Second Question Presented Does Not Warrant The Court's Review

The second question presented is whether a plaintiff's annoyance or time spent consulting an attorney regarding an FDCPA violation qualifies as concrete harm sufficient to establish Article III standing. That question, too, does not warrant the Court's review at this time.

1. As an initial matter, this case is an exceedingly poor vehicle to address the second question presented. Petitioner frames the question as whether allegations of "mental distress" and "lost time" qualify as concrete harms. Pet. i. But petitioner did not allege any harm in the complaint beyond the bare violation of the FDCPA. See p. 10, *supra*.

Nor did petitioner broadly argue that "mental distress" and "lost time" qualified as concrete injuries. Instead, "as something of an afterthought," Pet. App. 7a, counsel for petitioner identified "annoyance" and time spent having to "consult an attorney" as potential concrete harms for the first time at oral argument before the

court of appeals. *Id.* at 18a. Notably, petitioner never argued that annoyance or time spent consulting with an attorney bears a close relationship to a historically cognizable harm, as *TransUnion* requires. See Pet. C.A. Br. 15-21; D. Ct. Dkt. 25, at 5-7. And unsurprisingly, the court of appeals did not pass upon that issue below, instead citing an earlier precedent that rejected that theory without conducting a historical analysis. See Pet. App. 8a (citing *Gunn* v. *Thrasher*, *Buschmann & Voelkel*, *P.C.*, 982 F.3d 1069, 1071 (7th Cir. 2020)). Because this case is an inappropriate vehicle for addressing the second question presented in the wake of *TransUnion*, the Court should deny review.

2. Even if the second question presented had been fully preserved and passed upon below, further percolation would be warranted. Petitioner contends (Pet. 26-28) that three courts of appeals have held that annoyance and time spent consulting an attorney qualify as concrete harms, while two courts of appeals, including the court below, have held that they do not. But petitioner cites only nonbinding decisions from three of those five courts. See *Kottler* v. *Gulf Coast Collection Bureau, Inc.*, 847 Fed. Appx. 542 (11th Cir. 2021); *Adams*, *supra*; *Ben-Davies*, *supra*. And in *Frank*, the D.C. Circuit did not hold that annoyance necessarily qualifies as concrete harm; rather, the court determined only that the plaintiff had failed to prove the factual predicate for that argument. See 961 F.3d at 1188.

Petitioner thus cites only one binding decision squarely addressing the second question presented: the decision below. See Pet. App. 28a. And that decision is unique because it is the only one cited by petitioner that addresses whether time spent consulting an attorney qualifies as a concrete harm. The Eleventh Circuit's decision in *Kottler*, *supra*, comes the closest to addressing

that question, but it considers only whether time spent communicating with a *debt collector* qualifies as a concrete harm. See Br. of Appellee at 14, *Kottler*, *supra* (No. 20-12239); see also Pet. App. 19a (statement of Judge Easterbrook at oral argument that, if "consulting an attorney is an injury that affords Article III standing," then "there's standing in every case"). The other cases cited by petitioner consider annoyance alone as a concrete harm.

Finally, none of the other cases in the purported conflict analyzed whether annoyance or time spent consulting an attorney bears a "close relationship" to a historically cognizable harm. See p. 9, *supra*. Those courts will likely need to reconsider the issue in light of *TransUnion*, confirming that review is not warranted while the ink on the *TransUnion* opinion is still drying.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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