No. 24-7189

IN THE
Supreme Court of the United States

HANNAH HEKEL,

Petitioner,

v.

HUNTER WARFIELD, INC.,

Respondent.

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

REPLY BRIEF FOR PETITIONER

LINDSEY POWELL
ZIMMER, CITRON & CLARKE LLP
345 West Washington Ave. #300
Madison, WI 53703

JOHN M. BUHTA
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, INC.
903 West Center Street
Suite 230
Rochester, MN 55902

DAVID J. ZIMMER
Counsel of Record
ZIMMER, CITRON & CLARKE LLP
130 Bishop Allen Drive
Cambridge, MA 02139
(617) 676-9421
david@zimmercitronclarke.com

DARREN. B. SCHWIEBERT
DEBT LAWSUIT RELIEF, INC.
30 South 9th Street
7th Floor
Minneapolis, MN 55402

Counsel for Petitioner

September 18, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

When debt collectors send letters to consumers in violation of the Fair Debt Collections Practices Act (FDCPA), those letters often inflict emotional harm. The circuits are intractably split as to whether such harm is sufficiently concrete to support standing. By holding that emotional harm is insufficient, the Eighth Circuit's decision directly implicates that split and is incorrect on the merits. Consistent with *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), other circuits have correctly held that emotional distress may suffice to establish standing in this context given that it is both a traditionally recognized harm and among those that Congress intended the FDCPA to address. This Court should grant the petition for a writ of certiorari to resolve the conflict and ensure that plaintiffs can enforce the FDCPA based on the very harms Congress intended to prevent.

ARGUMENT

I. The circuits are in direct conflict on the question presented.

1. A direct and acknowledged circuit conflict has emerged since this Court's decisions in *Spokeo, Inc. v. Robbins*, 578 U.S. 330 (2016), and *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), regarding the showing required to establish standing based on certain types of intangible harms against which the FDCPA was meant to protect. That conflict has implications not only for the enforcement of consumer protection laws but also for the relationship between Congress and the judiciary. The Eighth Circuit's decision in this case "deepens an important and growing circuit split on the separation of powers between legislative and

judicial branches." *Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 940 (7th Cir. 2022) (Hamilton, J., dissenting), *cert. denied* 143 S. Ct. 775 (2023).

Spokeo and *TransUnion* clarified the longstanding requirement that a plaintiff must demonstrate a "concrete" harm to establish Article III standing. *TransUnion*, 594 U.S. at 422. "That inquiry asks whether plaintiffs have identified a close historical or common-law analogue for their asserted injury," and requires courts to "afford due respect to Congress's decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action" in connection therewith, *id.* at 424-25.

In applying these precedents, the courts of appeals are divided as to "whether Congress has the power under the Constitution to create private causes of action under the [FDCPA] and other consumer protection statutes for injuries that are intangible but quite real." *Pierre*, 29 F.4th at 940 (Hamilton, J., dissenting). The FDCPA provides that a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. § 1692e, and it prohibits many actions likely to cause "emotional distress, fear, and anxiety." *Pierre*, 29 F.4th at 941 (Hamilton, J., dissenting). Congress specifically identified intangible harms as among those it sought to prevent. 15 U.S.C. § 1692(a).

The Third, Fourth, and Fifth Circuits have held that the emotional distress caused by unlawful debt collection practices is a concrete harm sufficient to support Article III standing. The Eleventh Circuit has reached the same conclusion in cases in which the

plaintiff additionally alleges that she spent time grappling with or responding to an unlawful debt collection letter—which will be essentially every case. The Sixth and Seventh Circuits have reached a contrary conclusion, holding that emotional harms like anxiety and distress are not sufficiently concrete in this context notwithstanding that they are among the harms that Congress meant to prevent. In holding that petitioner lacks standing and requiring a heightened degree of proof, the Eighth Circuit joined the Sixth and Seventh Circuits, deepening the existing split and substantially undermining enforcement of the FDCPA in that circuit.

2. The Third, Fourth, Fifth, and Eleventh Circuits have correctly held that "emotional distress" of the type often caused by unlawful debt collection practices "is a traditional harm that satisfies *TransUnion*'s concreteness requirement." *Calogero v. Shows, Cali & Walsh, L.L.P.*, 95 F.4th 951, 958 (5th Cir. 2024). The plaintiffs in *Calogero* "complained of 'fear, anxiety, and emotional distress' after receiving 'intimidating' and 'misleading'" letters demanding payment of between $2,500 and $4,600 plus interest and threatening further action. *Id.* at 956-57. One plaintiff (but not the other) "was so 'terrified' by [the defendant's] unlawful threat to sue and by the prospect of losing her home that she agreed to make monthly payments." *Id.* at 958. The Fifth Circuit held that the plaintiffs had demonstrated "a concrete and cognizable harm." *Ibid.*

Underpinning this conclusion is the principle that courts should "focus[] on types of harms protected at common law, not the precise point at which those

harms become actionable." *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816, 822 (5th Cir. 2022) (quotation marks omitted). "[A] plaintiff doesn't need to demonstrate that the level of harm he has suffered would be actionable under a similar, common-law cause of action." *Ibid.* Instead, he "need[s] to show that the type of harm he's suffered is similar in kind to a type of harm that the common law has recognized as actionable." *Ibid.* Emotional harms meet that standard. *Calogero*, 95 F.4th at 958.

The Third Circuit has similarly recognized that, although confusion alone is not sufficiently concrete, any associated "emotional harm" is. *Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 148-49 (3d Cir. 2023); *see Clemens v. ExecuPharm Inc.*, 48 F.4th 146, 155-56 (3d Cir. 2022) (holding that "emotional distress" is sufficiently concrete).

The Fourth and Eleventh Circuits have reached the same conclusion. The Fourth Circuit held that a plaintiff alleged a sufficiently concrete harm where she claimed that, "as a 'direct consequence' of [the defendant's] alleged violations of the FDCPA's proscribed practices, she 'suffered and continues to suffer' . . . 'emotional distress, anger, and frustration.'" *Ben-Davies v. Blibaum & Assocs., P.A.*, 695 F. App'x 674, 676-77 (4th Cir. 2017). While the Eleventh Circuit has stopped short of deciding "whether emotional distress alone is a sufficiently concrete injury," it "found standing where the plaintiff experienced both emotional distress manifesting in a loss of sleep and wasted time spent" trying to understand and resolve issues created by a misleading debt collection letter—

time that will be spent in essentially all cases alleging FDCPA violations. *Toste v. Beach Club at Fontainbleau Park Condominium Ass'n, Inc.*, 2022 WL 4091738, at *4 (11th Cir. 2022); *see Losch v. Nationstar Mortgage LLC*, 995 F.3d 937, 943 (11th Cir. 2021) (holding that "stress, anxiety, and lack of sleep" are sufficiently concrete when combined with time spent responding to an unlawful letter).

On the other side of the split, the Seventh Circuit has held that "[p]sychological states induced by a debt collector's letter . . . fall short" of demonstrating the type of concrete harm that Article III requires, concluding that "worry, like confusion, is insufficient to confer standing." *Pierre*, 29 F.4th at 939. Similarly, although the Sixth Circuit has "recognized that an allegation of *extreme* emotional distress can suffice" to confer standing, it has held that "emotional harm like anxiety or distress" of the type often experienced by consumers injured by FDCPA violations is insufficient. *Van Vleck v. Leikin, Ingber, & Winters, P.C.*, 2023 WL 3123696, at *6 (6th Cir. 2023) (emphasis added).

Adding to this uncertainty, at least two other courts of appeals have held that "confusion and misunderstanding are insufficient to confer standing" without addressing the emotional harm that often results from such confusion. *Shields v. Professional Bureau of Collections of Maryland, Inc.*, 55 F.4th 823, 830 (10th Cir. 2022); *see Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544, 547 (9th Cir. 2020).

As a result, what suffices to establish concrete injury in this context is unclear and inconsistent across the federal courts of appeals, with significant implications for the congressional judgments reflected in the FDCPA and other statutes.

3. Respondent's attempts to minimize this judicially acknowledged conflict are unavailing. Contrary to respondent's suggestion (at 13), the Fifth Circuit has expressly "recognized that 'emotional distress' is a traditional harm that satisfies *TransUnion*'s concreteness requirement." *Calogero*, 95 F.4th at 958. And it found sufficient in *Calogero* allegations of "'fear, anxiety, and emotional distress' after receiving 'intimidating' and 'misleading'" letters. *Ibid.* The court's observation that one plaintiff's fear was so great that it caused her to agree to make monthly payments simply underscored the magnitude of her fear. *See ibid.* Given that the other plaintiff had *not* agreed to such payments, the court did not suggest that the additional step of agreeing to make payments was necessary to establish concreteness—in contrast to the Ninth Circuit in *Adams*, 836 F. App'x at 547.

Respondent's efforts to distinguish other circuits' decisions likewise fail. While the Eleventh Circuit did not decide whether emotional distress alone qualifies as an injury in fact, it found such distress sufficient when coupled with an allegation that the plaintiff spent even a small amount of time trying to understand or respond to the debt collection letter. *See Toste*, 2022 WL 4091738, at *4. Given that some amount of time will be spent by practically any con-

sumer in receipt of such a letter, that additional consideration does not meaningfully distinguish the Eleventh Circuit's approach.

Respondent dismisses the Fourth Circuit's decision in *Ben-Davies* because it predates *TransUnion*. Br. in Opp. 13. But *TransUnion* applied *Spokeo*'s concreteness analysis—looking to history and tradition while giving due respect to congressional judgments. *See TransUnion*, 594 U.S. at 424-26 (discussing *Spokeo*, 578 U.S. at 340-41). And the Fourth Circuit relied on *Spokeo* in concluding that the plaintiff alleged a sufficiently concrete harm where she suffered "'emotional distress, anger, and frustration.'" *Ben-Davies*, 695 F. App'x at 676-77. Nothing about *TransUnion* changes that analysis. There is likewise no substance to respondent's suggestion (at 13) that the emotions of anger and frustration are different in degree or in kind from the emotional harms alleged in other cases.

II. The Eighth Circuit's opinion directly implicates the circuit conflict.

1. The harm alleged in this case would have been sufficient for standing in the Third, Fourth, Fifth, and Eleventh Circuits. Petitioner alleges that she received a debt collection letter demanding over $8,000 that contained false and misleading statements and caused her "out-of-pocket costs, worry, and sleeplessness," as well as the expenditure of time. Pet. App. 33, 37-39. These allegations closely align with those in *Calogero, Clemens*, and *Ben-Davies*, in which the plaintiffs established standing based on their experi-

ence of fear, anxiety, anger, frustration, or other emotional distress. *Calogero*, 95 F.4th at 958; *Clemens*, 48 F.4th at 157-58; *Ben-Davies*, 695 F. App'x at 676-77. And they would likewise be sufficient under *Toste* and *Losch*, which recognized standing "where the plaintiff experienced both emotional distress manifesting in a loss of sleep and wasted time spent resolving problems caused by the defendant's mistakes"—both of which are alleged here. *Toste*, 2022 WL 4091738 at *4; *see Losch*, 995 F.3d at 943. The Eighth Circuit reached a contrary conclusion by following the holdings of the Sixth and Seventh Circuits that "emotional injuries" like anxiety and distress "fall short" of establishing standing. Pet. App. 11 (alteration omitted).

Respondent errs in asserting that the Eighth Circuit did not weigh in on the circuit conflict. According to respondent, the Eighth Circuit "did not foreclose standing for *true* emotional injuries" but instead "reaffirmed the position that *certain* negative emotions are insufficient for standing while declining to decide whether emotional distress is sufficient." Br. in Opp. 11 (emphases added). But the Eighth Circuit read its precedent to categorically foreclose treating "emotional or psychological harm" or "negative emotions" as the type of harm that "suffice[s] for Article III purposes." Pet. App. 11-12. In asserting that "'nervousness, restlessness, irritability, *amongst other negative emotions*' are not" a concrete injury, *ibid.* (emphasis added), the court of appeals was not focused on the specific negative emotions enumerated but rather was providing examples of the broader class of emotional harms that it has found categorically insufficient to

support standing. That aligns with the Seventh Circuit's position. *Pierre*, 29 F.4th at 939 (holding that "[p]sychological states induced by a debt collector's letter . . . fall short" of demonstrating standing). And it squarely conflicts with the Fifth Circuit's approach. *Calogero*, 95 F.4th at 958 (holding that "emotional distress is a traditional harm that satisfies *TransUnion*'s concreteness requirement" (quotation marks omitted)).

2. There is likewise no merit to respondent's contention that "it does not matter whether Ms. Hekel's claimed injuries are sufficient for standing because she did not plead specific facts necessary to support her claims." Br. in Opp. 7. Given that petitioner pleaded the type of emotional harm found sufficient by other circuits—asserting that respondent's letter caused her "out-of-pocket costs, worry, and sleeplessness," as well as the expenditure of time—the Eighth Circuit's view that these allegations are insufficient simply restates its view that emotional harm is not enough. Pet. App. 39.

If anything, respondent's argument underscores the conflict between the court of appeals in this case and that of other circuits. The Fifth Circuit has explained that courts must "focus[] on *types* of harms protected at common law, not the *precise point* at which those harms become actionable." *Perez*, 45 F.4th at 822 & n.1 (emphases added) (collecting cases). The Eighth Circuit's conclusion that petitioner's allegations lack sufficient "factual enhancement," Pet. App. 12, seems to require a plaintiff "to demonstrate that the *level* of harm [s]he has suffered would be actionable under a similar, common-law

cause of action," rather than making a showing only as to the similarity of its type. *Perez*, 45 F.4th at 822 (emphasis added); *see Garland v. Orlans, PC*, 999 F.3d 432, 439-40 (6th Cir. 2021) (requiring a heightened showing similar to the Eighth Circuit here). These compounding errors directly implicate the circuit conflict and warrant review by this Court.

Respondent's argument in this respect is further undermined by the fact that it did not dispute the adequacy of petitioner's standing in its district court briefing, nor did the district court question petitioner's standing in granting respondent summary judgment on the merits. Rather than deny certiorari based on a purported lack of "factual enhancement" that petitioner was never asked to provide in district court, Pet. App. 12, this Court should grant certiorari to resolve the circuit conflict and make clear that emotional harm is sufficient. Whether petitioner can adequately demonstrate such harm after being given a meaningful opportunity to do so is a question for the court on remand.

III. The Eighth Circuit's analysis is inconsistent with *TransUnion*.

The Eighth Circuit's opinion misreads *TransUnion* and fails to give Congress's judgment due respect. It also "overlook[s] close historical parallels—from both common law and constitutional law—for remedies for intangible harms caused by many violations of the FDCPA and similar statutes." *Pierre*, 29 F.4th at 940 (Hamilton, J., dissenting). These errors led the court of appeals "to restrict standing under consumer protection laws much more tightly than [this] Court itself has," and "[t]he cumulative effect may be close to a

tipping point, leaving at least the FDCPA largely neutered" in many States. *Ibid.*

TransUnion reiterated 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." 594 U.S. at 426 (quoting *Spokeo*, 578 U.S. at 341). "'Article III standing requires a concrete injury even in the context of a statutory violation.'" *Ibid.* (quoting *Spokeo*, 578 U.S. at 341).

The facts of *TransUnion* illustrate this requirement. There, a credit reporting agency told creditors whether a consumer's name matched a name on a government watch list, without ascertaining whether the consumer was the same individual as the person listed. 594 U.S. at 419-20. Many law-abiding Americans share names with people on the government's list and were thus improperly identified as potential matches. *Id.* at 420. Although anyone whom the agency identified as a potential match had a viable claim under the Fair Credit Reporting Act, this Court held that only plaintiffs for whom the reporting agency disclosed that information to third parties had Article III standing. *Id.* at 417. Plaintiffs for whom the agency never reported the potential match did not have standing given the lack of any contention that those plaintiffs had even known of the existence of the false information, much less been affected by it. *Id.* at 434.

Contrary to the suggestion of the Eighth Circuit and other courts on its side of the split, the problem

for the second group of plaintiffs was not that their injury was intangible but that they had not experienced any injury at all. Those plaintiffs did not even know that their information was at risk. *See TransUnion*, 594 U.S. at 433. While this Court has made clear that "mere risk of future harm, standing alone, cannot qualify as a concrete harm," it has also recognized that such risk can "cause[] a *separate* concrete harm" sufficient to support standing. *Id.* at 436.

Petitioner's injury here is analogous to that of the plaintiffs who *had* standing in *TransUnion*. Petitioner was not only aware of the unlawful debt-collection letters that she received but had very real negative experiences as a result—including sleeplessness, which is not just emotional but physical. Whether or not the *degree* of harm would make out a tort claim at common law, these harms are of a *kind* that has historically been legally cognizable. *See Calogero*, 95 F.4th at 958. They are also among the precise types of harm that Congress intended the FDCPA to prevent. Those are the considerations that *Spokeo* and *TransUnion* direct courts to consider, and proper consideration of those factors has led the Third, Fourth, Fifth, and Eleventh Circuits to reach a different conclusion from that reached by the Eighth Circuit below.

Petitioner's experience of worry and a resulting loss of sleep after receiving respondent's letter establishes standing. The Eighth Circuit's contrary holding threatens to undermine Congress's ability to prevent these harms as part of its regulation of interstate commerce.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

LINDSEY POWELL
ZIMMER, CITRON & CLARKE LLP
345 West Washington Ave. #300
Madison, WI 53703

JOHN M. BUHTA
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, INC.
903 West Center Street
Suite 230
Rochester, MN 55902

DAVID J. ZIMMER
Counsel of Record
ZIMMER, CITRON & CLARKE LLP
130 Bishop Allen Drive
Cambridge, MA 02139
(617) 676-9421
david@zimmercitronclarke.com

DARREN. B. SCHWIEBERT
DEBT LAWSUIT RELIEF, INC.
30 South 9th Street
7th Floor
Minneapolis, MN 55402

Counsel for Petitioner

September 18, 2025