

## SCOTUS Declines to Revisit *Spokeo*

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Nearly two years after issuing its landmark Article III standing decision in *Spokeo, Inc. v. Robins*, the Supreme Court recently declined to issue certiorari in the matter for a second time. In the underlying complaint, the plaintiff alleged that Spokeo, a website which provides basic personal and employment information about individuals, had collected and published false information about him in violation of the Fair Credit Reporting Act. At the trial level, the district court granted the defendant's motion to dismiss, finding that Robins was unable to plead "actual or imminent harm" as required by the Supreme Court's recent ruling in *Clapper v. Amnesty International USA* (2013). This decision was reversed by the Ninth Circuit, which found that the alleged violation of a statutory right is a sufficient injury for Article III standing purposes. In May 2016, the Supreme Court disagreed, remanding the case for reconsideration with a mandate that the Ninth Circuit must determine whether the alleged statutory injury was "concrete and particularized" and indicating that a statutory violation is not sufficient without a showing of actual harm.

On remand, the Ninth Circuit found again that, even under the Supreme Court's heightened standing requirements, Robins had sufficiently alleged a concrete "intangible harm" caused by Spokeo's alleged statutory violation to properly assert standing. Spokeo again petitioned the Supreme Court for certiorari in order to receive additional guidance on what types of intangible injuries may establish standing. However, on January 22, the Supreme Court denied cert without comment. The Supreme Court's denial comes in the midst of a circuit split over how to interpret *Spokeo* in the data privacy and security context, where data incidents often put individuals' information at increased risk of fraud without evidence of actual fraud or misuse of information. As we have previously [written](#), a cert petition is currently pending before the Supreme Court to address this split.

**TIP: The cert denial leaves the circuit split open, and furthers the uncertainty about how courts will resolve these standing questions going forward.**

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