STANDING FOR WORKERS' RIGHTS: EXPANDING ACCESS TO FEDERAL COURTS FOR WORKERS BRINGING WAGE THEFT SUITS AGAINST EMPLOYERS POST-*TRANSUNION*

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ABSTRACT

Wage theft affects millions of workers in the United States, particularly low-wage and hourly workers. In response to this crisis, many states have enacted wage theft prevention laws requiring employers to provide employees with written documentation of wage information. Employers who fail to provide sufficient notice must pay statutory damages. However, plaintiff-employees seeking enforcement of these provisions against their private employers in federal court often struggle to establish standing to sue. The Supreme Court's 2021 decision in *TransUnion LLC v. Ramirez* has narrowed the standing doctrine by holding that a statutory violation is insufficient to establish standing without further demonstration that the violation resulted in concrete harm to the plaintiff. After *TransUnion*, federal courts have remained divided on when an employer's violation of a wage documentation or notice statute constitutes a concrete injury to the plaintiff for standing purposes. This Note explores the Second and Ninth Circuits' narrowed approaches to standing in wage documentation violation claims following *TransUnion*, rendering these provisions toothless and virtually unenforceable. This Note argues that an overly narrow interpretation of standing in wage theft suits unfairly prevents workers from using federal courts to hold their employers accountable and suggests that federal courts must reevaluate the standing doctrine in light of its roots and original purpose.

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TABLE OF CONTENTS

INTRODUCTION

Low-wage and hourly workers across the country lose an estimated fifty billion dollars each year to wage theft, with most of the losses going unrecovered.[1] Wage theft, also known as wage-and-hour violations, refers to instances in which employers fail to pay their employees the full compensation to which they are legally entitled.[2] Wage theft can take many forms, ranging from paying employees less than minimum wage to illegally deducting meal breaks from time sheets. One way plaintiff-employees can recover stolen wages is by suing their employers in federal courts under the federal Fair Labor Standards Act ("FLSA")[3] and state wage theft laws. However, federal courts have ruled that plaintiff-employees have not experienced enough concrete harm to establish standing to sue when employers violate state wage notice and documentation statutes.[4] As a result, many plaintiff-employees cannot recover the statutory penalties owed to them for these violations. This overly narrow interpretation of standing in wage theft suits prevents workers from using federal courts to hold their employers accountable and disproportionately disadvantages the most vulnerable communities.

The FLSA establishes a federal minimum wage, overtime compensation requirements, employer record-keeping requirements, and enforcement provisions. The FLSA also permits states to enact wage-and-hour laws that are more stringent than federal labor standards.[5] States such as New York and California have enacted

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1. Brady Meixell & Ross Eisenbrey, *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*, ECON. POL'Y INST. (Sept. 11, 2014), https://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds [https://perma.cc/A42V-MG4J].

2. Paul Kim, *Business Insider: Wage theft is when an employer withholds benefits, such as breaks or compensation, that an employee has already worked for*, NAT'L EMP. L. PROJECT (Jul. 12, 2022), https://www.nelp.org/wage-theft-is-when-an-employer-withholds-benefits-such-as-breaks-or-compensation-that-an-employee-has-already-worked-for/ [https://perma.cc/DH5X-6BPM].

3. 29 U.S.C. §§ 201–19.

4. *See* discussion *infra* Parts II.B.1, II.C.1.

5. 29 U.S.C. § 218(a); Daniel V. Dorris, *Fair Labor Standards Act Preemption of State Wage-and-Hour Law Claims*, 76 U. CHI. L. REV. 1251, 1255–56 (2009) ("Additionally, the FLSA contains a savings clause, specifically authorizing states to set stricter regulations . . . . The savings clause explicitly allows states to set higher minimum wages and adjust the overtime workweek. The overall effect is to give states a continuing role in regulating wages and hours (subject to federal minimums)").

wage theft prevention laws which expand the rights of workers and set forth civil and criminal remedies for violations.[6] These statutes often include provisions intended to increase wage transparency and notice by requiring employers to provide employees with written documentation of the employees' wage rate, hours worked, overtime wages, and employer information.[7] Employers who do not comply may be subject to monetary penalties, among other consequences.[8]

Plaintiff-employees seeking civil remedies against private employers in federal court for both federal and state wage-and-hour violations must first establish that they have standing to sue. Without standing, a court cannot consider the merits of the claims. In recent decades, federal courts have increasingly used standing as a barrier to plaintiffs seeking access.[9] Historically, courts easily found standing in cases brought by plaintiffs to vindicate statutory private rights.[10] However, the Supreme Court's decision in *TransUnion LLC v. Ramirez*[11] held that a defendant's statutory violation alone is insufficient to satisfy the injury-in-fact requirement; plaintiffs must show a concrete harm.[12] Since *TransUnion*, federal courts have remained divided on when an employer's violation of a wage documentation or notice statute constitutes a concrete injury to the plaintiff for standing purposes.

Recent Second and Ninth Circuit cases have further narrowed standing doctrine in wage notice and statement violation claims in federal courts. In *Guthrie v. Rainbow Fencing Inc.*,[13] the Second Circuit applied *TransUnion* by requiring plaintiffs to show a causal connection between the lack of accurate wage notices and statements from their employers and the downstream harm suffered by plaintiffs.[14] The Ninth Circuit also applied *TransUnion* to narrow standing as applied to wage notice and wage statement violations in *Castro v. PPG Industries, Inc.*, holding that plaintiffs lack standing to bring a wage statement claim when they fail to identify a common

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6. GREGORY K. MCGILLIVARY ET AL, A.B.A., WAGE AND HOUR LAWS (3rd ed. 2023) (summarizing wage and hour laws by state and topic).

7. *Wage Notice Requirements by State*, WRAPBOOK (Nov. 3, 2022), https://www.wrapbook.com/blog/wage-notice-requirements-by-state [https://perma.cc/X7C8-UAUF].

8. *Id.*

9. *See* discussion *infra* Parts II.B.1, II.C.1.

10. *See infra* note 66.

11. TransUnion LLC v. Ramirez, 594 U.S. 413 (2021).

12. *Id.* at 426–30.

13. Guthrie v. Rainbow Fencing Inc., 113 F.4th 300 (2d Cir. 2024).

14. *Id.* at 308.

law analogue for the injury.[15] The narrowing of the standing doctrine in federal courts across the country makes it exceedingly difficult for plaintiff-employees to sue their employers for violating wage statement and notice statutes. This renders these provisions toothless and virtually unenforceable.

This Note argues that using standing doctrine to limit who can litigate wage-and-hour claims in federal court is both undesirable from a policy standpoint and is contrary to the standing doctrine's purpose. Rather than raising the barriers for workers to establish standing to collect monetary damages after being denied their proper wages, federal courts must reevaluate the standing doctrine in light of its roots and original purpose. Part I of this Note provides background on federal and state wage-and-hour legislation, the wage theft crisis, barriers to relief for workers, the standing doctrine, and the *TransUnion* decision. Part II discusses the gradual narrowing of the standing doctrine in wage theft suits in federal courts in New York and California, particularly in the wake of *TransUnion*. Part III proposes a worker-friendly path forward that comports with the values of separation of powers and federalism, while remaining consistent with the origins of the standing doctrine.

I. BACKGROUND

This Part offers a brief overview of the history of wage-and-hour protections in the United States, the problem of wage theft and barriers to relief, and the doctrinal basis for Article III standing. Section I.A describes existing federal and state wage-and-hour legislation, focusing on New York and California, which have both enacted Wage Theft Prevention Acts with specific provisions governing wage statements and notices. Section I.B considers the rising tide of wage theft litigation and the consequences for workers who experience wage theft without access to avenues for enforcement and relief. Section I.C explains Article III standing and demonstrates how the Supreme Court's decision in *TransUnion* has narrowed the doctrine even further.

15. Castro v. PPG Indus., Inc., No. 21-55340, 2022 WL 3681305, at *1 (9th Cir. Aug. 25, 2022).

A. Federal and State Wage-and-Hour Legislation

In the early twentieth century, labor law in the United States was primarily the domain of state and local governments.[16] State-level minimum wage laws in the early twentieth century were targeted at women and children.[17] These laws faced numerous challenges in state and federal courts.[18] In 1937, the Supreme Court's decisions in *West Coast Hotel v. Parrish* and *National Labor Relations Board v. Jones & Laughlin Steel Corporation* paved the way for a "constitutional federal minimum wage law."[19] In an address to Congress on May 24, 1937, President Franklin D. Roosevelt stated that "[a] self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours. . . ."[20] He argued that the "[g]overnment must have some control over maximum hours, minimum wages, the evil of child labor, and the exploitation of unorganized labor."[21] In 1938, President Roosevelt signed the FLSA into law, establishing a federal minimum wage, overtime pay, employer record-keeping requirements, and child labor restrictions.[22]

The current version of the FLSA mandates a national minimum wage of $7.25 per hour and an overtime pay rate of 1.5 times the regular pay rate for hours worked in excess of forty hours per week for non-exempt employees.[23] The FLSA allows states and localities to set higher labor standards or minimum wage than the

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16. Price V. Fishback & Andrew J. Seltzer, *The Rise of American Minimum Wages, 1912–1938*, 35 J. ECON. PERSP. 73, 73 (2021).

17. *Id.*

18. *Id.* at 75, 77–78.

19. *Id.* at 80; *see also* West Coast Hotel Co. v. Parrish, 300 U.S. 379, 396–97 (1937) (upholding a state minimum wage law for women as constitutional); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 36–37 (1937) ("[T]he power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection or advancement' . . . ; to adopt measures 'to promote its growth and insure its safety' . . . ; 'to foster, protect, control, and restrain.'" (citations omitted)).

20. LES A. SCHNEIDER & J. LARRY STINE, WAGE AND HOUR LAW: COMPLIANCE AND PRACTICE §1:3 (2024).

21. *Id.*

22. John S. Forsythe, *Legislative History of the Fair Labor Standards Act*, 6 LAW & CONTEMP. PROBS. 464, 473 (1939); Jeounghee Kim & Skye Allmang, *Wage Theft in the United States: A Critical Review* 6 (Rutgers Sch. Mgmt. & Lab. Rels. Ctr. for Women & Work, Working Paper Series, 2020).

23. Kim & Allmang, *supra* note 22, at 6.

FLSA provides, in which case the highest minimum wage applies.[24] As of October 2024, thirty states and the District of Columbia have enacted minimum wage rates above the federal rate, and seven states—including New York and California—have minimum wages above $15.00 per hour.[25]

Some states have passed additional laws that increase penalties against employers for wage-and-hour violations or facilitate the collection of wage judgments from noncomplying employers.[26] In civil suits, most penalties are monetary. However, some states and localities have experimented with non-monetary penalties including individual criminal liability and revocation of business licenses.[27] New York's Wage Theft Prevention Act and California's Wage Theft Protection Act both include wage documentation and notice provisions and impose monetary penalties on employers who violate these provisions.[28] These types of wage documentation laws increase wage transparency by deterring employers from engaging in wage theft, increasing the likelihood that employees discover wage theft violations, and serving as evidence to prove wage theft.[29] However, these laws require workers to be aware of and willing to exercise their rights, which limits their effectiveness for marginalized and vulnerable workers who may be less likely to pursue legal action.[30]

1. New York's Wage Theft Prevention Act

The Wage Theft Prevention Act ("New York WTPA") enacted by the New York State Legislature took effect in 2011 and was

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24. SARAH A. DONOVAN & ELLEN M. LECHMAN, CONG. RSCH. SERV., RL43792, STATE MINIMUM WAGES: AN OVERVIEW 1, 1 (2024).

25. *Id.* at 3.

26. Nicole Hallett, *The Problem of Wage Theft*, 37 YALE L. & POL'Y REV. 93, 98 (2018). The term entered widespread usage after religious and workers' rights activist Kim Bobo advocated for its use in her book *Wage Theft in America*, which she begins with the epigraph "Thou shalt not steal." Kim Bobo, WAGE THEFT IN AMERICA: WHY MILLIONS OF WORKING AMERICANS ARE NOT GETTING PAID—AND WHAT WE CAN DO ABOUT IT 114–15 (2009). Between 2005 and 2018, a total of 141 laws regulating wage theft practices were enacted across twenty-four states and fifty-seven localities. Kim & Allmang, *supra* note 22, at 16.

27. Hallett, *supra* note 26, at 114–15.

28. N.Y. LAB. LAW § 195 (McKinney 2021); CAL. LAB. CODE § 226 (West 2023).

29. Elle Eshleman, *Injured on the Job: Standing, Federalism, and State Wage-and-Hour Laws*, 133 YALE L. J. 931, 948–50 (2024).

30. Kim & Allmang, *supra* note 22, at 18.

codified in the New York Labor Law ("NYLL").[31] Sections 195(1) and 195(3) of the NYLL contain the statute's wage notice and statement provisions.[32] Section 195(1) requires employers at the time of hire to provide employees with a wage notice containing, *inter alia*, the rate of pay, the basis thereof, the pay schedule, and information identifying the employer in both English and the primary language of the employee.[33] Section 195(3) requires employers to provide employees with "a statement with every payment of wages" listing information including the dates of work covered by the payment, information identifying the employer and employee, details regarding the rate of pay and the overtime rate of pay, and the number of hours worked.[34] Sections 198(1-b) and 198(1-d) of the NYLL impose statutory damages for employers who violate these provisions.[35]

2. California's Wage Theft Prevention Act

The California state legislature enacted similar provisions to those in the NYLL in its own Wage Theft Prevention Act ("California WTPA"), codified in the California Labor Code ("Labor Code").[36] Section 226(a) of the Labor Code requires employers to furnish employees with documentation containing, *inter alia*, the gross wages, hours worked, deductions, net wages, employer information, and hourly rates either "semimonthly or at the time of each payment of wages." [37] Section 226(e)(1) imposes statutory damages for violations of Section 226(a).[38]

B. The Wage Theft Crisis and Barriers to Relief for Plaintiffs

The term wage theft was popularized by labor activists and progressive scholars to evoke the commission of a crime and draw more attention to employer violations of federal and state wage laws that result in workers not being paid the full wages they are legally

31. N.Y. LAB. LAW § 195 (McKinney 2021).
32. N.Y. LAB. LAW §§ 195(1), 195(3) (McKinney 2021).
33. N.Y. LAB. LAW § 195(1) (McKinney 2021).
34. N.Y. LAB. LAW § 195(3) (McKinney 2021).
35. N.Y. LAB. LAW §§ 198(1-b), 198(1-d) (McKinney 2021).
36. Assemb. B. 469, 2011 Cal. Leg., 2011–2012. Reg. Sess. (Cal. 2011), http://www.leginfo.ca.gov/pub/1112/bill/asm/ab_0451-0500/ab_469_bill_20111009_chaptered.pdf [https://perma.cc/GLE6-GK3B].
37. CAL. LAB. CODE § 226(a) (West 2023).
38. CAL. LAB. CODE § 226(e)(1) (West 2023).

owed.[39] Wage theft encompasses a broad spectrum of employer practices beyond overt refusal to pay employees for their work. It includes paying less than the minimum or promised wage, not paying employees for all hours worked, failing to pay an overtime premium for hours worked beyond forty hours per week, insisting on "off-the-clock" work, taking illegal deductions from paychecks, paying with bad checks, stealing tips, and misclassifying employees as "independent contractors" to evade worker protections and benefits.[40] More than three billion dollars in stolen wages were recovered by the U.S. Department of Labor, state agencies, and in collective and class action litigation between 2017 and 2020.[41] More than 1.5 billion dollars in stolen wages were recovered between 2021 and 2023.[42] Yet quantifying the true extent of wage theft is difficult as much of it goes unreported and only a small portion of stolen wages are ever recovered.[43]

Wage theft affects millions of workers across the United States, particularly low-wage and hourly workers. Some sources estimate the total amount of unpaid wages owed to workers across the country to be as high as fifty billion dollars per year.[44] Many employees do not realize that they are being underpaid, or by how much, and are often afraid to take legal action for fear of retaliation. Wage theft disproportionately impacts low-wage workers, workers of color, and immigrants, and is particularly pervasive in the construction, food service, healthcare, retail, and temporary work industries.[45] The harms of wage theft are not limited to workers—wage theft also harms employers who comply with labor standards and must operate at a comparative disadvantage to employers who flout regulations. Wage theft also puts downwards pressure on wages,

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39. Hallet, *supra* note 26, at 98. However, others argue that the term unfairly vilifies business owners who make unintentional mistakes. *Id.*

40. Bobo, *supra* note 26, at 24–41; Elizabeth J. Kennedy, *Deputizing the Frontline: Enforcing Workplace Rights in a Post-Pandemic Economy*, 38 HOFSTRA LAB. & EMP. L. J. 203, 211 (2021).

41. Ihna Mangundayao et al., *More Than $3 Billion in Stolen Wages Recovered for Workers Between 2017 and 2020*, ECON. POL'Y INST. (Dec. 22, 2021), https://www.epi.org/publication/wage-theft-2021/ [https://perma.cc/H5MY-UVR8].

42. Margaret Poydock & Jiayi (Sonia) Zhang, *More Than $1.5 Billion in Stolen Wages Recovered for Workers between 2021 and 2023*, ECON. POL'Y INST. (Dec. 20, 2024), https://www.epi.org/publication/wage-theft-2021-23/ [https://perma.cc/H8C6-VGMZ].

43. Mangundayao et al., *supra* note 41, at 2.

44. Meixell & Eisenbrey, *supra* note 1, at 2.

45. Poydock & Zhang, *supra* note 42, at 3; Kennedy, *supra* note 40, at 212.

strains public safety net programs that workers who have been deprived of their wages and live near or below the poverty line rely on to meet their basic needs, and has negative impacts on local, state, and federal economies and tax revenues.[46]

Victims of wage theft may pursue relief by filing a complaint with a state or federal labor agency, filing a private lawsuit alleging violations of the FLSA or state labor laws, or both.[47] However, there are many barriers that prevent workers from seeking relief. Many workers are uninformed about the law and do not realize when they have been subjected to wage violations.[48] The workers most vulnerable to wage theft often have limited education and English proficiency and lack the resources and time to research the law and pursue relief.[49] When workers *are* aware of their rights, lawsuits are often prohibitive because they require navigating the process pro se or hiring a lawyer.[50] Plaintiff-side employment lawyers often operate on contingency, meaning that plaintiffs only pay attorneys' fees if they win at trial or reach a settlement, but these lawyers tend to cherry-pick cases that are likely to yield large attorney's fees awards and damages, such as class actions or suits brought by highly-paid employees.[51] Remedies through state governments are limited in scope.[52] Thus, it is difficult for plaintiffs to access legal advice and representation, even when they are not at risk of accumulating expensive legal fees.

Despite the numerous barriers to relief, wage theft litigation has skyrocketed in the past few decades—the number of cases filed in federal district court has more than quadrupled over a fifteen-year period, rising from 1,935 cases in 2000 to 8,871 in 2015.[53] Wage-and-hour class actions account for nearly twenty percent of all class action claims filed in federal court, and federal courts frequently encounter suits involving violations of federal and state labor laws.[54] Furthermore, these lawsuit statistics dramatically understate the

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46. Kennedy, *supra* note 40, at 211–13.
47. Kennedy, *supra* note 40, 213–14.
48. Hallet, *supra* note 26, 104–05.
49. *Id.*
50. *Id.* at 105–06.
51. *Id.*
52. *Id.* at 218–20.
53. Lydia DePillis, *Why Wage and Hour Litigation Is Skyrocketing*, WASH. POST (Nov. 25, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/11/25/people-are-suing-more-than-ever-over-wages-and-hours/ (on file with the *Columbia Human Rights Law Review*).
54. Dorris, *supra* note 5, at 1251–52.

scope of the problem as most victims of wage theft never even file a complaint with a state or federal labor agency, despite being less costly and easier to file than a lawsuit.[55] Barriers to filing a complaint include the limited capacity of the Department of Labor and equivalent state agencies, which are often underfunded and understaffed.[56] The long wait times and uninvestigated claims can also cause the workers to face additional risks such as retaliation at the workplace.[57]

C. The Standing Doctrine, *TransUnion*, and its Application to Wage Theft Claims

Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies."[58] The concept of standing is part of this limitation as one of multiple justiciability doctrines, which are legal principles governing whether a federal court has the authority to hear and decide a case.[59] The Supreme Court has stated that standing is "perhaps the most important" justiciability doctrine limiting federal judicial power.[60] The Court has articulated three requirements of the standing doctrine—the plaintiff must have (1) suffered an injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a judicial relief.[61] Furthermore, an injury-in-fact must be concrete, particularized, actual, and imminent.[62] If these three elements of standing are not met, "[a] federal court must dismiss the case for lack of jurisdiction."[63]

Standing doctrine developed out of concerns regarding the separation of powers and the structural role of federal courts in a

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55. Hallet, *supra* note 26, 104–06.
56. *Id.* at 106.
57. *Id.* at 106–07.
58. U.S. CONST. art. III, § 2, cl. 1.
59. Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 38 (1976).
60. Allen v. Wright, 468 U.S. 737, 750 (1984), *abrogated by*, Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118 (2014) (suggesting that standing is the most important of the Article III doctrines, including mootness, ripeness, and political question, among others, that "state fundamental limits on federal judicial power in our system of government").
61. Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)).
62. Lujan v. Defs. of Wildlife, 504 U.S. at 560.
63. F. Andrew Hessick, *The Separation-of-Powers Theory of Standing*, 95 N.C. L. REV. 673, 679 (2017) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94–95 (1998)).

democracy, particularly in the context of plaintiffs seeking equitable relief against government officials.[64] In such cases, a federal court may find itself in the position of reviewing the actions of an official in another branch of the government, raising a separation of powers issue.[65] Although suits against private parties do not raise the same structural issue,[66] the Court has traditionally applied the same three-element standing test to suits between private parties, albeit more generously.[67] Prior to 2020, the Court had never dismissed a suit brought by a private party against another private party for lack of

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64. Thomas P. Schmidt, *Standing Between Private Parties*, 2024 WIS. L. REV. 1, 6–8 (2024).

65. *Id.* at 7.

66. Schmidt argues that this structural separation of powers problem "is irrelevant when the defendant is a private party" because "there is no prospect that such a suit will yield a remedy against a government official." *Id.* at 7–8. Rather, the standing doctrine in such cases must rest on another structural basis, such as usurping the executive's power to enforce the law or keeping courts in their traditional role of resolving disputes. *Id.*

67. Schmidt juxtaposes three sets of Supreme Court cases to demonstrate that the Court has historically been more generous in upholding claims of standing in private suits than in suits against the government. *Id.* at 36–40.

First, the Court found that the plaintiff had suffered an adequate injury-in-fact when the threat of injury was "remote, if not nonexistent" in *MedImmune, Inc. v. Genentech, Inc.*, a suit between private parties, but held that a "threatened injury must be *certainly impending* to constitute injury in fact" in *Clapper v. Amnesty International USA*, a suit against federal government officials. *Id.* at 36 (quoting MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 128 (2007) and Clapper v. Amnesty Int'l USA, 568 U.S. 398, 410 (2013) (emphasis added)).

Second, the Court held in *Friends of the Earth, Inc. v. Laidlaw Environment Services*, a suit between private parties, that plaintiffs had standing because they had "*reasonable concerns* about the effects" of the defendant's unlawful actions, even though the defendant's actions did not result in any health risk or environmental harm to the plaintiffs. *Id.* at 36–37 (quoting Friends Earth, Inc. v. Laidlaw Env't Servs., Inc., 528 U.S. 167, at 181, 183–84 (2000) (emphasis added)). In contrast, the Court dismissed cases against government entities when plaintiffs alleged a "chilling" effect on the exercise of their rights in *Laird v. Tatum* and fear that they would be physically injured in future police encounters in *City of Los Angeles v. Lyons*, reasoning that "subjective apprehensions" were insufficient to give rise to standing. *Id.* at 37–38 (citing Laird v. Tatum, 408 U.S. 1, 3 (1972) and City of L.A. v. Lyons, 461 U.S. 95, at 107–08, 107 n.8 (1983)).

Third, the Court held that a plaintiff alleging an information injury had suffered a "specific" injury-in-fact giving rise to standing in *Havens Realty Corporation v. Coleman*, a suit between private parties, but found the plaintiff's information injury in *United States v. Richardson*, a suit against a government entity, to be a "generalized grievance" that lacked standing. *Id.* at 38–39 (quoting Havens Realty Corp. v. Coleman, 455 U.S. 363, 373–74 (1982) and U.S. v. Richardson, 418 U.S. 166, at 176–77, 180 (1974)).

standing due to inadequate injury-in-fact.[68] The Court broke this pattern in two closely divided opinions—first articulated in *Thole v. U.S. Bank* and more fully justified in *TransUnion*—holding that there was no standing because the plaintiff was inadequately injured and thus Congress was unable to authorize the suits.[69]

1. The Injury-in-Fact Element of Article III Standing

The key question for an injury-in-fact analysis is "whether a plaintiff established a degree of risk [of harm] that is sufficient to meet the concreteness requirement."[70] "A concrete injury must be *de facto*," meaning "it must actually exist."[71] To determine whether an injury is concrete, courts look to "whether the asserted harm has a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or various intangible harms."[72] The judgment of Congress is "instructive" in determining whether an intangible harm constitutes a concrete injury-in-fact.[73] Additionally, Congress may "elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law."[74] Yet the "mere risk of future harm, standing alone, cannot qualify as a concrete harm—at least unless the exposure to the risk of future harm itself causes a *separate* concrete harm."[75]

The Court introduced the "injury-in-fact" test in *Association of Data Processing Service Organizations, Inc. v. Camp* in 1970, after a decade of liberalizing standing doctrine.[76] Over the next decade, the Court clarified that an "injury-in-fact" was required by Article III and articulated additional requirements—that the "injury-in-fact" be "distinct and palpable," caused by or fairly traceable to the defendant,

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68. Schmidt, *supra* note 64, at 8–9.

69. *Id.* at 45–50.

70. TransUnion, 594 U.S. at 456 (quoting Spokeo, Inc. v. Robins, 578 U.S. 330, 341 (2016)) (internal citations omitted).

71. Spokeo, Inc. v. Robins, 578 U.S. at 340 (internal quotations omitted).

72. *TransUnion*, 594 U.S. at 417 (citing *Spokeo*, 578 U.S. at 340–41) (internal quotations omitted).

73. *Id*. at 424.

74. Lujan v. Defs. of Wildlife, 504 U.S. 555, 577–78 (1992) (distinguishing "[statutory] broadening [of] the categories of injury that may be alleged in support of standing" from "abandoning the requirement that the party seeking review must himself have suffered an injury. . . .") (quoting Sierra Club v. Morton, 405 U.S. 727, 738 (1972) (emphasis in original).

75. *TransUnion*, 594 U.S. at 436 (emphasis in original).

76. Schmidt, *supra* note 64, at 15–16.

and be redressable by the court—that would ultimately become the three elements of the modern standing doctrine.[77] In 1972, only two years after *Data Processing*, the Court first used the phrase "injury-in-fact" in a suit against private parties, rather than in a suit against government parties, in *Trafficante v. Metropolitan Life Insurance Co.*[78] By the time the Court decided *Gladstone, Realtors v. Village of Bellwood* and *Havens Realty Corporation v. Coleman*—both suits against private parties—in 1979 and 1982, respectively, the Court simply applied the new developments in standing doctrine to suits between private parties without further consideration or deliberation, causing a "doctrinal drift" that was not grounded in any reasoning or logic.[79]

2. The *TransUnion* Decision: Clarifying the Concrete Harm Requirement for Statutory Violations

The Supreme Court first considered the injury-in-fact element of standing in the context of a statutory violation in its 2016 *Spokeo, Inc. v. Robins* decision, holding that "Article III standing requires a concrete injury even in the context of a statutory violation" and "[a plaintiff] could not . . . allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement . . . ."[80] However, the *Spokeo* court also held that "the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact."[81]

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77. *Id.* at 16–17.

78. Schmidt, *supra* note 64, at 18; Trafficante v. Metro. Life Ins. Co., 409 U.S. 205 (1972).

79. Schmidt, *supra* note 64, at 21–25.

80. Spokeo, Inc. v. Robins, 578 U.S. 330, 341–42 (finding that a consumer's allegation that a website operator published inaccurate information about them, in violation of the Fair Credit Reporting Act, did not adequately allege a concrete injury because "not all inaccuracies cause harm or present any material risk of harm," pointing to an incorrect zip code as an example of an inaccuracy that might not "work any concrete harm").

81. *Id.* at 342; *see, e.g.*, Fed. Election Comm'n v. Akins, 524 U.S. 11, 21 (1998) (finding that respondents alleging a political organization's failure to publicly disclose information such as donors and campaign-related contributions and expenditures, in violation of the Federal Election Campaign Act, "suffered a genuine injury in fact" that is concrete because it "consists of [the respondent's] inability to obtain information . . . [that] would help them . . . to evaluate candidates for public office, especially candidates who received assistance from [the organization], and to evaluate the role that [the organization's] financial assistance might play in a specific election").

The Supreme Court further developed the modern standing doctrine in its 2021 *TransUnion* decision. The decision included this declaration: "No concrete harm, no standing."[82] The Court rejected the proposition that a plaintiff has automatically satisfied the injury-in-fact requirement when a statutory violation has occurred, stressing that "an injury in law is not an injury-in-fact . . . ."[83] and highlighting its prior holding in *Spokeo* that "Article III standing requires a concrete injury even in the context of a statutory violation."[84] Furthermore, the Court held that an alleged intangible harm must have a "close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts" to constitute an injury-in-fact.[85]

In *TransUnion*, a class of plaintiffs, including named plaintiff Sergio Ramirez, sued the credit reporting agency TransUnion in federal court under the Fair Credit Reporting Act ("FCRA"), which regulates consumer reporting agencies that compile and disseminate personal information about consumers.[86] The FCRA creates a cause of action for consumers to sue and recover damages from reporting agencies that have violated statutory requirements.[87] The plaintiffs alleged that TransUnion violated three provisions of the FCRA by failing to (1) use reasonable procedures to ensure the accuracy of their credit files, (2) provide plaintiffs with all the information in their credit files upon request, and (3) provide plaintiffs with a summary of their rights with each written disclosure.[88]

However, the *TransUnion* majority held that only the subset of class members whose misleading credit reports TransUnion provided to third-party businesses—1,853 out of 8,185—suffered a concrete harm similar to the harm associated with the tort of defamation, and thus had standing to sue with respect to the first claim.[89] With respect to the disclosure claims, the Court concluded that only Ramirez had standing to sue since Ramirez was the only plaintiff to present evidence "demonstrat[ing] that the format of

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82. TransUnion, 594 U.S. at 417.
83. *Id.* at 426–27.
84. *Id.* at 426 (quoting *Spokeo*, 578 U.S. at 341) (internal quotations omitted).
85. *Id.* at 417 (citing *Spokeo*, 578 U.S. at 340–41) (internal quotations omitted).
86. *Id*. at 417–18.
87. *Id.* at 419.
88. *Id.* at 417, 421.
89. *Id.* at 431–34.

TransUnion's mailings caused [him] a harm with a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts."[90] The other *TransUnion* plaintiffs did not allege that they failed to receive any required information—they only alleged that they received the information in the wrong format.[91] Thus, the Court clarified that a plaintiff must identify "downstream consequences from failing to receive the required information" for an "informational injury" to have standing.[92]

To illustrate the "concrete harm" principle, the *TransUnion* court distinguished between two hypothetical plaintiffs bringing a lawsuit against the same Maine-based factory alleging violations of federal environmental law.[93] A Maine citizen who owns land that has been damaged by pollution from the factory has suffered concrete harm and thus has standing to sue in federal court, whereas a plaintiff in Hawaii bringing a claim against the same company who has not suffered any "physical, monetary, or cognizable intangible harm traditionally recognized as providing a basis for a lawsuit" does not have standing.[94] "In [the Court's] view, the public interest that private entities comply with the law cannot be converted into an individual right by a statute that denominates it as such, and that permits all citizens (or for that matter a subclass of citizens who suffer no distinctive concrete harm) to sue."[95]

In his dissent, Justice Thomas—joined by Justices Breyer, Sotomayor, and Kagan—wrote: "Never before has this Court declared that legal injury is *inherently* insufficient to support standing."[96] Justice Kagan, writing separately and joined by Justices Breyer and Sotomayor, described the majority's decision as a transformation "from a doctrine of judicial modesty into a tool of judicial aggrandizement" by "hold[ing], for the first time, that a specific class of plaintiffs whom Congress allowed to bring a lawsuit cannot do so under Article III."[97] The *TransUnion* decision has serious negative

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90. *Id.* at 440–42 (quoting Trichell v. Midland Credit Mgmt, Inc., 964 F.3d 990, 1004 (11th Cir. 2020).

91. *Id.* at 441.

92. *Id.* at 442 (citation omitted) (holding that an informational injury must cause "adverse effects" to satisfy standing).

93. *Id.* at 427.

94. *Id.* at 427–28.

95. *Id.* at 428–29 (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 576–77 (1992)) (internal citations omitted).

96. *Id.* at 453–54 (emphasis in original) (Thomas, J., dissenting).

97. *Id.* at 461 (Kagan, J., dissenting).

implications for the standing doctrine, most notably shifting the standing doctrine away from its original meaning and harming the separation of powers by intruding on Congress's power to define rights and injuries.[98]

A. Standing, Separation of Powers, and Critiques

The "single basic idea" of Article III standing is "the idea of separation of powers."[99] Scholars have argued that the Supreme Court has used the standing doctrine to perform "at least three separation-of-powers functions:" (1) to restrict the cases heard in federal court to those that are properly "cases" and "controversies" under Article III and are capable of judicial resolution; (2) to refrain from adjudicating widely-shared "generalized grievances" that are better addressed by the legislature or the executive branch; and (3) to prevent Congressional overreach into the executive branch's enforcement of federal law through citizen-suits.[100]

The modern standing doctrine is convoluted, inconsistent, and controversial, and has long been criticized, even before the doctrine was further narrowed in *TransUnion*. Justices Harlan and Brennan have described standing as a "word game played by secret rules"[101] and a "cover" "to slam the courthouse door against plaintiffs who are entitled to full consideration of their claims on the merits."[102] Critics to the standing doctrine claim it is "incoherent,"[103] "manipulable,"[104] lacking in historical basis,[105] a "pointless constraint on courts,"[106] and

98. Sophia Shams, *One Step Forward, Three Steps Back: TransUnion and its Implications for Standing, Separation of Powers, and Privacy Rights*, 16 N.Y.U. J. L. & LIBERTY 527, 528 (2023).

99. Allen v. Wright, 468 U.S. 737, 752 (1984).

100. Heather Elliot, *The Functions of Standing*, 61 STAN. L. REV. 459, 459–63 (2008) (quoting U.S. CONST. art. III, § 2.).

101. Flast v. Cohen, 392 U.S. 83, 129 (1968) (Harlan, J., dissenting).

102. *Allen*, 468 U.S. at 766–67 (Brennan, J., dissenting).

103. William A. Fletcher, *The Structure of Standing*, 98 YALE L. J. 221, 221 (1988) ("The structure of standing law in the federal courts has long been criticized as incoherent.").

104. Cass R. Sunstein, *Standing and the Privatization of Public Law*, 88 COLUM. L. REV. 1432, 1458 (1988) ("The manipulable character of the [standing] inquiry has resulted in considerable doctrinal confusion.").

105. *See, e.g.*, Schmidt, *supra* note 64, at 3 ("Standing doctrine lacks a firm foothold in the Constitution's text. It lacks a substantial originalist basis and has a dubious historical pedigree. . . .").

106. Jonathan R. Siegel, *A Theory of Justiciability*, 86 TEX. L. REV. 73, 75 (2007) ("[J]usticiability doctrines—particularly standing doctrine—pose a riddle. .

a "ritual recitation" performed before "the Court . . . chooses up sides and decides the case."[107] In particular, they take issue with its malleability such that the doctrine enables "judges to engage in ideologically driven doctrinal manipulation in standing cases."[108] This results in significant doctrinal confusion, as scholars have noted:

> Any judge can write a reasonably well-crafted opinion granting or denying standing in a high proportion of cases. The Supreme Court has issued so many opinions on standing with so many versions of injury, causation, [and] redressability . . . that any competent judge can find ample precedent to support broad or narrow versions of each of the doctrinal elements that together comprise the law of standing.[109]

This doctrinal confusion results in inconsistent outcomes and reasoning, even when the underlying facts are similar.

Furthermore, scholars have fiercely critiqued the standing doctrine as ill-suited to serving separation-of-powers functions. They argue that it results in considerable confusion among lower courts applying the doctrine and causes them to increasingly turn to "empty formalism."[110] Lower courts resolving standing questions produce contradictory results even when the facts are essentially the same.[111] This results in courts "plac[ing] the formal requirements of standing above any common-sense notion of why the standing test is applied in

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. . In many cases, justiciability rules do no more than act as an apparently pointless constraint on courts. They throw a few grains of sand into the workings of the judicial branch but do not prevent it from grinding out a judgment.").

107. Abram Chayes, *Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4, 22–23 (1982) ("[T]he Court seems to have reached something like unanimity on a verbal formula for standing doctrine. With dreary regularity the opinions . . . repeat the same litany. . . . This ritual recitation having been performed, the Court then chooses up sides and decides the case.").

108. Richard J. Pierce, Jr., *Is Standing Law or Politics?*, 77 N.C. L. REV. 1741, 1760 (1999).

109. *Id.* at 1762.

110. Elliot, *supra* note 100, at 463–64.

111. *Id.* at 466. *Compare* Francisco v. NY Tex Care, Inc., 2022 WL 900603, at *7 (E.D.N.Y. Mar. 28, 2022) (finding plaintiffs' allegations that defendants failed to furnish them with proper wage notices when hired and did not include a phone number, deductions, or gross wages on wage statements to be insufficient to establish standing), *with* Stih v. Rockaway Farmers Mkt., Inc., 2023 WL 2760492, at *7 (E.D.N.Y. Apr. 3, 2023) ("The gravamen of the complaint is that the denial of plaintiff's statutory right to these documents caused plaintiff to fail to realize that defendants were deducting certain benefits from his wages, resulting in his underpayment. This is sufficient to demonstrate a tangible injury resulting from the violation.").

the first place" such that "[f]orm has replaced function."[112] We will discuss some examples of contradictory results reached by New York and California federal district courts in Part II.

II. FEDERAL COURTS IN NEW YORK AND CALIFORNIA NARROW THEIR APPROACH TO STANDING IN WAGE DOCUMENTATION VIOLATION CLAIMS, CITING *TRANSUNION*

This Part traces the gradual narrowing of the standing doctrine as applied to wage statement violation claims in both New York and California and illustrates the harmful impact to workers. Despite this general trend, California courts still take a more permissive approach to standing than New York courts by drawing a line between "trivial" violations that do not give rise to standing and substantive violations which *do* give rise to standing. Section II.A highlights the Second Circuit's recent decision in *Guthrie v. Rainbow Fencing Inc.* in which the court affirmed the narrowest interpretations of standing in wage statement violation claims among district courts in the Circuit.[113] In doing so, the court raised the threshold to establish standing in future suits brought by employees against their employers. Section II.B examines the three approaches to standing that district courts in New York took before the Second Circuit embraced the narrowest approach in the *Guthrie* decision. Section II.C explores California courts' efforts to distinguish "trivial" wage statement violations from more substantive ones that are sufficient to establish standing. Section II.D underscores alternative ways that California courts have tried to preserve standing—establishing a presumption of standing in certain types of wage statement violations, as seen in *Magadia v. Wal-Mart Associates, Inc.,* a case that predates *TransUnion*.[114]

A. The Second Circuit Narrows Standing as Applied to Wage Statement and Notice Violations in *Guthrie*

In August 2024, the Second Circuit applied *TransUnion*'s concrete injury analysis to a wage statement violation claim in *Guthrie v. Rainbow Fencing Inc*.[115] The courts held that in order to satisfy the concrete injury requirement for standing in an action for

112. Elliot, *supra* note 100, at 504.
113. Guthrie v. Rainbow Fencing Inc., 113 F.4th 300 (2d Cir. 2024).
114. Magadia v. Wal-Mart Assocs., Inc., 999 F.3d 668 (9th Cir. 2021).
115. Guthrie v. Rainbow Fencing Inc., 113 F.4th 300 (2d Cir. 2024).

statutory damages arising from an employer's failure to comply with New York's wage documentation statutes, a plaintiff must show a causal connection between the lack of accurate wage statement or notices and the alleged downstream harm. [116] The plaintiff, Guthrie, sued his former employer, Rainbow Fencing Inc. ("RFI"), in the Eastern District of New York for unpaid minimum and overtime wages under the FLSA and NYLL and for failing to provide him with the wage notice and statements required under the NYLL.[117] While the Eastern District awarded Guthrie damages consisting of his unpaid minimum and overtime wages and liquidated damages, the Court dismissed his claims for statutory damages related to the wage notices and statements for lack of standing.[118]

On appeal, the plaintiff argued that he satisfied the injury-in-fact requirement for Article III standing by alleging a statutory violation.[119] The Second Circuit recognized that this question implicated a disagreement among the district courts concerning the sufficiency of a plaintiff's allegations to show Article III standing to pursue wage notice and statement claims in federal court and resolved the disagreement by holding that Guthrie's claim for statutory damages was properly dismissed under the *TransUnion* standard because the plaintiff "failed to allege an actual injury."[120] The Court recognized that an employer's failure to provide the required wage statements and notices may result in various harms to an employee, but noted that Guthrie had merely identified "potential harms that *could* result from an employer's failure to provide wage notices and wage statements."[121] The Court noted that "possible injuries" could result from wage documentation and notice violations, but reasoned that Guthrie "fail[ed] to link the general harms an employee *might* experience to any harms that [Guthrie] *did*, in fact, experience" and that "[w]ithout plausible allegations that [Guthrie] suffered a concrete injury because of RFI's failure to provide the required notices and statements, [he] lacks standing to sue for that statutory violation."[122] *Guthrie* abrogated previous decisions by district courts in the Second Circuit deemed to be inconsistent with

116. Guthrie, 113 F.4th at 305.
117. *Id.* at 303.
118. *Id.*
119. *Id.*
120. *Id.* at 305.
121. *Id.* at 310 (emphasis in original).
122. *Id.* at 311 (emphasis in original).

TransUnion, including *Bueno v. Buzinover* and *Bello v. Pro-Line Pumping Corporation*.[123]

B. Before *Guthrie*, New York Courts Were Divided on How to Properly Apply *TransUnion* to Wage Statement and Notice Violations

Prior to the *Guthrie* decision, in only a handful of instances had Second Circuit courts applying the *TransUnion* standard found that plaintiffs sufficiently pled a concrete harm stemming from the alleged notice violations to establish standing.[124] Three primary schools of thought emerged from those cases: (1) that plaintiffs must allege a concrete downstream harm resulting from the statutory violations to establish standing—the approach ultimately adopted by

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123. *Id.* at 307–08; *see also* Bueno v. Buzinover, No. 22-CV-2216, 2023 WL 2387113 (S.D.N.Y. Mar. 7, 2023) (finding that the harms resulting from wage notice and statement violations can be considered concrete "without requiring a specific showing as to the downstream impact on the plaintiff of the non-provision of the required notice" by considering the legislature's purpose in enacting the statute); Bello v. Pro-Line Pumping Corp., No. 22-CV-4081, 2023 WL 8260830 (E.D.N.Y. June 20, 2023) (finding that "the bare assertion that [the plaintiffs] never received their statutorily required wage statement and notices" was sufficient to establish concrete harm and standing because they were accompanied by claims of wage theft and "the . . . wage notice and wage statement provisions [were] intended to serve as safeguards of employees' broader interest in being paid the wages they earned").

124. *See, e.g.*, Mateer v. Peloton Interactive, Inc., No. 22-CV-740, 2022 WL 2751871 (S.D.N.Y. July 14, 2022) (holding that the employer's failure to pay overtime wages resulted in the plaintiff's underpayment, and this sort of monetary injury is a concrete harm sufficient for standing purposes); Stih v. Rockaway Farmers Mkt., Inc., No. 22-CV-3228, 2023 WL 2760492 (E.D.N.Y. Apr. 3, 2023) (holding that plaintiff suffered a tangible injury when his employer failed to provide him the proper wage notice documentation which resulted in his underpayment); Lipstein v. 20X Hospitality LLC, No. 22-CV-04812 , 2023 WL 6124048 (S.D.N.Y. Sept. 19, 2023) (holding that plaintiff sufficiently pled a concrete harm in alleging that he "did not receive information about his rate of pay and accurate wage statements," which prevented him from determining whether he was being underpaid, and ultimately deprived him of his income); Metcalf v. TransPerfect Translations Int'l, Inc., No. 19-CV-10104, 2023 WL 2674743 (S.D.N.Y. Mar. 29, 2023) (holding that the receipt of inaccurate wage notices prevented plaintiffs from determining whether they were being underpaid and whether the employer's remedial payments sufficiently compensated them for overtime work was an injury in fact); Gaskin v. Brooklyn Suya Corp., No. 22-CV-05648, 2023 WL 9232962 (E.D.N.Y. Oct. 26, 2023) (holding that the failure to provide correct wage information is an injury in fact for which the plaintiff has standing when it is connected to the ensuing actual failure to adequately compensate the plaintiff).

the Second Circuit in *Guthrie*, (2) that concrete harm can be demonstrated by the legislative purpose of the statute, or (3) that concrete harm resulting from statutory violations is self-evident when accompanied by wage theft claims. The development of these schools of thought is discussed in the subsections below.

Alternatively, some courts in this Circuit have awarded statutory damages for technical violations of the wage notice and wage statement provisions of the NYLL following *TransUnion* without analyzing the issue of standing.[125] However, this applies to a very small minority of cases and is unlikely to gain traction as a possible approach to standing moving forward.[126]

1. New York Approach 1: Plaintiffs Must Demonstrate Downstream Harm Resulting from Wage Statement and Notice Violations to Establish Concrete Harm for Standing

Under the first school of thought among New York District Courts—adopted by the Second Circuit in *Guthrie*—a plaintiff must "link" an employer's failure to provide wage information to the employer's failure to lawfully compensate them in order to establish standing to bring New York wage statement and notice claims in federal court.[127] Numerous courts in the Second Circuit have held "that a plaintiff lacks standing to recover for a wage notice or

125. *See, e.g.*, Marine v. Vieja Quisqueya Rest. Corp., No. 20-CV-4671, 2022 WL 17820084, at *8 (E.D.N.Y. Sept. 8, 2022) (Magistrate Judge Levy awarding the maximum statutory damages without analyzing standing); *see also* Sanchez Flores v. El Bukanitas Inc., No. 22-CV-6751, 2024 WL 1051161, at *11 (E.D.N.Y. Feb. 14, 2024) (Magistrate Judge Bulsara awarding the maximum statutory damages without analyzing standing); Castillo v. Chapines LLC, No. 22-CV-203, 2024 WL 1452324, at *8 (E.D.N.Y. Feb 16, 2024). *But see* Sanchez v. E.I.G. Auto Salvage, Inc., No. 21-CV-8266, 2023 WL 5827669, at *20 (District Judge Engelmayer denying statutory damages, not because of a lack of standing, but because defendants pled one of two affirmative defenses under the NYLL).

126. These cases seem to be the result of judicial oversight that has since been corrected, rather than a viable approach to analyzing standing. *Compare* Sanchez v. Hyper Structure Corp., No. 19-CV-4524, 2023 WL 2815717, at *10–11 (E.D.N.Y. Feb. 24, 2023) (Magistrate Judge Kuo awarding the plaintiffs statutory damages without analyzing standing), *with* Sanchez v. Trescly, No. 19-CV-4524, 2023 WL 2473070, at *1–2 (District Judge Matsumoto modifying Judge Kuo's recommendation regarding statutory damages, finding that plaintiffs lack standing to bring and obtain damages for these claims).

127. *Gaskin*, 2023 WL 9232962, at *8 (E.D.N.Y. Oct. 26, 2023) (collecting cases).

statement violation . . . when the plaintiff pleads nothing more than the statutory violation and a demand for damages."[128]

Courts have frequently denied standing because the plaintiffs have only pled technical violations of the New York WTPA. In three seriatim decisions post-*TransUnion*, Judge Chen held that plaintiffs who allege "technical violations" of the wage notice and statement requirements under NYLL § 195—such as the defendant failing to provide the plaintiff with any records or the defendant furnishing the plaintiff with incomplete or inaccurate records—and do not "demonstrate how those technical violations led to either a tangible injury or something akin to a traditional cause of action" fail to establish Article III standing.[129] Similarly, Judge Komitee found that a plaintiff alleging that a defendant had issued wage statements omitting its address and with the name "Postgraduate Center" rather than its "correct legal name," "Postgraduate Center for Mental Health," lacked standing to bring a wage statement claim.[130] Even though the defendant was technically in violation of the NYLL, the "[p]laintiff testified that he 'of course' understood [the shortened name] to be his employer" and also testified that he "had visited [his employer's] office on more than one occasion," demonstrating that the plaintiff was not harmed by the technical violations of the New York WTPA.[131]

Other decisions, including *Guthrie*, have relied on Judge Chen's reasoning to show that "technical violations" of the WTPA are "insufficient, on their own, to confer . . . standing."[132] Additionally, several courts have denied standing because plaintiffs have not

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128. Montalvo v. Paul Bar & Rest. Corp., No. 22-CV-1423, 2023 WL 5928361, at *3 (S.D.N.Y. Sept. 12, 2023) (collecting cases).

129. *See, e.g.*, Francisco v. NY Tex Care, Inc., 2022 WL 900603, at *7 (E.D.N.Y. Mar. 28, 2022) (plaintiffs alleged that defendants failed to furnish them with proper wage notices when they were hired and did not include their phone number, deductions or gross wages on wage statements); *see also* Sevilla v. House of Salads One, LLC, 2022 WL 954740, at *1, 7 (E.D.N.Y. Mar. 30, 2022); Wang v. XBB, Inc., 2022 WL 912592, at *10, 13 (E.D.N.Y. Mar. 29, 2022).

130. Perez v. Postgraduate Ctr. for Mental Health, No. 19-CV-931, 2021 WL 3667054, at *7 (E.D.N.Y. Mar. 15, 2024).

131. *Id.*

132. Guthrie v. Rainbow Fencing Inc., No. 21-CV-5929, 2022 WL 1899832, at *6 (E.D.N.Y. Dec. 13, 2022), *R&R adopted*, 2023 WL 2206568 (E.D.N.Y. Feb. 24, 2023) (internal quotations omitted) (quoting Beh v. Comm. Care Companions, Inc., No. 19-CV-1417, 2022 WL 5039391, at *7 (W.D.N.Y. Sept. 29, 2022)).

alleged any concrete harms stemming from the statutory violations.[133] Judge Cogan wrote, "I think it is doubtful that the mere violation of §§ 198(1-b) and 198(1-d) could ever give rise to accompanying injury sufficient for standing purposes,"[134] but other judges have declined to go as far as Judge Cogan.[135]

However, courts *have* found standing in a handful of cases in which the plaintiffs sufficiently alleged downstream harms resulting from their failure to receive the wage information they were entitled under the NYLL. Judge Schofield in *Mateer v. Peloton Interactive, Inc.* found standing where "the allegations in the [complaint] *go beyond* asserting a bare statutory violation and sufficiently allege a concrete harm."[136] Judge Schofield found the plaintiff's allegation that the defendant's failure to provide accurate wage statements "resulted in the underpayment of wages" to be persuasive because "monetary injury is a concrete harm sufficient for purposes of Article III standing."[137] Relying on *Mateer*, Judge Ross found that a plaintiff's

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133. *See, e.g.*, Cuellar v. Kings Juice Bar Deli Grill, Inc., No. 23-CV-4293 (EK) (RML), 2024 WL 3063792, at *1 (E.D.N.Y. June 20, 2024) (District Judge Komitee finding that violations of the wage notice and statement provisions of the WTPA are "insufficient to confer Article III standing unless the plaintiff also demonstrates an actual and concrete injury resulting from that violation"); Montiel v. Mi Esquina Deli Corp., No. 23-CV-07870 (HG), 2024 WL 3509302, at *3 (E.D.N.Y. July 23, 2024) (District Judge Gonzales finding that the plaintiff has alleged insufficient facts to show that they suffered a concrete harm resulting from the wage notice and statement violations); Cooper v. Fire & Ice Trucking Corp., No. 23-CV-1675 (KAM) (TAM), 2024 WL 3344001, at *4 (E.D.N.Y. July 9, 2024) (District Judge Matsumoto finding that the plaintiff cannot have suffered a concrete injury resulting from the defendant's wage notice and statement violations without "some tangible downstream harm flowing from the statutory violations . . ."); Sanchez v. Ms. Wine Shop Inc., 643 F. Supp. 3d 355, 373 (E.D.N.Y. 2022) ("Where the plaintiff does not establish a concrete injury fairly traceable to the statutory violation, the plaintiff lacks Article III standing . . .") (citing *Sevilla*, 2022 WL 954740 at *7).

134. Deng v. Frequency Elecs., Inc., 640 F. Supp. 3d 255, 267 (E.D.N.Y. 2022).

135. Judge Gonzales declined to go as far as Judge Cogan in *Deng*. *Montiel*, 2024 WL 3509302, at *3.

136. Mateer v. Peloton Interactive, Inc., No. Civ. 740 (LGS), 2022 WL 2751871, at *2 (S.D.N.Y. July 14, 2022) (emphasis added).

137. *Id.* at *2 (internal quotations omitted). *But see* Quieju v. La Jugueria Inc., No. 23-CV-264 (BMC), 2023 WL 3073518, at *1 ("It cannot be that the Supreme Court jurisprudence on standing that requires the showing of an actual and concrete injury can be so easily circumvented by a conclusory allegation that a statutory violation 'resulted in injury.' If it could, then the plaintiff in *TransUnion* could have avoided a trip to the Supreme Court simply by alleging

allegation that the defendant's failure to provide him with a proper wage notice injured him by "denying him the right to be adequately apprised of the terms and conditions of his employment, including allowances defendants now purport to claim against his salary."[138] Similarly, Judge Rochon found that the plaintiff's allegations that the defendant's violations of NYLL §§ 195(1) and 195(3) prevented him from "realizing [his] true hours worked," "realizing [he was] underpaid," and "taking appropriate action to obtain the payments due to [him]" sufficient to establish standing.[139] Judge Ramos found standing where plaintiffs "actually received inaccurate wage notices, which did not include a tabulation of hours and overtime," and which plaintiffs allege "thereby prevented them from knowing whether, and to what extent, they had been underpaid during the nine-month period."[140] Finally, Magistrate Judge Bloom found that "though thin . . . plaintiffs plausibly allege that defendant's failure to provide plaintiffs with wage information is linked to the defendant's failure to lawfully compensate plaintiffs," and thus the plaintiffs had standing with respect to their New York WTPA claims.[141] These diverging approaches illustrate the inconsistent application of doctrine across judges in New York federal courts.

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the failure to accurately reflect his credit injury 'resulted in an injury to his credit standing' under the Fair Credit Reporting Act.").

138. Stih v. Rockaway Farmers Mkt., Inc., No. 22-CV-3228-ARR-RER, 2023 WL 2760492, at *7 (E.D.N.Y. Apr. 3, 2023) (internal quotations omitted) ("The gravamen of the complaint is that the denial of plaintiff's statutory right to these documents caused plaintiff to fail to realize that defendants were deducting certain benefits from his wages, resulting in his underpayment. This is sufficient to demonstrate a tangible injury resulting from the violation.").

139. Lipstein v. 20X Hosp. LLC, No. 22-CV-04812 (JLR) (JW), 2023 WL 6124048, at *9 (S.D.N.Y. Sept. 19, 2023) (finding that the plaintiff "plausibly alleged that he was monetarily harmed . . . by being deprived of his income for longer than he would have been had he been able to timely raise his underpayment earlier . . . [and the] harm is a tangible downstream consequence of the failure to receive required information").

140. Metcalf v. TransPerfect Translations Int'l, Inc., No. 19 Civ. 10104 (ER) (KHP), 2023 WL 2674743, at *6 (S.D.N.Y. Mar. 29, 2023) (plaintiffs allege that but for defendants' failure to provide accurate notices disclosing wage-and-hour information as required, they would have been able to determine that they were being underpaid and by what amount, including whether subsequent retroactive payments were sufficient to cover previously withheld overtime pay).

141. Gaskin v. Brooklyn Suya Corp., No. 22-CV-05648, 2023 WL 9232962, at *9 (E.D.N.Y. Oct. 26, 2023) ("[P]laintiffs allege that defendant did not provide wage information required by the WTPA in order to deny them their lawful wages—harms plaintiffs in fact experienced.").

2. New York Approach 2: Concrete Harms Can Be Established Through the Legislative Purpose of the NYLL

Taking a different approach to establishing concrete harm and standing, the court in *Bueno v. Buzinover*—abrogated by *Guthrie*—found that the harms resulting from wage notice and statement violations can be considered concrete "without requiring a specific showing as to the downstream impact on the plaintiff of the non-provision of the required notice" by considering the legislature's purpose in enacting the statute.[142] The Court relied on an earlier case, *Imbarrato v. Banta Management Services, Inc.*, which predates *TransUnion*, reasoning that because the New York State Assembly passed the WTPA to "protect . . . employee[s'] concrete interest in being paid what [they are] owed under the NYLL," the written notices mandated under the WTPA "serve as a means of apprising employees of their rights and of their employer's obligations towards them, empowering employees to advocate for themselves."[143] Judge Englemeyer found that "[d]enying an employee [written notices mandated under NYLL §§ 195(1) and 195(3)] . . . can impinge on an employee's interests not only in being paid what is owed, but also in being able to advocate for the receipt of proper pay," and thus, the plaintiffs had asserted a concrete and particularized injury to establish standing by alleging the employer failed to furnish them with the proper records.[144] In support of this proposition, the Court cited two recent trials, but failed to analyze standing in either trial.[145]

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142. Bueno v. Buzinover, No. 22-CV-2216, 2023 WL 2387113, at *3 (S.D.N.Y. Mar. 7, 2023).

143. *Id.* (internal quotations omitted) (quoting Imbarrato v. Banta Mgmt. Servs., Inc., No. 18-CV-5422, 2020 WL 1330744, at *8 (S.D.N.Y. Mar. 20, 2022)).

144. *Id.* at *3 (adopting Magistrate Judge Parker's Report and Recommendation in part but rejecting her recommendation to dismiss plaintiff's claims under NYLL §§ 191 and 195 for lack of standing). *But see* Neor v. Acacia Network, Inc., No. 22-CV-4814 (ER), 2023 WL 1797267, at *4 (S.D.N.Y. Feb. 7, 2023) (District Judge Ramos finding that "reliance on the New York State Assembly's reasoning cannot be used for Article III standing as a legislature cannot create standing").

145. *Bueno*, 2023 WL 2387113, at *3 (citing Sanchez v. E.I.G. Auto Salvage, Inc., No. 21-CV-8266 (PAE) (SN), 2023 WL 5827669, at *20 (S.D.N.Y. Sept. 8, 2023) and Cajero Torres v. Sushi Sushi Holdings, Inc., No. 19-CV-2532 (PAE) (RWL), 2022 WL 2788655, at *4 (S.D.N.Y. July 15, 2022)). Again, this is another instance where courts have relied on prior cases that have not analyzed standing under *TransUnion* to support their decision in a given case.

Accordingly, this seems to be an example of judges using the standing doctrine to arrive at their desired outcome.

3. New York Approach 3: Concrete Harms are Self-Evident When Accompanied by Wage Theft

Representing the third school of standing approaches in New York courts, the court in *Bello v. Pro-Line Pumping Corporation*—abrogated by *Guthrie*—found that "the bare assertion that [the plaintiffs] never received their statutorily required wage statement and notices" was sufficient to establish concrete harm and standing because they were accompanied by claims of wage theft.[146] The court further noted that "[t]he wage statement and notice violations alleged [in the context of WTPA violations] are of a different class of harms from those alleged in *TransUnion*," because "the WTPA's wage notice and wage statement provisions are intended to serve as safeguards of employees' broader interest in being paid the wages they earned."[147]

C. California Courts Have Taken a More Permissive Approach to Applying *TransUnion*, Finding That Only Trivial and Harmless Wage Notice and Statement Violations are Precluded

California courts have generally taken a more permissive approach to standing than New York courts. California district courts have found *TransUnion*'s concrete injury requirement to only preclude standing in wage notice and statement violations when the violations are clearly trivial *and* harmless, such as a mistyped name or address that clearly did not affect a plaintiff's ability to identify, contact, or sue their employer.[148] However, California courts have

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146. Bello v. Pro-Line Pumping Corp., No. 22-CV-4081, 2023 WL 8260830, at *9 (E.D.N.Y. June 20, 2023) ("[T]he realization of the downstream harm the statute seeks to prevent—wage theft—is evident on the face of the pleadings.").

147. Gunthorpes v. IM Grp., LLC, No. 21-CV-5140 (ARR) (RML), 2024 WL 2031191, at *7 (E.D.N.Y. Apr. 11, 2024) (citing *Bueno*, 2023 WL 2387113, at *3) ("[I]f an employer's failure to provide wage statements or wage notices were considered a purely technical violation, then no employee would ever have standing to sue under the WTPA and the statutory damages provisions would be rendered meaningless and unenforceable.")

148. *See, e.g.*, Castro v. PPG Indus., Inc., No. 21-55340, 2022 WL 3681305, at *1 (9th Cir. Aug. 25, 2022) (dismissing wage-statement claim for lack of standing where employer listed corporate parent's address rather than its own, since plaintiff already knew his workplace address and alleged no injury in fact from the error); Clayborn v. Amazon.com Servs. LLC, No. 20-cv-02368, 2021 WL

found standing in wage statement claims with more substantive inaccuracies or omissions that could plausibly cause concrete harm to plaintiffs, such as incorrect pay rates or hours worked.[149] The notion that California courts have adopted a more permissive approach to standing than courts in other states is supported by a student Note, published prior to the *Guthrie* decision, urging federal district courts nationwide—including in New York—to adopt the Ninth Circuit's approach to standing analysis.[150]

1. California Courts Find That Trivial and Harmless Wage Statement and Notice Violations Do Not Give Rise to Standing

The Ninth Circuit decided *Castro v. PPG Industries, Inc.* in August 2022,[151] a little more than a year after *TransUnion*, but has largely left the issue of standing in wage statement claims up to the discretion of the district courts since then, leading to varied outcomes. District courts in California were more likely to dismiss cases for lack of standing when the wage statement inaccuracies were trivial and did not appear to impact the plaintiff's ability to bring a lawsuit against her employer. In *Castro*, the Ninth Circuit dismissed the plaintiff's wage statement claim because the wage statement violation was trivial and harmless, and thus was insufficient for standing.[152] The plaintiff alleged that the employer violated Section 226(a)(8) of the Labor Code by issuing wage statements that listed the physical address of its parent company, PPG Industries, rather than its own address.[153] The Court held that Castro failed to allege any injury in fact from the alleged violation, reasoning that "[the plaintiff was] aware of [his employer]'s address—because [Castro] physically work[ed] there—even if [the] wage statement failed to list

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7707763, at *4–5 (C.D. Cal. Nov. 9, 2021) (dismissing wage-statement claim where employer listed "Inc." instead of "LLC" in its name, finding the misnomer a merely technical violation without concrete harm to employees' ability to identify or contact their employer).

149. *See, e.g.*, Boone v. Amazon.com Serv., LLC, 562 F. Supp. 3d 1103, 1124–25 (E.D. Cal. 2022) (holding that employees had standing to bring a wage statement claim where the statements allegedly omitted time spent in mandatory COVID-19 screenings, thereby failing to reflect total hours worked, hourly rates, and wages earned).

150. Eshleman, *supra* note 29, at 964–66.

151. *Castro*, 2022 WL 3681305, at *1.

152. *Id.*

153. *Id.*

that address."[154] The Court then cited *TransUnion*'s requirement that plaintiffs must identify a common law analogue to determine whether the concrete-harm requirement was met, which Castro failed to do.[155]

Prior to *Castro*, the Ninth Circuit held in *Mays v. Wal-Mart Stores, Inc.* that the plaintiff failed to demonstrate standing to bring a wage statement claim, applying a two-step test to assess whether a statutory violation causes a concrete injury sufficient to satisfy Article III: "(1) whether the statutory provisions at issue were established to protect [the plaintiff's] concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in this case actually harm, or present a material risk of harm to, such interests."[156] The Court reasoned that the provision at issue "was established to protect the concrete interests of California's workers, not merely to confer pure procedural rights" by looking to the legislative history of the provision which "clarifie[d] that it was meant to provide workers with transparency about their compensation to protect them from being cheated of their earned wages and to facilitate their application, if needed, for unemployment benefits" which is a plainly substantive objective "directed at safeguarding employees' concrete interests rather than establishing procedural requirements as an end unto themselves."[157] Then, the court moved to the second step of the analysis. Mays alleged that her wage statements incorrectly stated one word of her employer's name—using "Wal-Mart Associates, Inc." instead of "Wal-Mart Stores, Inc."—and that the alleged inaccuracy caused her confusion but did not allege any other real-world consequences "flowing, or even potentially flowing" from the violation.[158] The Court deemed this violation to be "trivial" and did not "pose a clear threat of harm" and that "base confusion, without more, lacks a meaningful nexus to the concrete interests safeguarded by [Section] 226."[159]

District courts have applied the *Mays* test to evaluate standing. In *Clayborn v. Amazon.com Services LLC*, the plaintiff alleged that the wage statements issued to him by his employer violated Section 226(a)(8) because they failed to include the legal name of the employer, listing "Amazon.com Services, Inc." rather

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154. *Id.*
155. *Id.*
156. Mays v. Wal-Mart Stores, Inc., 804 F. App'x 641, 643 (9th Cir. 2020) (quoting Robins v. Spokeo, Inc., 867 F.3d 1108, 1113 (9th Cir. 2017)).
157. *Mays*, 804 F. App'x at 643.
158. *Id.*
159. *Id.* at 643–44.

than the correct name "Amazon.com Services LLC" and thus violated Section 226(a)(8).[160] The Court dismissed the claim on the grounds that the plaintiff "failed to plead any facts of *actual* concrete injury that the violation allegedly caused."[161] Similarly, in *Elliot v. Spherion Pacific Work, LLC* the district court found the inclusion of a "slightly truncated" version of the entity's name sufficient to comply with the statute ("Spherion Pacific Work, LLC" instead of "Spherion Pacific Workforce, LLC"). However, the court noted that "an employer using a shortened name or abbreviation that renders the name confusing or unintelligible may be violating section 226(a)(8)."[162] The Ninth Circuit affirmed.[163] These decisions have sowed confusion as to what level of naming inaccuracies is permissible, especially when the question of whether an inaccurate company name is confusing or unintelligible is highly fact-specific.

2. California Courts Find that Substantive Inaccuracies in Statutorily-Required Wage Notices and Statements Give Rise to Standing

Sarmiento v. Sealy, Inc. illustrates the distinction California courts have drawn between trivial and harmless violations that do not give rise to standing and substantive inaccuracies that *do* give rise to standing.[164] In *Sarmiento*, plaintiffs alleged that the wage statements they received listed the incorrect name and address of their employer and that "for employees who worked more than one position, [the employer] failed to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by each employee."[165] The Northern District of California found the plaintiffs' inaccurate name claim "too trivial" to

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160. Clayborn v. Amazon.com Servs. LLC, No. 20-cv-02368, 2021 WL 7707763, at *1 (C.D. Cal. Nov. 9, 2021).

161. *Id.* at *4.

162. Elliot v. Spherion Pacific Work, LLC, 572 F. Supp. 2d 1169, 1179–90 (C.D. Cal. 2008).

163. Elliot v. Spherion Pacific Work, LLC, 368 F. App'x 761, 764 (9th Cir. 2010). *But see* Cicairos v. Summit Logistics, Inc., No. C048133, 35 Cal. Rptr. 3d 243, 251 (Cal. Ct. App. 2005) (finding that an employer violated Section 226(a)(8) because the wage statements stated "SUMMIT" rather than the employer's proper full name "Summit Logistics, Inc." and failed to include the employer's address).

164. Sarmiento v. Sealy, Inc., No. 18-CV-01990, 2021 WL 4260646 (N.D. Cal. Aug. 26, 2021).

165. *Id.* at *4 (listing Sealy Inc, 1 Office Parkway Road, Trinity, NC 27370-9449 rather than Sealy Mattress Manufacturing Company, LLC, 1000 Tempur Way, Lexington, KY 40511).

support Article III standing, citing *Mays*, on the grounds that plaintiffs had not provided evidence as to how the different name was "confusing and unintelligible."[166] However, the court found the employer's failure to state hourly rates and corresponding hours worked for employees who worked more than one position to be a substantive inaccuracy giving rise to standing.[167]

Similarly, in *Krauss v. Wal-Mart, Inc.*, the court attempted to draw a line between trivial and harmless mistakes and problematic substantive inaccuracies.[168] The plaintiff alleged wage statement violations that merely restated the statutory text, but also provided three factual allegations elaborating on that generic allegation—(1) that her payment for an overtime incentive program was a lump sum without specifying the hours worked or hourly rate which allegedly prevented her from "determin[ing] the formula [the employer] had used to calculate the [overtime incentive payment] from her wage statement alone," (2) that her "Statement of Final Pay" did not include the start and end dates of the pay period and "consequently [she] could not determine the formula for calculating her final pay from her wage statement alone," and (3) that, similarly to *Mays*, her wage statement incorrectly listed "Wal-Mart Associates, Inc." instead of "Walmart, Inc."[169] This last allegation was the same question addressed in *Mays*.[170] The Court found standing for the first two wage violation claims, but not the third claim.[171] Here, it appears the Court is trying to draw a line between omissions that have the potential to obscure wage theft violations from clerical errors that are understood by both parties.

D. Some California Courts Instead Rely on a Presumption of Injury from *Magadia*, a Ninth Circuit Case That Predates *TransUnion*

However, while some district courts in California have applied the *TransUnion* standard for standing to wage documentation and notice violations, others have continued to rely on *Magadia v. Wal-Mart Associates, Inc.*, a case decided a month prior to

166. *Id.* at *5.
167. *Id.*
168. Krauss v. Wal-Mart, Inc., No. 2:19-cv-00838-JAM-DB, 2020 WL 1874072 (E.D. Cal. Apr. 15, 2020).
169. *Id.* at *4–6.
170. *Id.*
171. *Id.* at *6.

TransUnion.[172] The plaintiff, Magadia, alleged that Walmart did not provide adequate pay rate information on wage statements and failed to furnish the pay-period dates with the last paycheck, among other allegations.[173] The Ninth Circuit in *Magadia* held that Magadia had standing.[174] The court applied the *Mays* two-part inquiry to determine whether the statutory violation constituted a concrete harm and concluded Wal-Mart's failure to disclose the statutorily required information on Magadia's wage documents violated a concrete interest. The court explained that without the mandated information, employees could not tell from the wage statements how wages were calculated or what dates the paystub covered, and thus could not access the information required by statute.[175]

Several California district court and Ninth Circuit cases following the *TransUnion* decision rely on *Magadia*.[176] One example is *Boone v. Amazon.com Services, LLC*, where plaintiffs claimed that their employer failed to provide itemized wage statements.[177] The holding in *Magadia* helped the district court find standing.[178] The plaintiffs in *Boone* alleged that the time they spent in COVID-19 screening was not counted as hours worked on their wage statements and they were not compensated for it.[179] In other words they "specifically alleged in their [complaint] that Amazon failed to furnish plaintiffs with timely, itemized wage statements that accurately reflect the total number of hours worked, hourly rates, and wages earned" which violates Section 226(a) and is information that is entitled to a presumption of injury under Section 226(e).[180] However, it is unclear whether future appellate courts would consider the *Magadia* line of cases to be instances of judicial oversight in failing to apply *TransUnion*, or as legally-valid reasoning in their own right.

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172. Magadia v. Wal-Mart Assocs., Inc., 999 F.3d 668 (9th Cir. 2021).
173. *Id.* at 672–73.
174. *Id.*
175. *Id.*
176. *See, e.g.*, Cuozzo v. Amazon Retail LLC, No. SACV 21-01271-CJC (ADSx), 2021 WL 9968332 (C.D. Cal. Oct. 7, 2021); Ornelas v. Tapestry, Inc., No. C 18-06453 WHA, 2021 WL 2778538 (N.D. Cal. Jul. 2, 2021); Zhou v. Chai, No. 21-cv-06067-AMO, 2024 WL 3834381 (N.D. Cal. Aug. 15, 2024).
177. Boone v. Amazon.com Servs., LLC, 562 F. Supp. 3d 1103, 1124–25 (E.D. Cal. 2022).
178. *Id.*
179. *Id.* at 1124 (internal quotations omitted).
180. *Id.* at 1125.

III. CHARTING A WORKER-FRIENDLY PATH FORWARD IN WAGE-AND-HOUR STANDING DOCTRINE

As illustrated *supra* Part II, the standing doctrine is convoluted, inconsistent, and easily manipulated to be used as a barrier to prevent certain plaintiffs from bringing cases in federal court. Rather than promoting separation of powers and democratic governance, critics contend that the modern standing doctrines provides judges with "countless avenues they can use to accept or avoid cases in line with their ideological preferences" which "undermines judicial impartiality and elevates the power of the judiciary over that of the political branches."[181] Furthermore, this approach to standing in the wage theft and wage documentation violation context renders statutory protections for workers ineffective, results in doctrinal confusion, and erects unnecessary barriers to plaintiffs seeking relief against their employers.

This Part proposes two worker-friendly paths forward for federal courts to take when evaluating standing in the wage theft and wage statement violation context that both minimize doctrinal confusion and are consistent with separation of powers goals. Section III.A reconciles *Guthrie* with the Ninth Circuit's case law on standing and proposes that federal courts nationwide clarify the line between trivial and substantive differences that give rise to standing. Section III.B argues that adopting a more generous approach to standing that differentiates between private parties and government parties, and is more permissive in suits against private parties, is a better solution to wage statement violations that preserves the intention of Congress while maintaining the separation of powers among the branches of government.

A. Reconciling *Guthrie* with California Federal Courts' Permissive Application of *TransUnion*

One path forward to preserve standing for wage statement violation claims is to follow a similar approach to California federal courts which have attempted to police the line between trivial and harmless wage statement violations that do not give rise to standing, and problematic substantive violations that *do* give rise to standing.

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181. Scott R. Anderson, *Revisiting Standing Doctrine: Recent Developments, Policy Concerns, and Possible Solutions*, BROOKINGS INST., at 9–10 (Sept. 29, 2022), https://www.brookings.edu/wp-content/uploads/2022/09/BR_Standing_Doctrine_final.pdf [https://perma.cc/ZE6Y-KA6G].

This solution acknowledges the importance of the standing doctrine as a limitation on the judiciary's power while also clarifying the contours of the doctrine in this context. This would deter federal courts from resorting to empty formalism that unnecessarily restricts access to courts for plaintiffs who have been the victim of wage theft by their employers.

While the Second Circuit in *Guthrie* definitively clarified that plaintiffs must "link" a defendant's failure to provide them with wage information to the failure to lawfully compensate them in order to establish standing and held that technical violations of the statute in themselves are not enough for standing,[182] this decision is reconcilable with the Ninth Circuit's approach. While *Guthrie* finds that technical violations are trivial and thus do not give rise to standing,[183] the decision leaves open the questions of what violations *are* substantial enough to give rise to standing. For example, whether allegations that incomplete or inaccurate wage statements prevented an employee from knowing the extent of wage underpayment constitute a strong enough downstream harm and causal link to establish standing. Another question is whether allegations that an employer inaccurately informed an employee that they were not eligible for overtime, resulting in that employee losing the opportunity to advocate for overtime payment, constitute a strong enough downstream harm and causal link to establish standing. These are still open questions. While *Guthrie* has further narrowed the standing doctrine in the Second Circuit, it has not completely foreclosed the possibility for plaintiffs to recover statutory damages for their employers' failure to provide them with the wage information required by statute.[184]

As discussed *infra* Part I, wage theft affects millions of workers across the United States, particularly low-wage and hourly workers, and its effects are easily compounded when workers lack an understanding of their rights under the law or lack the information necessary to confirm that they are being paid what they are properly owed. As a result, many states across the United States, including New York and California, have adopted Wage Theft Prevention Acts[185] which serve two primary functions—(1) to equip workers with

182. Guthrie, 113 F.4th at 311.

183. Guthrie, 113 F.4th at 305.

184. *See* N.Y. LAB. LAW § 195 (McKinney 2021) (listing the statutory notice and record requirements).

185. N.Y. LAB. LAW § 195 (McKinney 2021); CAL. LAB. CODE § 226 (West 2023).

the information they need to calculate their earned wages and verify that they are being paid fairly and (2) to deter employers from intentionally withholding wage information from employees in order to obscure their unlawful underpayment of their employees by imposing monetary penalties.

The modern standing doctrine imposes an additional requirement on plaintiffs suing their employers for failing to pay them the wages they are lawfully owed by requiring that plaintiffs specifically allege a concrete, downstream harm resulting from their employer's violation of the wage statement and notice statute in order to recover statutory damages in addition to recovering the wages they are owed. It is not enough that the statutes specifically provide for monetary penalties when employers fail to comply with the requirements. Plaintiffs must also satisfactorily state the magic words to demonstrate standing for the statutory violations so that they can recover the damages. Given the messiness and incoherence of standing doctrine, many plaintiffs do not know the magic words necessary to demonstrate standing and thus miss out on the statutory damages. This is undesirable from a policy perspective—particularly when the barriers and costs of litigation are already high, and the plaintiff has already been deprived of their lawful wages. The modern standing doctrine is too formalistic in the context of wage statement violations, which results in plaintiffs being unfairly punished and federal courts often rendering the legislature's intent void. For these reasons, the standing doctrine needs to be clarified so that the elements required to satisfy standing for a statutory violation claim are clear. However, this approach risks complicating the doctrine further through additional case law, making the doctrine even more unwieldy to apply in this context.

B. Adopting a Different Approach to Standing in Suits Against Private Parties

An alternative and more effective approach to improve access to courts for plaintiffs alleging wage statement violation claims is for federal courts to take a more permissive approach to standing in suits between private parties. As scholars have noted, standing doctrine developed out of concerns regarding the separation of powers and the structural role of federal courts in a democracy—particularly in the context of plaintiffs seeking equitable relief against government

officials.[186] In such cases, a federal court may find itself in the position of reviewing the actions of an official in another branch, raising a separation of powers issue.[187] However, suits brought by private parties against private parties do not raise the same structural issue, and thus courts have no need to apply the three-element standing test as restrictively to suits between private parties as it would to suits against government entities.

While the Supreme Court has adopted a narrower understanding of standing over time, culminating in the Court's recent decision in *TransUnion*, this understanding was not intentionally extended to suits between private parties. Rather, the Court simply applied new developments in standing doctrine to suits between private parties without further consideration or deliberation, causing a "doctrinal drift" that is not based in any constitutional or separation of powers rationale. Furthermore, this approach is in line with the original purpose of the standing doctrine. The Founders wanted to prevent federal courts from issuing purely advisory opinions in the absence of a dispute which would infringe on the powers of the legislative and executive branches, but corporations and government entities have pushed courts to adopt a much narrower understanding of "cases" and "controversies."[188] From their perspective, a narrower understanding of standing reduces corporate liability to only those who are deemed as truly injured rather than anyone seeking a quick cash grab. Although this sort of doctrinal restructuring and broadening would be hard to implement without further action by the Supreme Court, which may be untenable, it could be appealing to the current Court based on originalist rationales. While the concept of standing is rooted in the Constitution, it is at heart a judge-made doctrine that can be manipulated.

An approach to standing that differentiates between private party and government defendants would greatly improve plaintiffs' access to justice in federal courts for wage theft and wage statement violations accompanying wage theft. It also better supports the intentions of the state legislators who drafted and passed wage statement prevention acts, creating a statutory cause of action for

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186. Schmidt, *supra* note 64, at 6–8.

187. *Id*. at 7.

188. *Standing Doctrine*, PUBLIC JUSTICE, https://www.publicjustice.net/what-we-do/access-to-justice/standing-doctrine/ [https://perma.cc/Y9Z5-SVUR] (last visited Aug. 5, 2025).

plaintiffs who were denied proper wage information by their employers. This sort of informational injury caused by a statutory violation may not initially seem significant, but it is a big contributor to wage theft, particularly because the faulty recordkeeping and communications can prevent victims from knowing the exact amount of wages they are owed.

Furthermore, this approach to standing does not lead to judicial aggrandizement and is deferential to the wishes of Congress and state legislatures. It does not overreach into the enforcement powers of the executive branch as a suit between private parties to determine whether a private defendant violated the law fits squarely within the dispute resolution function of the federal courts. Even if the Supreme Court adheres to *TransUnion* and nominally applies the standing test to all suits, it is time for the courts to reconsider the types of suits in which the question of standing is most important to maintaining the separation of powers. There are still opportunities to clarify when a true structural constitutional issue is raised such that the standing analysis becomes more important.

CONCLUSION

The narrowing of the standing doctrine in federal courts across the country in cases like *TransUnion* and lower federal court decisions like *Guthrie* makes it exceedingly difficult for plaintiff-employees to bring claims against their employers for violating wage statement and notice statutes, rendering these provisions toothless and virtually unenforceable. An overly narrow interpretation of standing in wage-theft suits unfairly prevents workers from using the courts to hold their employers accountable for failing to pay them what they are owed and disadvantages the most vulnerable communities. This use of standing as a barrier to justice is contrary to the original purpose of the standing doctrine and does not advance any separation of powers goals. This Note demonstrates that using standing doctrine to limit who can litigate wage-and-hour claims in federal court is both undesirable from a policy standpoint and contrary to the purpose of the standing doctrine.

Rather than raising the bar for workers to establish standing to collect monetary damages specifically provided for by state legislatures when they have already been wrongfully denied their proper wages, federal courts must reevaluate the standing doctrine in light of its roots and original purpose. One interim way to preserve access to justice is to recognize that substantive errors that violate

wage statement and notice statutes satisfy standing. An improved long-term approach to standing for statutory violations accompanying wage theft is to differentiate between government and private party defendants, and to lower the threshold for establishing standing for the latter. This would help to preserve plaintiff-employees' private right to obtain monetary damages when they have been denied their proper wages due to their employers' misconduct.