



## United States Supreme Court Holds That Plaintiffs Must Suffer Concrete Harm to Sue in Federal Court

As part of the flurry of its end-of-term opinions, the U.S. Supreme Court recently issued its opinion in *TransUnion LLC v. Ramirez*, 594 U.S. \_\_\_\_ (2021) confirming that plaintiffs who have suffered no concrete harm have no standing to sue in federal court under Article III of the U.S. Constitution. As Justice Kavanaugh succinctly put it in writing for the five justice majority, “No concrete harm, no standing.”

*Ramirez* involves a class-action brought under the Fair Credit Reporting Act (“FCRA”). In particular, 8,185 class members asserted that TransUnion had “failed to use reasonable procedures to ensure the accuracy of their credit files, as maintained internally by TransUnion” when it identified each of them as a “potential match” for terrorists or drug traffickers on the U.S. Treasury’s Office of Foreign Assets Control’s list of “Specially Designated Nationals.” The class members were not the individuals on that list but had similar names. TransUnion shared misleading credit reports about 1,853 class members with third-party businesses. Of the remaining 6,332 class members, TransUnion had not provided any third party with their credit reports. The class members also asserted that TransUnion violated the FCRA by incorrectly formatting mailings TransUnion sent each class member.

The case was tried to a jury in the district court, which returned a multi-million dollar verdict, which included punitive damages, in the class members’ favor. TransUnion appealed to the U.S. Court of Appeals for the Ninth Circuit, asserting the plaintiffs lacked Article III standing. The Ninth Circuit disagreed and affirmed the jury’s verdict.

Writing for the majority, Justice Kavanaugh found that most of the class members lacked standing. After reaffirming the Court’s longstanding precedent that, to have standing, a plaintiff’s injury must bear a “close relationship” (but not necessarily be

identical) to a harm traditionally recognized at common law, Justice Kavanaugh concluded that the 1,853 class members who had misleading information about them published to third-parties had Article III standing. The majority determined that the harm caused by such disclosure bears a close relationship to the reputational harm associated with defamation.

For the remaining 6,332 class members who did not have any misleading information about them published to any third party, however, the majority held they lacked standing. Comparing those Plaintiffs' claims to "someone writ[ing] a defamatory letter and then stor[ing] it in her desk," the majority in *Ramirez* concluded that "an inaccuracy in an internal credit file, if it is not disclosed to a third party, causes no concrete harm."

In perhaps the most important section of the opinion, the majority then turned to the Plaintiffs' alternative argument that those unpublished inaccuracies presented a risk of future harm and thus, under *Spokeo v. Robins*, they had standing. The majority flatly rejected this argument, stating, "...*Spokeo* did not hold that the mere risk of future harm, without more, suffices to demonstrate Article III standing in a suit for damages." That is, the Court distinguished between claims for injunctions and claims for damages—the risk of future harm may suffice to confer standing for injunction claims, but cannot, on its own, confer standing for damages claims.

While Justice Thomas, writing in dissent, sharply criticized the majority's conclusion that risk of future harm is insufficient for standing in damages cases, lower courts must adhere to the majority's holding, which may have wide effects for a litany of statutory claims. Practitioners and their clients should scrutinize not only FCRA claims that seek only statutory damages, but claims under numerous other federal statutes, such as the Fair Debt Collection Practices Act, the Real Estate Settlement Procedures Act, and the Telephone Consumer Protection Act, when a plaintiff alleges only that they were exposed to a risk of harm in the future and not that they were damaged as of the time of filing suit. In such cases, it will likely be worthwhile to present a standing challenge if the claim is brought in federal court.

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