No. 18-328

In the Supreme Court of the United States

KEVIN C. ROTKISKE, PETITIONER

v.

PAUL KLEMM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

MARY MCLEOD
General Counsel
JOHN R. COLEMAN
Deputy General Counsel
STEVEN Y. BRESSLER
Assistant General Counsel
KRISTIN BATEMAN
Attorney
Bureau of Consumer Financial Protection
Washington, D.C. 20552

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
MALCOLM L. STEWART
Deputy Attorney General
JONATHAN C. BOND
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, imposes various requirements on "a debt collector * * * in connection with the collection of any debt." 15 U.S.C. 1692c(a); see 15 U.S.C. 1692c-1692g. In addition to administrative enforcement of those requirements by federal agencies, 15 U.S.C. 1692*l*, the FDCPA authorizes a private civil action against a debt collector "who fails to comply with any" of the FDCPA's provisions. 15 U.S.C. 1692k(a). Such an action "to enforce any liability created by" the FDCPA "may be brought * * * within one year from the date on which the violation occurs." 15 U.S.C. 1692k(d). The question presented is as follows:

Whether the "discovery rule" applies to the one-year statute of limitations under the FDCPA.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statutory provisions involved 1
Statement 2
Summary of argument 8
Argument 9
I. Section 1692k(d) cannot fairly be construed to identify the plaintiff's actual or constructive discovery of a violation as the event that triggers the FDCPA's one-year limitations period 10
A. The FDCPA's text unambiguously makes the occurrence of an alleged violation the starting point for the Act's limitations period 11
B. Section 1692k(d)'s clear text displaces any default presumption in favor of a discovery rule 15
C. The FDCPA's purposes do not justify departing from the statutory text 18
II. Petitioner identifies no valid basis for excusing his noncompliance with the FDCPA's filing deadline 22
A. Traditional principles of equitable tolling apply to the FDCPA, but petitioner forfeited any equitable-tolling argument in this case 23
B. The special rule the Court has recognized for fraud suits does not apply to petitioner's FDCPA claim 27
Conclusion 33
Appendix — Statutory provisions 1a

TABLE OF AUTHORITIES

Cases:

Allen ex. rel. Martin v. *LaSalle Bank, N.A.*, 629 F.3d 364 (3d Cir. 2011), cert. denied, 565 U.S. 1177 (2012) 3

Cases—Continued: Page

American Pipe & Constr. Co. v. *Utah*, 414 U.S. 538 (1974) 25
Amy v. *Watertown (No. 2)*, 130 U.S. 320 (1889) 29
Astoria Fed. Sav. & Loan Ass'n v. *Solimino*, 501 U.S. 104 (1991) 15
Avery v. *Cleary*, 132 U.S. 604 (1890) 29, 30, 31
Bailey v. *Glover*, 88 U.S. (21 Wall.) 342 (1875) 5, 9, 27, 28, 29, 30
Bay Area Laundry & Dry Cleaning Pension Trust Fund v. *Ferbar Corp. of Cal., Inc.*, 522 U.S. 192 (1997) 14
Cada v. *Baxter Healthcare Corp.*, 920 F.2d 446 (7th Cir. 1990), cert. denied, 501 U.S. 1261 (1991) 10
California Pub. Emps.' Ret. Sys. v. *ANZ Sec., Inc.*, 137 S. Ct. 2042 (2017) 22, 23, 24, 25, 26
Credit Suisse Sec. (USA) LLC v. *Simmonds*, 566 U.S. 221 (2012) 26, 27
Department of Homeland Sec. v. *MacLean*, 135 S. Ct. 913 (2015) 13
Exploration Co. v. *United States*, 247 U.S. 435 (1918) 29, 30, 31
Food Mktg. Inst. v. *Argus Leader Media*, 139 S. Ct. 2356 (2019) 12, 16
Gabelli v. *SEC*, 568 U.S. 442 (2013) 10, 14, 28
Glus v. *Brooklyn E. Dist. Terminal*, 359 U.S. 231 (1959) 25
Harris Trust & Sav. Bank v. *Salomon Smith Barney Inc.*, 530 U.S. 238 (2000) 11
Henson v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017) 22
Holmberg v. *Armbrecht*, 327 U.S. 392 (1946) 12, 24, 30

Cases—Continued: Page

Irwin v. *Department of Veterans Affairs*, 498 U.S. 89 (1990) 25
Jerman v. *Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573 (2010) 3
Kirkendall v. *Department of the Army*, 479 F.3d 830 (Fed. Cir.), cert. denied, 552 U.S. 948 (2007) 25
Klehr v. *A. O. Smith Corp.*, 521 U.S. 179 (1997) 26
Lampf, Pleva, Lipkind, Prupis & Petigrow v. *Gilbertson*, 501 U.S. 350 (1991) 25, 31
Lozano v. *Montoya Alvarez*, 572 U.S. 1 (2014) 23, 25, 31
Mangum v. *Action Collection Servs.*, 575 F.3d 935 (9th Cir. 2009) 21
Mathews v. *Kidder, Peabody & Co.*, 260 F.3d 239 (3d Cir. 2001) 6
Menominee Indian Tribe of Wis. v. *United States*, 136 S. Ct. 750 (2016) 26
Merck & Co. v. *Reynolds*, 559 U.S. 633 (2010) 10, 13, 31
Mertens v. *Hewitt Assocs.*, 508 U.S. 248 (1993) 19
National R.R. Passenger Corp. v. *Morgan*, 536 U.S. 101 (2002) 12
Nutraceutical Corp. v. *Lambert*, 139 S. Ct. 710 (2019) 24
OBB Personenverkehr AG v. *Sachs*, 136 S. Ct. 390 (2015) 27
Obduskey v. *McCarthy & Holthus LLP*, 139 S. Ct. 1029 (2019) 22
Petrella v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014) 14, 25
Ramírez-Carlo v. *United States*, 496 F.3d 41 (1st Cir. 2007) 25
Rodriguez v. *United States*, 480 U.S. 522 (1987) 22
Rosenthal v. *Walker*, 111 U.S. 185 (1884) 29, 30

Cases—Continued: Page

Ross v. *Blake*, 136 S. Ct. 1850 (2016) 11
Rotella v. *Wood*, 528 U.S. 549 (2000) 20, 21, 22, 25
SEC v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963) 31
Sherwood v. *Sutton*, 21 F. Cas. 1303 (C.C.D.N.H. 1828) 28
TRW Inc. v. *Andrews*, 534 U.S. 19 (2001) 7, 16, 17, 18
Traer v. *Clews*, 115 U.S. 528 (1885) 29, 30
United States v. *American Trucking Ass'ns*, 310 U.S. 534 (1940) 18
United States v. *Wells*, 519 U.S. 482 (1997) 15
Urie v. *Thompson*, 337 U.S. 163 (1949) 11, 15, 16, 17
Wahl v. *Midland Credit Mgmt., Inc.*, 556 F.3d 643 (7th Cir. 2009) 3
William A. Graham Co. v. *Haughey*, 646 F.3d 138 (3d Cir.), cert. denied, 565 U.S. 963 (2011) 10, 23
Young v. *United States*, 535 U.S. 43 (2002) 14, 16, 21, 24, 25, 31

Statutes:

Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* 17
15 U.S.C. 1681p (1976) 13
15 U.S.C. 1681p (2000) 17
Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* 1
15 U.S.C. 1692(e) 2, 19, 1a
15 U.S.C. 1692b 21
15 U.S.C. 1692c-1692i 2
15 U.S.C. 1692c(a) 2
15 U.S.C. 1692c(a)(1) 19
15 U.S.C. 1692c(a)(2) 19

Statutes—Continued: Page

15 U.S.C. 1692c(a)(3) 20
15 U.S.C. 1692c(b) 2, 21
15 U.S.C. 1692c(c) 19
15 U.S.C. 1692d 2, 19
15 U.S.C. 1692d(3) 21
15 U.S.C. 1692d(4) 21
15 U.S.C. 1692e 2, 2a
15 U.S.C. 1692e(2) 32, 2a
15 U.S.C. 1692e(2)(A) 4, 2a
15 U.S.C. 1692e(2)(B) 4, 2a
15 U.S.C. 1692e(5) 4, 32, 2a
15 U.S.C. 1692f 2
15 U.S.C. 1692f(6)(A) 20
15 U.S.C. 1692f(6)(C) 20
15 U.S.C. 1692f(7) 19
15 U.S.C. 1692f(8) 19
15 U.S.C. 1692g(a) 2, 20
15 U.S.C. 1692g(b) 2
15 U.S.C. 1692k(a) 2, 3a
15 U.S.C. 1692k(a)(2) 3, 3a
15 U.S.C. 1692k(b) 3, 4a
15 U.S.C. 1692k(c) 3, 4a
15 U.S.C. 1692k(d) ..... *passim*, 4a
15 U.S.C. 1692k(e) 3, 5a
15 U.S.C. 1692*l*(a) 1
15 U.S.C. 1692*l*(a)-(c) 2
15 U.S.C. 1692*l*(b) 1
Federal Employers' Liability Act,
45 U.S.C. 51 *et seq.* 16
45 U.S.C. 56 16
Federal Farm Loan Act, ch. 245, 39 Stat. 360 24

Statutes—Continued: Page

5 U.S.C. 552a(g)(5) (1976) 13, 14
7 U.S.C. 210(a) (1976) 14
7 U.S.C. 499f(a) (1976) 14
10 U.S.C. 2733(b)(1) (1976) 14
15 U.S.C. 77m (1976) 13
15 U.S.C. 77www(a) (1976) 13
15 U.S.C. 78i(e) (1976) 13
15 U.S.C. 78r(c) (1976) 13
15 U.S.C. 1711 (1976) 13
19 U.S.C. 1621 (1976) 13
22 U.S.C. 2356(a) (1976) 14
26 U.S.C. 7217(c) (1976) 13, 14
28 U.S.C. 1658(b)(1) 11, 13
28 U.S.C. 2401 (1976) 14
29 U.S.C. 1113 (1976) 13
31 U.S.C. 241(c)(1) (1976) 14
32 U.S.C. 715(b)(1) (1976) 14
38 U.S.C. 236 (1976) 14
45 U.S.C. 153(r) (1976) 14
47 U.S.C. 415(a)-(c) (1976) 14
49 U.S.C. 16(3)(a)-(c) (1976) 14
49 U.S.C. 908(f)(1)(A)-(C) (1976) 14

Miscellaneous:

J. K. Angell, *A Treatise on the Limitations of Actions at Law and Suits in Equity and Admiralty* (2d ed. 1846) 28
Black's Law Dictionary:
(Rev. 4th ed. 1968) 12
(10th ed. 2014) 12

Miscellaneous—Continued: Page

Calvin W. Corman, *Limitation of Actions* (1991):
Vol. 1 15
Vol. 2 26
John P. Dawson, *Undiscovered Fraud and Statutes of Limitation*, 31 Mich. L. Rev. 591 (1933) 28
2 Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* (Rev. 2d ed. 1839) 28
Webster's New International Dictionary (2d ed. 1949) 12
Whether Fraud Is a Sufficient Answer, in an Action at Law, to a Plea of the Statute of Limitations, 1 U.S. L. Intelligencer & Rev. 139 (1829) 28
H. G. Wood, *A Treatise on the Limitation of Actions at Law and in Equity* (Dewitt C. Moore ed., 4th ed. 1916):
Vol. 1 ..... 14, 28
Vol. 2 15

In the Supreme Court of the United States

No. 18-328

KEVIN C. ROTKISKE, PETITIONER

v.

PAUL KLEMM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF THE UNITED STATES

This case concerns the limitations period that applies to private suits under the Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692 *et seq.* The Bureau of Consumer Financial Protection (Bureau), the Federal Trade Commission (FTC), and other federal agencies share responsibility for enforcement of the FDCPA. 15 U.S.C. 1692*l*(a) and (b). Private actions alleging violations of the FDCPA supplement those enforcement efforts. The United States therefore has a substantial interest in the rules governing such private enforcement suits.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

1. Congress enacted the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors" and to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. 1692(e). The FDCPA pursues those objectives primarily by regulating the activities of "debt collector[s]" "in connection with the collection of [a] debt." 15 U.S.C. 1692c(a); see 15 U.S.C. 1692c-1692i. Among other things, the Act restricts debt collectors' communications with consumers and third parties "in connection with the collection of any debt," 15 U.S.C. 1692c(a) and (b); prohibits debt collectors from "harass[ing], oppress[ing], or abus[ing] any person," or from making "false, deceptive, or misleading representation[s]," "in connection with the collection of any debt," 15 U.S.C. 1692d, 1692e; and bans debt collectors' use of "unfair or unconscionable means to collect or attempt to collect any debt," 15 U.S.C. 1692f. The FDCPA also requires a debt collector seeking to collect a debt promptly to provide the consumer certain information and, if the consumer "dispute[s]" the debt, to "cease collection" until the debt collector provides verification. 15 U.S.C. 1692g(a) and (b).

The Bureau, the FTC, and other federal agencies enforce the FDCPA. 15 U.S.C. 1692*l*(a)-(c). The FDCPA also authorizes private suits. "[A]ny debt collector who fails to comply with [the FDCPA] with respect to any person is liable to such person," 15 U.S.C. 1692k(a), and the affected person may file suit in federal or state court to enforce such liability, 15 U.S.C. 1692k(d).

The FDCPA's private right of action is part of a "calibrated scheme" designed to incentivize compliance with the Act by debt collectors and "self-enforcement"

by consumers. *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 603 (2010). The FDCPA largely "is a strict liability statute" in the sense that, for most of its provisions, "a collector 'need not be deliberate, reckless, or even negligent to trigger liability.'" *Wahl* v. *Midland Credit Mgmt., Inc.*, 556 F.3d 643, 646 (7th Cir. 2009) (citation omitted); accord, *e.g.*, *Allen ex. rel. Martin* v. *LaSalle Bank, N.A.*, 629 F.3d 364, 368 n.7 (3d Cir. 2011), cert. denied, 565 U.S. 1177 (2012). Whether a violation was "intentional" is a factor that a court may consider "[i]n determining the amount of liability" for statutory damages, 15 U.S.C. 1692k(b), but generally is not an element of a plaintiff's claim.

The FDCPA limits defendants' liability in certain respects. A debt collector may not be held liable for "any act done or omitted in good faith in conformity with any advisory opinion of the Bureau," 15 U.S.C. 1692k(e), or for an unintentional violation that "resulted from a bona fide error" if the debtor maintained "procedures reasonably adapted to avoid any such error." 15 U.S.C. 1692k(c). The FDCPA authorizes awards of statutory damages but caps such damages in both individual and class actions. See 15 U.S.C. 1692k(a)(2). Finally, and most relevant here, Congress placed a time limit on private actions: "An action to enforce any liability created by th[e] [FDCPA] may be brought * * * within one year from the date on which the violation occurs." 15 U.S.C. 1692k(d).

2. This case arises from the dismissal of petitioner's complaint. Pet. App. 3. Petitioner's operative, amended complaint alleges the following facts, which the district court assumed to be true. *Id.* at 16 n.1.

In 2005, petitioner fell into arrears on a credit-card debt. 2 C.A. App. 8a. His credit-card company referred

the debt to respondents for collection. *Ibid.*[1] In March 2008, respondents sued petitioner, seeking to collect approximately $1500. *Ibid.* Respondents attempted to serve petitioner at an address where he no longer lived. *Ibid.* A person whose race and physical description did not match petitioner accepted service. *Ibid.* Respondents subsequently withdrew the complaint. *Ibid.*

In January 2009, respondents refiled the debt-collection suit against petitioner and attempted to serve petitioner at the same address. 2 C.A. App. 8a. Another person petitioner did not know accepted service on petitioner's behalf. *Ibid.* When petitioner did not respond to the suit, the court entered a default judgment against him. *Ibid.*

3. a. In June 2015, petitioner commenced this action against respondents. Pet. App. 3. His operative, amended complaint asserted a single claim under the FDCPA. 2 C.A. App. 9a. Citing 15 U.S.C. 1692e(2)(B) and (5), petitioner alleged that respondents had commenced the 2009 debt-collection lawsuit after the applicable state-law limitations period had expired, and that respondents had thereby "violated the FDCPA by contacting [petitioner] without lawful ability to collect." 2 C.A. App. 9a. Section 1692e(2)(B) prohibits a "false representation of * * * any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt." 15 U.S.C. 1692e(2)(B).[2] Section 1692e(5) prohibits a "threat to take any action that cannot legally be taken or that is not intended to be taken." 15 U.S.C. 1692e(5).

---

[1] Petitioner's complaint "d[id] not distinguish between" the respondents, and the court of appeals referred to respondents collectively. Pet. App. 3 n.1. This brief does so as well.

[2] Petitioner may have intended to invoke Section 1692e(2)(A), which prohibits a "false representation of * * * the character, amount, or legal status of any debt." 15 U.S.C. 1692e(2)(A).

Petitioner's complaint alleged that he "was completely unaware of all actions against him regarding the credit card debt" until September 2014, when he was denied a mortgage because his credit report referred to the default judgment against him. 2 C.A. App. 8a. Petitioner asserted that, "[b]ecause the nature of the service of the collection lawsuit purposefully ensured that [petitioner] could never properly be served at an address at which he no longer live[d], [respondents'] acts were 'of such character as to conceal themselves to warrant equitable tolling.'" *Id.* at 8a-9a (quoting *Bailey* v. *Glover*, 88 U.S. (21 Wall.) 342, 349-350 (1875)) (brackets omitted).

Respondents moved to dismiss petitioner's suit as time-barred under 15 U.S.C. 1692k(d). Pet. App. 3. In his response, petitioner stated that he "withdr[ew] [his] statute of limitations argument and corresponding allegations" pending discovery. D. Ct. Doc. 17, at 4 (Nov. 10, 2015). He asserted that "[t]he gravamen of [his] complaint [wa]s that [respondents] falsely, unfairly, and deceptively took [their] collection judgment in 2009 against [petitioner] at an address [respondents] knew [petitioner] did not occupy." *Ibid.*; see Pet. App. 17 n.2. Petitioner did not further amend his complaint. In contending that his suit should not be dismissed as untimely, he invoked both the "[d]iscovery [r]ule" and principles of "'equitable tolling.'" *Id.* at 4-5 (citation omitted).

b. The district court dismissed petitioner's suit as untimely. Pet. App. 15-29. The court rejected petitioner's contention "that the discovery rule, which delays the beginning of a limitations period until the plaintiff knew of or should have known of his injury, applies to FDCPA claims." *Id.* at 21; see *id.* at 22-26. The court held that the "language of the statute" establishes that the limitations period begins to run "on the date of the

defendant's last opportunity to comply with the statute, rather than the date on which the plaintiff discovers or should have discovered the violation." *Id.* at 22, 25-26. In this case, the court held, the "alleged violation of the FDCPA occurred 'on or about January 2009'" when the debt-collection suit was refiled, not when petitioner discovered that suit. *Id.* at 26 (brackets omitted).

The district court also rejected petitioner's "alternative" contention that "the doctrine of equitable tolling" applied because respondents had engaged in "fraudulent concealment." Pet. App. 21-22, 27; see *id.* at 26-29. The court held that, to invoke equitable tolling, a plaintiff must "prove '(1) active misleading by the defendant, (2) which prevents the plaintiff from recognizing the validity of her claim within the limitations period, (3) where the plaintiff's ignorance is not attributable to her lack of reasonable due diligence in attempting to uncover the relevant facts.'" *Id.* at 27 (quoting *Mathews* v. *Kidder, Peabody & Co.*, 260 F.3d 239, 256 (3d Cir. 2001)) (internal quotation marks omitted). The court found that petitioner had made "no allegations of active misleading," and that he was "was not misled by any conduct committed by any [respondent]." *Id.* at 28-29.

4. Petitioner appealed. Pet. App. 4. Following oral argument, the court of appeals *sua sponte* ordered rehearing en banc, *ibid.*, and unanimously affirmed, *id.* at 1-14.

On appeal, petitioner contended that the "discovery rule" delayed the start of the one-year limitations period. Pet. App. 7, 13; see Pet. C.A. Br. 6, 13-16; Pet. C.A. Supp. Br. 1-19. The court of appeals rejected that argument. Pet. App. 7-13. It agreed with the district court that Section 1692k(d) "sp[eaks] clearly" and precludes "imply[ing] a discovery rule." *Id.* at 5.

The court of appeals observed that a legislature enacting a limitations period typically chooses between "two basic models": "a statute can run from 'the date the injury actually occurred, an approach known as the 'occurrence rule'"; or it "may delay the start of the limitations period until 'the date the aggrieved party knew or should have known of the injury, that is, the "discovery rule."'" Pet. App. 6 (citations omitted). The court held that "the occurrence rule plainly applies" under Section 1692k(d) because Congress "specifie[d] that the 'date on which the violation occurs' starts the limitations period." *Ibid.* While acknowledging that the FDCPA "does not state *in haec verba* that the discovery rule shall not apply," the court explained that "Congress's explicit choice of an occurrence rule" in the FDCPA "implicitly excludes a discovery rule." *Id.* at 7-8 (quoting *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28 (2001)). The court reserved judgment on whether limitations periods defined by different, "less-determinate language"—for example, limitations periods that start when a claim "'accrues'" or "'arises'"—would be understood to incorporate a discovery rule. *Id.* at 7 (brackets and citations omitted).

The court of appeals also rejected petitioner's contention that, because FDCPA plaintiffs sometimes allege "fraud, deception, or self-concealing behavior," a discovery rule should be inferred to avoid "thwart[ing]" the Act's purpose. Pet. App. 8. The court explained that, "[a]s the language of the FDCPA makes clear, many violations will be apparent to consumers the moment they occur" and are not "inherently fraudulent, deceptive, or self-concealing." *Id.* at 9. The court further observed that, "to the extent that FDCPA claims *do* deal with 'false, deceptive, or misleading representations,'

* * * equitable tolling remains available in appropriate cases." *Id.* at 9-10 (brackets and citation omitted).

The court of appeals "d[id] not reach the question" whether equitable tolling would apply in these circumstances, finding that petitioner had "failed to raise [that argument] on appeal." Pet. App. 13. The court "emphasiz[ed] that [its] holding * * * should not be read to foreclose the possibility that equitable tolling might apply to FDCPA violations that involve fraudulent, misleading, or self-concealing conduct." *Ibid.* The court noted that, "[i]f [petitioner] had preserved reliance on equitable tolling on appeal," four judges "would have remanded to allow the District Court" to reconsider that argument. *Id.* at 14 n.5.

SUMMARY OF ARGUMENT

I. The FDCPA's one-year limitations period cannot fairly be construed as beginning to run only when a plaintiff discovers or should discover the alleged violation. The limitations provision states that "[a]n action to enforce any liability created by [the FDCPA] may be brought * * * within one year from the date on which the violation occurs." 15 U.S.C. 1692k(d). That language unambiguously identifies the date of the violation, not the date of actual or constructive discovery, as the date when the one-year period for filing suit commences.

Contrary to petitioner's contention, this Court has never adopted a general presumption that federal limitations periods should be read to incorporate a discovery rule. The decisions on which petitioner relies are better understood as interpreting particular limitations periods or applying equitable principles to excuse untimely filings. And even if such a presumption existed, it would be overcome by the FDCPA's plain text, which unambiguously identifies the date a violation occurs as the event that triggers the one-year limitations period.

II. Equitable principles sometimes may warrant excusing a plaintiff's failure to comply with a limitations period, or precluding a defendant from asserting untimeliness as a defense. At least in some circumstances, those principles apply to the FDCPA. The most familiar principle, equitable tolling, might apply if (as petitioner asserts) respondents concealed their debt-collection suit from him. But the court of appeals found that petitioner had forfeited any equitable-tolling argument, and he does not challenge that conclusion. This Court has also recognized what is arguably a distinct, per se rule for fraud cases, under which a limitations period does not operate until the plaintiff discovers or should discover the fraud. *Bailey* v. *Glover*, 88 U.S. (21 Wall.) 342, 348-350 (1875). But petitioner's FDCPA claim is not an action for fraud as traditionally understood.

ARGUMENT

A private suit under the FDCPA "may be brought * * * within one year from the date on which the violation occurs." 15 U.S.C. 1692k(d). Petitioner's complaint alleges that respondents violated the FDCPA in 2009, 2 C.A. App. 8a-9a, but he did not bring suit until 2015, Pet. App. 3. Petitioner contends (Br. 13) that his suit should be treated as timely, despite that six-year delay, based on "the 'discovery rule,'" which he describes as "an equitable doctrine, which either delays the commencement of, or suspends the running of, the applicable statute of limitations." See *id.* at 14-41. Courts do not use the term "discovery rule" consistently, and petitioner's argument might implicate at least two distinct concepts. To the extent petitioner urges this Court to *interpret* Section 1692k(d) as delaying the start of the limitations period until he discovered the alleged violation, that argument is foreclosed by the statutory text. To the

extent petitioner contends that equitable or similar principles should *excuse* his noncompliance with the limitations period in these circumstances, that argument also fails, but for different, case-specific reasons.

I. SECTION 1692k(d) CANNOT FAIRLY BE CONSTRUED TO IDENTIFY THE PLAINTIFF'S ACTUAL OR CONSTRUCTIVE DISCOVERY OF A VIOLATION AS THE EVENT THAT TRIGGERS THE FDCPA'S ONE-YEAR LIMITATIONS PERIOD

Petitioner's argument (Br. 13) that "the discovery rule applies" to private FDCPA actions might be understood as contending that Section 1692k(d) should be interpreted to give the plaintiff one year to file suit after he discovers or reasonably should have discovered the alleged violation. Although courts do not use the term "discovery rule" consistently, see *William A. Graham Co.* v. *Haughey*, 646 F.3d 138, 149-150 (3d Cir.) (collecting cases), cert. denied, 565 U.S. 963 (2011), this Court and others have often used the term to refer to "a doctrine that delays accrual of a cause of action"—and with it, the start of the limitations period—"until the plaintiff has 'discovered' it." *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 644 (2010); see, *e.g.*, *Gabelli* v. *SEC*, 568 U.S. 442, 449 (2013); *Cada* v. *Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990), cert. denied, 501 U.S. 1261 (1991). Where the doctrine applies, an action is deemed to be timely if the plaintiff files suit within the prescribed period following discovery of the cause of action.

Whether a particular limitations provision incorporates that approach is a matter of statutory interpretation. Some statutes expressly make the "discovery" of a claim, injury, or other specified facts the event that triggers the limitations period. See, *e.g.*, *Merck*, 559 U.S. at 644-653 (construing limitations period that ran from

"the discovery of the facts constituting the violation" of the securities laws, 28 U.S.C. 1658(b)(1)). Or a court may conclude that, although a particular time bar's text is ambiguous, the statutory context indicates that Congress intended a discovery rule to apply. See, *e.g.*, *Urie* v. *Thompson*, 337 U.S. 163, 168-171 (1949). In either circumstance, a court may conclude as a matter of statutory interpretation that a particular limitations period does not start running until a plaintiff does or should discover specified facts.

Section 1692k(d) cannot plausibly be construed in that manner because it identifies "the date on which the violation occurs" as the date when the one-year period for filing suit begins. 15 U.S.C. 1692k(d). That language forecloses any interpretation that would make (actual or constructive) discovery of the violation the triggering event. And a principle delaying the "accrual" of a plaintiff's cause of action would not benefit petitioner because the commencement of the FDCPA's limitations period does not turn on when a claim accrues. Contrary to petitioner's contention, neither this Court's precedent nor the FDCPA's purposes provide a valid basis for reading in a discovery rule.

A. The FDCPA's Text Unambiguously Makes The Occurrence Of An Alleged Violation The Starting Point For The Act's Limitations Period

"Statutory interpretation * * * begins with the text." *Ross* v. *Blake*, 136 S. Ct. 1850, 1856 (2016). "And where the statutory language provides a clear answer" to a particular question, the inquiry "ends there as well." *Harris Trust & Sav. Bank* v. *Salomon Smith Barney Inc.*, 530 U.S. 238, 254 (2000) (citation omitted). That is true of limitations periods no less than other statutes. "If Congress explicitly puts a limit upon the time for enforcing a

right which it created, there is an end of the matter." *Holmberg* v. *Armbrecht*, 327 U.S. 392, 395 (1946). The ordinary meaning of the FDCPA's text is dispositive here.

1. Section 1692k(d) states that a private suit "may be brought * * * within one year from the date on which the violation occurs." 15 U.S.C. 1692k(d). Because the Act does not define "violation" or "occurs," courts must "ask what th[ose] term[s'] 'ordinary, contemporary, common meaning' was when Congress enacted" the FDCPA in 1977. *Food Mktg. Inst.* v. *Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (citation omitted). In 1977, as today, "violation" meant the "[a]ct or instance of violating, or state of being violated"—specifically, "[i]nfringement; transgression, nonobservance; as, the *violation* of law, covenants, promises, etc." *Webster's New International Dictionary* 2846 (2d ed. 1949) (*Webster's Second*); accord *Black's Law Dictionary* 1800 (10th ed. 2014) ("An infraction or breach of the law; a transgression. * * * The act of breaking or dishonoring the law; the contravention of a right or duty"); *Black's Law Dictionary* 1741 (Rev. 4th ed. 1968) (*Black's Fourth*) ("Injury; infringement; breach of right, duty or law"). And, as this Court held in construing a limitations period enacted not long before the FDCPA, an unlawful act "'occur[s]' on the day that it 'happen[s].'" *National R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 110 (2002); see *id.* at 109-110 & n.5 (practice occurred when it "took place or happened"); accord *Black's Fourth* 1231; *Webster's Second* 1684.

Taken together, the words "violation" and "occurs" establish that Section 1692k(d)'s one-year period for filing suit begins to run on the date of the act or omission that is alleged to have violated the FDCPA. The text cannot plausibly be construed to identify the plaintiff's

actual or constructive discovery of the violation as the event that triggers the FDCPA's limitations period. In ordinary parlance, no reasonable speaker would use the phrase "the date on which the violation occurs" to refer to the date when a person harmed by a violation learned or should have learned of it.

2. The "violation occurs" language in Section 1692k(d) is especially probative in contrast to language Congress had previously used in other limitations provisions. A number of federal statutes that were in force when Congress enacted the FDCPA stated that a limitations period would begin—either in general or in specified circumstances, and sometimes paired with an outer repose period—upon the "discovery" of a violation, injury, or other event. 15 U.S.C. 77m (1976); see, *e.g.*, 5 U.S.C. 552a(g)(5) (1976); 15 U.S.C. 77www(a), 78i(e), 78r(c), 1681p, 1711 (1976); 19 U.S.C. 1621 (1976); 26 U.S.C. 7217(c) (1976); 29 U.S.C. 1113 (1976); cf. *Merck*, 559 U.S. at 644-653 (construing 28 U.S.C. 1658(b)(1)). If Congress had intended to incorporate a similar "discovery" trigger in the FDCPA, it "knew how" to do so. *Department of Homeland Sec.* v. *MacLean*, 135 S. Ct. 913, 921 (2015) (other, preexisting statutes showed that, "[h]ad Congress wanted to draw [a particular] distinction, there were far easier and clearer ways to do so").

Congress also eschewed other commonplace formulations that would have delayed the start of the FDCPA's limitations period until a plaintiff has a complete cause of action, and that would at least have preserved the possibility of a discovery rule. In 1977 as today, many federal statutes contained limitations periods that ran from the date when a plaintiff's cause of action "arises" or "accrues," sometimes in combination with a period running from the date of discovery. *E.g.*,

7 U.S.C. 210(a), 499f(a) (1976) ("accrues"); 10 U.S.C. 2733(b)(1) (1976) (same); 28 U.S.C. 2401 (1976) (same); 31 U.S.C. 241(c)(1) (1976) (same); 32 U.S.C. 715(b)(1) (1976) (same); 38 U.S.C. 236 (1976) (same); 45 U.S.C. 153(r) (1976) (same); 47 U.S.C. 415(a)-(c) (1976) (same); 49 U.S.C. 16(3)(a)-(c), 908(f)(1)(A)-(C) (1976) (same); 5 U.S.C. 552a(g)(5) (1976) ("arises"); 22 U.S.C. 2356(a) (1976) (same); 26 U.S.C. 7217(c) (1976) (same). "[T]he 'standard rule'"—which has "governed since the 1830's"—"is that a claim accrues 'when the plaintiff has a complete and present cause of action.'" *Gabelli*, 568 U.S. at 448 (citation omitted); see *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 670 (2014). A limitations period that runs "from 'the date on which the cause of action arose'" similarly "incorporates th[at] standard rule." *Bay Area Laundry & Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal., Inc.*, 522 U.S. 192, 201 (1997) (citation omitted).

A limitations period that runs from the date a claim "accrues" or "arises" would not necessarily incorporate a discovery rule, but those formulations would at least leave the door ajar. Unless the statute specifies otherwise, a cause of action is "'complete and present' for limitations purposes" when "the plaintiff can file suit and obtain relief," *Bay Area Laundry*, 522 U.S. at 201—that is, when the plaintiff "has the right to apply to the court for relief," 1 H. G. Wood, *A Treatise on the Limitation of Actions at Law and in Equity* § 122a, at 684 (Dewitt C. Moore ed., 4th ed. 1916) (Wood). And a cause of action may be complete in that sense even if the plaintiff is unaware of it. See *Young* v. *United States*, 535 U.S. 43, 49 (2002) ("There is nothing unusual about a statute of limitations that commences when the claimant has a complete and present cause of action, whether

or not he is aware of it." (citing 1 Calvin W. Corman, *Limitation of Actions* § 6.1, at 370, 378 (1991) (Corman), and 2 Wood § 276c(1), at 1411)). But the context of a particular limitations period might show that Congress did not intend a claim to "accrue" until the plaintiff discovered his injury or other facts. See, *e.g.*, *Urie*, 337 U.S. at 168-171 (concluding, in light of the statutory purpose, that a claim based on a latent disease "accrued" only when the plaintiff discovered the disease).

In Section 1692k(d), however, Congress rejected those familiar formulations. Instead, it made the "occur[rence]" of an FDCPA "violation"—that is, the defendant's allegedly unlawful conduct—the event that triggers the one-year period. 15 U.S.C. 1692k(d). In doing so, Congress foreclosed any interpretation of that time period as beginning only when a plaintiff discovers or should discover the alleged violation.

B. Section 1692k(d)'s Clear Text Displaces Any Default Presumption In Favor Of A Discovery Rule

Petitioner does not contend that the FDCPA's text affirmatively suggests that the one-year period for filing suit begins only when a plaintiff does or should discover the alleged violation. Instead, he principally argues (Br. 16-28) that, by 1977, this Court's precedent had established a default presumption that federal statutes of limitations incorporate a discovery rule, and that the FDCPA's limitations period should be construed in accordance with that presumption. Those arguments lack merit.

1. Federal statutes ordinarily should be read "against a background of common-law adjudicatory principles," *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 108 (1991), and "Congress expects its statutes to be read in conformity with this Court's precedents," *United States* v. *Wells*, 519 U.S. 482, 495 (1997).

But petitioner has identified no decision of this Court either before 1977, cf. *Food Mktg. Inst.*, 139 S. Ct. at 2365-2366, or since then that has adopted a presumption that federal limitations periods incorporate a delayed-accrual discovery rule. In 2001, the Court observed that, although lower courts had adopted that approach, this Court "ha[d] not adopted that position as [its] own." *TRW Inc.* v. *Andrews*, 534 U.S. 19, 27 (2001). The following year, the Court noted that it is unremarkable for a plaintiff's claim to accrue, and the limitations period to start running, "whether or not [the plaintiff] is aware of [the claim]." *Young*, 535 U.S. at 49.

Petitioner points (Br. 25) to *Urie*, but in that case the Court simply interpreted the particular limitations period at issue—which governed claims brought by injured employees under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.*—as running from the date a plaintiff discovered a latent injury. See *Urie*, 337 U.S. at 168-174. The plaintiff sued his employer under FELA after contracting silicosis from inhaling silica dust at work. *Id.* at 165-166. The employer contended that the claim was barred by FELA's three-year limitations period, which ran from the date "the cause of action accrued," 45 U.S.C. 56. *Urie*, 337 U.S. at 168-169. The employer argued that the plaintiff had first been exposed to silica dust many years earlier and must have contracted his disease outside the limitations period, or alternatively that every inhalation of silica dust gave rise to a distinct injury and only injuries caused within the three-year period preceding the suit's commencement were still actionable. *Id.* at 169.

The Court rejected those "constructions of the statute." *Urie*, 337 U.S. at 169. It concluded that those interpretations contradicted the "humane legislative plan," and that

"such mechanical analysis of the 'accrual' of [the plaintiff's] injury * * * can only serve to thwart the congressional purpose." *Id.* at 169-170. Instead, the Court held that "the afflicted employee can be held to be 'injured' only when the accumulated effects of the deleterious substance manifest themselves." *Id.* at 170 (citation omitted).

Petitioner cites (Br. 21-27) other decisions holding various limitations periods inapplicable in particular circumstances, but those decisions do not reflect any presumption that is relevant here. As discussed below, some of those decisions applied traditional principles of equitable tolling to excuse untimely filings; but that doctrine is not at issue here because petitioner forfeited any equitable-tolling argument. See pp. 23-27, *infra*. Others applied what is arguably a distinct, per se rule that the Court has long recognized in the specific context of fraud claims; but petitioner's suit is not an action for fraud. See pp. 27-32, *infra*.

2. In any event, even if some or all federal statutes of limitations were presumed to delay the start of the limitations period until a claim or injury is discovered, Congress clearly displaced any such presumption in the FDCPA. See *TRW*, 534 U.S. at 28-31. In *TRW*, the Court held that, even assuming a "presumption exists" that "all federal statutes of limitations, regardless of context, incorporate a general discovery rule," Congress had overcome that presumption in the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.* 534 U.S. at 27. The Court observed that Congress had included in the FCRA *both* a general limitations period running "from the date on which the liability arises," *and* an exception for certain cases of material, willful misrepresentation in which the period ran from the date of "discovery by the individual of the misrepresentation." *Id.* at 28 (quoting 15 U.S.C. 1681p

(2000)). The Court held that "[t]he most natural reading of" the provision was that "Congress implicitly excluded a general discovery rule by explicitly including a more limited one." *Ibid.* A contrary approach, the Court observed, would render the FCRA's limited-purpose discovery rule "entirely superfluous in all but the most unusual circumstances." *Id.* at 29; see *id.* at 29-31.

The FDCPA's text unmistakably supplants any presumption in favor of a discovery rule. Construing Section 1692k(d) to delay the onset of the one-year bar until a plaintiff learns of a violation would not merely render a portion of the statutory language superfluous, as in *TRW*; it would flatly contravene the text's clear command that the occurrence of a violation starts the clock. As in *TRW*, 534 U.S. at 27, the Court accordingly need not determine whether a general presumption in favor of a discovery rule exists because the FDCPA's plain language would overcome any such presumption.

C. The FDCPA's Purposes Do Not Justify Departing From The Statutory Text

Petitioner contends (Br. 29-39) that the FDCPA's purposes "suggest" that Congress intended to incorporate a discovery rule, because some violations of the Act will not be apparent to a plaintiff within the limitations period, and Congress could not have intended for private suits to be barred before a plaintiff has learned of the unlawful acts. That argument lacks merit.

Section 1692k(d)'s clear text, which unambiguously designates the occurrence of the violation as the event that starts the one-year period for filing suit, is the most "persuasive evidence of the purpose of [the] statute." *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543 (1940). Generalized "notions of [the FDCPA's] 'basic purpose' are * * * inadequate to overcome the

words of its text regarding the *specific* issue under consideration." *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 261 (1993). Rather than attempt to discern whether a discovery rule would better effectuate the Act's overall objectives, the Court should give effect to Congress's judgment that Section 1692k(d)'s "violation occurs" trigger best achieves Congress's aims.

In any event, petitioner overstates the extent to which applying Section 1692k(d) by its terms is likely to preclude plaintiffs from bringing meritorious suits. The Act's overarching goal is to eliminate "abusive debt collection practices" through which professional "debt collectors" attempt to pressure debtors to repay their debts. 15 U.S.C. 1692(e). Consistent with that objective, many acts the FDCPA forbids will be readily apparent to a potential plaintiff. For example, the FDCPA makes it unlawful for a debt collector:

- to communicate with a consumer at an inconvenient time or place, 15 U.S.C. 1692c(a)(1);
- to communicate directly with a consumer represented by counsel, or after the consumer has requested in writing that the debt collector cease communications, 15 U.S.C. 1692c(a)(2) and (c);
- to communicate with the consumer by postcard, or to send the consumer mail in an envelope containing any language or symbol other than the debt collector's address and (if it does not disclose that the sender is a debt collector) its business name, 15 U.S.C. 1692f(7) and (8);
- to engage in harassing, oppressive, or abusive conduct, such as using or threatening violence, using obscene language, or causing a phone to ring repeatedly, 15 U.S.C. 1692d;

- to repossess or disable property in which the collector has no enforceable security interest, 15 U.S.C. 1692f(6)(A);
- to threaten to take nonjudicial action to dispossess or disable property if the debt collector has no legal right to do so, 15 U.S.C. 1692f(6)(C); or,
- to fail to send a required notice when first communicating with a consumer in connection with collecting a debt, 15 U.S.C. 1692g(a).

Petitioner observes (Br. 32) that, for some FDCPA violations, a consumer might know of the debt collector's conduct but not of other facts or circumstances that make that conduct unlawful. For example, the Act prohibits a debt collector from communicating with a consumer at the consumer's place of employment only if the debt collector "knows or has reason to know that the consumer's employer prohibits" such workplace communications. 15 U.S.C. 1692c(a)(3). Although a consumer ordinarily will know whether he has been contacted by a debt collector at work, he might not know whether the debt collector had actual or constructive knowledge of the employer's workplace-communication rule. The traditional discovery rule, however, would not benefit a consumer in those circumstances. The Court "ha[s] been at pains to explain" that, under the "discovery accrual rule" that courts have applied in certain other contexts, "what starts the clock" is "discovery of the injury, not discovery of the other elements of a claim." *Rotella* v. *Wood*, 528 U.S. 549, 555 (2000). Reading a discovery rule into Section 1692k(d) thus would not address the concern that petitioner raises.

Petitioner is correct that, for some violations of the FDCPA, a plaintiff might not learn even of the defendant's conduct within the limitations period. For example, the Act generally bars debt collectors from communicating with third parties in connection with collecting a debt and from publicizing the debt. See 15 U.S.C. 1692b, 1692c(b), 1692d(3) and (4). A consumer will not necessarily learn of such third-party communications within one year. But it does not follow from that possibility that Congress intended to incorporate an across-the-board discovery rule.

Congress may have anticipated that most FDCPA violations will come to the consumer's attention promptly. For example, communications intended to pressure or cajole a consumer into paying a debt, whether through harassment or embarrassment, will often be made known to the consumer by design. See, *e.g.*, *Mangum* v. *Action Collection Servs.*, 575 F.3d 935, 937-938 (9th Cir. 2009). And if a consumer remains unaware of a violation because a defendant conceals its unlawful conduct, traditional principles of "equitable tolling may be one answer to the plaintiff's difficulty." *Rotella*, 528 U.S. at 561; see *id.* at 560 (rejecting discovery rule but clarifying that the Court's decision did not displace "equitable principles of tolling"). As discussed below, see pp. 23-24, *infra*, Congress is "presumed to draft limitations periods in light of th[at] background principle," *Young*, 535 U.S. at 49-50, and it may have anticipated that equitable tolling would address many of the situations petitioner envisions.

To the extent cases might arise where Section 1692k(d) bars a suit by a plaintiff who did not learn of an alleged violation within a year, and where equitable tolling or other principles do not excuse the suit's

untimeliness, that possibility reflects Congress's balancing of "competing values," *Rodriguez* v. *United States*, 480 U.S. 522, 526 (1987) (per curiam). "[N]o statute yet known pursues its stated purpose at all costs," *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) (brackets, citation, and internal quotation marks omitted), and the FDCPA embodies various compromises, see, *e.g.*, *Obduskey* v. *McCarthy & Holthus LLP*, 139 S. Ct. 1029, 1035-1038 (2019). Congress may have concluded that, if no suit is brought within a year of a violation and equitable principles do not apply, policies of "repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities" (*Rotella*, 528 U.S. at 555) under a strict-liability regime outweigh allowing a private suit to proceed.[3]

II. PETITIONER IDENTIFIES NO VALID BASIS FOR EXCUSING HIS NONCOMPLIANCE WITH THE FDCPA'S FILING DEADLINE

For the reasons set forth above, Section 1692k(d)'s text clearly forecloses any argument that petitioner *complied* with Section 1692k(d), *i.e.*, that petitioner filed his suit within the one-year interval that Section 1692k(d) specifies. Petitioner's contention that a "discovery rule" applies here might alternatively be understood as arguing that, even though he commenced this suit outside the

---

[3] As noted above, p. 13, *supra*, some federal limitations provisions that expressly incorporate a discovery rule also establish an explicit outer limit on the period for filing suit. See also *California Pub. Emps.' Ret. Sys.* v. *ANZ Sec., Inc.*, 137 S. Ct. 2042, 2049-2050 (2017). Those provisions reflect Congress's willingness to tolerate occasional cases in which even diligent plaintiffs are unable to file timely suits, in order to further competing interests in finality and repose. See *id.* at 2051.

FDCPA's limitations period, that failure should be excused on equitable or other similar grounds. See, *e.g.*, Pet. Br. 13, 24 (describing "discovery rule" as an "equitable doctrine"). Courts have sometimes used the term "discovery rule" in that manner, *e.g.*, *William A. Graham Co.*, 646 F.3d at 150, and many of the decisions petitioner cites applied the substance of that approach.

Petitioner's FDCPA suit, however, cannot be deemed timely on that basis. Although the established doctrine of equitable tolling applies to the FDCPA, petitioner forfeited any equitable-tolling argument in this case. Petitioner also points to decisions applying what is arguably a distinct, per se rule for fraud cases. But to the extent that rule differs from ordinary equitable tolling, it is inapplicable here because petitioner's FDCPA suit is not an action for fraud.

A. Traditional Principles Of Equitable Tolling Apply To The FDCPA, But Petitioner Forfeited Any Equitable-Tolling Argument In This Case

1. Although some principles that save seemingly time-barred suits from dismissal—such as a delayed-accrual discovery rule—"derive from legislative enactments," others instead "derive from the traditional power of the courts to 'apply the principles . . . of equity jurisprudence.'" *California Pub. Emps.' Ret. Sys.* v. *ANZ Sec., Inc.*, 137 S. Ct. 2042, 2050 (2017) (citation omitted). The "classic example is the doctrine of equitable tolling, which permits a court to pause a statutory time limit 'when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action.'" *Ibid.* (quoting *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 10 (2014)). "It is hornbook law that limitations periods are customarily

subject to equitable tolling, unless tolling would be inconsistent with the text of the relevant statute." *Young*, 535 U.S. at 49 (citations and internal quotation marks omitted). Whether equitable tolling is available under a particular law is a matter of statutory interpretation in the sense that a court must determine whether Congress intended to displace that doctrine. See, *e.g.*, *Nutraceutical Corp.* v. *Lambert*, 139 S. Ct. 710, 714 (2019). But equitable tolling is an exercise of "the judicial power to promote equity, rather than to interpret and enforce statutory provisions." *ANZ Securities*, 137 S. Ct. at 2051.

At least some of the decisions on which petitioner relies (Br. 21-27) to support applying a discovery rule in substance applied equitable tolling. *Holmberg*, *supra*, for example, involved a suit by a bank's creditors against a bank shareholder. The plaintiffs sought to obtain money due to them under a provision of the Federal Farm Loan Act, ch. 245, 39 Stat. 360, that made shareholders of a bank responsible for the bank's debts. *Holmberg*, 327 U.S. at 393 & n.1. The plaintiffs alleged that the defendant had fraudulently concealed his ownership of shares, effectively preventing the plaintiffs from suing until they discovered the concealed ownership ten years later. *Id.* at 393. The defendant contended that the suit was untimely, arguing that, although the federal statute lacked an express limitations provision, it implicitly incorporated a state-law time bar. *Id.* at 393-394.

Without addressing "[w]hen the liability, if any, accrued in th[at] case," the *Holmberg* Court held that the statute was subject to "historic principles of equity," including the rule that a suit will not be dismissed "because of mere lapse of time" if "fraudulent conduct on the part of the defendant may have prevented the plaintiff from being diligent" in bringing suit. 327 U.S.

at 395-397. This Court has described *Holmberg* as a "paradigm application[] of equitable tolling principles," *ANZ Securities*, 137 S. Ct. at 2052, and it has often cited that case to illustrate the doctrine, see, *e.g.*, *Petrella*, 572 U.S. at 681; *Lozano*, 572 U.S. at 11; *Young*, 535 U.S. at 49; *Rotella*, 528 U.S. at 560-561; *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350, 363 (1991). *Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231, 232-233 (1959), and *American Pipe & Construction Co.* v. *Utah*, 414 U.S. 538, 552-559 (1974), likewise involved the application of equitable-tolling or analogous principles to particular contexts. This Court has described both decisions in those terms. See, *e.g.*, *ANZ Securities*, 137 S. Ct. at 2051-2052; *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89, 96 & nn.3-4 (1990).[4]

2. The parties and the court of appeals in this case appear to agree that equitable tolling is available in FDCPA suits in at least some circumstances. See Pet. Br. 16-19; Resp. Br. 35-36; Br. in Opp. 9-10; Pet. App. 13-14. That conclusion is correct. Section 1692k(d) does not expressly or implicitly preclude application of equitable-tolling principles. To be sure, this Court has held in other contexts that Congress's adoption of a time bar that "runs from the defendant's last culpable act * * * , not from the accrual of the claim," is "close to a dispositive indication that the statute is one of repose." *ANZ Securities*,

---

[4] Respondents describe (Br. 38-39) *Glus* as applying equitable estoppel rather than equitable tolling. To the extent the doctrines are meaningfully distinct, cf., *e.g.*, *Ramírez-Carlo* v. *United States*, 496 F.3d 41, 49 (1st Cir. 2007) (noting that this Court has "treated equitable estoppel as a form of equitable tolling" (citing *Irwin*, 498 U.S. at 96)); *Kirkendall* v. *Department of the Army*, 479 F.3d 830, 838-839 (Fed. Cir.) (en banc) (same), cert. denied, 552 U.S. 948 (2007), the distinction is irrelevant here because petitioner has not separately argued that equitable estoppel applies, see Resp. Br. 39.

137 S. Ct. at 2049. But as petitioner notes, Section 1692k(d) lacks the other "common feature" often found in statutes that impose inflexible repose periods: "a two-tier structure" that pairs "a shorter statute of limitations and a longer statute of repose." *Id.* at 2049, 2055; see Pet. Br. 17-18. And nothing else in Section 1692k(d)'s text or context signals that Congress intended to displace traditional equitable tolling.

Petitioner's factual allegations, if true, might warrant application of equitable tolling. "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Credit Suisse Sec. (USA) LLC* v. *Simmonds*, 566 U.S. 221, 227 (2012) (citation and emphasis omitted); cf. *Menominee Indian Tribe of Wis.* v. *United States*, 136 S. Ct. 750, 756 n.2 (2016) (reserving judgment on whether that formulation, articulated in the habeas context, applies more generally). Petitioner's allegations that respondents "purposefully ensured that [petitioner] could never properly be served" in the debt-collection suit, 2 C.A. App. 8a, and that respondents filed a false affidavit of service attesting that he had been properly served, Pet. Br. 7-8, might well constitute an extraordinary circumstance outside petitioner's control—as an instance of, or close analogue to, what courts have termed "fraudulent concealment." *Klehr* v. *A. O. Smith Corp.*, 521 U.S. 179, 194 (1997); see 2 Corman §§ 9.7, 9.9, at 55-78.

It is less clear from the complaint whether petitioner exercised the requisite degree of diligence. Cf. *Credit Suisse*, 566 U.S. at 227. But in this pleading-stage posture, it is not apparent from the complaint that petitioner could have learned of the debt-collection suit earlier by

reasonable effort. Amici Professors Bray et al. argue (Br. 21-22) that "[e]quitable tolling does not apply" here because a victim who "does not know he has been injured" cannot satisfy the diligence requirement because he is not "pursuing his rights at all." This misunderstands the inquiry. A plaintiff who has been delayed in discovering his injury satisfies the diligence requirement by showing that he "*remain[ed] in ignorance* * * * without any fault or want of diligence or care on his part." *Credit Suisse*, 566 U.S. at 227 (emphasis altered; citation omitted).

In all events, the question whether equitable tolling would apply in these circumstances is not presented in this case. The court of appeals did not decide that issue because it determined that petitioner had forfeited any equitable-tolling argument by "fail[ing] to raise it on appeal." Pet. App. 13. Petitioner had argued in the district court that equitable tolling should apply, but the court of appeals found that he had abandoned that argument on appeal. See pp. 5-6, 8, *supra*. Petitioner has not challenged that finding in this Court, and he does not identify any "unusual circumstance[]" that would warrant overlooking that forfeiture. *OBB Personenverkehr AG* v. *Sachs*, 136 S. Ct. 390, 398 (2015). There is accordingly no basis to overturn the court of appeals' judgment based on equitable-tolling principles. If the Court concludes, however, that consideration of equitable tolling is essential to proper analysis of the question presented, it should dismiss the writ of certiorari as improvidently granted.

B. The Special Rule The Court Has Recognized For Fraud Suits Does Not Apply To Petitioner's FDCPA Claim

Petitioner also points (Br. 21-24) to a line of this Court's decisions beginning with *Bailey* v. *Glover*, 88 U.S. (21 Wall.) 342 (1875), that have arguably recognized a special, per se rule for fraud suits. Under that

rule, a limitations period is deemed not to apply to a suit for fraud while the plaintiff, despite reasonable diligence, remains unaware of the fraud. See *id.* at 348-350; *Gabelli*, 568 U.S. at 449. That special rule is inapplicable here because petitioner's suit is not an action for fraud.

1. Early American courts placed particular weight on English decisions addressing statute-of-limitations issues because most States that adopted statutes of limitations patterned them closely on a 1623 English law. See 1 Wood § 2, at 6; J. K. Angell, *A Treatise on the Limitations of Actions at Law and Suits in Equity and Admiralty* Ch. II, § 3, at 12 (2d ed. 1846) (Angell). English courts of equity traditionally applied a principle that a limitations period generally did not operate to bar an action alleging fraud until the plaintiff discovered or reasonably should have discovered it. See 2 Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* §§ 1521-1521*a*, at 737-739 (Rev. 2d ed. 1839); Angell Ch. XVIII, § 1, at 188. It was less clear whether that principle also applied to actions at law. See, *e.g.*, John P. Dawson, *Undiscovered Fraud and Statutes of Limitation*, 31 Mich. L. Rev. 591, 597-599 (1933) (Dawson); Angell Ch. XVIII, § 2, at 188-191; *Whether Fraud Is a Sufficient Answer, in an Action at Law, to a Plea of the Statute of Limitations*, 1 U.S. L. Intelligencer & Rev. 139, 139-140 (1829) (Intelligencer).

Courts in this country likewise were initially divided on the question. In an influential decision, Justice Story, riding circuit, concluded that the principle did apply to actions at law. See *Sherwood* v. *Sutton*, 21 F. Cas. 1303, 1303-1308 (C.C.D.N.H. 1828) (No. 12,782). Ultimately, that position came to predominate in lower courts. See Dawson 599-606; Angell Ch. XVIII, §§ 3-4, at 191-195; Intelligencer 140-141.

In 1875, this Court adopted that view as well. See *Bailey*, 88 U.S. (21 Wall.) at 348-350. In *Bailey*, an assignee in bankruptcy brought suit to set aside a fraudulent conveyance that the defendant had effected "to defraud the only creditor named in [the defendant's bankruptcy] petition." *Id.* at 343. The defendant sought dismissal under a law that required suit to be brought "within two years from the time of [sic] the cause of action accrued for or against [the] assignee." *Id.* at 344 (argument of counsel) (citation and emphasis omitted). The Court held that dismissal was unwarranted, even though the suit "was not filed until more than two years after the cause of action accrued" and thus did not satisfy the limitations provision's terms. *Id.* at 345, 349. The Court relied on a "very often applied" principle that governed cases in which "the object of the suit is to obtain relief against a fraud":

> [W]hen there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed, or is of such character as to conceal itself, the statute does not begin to run until the fraud is discovered by, or becomes known to, the party suing [or his privies].

Id. at 347, 349-350.

In the ensuing years, the Court often reiterated *Bailey*'s rule. See, *e.g.*, *Exploration Co.* v. *United States*, 247 U.S. 435, 446-448 (1918); *Avery* v. *Cleary*, 132 U.S. 604, 609-611 (1890); *Amy* v. *Watertown (No. 2)*, 130 U.S. 320, 324-325 (1889); *Traer* v. *Clews*, 115 U.S. 528, 537-538 (1885); *Rosenthal* v. *Walker*, 111 U.S. 185, 190 (1884). But the Court appears to have applied that per se rule only in suits that sounded in fraud that either had been concealed or was inherently self-concealing.

See *Exploration Co.*, 247 U.S. at 446 (suit by government to annul land patent based on fraud); *Traer*, 115 U.S. at 536 (suit to invalidate "fraudulent transactions"); *Rosenthal*, 111 U.S. at 186 (suit to recover assets conveyed in "fraudulent transfer" under bankruptcy law). And it expressly declined to apply that rule to a claim that did not involve concealed or self-concealing fraud. See *Avery*, 132 U.S. at 609-611.

In *Avery*, a bankruptcy assignee brought suit to recover property that he alleged had been wrongfully withheld from the estate, but he did not show that the property had been fraudulently withheld. See 132 U.S. at 609-611. The Court explained that the defendant's failure to disclose the property might have been an honest mistake and "would not establish fraud within the meaning of the rule announced in *Bailey*." *Id.* at 610. A defendant's efforts to conceal relevant facts from the plaintiff in a non-fraud case might warrant application of the ordinary rule of equitable tolling if the other requirements of that doctrine are met. See, *e.g.*, *Holmberg*, 327 U.S. at 395-396. But to the extent *Bailey* recognized a distinct, per se rule, the Court appears to have applied that rule only to actions for fraud.

2. It is debatable whether the rule recognized in *Bailey* is best understood as an interpretive rule for construing limitations periods, or instead as an equitable principle—*i.e.*, as either a specialized application of, or close analogue to, equitable tolling. Some decisions, including *Bailey* itself, describe the rule as delaying when the time bar "begin[s] to run," 88 U.S. (21 Wall.) at 350, and the Court has stated that *Bailey*'s "equitable doctrine is read into every federal statute of limitation," *Holmberg*, 327 U.S. at 397. But the Court has also repeatedly cited *Bailey* as applying equitable tolling.

See *Lozano*, 572 U.S. at 11; *Merck*, 559 U.S. at 644; *Young*, 535 U.S. at 49; *Lampf*, 501 U.S. at 363. That characterization better accords with the origin of the principle in courts of equity and the lack of any apparent textual basis for reading *Bailey*'s rule into many limitations periods. In *Exploration Co.*, for example, the Court applied the *Bailey* rule while emphasizing that the statute before it lacked any provision delaying accrual of a cause of action until discovery. 247 U.S. at 447. And because the applicable limitations period in *Exploration Co.* ran from the "date of the issuance of" the land patent that the plaintiff sought to annul, *id.* at 445 (citation omitted), the *Bailey* rule provided no evident basis for concluding that the suit had been filed within the statutorily prescribed period.

However *Bailey*'s rule for fraud cases is understood, it is inapplicable here because petitioner's FDCPA claim does not allege "fraud within the meaning of the rule announced in *Bailey*." *Avery*, 132 U.S. at 610. Private actions for fraud traditionally encompassed misrepresentations made knowingly or at least recklessly. See, *e.g.*, *ibid.*; *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 192 (1963). FDCPA claims generally do not require that element of a traditional fraud claim. In general, the FDCPA's private-action provision imposes a strict-liability regime, and many of its provisions prohibit conduct that does not involve deception at all, but rather involves harassment and abuse designed to pressure a debtor to repay a debt. See pp. 3, 19-20, *supra*.

In this case, petitioner does not appear to allege a knowing or reckless misrepresentation, which is not an element of his FDCPA claim. See p. 3-5, *supra*. His operative, amended complaint alleges a single claim: that respondents "violated the FDCPA by contacting

[petitioner] without lawful ability to collect." 2 C.A. App. 9a. That claim was ostensibly based on his allegation that the debt-collection suit respondents commenced was itself time-barred. See *ibid.* That claim does not sound in fraud, and neither FDCPA provision the complaint cites (*ibid.*) requires a knowing or reckless misrepresentation. One prohibits certain "threat[s]," 15 U.S.C. 1692e(5), and the other bars certain "false representation[s]," 15 U.S.C. 1692e(2). But a claim under either one would not require proof of a knowing or reckless misrepresentation, and the complaint does not allege any particular knowing or reckless misrepresentation made by respondents.

In his briefing below and in this Court, petitioner has characterized his suit as focused instead on respondents' allegedly intentional service of process at the wrong address to conceal the debt-collection suit from petitioner. See Pet. Br. 8-9, 12; D. Ct. Doc. 17, at 4; Pet. App. 17 & n.2. But the amended complaint does not allege that the intentional misdirection of service *itself* violated the FDCPA. Rather, it alleges that the misdirection prevented petitioner from learning that respondents had engaged in *other* conduct (filing a time-barred debt-collection lawsuit) that the FDCPA prohibited. As discussed above, if petitioner had preserved the argument, those allegations (if true) might warrant equitable tolling. But they fall outside the class of suits to which this Court traditionally has applied *Bailey*'s special rule for fraud claims.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
MALCOLM L. STEWART
Deputy Attorney General
JONATHAN C. BOND
Assistant to the Solicitor General

MARY MCLEOD
General Counsel
JOHN R. COLEMAN
Deputy General Counsel
STEVEN Y. BRESSLER
Assistant General Counsel
KRISTIN BATEMAN
Attorney
Bureau of Consumer Financial Protection

JULY 2019

APPENDIX

1. 15 U.S.C. 1692 provides:

Congressional findings and declaration of purpose

(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.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(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.

2. 15 U.S.C. 1692e provides in pertinent part:

False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * * * *

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

* * * * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * * * *

3. 15 U.S.C. 1692k provides:

Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section 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.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(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.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.