No. 22-435

IN THE
Supreme Court of the United States

RENETRICE R. PIERRE,
Petitioner,

v.

MIDLAND CREDIT MANAGEMENT, INC.,
Respondent.

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

BRIEF IN OPPOSITION

DAVID M. SCHULTZ
TODD P. STELTER
HINSHAW & CULBERTSON LLP
151 North Franklin Street
Chicago, IL 60606
(312) 704-3527
dschultz@hinshawlaw.com

MICHAEL T. BRODY
Counsel of Record
GABRIEL K. GILLETT
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 222-9350
mbrody@jenner.com

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QUESTION PRESENTED

Whether a plaintiff's testimony that she experienced confusion and fear as a result of receiving a debt-collection letter confers Article III standing to assert a claim that specific language in the letter was misleading under the Fair Debt Collection Practices Act.

CORPORATE DISCLOSURE STATEMENT

Respondent Midland Credit Management, Inc. is a wholly owned subsidiary of Encore Capital Group, Inc., a publicly traded company.

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The opinions of the court of appeals (Pet. App. 1a-47a) are reported at 29 F.4th 934 (7th Cir. 2022), and its opinions in connection with rehearing (Pet. App. 64a-85a) are reported at 36 F.4th 728 (7th Cir. 2022). The district court's memorandum opinion and order granting summary judgment on liability (Pet. App. 48a-63a) is available at No. 16 C 2895, 2018 WL 723278 (N.D. Ill. Feb. 5, 2018).

JURISDICTION

The final judgment of the court of appeals was entered on April 1, 2022. *Pierre v. Midland Credit Management, Inc.*, Nos. 19-2993, 19-3109 (7th Cir. Apr. 1, 2022), ECF No. 46. A timely petition for rehearing was denied (Pet. App. 64a-65a) on June 8, 2022. On August 24, 2022, Justice Barrett extended the time to file a petition for a writ of certiorari to Saturday, November 5, 2022. The petition was filed on Monday, November 7, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

INTRODUCTION

Petitioner asks the Court to decide whether a plaintiff who suffers only "emotional or psychological distress and confusion" as a result of receiving an allegedly misleading debt-collection letter has standing to sue. Pet. i-ii. Despite Petitioner's contentions to the contrary, the Courts of Appeals are not split about how to answer that question. Even reading the decision below as adopting a rule that intangible harm like Petitioner's in response to an allegedly misleading debt-collection letter is not concrete—and, as detailed below,

such a reading is not warranted—no other circuit has adopted the opposite view that such harm *is* concrete. Nor have the circuits split in cases involving standing to bring other types of claims under the Fair Debt Collection Practices Act ("FDCPA"). Since this Court's decision in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021), every circuit court that has addressed this issue has held that experiencing confusion, worry, anxiety, or the like, but nothing more, is not a concrete injury-in-fact that satisfies Article III.

Aside from those strong reasons to deny the Petition, this case is a seriously flawed vehicle for addressing the question presented. Petitioner's main argument now—that Petitioner has standing because her claim is analogous to common law causes of action and because Congress created a statutory claim under the FDCPA—was not timely briefed, argued, or addressed below. Although the Seventh Circuit did not reach the point, Petitioner also lacks standing because her alleged injuries are not traceable to the conduct she contends was unlawful. This case does not warrant this Court's review.

STATEMENT

A. Petitioner's Claim

On September 2, 2015, Respondent Midland Credit Management, Inc. sent a letter to Petitioner inviting her to make a payment on a time-barred debt. Multiple courts of appeals have held that it is not unlawful for a debt collector to attempt to recover time-barred debt through non-deceptive means. *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 396-97 (6th Cir. 2015); *Stimpson*

v. Midland Credit Mgmt., Inc., 944 F.3d 1190, 1194 (9th Cir. 2019).

In the letter, Respondent provided payment options to Petitioner. Respondent also advised Petitioner that:

> The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, we will not report it to any credit reporting agency, and payment or non-payment of this debt will not affect your credit score.

Pet. App. 3a. The above disclosure language exactly tracked language that Respondent was required to include in its collection letters under a consent order it entered into with the Consumer Financial Protection Bureau. *See* Pet. App. 59a. The disclosure language also followed prior agreements with the FTC and applicable state statutes. *See id.*; Midland Combined Reply-Resp. Br. at 20-21, No. 19-2993, (7th Cir. Aug. 17, 2020), ECF No. 28. The Ninth Circuit upheld the very same disclosure as not deceptive. *Stimpson,* 944 F.3d at 1196-97.

Petitioner alleged in her complaint that the letter was deceptive, and thus violated the FDCPA, because the disclosure stated Respondent "will not sue" Petitioner and "will not report" Petitioner to a credit reporting agency. Petitioner contends Respondent was instead required to disclose that it "cannot" or "could not" sue Petitioner. *See* Am. Class Action Compl. ¶¶ 1, 14, 16, 32, No. 16-cv-02895 (N.D. Ill. June 28, 2016), ECF No. 20.

B. Petitioner's Claimed Injury

Petitioner testified in her deposition as to her injury. She conceded that she "understood everything" in the letter, including the time-barred debt disclosure. Midland Opening Br. at 7, No. 19-2993 (7th Cir. May 13, 2020), ECF No. 20. When asked to paraphrase that disclosure, she used the expressions "won't sue" and "can't sue" interchangeably: she said the letter "made [her] think … you won't" sue and "can't sue me for it." *Id.* at 7-8 (record citations omitted). She testified she knew Respondent did not have the right to pursue legal remedies to collect the time-barred debt. Petitioner acknowledged the time-barred debt disclosure did not cause her to take any action that she otherwise would not have taken. *Id.* at 8 (record citations omitted).

Petitioner also testified about her emotional reaction to having received the letter. Despite Respondent's disclosure that it "will not" sue Petitioner and "will not" report her non-payment to a credit agency, Petitioner explained that receiving the letter somehow made her fear she would be sued by Respondent or another entity, and that the letter might impact her credit report. *Id.* at 7-8 (record citations omitted); Midland Combined Reply-Resp. Br. at 6-7, 7 n.3 (record citations omitted). She also stated that the letter caused her to call Respondent and hire a lawyer. Midland Opening Br. at 7-8, 17 (record citations omitted).

Petitioner further stated that she felt "great concern," "emotional distress," and "agitation and anxiety" as a result of receiving the letter. Midland Combined Reply-Resp. Br. at 6-7, 7 n.3 (record citations omitted); *see also* Pierre Combined Resp.-Opening Br.

at 42, 47 (7th Cir. July 17, 2020), ECF No. 25 (record citations omitted). She did not tie any of those reactions to the language of the time-barred debt disclosure generally or to the "will not" language she alleged was deceptive. Midland Combined Reply-Resp. Br. at 7-8 (record citations omitted). Nor did Petitioner contend that she took any action as a result of the time-barred debt disclosure. *Id.* at 8 (record citations omitted).

C. Proceedings Below

Relying on a prior Seventh Circuit decision involving a different debt collector, *Pantoja v. Portfolio Recovery Associates*, 852 F.3d 679 (7th Cir. 2017), the district court granted summary judgment on liability to Petitioner and certified a class. Pet. App. 60a-63a. The district court rejected Respondent's argument that Petitioner lacked standing. Pet. App. 58a-61a. The case proceeded to trial, and Petitioner and her class received a statutory damages verdict of $350,000. Pet. App. 2a. Both parties appealed. *Id.*

On appeal, in addition to briefing the merits of the claim and Petitioner's cross-appeal, Respondent renewed its argument that Petitioner lacked standing. Respondent argued that Petitioner did not suffer a concrete injury and that her injury was not traceable to the violation she alleged. Midland Opening Br. at 12-24, 42. Petitioner responded, but, as in the district court, did not argue that the injury she suffered was analogous to a harm traditionally recognized as the basis for a lawsuit. *See* Pierre Combined Resp.-Opening Br. at 37-50.

Between argument and the Seventh Circuit's decision in this case, this Court decided *TransUnion*.

See Midland 28(j) letter, No. 19-2993 (7th Cir. July 6, 2021), ECF No. 44. During that period, the Seventh Circuit also decided a series of FDCPA cases addressing when an intangible injury could support standing. *See* Midland 28(j) letter, No. 19-2993 (7th Cir. Dec. 23, 2020), ECF No. 43. In that series of cases, the Seventh Circuit recognized that in some circumstances intangible harm can constitute a cognizable injury-in-fact, and the court evaluated whether the intangible harm alleged was sufficient on the particular facts in each case. Confusion or emotional distress in response to an allegedly misleading debt-collection letter, the Seventh Circuit held, does not support standing unless it causes the plaintiff to act, impairs the plaintiff's ability to act, or causes the plaintiff to otherwise suffer a concrete injury. *See, e.g.*, *Brunett v. Convergent Outsourcing, Inc.* 982 F.3d 1067, 1068-69 (7th Cir. 2020) (if a state of confusion alone established standing, "then everyone would have standing to litigate about everything"); *Gunn v. Thrasher, Buschmann & Voelkel, PC*, 982 F.3d 1069, 1071-72 (7th Cir. 2020); *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 280-81 (7th Cir. 2020).

D. The Seventh Circuit's Decision

The Seventh Circuit did not reach the merits of Respondent's claim or address Respondent's traceability argument. Instead, it found that Petitioner lacked standing to sue because she did not suffer a concrete and particularized harm. Pet. App. 5a-10a. To be concrete under this Court's precedents, the Seventh Circuit observed, an injury must be "real, and not abstract." Pet. App. 5a, quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016). That "includes 'traditional

tangible harms … as well as '[v]arious intangible harms,' such as 'reputational harms, disclosure of private information, and intrusion upon seclusion.'" Pet. App. 5a-6a, quoting *TransUnion*, 141 S. Ct. at 2204. The Seventh Circuit restated this Court's holding that "Congress's decision to create a statutory cause of action" is relevant to the assessment of standing, but that "[h]istory and tradition remain our ever-present guides, and legislatively identified harms must bear a close relationship in kind to those underlying suits at common law." Pet. App. 6a, citing *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462-63 (7th Cir. 2020).

The court turned to its "recent decisions [that] mark the line between FDCPA violations inflicting concrete injuries and those causing no real harm." Pet. App. 7a. Reviewing those cases, it compared a case in which the plaintiff complained of a statutory violation that caused "intangible, reputational injury" (establishing standing) to a case similar to Petitioner's case in which the plaintiff complained of a statutory violation in a dunning letter but could point to no "concrete harm" or injury "for the court to remedy" (no standing). *See* Pet. App. 7a-8a, discussing *Ewing v. Med-1 Sols., LLC*, 24 F.4th 1146, 1149-50, 1154 (7th Cir. 2022); *Casillas v. Madison Ave. Assoc., Inc.*, 926 F.3d 329, 332, 339 (7th Cir. 2019); and *Larkin v. Fin. Sys. of Green Bay, Inc.*, 982 F.3d 1060, 1066-67 (7th Cir. 2020).

Applying this line of cases to the record before it, the court of appeals held that the harms Petitioner claims to have suffered—confusion about whether she would or could be sued for a debt, emotional distress, contacting a lawyer, and filing suit—were insufficient to confer

standing. More specifically, the court determined that Petitioner's testimony about her emotional state did not reflect the existence of a concrete harm under recent cases. Pet. App. 9a, citing *Markakos v. Microcredit, Inc.*, 997 F.3d 778, 781 (7th Cir. 2021); *Brunett*, 982 F.3d at 1068; *Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 668 (7th Cir. 2021); *Pennell v. Glob. Tr. Mgmt., LLC*, 990 F.3d 1041, 1045 (7th Cir. 2021). The court did not address whether there were common-law analogues for Petitioner's claim, *see* Pet. App. 9a-10a, as Petitioner had not raised that argument, *see* Pierre Combined Resp.-Opening Br. at 37-50.

Judge Hamilton dissented. His opinion criticized efforts to collect time-barred debt generally and discussed common law analogues for Petitioner's claim. Pet. App. 11a-13a, 15a-17a, 26a-33a. Judge Hamilton concluded Petitioner's claimed psychological injuries were sufficient to create standing. Pet. App. 17a-18a, 23a-30a. He cited many pages of Petitioner's deposition and trial testimony that supposedly supported his conclusions, but did not identify any particular testimony, or explain why he viewed it as relevant. *See* Pet. App. 17a-18a, 18a n.3.

Petitioner sought rehearing and rehearing *en banc*, raising the common law analogy issue for the first time. Pet. For Rehearing & For Rehearing *En Banc* at 9-13, No. 19-2993 (7th Cir. Apr. 15, 2022), ECF No. 48. The majority of the Seventh Circuit judges voted to deny the petition. Pet. App. 64a-65a. Judge Hamilton, joined by three of his colleagues, dissented. Pet. App 66a-85a.

ARGUMENT

I. THE SEVENTH CIRCUIT'S DECISION DOES NOT CREATE A SPLIT WITH OTHER CIRCUITS.

Petitioner contends that "[t]he courts of appeals are deeply divided" on whether "intangible harms suffice" to establish Article III standing to bring a claim under the FDCPA arising from an allegedly misleading debt-collection letter. Pet. 10. The cases Petitioner cites evince no "clear division" on that question. *See id.*

In every post-*TransUnion* case Petitioner cites, as well as the Seventh Circuit's decision in this case, the courts of appeals recognized this Court's guidance that intangible harms may qualify as concrete injuries if they bear a close relationship to a harm that traditionally provided a basis for a lawsuit. *See TransUnion*, 141 S. Ct. at 2204. In applying this guidance, the courts on one side of Petitioner's supposed split have reached decisions that are consistent with the decision below—holding that confusion or emotional distress alone does not confer standing. The courts on the other side of the supposed split do not disagree: many of Petitioner's cited cases do not involve emotional injury or confusion, and none of Petitioner's post-*TransUnion* cases adopt a binding rule that confusion or emotional injury in response to receipt of a debt-collection letter automatically confers standing.

1. Petitioner contends the Fifth, Ninth, and Eleventh Circuits have applied a "restrictive approach to standing under the FDCPA," and the "trend" in the Sixth and Eighth Circuits is similarly restrictive. Pet. 12-14. The

approach those courts have taken is consistent with the Seventh Circuit's approach. As discussed further below, that approach is also not inconsistent with the cases Petitioner cites on the other side of this supposed split.

In *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816 (5th Cir. 2022), the plaintiff alleged confusion after receiving a debt-collection letter seeking payment of an unenforceable debt, because the letter did not say the debt was unenforceable. *Id.* at 820. The court found alleging "confusion, absent more," was not enough to confer standing because her claim of intangible injury was not analogous to a common law claim of fraudulent misrepresentation, which traditionally requires tangible, pecuniary harm. *Id.* at 824-25. In reaching that conclusion, the court said it was adopting the position held by the Sixth, Seventh, Eighth, and Eleventh Circuits. *Id.* at 825 n.5, citing *Garland v. Orlans, PC*, 999 F.3d 432, 438 (6th Cir. 2021); *Brunett*, 982 F.3d at 1068; *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 997-98 (11th Cir. 2020); *Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 463 (8th Cir. 2022).

In the Ninth Circuit's unpublished decision in *Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544 (9th Cir. 2020), the plaintiff alleged that a letter was misleading under the FDCPA because, "upon reading the letter, [he] was unsure of who the current creditor was." *Id.* at 545. The court found that this "bare allegation of confusion" was not enough, because "[w]ithout more, confusion does not constitute an actual harm" that is analogous to common law fraud. *Id.* at 547. That holding is consistent with the cases discussed above.

The Eleventh Circuit cases Petitioner cites are in accord with the decisions just discussed and the decision below. She cites *Trichell v. Midland Credit Management, Inc.*, 964 F.3d 990 (11th Cir. 2020), where the plaintiffs alleged that the debt-collection letter they received put them at risk of harm and provided misleading information, even though it did not cause them to take any actions. *Id.* at 997. The court, considering the judgment of Congress and common law tradition, found the plaintiffs lacked standing because the harms they alleged were not analogous to claims of fraudulent or negligent misrepresentation, both of which required reliance and damages. *Id.* at 997-1000. Although the court did not decide whether emotional distress could be sufficiently concrete to confer standing, to date the Eleventh Circuit has not held otherwise. *See* Pet. 14, quoting *Toste v. Beach Club at Fontainebleau Park Condo. Ass'n.*, No. 21-14348, 2022 WL 4091738, at *4 (11th Cir. Sept. 7, 2022) (noting Eleventh Circuit has "not yet decided in a published opinion whether emotional distress alone is a sufficiently concrete injury for standing purposes"); *see also Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1240 1245-49 (11th Cir. 2022) (*en banc*) (finding alleged harm from private disclosure was not analogous to a common law tort of public disclosure, without discussing emotional distress).

Petitioner notes that the Sixth and Eighth Circuits have also recently held that confusion alone is not a concrete harm for purposes of standing. Pet. 14-15. In *Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 463 (8th Cir. 2022), the plaintiff alleged "nervousness,

restlessness, irritability" from being sent a copy of a summons a debt collector had served on a third-party bank. *Id.* at 462 (record citation omitted). The Eighth Circuit held that under the circumstances presented those injuries were not concrete or analogous to invasion of privacy. *Id.* at 463 & n.4. In *Ward v. National Patient Account Services Solutions, Inc.*, 9 F.4th 357, 363 (6th Cir. 2021), the plaintiff alleged that a phone call from a debt collector caused confusion about who had called him and led him to send a cease and desist letter to the wrong entity. *Id.* at 362-63. The court held this claim was not analogous to invasion of privacy or intrusion upon seclusion, and stated that "confusion alone is not a concrete injury for Article III purposes." *Id.* at 363 (collecting cases).

The Seventh Circuit agrees with the views of these courts, and for good reason: if "the state of confusion" were an injury, "then everyone would have standing to litigate about everything." *Brunett*, 982 F.3d at 1068. The same is true of annoyance: "[m]any people are annoyed to learn that governmental action may put endangered species at risk or cut down an old-growth forest." *Gunn*, 982 F.3d at 1071, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Yet to litigate over such an action, "the plaintiff must show a concrete and particularized loss, not infuriation or disgust." *Id.*

In a single line in the opinion below, the Seventh Circuit noted that "[p]sychological states induced by a debt collector's letter likewise fall short" of standing. Pet. App. 9a. Even overreading that statement as holding that "psychological harms are insufficient to confer Article III standing as a matter of law," Pet. 25,

Petitioner fails to identify any split between the Seventh Circuit and the Fifth, Sixth, Eighth, Ninth, or Eleventh Circuits.

2. Attempting to manufacture a split, Petitioner argues that the Third, Fourth, Tenth, and D.C. Circuits "hold that plaintiffs suing for intangible injuries" caused by FDCPA violations have standing. Pet. 10-11. Not so. Petitioner does not identify any post-*TransUnion* case holding that confusion alone *is* enough to confer standing. And none of the cases Petitioner cites involves only emotional or psychological harm arising from the mere receipt of a debt-collection letter.

In *DiNaples v. MRS BPO, LLC*, 934 F.3d 275, 279-80 (3d Cir. 2019), a plaintiff brought an FDCPA claim alleging her private information had been disclosed through a QR code on the outside of the envelope of a debt-collection letter. She argued that this "disclosure of confidential information" caused harm sufficient to confer standing. The court agreed, concluding the intangible injury caused by the disclosure of private information to the public was "an invasion of privacy … 'closely related to harm that has traditionally been'" cognizable at common law. *Id.* at 278, 280 (citation omitted). The decision thus did not involve the intangible injury of emotional distress, confusion, or anxiety occasioned by receipt of an allegedly misleading communication. Nor did it categorically hold that the plaintiff had standing to bring an FDCPA claim premised on any intangible harm; the court found standing because the harm alleged (invasion of privacy) was similar to a common law cause of action.

In *Lupia v. Medicredit, Inc.*, 8 F.4th 1184, 1191-93 (10th Cir. 2021), the plaintiff received an unwanted telephone call from a debt collector after demanding that the collector cease communications. She alleged that the "call caused her 'to suffer intangible harms, which Congress has made legally cognizable in passing the FDCPA.'" *Id.* at 1190-91 (record citation omitted). The Tenth Circuit agreed, analogizing her claim to a common law cause of action for intrusion upon seclusion. The court distinguished the Seventh Circuit's "recent standing cases," finding they did not apply because the plaintiffs in the Seventh Circuit cases (like Petitioner) only alleged "'stress and confusion'—not an invasion of privacy" like Ms. Lupia. *Id.* at 1193 (citation omitted). As in *DiNaples*, the court never suggested the plaintiff had standing merely because she alleged intangible harm.

Petitioner contends that "the D.C. Circuit *appears* to recognize that 'stress and inconvenience' rises to the level of a cognizable injury for purposes of an FDCPA lawsuit." Pet. 12, quoting *Frank v. Autovest, LLC*, 961 F.3d 1185, 1187-88 (D.C Cir. 2020) (emphasis added). Even that equivocal statement does not support a circuit split. The D.C. Circuit found the plaintiff *lacked* standing when the evidence showed she experienced "stress and inconvenience" but was not "confused, misled, or harmed in any relevant way." *Id.* at 1188. As the case cited by Petitioner (at 12) admits, *Frank* did not hold that such intangible harm was concrete but merely "suggested that 'stress and inconvenience' might be cognizable harms for purposes of Article III." *Magruder v. Cap. One, Nat'l Ass'n*, 540 F. Supp. 3d 1, 13 (D.D.C.

2021). And the D.C. Circuit did not address whether emotional distress, confusion, or anxiety, if proved, would have conferred standing to bring a claim under the FDCPA.

To be sure, the Fourth Circuit has held in two unpublished decisions that a plaintiff sufficiently pleaded standing by alleging that receipt of a debt-collection letter seeking improper amounts caused the plaintiff to experience "emotional distress, anger, and frustration." *See Moore v. Blibaum & Assocs., P.A.*, 693 F. App'x 205, 206 (4th Cir. 2017), and *Ben-Davies v. Blibaum & Assocs., P.A.*, 695 F. App'x 674, 676-77 (4th Cir. 2017). But those nonbinding decisions lack meaningful analysis; they pre-date *TransUnion*; they do not discuss common-law analogs for the plaintiffs' claims or Congress's judgment; and they arose at the pleading stage, rather than after a full trial. In addition, district courts in the Fourth Circuit have not treated *Moore* or *Ben-Davies* as creating a categorical rule that emotional distress from the receipt of a debt-collection letter constitutes a cognizable injury-in-fact under Article III. *See, e.g., Reimer v. LexisNexis Risk Sols., Inc.*, No. 22cv153, 2022 WL 4227231, at *8 (E.D. Va. Sept. 13, 2022) ("Plaintiff merely pleads that he felt 'greatly distressed,' 'very concerned,' and suffered 'emotional distress and mental anguish.' Plaintiff offers no specific facts to demonstrate these feelings. Threadbare allegations such as these do not confer standing alone." (internal citations omitted)).

In sum, the cases Petitioner cites do not reflect "diverging approaches" or an "entrenched" split among the circuits on the question presented. Pet. 15, quoting

Pet. App. 45a (Hamilton, J., dissenting). Petitioner's cases reflect the consistent application of the same legal rules to a multitude of different facts. And critically for purposes of deciding the Petition, Petitioner does not identify *any* case holding that confusion alone is enough to confer standing. So there is no disagreement on this issue among the circuits for this Court to resolve.

II. THE SEVENTH CIRCUIT CORRECTLY HELD PETITIONER LACKED STANDING.

Petitioner contends that the Seventh Circuit's decision "contravenes this Court's guidance." Pet. 15 (capitalization omitted). The decision shows otherwise.

First, the Seventh Circuit followed this Court's framework for analyzing standing when a plaintiff alleges intangible harm. Relying on *TransUnion* and *Spokeo*, the Seventh Circuit recognized that "[v]arious intangible harms" may qualify as concrete injuries if they have "a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." Pet. App. 5a-6a (citations omitted). The Seventh Circuit also recognized that Congress's "decision to create a statutory cause of action may 'elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law,'" but cannot "enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." Pet. App. 6a (citations omitted).

The Seventh Circuit then applied these teachings along with that court's "recent decisions [that] mark the line between FDCPA violations inflicting concrete

injuries and those causing no real harm." Pet. App. 7a. Reviewing the record, including Petitioner's deposition testimony, the panel concluded Petitioner lacked standing because she did not demonstrate any concrete harm—only mere confusion, anxiety, and emotional distress. *Id.* at 7a-10a.

Petitioner is wrong to suggest the majority opinion should be read as categorically "holding" that emotional injury "*per se*" can *never* qualify as a concrete but intangible harm when bringing any FDCPA claim in the Seventh Circuit. *See* Pet. 9-10, 13, 16 (arguing "the court issued a conclusory determination that psychological states *per se* fall short of the concreteness requirement of Article III"). Rather, by referring to the "[m]any … recent decisions" in which the Seventh Circuit had "mark[ed] the line between FDCPA violations inflicting concrete injuries and those causing no real harm," Pet. App. 7a, the panel recognized that intangible injuries *can* give rise to standing, as dictated by this Court's precedent, depending on the specific facts and circumstances.

Importantly, review is not warranted even if this Court agrees with Petitioner's overbroad reading of the Seventh Circuit's decision. As described above, every court of appeals post-*TransUnion* that has addressed the question held that confusion or emotional distress alone does not necessarily confer standing to bring an FDCPA claim, and has found that the plaintiffs in those cases lacked standing to bring the particular claim asserted. Whether as a factual matter based on the record, or as a legal matter based on the law, the Seventh Circuit below was correct to conclude that, in

this case, "[p]sychological states induced by a debt collector's letter likewise fall short" of standing to bring a claim based on receipt of an allegedly misleading debt-collection letter. *See* Pet. App. 9a.

III. THIS CASE IS NOT A GOOD VEHICLE TO ADDRESS PETITIONER'S STANDING ISSUES.

Petitioner asserts in a single paragraph that "there are no vehicle problems." Pet. 25 (capitalization omitted). That assertion is incorrect on multiple levels. The flaws in this vehicle are more than sufficient reason to deny the Petition.

A. The Issues Petitioner Now Asserts Were Not Raised Or Addressed Below.

Petitioner argues that this Court should grant review to consider the merits of whether her claim maps onto an analogous common law cause of action. *See* Pet. 11, 16-17. Petitioner also appeals to the judgment of Congress reflected in the FDCPA, asserting that this case presents an opportunity to evaluate the separation of powers concerns she claims are present when a plaintiff seeks to vindicate a statutory right. *See* Pet. 9-10, 16-17. This case presents a flawed vehicle to raise these arguments, however, because Petitioner did not timely raise either below.

Because Petitioner first argued there are common law analogues for her FDCPA claim in her petition for rehearing, *see* Pierre Combined Resp.-Opening Br. at 37-50, the Seventh Circuit did not have the opportunity to express its views on her proffered common law analogues to the claims at issue, *see* Pet. App. 1a-10a. As

the Seventh Circuit recited in its opinion, when called upon to assess standing to bring federal statutory causes of action in other cases, it considers the judgment of Congress. *See* Pet. App. 7a, 9a. But Petitioner first raised the impact of the judgment of Congress in her petition for rehearing, *see* Pierre Combined Resp.-Opening Br. at 37-50, again depriving the Seventh Circuit of an opportunity to address the issue, *see* Pet. App. 1a-10a.

Petitioner's failure to raise these arguments timely, even though they were well established in decisions of this Court and others, warrants denying the Petition. *See, e.g.*, *California v. Texas*, 141 S. Ct. 2104, 2116 (2021); *Brownback v. King*, 141 S. Ct. 740, 747 n.4 (2021).

B. Petitioner Cannot Satisfy The Traceability Requirement For Standing.

In addition to proving a concrete harm, Petitioner must show that her harm is traceable to the conduct she alleged to be wrongful. *Lujan v. Defenders of Wildlife*, 504 U.S 555, 590-91 (1992). Petitioner's failure to do so here provides independent grounds to find Petitioner lacks standing.

Petitioner did not allege that it was unlawful for Respondent to send her a letter. She alleged that Respondent's disclosure was unlawful because it said "we will not sue you for it" and "will not report it to any credit reporting agency," rather than saying Respondent "cannot" or "could not" do so based on the age of her debt. Pet. 4-6; *see* Am. Class Action Compl. ¶¶ 1, 14, 16, 32. Petitioner testified she was upset that she received the letter at all; Respondent never sued

Petitioner and will not, consistent with its disclosure. Critically, Petitioner did not attribute any of her anxiety, emotional distress, or confusion to the "will not" language in the letter, or the absence of the "cannot" or "could not" language. Midland Opening Br. at 15-19 (record citations omitted). To the contrary, she testified that she knew that Respondent could not sue her and used "will not" and "could not" interchangeably. *Id.* at 16-17 (record citations omitted). Thus, even if her psychological injuries could constitute a concrete harm, they are not traceable to the allegedly unlawful conduct and she would not have standing to sue.

Respondent raised the traceability argument in the lower courts. *See id.* at 15-19; Midland Combined Reply-Resp. Br. at 3-8. The Seventh Circuit did not address that issue, having found Petitioner lacked a concrete harm. *See* Pet. App. 1a-10a. But Petitioner's failure of proof on traceability is an independent ground for finding Petitioner lacks standing. *See Frank*, 961 F.3d at 1188 (finding no standing because alleged confusion was not caused by alleged violation); *Ojogwu*, 26 F.4th at 463-64 (same). It is therefore also a further and independent reason for the Court to deny review.[1]

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[1] Petitioner asserts that if the Court finds standing, the district court's judgment may be affirmed. Petitioner is incorrect. The Seventh Circuit did not reach Respondent's appeal of the liability finding. Were this Court to find standing, there would still be multiple issues to be resolved prior to the entry of the final judgment. Those lingering and outstanding issues are further reasons that the Petition is a flawed vehicle for addressing any issue raised by the decision below.

C. This Case Does Not Present An Important Question In Need Of Decision At This Time.

Contrary to the assertion in the Petition, this case does not present an issue likely to have an impact beyond this case.

Petitioner asserts that the Seventh Circuit's decision will impact cases brought under the Fair Credit Reporting Act, ("FCRA"), 15 U.S.C. § 1681, which was the statute at issue in *Spokeo* and in *TransUnion*, and the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, as well as the FDCPA. Pet. 21-25. Petitioner's argument is inconsistent with her argument that she has standing because her FDCPA claim has a common law analogue. In comparing a statutory claim to a common law claim, "courts should assess whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 141 S. Ct. at 2204, quoting *Spokeo*, 578 U.S. at 341.

The statutes Petitioner identifies protect different interests from those implicated by Petitioner's FDCPA claim. The FCRA protects an individual from the public disclosure of private information. As this Court found in *TransUnion*, the victim of a false disclosure of private information has standing because the harm suffered is analogous to the interest protected by the tort of defamation. 141 S. Ct. at 2208. The TCPA protects an individual from an unlawful commercial intrusion, which

itself imposes costs upon the unwilling party. Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, §2, 105 Stat. 2394, 2394 (47 U.S.C. §227 note).

By contrast, Petitioner states the FDCPA's concern was to prevent "abusive debt collection practices." Pet. 3 (citation omitted). Petitioner's claim is even narrower, focusing on the impact, if any, of stating Respondent "will not" sue her, rather than it "cannot" or "could not" sue her. There is no reason to believe that deciding whether Petitioner has standing to bring that specific claim is likely to impact cases involving other claims or theories related to the FDCPA, much less cases involving entirely different statutes and interests.

Petitioner asserts there are many other cases in the lower courts that involve standing to sue for statutory claims, suggesting that that demonstrates the need for review of this case. Pet. 21-24. To the contrary, the existence of other cases provides ample reason to *deny* the Petition. The volume of potential cases reinforces the conclusion that this Court can and should wait for a proper vehicle to review—it need not take up this case, which does not present a split on an important legal issue or involve any confusion about how to apply this Court's teachings, and which was correctly decided.

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

DAVID M. SCHULTZ
TODD P. STELTER
HINSHAW & CULBERTSON LLP
151 North Franklin Street
Chicago, IL 60606
(312) 704-3527
dschultz@hinshawlaw.com

MICHAEL T. BRODY
Counsel of Record
GABRIEL K. GILLETT
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 222-9350
mbrody@jenner.com