

No. 22A-\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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RENETRICE R. PIERRE,

**Applicant,**

v.

MIDLAND CREDIT MANAGEMENT, INC.,

**Respondent.**

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

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**APPLICATION FOR EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI**

To: Associate Justice Amy Coney Barrett, Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Under this Court’s Rules 13.5 and 22, Applicant Renetrice R. Pierre respectfully requests an extension of sixty (60) days to file a petition for a writ of certiorari in this case. Her petition will challenge the decision of the Seventh Circuit in *Pierre v. Midland Credit Management, Inc.*, 29 F.4th 934 (7th Cir. 2022), a copy of which is attached to this application. In support of this application, Applicant states the following:

1. By a divided vote, the Seventh Circuit issued its opinion on April 1, 2022, and on June 8, 2022, it denied a timely petition of rehearing over the dissent of Judge Hamilton (joined by Rovner, Wood, and Jackson-Akiwumi, JJ.). Without an extension, the petition for a writ of certiorari would be due on September 6, 2022. With the requested extension, the petition would be due on November 7, 2022 (as November 5, 2022 falls on a Saturday). This Court’s jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case presents an important question for review that has divided the Courts of Appeals. “The issue is whether Congress has the power under the Constitution to create private causes of action under the Fair Debt Collection Practices Act [FDCPA] and other consumer protection statutes for injuries that are intangible but quite real”—such as “emotional distress, stress, and harm to reputation.” *Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 940 (7th Cir.

2022) (Hamilton, J., dissenting). In this case, the district court granted summary judgment in favor of Applicant on her claim that Respondent’s attempt to collect so-called “zombie debt” from her violated the FDCPA. *Id.* at 937. Although she did not pay the debt, she testified that “she experienced emotional distress arising from her concern about being sued for the debt” and “confusion.” *Id.* at 939. Over Judge Hamilton’s dissent, the Seventh Circuit reversed the judgment. The court held that Applicant’s injury failed to satisfy Article III’s concreteness requirement for standing because “[p]sychological states induced by a debt collector’s letter . . . fall short”; the court held Applicant’s “emotional distress” “is insufficient to confer standing in this context.” *Id.* at 939.

3. In holding that psychological injuries are categorically insufficient for Article III standing to bring a FDCPA claim, the decision below places the Seventh Circuit “out of step with the Supreme Court” and “at the far, most restrictive, end of a range of approaches by different circuits.” *Pierre v. Midland Credit Management, Inc.*, 36 F.4th 728 (Mem.), 736 (7th Cir. 2022) (Hamilton, J., dissenting from denial of rehearing en banc, joined by Rovner, Wood, and Jackson-Akiwumi, JJ.). The Seventh Circuit’s decision contravenes this Court’s guidance and “deepens an important and growing circuit split on the separation of powers between legislative and judicial branches.” 29 F.4th at 940 (Hamilton, J., dissenting).

4. Article III of the Constitution requires that “the plaintiff’s injury in fact be ‘concrete’—that is, ‘real and not abstract.’” *TransUnion LLC v. Ramirez*, 141

S.Ct. 2190, 2204 (2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016)). “Congress may ‘elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Id.* at 2204-05 (quoting *Spokeo*, 578 U.S. at 341). Critically, “[a]lthough tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete.” *Spokeo*, 578 U.S. at 340. In both *Spokeo* and *TransUnion*, this Court set forth the analysis to determine whether an intangible injury is concrete for Article III purposes—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” and “afford due respect to Congress’s decision . . . to grant a plaintiff a cause of action to sue . . . .” *TransUnion*, 141 S.Ct. at 2204 (quoting *Spokeo*, 578 U.S. at 341).

5. Following *Spokeo* and *TransUnion*, the lower courts have split on the concreteness of intangible injuries under the FDCPA (among other statutes). The split is “entrenched, at least pending further guidance from the Supreme Court.” *Pierre*, 29 F.4th at 955; see *TransUnion*, 141 S.Ct. at 2211 n.7 (acknowledging, but “tak[ing] no position on,” the prospect that “a plaintiff’s knowledge that he or she is exposed to a risk of future physical, monetary, or reputational harm could cause its own current emotional or psychological harm,” which could be “analog[ized] to the tort of intentional infliction of emotional distress”).

6. The Third and Tenth Circuits have squarely held, contrary to the ruling of the Seventh Circuit below, that plaintiffs have standing to seek redress for intangible injuries implicating psychological distress under the FDCPA. *See Lupia v. Medicredit, Inc.*, 8 F.4th 1184, 1191-92 (10th Cir. 2021) (plaintiff’s “intangible injuries” are “concrete for standing purposes” under the FDCPA where she experienced “an unwanted intrusion into [her] peace and quiet”); *DiNaples v. MRS BPO, LLC*, 934 F.3d 275, 279-80 (3d Cir. 2019) (FDCPA plaintiff “suffered a concrete injury when her debt collector sent her a letter in an envelope displaying a QR code that, when scanned, revealed her account number with the debt collection agency” because it was “an invasion of privacy”).

7. Meanwhile, the Sixth and Eighth Circuits have moved toward restricting standing in similar contexts. *See Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 463 (8th Cir. 2022) (no concrete harm for “intangible injuries” of emotional distress experienced by FDCPA plaintiff); *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 864 (6th Cir. 2020) (FDCPA plaintiff’s “failure to allege anything other than anxiety makes us skeptical about whether he has established an injury in fact”). And while a panel of the Eleventh Circuit sided with the Third and Tenth Circuits in recognizing standing for an intangible injury under the FDCPA, that panel decision has been vacated and is being considered en banc. *Hunstein v. Preferred Collection & Mgmt. Servs.*, 17 F.4th 1016, 1024 (11th Cir. 2021) (FDCPA defendant’s “alleged statutory violation is sufficiently analogous” to “the historical pedigree of invasion-of-privacy torts”;

thus, plaintiff had Article III standing), *vacated and rehearing en banc granted*, 17 F.4th 1103 (11th Cir. 2021).

8. The Seventh Circuit's decision was in error. In holding that Applicant's psychological state induced by the Respondent's conduct was not sufficiently concrete to permit standing for her FDCPA claim, the Seventh Circuit overrode Congress's judgment in providing a cause of action under the FDCPA for injuries such as Applicant's and disregarded that close analogues in the common law and constitutional law permit suit for the kind of injuries she experienced here. In so doing, the court below effectively endorsed the faulty notion that only tangible injuries are concrete enough for Article III standing. As Judge Hamilton explained in his thorough and scholarly dissenting opinions, the intangible injuries Applicant sued under the FDCPA to redress satisfy the standard for concreteness for Article III standing under the analysis set forth in *Spokeo* and *TransUnion. Pierre*, 36 F.4th at 731-37; *Pierre*, 29 F.4th at 946-50.

9. This case presents an opportunity for the Court to resolve the circuit split on this important issue.

10. This application for a 60-day extension seeks to accommodate Applicant's legitimate needs. Applicant recently retained the undersigned counsel. The extension is needed for counsel and his colleagues to familiarize themselves with the record of this case, the decisions below, and the relevant case law.

11. For the foregoing reasons, Applicant respectfully requests that

the due date for her petition for a writ of certiorari be extended to November 7, 2022.

Respectfully submitted,

*/s/ Gregory Dubinsky*

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