No. 15-511

IN THE

Supreme Court of the United States

LAW OFFICE OF JOSEPH ONWUTEAKA, P.C., *et al.*,

Petitioners,

v.

ROLANDO SERNA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the limitations period for a forum abuse claim under 15 U.S.C. § 1692i(a)(2) begins when the prohibited lawsuit is filed or when the consumer is obligated to defend the prohibited lawsuit in a distant forum upon service of process.

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STATEMENT OF THE CASE

A. The Fair Debt Collection Practices Act

Congress enacted the Fair Debt Collection Practices Act (FDCPA) almost forty years ago, 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); Pub. L. 95-109, 91 Stat. 880 (Sept. 20, 1977). The FDCPA aims "to eliminate abusive debt collection practices [and] to insure that that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." *Id.* at § 1692(e).

The FDCPA prohibits various debt collection practices. Among them is "forum abuse, an unfair practice in which debt collectors file suit against consumers in courts which are so distant or inconvenient that consumers are unable to appear, hence permitting the debt collector to obtain a default judgment." *Hess v. Cohen & Slamowitz L.L.P.*, 637 F.3d 117, 120 (2d Cir. 2001) (quoting S. REP. NO. 95-382 at 5 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699). To prohibit forum abuse, the FDCPA provides that:

> [a]ny debt collector who brings any legal action on a debt against any consumer shall ... bring such action only in the judicial district ... (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. § 1692i(a)(2).

A debt collector who violates the FDCPA is liable for actual damages and statutory damages up to $1,000. *Id.* at § 1692k(a). An "action to enforce any liability [for any FDCPA violation] may be brought . . . within one year from the date on which the violation occurs." *Id.* at § 1692k(d).

B. Facts

Petitioners are three debt collectors who do business in Harris County, Texas: Joseph Onwuteaka, Law Office of Joseph Onwuteaka, P.C., and Samara Portfolio Management, L.L.C., a debt purchasing business owned by Joseph Onwuteaka (collectively, Onwuteaka). Onwuteaka purchases debts and often sues in justice of the peace courts in Harris County to collect on debts that have nothing to do with Harris County, taking default judgments on those lawsuits and then garnishing bank accounts to collect on the default judgments. Pet. App. 29a-30a, 35a, 40a-41a.[1]

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1. The district court found:

> The summary judgment evidence and Onwuteaka's own admissions to the Court reflect that Onwuteaka engaged in the exact behavior the FDCPA sought to prevent: he mass-filed a number of debt collection suits in Harris County without regard to the proper FDCPA venue for the individual debtors .... Onwuteaka's failure to comply with the FDCPA is extensive and persistent.

Pet. App. 40a.

In 2008, respondent Rolando Serna applied for a loan from the First Bank of Delaware while living in Bexar County, Texas. The loan documents stipulate that the parties executed the loan documents in Delaware. Pet. App. 37a. On July 6, 2010, Onwuteaka sued Serna in Harris County to collect on the promissory note. Serna's first notice of this suit was when Onwuteaka served Serna at his residence in Bexar County on August 14, 2010. Pet. App. 73a at n.17. Serna did not respond to the lawsuit so a Harris County justice of the peace granted Onwuteaka a default judgment against Serna. Onwuteaka then sought to collect on this judgment by garnishing Serna's bank account. Pet. App. 29a-30a.

C. Procedural History

Serna filed an FDCPA suit against Onwuteaka on August 18, 2011. Pet. App. 30a. That suit maintained that Onwuteaka violated the FDCPA's forum-abuse provision because Onwuteaka's collection suit was filed neither in Serna's county of residence nor where the contract was signed. Under FED. R. CIV. P. 6, Serna filed his FDCPA lawsuit within one year of the date that Onwuteaka *served* Serna with the improper collection suit, but not within one year of the date that Onwuteaka *filed* the improper suit against Serna. Pet. App. 68a.

On summary judgment, the district court held that Serna's FDCPA claim is barred by the FDCPA's statute of limitations because Serna did not file suit within one year of the date that Onwuteaka filed suit against Serna. Pet. App. 96a-97a. A divided panel of the Fifth Circuit reversed. Pet. App. 54a-85a. The court held that "bring such action" in 15 U.S.C. § 1692i(a)(2) is ambiguous because

federal and state officials have long used "bring" to refer to both filing and service of lawsuits. Pet. App. 58a-60a. Because the plain language of the statute does not resolve the question, the majority considered the structure, history, and purpose of the statute to discern Congress's intent. Pet. App. 61a. The majority found these indicia of Congress's intent:

(a) the statutory text includes Congress's direction that the statute seeks to "eliminate" forum abuse, Pet. App. 61a;

(b) reading "bring" to mean "file" would effectively place the limitation period entirely within the control of debt collectors, who could then unilaterally shrink the limitations period, even to zero, by delaying service, thus perpetuating rather than eliminating forum abuse, Pet. App. 63a;

(c) Congress proscribed forum abuse to prevent consumers from having to *defend* lawsuits in distant fora, and defense of lawsuits is not required until after service of process, Pet. App. 65a & 71a at n.15 (fair venue standards "did not seek to cure the harm of filing a suit per se," but the hardship on the consumer of having to defend a suit in distant forum); and

(d) service provides the last opportunity for debt collectors to comply with the law and avoid the injury identified by Congress, Pet. App. 66a.

Judge Smith dissented. Pet. App. 76a. Citing BLACK'S LAW DICTIONARY and federal statutes other than the FDCPA that use "file" and "brought" interchangeably, the dissent found the FDCPA unambiguous and would have held Serna's suit untimely on that ground. *Id.* at 81a.

On remand, the district court granted summary judgment to Serna on his FDCPA claim. Pet. App. 28a. Onwuteaka filed a second appeal, raising what Onwuteaka concedes was a "new" limitations argument: that "brought" as used in 15 U.S.C. § 1692k(d) must be read to have the same meaning as "bring" as used in § 1692i(a)(2). Pet. 14; CA5 ROA 585 (motion for rehearing); Brief of Appellant, Fifth Circuit Appeal No. 14-20574 at 18. The Fifth Circuit panel unanimously declined to consider this argument, citing waiver and the law-of-the-case doctrine. Pet. App. 17a-18a. Rejecting all of Onwuteaka's assertions on appeal, the Fifth Circuit affirmed and taxed the costs of the appeal against Onwuteaka "in light of Onwuteaka's persistently deficient briefing and misrepresentation of legal authority." Pet. App. 24a.

Onwuteaka filed a petition for rehearing, which the Fifth Circuit denied. Pet. App. 100a.

REASONS FOR DENYING THE PETITION

In the nearly four decades since the FDCPA's enactment, only one court of appeals—the Fifth Circuit below—has ruled on when the statute of limitations commences on a forum-abuse claim under 15 U.S.C. § 1692i(a). There is no conflict among the circuits, and the Fifth Circuit's solitary decision on this issue is correct. Review should be denied.

I. No Conflict Among Courts of Appeals Exists

Onwuteaka argues that a conflict exists because:

> [i]n *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.*

Pet. 17 (emphasis added). This statement is false. *Naas* never mentions § 1692i(a)(2). *Naas,* 130 F.3d at 892-93; *see also* Pet. App. 84a (Smith, J., dissenting) ("the Ninth Circuit was not construing § 1692i(a)"). *Naas* never states how the debt collection lawsuit at issue there allegedly violated the FDCPA. 130 F.3d at 892-93. *Naas* explicitly recognizes that the facts of some cases do not require courts to choose between filing and service as the time that an FDCPA cause of action accrues. *Id.* at 893 (noting that a district court "held that the violation occurred and the statute of limitations started to run on either the day the complaint was filed or the day it was served, but deciding between the two alternatives was unnecessary in that case"). *Naas* never refers to service of process again, never refers to any date of service, and never indicates that "deciding between the two alternatives" (filing and service) was necessary to its analysis. *Id. Nass* only rejects the date of *final appellate judgment* as the date of accrual for an FDCPA violation that is based on a state-court lawsuit. *Id.* ("The alleged violation of the [FDCPA] was not a reviewing court judgment, but the bringing of the suit itself.").

Because the Ninth Circuit could not have chosen filing over service as the date that limitations began to run, its statement that "filing" begins limitations is dicta and, in any event, says nothing about the Ninth Circuit's view on whether service triggers the limitations period in a forum abuse suit. As the court below observed, "[w]hile the Ninth Circuit noted that the one-year limitation '[begins] to run on the filing of the complaint,' the date of service was irrelevant to its narrow holding that an appellate court's affirmation of an underlying debt-collection judgment did not trigger the limitations period." Pet. App. 72a at n.16. And, as the Tenth Circuit observed in *Johnson v. Riddle*, 305 F.3d 1107, 1114 (10th Cir. 2002), "the choice between accrual upon filing and accrual upon service was not before the court in *Naas*." Indeed, the Tenth Circuit noted that "it appears likely, had the *Naas* court confronted the issue, it would have concluded that the cause of action accrues upon service." *Johnson*, 305 F.3d at 1114 n.4.[2]

Onwuteaka also implies that two Sixth Circuit decisions conflict with the holding below. Pet. 17. Neither decision involves a suit for violation of the FDCPA's forum-abuse provision. The first of these decisions expressly disclaims any holding as to whether the FDCPA statute of limitations commences at filing or service. *See Slorp v. Lerner, Sampson & Rothfuss*, 587 Fed. Appx. 249, 258 n.5

2. Ruling upon whether a lawsuit is an "unconscionable debt collection action" under 15 U.S.C. § 1692f(i), *Johnson* reasoned that a consumer does not have a "'complete and present cause of action,' and thus no violation occurs within the meaning of § 1692k(d), until the plaintiff has been served." 305 F.3d at 1113 (citation omitted); *accord Benzemann v. Citibank N.A.*, 806 F.3d 98, 102 (2d Cir. 2015) (FDCPA violation occurred when debtor's account was frozen and debtor had notice of injury, following *Serna* and *Johnson*).

(6th Cir. 2014) ("Because [the collector's] action was filed and served more than one year before [the consumer] filed suit, we need not resolve" the open question in the Sixth Circuit of "whether the relevant date for purposes of the accrual of an FDCPA claim is the date on which the suit is filed or the date on which the defendant is served."). The other decision analyzes accrual of an FDCPA claim under the Bankruptcy Code, and disclaims ruling on limitations accrual. *See Tyler v. DH Capital Mgmt.*, 736 F.3d 455, 463 (6th Cir. 2013).

In sum, no circuit split exists.

Although district court decisions do not establish splits in authority, Onwuteaka looks for conflict there and overstates it. The petition cites nine district-court decisions without individual discussion and then says:

> [t]he 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 ....

Pet. 18. Not so. Of the nine cited decisions, only one involves a limitations challenge to a forum-abuse claim. That decision is currently on appeal, and it never analyzes the text of § 1692i(a)(2). *See Lyons v. Michael & Associates,* No. 13-cv-11, 2013 WL 4680179 at *2 (S.D. Cal. Aug. 29, 2013), *appeal pending*, Ninth Cir. No. 13-56657.[3]

3. District courts in the Seventh Circuit apparently disagree as to whether filing suit in an improper forum is itself actionable if the lawsuit is never served. *Compare Desfassiaux v. Blatt, Hasenmiller,*

II. The Petition Raises Arguments Not Presented or Decided Below

Petitioner Joseph Onwuteaka presented no statutory construction arguments to the Fifth Circuit. *See generally* Brief of Appellee, Fifth Circuit Appeal No. 12-20529. He only asked the Fifth Circuit to follow the dicta in *Naas*. *Id*. at 6. Now Petitioners ask this Court to interpret the FDCPA to decide not only the trigger date for forum abuse suits under § 1692i(a)(2), but the trigger date for *any* FDCPA violation that involves any "offending debt collection lawsuit." Pet. i.[4]

Leibsker & Moore, LLC, No. 14-cv-8663, 2015 WL 6798301 at *2 (N.D. Ill. Oct. 30, 2015) (cause of action accrues upon filing suit even if service is never effected), *with Taylor v. Blitt & Gaines, P.C.*, No. 14-cv-5781, 2015 WL 5821704 at *3 (N.D. Ill. Oct. 1, 2015) ("Because a debt collector cannot obtain a default judgment until the debtor is subject to the jurisdiction of the collection court," the statute is not violated until service.). These decisions do not address the limitations issue decided below. And the Seventh Circuit should have the opportunity to address this issue in the first instance. *See Joseph v. United States*, 135 S. Ct. 705, 707 (2014) (Kagan, J.) (statement respecting denial of *certiorari*).

4. The FDCPA can be violated in many ways that could involve a collector's lawsuit, only one of which is bringing the lawsuit in an improper forum. *See, e.g.,* 15 U.S.C. §§ 1692e, 1692f, 1692i (listing numerous distinct violations); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013) (filing time-barred suit violates §§ 1692e and 1692f); *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1193-98 (11th Cir. 2010) (threat of filing suit without collection license violates § 1692e); *McCollough v. Johnson, Rodenburg & Lauinger, L.L.C.*, 637 F.3d 939, 950-52 (9th Cir. 2011) (submitting false request for admissions violated §§ 1692e and 1692f). The text of 15 U.S.C. § 1692k(d) provides that limitations commences when each violation occurs.

That gambit should be rejected. The Fifth Circuit did not decide whether the text of 15 U.S.C. § 1692k(d) permits a "one size fit all" rule for all FDCPA violations that arise from a collector's lawsuit. Pet. App. 57a ("to determine whether Serna's action was 'brought ... within one year from the date on which the [alleged] violation [of § 1692i(a)(2) occur[ed],' *see* § 1692k(d), we must interpret § 1692i(a)(2)'s reference to 'bring such action' to determine when the underlying debt-collection suit was brought"). Onwuteaka never presented his "one size fits all" argument to the Fifth Circuit, so the argument is forfeited. *See OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390, 397-98 (2015) ("Absent unusual circumstances—none of which is present here—we will not entertain arguments not made below.").

Onwuteaka also presents what his own petition concedes is a "new argument" concerning the meaning of "may be brought" in 15 U.S.C. § 1692k(d). Pet. 14. While Onwuteaka offered no statutory construction argument in the first appeal, in the second appeal he attempted to do so. *See* Brief of Appellee, Fifth Circuit Appeal No. 14-20574 at 18-19. The Fifth Circuit held that Onwuteaka waived his statutory construction argument by failing to present it in the first appeal. Pet. App. 17a-18a. As unusual as it is for this Court to consider arguments never presented below, it must be even more unusual for the Court to consider arguments held forfeited below. *See United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 (1994) ("Finding no exceptional circumstances that would warrant reviewing a claim that was waived below, we adhere to our general practice and decline to address [the] argument.").

III. The Fifth Circuit Correctly Decided a Narrow Question

The Fifth Circuit correctly interpreted § 1692i(a)(2), and its result is consistent with this Court's unanimous decision in *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp of Calif., Inc.*, 522 U.S. 192 (1997). This is so for three primary reasons.

A. "Bring Suit" is Ambiguous

To be sure, as the dissent below argues, one meaning of "bring suit" is "file suit." But "bring suit" can also refer to actions in addition to filing suit, including service of process. Federal and Texas legislative and judicial officers have long recognized that "bring suit" can have a meaning that is broader than "file suit." *See* Pet. App. 58a-60a (citing federal and state examples used over decades); *United States ex rel. Rost v. Pfizer, Inc.*, 507 F.3d 720, 725 (1st Cir. 2007); *Ford v. Johnson*, 362 F.3d 395, 399 (7th Cir. 2004); *Treviño v. State Farm Lloyds*, 207 Fed. Appx. 422, 424 (5th Cir. 2006); *Perkin Elmer v. Trans Mediterranean Airways, S.A.L.*, 107 F.R.D. 55, 60-61 (E.D.N.Y. 1985).

The dissent would ignore all state authority reading "bring suit" to require service of process because "[w]e do not usually interpret the terms of federal statutes by seeing how they are used in one particular state's laws." Pet. App. 85a at n.13. But "ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more senses." 2A Norman J. Singer, Sutherland Statutory Construction § 45.02 at 6 (7th ed. 2008). Both filing and service are necessary

to "bring suit" in Texas. Pet. App. 29a (alleging that Onwuteaka improperly brought suit against Serna in Texas); Pet. App. 59a (collecting authorities showing that in Texas, service is needed to "bring suit"). The fact that Texas officials use "bring suit" to mean "file and serve" may not prove how Congress used "bring suit," but it does prove that "reasonably well-informed persons" can read "bring suit" in two or more senses.

The only consequence of ambiguity is that the text, structure, history, and purpose of § 1692i(a)(2) must be examined to discern Congress's intent as to whether "bring" means "file" or whether it means "file and serve."

B. "Eliminate" is a Directive that Appears in the FDCPA

Congress expressly stated that it sought to "eliminate" forum abuse. 15 U.S.C. § 1692(e). This directive, appearing in statutory text, must be given effect. *Mastro Plastics Corp. v. Nat'l Labor Relations Bd.*, 350 U.S. 270, 285 (1956); *see also* 2B NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 56.2 (7th ed. 2008) ("legislation enacted in response to defined needs provides an extremely valuable indication of public policy[, and] these policy considerations dictate an interpretation according to the purpose ... of the statute") (collecting cases).

If "bring" in § 1692i(a)(2) means "file" rather than "file and serve," then unscrupulous debt collectors may unilaterally circumvent the FDCPA's forum-abuse proscription simply by delaying service. This concern is more than theoretical. *De Perez v. Bureaus Invest. Group No. II, LLC*, No. 09-cv-20784, 2009 WL 1973476 at *1-3

(S.D. Fla. July 8, 2009) (collecting cases); *see also In re Spiegel, Inc.*, FTC No. 8990, 1975 WL 173254 at *6 (Fed. Trade Comm'n Aug 18, 1975) (forum abuse "has been continuously identified ... as a widespread and common abuse in the debt collection field").

The Fifth Circuit correctly held that "bring" in § 1692i(a) must mean "file and serve" rather than "file," because only the first interpretation could "eliminate" forum abuse. Pet. App. 63a (delayed service "frustrates the purpose of the FDCPA because it forces alleged debtors to scour court records in order to preserve their rights"); *accord Ford*, 362 F.3d at 399 (reading "bring" in the Prison Litigation Reform Act to be broader than "file" because "[o]therwise the statute cannot work").

Onwuteaka's arguments, presented for the first time here, do not account for this statutory directive.

1. Equitable Tolling. Onwuteaka concedes that his proposed reading of § 1692i(a)(2) would create a loophole under which a collector could deliberately delay service and thus run out the limitations period without the consumer's knowledge. But Onwuteaka would address this problem by reading "equitable tolling" into 15 U.S.C. § 1692k(d). Pet. 23. But equitable tolling is a principle that federal courts allow only "sparingly." *Irwin v. Dep't of Veteran Affairs*, 489 U.S. 89, 96 (1990). And equitable tolling is available only as a matter of judicial discretion. *Palacios v. Stephens*, 723 F.3d 600, 603 (5th Cir. 2013). Consequently, equitable tolling cannot provide the completeness demanded by the statutory text "eliminate." *See Buetow v. A.L.S. Enterprises, Inc.*, 650 F.3d 1178, 1186 (8th Cir. 2011) (eliminate means completely eradicate);

http://grammar.about.com/od/words/a/redundancies.htm ("completely eliminate" is a common redundancy); *see generally* BRYAN A. GARNER, DICTIONARY OF MODERN LEGAL USAGE at 744-45 (2d ed. 1995) ("Redundancy"). Delayed service is inconsistent with "eliminate" because it would prevent termination of forum abuse. Only by construing "bring" to mean "serve" is delayed service of any degree rendered ineffective in perpetuating forum abuse.

2. Discovery Rule. In dissent, Judge Smith also recognized the possibility of a loophole arising from delayed service under his interpretation of § 1692i(a)(2). But Judge Smith went further than Onwuteaka and proposed that this "might justify applying a discovery rule" as well as equitable tolling. Pet. App. 84a at n.10. This suggestion is off-base for two reasons.

First, a discovery rule uniformly delays commencement of limitations until the plaintiff first knows, or should know, of the existence of a cause of action. 1 CALVIN W. CORMAN, LIMITATION OF ACTIONS § 6.1 at 370 (1991 ed.). Here, the parties agree that Serna first gained notice of the claim at issue when he was served. Pet. App. 73a at n.17. Consequently, a discovery rule would produce the same result in this case as the majority's interpretation of "bring."

Second, because the majority read "bring" to mean "serve" as a means of preserving the statute's capacity to "eliminate" forum abuse, the majority did not need to decide whether a discovery rule is appropriate, and the parties never briefed this issue to the Fifth Circuit. Pet. App. 73a-74a at n.18. The dissent would read "bring" to mean "file" without committing to whether a discovery rule

is appropriate. Pet. App. 84a at n.10. ("might"). "Federal courts, to be sure, generally apply a discovery accrual rule when a statute is silent on the issue ...." *Rotella v. Wood*, 528 U.S. 549, 555 (2000); *but see TRW Inc. v. Andrews*, 534 U.S. 19, 37 (2001) (Scalia, J., concurring). So to the extent that the dissent equivocates as to whether a discovery rule is appropriate under the statutes at issue, the dissent offers no answer to Congress's directive that the FDCPA be interpreted to "eliminate" forum abuse. *Cf. Bay Area Laundry*, 522 U.S. at 204-05 (statute interpreted to place commencement of a "limitations period in the control of the plaintiff" merits analysis, and is unanimously found to bespeak Congress's rational choice as shown both by statutory language and practical operation of the limitations statute).

3. Dueling Canons. Onwuteaka contends that because "brought" in 15 U.S.C. § 1692k(d) must mean "file," the same verb "bring" in 15 U.S.C. § 1692i(a)(2) must also mean file. Pet. 21. Ordinarily, similar words in the same statute have the same meaning, but this canon is not absolute. *See Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 575-76 (2007) ("There is . . . no effectively irrebuttable presumption that the same defined term in different provisions of the same statute must be interpreted identically. Context counts."); *accord King v. Burwell*, 135 S.Ct. 2480, 2490 (2015) (even a term defined by statute may have an alternate meaning when viewed in its place in the overall statutory scheme). Here, the canon has little force because "bring" is not defined in the FDCPA. By choosing the ambiguous "bring" rather than the unambiguous "file" for both FDCPA provisions, Congress could have reasonably:

(a) left the matter for judicial resolution, *see Ford*, 362 F.3d at 399 ("a different objective ... may explain why Congress used a different word: "brought" rather than "filed");

(b) allowed for varying state interpretations of "bring" under § 1692i(a)(2) because most if not all forum abuse occurs in state courts; or

(c) used the broader term "bring" to accomplish both commencement of the limitations period at the *latest* act of the defendant and termination of the limitations period at the *earliest* act of the plaintiff.

Even assuming that Onwuteaka has identified a canon that favors his interpretation, the statute still must be interpreted to "eliminate" forum abuse, and Onwuteaka fails to explain how his interpretation could be consistent with this statutory text. *See POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2236 (2014) ("[a] principle of [statutory] interpretation is 'often countered, of course, by some maxim pointing in a different direction.'") (citations omitted).

Finally, if resort to canons of construction is required, Serna would respond in kind. "Every word" of the statute must be respected if possible. Those words include directives not only to "eliminate" forum abuse, but also to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. § 1692(a)(2). Moreover, as a remedial statute, the FDCPA must be construed liberally.[5]

5. The FDCPA is a remedial statute that must be construed liberally. *Johnson*, 305 F.3d at 1117 (collecting cases). This Court

C. "Defense" of Lawsuits is the Injury Redressed by the Statute

The legislative history of § 1692i(a)(2) establishes that Congress outlawed forum abuse to prevent debt collectors from forcing consumers to *defend* lawsuits in inconvenient fora. S. REP. NO. 95-382 at 5, *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699; Pet. App. 64a-65a (collecting authority); *Hess*, 637 F.3d at 120 (same). No one is forced to defend any lawsuit until the time of service. *See Omni Capital Int'l, Ltd. v. Rudolph Wolff & Co.*, 484 U.S. 97, 104 (1987) ("Before a ... court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied."). Because the injury at issue—defense of a lawsuit—is not incurred until service, "the date on which the violation [of § 1692i(a)(2)] occurs" under § 1692k(d) is the date of service. Pet. App. 68a.[6] The result below is thus fully consistent with the time-honored principle that limitations periods commence when a claim first becomes actionable, but not before. *See, e.g., Bay Area Laundry*, 522 U.S. at 201.

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repeatedly and unanimously so construes remedial statutes. *Atchison, Topeka and Santa Fe Railway Co. v. Buell*, 480 U.S. 557, 562 (1987); *NLRB v. Scrivener*, 405 U.S. 117, 124 n.6 (1972).

6. Onwuteaka would turn the stated purpose of § 1692i(a)(2) on its head when he argues that "Congress intended to regulate the conduct of debt collectors in the debt collection process *independent of the awareness of the debtor/consumer.*" Pet. 23-24 (emphasis added). Onwuteaka argues that a consumer may be injured by a lawsuit that is filed in an improper forum but not served if, for example, a background check reveals an unserved lawsuit and results in a consumer's disqualification from employment or credit. Pet. 18. The record has no evidence to explain or support this assertion.

CONCLUSION

The Court should deny the Petition.

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