No.

In the Supreme Court of the United States

IQ DATA INTERNATIONAL, INC.,
Petitioner,

v.

RYAN SIX,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the receipt of a written letter constitutes an intrusion upon seclusion such that the recipient has suffered a cognizable injury in fact sufficient to confer Article III standing in a case brought for an alleged violation of the Fair Debt Collection Practices Act?

PARTIES TO THE PROCEEDING

All parties to the proceeding are identified in the caption.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

100% of the stock in Petitioner IQ Data International, Inc. is owned by TS Holdings, Inc., which is a wholly owned subsidiary of American Bankers Insurance Group, Inc., which is wholly owned by its parent company, Assurant, Inc., which issues stock and is traded on the New York Stock Exchange.

STATEMENT OF RELATED PROCEEDINGS

The proceedings directly related to this petition are:

U.S. District Court for the District of Arizona:

> *Six v. IQ Data International, Incorporated*, No. 2:22-cv-00203-MTL (May 18, 2023)

U.S. Court of Appeals for the Ninth Circuit:

> *Six v. IQ Data International, Incorporated*, No. 15887 (Feb. 24, 2025), *reh'g denied* (Mar. 28, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner IQ Data International, Inc. ("IQ Data" or "Petitioner") respectfully petitions for a writ of certiorari to review the opinion of the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION

This Court should grant review because courts around the country, including federal district and appellate courts, and a multitude of circuit courts, are conflicted as to what *kind* of alleged unwelcome communication is sufficiently akin to an intrusion upon seclusion claim for purposes of establishing an intangible harm necessary to meet the injury-in-fact prong of Article III standing. Indeed, the conflicting opinions issued by numerous courts confirm there are two distinct prongs of this analysis requiring this Court's guidance.

First, this Court's guidance is needed on the historical common law analogue analysis referenced in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021). Specifically, this case calls into question whether there is a difference between types of unwelcome communications akin to an intrusion upon seclusion injury including, but not limited to, phone calls, text messages, voicemails, emails, and written letters delivered through the mail. The parameters of an alleged injury based upon intrusion upon seclusion are more important now than ever as companies communicate with consumers in new and modern ways as

a result of evolving technology. The last time this Court discussed the tort of intrusion upon seclusion, and whether analogous harms were sufficient to establish an injury for Article III standing, was in *TransUnion*. However, that opinion does not go so far as to define the parameters of what facts must be alleged for Article III standing to be asserted on that basis. This case is the ideal vehicle for this Court to further define the standing framework developed in *Spokeo* and *TransUnion* and settle a troubling circuit split prompted by the Ninth Circuit's decision.

Second, guidance is needed on the congressional intent underlying the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C. § 1692 (1996), and specifically whether the provisions of section 1692c(a)(2) were intended to elevate a statutory harm into a concrete and particularized injury. Courts across the country are reaching dramatically different conclusions as to whether a plaintiff has established Article III standing under the different subsections of § 1692c, based on conflicting interpretations of congressional intent behind the same statutory language. This recurring issue has arisen numerous times over the past few years. IQ Data respectfully asks this Court for guidance as to congressional intent underlying the FDCPA statute at issue.

Moreover, this case warrants this Court's review because, in holding for Mr. Six ("Six" or "Respondent"), the Ninth Circuit decision failed to meaningfully analyze the two issues described above, and, in the process, further created a conflict with the Fifth and Seventh Circuits.

Finally, this case is the appropriate vehicle for this Court to weigh on this issue and provide

meaningful guidance on the confines of an alleged injury associated with an intrusion upon seclusion for purposes of establishing standing, as well as providing a definitive interpretation on whether and how Congress intended specific provisions of the FDCPA to be utilized in pleading a sufficient injury under Article III. For these reasons, Petitioner respectfully requests this Court grant certiorari and review the Ninth Circuit's decision.

OPINIONS AND ORDERS BELOW

The Ninth Circuit's opinion (Petition Appendix "Pet.App." 1a-11a) is reported at 129 F. 4th 630. The District Court's opinion (Pet.App. 12a-27a) is reported at 673 F. Supp. 3d 1040.

JURISDICTION

The court of appeals entered its opinion on February 24, 2025. A petition for rehearing was denied on March 28, 2025. (Pet.App. 28a-29a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the United States Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States . . . .

The Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p (1996), provides:

> (a) Abusive Practices
>
> There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
>
> ****

15 U.S.C. § 1692(c) states:

> (a) Communication with the consumer generally.
>
> Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—
>
> **
>
> (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer[.]

STATEMENT OF THE CASE

A. This Court Should Provide Guidance on How to Determine Whether Article III Standing Exists for Statutory Violations of the FDCPA When the Alleged Injury is Premised on Harms Analogous to Intrusion Upon Seclusion

The FDCPA is designed to protect consumers from abusive acts and practices related to the collection of consumer debts. It also imposes civil liability on debt collectors for certain prohibited practices. It is enforced by federal regulators and consumers who have a private right of action under certain provisions of the statute. However, private suits are still limited by constitutional constraints including Article III standing. It is not enough that a consumer allege a technical violation of the statute – they must also establish they were harmed by such violation in a way that rises to the level of a concrete and particularized injury-in-fact.

1. Reliance on Common Law Analogues is Limited by Historical Practice

This Court has held a plaintiff may establish standing by analogizing their alleged injury to a harm historically recognized at common law. Not just any alleged injury is sufficient; rather, the alleged harm must be cognizable under that historical common law practice. To determine whether a plaintiff is able to avail themselves of a historically analogous common

law claim, such as an intrusion upon seclusion, it is critical to first evaluate the historical application of such claims. The Restatement (Second) of Torts defines "Intrusion upon Seclusion" as "[o]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." Restatement (Second) of Torts § 652B (Am. Law Inst. 1977).

> The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room in a hotel or insists over the plaintiff's objection in entering his home. It may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs, as by looking into his upstairs windows with binoculars or tapping his telephone wires. It may be by some other form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents. The intrusion itself makes the defendant subject to liability, even though there is no publication or other use of any kind of the photograph or information outlined.

Id. at Comment (b).

> There is likewise no liability unless the interference with the plaintiff's seclusion is a substantial one, of a kind that would be highly offensive to the ordinary reasonable man, as the result of conduct to which the reasonable man would strongly object. Thus there is no liability for knocking at the plaintiff's door, or calling him to the telephone on one occasion or even two or three, to demand payment of a debt. It is only when the telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff, that becomes a substantial burden to his existence, that his privacy is invaded.

Id. at Comment (d).

Whether a plaintiff can establish a concrete and particularized injury by analogizing it to intrusion upon seclusion must be measured against these historical contours, which highlight the "highly offensive" nature that must be inherent in the alleged intrusion. The following cases where intrusion upon seclusion was found, are instructive. *See, e.g.*, *Dietemann v. Time, Inc.*, 449 F.2d 245 (9th Cir.1971); *Thompson v. City of Jacksonville*, 130 So.2d 105 (Fla. App. 1961) (search of home without warrant); *Byfield v. Candler*, 33 Ga. App. 275, 125 S.E. 905 (1924) (breaking into woman's bedroom on steamboat); *Sutherland v. Kroger Co.*, 110 S.E.2d 716 (W. Va. 1959) (illegal search of woman's shopping bag in a store); *Noble v. Sears, Roebuck & Co.*, 33 Cal. App. 3d 654, 109

Cal.Rptr. 269 (1973) (entry into hospital room by deception); *Love v. Southern Bell Tel. & Tel. Co.*, 263 So. 2d 460 (La. App. 1972) (plaintiff photographed at home, drunk); *Estate of Berthiaume v. Pratt*, 365 A.2d 792 (Me. 1976) (doctor photographed dying patient over protests).

2. Standing Based on Harms Analogous to Intrusion Upon Seclusion Requires a "Highly Offensive" Intrusion under the FDCPA

Some portions of the FDCPA specifically address conduct deemed abusive or harassing. *See, e.g.,* §§ 1692d, 1692e, and 1692f. However, other sections of the FDCPA focus on technical requirements. Section 1692c governs communications in connection with debt collection. Relevant here, subsection (a)(2) prohibits debt collectors from communicating with a consumer regarding collection of a debt if that debt collector knows the consumer is represented by an attorney. This section of the FDCPA does not address abuse or harassment. Nor does it plainly invoke privacy considerations.

A purported violation of section 1692c(a)(2) of the FDCPA does not automatically give rise to an actionable claim. As this Court has long recognized, bare statutory violations do not create live cases and controversies. Instead, a consumer alleging a violation of this section must establish constitutional standing through a concrete and particularized injury. Such standing may be established by analogizing the harm suffered to a claim historically recognized at common law. Here, Respondent asserts he has standing to bring a claim under § 1692c(a)(2) because the receipt of one unwelcome letter, delivered to his mailbox, was

the kind of intrusion that formed the basis of an intrusion upon seclusion claim at common law.

The tort of intrusion upon seclusion only arises when the intrusion would be "highly offensive to a reasonable person." The commentary in the Restatement specifically notes no liability accrues "for knocking at the plaintiff's door, or calling him to the telephone on one occasion or even two or three, to demand payment of a debt." *Id.* The intrusion must be so significant it becomes a substantial burden to the person's existence, thereby invading their privacy.

The legislative history of the FDCPA clarifies Congress intended to prohibit abusive conduct and thus only violations of those statutory provisions which address abusive practices are elevated to a legally cognizable injury under Article III. Senate Report No. 95-382 notes the FDCPA's "purpose is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." S. Rep. No. 95-382, at 1-2 (1977). The Report defines "harassing, deceptive, and unfair debt collection practices" to include "threats of violence; obscene language; publishing of 'shame lists;' harassing or anonymous telephone calls; impersonating a government official or attorney; misrepresenting the consumer's legal rights; simulating court process; obtaining information under false pretenses; collecting more than is legally owing; and misusing postdated checks." *Id.*

Similarly, statements made by the bill's sponsor during the House Floor Debate reveal Congress intended to balance the rights of consumer debtors and their creditors. *See, e.g.*, 123 Cong. Rec. 10242 (1977) (statement of Rep. Annunzio)("The bill's limits on

communication are quite reasonable and strike a fair balance between the debt collector's need to contact and the consumer's right to privacy and right to be free from harassment."). Nowhere does the Senate Report identify the mailing of one letter, especially one that includes accurate information and was requested by the debtor, as an abusive practice. The commentary during the House Floor Debate is also devoid of any discussion that could lead one to infer one unwelcome letter was the type of harm being combatted by the FDCPA.

Accordingly, while the FDCPA's overarching purpose is to prevent abusive debt collection practices, claims asserted under technical violations still require an adequate injury. The Restatement's commentary explains a claim for intrusion upon seclusion only lies where the conduct complained of is so abusive and significant it "becomes a burden" to the individual's "existence." Coupled with the FDCPA's legislative history, this indicates that, when relying on the common law analogue of intrusion upon seclusion to establish an injury under Article III, the alleged intrusion must be highly offensive to a reasonable person such that the intrusion is inherently abusive.

B. Relevant Facts of this Case

Six had an overdue invoice related to his breach of a residential lease. After the invoice remained unpaid, it was sent to collections and placed with IQ Data, a professional collection agency that provides services to the residential apartment industry. Six mailed a dispute letter to Equifax on August 18, 2021, claiming he had no recollection of the debt account and requesting documentation verifying the debt. The same day, Six's

attorney mailed a letter to IQ Data advising that Six had retained counsel and directing IQ Data to send all communications about the debt to counsel.

Although there is some dispute about the precise timeline of what happened next, the facts relevant to this Petition are these. Petitioner processed Six's request first, and mailed one written letter to Six providing the debt validation information he requested in his dispute to Equifax. This letter was placed in Six's mailbox, where he retrieved it and read it at some later time. As noted by the District Court, Six testified he did not know when the letter came to his mailbox. Nevertheless, Six filed suit against IQ Data, asserting it violated 15 U.S.C. § 1692c(a)(2) by communicating directly with him – by sending a single letter – despite IQ Data knowing he was represented by counsel.

C. Procedural History

In the District Court, Six and IQ Data filed cross motions for summary judgment. On May 18, 2023, the District Court issued an Order dismissing the action in its entirety for lack of subject matter jurisdiction. (Pet.App. B, 12a). The District Court found Six had not alleged a concrete injury to satisfy Article III standing for his FDCPA claim under Section 1692c(a)(2). Consequently, the court lacked jurisdiction to adjudicate the merits of his claim.

In reaching its decision, published at 673 F. Supp. 3d 1040, the District Court considered whether IQ Data's alleged FDCPA violation constituted an injury to a sufficiently concrete interest based on historical practice and the legislative text of the FDCPA. The court then considered whether Six alleged actual harm or a risk of harm to interests protected by the

FDCPA. The court rejected Six's argument that historical practice supported treating the harm he alleged—"[r]eceiving a letter with undisputedly accurate information, specifically requested from a different source"—as sufficiently concrete like the harms against which the common law tort of intrusion upon seclusion protects. (Pet.App. B, 20a). The court acknowledged intrusion upon seclusion has been recognized by this Court as entailing a concrete (albeit intangible) harm sufficient to establish an injury in fact. However, the court was not persuaded that the unwelcome letter Six received was among the same "kind" of harms supporting claims for intrusion upon seclusion recognized by other circuits.

The District Court elaborated that the kind of harms squarely associated with intrusion upon seclusion are "only those particularly offensive intrusions." (Pet.App. B, 19a). Historically, these included investigations or examinations into private matters like looking through personal documents or eavesdropping. Based on its analysis of the historical contours of intrusion upon seclusion, the District Court found one unwelcome letter was not the "kind" of intrusion that is highly offensive to a reasonable person. *See id.* ("It is difficult to see how a letter delivered to a mailbox, unbeknownst to Six, and to be retrieved at his leisure, in a mailbox where he receives countless articles of correspondence, some desired and some not, results in a harm similar in kind to the irritating intrusion into the peace and quiet of a private and personal realm caused by phone calls and text messages."). The District Court accordingly found "Six's alleged harm does not bear a close relationship to a harm traditionally regarded as providing a basis for a lawsuit." *Id.*

On June 15, 2023, Six appealed the District Court's decision. Six and IQ Data submitted briefing on whether Six had constitutional standing to assert his FDCPA claim. The parties also appeared for oral argument.

On February 24, 2025, in a five-page opinion, a three-judge panel of the Ninth Circuit reversed and remanded. In its brief opinion, the Ninth Circuit held the alleged harm suffered by Six when he received a single unwanted letter was analogous to the harm recognized by the tort of intrusion upon seclusion. Citing only cases that dealt with a debtor's receipt of phone calls, voicemails, and text messages delivered to cell phones, the court held a written letter delivered to a mailbox constitutes the same type of intrusion upon seclusion. With essentially no supporting analysis, the court stated, "[w]e see no meaningful difference in this context between making a phone call and sending a letter." (Pet.App. A, 7a); *Six v. IQ Data Int'l*, 129 F.4th 630, 634 (9th Cir. 2025).

The Ninth Circuit contrasted the Seventh Circuit's decision in *Pucillo v. National Credit Systems, Inc.*, 66 F.4th 634, 641 (7th Cir. 2023), in which the court concluded receipt of two unwanted letters was too dissimilar to the harm entailed by the tort of intrusion upon seclusion to establish a concrete injury to sustain an FDCPA suit. The Ninth Circuit rejected *Pucillo's* distinction between text messages and unwanted letters, characterizing *Pucillo* as erroneously relying upon the *degree* of harm caused by unwanted letters when it should have recognized the *kind* of harm caused by unwanted letters was dispositive under this Supreme Court's precedent. Nevertheless, the Ninth Circuit held Six's receipt of a single unwelcome

letter was sufficiently akin to the historical common law claim of intrusion upon seclusion, and thus Six's allegations were sufficient to establish Article III standing.

REASONS FOR GRANTING THE PETITION

This Court should grant the Petition and review the Ninth Circuit's decision below because it creates a circuit split in the way courts evaluate Article III standing under *TransUnion*. The FDCPA is a federal statute designed to apply consistently across the nation, but the conflicting analyses now employed across the country are generating inconsistent outcomes. Without review, the same factual scenarios that give rise to Article III standing in some parts of this country, will not be permitted to move forward as viable cases and controversies in other parts. Accordingly, IQ Data respectfully requests this Court grant review so every circuit and lower court will have the benefit of this Court's guidance when evaluating Article III standing in the context of an alleged FDCPA violation, and more particularly one premised on alleged harms analogous to the common law tort of intrusion upon seclusion.

A. The Ninth Circuit's Decision Highlights Inconsistent Constitutional Standing Analysis Employed Across the Circuits

To establish standing under Article III's "Cases" and "Controversies" requirement, U.S. Const. art. III, § 2, a plaintiff must show "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180-

81 (2000) (citing *Lujan v. National Wildlife Federation*, 504 U.S. 555, 560-61 (1992)).

The concrete injury-in-fact requirement is the "irreducible constitutional minimum" for standing. *Lujan*, 504 U.S. at 560. A plaintiff must show an injury-in-fact in all cases, even those where a plaintiff relies on a statutory violation. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021) ("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.").

When evaluating whether statutory harms are concrete, Congress's views are entitled to "due respect." *Ibid.* "Congress may 'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.'" *Spokeo, Inc., v. Robins,* 578 U.S. 330, 341 (2016), (alteration adopted and quotation omitted). But the limitation remains: injuries-in-law are *not* automatically injuries-in-fact, and plaintiffs must still satisfy the concrete injury test embedded in Article III and outlined in *TransUnion*. *TransUnion*, 594 U.S. at 440 ("Without any evidence of harm caused by the format of the mailings, these are bare procedural violation[s], divorced from any concrete harm. That does not suffice for Article III standing.") (internal citations and quotations omitted).

To show a concrete injury-in-fact when plaintiffs invoke a statutory injury, this Court directed lower courts to consider "whether the asserted harm has a "close relationship" to a harm "traditionally" recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 594 U.S. at 424, ("[H]istory and

tradition offer a meaningful guide to the types of cases Article III empowers federal courts to consider").

1. The Ninth Circuit's Decision Failed to Consider Whether Six's Alleged Harm was "Highly Offensive" to a "Reasonable Person"

Six asserts he has Article III standing because he suffered an injury akin to intrusion upon seclusion. Intrusion upon seclusion is a privacy tort that arises when one intrudes into another's life in a way that is highly offensive to a reasonable person. A survey of the historical application of this tort reveals it is typically invoked in circumstances where the offending party physically invades one's private life though eavesdropping, wiretapping, looking into the windows of someone's home or hotel room, or going through their mail.

TransUnion provided the framework for establishing Article III standing and allows plaintiffs to pursue standing based on historical common law analogues. But this Court's precedent does not divest lower courts of the obligation to meaningfully evaluate whether a plaintiff actually meets the concrete injury requirement in the context of historical practice and congressional judgment and intent.

In assessing Respondent's standing theory, the Ninth Circuit failed to adequately address the standing parameters outlined in *TransUnion*. The Ninth Circuit's analysis of Six's alleged injury against the allegedly analogous common law tort of intrusion upon seclusion was cursory at best and failed to meaningfully consider whether Six's alleged injury was contemplated by the historical limitations applicable to

an intrusion upon seclusion claim. Relying exclusively on cases dealing with electronic communications, the Ninth Circuit stated, "Courts have consistently found that the harm caused by unwanted communications bears a close relationship to the intrusion upon seclusion." (Pet.App. A, 6a). While the Ninth Circuit characterized the challenged letter as an "irritating intrusion," it did not consider whether the letter would be "highly offensive" to a "reasonable person" or whether the single letter constituted an intrusion so significant it became a substantial burden to Six's existence, thereby invading his privacy. Indeed, the word "offensive" occurs nowhere in the Ninth Circuit's opinion. By failing to measure Six's alleged injury against the historical contours of an intrusion upon seclusion claim, the Ninth Circuit's decision effectively ignored the searching standing analysis outlined in *TransUnion.*

2. The Ninth Circuit's Truncated Analysis of FDCPA § 1692c(a)(2) Failed to Consider Congress's Judgment

The Ninth Circuit's decision also failed to adequately analyze Congress's intent in enacting 15 U.S.C. § 1692c(a)(2). The Ninth Circuit stated, "[w]hen Congress enacted the FDCPA, it recognized that '[a]busive debt collection practices contribute to …invasions of privacy" … and "with that knowledge, Congress expressly prohibited debt collectors from communicating directly with consumers who the collectors know are represented by counsel." (Pet.App. A, 5a). Citing to two wholly different sections of the FDCPA, the Ninth Circuit then asserted, "[i]t follows therefore, that receipt of a letter from a debt collection

agency is the type of infringement on privacy interests that Congress contemplated when it enacted the FDCPA. The court asserted that Congress's judgment thus supported Six's claim that he suffered a concrete injury in the context of the statute. (Pet.App. A, 6a).

The Ninth Circuit's decision does not consider the statutory scheme of the FDCPA, the legislative history of the statute, or that Congress elevated some statutory violations into cognizable claims, while electing not to elevate others. It does not explain how Congress intended a technical provision like section 1692c(a)(2) to give rise to a privacy claim. Instead, the Ninth Circuit's opinion cites to one decision from the Sixth Circuit that held a *different* section of the FDCPA protects consumer privacy. (Pet.App. A, 5a-6a) (citing § 1692c(c)).

The Ninth Circuit's decision shines a light on the dearth of guidance available to courts to aid them in meaningfully analyzing Article III standing under specific provisions of the FDCPA. It also fails to provide meaningful guidance on how Article III standing can be established by likening the alleged harm to a historical common law analogue such as intrusion upon seclusion. As discussed below, the Ninth Circuit's decision also created a circuit split, further adding to the nationwide confusion over how to analyze standing in these circumstances.

3. The Ninth Circuit's Opinion Creates a Stark Conflict with the Seventh and Fifth Circuits

While the Ninth Circuit attempted to distinguish a contrary decision from the Seventh Circuit, the cases are quite analogous. A Fifth Circuit opinion also

conflicts with the Ninth Circuit's decision. Accordingly, the Ninth Circuit's decision creates a circuit split on whether receipt of a written letter constitutes an injury akin to intrusion upon seclusion sufficient to confer Article III standing.

a. The Seventh Circuit Has Denied Standing Based on Receipt of an Unwelcome Debt Collection Letter

The Seventh Circuit held receipt of a letter is not the type of offensive intrusion that confers Article III standing based on the common law tort of intrusion upon seclusion. In *Pucillo v. Nat'l Credit Sys., Inc.*, a consumer debtor brought an action against a debt collector alleging it violated the FDCPA when it sent him two collection letters about a debt that had previously been discharged in bankruptcy. *Pucillo v. Nat'l Credit Sys., Inc.*, 66 F.4th 634 (7th Cir. 2023). The Seventh Circuit Court of Appeals held the debtor failed to allege a concrete injury and thus did not have Article III standing. The court held the debtor's intangible harms did not bear a close relationship to the common law tort of intrusion upon seclusion. The court looked to the common law historical practice and to congressional intent and judgment underlying enactment of the FDCPA.

Recognizing intrusion upon seclusion requires a particularly offensive act, the *Pucillo* court held there is nothing inherently bothersome, intrusive or invasive about a collection letter delivered through the mail. *Id.* at 641. The court further held standing premised on intrusion upon seclusion requires more than just an emotional response from the recipient – it requires a particular kind of *offensive* intrusion. *Id.*

Intrusion upon seclusion "occurs when a person intrudes upon the solitude or seclusion of another or his private affairs or concerns and this intrusion would be highly offensive to a reasonable person." *Id.* at 640 (quoting *Persinger v. Southwest Credit Systems, L.P.*, 20 F.4th 1184 (7th Cir. 2021)).

The court distinguished cases where intrusion upon seclusion was found because the communication at issue was the kind that actually invaded or interrupted a person's life. By contrast, the *Pucillo* court explained, "postal mail is delivered to a mailbox without interrupting the recipient's seclusion. Mail can be picked up when, if, and how often the recipient chooses, unlike a phone which is usually on one's person or close by throughout the day." *Pucillo*, 66 F.4th at 641.

The court then considered congressional judgment in enacting the FDCPA and held congressional judgment supported a lack of Article III standing, because sending two letters, one year apart without any tangible consequences for the recipient, was not the kind of abusive practice Congress sought to prevent. *Pucillo*, 66 F.4th at 641-642.

While the *Pucillo* case involved debt collection letters sent following a bankruptcy discharge, the intrusion upon seclusion analysis is the same as was before the Ninth Circuit. However, the Ninth Circuit attempted to distinguish *Pucillo* by claiming its holding rested on an improper evaluation of "degree" versus "kind" of intrusion. Not so. The *Pucillo* court explained that letters delivered by the U.S. mail simply do not constitute the same kind of intrusion one might experience when they receive unwanted phone calls, text

messages or voicemails to their personal cell phone device.

As the District Court below recognized, "[e]very day, millions of people receive unwanted mail. Extend the warranty on your car, buy-one-get-one-free teriyaki bowls, an upstart landscaper wants your business, and the like." (Pet.App. B, 12a). Despite that people may not want their mailboxes filling up with unwanted mailings, Congress has not treated such communications as inherently abusive.

The *Pucill*o court's decision did not rely on a difference in degree, but appropriately recognized a letter is not the *kind* of intrusion envisioned by the common law claim of intrusion upon seclusion. It reached this conclusion by evaluating whether the letter was the kind of intrusion that would be considered highly offensive by a reasonable person, and held it was not. By departing from *Pucillo's* well-reasoned analysis, the Ninth Circuit created a split of authority among the circuit courts.

b. The Fifth Circuit Has Denied Standing Based on Receipt of an Unwelcome Debt Collection Letter

The Fifth Circuit also denied standing in instances where plaintiffs alleged the receipt of an unwanted letter was analogous to the tort of intrusion upon seclusion. In *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, a consumer debtor sued a collections law firm under the FDCPA for sending her a letter demanding payment on a time-barred debt. *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816 (5th Cir. 2022).

Citing *TransUnion*, the appellate court held Perez failed to show she suffered a concrete injury. It stated:

> *TransUnion* is clear: A plaintiff always needs a concrete injury to bring suit, and injuries are concrete only if they bear a "close relationship" to injuries that courts have traditionally recognized as concrete. But how close is close enough? The Supreme Court hasn't provided an exact formulation.

Perez, 45 F.4th at 822.

On appeal, Perez advanced a new theory to establish standing: receipt of the unwanted letter was analogous to the tort of intrusion upon seclusion. *Id.* at 823. The court was not persuaded. Noting *TransUnion* recognized harms analogous to intrusion upon seclusion can qualify as concrete, it held Perez failed to establish standing based on that common law analogue. The Fifth Circuit explained:

> Congress *didn't* elevate the receipt of a single, unwanted message to the status of a legally cognizable injury in the FDCPA. Perez sued MVBA for violating the statute's antifraud provision. 15 U.S.C. § 1692e. Congress's concern in prohibiting "false, deceptive, or misleading representation[s] or means in connection with the collection of any debt" wasn't consumer privacy. It was the economic harms that consumers suffered due to aggressive and unfair attempts to collect their debts. *See id.* § 1692(a) (holding that "[a]busive debt collection

> practices contribute to the number of personal bankruptcies, to marital instability, [and] to the loss of jobs"). Congress also expressed concern about "invasions of individual privacy." *Id.* § 1692(a). But it addressed those problems through a *different* section of the FDCPA: the statute's prohibition on harassment and abuse. *Id.* § 1692d.

The Fifth Circuit explained that because Perez didn't sue based on that provision, she can't bootstrap the harms the FDCPA recognizes as actionable to demonstrate standing to sue based on a different provision. *Id.*

The court took its analysis of congressional intent further and explained even if Perez had sued under section 1692d (which addresses harassment and abuse), the FDCPA's harassment provision doesn't recognize that a single unwanted message qualifies as a concrete harm. Instead, its closest analog to an unwanted letter—unwanted telephone calls—must be made "repeatedly or continuously." 15 U.S.C. § 1692d(5). Its general prohibition on actions that "harass, oppress, or abuse" a debtor carries the same connotation. *Id.* § 1692d. *Id.* Accordingly, *Perez* held even if Congress could elevate a single unwanted message to the status of a concrete injury, it hasn't done so.

Now, the Ninth Circuit's decision directly conflicts with well-reasoned decisions from both the Seventh and the Fifth Circuits.

c. Conflicting Circuit Decisions are Causing Vastly Varied Results in the Country's District Courts

This issue has arisen in district courts all over the nation. And relying on conflicting guidance from the circuit courts, these district courts are resolving the standing issue inconsistently. The cases discussed below are just a sample of recent decisions where district courts attempt to resolve this thorny issue without the benefit of this Court's guidance.

In March 2023, the Northern District of Illinois analyzed this issue in the context of unwanted email communications. *Branham v. TrueAccord Corp.*, No. 22-CV-00531, 2023 WL 2664010 (N.D. Ill. Mar. 28, 2023). In *Branham*, the plaintiff brought suit under the FDCPA related to two emails she received from the defendant. On October 27, 2021, Branham's attorney sent a letter to TrueAccord notifying it she was represented by an attorney with regard to the debt. *Id.* at *1. In November 2021, TrueAccord sent Branham at least two emails seeking to collect the debt, despite having notice she was represented by an attorney. The plaintiff contended TrueAccord violated several provisions of the FDCPA by contacting her directly after being notified she was represented by an attorney. *Id.*

The court agreed with TrueAccord that receipt of two emails was not sufficiently analogous or "closely related" to the tort of intrusion upon seclusion to demonstrate Article III standing. Recognizing intrusion upon seclusion requires challenged conduct to be highly offensive to a reasonable person, the court stated, "Plaintiff notably does not point the Court to any FDCPA caselaw where a court held that the

receipt of one or two unwanted written or email communications from a [collector] was sufficient on its own to confer standing, let alone a case holding that the mere receipt of such communications is "highly offensive" to "a reasonable person." *Id*. at *6.

Impliedly recognizing that written letters are not highly offensive to the reasonable person, the *Branham* Court opined, "[r]eceiving an email is generally more akin to receiving a letter than to receiving phone calls or text messages. The Court imagines there may be some circumstances where the receipt of numerous emails could create an intrusion on an individual's peace and quiet akin to the kind of intrusion caused by the receipt of "pestiferous" phone calls and text messages which courts have found sufficient to create standing. But Plaintiff here has made no allegations suggesting any such intrusion; she merely alleges that she received at least two emails and that those two emails created a "risk" of an invasion of privacy." *Branham v. TrueAccord Corp.*, No. 22-CV-00531, 2023 WL 2664010 at *7 (N.D. Ill. Mar. 28, 2023). While sympathetic to the consumer debtor's frustration, the court stated, "whether or not TrueAccord's communications violated the FDCPA, the Supreme Court has held that statutory violations on their own are not enough to satisfy the concrete injury requirement for Article III standing"…and that "[o]n review of the parties' briefing and the caselaw exploring what kinds of injuries satisfy this requirement in the context of the FDCPA, the Court concludes that Plaintiff has not alleged the requisite concrete harm for Article III standing under the FDCPA." *Id*.

Similarly, in August 2023, the Eastern District of Missouri held receipt of an unwelcome letter was

insufficient to confer Article III standing. *See Ebaugh v. Medicredit, Inc.*, No. 4:23-CV-209-MTS, 2023 WL 5289226 (E.D. Mo. Aug. 17, 2023). Relying on *Pucillo*, the court held a letter was not the kind of injury associated with intrusion upon seclusion. The *Ebaugh* Court concluded that "while delivery of a letter *could* invade privacy, mere receipt of an unsolicited letter, without any other factual allegations, is insufficient to establish injury as the type of intrusive privacy invasion the tort of intrusion upon seclusion seeks to prevent. *Cf.* [*Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 463 n.4 (8th Cir. 2022)] ("the concrete harm inquiry is fact specific.")." *Id.* This decision highlights the need for this Court's guidance on the factual allegations that must be present to establish Article III standing based on a harm likened to intrusion upon seclusion.

In contrast, district courts in other jurisdictions have ruled the other way. For example, in *Leichliter v. Optio Sols., LLC*, a consumer debtor brought suit under the FDCPA after receiving letters from a debt collector when she had previously advised the debt collector she was refusing to pay. *Leichliter v. Optio Sols., LLC,* 672 F. Supp. 3d 1165 (W.D. Okla. 2023). Relying on the rationale in *Lupia*, the Western District of Oklahoma held receipt of unwanted letters was the kind of intrusion that conferred standing under intrusion upon seclusion. *Id.* at 1170-1171. Furthermore, the court drew a distinction between Sections 1692c and 1692d, asserting that Congress intended one be elevated to a concrete harm while the other was not. *Id.* at 1172-1173.

The range of varied district court decisions, derived from conflicting circuit court opinions,

illustrates the pressing need for this Court's review and guidance on the historical practice element of the Article III constitutional standing analysis, as well as Congress's intent and judgment in enacting various provisions of the FDCPA.

4. Lower Courts Need This Court's Guidance on What Facts Must be Alleged to Establish Standing under Article III, When the Alleged Harm is Characterized as Analogous to Intrusion Upon Seclusion

To identify the concrete interests protected by statutory provisions, courts "examine historical practice and the legislative judgment underlying the provisions at issue." *Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544, 546 (9th Cir. 2020) (citing *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1117 (9th Cir. 2020)) (cleaned up). Inconsistent analysis of what constitutes an actionable intrusion upon seclusion has caused conflicting decisions over substantially similar factual scenarios.

This Court has explained certain common law analogues may provide an avenue for a plaintiff to establish Article III standing and has expressly listed the common law tort of intrusion upon seclusion as one of those harms bearing a close relationship to harms traditionally regarded as providing a basis for a lawsuit. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). IQ Data does not dispute that the tort of intrusion upon seclusion is one of those harms traditionally regarded as providing a basis for a lawsuit. Rather, Petitioner argues that any intangible harm suffered from receiving a single letter after providing notice of

representation does not bear a close relationship to the harm suffered by intrusion upon seclusion.

The Restatement makes clear that a claim for intrusion upon seclusion historically required an intrusion that was "highly offensive" to a "reasonable person." A survey of the recent cases to address this issue, including the Ninth Circuit's decision below, reveal that courts are not consistently measuring the harm alleged for standing purposes against this historical standard. And even when courts do include the "highly offensive" and "reasonable person" standard in their analysis, there is little clarity about what rises to the level of a highly offensive intrusion.

Here, relying on the reasoning in *Pucillo*, the District Court held a debt collectors' mailing of a single letter containing accurate information to a debtor's mailbox after that debtor requested information verifying the debt from a credit reporting agency is not the kind of abusive debt collection practice the FDCPA seeks to prevent. "In sum, neither historical practice nor congressional judgment establishes that Congress enacted the FDCPA to protect against the intangible harm Six alleges here and Six fails to show any other actual harm or material risk of harm to the interests protected by the FDCPA." (Pet.App. B, 25a).

The court found that receiving a letter with undisputedly accurate information, specifically requested from a different source, can hardly be said to constitute a particularly offensive intrusion. *See Pucillo v. National Credit Systems, Inc.*, 66 F.4th 634, 640 (7th Cir. 2023) (reasoning that "there is nothing inherently bothersome, intrusive, or invasive about a collection letter delivered via U.S. Mail"). It also recognized a physically mailed letter, delivered to a mail box, was

a very different kind of intrusion than a phone call or text message that comes to a cellphone that someone has on or near their person at all times.

In its analysis, the District Court specifically highlighted the fact that the letter was a form letter, requested by Six, and contained indisputably accurate and standard information verifying the debt. It included no threatening or abusive language or any of the problematic *content* that the FDCPA was enacted to prohibit.

Five years ago, Justice Barrett explained "when *Spokeo* instructs us to analogize to harms recognized by the common law, we are meant to look for a "close relationship" in kind, not degree." *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020). The question now is what facts are enough to make a communication: a) the *kind* of harm recognized by an intrusion upon seclusion claim; and b) highly offensive to a reasonable person in line with the historical contours of such a claim.

To further guide courts in assessing whether a particular communication is the kind of particularly offensive intrusion that rises to a harm analogous to intrusion upon seclusion, Petitioner requests that this Court grant cert and provide much needed clarity on the factual allegations that are required to establish Article III standing on this basis.

B. The Question Presented Concerns a Frequently Recurring Issue of National Importance and Warrants Review in this Case

1. The Issue of What "Kind" of Unwelcome Communication Constitutes an Article III Injury Continues to Arise Across the Country

Cases continue to arise in which courts across the country have reached contradictory or varying conclusions regarding whether written correspondence satisfies the injury in fact requirement to assert Article III standing. In addition to the contrary opinions issued by the Fifth, Seventh, and Ninth Circuits, district courts relying on those opinions, as well as guidance from other jurisdictions, continue to create inconsistent outcomes across the country. Beyond the *Branham*, *Ebaugh*, and *Leichliter* cases discussed above, the following provide a sample of recent decisions highlighting the need for this Court's guidance.

In *Denmon v. Kansas Counselors, Inc.*, the court held that a single letter sent in violation of Section 1692c(c) established a concrete injury, inferring that the letter invaded a privacy interest traditionally protected by the tort of intrusion upon seclusion. 661 F. Supp. 3d 914, 919-20 (W.D. Mo. 2023), *recons denied*, *Denmon v. Kansas Counselors, Inc.*, No. 4:21-00457-HFS, 2023 WL 7179809 (W.D. Mo. Nov. 1, 2023). Upon denial of reconsideration, the court commented that "there is no dispute that the question of standing pursuant to the Federal Debt Collection Practices Act is evolving and further clarification from the Supreme Court and the Eighth Circuit is welcomed." *Denmon v.*

Kansas Counselors, Inc., No. 4:21-00457-HFS, 2023 WL 7179809, at *4 (W.D. Mo. Nov. 1, 2023).

Based on *Perez*, district courts in the Fifth Circuit developed a unique test for discerning whether an FDCPA claimant alleged a concrete injury of the kind that intrusion upon seclusion concerns, inquiring, first, "did the legislature exercise its power to elevate a single unwanted message to the status of a concrete injury" and, second, "why Congress did so: was the provision in which Congress did—or did not—create a cognizable injury-in-fact motivated by concerns regarding consumer privacy[?]" *Vazzano v. Receivable Mgmt. Servs., LLC*, No. 3:21-CV-0825-D, 2022 WL 17406317, at *2 (N.D. Tex. Dec. 2, 2022). *Vazzano* applied this test to conclude that the plaintiff alleged a concrete harm based upon a violation of Section 1692c for receipt of one unwanted letter. *See id.* at *2-3.

Applying the reasoning of *Perez* and *Vazzano*, the district court in *Leichliter*, 672 F. Supp. 3d 1165, 1172-73 (W.D. Okla. 2023), concluded the plaintiff established a concrete harm because she brought her FDCPA claim alleging receipt of multiple unwanted letters under Section 1692c, which concerned harm to invasion of privacy. The district court equated receipt of unwanted letters with text messages, voicemails, and phone calls, all of which, in the court's view, typified the kind of harm that intrusion upon seclusion concerns. *See id.* at 1170-71.

The Western District of Oklahoma applied the reasoning of *Leichliter* in *Winstead v. Carter-Young, Inc.*, which similarly held than an unwanted letter constituted the kind of harm protected by the tort of intrusion upon seclusion, rendering it sufficiently concrete. *See* No. CIV-23-00956-JD, 2024 WL 4204926, at

*3 (W.D. Okla. Sept. 16, 2024); *see also Peters v. Lockhart Morris & Montgomery, Inc.*, No. CIV-24-00085-JD, 2024 WL 4182925, at *3 (W.D. Okla. Sept. 13, 2024) (reaching the same conclusion).

In *Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 462 (8th Cir. 2022), the Eighth Circuit held that the plaintiff failed to established standing for a violation of Section 1692c(a)(2) based on the defendant allegedly "sending [the plaintiff] a copy of a garnishment summons served on US Bank[.]" The Eighth Circuit concluded that sending the garnishment summons did not constitute a cognizable injury as a matter of general tort law. *See id.* at 463. In a footnote, the court rejected the proposition that sending the summons constituted an intrusion upon seclusion, explaining "[d]irectly providing a debtor with a required notice that the creditor is seeking an ancillary remedy in a long-standing debt collection action is not an invasion of the defendant's privacy." *Id.* at 463 n.4.

In *Heres v. Medicredit, Inc.*, the court "compare[d] the tort of intrusion upon seclusion to the privacy invasion caused by receiving unsolicited debt letters" that allegedly violated the FDCPA. No. 23-CV-24815, 2024 WL 3291738, at *11 (S.D. Fla. July 3, 2024). Despite acknowledging the Eleventh Circuit has found unwanted text messages and phone calls to resemble the kind of harm associated with intrusion upon seclusion, the court concluded there was no "support for [the] position receiving an unwanted debt letter causes the same kind of harm as an intrusion upon seclusion at common law." *Id.*

In *Brown v. Midland Credit Management*, the court held the plaintiff lacked standing to bring her Section 1692c(a) claim in federal court because her

alleged harm, "transmission of . . . [a] letter to Plaintiff via USPS as opposed to via email," was not "highly offensive to a reasonable person." No. 24-CV-1184-PKCRML, 2024 WL 1623336, at *2 (E.D.N.Y. Apr. 15, 2024). As such, the harm did not "rise to the level of stating a claim for intrusion upon seclusion" and was not sufficiently concrete. *Id.*

Still other cases continue to reach inconsistent conclusions regarding whether certain types of written communications allegedly violating the FDCPA are of the same kind of harm as the common law tort of intrusion upon seclusion so as to be considered concrete. *See Gatchalian v. Atl. Recovery Sols., LLC*, No. 22-CV-04108-JSC, 2022 WL 3754523, at *2, 4 (N.D. Cal. Aug. 30, 2022) (observing that the plaintiff's alleged "harm of receiving unwanted and misleading voicemails and text messages is a concrete injury in fact with a close relationship to the harm of intrusion upon seclusion, traditionally recognized as providing a basis for lawsuits in American courts" and the type "of substantive harm that the FDCPA was meant to redress"); *Simpson v. Revco Sols., Inc.*, No. 22-CV-00483-JPG-1, 2022 WL 17582742, at *5 (S.D. Ill. Dec. 12, 2022) ("The Court finds that the cases within this circuit indicate a letter after advisement of lawyer representation does not point to an intrusion upon seclusion."); *Shorts v. Cedars Bus. Servs.*, LLC, No. 24 CIV. 2787 (ER), 2025 WL 580208, at *4 (S.D.N.Y. Feb. 21, 2025) (concluding that allegations of receipt of an email in violation of the FDCPA established an "intrusion upon . . . seclusion . . . provid[ing] a concrete harm sufficient to confer standing"); *Stephens v. I.C. Sys., Inc.*, No. CV-21-9786-MWFMARX, 2023 WL 4316788, at *4-5 (C.D. Cal. Apr. 6, 2023) (finding that plaintiff's receipt of a letter in violation of the FDCPA

that the plaintiff did not read did not establish a concrete harm based on similarity to the tort of intrusion upon seclusion).

The cases described above, and their widely varied analysis and conclusions demonstrate why this Court should grant review and provide definitive guidance on the matter.

2. The Current Circuit Split Undermines the FDCPA's Purpose and Creates Inconsistent Standing Access Depending on Geography

The Ninth Circuit's decision means accidents of geography decide when a concrete injury has occurred and when it has not. That is not Congress's intention. With the FDCPA, Congress intended to create consistent creditor-debtor law across the country. "The FDCPA was enacted as a broad remedial statute designed to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060 (9th Cir. 2011) (quotations omitted) (quoting 15 U.S.C. § 1692(e)); *see also Vincent v. The Money Store*, 736 F.3d 88, 96 (2d Cir. 2013).

Though the FDCPA makes room for more protective state statutes, Congress expressly preempted state laws that are "inconsistent" with the FDCPA's basic protections. 15 U.S.C. § 1692n. The preemption clause makes clear Congress's intention to legislate broadly and nationally on the issue of debt collection.

Thus, practically speaking, the FDCPA creates a consistent baseline of rules that govern the collection of consumer debt.

The Ninth Circuit's decision deviates from this uniform baseline of rules and injects the risk of inconsistent outcomes into a statutory regime Congress intended to be consistent and stable. With a clear circuit split now in place, access to courts to litigate certain FDCPA claims will differ based on where consumers live and where collectors operate.

Consider two consumer examples. Both consumers owe valid debts subject to collection, both mistakenly received a mailed notice, and both are represented by attorneys. The single difference between the consumers is their geographical location, with Consumer 1 living in California (the Ninth Circuit) and Consumer 2 living in Indiana (the Seventh Circuit). Despite the same factual scenario, only Consumer 1 suffered an injury-in-fact cognizable under the FDCPA. *See Six v. IQ Data Int'l*, 129 F.4th 630, 634 (9th Cir. 2025) reh'g denied (Mar. 28, 2025); *see also Pucillo v. National Credit Systems, Inc.*, 66 F.4th 634, 639 (7th Cir. 2023). As a result of a mere accident of geography, Consumer 1 is granted broader FDCPA rights than Consumer 2. That should not be the case for a generally applicable consumer protection law that is meant to set uniform, baseline standards across the country.

Such unintended inconsistency is bad for consumers and bad for the economy. Consumers' rights and collectors' liability under the FDCPA will live and die with state borders. For creditors and debt collectors who operate in numerous states, the geographically-based standing standards will make operations

difficult. In California, a mistaken mailer will be subject the entity to costly litigation, while in Indiana, the mistake will fail to trigger the FDCPA at all. That makes compliance mechanisms and controls difficult to manage and implement.

The unfortunate impact will be depressed collections, which will lead to an increase in the cost of credit and goods and less available credit for consumers. *See* Zywicki, Todd, *The Law and Economics of Consumer Debt Collection and its Regulation* (09/29/2015), available at: https://ssrn.com/abstract=3191392. More than anything, the collections industry needs uniform, clear guidelines to rely upon. Without that clarity, creditors and debt collectors will be left guessing how to proceed, with legal liability waiting when an entity guesses wrong. When collections are made more difficult, or when the flow of information is unnecessarily restricted, the small businesses, medical providers, and community financial institutions that rely on debt collection will recover less of their owed monies. This could lead to a host of consequences including the closure of small or rural businesses or medical providers operating on thin margins. Some businesses may close as a result. Consumers lose as well. Consumers receive less information, settle fewer debts, and may have to answer to their creditors through the legal system in a public forum.

Instability in the credit system benefits no one, which is exactly why Congress passed the FDCPA. This Court's clarity is urgently needed so consumers and collectors alike can be assured of consistent application of the Article III standing requirements under the FDCPA.

3. This Case is an Appropriate Vehicle to Resolve this Recurring Issue

This case presents an ideal vehicle for the Court to address a question perpetually left open: how a court should determine whether an alleged intangible harm from a statutory violation constitutes injury in fact. *First*, the factual scenario is simple: a debt verification letter was mistakenly mailed directly to the consumer before the database was updated with attorney contact information. The facts are not in dispute. All that remains is the legal question whether the mistaken mailer constitutes a concrete injury.

Second, unless a single mistaken mailing constitutes a concreate injury, Respondent has no other basis upon which to claim standing. The only claim at issue is Petitioner's alleged violation of 15 U.S.C. § 1692c(a)(2) by communicating directly with Respondent despite knowledge of Respondent's representation by counsel. If the letter is *not* a violation of the FDCPA, Respondent has no standing and the case is resolved.

Third, the question at issue needs no further percolation at the circuit level. The Court provided a framework in *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), and *TransUnion LLC v. Ramirez,* 594 U.S. 413, 417-418 (2021)—a framework that was followed and applied by courts across the country. Now, sister circuits are split on the working details of that framework. Further clarity is needed.

CONCLUSION

This case warrants Supreme Court review. It presents a deep circuit split on a recurring issue of national significance, including inconsistent application

of the constitutional standing analysis which has and will continue to result in incongruent court access across the country. This Court should grant certiorari and review the decision of the Ninth Circuit.

Respectfully submitted,

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JUNE 26, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED FEBRUARY 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15887

D.C. No. 2:22-cv-00203-MTL

RYAN SIX,

Plaintiff-Appellant,

v.

IQ DATA INTERNATIONAL, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Arizona
Michael T. Liburdi, District Judge, Presiding

Argued and Submitted May 17, 2024
Phoenix, Arizona

Filed February 24, 2025

Before: Susan P. Graber, Roopali H. Desai, and
Ana de Alba, Circuit Judges.

Opinion by Judge Desai

Appendix A

OPINION

DESAI, Circuit Judge:

The Fair Debt Collection Practices Act ("FDCPA") prohibits debt collectors from engaging in certain practices, including directly communicating with a consumer in connection with the collection of any debt when the collector knows that the consumer is represented by an attorney. *See* 15 U.S.C. § 1692c(a)(2). Ryan Six brought a claim against IQ Data International, Inc. ("IQ") under § 1692c(a)(2), alleging that IQ sent him a debt verification letter after he notified the company that all communications should be sent to his attorney. The district court dismissed Six's action for lack of jurisdiction, ruling that he lacked Article III standing. On appeal, Six challenges the district court's dismissal for lack of jurisdiction, as well as its denial of his motion to strike affirmative defenses, its resolution of the parties' joint discovery dispute based on attorney-client privilege, and its modified grant of attorneys' fees. We hold that an individual who receives a letter in violation of § 1692c(a)(2) has standing to bring a claim, and thus reverse the district court's dismissal for lack of jurisdiction and remand for further proceedings.[1] In light of our ruling, we need not, and do not, reach Six's claim for the denial of his motion to strike affirmative defenses.[2]

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1. In a separately filed memorandum disposition, we affirm the district court's resolution of the parties' joint discovery dispute and the court's modified grant of attorneys' fees.

2. The parties may litigate the affirmative defenses on remand. And in any event, Six is not precluded from appealing the district court's denial of his motion to strike in a future appeal.

Appendix A

BACKGROUND

IQ acquired a debt obligation for Six's purported breach of a residential lease. Six learned of the debt and, on August 18, 2021, mailed a letter to Equifax disputing the debt and requesting documentation of it. The same day, Six's counsel mailed a letter directly to IQ providing notice that Six was represented and that all correspondence should be sent to counsel.

On September 2, 2021, IQ received Six's dispute letter and submitted an internal request to generate and send the requested documentation to Six's mailing address. The next day, September 3, IQ updated its records to show that it had processed Six's counsel's letter and that direct communication should cease. But on that same day, IQ also sent the letter with verification of the debt to Six's mailing address.

After receiving the letter, Six sued IQ in the District of Arizona under 15 U.S.C. § 1692c(a)(2). Six and IQ filed cross-motions for summary judgment. The district court dismissed the action for lack of jurisdiction. It ruled that Six lacked Article III standing because he could not show that he had suffered an injury in fact. The district court reasoned that the receipt of one unwanted letter was neither akin to the traditional types of harm providing a basis for a lawsuit, nor was it the type of abusive debt collection practice that the FDCPA was intended to prevent. The district court did not reach the other arguments in the parties' cross-motions for summary judgment and, instead, denied the remainder of the motions for summary judgment as moot.

Appendix A

STANDARD OF REVIEW

We review de novo whether a plaintiff has standing. *In re Zappos.com, Inc.*, 888 F.3d 1020, 1024 (9th Cir. 2018).

ANALYSIS

Six claims that he has standing because he received an unwanted letter from IQ after notifying IQ that all correspondence should be sent to his attorney, resulting in an invasion of his privacy interests. IQ claims that Six's alleged harm is insufficient to establish standing because it is not analogous to the types of harm traditionally recognized by American courts. To determine whether Six had standing to bring his claim, we consider whether he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1042 (9th Cir. 2017) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016)).

An "injury in fact" is "an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S. at 339 (cleaned up) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). To determine whether there is a concrete injury, we consider two factors: (1) Congress's judgment and (2) a comparison of the alleged harm to harms traditionally recognized by American courts. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425-26, 141 S. Ct. 2190, 210

L. Ed. 2d 568 (2021). Tangible harms, like physical or monetary loss, readily qualify as concrete injuries, but "[v]arious intangible harms can also be concrete." *Id.* at 425. A harm is particularized if it affects the plaintiff "in a personal and individual way." *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560 n.1).

We first turn to Congress's judgment, which can be "instructive" in determining whether there is a concrete injury "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements." *Id.* at 341. Accordingly, we "must afford due respect to Congress's decision to . . . grant a plaintiff a cause of action to sue over the defendant's violation of [a] statutory prohibition . . . In that way, Congress may 'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate [at] law.'" *TransUnion*, 594 U.S. at 425 (quoting *Spokeo*, 578 U.S. at 341). But the existence of a statutory cause of action does not automatically create standing, and this court must decide independently whether a concrete injury exists in the context of the statutory violation. *See id.* at 426.

When Congress enacted the FDCPA, it recognized that "[a]busive debt collection practices contribute to . . . invasions of individual privacy." 15 U.S.C. § 1692(a). And with that knowledge, Congress expressly prohibited debt collectors from communicating directly with consumers who the collectors know are represented by counsel. *Id.* § 1692c(a)(2); *see Ward v. NPAS, Inc.*, 63 F.4th 576, 581 (6th Cir. 2023) (finding that § 1692c(c) protects consumer

privacy). It follows, therefore, that receipt of a letter from a debt collection agency is the type of infringement on privacy interests that Congress contemplated when it enacted the FDCPA. Congress's judgment thus supports Six's claim that he suffered a concrete injury in the context of the statute and has standing to sue.

Next, we assess whether Six has "identified a close historical or common-law analogue for [his] asserted injury." *TransUnion*, 594 U.S. at 424. The analogue to the alleged injury must be a harm that is "traditionally recognized as providing a basis for a lawsuit in American courts." *Id.* (cleaned up). Intrusion upon seclusion, which protects the right of privacy, is one such example. *Id.* at 425; *see Van Patten*, 847 F.3d at 1043 ("Actions to remedy defendants' invasions of privacy, intrusion upon seclusion, and nuisance have long been heard by American courts, and the right of privacy is recognized by most states."). Furthermore, the alleged harm need not be "an exact duplicate" of a traditionally recognized harm to be analogous. *TransUnion*, 594 U.S. at 424. A close analogue exists when the alleged and traditionally recognized harm are similar in "kind" rather than "degree." *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020) (citing *Spokeo*, 578 U.S. at 340-42).

Courts have consistently found that the harm caused by unwanted communications bears a close relationship to intrusion upon seclusion. *See*, *e.g.*, *Van Patten*, 847 F.3d at 1040-41, 1043 (holding two unwanted text messages in violation of the Telephone Consumer Protection Act ("TCPA") was a concrete injury); *Wakefield v. ViSalus,*

Inc., 51 F.4th 1109, 1117-18 (9th Cir. 2022) (affirming *Van Patten* post-*TransUnion*); *Gadelhak*, 950 F.3d at 463; *Dickson v. Direct Energy, LP*, 69 F.4th 338, 348-49 (6th Cir. 2023) (holding that one silently delivered voicemail in violation of the TCPA was a concrete injury); *Lupia v. Medicredit, Inc.*, 8 F.4th 1184, 1191-93 (10th Cir. 2021) (holding that an unwanted call and voicemail in violation of the FDCPA was a concrete injury). In *Ward*, for example, a debt collector called the plaintiff one time after the plaintiff's lawyer attempted to send a cease-and-desist letter to the collector. 63 F.4th at 579. The plaintiff sued under § 1692c(a)(2), and the Sixth Circuit found that the kind of harm caused by the unwanted call was closely related to intrusion upon seclusion. *Id.* at 580-82. We see no meaningful difference in this context between making a phone call and sending a letter.

When Six notified IQ that it should communicate only with his counsel, he clearly expressed a desire to be undisturbed by IQ's communications. And by sending a letter after receiving Six's notification, IQ created the kind of "irritating intrusion[]" addressed by intrusion upon seclusion. *Gadelhak*, 950 F.3d at 462. As other courts have held, the fact that IQ sent only one letter does not change the *kind* of harm caused. *See Lupia*, 8 F.4th at 1192 (holding that a single phone call poses the same kind of harm as intrusion upon seclusion, although it may not be sufficient to establish liability). Accordingly, the harm alleged by Six poses "the same *kind* of harm recognized at common law—an unwanted intrusion into . . . plaintiff's peace and quiet," *id.*, and the harm caused by an unwanted letter, in violation of § 1692c(a)(2), is analogous to the harm caused by intrusion upon seclusion.

IQ relies on the Seventh Circuit's decision in *Pucillo v. National Credit Systems, Inc.*, 66 F.4th 634 (7th Cir. 2023), to distinguish the kind of harm caused by unwanted letters from that caused by other types of unwanted communications. In *Pucillo*, the plaintiff sued a debt collector under the FDCPA for sending him two letters regarding a debt that had been discharged in bankruptcy. *Id.* at 636. The court ultimately concluded that the two letters Pucillo received were "too far afield from the traditional tort of intrusion upon seclusion" to establish a concrete injury. *Id.* at 641. In reaching its conclusion, the court explained that the harm caused by the letters differed from that caused by unwanted text messages:

> Text messages may create an injury because they can disrupt a person at anytime, anywhere, thereby invading private solitude . . . In contrast, postal mail is delivered to a mailbox without interrupting the recipient's seclusion. Mail can be picked up when, if, and how often the recipient chooses, unlike a phone which is usually on one's person or close by throughout the day. While receiving a letter can be an irritation, we do not see an actionable analogy between a letter delivered to a mailbox and automated text messages delivered to one's cell phone.

Id. (cleaned up).

We are unpersuaded by this distinction. The line drawn by *Pucillo* rests on the *degree* of harm, rather than

the *kind* of harm, and the Supreme Court has counseled against this approach. *See Gadelhak*, 950 F.3d at 462 ("But when *Spokeo* instructs us to analogize to harms recognized by the common law, we are meant to look for a 'close relationship' in kind, not degree."); *Pucillo*, 66 F.4th at 644-45 (Lee, J., dissenting) (noting that the majority opinion's standing analysis erred by focusing on the number of letters received and degree of intrusion caused by mail). Indeed, the *Pucillo* court acknowledged that its analysis hinged on degree rather than kind, commenting that it reserved ruling on "other kinds of mailings [that] could impact seclusion more significantly." *Pucillo*, 66 F.4th at 640 n.3. Furthermore, taking *Pucillo*'s distinction to its logical extreme demonstrates that its line-drawing is misguided. Even a consumer who receives hundreds of unwanted letters could not establish a harm analogous to intrusion upon seclusion simply because the letters could be picked up at the recipient's choosing. This cannot be the case. Regardless of when it is picked up, an unwanted letter intrudes on the recipient's privacy and, thus, we are unpersuaded by *Pucillo*.[3]

In sum, both Congress's judgment and a comparison to traditionally recognized harms establish that Six suffered a concrete injury when IQ sent him a letter. Furthermore, Six's harm is both particularized and actual. IQ's letter

3. Similarly, the factual assumption underpinning *Pucillo*'s analysis is not necessarily true: Nothing compels a person to look at text messages at unwanted times of the day. Just as "[m]ail can be picked up when, if, and how often the recipient chooses," *Pucillo*, 66 F.4th at 641, so too can text messages be viewed when, if, and how often the recipient chooses.

was delivered directly to Six, which affected him in a "personal and individual way." *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560 n.1). And because receipt of the letter in alleged violation of § 1692c(a)(2) inherently violated Six's privacy, he has sufficiently alleged actual harm, rather than a "conjectural" harm or "bare procedural violation." *Compare Spokeo*, 578 U.S. at 342 (noting that a formatting error in violation of the Fair Credit Reporting Act may not result in actual harm), *with Hall v. Smosh Dot Com, Inc.*, 72 F.4th 983, 988 n.5, 991 (9th Cir. 2023) (finding that a violation of TCPA § 227(c) for texting a phone number on the Do-Not-Call Registry established actual harm because an unsolicited text is inherently an invasion of privacy). Thus, Six suffered an injury in fact sufficient to establish standing at this juncture of the case.

We also conclude that the remaining elements of standing are met, a conclusion that IQ does not dispute. There is a "causal connection between the injury and the conduct complained of," *Lujan*, 504 U.S. at 560, because it was IQ's letter itself that caused the intrusion on Six's privacy, s*ee id.* (explaining that traceability requires a connection between the injury and defendant's alleged violation, rather than third-party action). And the relief sought under the FDCPA, including declaratory relief, statutory damages, and actual damages, would redress the intrusion. *Robey v. Shapiro, Marianos, & Cejda, L.L.C.*, 434 F.3d 1208, 1212 (8th Cir. 2006). In sum, the district court improperly dismissed the action for lack of jurisdiction.

Six argues that we should grant summary judgment in his favor if we hold that he has standing, but IQ argues that remand is appropriate if we reverse the district court's dismissal for lack of jurisdiction. The district court is best positioned to rule on the parties' alternative arguments for summary judgment in the first instance, and thus we agree with IQ's suggestion to remand for further proceedings consistent with our rulings.[4] *See EB Holdings II, Inc. v. Ill. Nat'l Ins. Co.*, 108 F.4th 1211, 1225 (9th Cir. 2024) (declining to reach alternative arguments for summary judgment in the first instance).

REVERSED AND REMANDED.

4. We do not consider the merits of Six's claim against IQ, and our holding does not foreclose the availability of the bona fide mistake defense on remand. Indeed, the minimal amount of time between IQ's processing of the letter from Six's attorney's and IQ's mailing of the disputed letter, coupled with the fact that Six asked IQ for information to be sent to him, raises serious questions about IQ's liability.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED MAY 18, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-22-00203-PHX-MTL

RYAN SIX,

Plaintiff,

v.

IQ DATA INTERNATIONAL INCORPORATED,

Defendant.

Filed May 18, 2023

ORDER

Every day, millions of people receive unwanted mail. Extend the warranty on your car, buy-one-get-one-free teriyaki bowls, an upstart landscaper wants your business, and the like. Sometimes a collection agency sends a recalcitrant debtor a letter asking for payment. Ryan Six, the plaintiff here, got one such letter and now he makes a federal case out of it. The Court is asked to rule on Defendant IQ Data International Incorporated's ("IQ Data") and Six's competing Motions for Summary Judgment (Docs. 62, 112). But doing so is not necessary because Six lacks Article III standing. The Court dismisses this action for lack of jurisdiction.

Appendix B

I. BACKGROUND

Six sues IQ Data, alleging that the company violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, by sending him a collection letter after he informed IQ Data of his representation by counsel. The debt obligation stems from an allegedly unpaid invoice for Six's breach of a residential lease. (Doc. 1 ¶ 9.) In June 2017, the debt obligation was placed with IQ Data, a professional collection agency providing services to the residential apartment industry. (Doc. 62 at 4.) On August 18, 2021, Six mailed a dispute letter to Equifax claiming that he had no recollection of the debt account and requesting documentation verifying the debt account information. (Doc. 63-1 at 21.) On that same day, Six's prior counsel mailed a letter to IQ Data advising that he had retained counsel in connection to the subject debt and directing IQ Data to send all communication related to the subject debt to counsel. (*Id.* at 23.)

While the parties dispute the precise timeline of what happened next, the following is uncontroverted. On September 2, 2021, IQ Data, having received and processed the dispute letter forwarded from Equifax, submitted a system request to generate and send a letter providing documentation and notice of the debt to Six's updated address. (Doc. 62 at 5; Doc. 112 at 4.) The next day, on September 3, 2021, IQ Data updated its records to reflect that it had processed the letter from counsel, that Six was represented by counsel, and that there should not be any direct communication with Six. (Doc. 62 at 6; Doc. 112 at 4.) On that same day, however, IQ Data's collection

letter providing documentation and re-issuing notice of the debt was sent to Six's updated mailing address. (*Id.*) Six alleges that IQ Data violated 15 U.S.C. § 1692c(a)(2) by communicating directly with him—by sending the letter—despite knowledge of his representation by counsel. (Doc. 1 ¶¶ 21–22.)

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). As relevant here, Article III of the United States Constitution limits the jurisdiction of federal courts to cases and controversies. U.S. CONST. art. III, § 2. "Standing is a constitutional requirement for the exercise of subject matter jurisdiction over disputes in federal court." *Tailford v. Experian Info. Sols., Inc.*, 26 F.4th 1092, 1099 (9th Cir. 2022) (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016)). Indeed, federal courts cannot decide the merits of a case unless they "have subject-matter jurisdiction, which requires the plaintiff have Article III standing." *Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544, 545 (9th Cir. 2020) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–95, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)).

The "irreducible constitutional minimum of standing" consists of three components. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The party invoking federal jurisdiction must prove that: "(1) it has suffered an 'injury in fact' that is (a) concrete and

particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000) (citing *Lujan*, 504 U.S. at 560–61)). The parties focus their argument solely on the first element of standing—injury in fact.

Article III standing requires a concrete injury even in the context of a statutory violation. *See Spokeo*, 578 U.S. at 341 (explaining that a plaintiff cannot "for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III"). In determining whether a plaintiff has suffered a concrete injury due to a defendant's failure to comply with a statutory requirement, the Ninth Circuit directs courts to apply a two-step test: "(1) whether the statutory provisions at issue were established to protect [a plaintiff's] concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in this case actually harm, or present a material risk of harm to, such interests." *Tailford*, 26 F.4th at 1099; *see also Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1113 (9th Cir. 2017).

III. DISCUSSION

IQ Data moves for summary judgment on the grounds that Six lacks standing to bring suit, that it lacked the

required knowledge to commit a violation of the FDCPA, and that any violation of the FDCPA was merely the result of a bona fide error. (Doc. 62 at 3.) IQ Data also requests an award of attorneys' fees and costs, arguing that Plaintiff filed his Complaint "in bad faith with the intent to harass and extort. . . ." (*Id.* at 4.) For his part, Six argues that he is entitled to summary judgment because IQ Data had actual notice of Six's counsel's letter before it sent him its collection letter and IQ Data "cannot prove a single element" of its bona fide error defense. (Doc. 112 at 2–9.) Six further maintains that he has standing to pursue his claims. (*Id.* at 9.)

A. Article III Standing

Standing is a threshold issue for the maintenance of this suit. Accordingly, the Court begins its inquiry with this issue.

1. Concrete Interests

To identify the concrete interests protected by statutory provisions, courts "examine historical practice and the legislative judgment underlying the provisions at issue." *Adams*, 836 F. App'x at 546 (citing *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1117 (9th Cir. 2020)) (cleaned up). As to historical practice, "it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Spokeo*, 578 U.S. at 341; *see also TransUnion LLC v. Ramirez*, _ U.S. _, 210 L. Ed. 2d 568,

141 S. Ct. 2190, 2204 (2021) ("Various intangible harms can also be concrete. Chief among them are injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts."). Regarding legislative judgment, "[c]ourts must 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 to sue over the defendant's violation of that statutory prohibition or obligation." *TransUnion*, 141 S. Ct. at 2204.

a. Historical Practice

Six argues that he "suffered intangible harm similar to intrusion upon seclusion. . . ." (Doc. 112 at 13.) The Supreme Court has expressly listed the common law tort of intrusion upon seclusion as one of those harms bearing a close relationship to harms traditionally regarded as providing a basis for a lawsuit. *TransUnion*, 141 S. Ct. at 2204. IQ Data does not dispute that the tort of intrusion upon seclusion is one of those harms traditionally regarded as providing a basis for a lawsuit. Rather, IQ Data argues that any intangible harm suffered from receiving a single letter after providing notice of representation does not bear a close relationship to the harm suffered by intrusion upon seclusion. (Doc. 116 at 7.)

The common law tort of intrusion upon seclusion occurs when one "intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concern . . . if the intrusion would be highly offensive to a reasonable person." Restatement (Second) of Torts

§ 652B (1977). The tort "consists solely of an intentional interference with [a person's] interest in solitude or seclusion, either as to his person or as to his private affairs or concerns, of a *kind* that would be highly offensive to a reasonable man." *Id.* at cmt. a (emphasis added).

The Ninth Circuit has not yet considered whether the alleged harm caused by an unwelcome letter bears a close relationship to harm suffered from intrusion upon seclusion. Six, therefore, directs the Court's attention to the Tenth Circuit's decision in *Lupia v. Medicredit, Inc.*, 8 F.4th 1184 (10th Cir. 2021), and the Sixth Circuit's recent decision in *Ward v. NPAS, Inc.*, 63 F.4th 576 (6th Cir. 2023). (Doc. 112 at 12; Doc. 122 at 1.) In *Lupia*, the Tenth Circuit found that a single unwelcome phone call related to a disputed medical debt, though insufficient to give rise to liability at common law, "poses the same *kind* of harm recognized at common law—an unwanted intrusion into plaintiff's peace and quiet." 8 F.4th at 1192 (citation omitted). Similarly, in *Ward*, the Sixth Circuit found that "[u]nwanted phone calls are the type of intrusive invasion of privacy that [the tort of intrusion upon seclusion] seeks to prevent." 63 F.4th at 580 (internal marks and citations omitted). This is so, the Sixth Circuit reasoned, even when "the volume of such calls may be too minor an annoyance to be actionable at common law." *Id.* at 581 (citation omitted). Both *Lupia* and *Ward* found the Seventh Circuit's decision in *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458 (7th Cir. 2020), instructive on this point. In that case, then-Judge Barrett reasoned that, in assessing intangible injuries and their relationship to common law harms, courts "are meant to look for a close relationship in kind, not degree."

Gadelhak, 950 F.3d at 462. Therefore, although a single unwanted phone call may not give rise to common law liability, the harm suffered by its receipt bears a close relationship in kind to the harm suffered from intrusion upon seclusion.

According to Six, just as an unwanted phone call or text message intrudes upon an individual's seclusion, so too does an unwelcome letter placed in his mailbox. But as the Seventh Circuit most recently clarified, "[i]ntrusion upon seclusion requires more than just an emotional response—it requires a particular kind of offensive intrusion." *Pucillo v. Nat'l Credit Sys., Inc.*, 66 F.4th 634, 640 (7th Cir. 2023) (citing *Gadelhak*, 950 F.3d at 462–63)). Mindful that courts should evaluate the kind of harm rather than the degree, *Pucillo* makes clear that only those particularly offensive intrusions are similar in kind to intrusion upon seclusion. Moreover, the tort generally seeks to guard against invasion of privacy by some "form of investigation or examination into [one's] private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents." *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 491 (9th Cir. 2019) (quoting Restatement (Second) of Torts § 652B)).[1] Indeed, courts have reasoned that intrusion upon seclusion is largely concerned with "eavesdropping, wiretapping,

1. In *Nayab*, a Fair Credit Reporting Act case, the Ninth Circuit found that "the release of highly personal information . . . is the same harm that forms the basis for the tort of intrusion upon seclusion." 942 F.3d at 491–92.

and looking through one's personal documents." *Salcedo v. Hanna*, 936 F.3d 1162, 1171 (11th Cir. 2019).

Receiving a letter with undisputedly accurate information, specifically requested from a different source, can hardly be said to constitute a particularly offensive intrusion. *See Pucillo*, 66 F.4th at 640 (reasoning that "there is nothing inherently bothersome, intrusive, or invasive about a collection letter delivered via U.S. Mail"). That "[c]ourts have also recognized liability for intrusion upon seclusion for irritating intrusions[,] such as when telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff[,]" does not lead to a differing conclusion. *Gadelhak*, 950 F.3d at 462 (internal marks and citations omitted). As *Pucillo* explains, text messages and phone calls differ in kind from the letter at issue here. "Text messages may create an injury because they can disrupt a person anytime, anywhere, thereby invading private solitude." *Pucillo*, 66 F.4th at 641 (internal marks and citation omitted). And the "undesired buzzing of a cell phone . . . like the unwanted ringing of a phone from a call, is an intrusion into peace and quiet in a realm that is private and personal." *Gadelhak*, 950 F.3d at 462 n.1. On the other hand, a letter delivered to an individual's mailbox does not intrude into the recipient's seclusion in a realm that is private and personal. Indeed, at his deposition, Six admitted that he did not know when the letter came to his to mailbox. (Doc. 112-1 at 56.) This admission is unsurprising given that "[m]ail can be picked up when, if, and how often the recipient chooses, unlike a phone which is usually on one's person or close by throughout

the day." *Pucillo*, 66 F.4th at 641. It is difficult to see how a letter delivered to a mailbox, unbeknownst to Six, and to be retrieved at his leisure, in a mailbox where he receives countless articles of correspondence, some desired and some not, results in a harm similar in kind to the irritating intrusion into the peace and quiet of a private and personal realm caused by phone calls and text messages. *Cf. Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017) (finding that "[u]nsolicited telemarking phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients"). Therefore, the Court finds that Six's alleged harm does not bear a close relationship to a harm traditionally regarded as providing a basis for a lawsuit.

b. Congressional Judgment

As Congress is "well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important." *Spokeo*, 578 U.S. at 341. That said, 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." *TransUnion*, 141 S. Ct. at 2205 (citations omitted). And courts cannot "treat an injury as concrete for Article III purposes based only on Congress's say-so." *Id.* (citations omitted).

Congress enacted the FDCPA to "eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to

protect consumers." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577, 130 S. Ct. 1605, 176 L. Ed. 2d 519 (2010). Insofar as Congress intended to prevent invasions of individual privacy through the passage of the FDCPA, only those "[a]busive debt collection practices" that "contribute to . . . invasions of individual privacy" are referenced in the statute. 15 U.S.C. § 1692(a); *see also Cohen v. Rosicki, Rosicki & Assocs., P.C.*, 897 F.3d 75, 81 (2d Cir. 2018) ("Congress enacted the FDCPA to protect against the abusive debt collection practices likely to disrupt a debtor's life.").

A debt collectors' mailing of a single letter containing accurate information to a debtor's mailbox after that debtor requested information verifying the debt from a credit reporting agency is not the kind of abusive debt collection practice the FDCPA seeks to prevent. *See Pucillo*, 66 F.4th at 641–42 (finding that "sending two letters, one year apart and without any tangible consequences for the recipient, is not the kind of abusive practice Congress sought to prevent"). And, as analyzed above, the intrusion into the peace and seclusion presented by unwanted phone calls differs materially from the receipt of a letter in a mailbox—even though both actions on behalf of the debt collector are violative of the statute if it has knowledge of a debtor's representation by counsel. In essence, not every violation of 15 U.S.C. § 1692c(a)(2) necessarily threatens the recipient's concrete interests. Therefore, the Court considers the alleged violation here more procedural than substantive. *See Campbell*, 951 F.3d at 1119 n.8 (reasoning that "*procedural* obligations . . . *sometimes* protect individual interests," while violations

of "*substantive* right[s]" always cause concrete harm) (citation omitted).

2. Actual Harm or Risk of Harm

Six also fails to allege actual harm or material risk of harm to the interests protected by the FDCPA. For one, Six's Complaint does not contain a single allegation that he acted or forewent any action because of the letter. Indeed, the Complaint does not allege any harm beyond a mere procedural violation. *See Bassett v. ABM Parking Servs.*, 883 F.3d 776, 779 (9th Cir. 2018) (reiterating that "a bare procedural violation, divorced from any concrete harm, cannot satisfy the injury-in-fact requirement of Article III") (internal marks and citation omitted); *see also TransUnion*, 141 S. Ct. at 2205 ("[U]nder Article III, an injury in law is not an injury in fact."). And as discussed above, the FDPCA is designed to protect against abusive debt collecting practices absent here.

For the first time in his summary judgment briefing, Six alleges that the collection "letter made him angry, frustrated, and stressed." (Doc. 112 at 13.) Six maintains that this resulted "in his heart racing, a feeling of being overwhelmed, loss of appetite, and loss of sleep." (*Id.*)[2] Again, the Ninth Circuit "has not yet considered

2. The Court disagrees with Six's characterization of these harms as tangible. (Doc. 112 at 13.) The Supreme Court has referred to "traditional tangible harms" as those that cause "physical or monetary injury to [a] plaintiff[.]" *TransUnion*, 141 S. Ct. at 2204. The Court finds the alleged anger, frustration, and stress to be dissimilar to traditional tangible harms causing

whether . . . allegations of intangible harm—emotional distress, loss of personal reputation, and loss of personal time—without more, suffice as concrete injury-in-fact for standing purposes in a FDCPA case in view of *TransUnion*." *Samano v. LVNV Funding, LLC*, No. 1:21-CV-01692-SKO, 2022 U.S. Dist. LEXIS 72102, 2022 WL 1155910, at *3 (E.D. Cal. Apr. 18, 2022). On the other hand, the Seventh Circuit "ha[s] expressly rejected 'stress' as constituting concrete injury following an FDCPA violation." *Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 668 (7th Cir. 2021) (quoting *Pennell v. Glob. Tr. Mgmt.*, 990 F.3d 1041, 1045 (7th Cir. 2021)). A plaintiff "must show harm beyond emotional response, such as an adverse credit rating or detrimental action that the plaintiff took in reliance on the letters." *Pucillo*, 66 F.4th at 639.

As an initial matter, it is not clear that Six's emotional responses are at all traceable to the collection letter. At his deposition, Six stated that he "even lost a few nights' sleep over this debt." (Doc. 112-1 at 58.) But this describes a response to the existence of a debt, not the response to a letter following notice of representation. And "federal courts may entertain FDCPA claims only when the plaintiff suffers a concrete harm that he wouldn't have incurred had the debt collector complied with the Act." *Wadsworth*, 12 F.4th at 669. Here, if Six's loss of sleep is driven by the existence of the debt, this harm is suffered regardless of whether IQ Data complied with the FDCPA.

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physical or monetary damage. Indeed, it is difficult to quantify "loss of appetite" or "loss of sleep." Thus, the Court also considers these to be intangible injuries.

Nevertheless, as mentioned above, Six's anger, frustration, and stress are insufficient to establish a concrete injury. *See Id.* at 668 (finding that these "are quintessential abstract harms that are beyond our power to remedy").[3]

In sum, neither historical practice nor Congressional judgment establishes that Congress enacted the FDCPA to protect against the intangible harm Six alleges here and Six fails to show any other actual harm or material risk of harm to the interests protected by the FDCPA.

B. IQ Data's Request for Fees

IQ Data argues that it "should be awarded fees and costs accrued from defending against [Six's] scheme and frivolous claim." (Doc. 62 at 15.) The FDCPA provides that on "a finding by the court that an action . . . was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." 15 U.S.C. § 1692k(a)(3). IQ Data claims that Six and his counsel "knew there was no standing at the time the frivolous lawsuit was filed." (*Id.* at 16.) The Court finds that the action was not brought in bad faith or for the purposes of harassment. Ironically, the Court previously found

3. For the first time in his supplemental briefing, Six claims that he received text/push notification to his cell phone notifying him that there was mail ready to be picked up at his mailbox. (Doc. 126 at 4.) But Six does not allege that IQ Data sent him the text message and provides no other information on the origins of the message. This tardy and vague allegation does not alter the Court's conclusion.

that IQ Data and its counsel recklessly filed a frivolous Rule 11 motion for the bad faith purpose of leveraging a settlement, denied Six's requests for an extension of time in bad faith, and misrepresented its reasoning for requesting a modification of the Scheduling Order to the Court. (Doc. 106 at 42–43.) Considering this context, IQ Data's request for attorneys' fees exhibits a striking lack of self-awareness. It is denied.

IV. CONCLUSION

Six has not alleged a concrete injury to satisfy Article III standing for his FDCPA claim. The Court is, therefore, without jurisdiction to adjudicate the merits of his claim.

Accordingly,

IT IS ORDERED:

1. This case is **dismissed** for lack of subject matter jurisdiction.

2. Defendant IQ Data International Incorporated's Motion for Summary Judgment (Doc. 62) is **denied as moot**.

3. Plaintiff Ryan Six's Motion for Summary Judgment (Doc. 112) is **denied as moot**.

4. Plaintiff Ryan Six's Motion to Strike Expert Disclosure or Exclude Expert (Doc. 68) is **denied as moot**.

5. The Clerk of Court is instructed to terminate this case.

6. The Court retains jurisdiction to resolve Plaintiff's Motion for Attorneys' Fees (Doc. 109), which remains pending and will be resolved in a separate order.

Dated this 18th day of May, 2023.

/s/ Michael T. Liburdi
Michael T. Liburdi
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MARCH 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15887

D.C. No. 2:22-cv-00203-MTL
District of Arizona

RYAN SIX,

Plaintiff-Appellant,

v.

IQ DATA INTERNATIONAL, INC.,

Defendant-Appellee.

Filed March 28, 2025

ORDER

Before: GRABER, DESAI, and DE ALBA, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for panel rehearing and petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

Appendix C

The petitions for panel rehearing and rehearing en banc are **DENIED**. Dkt. 40.