

No. 25-_____

IN THE
Supreme Court of the United States

GUARDIAN FLIGHT, L.L.C., ET AL.,
Petitioners,

v.

HEALTH CARE SERVICE CORPORATION
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The No Surprises Act (“NSA”) is Congress’s solution to the problem of surprise medical bills. Under the NSA, insurers must cover services provided by out-of-network emergency healthcare providers and pay providers directly. Patients cannot be billed for any unpaid balances. The NSA applies to both fully insured health plans and ERISA plans, meaning its coverage mandate is a benefit in every ERISA plan.

The NSA channels out-of-network provider-insurer payment disputes into an arbitration-like independent dispute resolution process (“IDR”). The NSA expressly provides that IDR awards are “binding” and dictates that the insurer “shall” pay the provider any amounts owed within 30 days of an IDR determination.

Petitioners are air-ambulance providers who transported patients covered by both traditional insurance and ERISA plans offered or administered by Respondent Health Care Service Corporation. The parties submitted their payment disputes to IDR, and Petitioners were awarded additional reimbursement. But Respondent did not pay.

The questions presented are:

1. Whether, in keeping with American courts’ traditional recognition that a breach of contract is in itself an actionable injury, a breach of ERISA plan terms constitutes an injury in fact to an ERISA plan beneficiary, even where the beneficiary will not suffer any pocketbook injury.
2. Whether, when Congress provided that NSA IDR awards are “binding” and mandated that insurers “shall” pay them within 30 days, it intended to allow providers to sue in court to enforce the awards.

PARTIES TO THE PROCEEDING

Petitioners Guardian Flight, LLC, and Med-Trans Corporation were the plaintiffs-appellants below.

Respondent Health Care Service Corporation was the defendant-appellee below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Guardian Flight, LLC, is a wholly-owned subsidiary of Global Medical Response, Inc. through a holding company, Air Medical Group Holdings Company LLC. No publicly held corporation owns 10% or more of the stock of Guardian Flight, LLC.

Petitioner Med-Trans Corporation, is a wholly-owned subsidiary of Global Medical Response, Inc. through a holding company, Air Medical Group Holdings Company LLC. No publicly held corporation owns 10% or more of the stock of Med-Trans Corporation.

LIST OF RELATED PROCEEDINGS

Guardian Flight, LLC v. Health Care Service Corporation, United States Court of Appeals for the Fifth Circuit, Case No. 24-10561 (June 12, 2025), reh’g denied (July 10, 2025).

Guardian Flight, LLC v. Health Care Service Corporation, United States District Court for the Northern District of Texas, Case No. 3:23-cv-1861 (May 30, 2024).

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INTRODUCTION

The No Surprises Act (“NSA”) is Congress’s comprehensive solution to a difficult and important problem: how to take patients out of the middle of payment disputes over out-of-network emergency medical care. When a commercially insured patient receives *in-network* care (meaning care from a provider that has a contract with the patient’s insurer), the provider accepts the contracted rate from the insurer; and the patient pays only the predetermined “patient responsibility” amount under her policy. But when a commercially insured patient receives *out-of-network* care—which often happens in emergencies—there is no agreed-upon rate between insurer and provider, and the patient is ultimately responsible for the balance the insurer does not cover. Before the NSA, that sometimes resulted in patients receiving significant, unexpected medical bills.

The NSA’s solution to this problem is novel, but simple in concept. From the patient’s perspective, treat the care as if it were in-network—including prohibiting balance billing. Then, to resolve payment disputes between insurers and providers, set up a streamlined, arbitration-like process. Implementing this novel solution within a complex healthcare regulatory scheme was, of course, no easy task. As Congress drafted, it drew upon settled background principles and harmonized the NSA system with existing law governing health plans, including the Employee Retirement Income Security Act (“ERISA”). The result is a statute that balances the interests of patients, providers, and insurers.

The two questions presented by this case go to whether the statutory scheme Congress carefully designed will continue to function, or whether it will be gutted. The NSA was enacted in 2020 and went into effect in 2022. Since then, its independent dispute resolution (“IDR”) process has been utilized hundreds of thousands of times. Healthcare providers have won an overwhelming majority of these disputes after insurers underpaid for medical care. The NSA’s text is clear about the effects of these IDR awards: they are “*binding* upon the parties involved.” 42 U.S.C. § 300gg-111(c)(5)(E)(i) (emphasis added). The statute further directs that payments “*shall be made* directly to the nonparticipating provider ... not later than 30 days after the date on which such determination is made.” *Id.* § 300gg-111(c)(6) (emphasis added).

But disturbingly often, insurers are simply not paying the awards. Petitioners Guardian Flight, LLC, and Med-Trans Corporation (“Providers”) are providers of life-saving air-ambulance services who won IDR awards against Respondent Health Care Service Corporation (“HCSC”). HCSC then failed to pay the awards, so the Providers sued in federal court. For some awards, the Providers asserted an ERISA benefits claim as the assignee of the plan beneficiary; for all awards, the Providers asserted a cause of action directly under the NSA.

But the Fifth Circuit held that the Providers have no path to court to obtain payment of their IDR awards. Specifically, the Fifth Circuit held that ERISA plan beneficiaries whose plan administrators fail to pay for healthcare lack standing to sue on this breach of contract if they do not face a pocketbook injury. As a result, it held, the Providers lack

derivative standing as the plan beneficiaries' assignees. And the Fifth Circuit held that the NSA does not create a private right of action for providers to enforce their binding IDR awards directly.

On both issues, the Fifth Circuit got the analysis badly wrong, ignoring statutory text, settled precedents of this Court, centuries of legal practice informing both questions, the views of the United States Government across two presidential administrations, and plain common sense. Both issues merit this Court's review.

First, the Fifth Circuit's ERISA-standing holding creates a clear 2-1 circuit split. Both the Sixth and Eighth Circuits have held that even absent pocketbook injury, an ERISA beneficiary who suffers a breach of the plan terms has suffered a cognizable harm for Article III purposes. The Fifth Circuit disagreed, dismissing this injury as a mere "technical violation." This clear split fits within a broader, deepening disagreement among courts of appeals respecting whether a breach of contract, standing alone, inflicts an Article III injury. The First, Sixth, Eighth, and D.C. Circuits (as well as Judges Thapar, Phipps, and Ikuta in separate writings) have all concluded, consistent with this Court's decisions in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) and *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), that losing a bargained-for benefit constitutes a cognizable injury even where there is no financial (or other tangible) harm to the promisee, because American courts at the Founding uniformly recognized a breach of contract alone as a valid basis for suit. The Fifth Circuit, however, has now joined the Fourth and Seventh Circuits in the ahistorical position that a plaintiff must show more

than a breach of contract to have Article III injury. This case provides an excellent vehicle for this Court to address the 2-1 split on ERISA standing and provide guidance to lower courts about the proper application of *TransUnion* and *Spokeo*.

Second, the Fifth Circuit’s conclusion that the NSA lacks a private right of action conflicts with this Court’s precedents and presents an issue of exceptional importance on a question of federal law that this Court should settle promptly. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001), says that “statutory intent” is determinative of the private-right-of-action question. But the Fifth Circuit ignored—indeed *did not even discuss*—the key statutory language. Long-settled usage in the arbitration context, going back before the Federal Arbitration Act (“FAA”), establishes that the term “binding” means “enforceable in court.” And since the Founding, as recently reaffirmed in *Maine Community Health Options v. United States*, 590 U.S. 296, 324 & n.12 (2020), statutory shall-pay language has been understood to reflect legislative intent to provide a private right of action. By failing to give effect to this language, the Fifth Circuit badly distorted the *Sandoval* inquiry and knocked Congress’s carefully calibrated scheme out of balance. If insurers can ignore their statutory payment obligations, the NSA will no longer provide a fair way to resolve insurer-provider payment disputes while taking patients out of the middle.

This Court should grant review and resolve both questions presented.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Fifth Circuit affirming dismissal of the Providers' claims is reported at 140 F.4th 271 (5th Cir. 2025), and reproduced at Pet.App.1a–15a. The district court's decision is reported at 735 F. Supp. 3d 742 (N.D. Tex. 2024), and reproduced at Pet.App.16a–36a.

JURISDICTION

The Fifth Circuit issued its decision in this case on June 12, 2025. Pet.App.1a. It denied the Providers' timely petition for rehearing en banc on July 10, 2025. Pet.App.16a. This petition is timely because it is filed on October 8, 2025, within ninety days of the order denying rehearing en banc. This Court has jurisdiction under 28 U.S.C. § 1254.

PROVISIONS INVOLVED

The federal statutory provisions at issue are: 42 U.S.C. §§ 300gg-111(a)(1), 300gg-111(c)(5)(E)(i), 300gg-111(c)(6), 300gg-112(a), 300gg-112(b)(5)(D), 300gg-112(b)(6); and 29 U.S.C. §§ 1185e(a)(1), 1185f(a). These provisions are included in the Appendix at Pet.App.37a–154a.

STATEMENT

A. Legal Background

Prior to the NSA, emergency-healthcare provider reimbursement operated differently depending on the provider's network status. When a patient received treatment from an *in-network* provider, the provider would accept the insurer's contracted rate as full payment, and the patient was responsible for only a limited share—any applicable deductible, copayment,

or coinsurance.¹ When a patient received care from an *out-of-network* provider, the insurer could pay whatever it chose and leave the patient responsible for the balance, which could be substantial. The provider could bill the patient for the balance and assert various state-law claims against both patients and insurers to try to recover what it was due.

The NSA transformed reimbursement for out-of-network emergency care covered by commercial insurers. The Act puts patients who receive out-of-network care in the same position as if the provider were in-network. Patients satisfy their “cost-sharing requirement”—i.e., deductible, copayment, or coinsurance—as they would with an in-network provider. See 42 U.S.C. §§ 300gg-111(a)(1)(C)(ii), 300gg-112(a)(1). And out-of-network providers cannot bill the patient for the remainder. See *id.* §§ 300gg-131, 300gg-135.²

But the system could not offer patients these benefits if it did not also guarantee fair, prompt, and enforceable payment from insurers to out-of-network emergency providers (including air-ambulance

¹ This petition uses “insurers” to encompass both “group health plans” and “health insurance issuers” under the NSA. See 42 U.S.C. § 300gg-111(a)(1).

² The NSA is comprised of two parts, one applicable to emergency room facilities and providers and the other to air-ambulance providers. The two parts are substantially similar and cross-reference one another. See 42 U.S.C. §§ 300gg-111, 300gg-112. The relevant provisions of the NSA occur in triplicate in the U.S. Code, because the Act amended the Public Health Service Act (cited above and throughout), ERISA, and the Internal Revenue Code. See 29 U.S.C. §§ 1185e, 1185f (ERISA); 26 U.S.C. §§ 9816, 9817 (Internal Revenue Code).

providers). To accomplish this, the NSA mandates that plans and policies “shall cover emergency services” from out-of-network providers as a benefit. 42 U.S.C. § 300gg-111(a)(1); *see also id.* § 300gg-112(a) (requiring coverage for air transports). Importantly, this coverage mandate applies to ERISA plans via ERISA’s provisions incorporating the NSA. *See* 29 U.S.C. §§ 1185e(a)(1), 1185f(a).

The NSA further facilitates the coverage requirement by spelling out the insurers’ payment obligations. At the outset, the statute requires insurers to make “an initial payment or notice of denial of payment” to out-of-network providers “not later than 30 calendar days” after the provider sends a bill. 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv)(I), 300gg-112(a)(3)(A). And because out-of-network providers, by definition, do not have contractually agreed-upon rates with insurers, the statute also provides a detailed process for determining how much insurers must reimburse providers—the “out-of-network rate.” 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv)(II), 300gg-112(a)(3)(B).

If a provider is unsatisfied with the insurer’s initial payment, it may initiate a 30-day open-negotiation period. *Id.* §§ 300gg-111(c)(1)(A), 300gg-112(b)(1)(A). If negotiations fail, either party can initiate IDR—essentially, NSA-specific arbitration—for a final determination of the “total plan or coverage payment” due. *Id.* §§ 300gg-111(c)(1)(B), 300gg-112(b)(1)(B), 300gg-111(a)(1)(C)(iv)(II), 300gg-112(a)(3)(B). The IDR process is mandatory once initiated. *See* 42 U.S.C. §§ 300gg-111(c)(5)(B)(i), 300gg-111(a)(1)(C)(iv)(II), 300gg-111(b)(1)(C), 300gg-111(a)(3)(K).

IDR under the NSA is conducted before neutral, third-party decisionmakers, known as “IDR entities,” that have substantial legal and medical expertise. *See* 42 U.S.C. §§ 300gg-111(c)(4)–(5), 300gg-112(b)(4)–(5). The arbitration is “baseball-style”: both parties make offers, and the IDR entity selects one based on specified statutory factors. *Id.* §§ 300gg-111(c)(5)(A)–(C), 300gg-112(b)(5)(A)–(C). These factors include the insurer’s “qualified payment amount”—the insurer’s median in-network rate for the same services—as well as such considerations as the nature and quality of the care provided. *See id.* §§ 300gg-111(a)(3)(E)(i), 300gg-112(b)(5)(C).

In a key provision, the NSA specifies the “[e]ffects of [an IDR] determination.” *Id.* § 300gg-111(c)(5)(E); *see id.* § 300gg-112(b)(5)(D). It states that a “determination of a certified IDR entity ...”

(I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and

(II) shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9 [i.e., the FAA].

Id. § 300gg-111(c)(5)(E)(i). In other words, absent fraud, misrepresentation, or a reason for vacatur set forth in the cross-referenced Section 10(a) of the FAA, the IDR determination is the final, binding authority setting the “plan or coverage” amount that the insurer must pay the provider. *Id.*; *see id.* §§ 300gg-111(a)(1)(C)(vi)(II), 300gg-112(a)(3)(B). And the statute requires that payments “shall be made directly

to the nonparticipating provider ... not later than 30 days after the date on which such determination is made.” *Id.* §§ 300gg-111(c)(6), 300gg-112(b)(6).

B. Factual Background

The Providers are air-ambulance companies that provide life-saving emergency air-medical transportation services to critically ill and injured patients across the country. CA5.ROA.7 ¶7. This appeal arises from 33 air-ambulance transports the Providers performed of patients covered by health plans insured or administered by HCSC, operating under the Blue Cross and Blue Shield brand. CA5.ROA.8 ¶12; CA5.ROA.14. Each of the transported patients assigned to the Providers their plan benefits, including ERISA plan benefits. CA5.ROA.8 ¶12; Pet.App.12a. The Providers are out-of-network with HCSC in the relevant states, so NSA reimbursement procedures apply. CA5.ROA.5 ¶1.

For each transport, HCSC made an initial payment, and the Providers sought additional payment. CA5.ROA.7–8 ¶¶9–12. The parties’ negotiations failed, and the claims proceeded to IDR. CA5.ROA.7–8 ¶¶9–11. Every IDR at issue resulted in a binding award requiring additional payment from HCSC to the Providers. CA5.ROA.8 ¶11. But despite its legal obligation to pay the additional amounts owed to the Providers within 30 days, HCSC failed to do so. CA5.ROA.9 ¶16. The Providers were thus forced to sue to recover what, at the time of filing, amounted to nearly \$1 million in payments owed, plus applicable interest and attorneys’ fees. CA5.ROA.12 ¶30; CA5.ROA.14.

C. Procedural History

1. The Providers filed suit in the Northern District of Texas raising two claims relevant here. First, the Providers brought a direct claim under the NSA, alleging that HCSC's refusal to timely pay the IDR-determined amounts violated HCSC's statutory obligation to make full payment on the transports (and the Providers' corresponding right to receive payment) within 30 days. CA5.ROA.9 ¶¶15–17. Second, because the transported patients assigned to the Providers their benefits under their health plans, and because (under the NSA) payment of out-of-network air-ambulance providers is a benefit included in all ERISA plans that cover emergency services, the Providers brought a derivative ERISA claim for improper denial of benefits. CA5.ROA.9–11 ¶¶18–23.

2. HCSC moved to dismiss all claims, and the district court granted its motion. Pet.App.16a. The court first held that “the NSA does not confer a private cause of action to enforce an IDR award.” Pet.App.20a–25a. The court agreed that the NSA's plain language creates a right to payment for providers but concluded that it does not back that right with a remedy. Pet.App.22a, 24a–25a. The court also dismissed the Providers' ERISA improper-denial-of-benefits claim. Pet.App.25a–28a. It held that although the Providers “received valid assignments from the beneficiaries,” the beneficiaries themselves would not have standing because they “suffered no concrete injury” as a result of HCSC's failure to pay given that they “incur no financial injury.” Pet.App.27a.

3. The Providers appealed to the Fifth Circuit. On the NSA private-right-of-action question, the Providers emphasized Congress’s decision to make IDR awards “binding” (which has long been understood to mean “enforceable in court”) as well as the NSA’s directive that insurers “shall” pay providers (language this Court has held establishes both a right and a remedy).

On derivative standing under ERISA, the Providers argued that, given the NSA’s incorporation into ERISA, plan participants are contractually entitled to out-of-network emergency healthcare coverage—that is, paid-for healthcare. Denying plan participants the benefit of that bargain constitutes an injury in fact under this Court’s precedents and according to every court to have considered the question—even absent personal financial harm.

Alongside other amici, the United States Government filed an amicus brief in support of the Providers, endorsing both their NSA-private-right-of-action and ERISA-standing arguments. CA5 ECF 32. After the turnover from the Biden Administration to the Trump Administration, the Government then delivered oral argument in support of the Providers, again fully endorsing the Providers’ position on both questions and underscoring their importance. CA5 ECF 83; OA at 12:20–17:00, [tinyurl.com/whkjjr5d](https://www.tinyurl.com/whkjjr5d).

Nevertheless, the Fifth Circuit affirmed the district court’s dismissal. Pet.App.2a. The court first held that the NSA does not grant providers a private right of action to enforce IDR awards. Pet.App.5a–12a. Its analysis never mentioned the NSA’s use of the word “binding” or its shall-pay provision. Instead, it focused

on the separate provision limiting “judicial review” of awards. Pet.App.6a–7a (discussing § 300gg-111(c)(5)(E)(i)(II)). In the Fifth Circuit’s view, because the NSA bars judicial *review* of IDR awards except in certain narrow circumstances, it must also bar judicial *enforcement* of IDR awards. Pet.App.6a–8a.

Next, the court noted that “Section 9 of the FAA empowers courts to confirm or enforce arbitration awards.” Pet.App.8a. Because “Congress *has* incorporated [that provision] to create a private right of action” “in other statutes,” the court determined that its failure to incorporate that provision here indicates that Congress did not intend private enforcement. Pet.App.9a–10a.

The court concluded that instead of providing for private enforcement, Congress empowered HHS to enforce the NSA through administrative penalties. Pet.App.10a–11a. The court did not acknowledge that the United States disclaimed having either the authority or ability to adequately enforce “binding” IDR awards. (Indeed, the court’s analysis did not mention the participation of the United States at all.) According to the court, because HHS has some authority in some cases to apply indirect pressure via administrative penalties, no private right of action is available to Providers. Pet.App.10a.

Turning to ERISA standing, the Fifth Circuit acknowledged that HCSC beneficiaries validly assigned their ERISA rights to the Providers. Pet.App.12a. But the court held that because the NSA bans balance billing—meaning the beneficiaries are not at risk of financial injury—they do not suffer *any* cognizable injury. The court further explained that, in

its view, even if HCSC breached the ERISA contract, that was at most a “technical violation” that “does no actual harm to the beneficiaries and is consequently ... insufficient for Article III injury.” Pet.App.13a.

The Fifth Circuit denied the Providers’ timely petition for rehearing en banc. Pet.App.17a.

REASONS FOR GRANTING THE PETITION

Both questions presented merit review by this Court.

First, the Fifth Circuit’s holding on ERISA standing creates a 2-1 circuit split on the question whether an ERISA health plan participant is injured by an insurer’s failure to pay a healthcare provider for covered services where the participant is not at risk of having to pay. Unlike the Fifth Circuit, the Sixth and Eighth Circuits have held that plan participants have standing in such cases.

That 2-1 split fits within a broader 4-3 circuit split on the question whether breach of contract alone constitutes an injury in fact. The First, Sixth, Eighth, and D.C. Circuits hold that breach of contract is a cognizable Article III injury, while the Fifth Circuit has joined the Fourth and Seventh Circuits in holding that breach of contract alone is insufficient.

The Fifth Circuit’s holding on ERISA standing also “decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. Rule 10(c). *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), recognizes that intangible injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts—

like breach of contract—are sufficiently concrete for Article III standing. *Id.* at 424–25.

Second, and just as important, the private-right-of-action question calls out for review. The Fifth Circuit decision conflicts with relevant decisions of this Court. And whether the NSA creates a private right of action is a critically “important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. Rule 10(c).

The Fifth Circuit contravened this Court’s precedents when it ignored the plain meaning and historical significance of the NSA’s language. *Sandoval*, 532 U.S. 275, dictates that “[s]tatutory intent ... is determinative” in this context and that the best indications of statutory intent are text and structure. *Id.* at 286–87. Yet the Fifth Circuit failed even to discuss two clear textual indications of Congress’s intent to provide a private right of action: language making IDR awards “binding upon the parties” and directing that insurers “shall” pay providers in 30 days. On their face, both phrases indicate that IDR awards are judicially enforceable. Both phrases also have historical pedigrees that inform how courts should understand them. *See Sekhar v. United States*, 570 U.S. 729, 733 (2013). Moreover, in 2020—just prior to the enactment of the NSA—this Court reaffirmed that “[s]tatutory ‘shall pay language’ often reflects congressional intent ‘to create both a right and a remedy.’” *Maine Community*, 590 U.S. at 324. But the Fifth Circuit gave those provisions no effect.

The question requires immediate resolution by this Court because the Fifth Circuit’s erroneous decision

threatens to defeat the will of both Congress and the Executive on a critically important issue. The NSA is an ambitious and comprehensive congressional response to the problem of payment for emergency healthcare services. The Executive Branch—across two administrations—emphasized to the Fifth Circuit the importance of giving effect to the statute’s language to preserve “one of the statute’s core features.” U.S. Br. at 1, CA5 ECF 32. Neither the plain statutory text nor the Government’s position factored into the Fifth Circuit decision. That decision poses an imminent threat to the integrity of the NSA scheme and endangers the availability of emergency healthcare to underserved communities.

I. THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER A BREACH OF ERISA PLAN TERMS ITSELF CONSTITUTES AN INJURY IN FACT TO A PLAN BENEFICIARY.

ERISA health plan beneficiaries have a right to sue the plan administrator (here, HCSC) when they have improperly been denied plan benefits. *See* 29 U.S.C. § 1132(a)(1)(B). A beneficiary may assign that right to a third party, like a provider, and the assignee “may stand in the shoes of a party seeking to enforce rights under ERISA.” 27 Fed. Proc., L. Ed. § 61:342. Here, the HCSC beneficiaries validly assigned their rights to the Providers. Pet.App.12a. The Providers therefore have standing to bring an ERISA improper-denial-of-benefits claim as long as the beneficiaries would have

standing to do so. Only the injury prong of Article III standing is at issue.

A. The Fifth Circuit’s ERISA-standing holding creates a 2-1 circuit split.

The Fifth Circuit’s decision creates a circuit split on the question whether insurers’ failure to pay providers for covered healthcare services concretely harms ERISA health plan participants.

The Sixth and Eighth Circuits have held that denying ERISA plan benefits by failing to pay for healthcare as the plan requires “is a concrete injury for Article III standing” even where “the patient-assignors ‘were never at imminent risk of out-of-pocket expenses.’” *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018) (citation omitted); see *Mitchell v. Blue Cross Blue Shield of N.D.*, 953 F.3d 529, 536 (8th Cir. 2020) (“[P]lan participants are injured not only when an underpaid healthcare provider charges them for the balance of a bill; they are also injured when a plan administrator fails to pay a healthcare provider in accordance with the terms of their benefits plan. ... [H]istory and the judgment of Congress both indicate that the denial of plan benefits constitutes a cognizable injury in fact for purposes of constitutional standing.”).³

³ In a similar context, the Second Circuit has held that a union had standing to enforce its agreement with an employer requiring payment of retiree medical benefits even where the union no longer represented the retirees. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union v. Cookson Am., Inc.*, 710 F.3d 470, 474–75 (2d Cir. 2013) (per

The only attempt the Fifth Circuit made to reconcile its holding with this line of cases was a footnote stating that cases coming out the other way on this specific “ERISA issue” “predate[] the NSA and [are] therefore inapposite.” Pet.App.13a–14a. If the court intended to suggest that those decisions would have come out differently if balance billing had been proscribed (as under the NSA), that is wrong. In *Mitchell*, the Eighth Circuit found standing while noting that the provider was legally proscribed, by agreement, from balance billing. *See* 953 F.3d at 534. And in *Springer*, the Sixth Circuit explained that its holding “does not depend” on allegations related to potential financial loss. *See* 900 F.3d at 287. In any case, the NSA does not, and could not, alter constitutional standing requirements. The Fifth Circuit thus stands alone.

B. The decision deepens a circuit split on the question whether breach of contract, standing alone, constitutes an injury in fact.

This 2-1 divide also fits within a broader 4-3 circuit split regarding whether breach of contract alone is sufficient for Article III injury.

curiam). As that court explained, “[b]ecause the Union was a party to the [agreement],” the employer’s “refusal to pay retiree benefits under that agreement will injure the Union by depriving it of the benefit of its bargain.” *Id.*

In addition, prior to the decision in this case, the Fifth Circuit had decided the ERISA-standing question in favor of providers. *See N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 192–94 (5th Cir. 2015).

The First, Sixth, Eighth, and D.C. Circuits have all held that breach of contract—even absent financial or other tangible harm to the contracting party—is a concrete injury. See *Amrhein v. eClinical Works, LLC*, 954 F.3d 328, 330–31 (1st Cir. 2020) (“Concrete injuries embrace not only tangible harms—like a picked pocket or a broken leg—but also intangible ones, like ... the invasion of a common-law right (including a right conferred by contract) actionable without wallet injury” (citation modified; citing, *inter alia*, *Katz v. Pershing, LLC*, 672 F.3d 64, 72 (1st Cir. 2012))); *Springer*, 900 F.3d at 287 (“Springer suffered an injury ... because he was denied health benefits he was allegedly owed under the plan. Like any private contract claim, his injury does not depend on allegation of financial loss. His injury is that he was denied the benefit of his bargain.”); *id.* at 292–93 (Thapar, J., concurring) (breach of contract historically established an injury in fact); *Glennborough Homeowners Ass’n v. U.S. Postal Service*, 21 F.4th 410, 415 (6th Cir. 2021) (citing *Springer* and stating that “a breach of a contract between two private parties, standing alone, may suffice as an injury for purposes of constitutional standing” while acknowledging “thorny questions” around the issue); *Mitchell*, 953 F.3d at 536 (“Traditionally, a party to a breached contract has a judicially cognizable injury ... because the other party’s breach devalues the services for which the plaintiff contracted and deprives them of the benefit of their bargain.” (citation and quotation omitted)); *Smith v. UnitedHealth Grp. Inc.*, 106 F.4th 809, 813 (8th Cir. 2024) (applying *Mitchell*); *Alston v. Flagstar Bank, FSB*, 609 F. App’x 2, 3 (D.C. Cir. 2015) (per

curiam) (finding standing to pursue breach-of-contract claim “even though [plaintiff] has neither suffered nor proved actual damages and could recover only nominal damages at this time”).

In addition, the Third and Ninth Circuits have both identified but reserved judgment on the issue. *See Clemens v. ExecuPharm Inc.*, 48 F.4th 146, 156 n.6 (3d Cir. 2022) (“Because Clemens has alleged an injury separate and apart from the breach of contract itself, we have no occasion to reach her additional argument that the breach of contract alone is a sufficiently imminent and concrete injury that confers standing ...”); *Perry v. Newsom*, 18 F.4th 622, 632 (9th Cir. 2021) (acknowledging that the injury-in-fact requirement may be satisfied where a party has identified a close common-law analogue for the injury but ultimately concluding that a promise made by a judge to litigants is not an enforceable contract). Notably, in both the Third and Ninth Circuit decisions, panel members issued robust separate opinions reaching the question and concluding that breach of contract, standing alone, constitutes an injury in fact. *See Clemens*, 48 F.4th at 161 (Phipps, J., concurring) (“The claims that Clemens pursues here ... are traditional causes of action that were recognized as well suited for judicial resolution at the time of the Constitution’s adoption. She therefore has standing.” (footnote omitted)); *Perry*, 18 F.4th at 640 (Ikuta, J., dissenting) (“[T]he breach of a contract or binding promise is an injury traditionally recognized as a violation of a private right, whether or not the injured party suffers economic or other damage.”).

By contrast, the Fourth and Seventh Circuits have held that breach of contract alone is insufficient to

establish an injury in fact. *See Dinerstein v. Google, LLC*, 73 F.4th 502, 522 (7th Cir. 2023) (“As we read *Thole*, *TransUnion*, and *Spokeo*, a breach of contract alone—without any actual harm—is purely an injury in law, not an injury in fact.”); *Freeman v. Progressive Direct Ins. Co.*, 149 F.4th 461, 467 (4th Cir. 2025) (“But more importantly, even were we to accept Freeman’s theory of breach, she has failed to show how she suffered any injury.”).

The Fifth Circuit, meanwhile, has contradicted itself and now stands on both sides of the split. In *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445 (5th Cir. 2022), the Fifth Circuit held that “traditional and recent precedent arising from both the Fifth Circuit and the Supreme Court reflect that a breach of contract is a sufficient injury for standing purposes.” *Id.* at 451. In this case, however, the Fifth Circuit panel stated that a breach of contract, without more, is a “technical violation” and “an abstract theory insufficient for Article III injury.” Pet.App.13a. The panel below did not acknowledge or address the contradiction, adding to the confusion in the lower courts.

This Court should grant the petition to resolve the split on the ERISA-standing question and give guidance to lower courts on the proper application of *TransUnion* and *Spokeo*.

C. The Fifth Circuit’s holding is inconsistent with *TransUnion*, *Spokeo*, the history of American courts, and common sense.

The need for this Court’s intervention is all the more urgent because the Fifth Circuit’s decision is wrong.

To the extent the Fifth Circuit, along with the Fourth and Seventh Circuits, read *TransUnion* as compelling this result, this Court should correct that misunderstanding before further confusion spreads. As the First, Sixth, Eighth, and D.C. Circuits, the Fifth Circuit in *Denning*, and Judges Thapar, Phipps, and Ikuta have all correctly concluded, losing a bargained-for benefit—even without tangible injury—constitutes a cognizable harm now, just as it did in American courts at the Founding.

TransUnion, building on *Spokeo*, was clear about the appropriate analysis. In addition to “traditional tangible harms, such as physical harms and monetary harms,” that “readily qualify as concrete injuries under Article III,” this Court explained that “[v]arious *intangible* harms can also be concrete.” 594 U.S. at 425 (emphasis added). “Chief among” those concrete, intangible harms are “injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts.” *Id.* (citing *Spokeo*, 578 U.S. at 340–41).

Breach of contract—even without any additional tangible harm—is just such an injury. Indeed, “American courts dating back to the Founding have permitted plaintiffs to bring suit based on ... a breach of contract ... regardless of whether the plaintiff incurred actual damages. ... [T]he breach of a contractual obligation to perform some duty has always been understood as a concrete injury that enables the aggrieved contracting party to proceed in an American court.” *Attias v. CareFirst, Inc.*, 346 F.R.D. 1, 9 (D.D.C. 2024); see *Uzuegbunam v. Preczewski*, 592 U.S. 279, 287 (2021) (discussing historical recognition that breach of contract could

create an injury justifying the award of nominal damages and noting that such an approach “was followed both before and after ratification of the Constitution”); *Spokeo*, 578 U.S. at 344 (Thomas, J., concurring) (in suits for “the alleged violation of a private right,” including “contract rights,” “courts historically presumed that the plaintiff suffered a *de facto* injury merely from having his personal, legal rights invaded”); *Springer*, 900 F.3d at 292 (Thapar, J., concurring) (common law courts “entertained breach-of-contract claims even when ‘no real loss be proved’” (quoting *Clinton v. Mercer*, 7 N.C. (3 Murr.) 119, 120 (N.C. 1819))).

Relatedly, it has long been blackletter law that where a promisor breaches a contractual duty to a third-party beneficiary, the promisee has a right to sue for performance even absent personal financial damage. See Restatement (Second) of Contracts § 305(1) (1981). “That [a] benefit accrues to third parties ... does not change the fact that the [contracting party] has negotiated for the benefit and has incurred obligations in order to secure it.” *United Steel*, 710 F.3d at 475.

With this historical grounding, moreover, breach-of-contract suits pose none of the concerns about freewheeling judicial power presented by “all citizens” suits or suits in which a party merely seeks to enforce “compliance with regulatory law.” See *TransUnion*, 594 U.S. at 427 (citations and quotation omitted).⁴

⁴ The Fifth Circuit also cited *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020), without providing any analysis. Pet.App.12a–13a. *Thole* did not call into question that a breach of contract is a

Finally, common sense supports standing. Contracts are premised on the exchange of valuable consideration. When one party accepts that consideration and then does not perform, that creates “a good and sufficient cause of action.” *Chandler & Taylor Co. v. Norwood*, 14 App. D.C. 357, 363 (1899).

Here, an ERISA plan participant pays premiums in exchange for a healthcare plan with certain terms, including (under the NSA) a commitment by the health plan to cover out-of-network emergency care as if it were in-network, paid at a rate ultimately determined through IDR. *Supra* 5–8; *see* 29 U.S.C. §§ 1185e(a)(1), 1185f(a); *Cent. Laborers’ Pension Fund v. Heinz*, 541 U.S. 739, 750 (2004) (ERISA “regulates the substantive content of [] plans” by “add[ing] [] mandatory term[s]”). In other words, the “plan participant[] [is] contractually entitled to [this] plan benefit[],” and an insurer’s “failure to pay” is a breach of contract that “deprives the participant of the benefit of their bargain.” *Mitchell*, 953 F.3d at 536. The fact that under the NSA, the plan participant is not ultimately financially responsible does not mean there is no injury, because the participant has bargained for the plan *to pay for her care*. When HCSC failed to pay for out-of-network emergency care as required by the participants’ plans, it deprived them of the benefit of their bargain. That is Article III injury.

cognizable injury. In fact, it *confirms* that plan participants who do not receive their contractually guaranteed benefits “would of course have Article III standing to sue and a cause of action under ERISA § 502(a)(1)(B) to recover the benefits due to them.” 590 U.S. at 542. The problem for the *Thole* plaintiffs was that they had not been deprived of any contractual benefit. *See id.*

The contrary rule that the Fifth Circuit adopted would mean that ERISA plan administrators could simply ignore their contractual obligation to pay for emergency healthcare, and neither plan participants nor their assignees could ever sue to enforce the participants' contractual rights. In that world, emergency healthcare providers could be conscripted to provide care for free. That cannot be what the drafters of the NSA intended when they protected patients from balance billing.

D. This case is an excellent vehicle to address the standing issue.

As just set forth, there is a clear 2-1 split on ERISA standing and a 4-3 split on the broader question whether a breach of contract, standing alone, is an Article III injury. The Fifth Circuit squarely decided that any breach by HCSC of its contractual obligations under the applicable ERISA plans was a mere "technical violation" that does not support standing. Pet.App.13a. It therefore affirmed the district court's final judgment dismissing the Providers' ERISA-based claims. There is no obstacle to this Court reaching and deciding the dispositive question.

II. THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER THE NO SURPRISES ACT GIVES PROVIDERS A PRIVATE RIGHT OF ACTION TO ENFORCE THEIR RIGHT TO PAYMENT.

Equally meriting this Court's review is the Fifth Circuit's erroneous holding that healthcare providers who win NSA IDR awards have no private right of action to make insurers pay what they owe. The Fifth Circuit purported to apply this Court's framework from *Sandoval*, 532 U.S. 275, for ascertaining

statutory intent to create a right of action. But where *Sandoval* directs close attention to statutory text and structure, the Fifth Circuit ignored key language and structural features in the NSA.

This Court should grant review and correct this error now because the Fifth Circuit's ruling nullifies an important federal statute contrary to the express position of the United States. And the stakes are high. Congress's solution to the problem of surprise medical bills carefully balances the interests of patients, healthcare providers, and insurers. If insurers can simply ignore their obligation to pay for emergency medical care, that will undermine the ability of providers to offer this much-needed healthcare to countless Americans—especially those in underserved communities such as rural areas, where emergency air-ambulance transportation is essential. The longer this goes on, the greater the risk to the availability of these critically important emergency services. Am. Hospital Ass'n Br. at 20–26, CA5 ECF 29.

A. The Fifth Circuit's holding that the NSA lacks a private right of action conflicts with this Court's commitment to giving effect to statutory intent.

There is no dispute that the NSA grants providers a *right* to payment. The only question is *remedy*—whether Congress intended Providers to be able to enforce that right in court. The NSA's text and structure, especially in light of historical sources, show that Congress so intended.

In *Sandoval*, this Court made clear that because “private rights of action to enforce federal law must be created by Congress,” “[s]tatutory intent ... is

determinative” as to whether such a right of action exists. *Id.* at 286. *Sandoval* marked the culmination of a shift away from courts “[r]aising up causes of action where a statute ha[d] not created them.” *Id.* at 287–89 (citation and quotation omitted). “Having sworn off the habit of venturing beyond” both Congress’s intent and the judicial role, the Court reaffirmed its commitment to looking to “the text and structure” of a statute “to determine whether it displays an intent to create not just a private right but also a private remedy.” *Id.* at 286–88.

Since then, courts have appropriately become more disciplined about not supplying private rights of action where Congress has not created them. But the Fifth Circuit’s decision distorts the inquiry. Under *Sandoval*, the judiciary should no more ignore textual evidence of Congress’s intent to create a cause of action than it should fabricate a cause of action that is unsupported by text.

1. By making IDR awards “binding,” Congress drew upon well-understood meaning and granted Providers a private right of action.

The first textual cue that the Fifth Circuit ignored is Congress’s directive that IDR awards are “binding upon the parties involved.” 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I); *see also id.* § 300gg-112(b)(5)(D). “Binding” means “having legal force to impose an obligation” or “requiring obedience.” BINDING, *Black’s Law Dictionary* (12th ed. 2024). Logic and plain meaning indicate that an award that is not enforceable does not “requir[e] obedience.” *Id.*

Moreover, that plain meaning comes imbued with “the legal tradition and meaning of centuries of practice.” *Sekhar*, 570 U.S. at 733 (citation omitted). Prior to the FAA, parties that won arbitrations pursuant to contracts routinely came to court to enforce their awards. The agreement to arbitrate—which was a contract—rendered any resulting arbitration award binding; in turn, the fact that the award was binding made it enforceable in court. See 21 Williston on Contracts § 57:2, *Arbitration Agreements at Common Law* (4th ed.) (“[O]nce an arbitration award was made ... [a]n award was binding on both parties and was enforced by the courts.”); *Red Cross Line v. Atl. Fruit Co.*, 264 U.S. 109, 121 n.1 (1924) (“[Courts] have and can have no just objection to [arbitrations] and will enforce, and promptly interfere to enforce their awards when fairly and lawfully made.”); *Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148, 154–55 (4th Cir. 1993) (collecting cases).

So strong is the relationship between the “binding” nature of an award and its enforceability that courts have long concluded that “[t]o agree to binding arbitration *is to agree* that if your opponent wins the arbitration he can obtain judicial relief if you refuse to comply with the arbitrator’s award.” *Lander Co. v. MMP Invs., Inc.*, 107 F.3d 476, 480 (7th Cir. 1997) (emphasis added); see *Specialty Healthcare Mgmt., Inc. v. St. Mary Par. Hosp.*, 220 F.3d 650, 655 n.20 (5th Cir. 2000) (“consent to binding arbitration may properly imply consent to confirmation”); *id.* at 658 (Garza, J., dissenting) (“Any reasonable person would believe that an agreement to ‘binding’ arbitration means that any resulting damages would be

enforceable and collectable. Otherwise, why agree to arbitrate?”).

Longstanding judicial construction of the FAA confirms the point. The FAA states that court confirmation of an arbitral award via Section 9’s procedures is appropriate only “[i]f the parties ... have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration.” 9 U.S.C. § 9. Despite this express condition, courts have not required magic words about judicial confirmation or judgment to be included in an arbitration agreement before enforcing an award. Rather, a “provision in [an] agreement that the arbitrator’s determination would be *final and binding*, along with [a party’s] full participation in the arbitration process, is sufficient under [the FAA] to confer authority on the district court to confirm the award.” *Booth v. Hume Publ’g, Inc.*, 902 F.2d 925, 930 (11th Cir. 1990) (emphasis added); *see also, e.g., Qorvis Commc’ns, LLC v. Wilson*, 549 F.3d 303, 308 (4th Cir. 2008) (holding that parties “contemplated binding arbitration with enforcement of any award through the entry of a judgment in a court” even though the agreement “d[id] not, *in haec verba*, provide that ‘a judgment of the court shall be entered upon the award’”).

When Congress “borrows” a term “in which [is] accumulated” such “legal tradition and meaning,” this Court “presum[es]” that Congress “knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.” *Sekhar*, 570 U.S. at 733 (citation omitted); *see also, e.g., Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*,

444 U.S. 11, 19 (1979) (holding, in the private right of action context, that when Congress uses a particular term, “it intend[s] that the customary legal incidents” of that term follow). By making IDR awards statutorily “binding,” Congress indicated that they are enforceable in court.

And this makes sense. When it passed the NSA, Congress implemented a novel scheme that has attributes of arbitration—flexible, streamlined, speedy resolution of payment disputes—but conspicuously lacks the element that, at common law, made arbitral awards binding and enforceable: a contract manifesting the parties’ mutual consent to arbitrate and be bound. So Congress provided, in the statute, that IDR determinations will be “binding.” It thereby granted parties the ability to enforce IDR awards in court, as they would have if they arose from arbitration agreements.

All of these arguments were presented to the Fifth Circuit. It offered no explanation or analysis respecting Congress’s use of the term “binding” and why it supposedly does not establish a judicial enforcement remedy.

2. As has long been established, shall-pay language signifies a private right of action.

If Congress’s use of the term “binding” were not clear enough, the NSA further mandates that payment due under an IDR award “shall be made [by insurers] directly to the nonparticipating provider not later than 30 days after ... [the] determination is made.” 42 U.S.C. §§ 300gg-112(b)(6), 300gg-111(c)(6). The plain meaning and historical pedigree of this

shall-pay language establish Congress’s intent to create a private right of action.

“[T]o say that A shall be liable to B is the *express* creation of a right of action.” *Key Tronic Corp. v. United States*, 511 U.S. 809, 818 n.11 (1994) (quoting and agreeing with *id.* at 822 (Scalia, J., dissenting)). That has been true since the Founding. At common law, “[i]f a statute did not expressly confer a remedy,” a cause of action would lie “only if a specific form of action”—e.g., assumpsit, debt, or case—“provided a remedy for the particular injury that the plaintiff had suffered.” Anthony J. Bellia Jr., *Article III and the Cause of Action*, 89 Iowa L. Rev. 777, 838–39 (2004). Accordingly, courts then (as now) would study statutory language to determine whether a plaintiff could sue on a statutory violation. Early cases recognized that where a statute directed that a party “*shall be liable to pay* a specific sum, ... it impose[d] on them a duty to do so”; and if they failed in that duty, they could be sued in an action on debt. *Bullard v. Bell*, 4 F. Cas. 624, 642 (C.C.D.N.H. 1817) (Story, J.) (emphasis added). As Justice Story emphasized, where such language is present, “to deny, that it is a duty ... to pay the money, *is to deny the authority of the statute itself.*” *Id.* (emphases added). The NSA was enacted against this backdrop, imbuing its shall-pay language with unmistakable meaning. See *Sekhar*, 570 U.S. at 733.

Moreover, recent authority confirms this well-worn understanding. In April of 2020—while the NSA was being hashed out in Congress and eight months before it reached its final form—this Court explained that “[s]tatutory ‘shall pay language’ often reflects congressional intent ‘to create both a right and a

remedy.” *Maine Community*, 590 U.S. at 324 (citations omitted). While *Maine Community* addressed the Tucker Act, “a right and a remedy” are the same necessary ingredients for a private right of action. *See Sandoval*, 532 U.S. at 286; *see also Maine Community*, 590 U.S. at 323–24 n.12 (noting that the “money mandating inquiry” in the Tucker Act immunity-waiver analysis is “precisely” the same as whether a statute “displays an intent to create” a private right of action).

This Court “presume[s] that Congress expects its statutes to be read in conformity with this Court’s precedents.” *United States v. Wells*, 519 U.S. 482, 495 (1997). Courts are therefore not free to ignore Congress’s use of shall-pay language in the wake of *Maine Community*. Yet despite robust argument on this point, the Fifth Circuit’s analysis did not even mention the NSA’s shall-pay language or cite *Maine Community*.

3. The Fifth Circuit misinterpreted the provisions of the NSA that it selectively addressed.

The incomplete statutory analysis that the Fifth Circuit did offer exacerbated its errors of omission. It focused on three features of the NSA as supposedly foreclosing a private right of action, but its analysis on each point is wrong.

First, the court viewed the NSA’s separate limit on “judicial review” of IDR awards as preclusive. Pet.App.6a–8a (discussing 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II)). But judicial review involves review of another decisionmaker’s decision to see if it should be *disturbed*. *See* JUDICIAL REVIEW, *Black’s Law*

Dictionary (12th ed. 2024) (“A court’s power to review the actions of other branches or levels of government; esp., the courts’ power to invalidate legislative and executive actions as being unconstitutional.”). It is thus distinct from judicial enforcement, which involves compulsion to *comply* with a pre-existing, valid judgment or rule. *See id.*, ENFORCEMENT (“The act or process of compelling compliance with a law, mandate, command, decree, or agreement; ... the forcible or compulsory exaction of some duty, such as making a payment, honoring a promise, or otherwise meeting a responsibility.”).

Congress thus routinely distinguishes between these two functions, including—to take one salient example—in the FAA. Section 9 dictates that courts “must” confirm arbitration awards unless a party shows a basis for vacatur or modification, while Sections 10 and 11 set forth the bases for vacating or modifying an award. *See* 9 U.S.C. §§ 9–11. The two functions are separate. The NSA is structured the same way: one provision makes IDR awards “binding” and thus enforceable, while its neighboring provision sets forth narrow conditions in which “judicial review” may lead to setting aside the award. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I)&(II). It makes no sense to conclude, as the Fifth Circuit did, that by limiting courts’ ability to *disturb* awards, Congress undermined courts’ ability to *enforce* them.

Second, the Fifth Circuit noted that Congress, in other statutes, has sometimes incorporated the FAA’s confirmation provision, and it drew a negative inference from Congress’s choice to not similarly do so in the NSA. Pet.App.8a–10a. But that simply begs the question whether the statute’s express “binding”

and shall-pay language itself resolves the issue. If it does, there is no basis for the negative inference the Fifth Circuit drew. And as already explained, the FAA is not necessary to enforce a “binding” arbitration award; it simply offers a procedural “mechanism[] for enforcing arbitration awards” to “streamline[]” the path to an already available remedy. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008); *see also Sverdrup*, 989 F.2d at 154–55 (discussing enforceability of arbitration awards through contract actions).

Moreover, there are textual reasons that Section 9 of the FAA is a poor fit for wholesale incorporation into the NSA. Most prominently, it expressly refers to “the parties[] agreement” to arbitrate as the predicate for judicial confirmation. 9 U.S.C. § 9. But in the NSA context, there *is* no agreement to arbitrate; IDR is mandatory. That makes the NSA different from, for example, the Administrative Dispute Resolution Act cited by the Fifth Circuit, Pet.App.9a (citing 5 U.S.C. § 580(c)), where alternative dispute resolution must always be agreed to by the parties, *see* 5 U.S.C. § 572(a). Congress sensibly concluded that cross-referencing FAA Section 9 would simply create confusion. That choice does not make “binding” awards unenforceable.

Third, the Fifth Circuit concluded that instead of providing for private enforcement, Congress empowered HHS to enforce the NSA through administrative penalties. Pet.App.10a (citing 42 U.S.C. § 300gg-22(b)(2)(A)). This theory ignored that the United States *disclaimed* having either the authority or ability to adequately enforce binding IDR

awards. U.S. Br. at 13–14, CA5 ECF 32. It also fails to faithfully account for the statutory scheme.

For one thing, the Fifth Circuit relied solely on *HHS*'s supposed enforcement authority, but that agency lacks jurisdiction over large swaths of IDR determinations. Section 300gg-22(b)(2)—HHS's general authority, pre-dating the NSA—applies to “*individual* health insurance coverage” or “group health plans that are *non-Federal governmental plans*,” i.e., plans maintained by state and local governments. See 42 U.S.C. § 300gg-22(b)(1)&(2) (emphases added); *id.* § 300gg-91(a)(1), (b)(4)&(5), (d)(8)(C) (defining terms). It does not apply to other group health plans, like ERISA plans—a very significant segment of the market.

For another, HHS lacks authority to direct payment of *any* award. So even if HHS has jurisdiction to impose civil penalties for failure to pay a limited set of IDR awards *and* hypothetically exercises that authority, *but see* OA at 14:32–44, [tinyurl.com/whkjjr5d](https://www.tinyurl.com/whkjjr5d) (U.S. Government explaining that it never has), it can at most use indirect measures to incentivize payment. That is nowhere close to fulfilling Congress's directive that each and every award “shall” be “binding” and enforceable.

B. The stakes are too high for the Court to wait for a split.

The NSA represents Congress's solution to the problem of provider reimbursement for emergency healthcare services—a solution that ultimately supports the sustainability of life-saving medical care. When it designed the scheme, Congress carefully balanced the interests of insurers and providers. A

crucial element of that balance is the providers' private right of action to enforce payment from insurers.

If the Fifth Circuit decision stands, Congress's scheme will be upended. Insurers will know that they can lowball their initial payment and then ignore a subsequent IDR award ordering them to pay more—and there will be nothing providers can do about it. There will be a brick, not a thumb, on the insurers' side of the scale. That is not what the statute says and is contrary to the consistent position of the Executive branch.

The impact will not be limited to air-ambulance providers. The NSA channels thousands of hospitals and physicians through IDR for exclusive determination of their right to payment for emergency care. Rural hospitals and other emergency providers have little margin for error in their finances, and providers already face an epidemic of insurer non-payment. *See* Am. Hospital Ass'n Br. at 20–26, CA5 ECF 29. Indeed, one survey indicates that even before the Fifth Circuit decision rejecting the enforceability of IDR awards, over half of IDR awards were going unpaid. *Id.* at 20. That number can be expected to increase dramatically if the Fifth Circuit's ruling stands, which will push providers past the breaking point and reduce the availability of emergency healthcare for the very patients the NSA was designed to protect.

Nor would this crisis be averted if the Court addresses only the ERISA standing issue (as to which there is already a split). Not all NSA claims fall under ERISA, nor do all ERISA plan beneficiaries execute

assignments in favor of providers. So correcting the Fifth Circuit's standing analysis will only allow providers to enforce a subset of IDR awards.

Review of the question whether NSA IDR awards are enforceable in court is therefore warranted now. The stakes are too high to wait for a circuit split to develop. This Court should grant review of both exceptionally important questions presented.

CONCLUSION

The Court should grant the petition.

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Respectfully submitted,

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