

# U.S. Supreme Court Tightens Standing Requirements in TransUnion Decision

---

June 29, 2021

On June 25, 2021, the Supreme Court of the United States handed down its decision in *TransUnion LLC v. Ramirez*, which tightened the Court's requirements for showing standing and will significantly affect class action litigation, particularly in cases involving causes of action created by federal statute or involving allegations of a potential risk of injury.

In *TransUnion*, a class of 8,185 individuals sued TransUnion, a credit reporting agency, claiming that it violated the Fair Credit Reporting Act by failing to accurately identify individuals who appear on the federal government's list of terrorists, drug traffickers, and other serious criminals. Plaintiffs alleged that TransUnion assigned an "alert" to anyone whose name matched a name on the list, including class members, without confirming that the name actually referred to the person in question. The district court ruled that the entire class — even those whose incorrect designation was never disclosed outside TransUnion — had standing under Article III of the Constitution to sue for damages. A jury subsequently returned a verdict in favor of the class, and the U.S. Court of Appeals for the Ninth Circuit affirmed.

The Supreme Court reversed, finding that most of the class did not suffer an injury sufficient to confer standing. The class members whose erroneous credit reports were sent to third-party businesses had standing, but the majority of the class, whose incorrect designations never left TransUnion's files, lacked standing.

Justice Kavanaugh, writing for the 5-4 majority, laid out the three requirements a plaintiff must plead with respect to harm in order to show Article III standing. The injury must be (i) concrete, particularized, and actual or imminent; (ii) likely caused by the defendant; and (iii) able to be redressed by judicial relief.<sup>1</sup> The question of standing turned on whether each plaintiff alleged a concrete injury, which courts have recognized as either a "tangible" injury — physical or monetary harms — or an "intangible" one including an injury "with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts" or "specified by the Constitution itself."<sup>2</sup>

*TransUnion* placed clear limits on plaintiffs' and classes' ability to bring claims and recover damages in federal court in at least two ways:

**First**, *TransUnion* confirmed that plaintiffs suing under a federal statute must demonstrate a concrete injury to establish Article III standing, even where statutory damages are available.<sup>3</sup> The Supreme Court noted that "Article III grants federal courts the power to redress harms that defendants cause plaintiffs,

not a freewheeling power to hold defendants accountable for legal infractions.”<sup>4</sup> Accordingly, plaintiffs will need to do more than point to the availability of a federal cause of action or statutory damages to establish a concrete injury and Article III standing. The Court also held that in the context of class action litigation, “[e]very class member must have Article III standing in order to recover individual damages.”<sup>5</sup> This holding may lead plaintiffs’ counsel and courts to narrow class definitions where concrete injuries are difficult to show, and may also support defense arguments that a proposed class that includes uninjured members cannot be certified.

**Second**, noting that plaintiffs and class members must “demonstrate standing separately for each form of relief sought”,<sup>6</sup> the Court held that “the risk of future harm on its own does not support Article III standing for the plaintiffs’ damages claim.”<sup>7</sup> Under this rule, a plaintiff or class member who allegedly faces a risk of *future* injury may not have standing to recover damages. This holding may have a particularly strong impact in data breach litigation, where plaintiffs often seek damages on the theory that the taking of their personal data increases their risk of identity theft even if they have not yet suffered any such consequences. Under *TransUnion*, such plaintiffs may be foreclosed from seeking money damages in federal court unless and until that risk is realized.

Defense attorneys can use *TransUnion* to their clients’ advantage at numerous stages of litigation by moving to dismiss claims of plaintiffs who fail to allege a concrete injury, seeking to narrow class definitions or oppose class certification altogether, and objecting to certain forms of relief. On the other hand, as noted in the dissent, Article III applies only in federal court, so plaintiffs may seek to refile dismissed claims in state courts, which sometimes have less rigorous standing requirements than Article III.

---

<sup>1</sup> *TransUnion v. Ramirez*, No. 20-297, slip op. at 7 (2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992)).

<sup>2</sup> *Id.* at 9 (citing *Spokeo v. Robins*, 578 U.S. 330, 341 (2016)).

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.* at 15 (emphasis added).

<sup>6</sup> *Id.* at 20.

<sup>7</sup> *Id.* at 26.

## CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

**Amy P. Lally**, Partner

+1 310 595 9662, [alally@sidley.com](mailto:alally@sidley.com)

**Daniel C. Craig**, Partner

+1 312 853 7370, [dcraig@sidley.com](mailto:dcraig@sidley.com)

Attorney Advertising—Sidley Austin LLP is a global law firm. Our addresses and contact information can be found at [www.sidley.com/en/locations/offices](http://www.sidley.com/en/locations/offices).

Sidley provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at [www.sidley.com/disclaimer](http://www.sidley.com/disclaimer).

© Sidley Austin LLP