No. 15- .

In the

Supreme Court of the United States.

Law Office of Joseph Onwuteaka, P.C.; Joseph Onwuteaka;
and Samara Portfolio Management, L.L.C.,

Petitioners,

-v-

Rolando Serna,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION FOR WRIT OF CERTIORARI.

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Questions Presented.

1. Does the one-year statute of limitations for seeking relief under the Fair Debt Collection Practices Act, 15 U.S.C. §1692k(d), begin to run when the offending debt collection suit is first filed or when it is served?

2. Should this Court resolve the split of authority among the circuit courts of appeals and the federal district courts about whether the one-year statute of limitations for seeking relief under the Fair Debt Collection Practices Act, 15 U.S.C. §1692k(d), begins to run when the offending debt collection suit is first filed or when it is served?

Parties to the Proceedings.

Petitioner Samara Portfolio Management, L.L.C., is a Texas limited liability company which is owned by petitioner Joseph Onwuteaka and Celeste Ledesma and provides limited liability to them.

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Citations of Opinions and Orders.

The unpublished *per curiam* decision of the United States Court of Appeals for the Fifth Circuit in *Rolanda Serna v. Law Office of Joseph Onwuteaka, P.C. et al.*, C.A. No. 14-20574, decided June 5, 2015, and reported at 2015 WL 3526977 (5th Cir. 2015), affirming the judgment of the United States District Court for the Southern District of Texas, Houston Division, granting summary judgment to respondent Rolanda Serna, is set forth in the Appendix hereto (App. 1-27).

The unpublished Memorandum and Order of the United States District Court for the Southern District of Texas, Houston Division, in *Rolando Serna v. Law office of Joseph Onwuteaka et al.*, Docket No. 4:11-CV-3034, filed on January 10, 2014, and reported at 2014 WL 109402 (S.D. Tex. 2014), granting respondent's motion for summary judgment, is set forth in the Appendix hereto (App. 28-53).

The published opinion of the United States Court of Appeals for the Fifth Circuit in *Rolanda Serna v. Law Office of Joseph Onwuteaka, P.C. et al.*, C.A. No. 12-20529, decided October 7, 2013, and reported at 732 F.3d 440 (5th Cir. 2015), reversing the judgment of the United States District Court for the Southern District of Texas, Houston Division, which granted summary judgment to petitioners and dismissed respondent's complaint, is set forth in the Appendix hereto (App. 54-85).

The unpublished Memorandum and Order of the United States District Court for the Southern District of Texas, Houston Division, in *Rolando Serna v. Law Office of Joseph Onwuteaka et al.*, Docket No. H-11-cv-3034, filed on June 19, 2012, and reported at 2012 WL 2360805, granting summary judgment to petitioners and dismissing respondent's complaint, is set forth in the Appendix hereto (App. 86-99).

The unpublished Order of the United States Court of Appeals for the Fifth Circuit in *Rolanda Serna v. Law Office of Joseph Onwuteaka, P.C. et al.*, C.A. No. 14-20574, filed and decided on July 17, 2015, denying petitioners' timely filed petition for rehearing, is set forth in the Appendix hereto (App. 100).

Basis for Jurisdiction in this Court.

The decision of the United States Court of Appeals for the Fifth Circuit affirming the judgment of the United States District Court for the Southern District of Texas, Houston Division, granting summary judgment to respondent Rolanda Serna, was filed on June 5, 2015; and its further Order denying petitioners' timely filed petition for rehearing was filed and decided on July 17, 2015 (App. 1-27;100).

This petition for writ of certiorari is filed within ninety (90) days of July 17, 2015. 28 U.S.C. § 2101(c).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

Constitutional, Statutory Provisions Implicated by This Petition.

15 U.S.C. § 1692 (a) & (e) [The Fair Debt Collection Practices Act]:

> **(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.
> ....
> **(e) Purposes.** It is the purpose of this subchapter 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.

15 U.S.C. § 1692f(1):

> A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt....

15 U.S.C. § 1692i(a):

> **Venue.** Any debt collector who brings any legal action on a debt against any consumer shall----
> (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in the judicial district or similar legal entity in which such real property is located; or
> (2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity-----
> (A) in which such consumer signed the contract sued upon; or
> (B) in which such consumer resides at the commencement of the action.

15 U.S.C. § 1692k(d):

> **Jurisdiction.** An action to enforce any liability created

by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

Fed. R. Civ. P. 3:

A civil action is commenced by filing a complaint with the court.

Fed. R. Civ. P. 6(a) & (d):

(a) **Computing Time**. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.
....

(d) **Additional Time After Certain Kinds of Service**. When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

Tex. Bus. & Com. Code Ann. § 17.46(b) (23) (2011):

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:
....
(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

Tex. Civ. Prac. & Rem. Code Ann. § 16.002 (2011):

> ONE-YEAR LIMITATIONS PERIOD.
> (a) A person must bring suit for malicious prosecution, libel, slander, or breach of promise of marriage not later than one year after the day the cause of action accrues.
> (b) A person must bring suit to set aside a sale of property seized under Subchapter E, Chapter 33, Tax Code, not later than one year after the date the property is sold.

Statement of the Case.

On June 22, 2008, respondent Rolando Serna ("respondent" or "Serna"), a resident of San Antonio in Bexar County, Texas, signed a promissory note with First Bank of Delaware via the internet. According to its terms, Serna was provided with $2,525 in funds and because the note carried an annual interest rate of 96%, he agreed to a total repayment amount of $9,218.84. Although the note was executed electronically, its terms provided that it was entered into in Delaware.

After Serna defaulted on the promissory note, petitioner Samara Portfolio Management, L.L.C. ("Samara" or "petitioner") purchased the loan from First Bank of Delaware. One of Samara's owners is petitioner Joseph Onwuteaka ("Onwuteaka" or "petitioner"), a Texas attorney practicing in Houston who purchases such debts and then sues to collect upon them. On July 6, 2010, two years after Serna executed the promissory note, Onwuteaka and his law firm, petitioner Law Office of Joseph Onwuteaka, P.C. ("Law Office" or "petitioner"), filed a lawsuit against Serna in Harris County, Texas, seeking a judgment for the unpaid balance on the promissory note. On August 14, 2010, Serna was served with process at his Bexar County address in San Antonio.

Despite being served with process, Serna did not file an answer or make an appearance in the Harris County lawsuit. Onwuteaka received a no-answer default judgment against Serna on December 9, 2010, and was awarded $2,600 in damages, $1,500 in attorney's fees and $34 in costs. On March 22, 2011, Onwuteaka began his attempts to collect from Serna on the default judgment via garnishment.

Serna did not seek relief from the default judgment or the garnishment proceedings in the state courts of Texas. Instead, on August 12, 2011, represented by counsel, he filed a motion in the federal district court for the Southern District of Texas, Houston Division, to proceed *in forma pauperis* in that court to prosecute his attached original complaint against petitioners for violating federal and state law by bringing a debt collection suit against him in a distant forum. Serna's motion to proceed *in forma pauperis* was denied by the district court on August 15, 2011, and the cause was administratively terminated the same day.

On August 18, 2011, Serna again filed his original complaint against petitioners in the federal district court for the Southern District of Texas, Houston Division, this time paying the required fee. His complaint alleged that Onwuteaka, the Law Office and Samara ("petitioners") violated the Fair Debt Collection Practices Act (15 U.S.C. § 1692) ("FDCPA" or "the Act") as well as the Texas Deceptive Trade Practices Act when they brought suit against him in Harris County, a county where he neither lived nor contracted for the loan sued upon. Specifically, Serna claimed that petitioners violated 15 U.S.C. § 1692i(a)(2) and Tex. Bus. & Com. Code Ann. § 17.46(b) (23) by filing a debt collection lawsuit against him in a "distant forum." He sought declaratory and injunctive relief as well as his actual damages, attorney's fees and costs.

Petitioners answered the complaint raising a number of affirmative defenses and filed a counterclaim alleging that Serna's lawsuit was groundless and brought in bad faith. After Serna voluntarily dismissed his claims under the Texas Deceptive Trade Practices Act, both sides moved for summary judgment with petitioners contending *inter alia* that Serna's FDCPA complaint was time-barred because he failed to file it within one year of the date on which petitioners filed the underlying Harris County lawsuit; and Serna's motion sought judgment in his favor on his FDCPA claim as well as petitioners' bad faith counterclaim and affirmative defenses.

The gist of petitioners' summary judgment motion was that the one-year limitations period in § 1692k(d) of the FDCPA began to run on the date the allegedly wrongful suit was filed, here July 6, 2010, and Serna did not file his complaint in federal district court until August 18, 2011, rendering his claim time-barred (App. 89;92).Serna argued that the date for calculating the one-year period under § 1692k(d) began on the date he was served with process in the allegedly wrongful suit, here August 14, 2010 (App. 92) . He then claimed that his ultimately unsuccessful *in forma pauperis* motion filed on August 12, 2011, tolled the running of the one-year period and his FDCPA complaint filed on August 18, 2011, was therefore timely (*Id*.). Finally, he argued that his time to file suit was extended to August 18, 2011, by operation of the Federal Rules of Civil Procedure, particularly the "mailbox rule" of Fed. R. Civ. P. 6(d) (*Id*.).

On June 19, 2012, Magistrate Judge George C. Hanks, Jr., issued a memorandum and order granting petitioners' summary judgment motion on Serna's FDCPA claim, denying Serna's opposing motion on this claim and granting Serna's motion regarding petitioners' counterclaims against him (App. 86-99). With no Fifth Circuit precedent addressing this issue of when the FDCPA limitations period under §1692k(d) begins to run, the motion judge canvassed available decisional law and noted that courts across the country have reached opposite conclusions (App. 94-95). Persuaded by the reasoning of some of those courts that the filing of the collection suit in the wrong venue is itself the offending act targeted by § 1692i(a)(2) of the FDCPA, the Magistrate Judge ruled that the one-year statute of limitations of § 1692k(d) for this particular violation begins to run upon the filing of the lawsuit in the improper forum, not when the defendant is subsequently served with process in the lawsuit (App. 95-96).

Explaining his conclusion, the motion judge felt bound by the plain language of §1692i(a) and §1692i(a)(2) which refers to and prohibits the "bringing" of a legal action by a debt collector in the judicial district where the consumer-defendant neither signed the contract sued upon nor where he resides (*Id*.). Relying upon *Beeler-Lopez v. Dodeka, LLC*, 711 F. Supp.2d 679, 681 (E.D.Tex.

2010), which found that "to bring an action" means "to sue; to institute legal proceedings," the Magistrate Judge thus determined that the limitations period of §1692k(d) —which itself refers to a civil action by a consumer which "may be brought" against a debt collector----began to run when petitioners filed their Harris County lawsuit on July 6, 2010 (App. 95-97).

In response to the concern that an unscrupulous debt collector might bring suit in the wrong forum and then delay service upon the alleged debtor in order to deprive him of his remedies under the FDCPA, the lower court noted its inherent power under the federal rules to dismiss actions where service is not made within 120 days of the filing of the complaint and the holding of another court that this kind of "sewer service" would be subject to equitable tolling under the FDCPA (App. 95-96). Finally, even if Serna's filing of his *in forma pauperis* motion on August 12, 2011, could be considered an action to enforce petitioners' liability under the FDCPA within the meaning of §1692k(d), he still did not take this step within one year of July 6, 2010 (App. 96-97).

Serna appealed and on October 7, 2013, the court of appeals reversed the judgment and remanded the case to the district court for further proceedings (App. 54-85). By a vote of 2-1, the panel ruled that for purposes of § 1692k(d)'s one-year limitations period, a violation of §1692i(a)(2) does not occur until a debtor like Serna is provided notice of the debt collection suit by service of petitioners' complaint (App. 58). Reaching back to a 1943 decision of a sister circuit court of appeals and then to the Texas courts' own treatment of the word "bring," the majority concluded that the phrase "bring such action" contained in §1692i(a)(2) was ambiguous, that it was not necessarily synonymous with instituting a lawsuit by filing a complaint and does not plainly mean "file a pleading," as the Magistrate Judge determined (App. 58-61).

According to the majority, for purposes of the FDCPA, the phrase "bring such action" as used in §1692i(a)(2) could mean that a violation occurs with the filing a debt collection suit in an improper venue or it could also mean that a violation occurs "only after the debtor becomes aware of the suit such that the debtor is harmed by having to respond in a distant forum, thereby requiring filing *and* notice of the action" (App. 60) (emphasis supplied). It found this reading supported by the remedial purpose of the FDCPA and the need to avoid rewarding unscrupulous debt collectors who delay service in order to deprive a debtor of the benefit of the FDCPA's short, one-year limitations period (App. 61-63). It also thought this result comported with Congress' intent and aligned with a decision by a sister circuit court of appeals (App. 63-66).

In essence, then, the majority ruled that the phrase "bring such action" as used in §1692i(a)(2) has a far different meaning than the phrase "[a]n action...may be brought" as used in §1692k(d) to define the remedy afforded a consumer who is sued in a distant forum by a debt collector, i.e, his right to sue or to institute legal proceedings against that debt collector in federal district court.

Applying its holding that the limitations period of § 1692k(d) begins to run when Serna was served with petitioners' complaint on August 14, 2010, the majority then determined that Serna was required to file his complaint against petitioners by August 14, 2011, and because this date was a Sunday, by August 15, 2011 (App. 67-68). However, since Fed. R. Civ. P. 6(d), provides him with 3 additional days after his *in forma pauperis* motion was denied, Serna's filing on August 18, 2011, was timely (App. 68).

Circuit Judge Smith dissented (App. 76-85). As he saw it, the majority's reading of the FDCPA which assigns a far different meaning to the phrase "bring such action" in §1692i(a)(2) than to the nearly identical phrase "[a]n action...may be brought" in §1692k(d), was not only counterintuitive but also "demonstrable error" (App. 76). He thought these nearly identical phrases contained within the same act should be given the same meaning (*Id*.).

First, examining the plain terms of the statutory text itself, the Circuit Judge found that the phrase "bring such action" was not ambiguous, that it means to begin, start or commence legal proceedings; and that in the context of federal law, a suit is brought or commenced when it is filed (App. 76-77). In addition, he found that many federal statutes use "file" and "bring" interchangeably and distinguish between bringing suit and serving process (App. 77).

As Judge Smith noted, even the majority's own opinion reads §1692k(d)'s phrase "[a]n action... may be brought" according to its ordinary meaning under federal law, i.e., synonymous with the filing of a complaint, using "bring suit" and "file suit" interchangeably as if they mean the same thing (App. 77-78). Because normal rules of statutory construction assume that identical words used in different parts of the same act are intended to have the same meaning----and there is nothing in the text of the FDCPA indicating otherwise----the terms of §1692i(a)(2) and §1692k(d) should be given the same meaning, rendering Serna's action untimely because it was brought more than a year after petitioners brought their collection suit against him on July 6, 2010 (App. 78-79).

Second, because the phrase "bring such action" as used in §1692i(a)(2) is not ambiguous, the dissent saw no reason to go beyond the statutory language itself to resort to canons of construction, legislative history or decisions by other courts interpreting different language, as the panel majority did (App. 79-80). Regardless of the remedial nature of the FDCPA, the duty of the court was to apply the statute as Congress wrote it unless to do so would produce patently absurd results (*Id*.). "That unscrupulous debt collectors might cut into the statute of limitations by delaying service might justify applying a discovery rule or equitable tolling but *not* a finding of absurdity" (App. 84) (emphasis supplied).

In any event, as the dissent observed, the legislative history of the FDCPA demonstrates that Congress intended to codify the FTC's rule against *filing suit* in a distant forum and, in §1692i(a)(2), it therefore prohibited *bringing an action* in a distant forum, synonymous terms under federal law (App. 80-81). Thus "bring" is not a broader term than "file" under federal law and the Senate Report upon which the majority relied uses them interchangeably, supporting the plain meaning of "bring such action" in §1692i(a)(2), as beginning a legal action by filing a complaint (App. 81). Because Judge Smith believed there was "no great mystery" about §1692i(a)(2)'s plain meaning, he thought Serna's action was untimely because it was brought more than a year after petitioners brought their collection suit against him on July 6, 2010 (*Id*.).

Upon remand of the case to federal district court and after further briefing, Serna moved for summary judgment on his FDCPA claim. On January 10, 2014, Magistrate Judge Hanks issued a memorandum and order granting Serna summary judgment on his FDCPA claim and awarding him $1,000 in statutory damages as well as his reasonable costs and attorney's fees (App. 28-53).

Petitioners appealed and in *per curiam* decision issued on January 5, 2015, the court of appeals affirmed the judgment (App. 1-27*)*. In the process, the court declined to hear petitioners' new argument concerning the meaning of the phrase "may be brought" in §1692k(d) which may have rendered Serna's action untimely (App. 17-18). As it ruled, petitioners' argument was foreclosed by its earlier decision and the law-of-the-case doctrine (App. 18).

On July 17, 2015, the court of appeals denied petitioners' timely filed petition for rehearing (App. 100).

Argument Supporting Allowance of the Writ.

This Court Should Resolve The Split Of Authority Among The Circuit Courts Of Appeals And The Federal District Courts About Whether The One-Year Statute Of Limitations For Seeking Relief Under The Fair Debt Collection Practices Act, 15 U.S.C. §1692k(d), Begins To Run When The Offending Debt Collection Suit Is First Filed Or When It Is Served.

The question of whether the one-year statute of limitations of 15 U.S.C. §1692k(d), for seeking relief under the Fair Debt Collection Practices Act begins to run when the offending debt collection suit is first filed or when it is served should be resolved because of "the importance of the question[] presented and [the] conflicting views in the courts of appeals and the district courts." *Calhoon v. Harvey*, 379 U.S. 134, 137 (1964). It implicates a vital issue of statutory construction of this federally preemptive legislation which is central to the effective administration of the FDCPA by the lower federal courts who have until now have decided the question so inconsistently as to leave the intent and meaning of the statute and its limitations period in a state of confusion. A definitive ruling by this Court is therefore needed to clarify the reach and meaning of §1692k(d).

Congress enacted the FDCPA in 1977 after finding "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. §1692(a). At the time the FDCPA was being considered, Congress was concerned that such practices contributed to a number of personal bankruptcies, marital instability, loss of employment and invasions of personal privacy, and that there was a dearth of meaningful State legislation which addressed these practices. *Id*., §1692(b). See S. Rep. No. 382, 95th Cong. 1st Sess. 1,2 reprinted in 1977 U.S.C.C.A.N. 1695, 1696. The Act therefore provides consumers with a private cause of action against debt collectors who fail to comply with the Act. *Id*., §1692k.

In §1692f, the FDCPA contains a nonexclusive list of unfair practices which it prohibits; and §1692i, its venue provisions, provides *inter alia* that a debt collector shall "bring[] any legal action on a debt" only in the judicial district where the consumer signed the contract sued upon or where the consumer resides at the commencement of the action. These venue restrictions prohibiting suits in counties other than the one in which the consumer resides or contracted were patterned after the venue standards developed by the Federal Trade Commission. *Blakemore v. Pekay*, 895 F. Supp. 2d 972,

980 (N.D.Ill. 1995). Finally, in §1692k(d), the FDCPA provides that the consumer's action to enforce any liability created by the Act "may be brought in any appropriate United States district court...or in any other court of competent jurisdiction, within one year from the date on which the violation occurs."

The "date on which the violation occurs" under §1692k(d) and therefore the date on which the one-year limitations period of that subsection begins to run is not defined by the FDCPA and there are arguably two possibilities: the violation could have occurred, if at all, on the date the complaint was filed in state court by the debt collector; or, the violation could have occurred, if at all, on the date the consumer received notice of the complaint which supposedly violated the Act.

Here petitioners Onwuteaka and the Law Firm brought their state court collection suit against Serna in Harris County, Texas, on July 6, 2010; and Serna was served with process on August 14, 2010. Because Serna did not bring his action under the FDCPA against petitioners until August 18, 2011, his action was untimely if the limitations period began to run on July 6, 2010, when petitioners brought their action against him; or, under the "mailbox rule" of Fed. R. .Civ. P. 6(d), it was arguably timely if the limitations period began to run from the time he was served with process on August 14, 2010.

The federal courts of appeals and the district courts have come to opposite conclusions on this issue. In *Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir. 1997), the Ninth Circuit court of appeals decided that when the alleged violation is the filing of the lawsuit in a distant forum in violation of §1692i(a)(2), the statute of limitations begins to run at the time of the filing of the offending lawsuit rather than at the time of service. Accord, *Slorp v. Lerner, Sampson & Rothfuss*, 587 Fed. Appx. 249, 258 (6th Cir. 2014) ("when a debt collector initiates a deceptive, abusive or otherwise unfair lawsuit, there is no doubt that the FDCPA claim—insofar as it is viable----accrues on that date."); *Tyler v. DH Capital Mgmt*., 736 F.3d 455, 463 (6th Cir. 2013).

A number of federal district courts have come to the same conclusion. See, e.g., *Toops v. Citizens Bank of Logan, Ohio*, Case No. 2:14-cv-2086 (S.D. Ohio 4/02/2015) at *5; *Baker v. Midland Funding, LLC*, 2014 WL 345686 (D.Ariz.2014) at *1-2; *Lyons v. Michael & Associates*, 2013 WL 4680179 (S.D. Cal. 2013); *Collins v. Erin Capital Management*, 290 F.R.D. 689, 697-698 (S.D. Fla. 2013); *Huy Thanh Vo v. Nelson & Kennard*, 931 F. Supp. 2d 1080, 1086 (E.D. Cal. 2013); *Holton v. Huff*, 2012 WL 1354024 (M.D. Pa. 2012) at *3; *Parker v. Pressler & Pressler LLP*, 650 F. Supp. 2d 326, 338 n.7 (D.N.J. 2009); *Calka v. Kucker, Kraus & Bruh, LLP*, 1998 WL 437151 (S.D.N.Y. 1998) at *3; *Blakemore*, *supra*, 895 F. Supp. at 983.

The rationale for these courts to conclude that the FDCPA violation takes place with the filing of the offending complaint derives from the plain language of the FDCPA which emphasizes that a debt collector who "*brings* any legal action" in an improper venue under §1692i(a) commits a present violation of the Act and under §1692k(d), the consumer has one year from the date "on which [this] violation *occurs*" to bring his action to enforce liability under the Act. Thus, the focus of the FDCPA is on the actions of the debt collector and the filing of the lawsuit is the debt collector's "last opportunity to comply" with the FDCPA. *Naas*, 130 F.3d at 893, quoting *Mattson v. U.S. West Communications*, 967 F.2d 259, 261 (8th Cir. 1992).

Other policy considerations support treating the filing date of the complaint as the date when the violation of the FDCPA occurs for purposes of §1692k(d). As identified by the *Tyler* court, 736 F. 3d at 464, filing a complaint may immediately cause actual harm to the debtor if it is considered a red flag to other creditors or anyone who runs a credit or background check. Second, dating the violation to the filing of the complaint is more easily administrable as the alternative may be complicated if the proper procedure for service is not followed or if the debtor is not found. Third, the purpose of the Act is to regulate the conduct of debt collectors; the focus is on the debt collector's conduct, *not* on the awareness of the debtor/consumer, and there is no reason to protect those debt collectors who have filed complaints but not yet served process. Finally, the filing of the offending complaint in a distant forum is the "root" of the present violation of the FDCPA regardless of whether it "matures" during the collection action.

In contrast to this approach, two courts of appeals, the Fifth Circuit in this case, and the Tenth Circuit in *Johnson v. Riddle*, 305 F.3d 1107, 1113 (10th Cir. 2002), have concluded that the statute of limitations begins to run when the debtor is served with process. In addition, several federal district courts have come to the same conclusion. See, e.g., *Lautman v. 2800 Coyle St. Owners Corp.*, 2014 WL 2200909 (E.D.N.Y. 2014) at *6-7 ("the interests of fairness are better served by the conclusion that the statute of limitations begins to run from the date of service."); *Archer v. Aldridge Connors, LLP*, 998 F. Supp.2d 1360, 1364 (S.D. Fla. 2014); *Langendorfer v. Kaufman*, 2011 WL 3682775 (S.D. Ohio 2011) at *3; *McNeill v. Graham, Bright & Smith, P.C.*, 2006 WL 1489502 (N.D. Tex. 2006).

The rationale supporting this result is founded on notions of fairness as well as the remedial purpose of the statute, i.e., that the debtor should be become aware of the offending lawsuit before a violation is made out; that the filing of the complaint is only half the violation under the FDCPA; and that an unscrupulous debt collector could delay service to the detriment of the debtor's rights under the Act. *Johnson*, 305 F.3d at 1113-1114. *Archer*, 998 F. Supp. 2d at 1364.

Given the confusion among these circuit courts of appeals and the various district courts about whether and when the one-year limitations period of §1692k(d) should begin to run, this Court should grant the petition and resolve this most important question of statutory interpretation. Petitioners submit that if the Court does so, it should conclude that the limitations period begins when the debt collector first brings the offending debt collection suit for the following reasons:

A. This result comports with a plain reading of the statute. As Circuit Judge Smith in his dissenting opinion persuasively demonstrates, § 1692i(a)(2) is not ambiguous and means what it says, i.e., that the words "bring such action" means to sue or to commence a suit; and that in the context of federal law, a suit is brought or commenced when it is filed in court, *not* when it is served. *Goldenberg v. Murphy*, 108 U.S. 162, 163 (1883) ("A suit is brought in law when it is commenced" and the words "brought" and "commenced" are interchangeable to mean the beginning of a lawsuit).

While the word "bring" by itself can have a broad meaning, in §§ 1692i and 1692k(d), the Act consistently refers to the bringing of a legal action. Dictionary definition confirms that "bringing" an action means "to sue" or to "institute legal proceedings." See *FDIC v. Miller*, 510 U.S. 168, 174 (1993). "[T]he plain language of the Act itself says nothing about" service of process, *Heintz v.*

Jenkins, 514 U.S. 291, 294 (1995) (Breyer, J.), and this Court should not read into clear statutory language a restriction which Congress itself did not include. *Hubbard v. United States*, 514 U.S. 695, 703 (1995) ("[A]bsent any indication that doing so would frustrate Congress's clear intention or yield patent absurdity, our obligation is to apply the statute as Congress wrote it."). Thus the words "bring such action" in § 1692i(a)(2) means to sue or to commence a suit and a suit is brought or commenced in federal court when it is filed in court, *not* when it is served;

B. Normal rules of statutory construction assume that identical words used in different parts of the same statute are intended to have the same meaning. *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). *Wisconsin Dep't of Revenue v. William Wrigley Jr. Co.*, 505 U.S. 214, 225 (1992). There is nothing in the FDCPA to overcome the presumption that the meaning of to "bring such action" in §1692i(a)(2) means anything other than to sue or to commence a suit regardless of when it is served; and this same meaning should also be assigned to the phrase "an action...may be brought" in §1692k(d) of the Act, i.e., to sue or to commence a suit regardless of when it is served. Thus bringing or commencing a suit for collection by a debt collector is the triggering event which begins the limitations period of §1692k(d), regardless of when it served; and because there is nothing in the text of the FDCPA indicating otherwise, the terms of §1692i(a)(2) and §1692k(d) should be given the same meaning, rendering Serna's action untimely because it was brought more than a year after petitioners brought their collection suit against him on July 6, 2010;

C. As a general matter, a limitations period usually commences when the plaintiff has a "complete and present cause of action," *Rawlings v. Ray*, 312 U.S. 96, 98 (1941). Thus "*[u]nless Congress has told us otherwise in the legislation at issue*, a cause of action does not become 'complete and present' for limitations purposes until the plaintiff can file suit and obtain relief." *Bay Area Laundry v. Ferbar Corp. of California*, 522 U. S. 192, 201 1997) (emphasis supplied). Yet with the FDCPA, Congress done precisely just that in its wording of the Act and has indicated that the cause of action for Serna becomes complete upon the bringing of a collection suit by a debt collector regardless of when it is served;

D. Because the FDCPA is unambiguous, there is no justification for resorting to the legislative history of the Act, as the majority panel has done. As Justice Scalia observed, "Judges interpret laws rather than reconstruct legislators' intentions....[and] [w]here the language of those laws is clear, we are not free to replace it with an unenacted legislative intent." *INS v. Cardoza-Fonseca*,480 U.S. 421, 452-453 (1987) (concurring). *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp*., 485 U.S. 495, 501 (1988) ("[U]nenacted approvals, beliefs, and desires are not laws."). Be that as it may, as Circuit Judge Smith noted, the legislative history of the FDCPA unmistakably demonstrates that Congress intended to codify the FTC's rule against *filing suit* in a distant forum and, in §1692i(a)(2), it therefore prohibited *bringing an action* in a distant forum, synonymous terms under federal law, making §1692k(d)'s limitations period begin to run upon that event (App. 80-81);

E. That the FDCPA can be characterized as a "remedial statute" which according to the maxim should be liberally construed is no reason to engraft upon §1692k(d)'s limitations period a requirement that before it begins to run, the consumer/debtor must also first be served with process of the offending lawsuit. The maxim "is both of indeterminate coverage (since no one knows what

a ‘remedial statute’ is) and of indeterminate effect (since no one knows how liberal is a liberal construction).” Antonin Scalia, *Assorted Canards of Legal Analysis*, 40 Case W. Res. L. Rev. 581, 586 (1989-1990). This canon of construction accordingly should have little currency with the Court in order to justify a rewriting of this statute at odds with its plain terms;

F. That unscrupulous debt collectors might delay service of process to the detriment of a consumer/debtor is no reason to read new provisions into the statute which were not enacted by Congress. FDCPA claims are subject to equitable tolling principles and if it can be shown that the debt collector has somehow delayed the service of process in order to deny a consumer/debtor his remedies under the Act, the time for seeking relief under the Act will be extended. See *Sykes v. Harris*, 757 F. Supp.2d 413, 421-422 (S.D.N.Y. 2010).

Thus in the absence of circumstances calling for the application of a discovery rule or the doctrine of equitable tolling (as when a unscrupulous creditor intentionally delays service, not the case here), the statute of limitations under the FDCPA begins to run when the allegedly offending debt collection suit is first filed rather than when it is served.; and

G. The plain terms of the FDCPA show that Congress intended to regulate the conduct of debt collectors in the debt collection process independent of the awareness of the debtor/consumer. *Mattson*, 967 F.2d at 261. Accordingly, once petitioners brought their lawsuit in Harris County, Texas, on July 6, 2010, the violation of the FDCPA under §1692i(a)(2) was complete and the one-year limitations period of §1692k(d) began to run.

Conclusion.

For all of these reasons identified herein, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Fifth Circuit and, ultimately, to vacate and reverse the judgment, determine that the running of the one-year statute of limitations for seeking relief under the Fair Debt Collection Practices Act, 15 U.S.C. §1692k(d), began when the offending debt collection suit was first filed and not when it was served on respondent; or provide petitioners with such other relief as is fair and just in the circumstances of this case

Respectfully submitted,

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