No. 23-704

In the Supreme Court of the United States

HI-TECH PHARMACEUTICALS, INC., ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

In 2008, a federal district court entered judgment in favor of the Federal Trade Commission, finding that petitioners had falsely advertised dietary supplements as clinically proven to cause weight loss. Invoking Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), the court permanently enjoined petitioners from making unsubstantiated claims with respect to any weight-loss product. In 2017, after petitioners violated the injunction, the district court held petitioners in civil contempt and ordered them to pay $40 million in compensatory sanctions. The court of appeals affirmed that judgment, and this Court denied review.

In 2021, this Court held that Section 13(b) authorizes "purely injunctive, not monetary, relief." *AMG Capital Management, LLC* v. *FTC*, 593 U.S. 67, 75 (*AMG*). Petitioners then moved for relief from the contempt sanctions under Rule 60(b)(6) of the Federal Rules of Civil Procedure, arguing that *AMG* precludes district courts from awarding compensatory sanctions for violations of injunctions entered under Section 13(b). The district court denied petitioners' motion, holding that *AMG* had no bearing on the propriety of monetary contempt remedies. The court of appeals affirmed. The question presented is as follows:

Whether this Court's decision in *AMG* constitutes an extraordinary circumstance that warrants relief, under Rule 60(b)(6) of the Federal Rules of Civil Procedure, from an order of compensatory contempt sanctions.

ADDITIONAL RELATED PROCEEDINGS

Supreme Court of the United States:

National Urological Group, Inc. v. *Federal Trade Commission*, No. 10-125 (Nov. 1, 2010)

Hi-Tech Pharmaceuticals, Inc. v. *Federal Trade Commission*, No. 19-1445 (Nov. 2, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 80 F.4th 1236. The order of the district court (Pet. App. 44-58) is not published in the Federal Supplement but is available at 2021 WL 5774177.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 2023. On November 13, 2023, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including December 27, 2023, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners Jared Wheat and Stephen Smith were officers of petitioner Hi-Tech Pharmaceuticals, Inc., which sold dietary supplements and advertised them as clinically proven to cause weight loss and other

beneficial effects. Pet. App. 3. In fact, Hi-Tech had no proof for its advertising claims. *Id.* at 366-367. In 2004, the Federal Trade Commission (FTC or Commission) sued petitioners, seeking to end the deceptive advertising and secure redress for Hi-Tech's victims. *Id.* at 3-4, 272-273.

The Commission alleged that petitioners had violated and were continuing to violate Section 5(a) of the Federal Trade Commission Act (FTC Act or Act), which prohibits "unfair or deceptive acts or practices in or affecting commerce," 15 U.S.C. 45(a)(1); and Section 12(a) of the Act, which prohibits "any false advertisement" in connection with "food, drugs, devices, services, or cosmetics," 15 U.S.C. 52(a)(1). Pet. App. 305. The Commission sought injunctive and equitable monetary relief, including restitution and disgorgement, under Section 13(b) of the FTC Act, 15 U.S.C. 53(b). Pet. App. 4.

In 2008, the district court granted summary judgment in favor of the FTC, permanently enjoining petitioners from making unsubstantiated weight-loss claims regarding their products. Pet. App. 4, 281-282. Invoking then-binding circuit precedent holding that restitutionary remedies were available under Section 13(b), the court also ordered petitioners to repay consumers nearly $16 million in unlawful gains. See *id.* at 4, 287. The court of appeals affirmed, 356 Fed. Appx. 358, and this Court denied a petition for a writ of certiorari, 562 U.S. 1003.

2. In 2009, petitioners launched a new, national marketing campaign that made unsubstantiated weight-loss claims about four of Hi-Tech's products. Pet. App. 21-22; see *id.* at 21-24. Petitioners asserted that these products would cause "fat loss and weight loss," "annihilate . . . fat," and make the "pounds melt away." *Id.*

at 22. Those claims were not supported by the scientific studies required under the 2008 injunction. *Id.* at 23-24.

Petitioners' violation of the 2008 injunction was deliberate. Their own lawyers advised them that the advertisements would violate the injunction, cautioning that "the express language in the FTC Injunction," and the very "premise upon which" the injunction was based, required proof of product efficacy that Hi-Tech lacked. Pet. App. 23; see *id.* at 93-96.[1] Petitioner Wheat had earlier expressed his understanding that under the injunction, "there is nothing we can say without doing a double-blind placebo study," which Hi-Tech did not conduct. *Id.* at 32. And as petitioners pursued their deceptive advertising campaign, they "repeatedly provided inaccurate and incomplete information in compliance reports submitted to the FTC." *Id.* at 180; see *id.* at 197-198. They also concealed their assets by setting up accounts in other companies' names, and through their lavish spending they acquired other dietary-supplement companies, purchased a Lamborghini, and otherwise dissipated millions of dollars. *Id.* at 200-201.

In 2017, after a two-week bench trial conducted at the FTC's request, the district court held petitioners in contempt of the 2008 injunction. See Pet. App. 59-182. The court found that "the record is replete with evidence * * * showing an intentional defiance of the court's injunctions." *Id.* at 180; see *ibid.* (stating that petitioners had "very clearly exhibited a pattern of contemptuous conduct since these proceedings began"). The court accordingly imposed $40 million in

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[1] The district court held that those communications were admissible, and petitioners did not challenge that holding on appeal. See Pet. App. 22 n.1.

compensatory sanctions, representing Hi-Tech's gross receipts on the four products between January 1, 2009 and August 31, 2013. *Id.* at 178-181.

In 2019 the court of appeals affirmed the contempt judgment. Pet. App. 17-43. Petitioners did not challenge the size of the $40 million contempt sanction, but instead argued that the advertising restrictions in the 2008 injunction were insufficiently clear. See *id.* at 27. The court held that petitioners had waived that challenge by "stay[ing] silent" when they could have either objected at the time the injunction was entered or subsequently sought clarification from the district court. *Id.* at 31. The court of appeals explained that petitioners were "calculating actors" who had "deliberately engaged in self-serving activities they knew seriously risked violating the injunction," despite their own lawyers' repeated advice "that they risked contempt" by disseminating the proposed advertisements. *Id.* at 31, 33. The court also sustained the district court's finding that petitioners' purported evidence for their weight-loss claims did not come close to meeting the injunction's substantiation standard. *Id.* at 36-42. This Court again denied a petition for a writ of certiorari. 141 S. Ct. 659.

3. In 2021, this Court held that Section 13(b) of the FTC Act—the statutory basis for the 2008 injunction—does not authorize equitable monetary relief for violations of the Act. See *AMG Capital Management, LLC* v. *FTC*, 593 U.S. 67, 75-78 (*AMG*). The Court observed that "[s]everal considerations, taken together," signal that "§ 13(b)'s 'permanent injunction' language does not authorize the Commission directly to obtain court-ordered monetary relief." *Id.* at 75. Among other things, the Court observed that "[t]he language and

structure of § 13(b), taken as a whole, indicate that the words 'permanent injunction' have a limited purpose": to authorize "purely injunctive, not monetary, relief." *Ibid.* The Court also noted that other provisions of the FTC Act expressly give "district courts the authority to impose limited monetary penalties and to award monetary relief," and it inferred from those provisions that Congress "likely did not intend for § 13(b)'s more cabined 'permanent injunction' language to have similarly broad scope." *Id.* at 77. Instead, the Court held that "the Commission may use § 13(b) to obtain injunctive relief while administrative proceedings are foreseen or in progress, or when it seeks only injunctive relief." *Id.* at 78.

4. a. After this Court issued its decision in *AMG*, petitioners filed a motion in district court under Rules 60(b)(5) and (6) of the Federal Rules of Civil Procedure, seeking relief from the 2017 contempt sanctions. The district court denied the motion. Pet. App. 44-58.

The district court first addressed Rule 60(b)(5), which authorizes relief when enforcing a judgment "prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). The court stated that Rule 60(b)(5) does not apply to "[m]oney judgments," even if the movant "'continu[es] to feel the effects of'" such a judgment. Pet. App. 50 (citation omitted). Here, the contempt judgment ordered petitioners to pay a sum of money to remedy a past wrong—*i.e.*, their violation of the 2008 injunction—and thus was beyond the reach of Rule 60(b)(5). *Ibid.*

Turning to petitioners' request for relief under Rule 60(b)(6), the district court found that *AMG* provided no basis for awarding such relief because *AMG* had "no bearing" on a district court's authority to impose

contempt sanctions for violations of a previously issued injunction. Pet. App. 54. The court observed that *AMG* addressed only whether Section 13(b) itself authorized awards of monetary relief to address past violations of the FTC Act, while the contempt judgment here rested on the district court's inherent authority to enforce its own prior orders. *Id.* at 53-54.

b. The court of appeals affirmed. Pet. App. 1-16.

The court of appeals explained that "*AMG* reaffirmed district courts' authority to award prospective injunctive relief, like the injunction the district court entered here, under § 13(b)." Pet. App. 11 (citing *AMG*, 593 U.S. at 78). The court observed that, when a district court enters an injunction, it "generally retains inherent contempt powers" to remedy violations, and that those "'broad and flexible'" inherent powers "exist[] independently of the underlying statute's prescribed remedies." *Id.* at 11-12 (citation omitted). The court further explained that "[n]either the text of the [FTC] Act nor [this] Court's decision in *AMG* expressly limits a district court's contempt powers in this context." *Id.* at 13-14.

The court of appeals accordingly held that the district court here "had the inherent power to vindicate its own authority by imposing the $40 million contempt judgment" to remedy petitioners' violations of the 2008 injunction. Pet. App. 12. Because "*AMG* did not concern a district court's ability to enforce its own orders and thus had no bearing on the contempt sanctions at issue here," the court concluded that *AMG* necessarily could not give rise to the sort of "'extraordinary circumstances'" required to "justify[] relief under Rule 60(b)(6)." *Id.* at 15 (quoting *Gonzalez* v. *Crosby*, 545 U.S. 524, 536 (2005)). The court observed that its

decision was "consistent with a recent Fourth Circuit decision addressing a similar argument," which had upheld monetary contempt sanctions for violations of an injunction entered under Section 13(b). *Id.* at 12; see *id.* at 12-13 (citing *FTC* v. *Pukke*, 53 F.4th 80, 102-103, 105-106 (4th Cir. 2022), cert. denied, 144 S. Ct. 73 (2023)).

ARGUMENT

Petitioners argue (Pet. 24-36) that, under this Court's decision in *AMG Capital Management, LLC* v. *FTC*, 593 U.S. 67 (2021) (*AMG*), a district court lacks authority to impose compensatory contempt sanctions when a defendant violates an injunction the court previously entered under Section 13(b) of the FTC Act. The court of appeals correctly rejected that argument as inconsistent with both *AMG* and established background principles, and petitioners concede (*e.g.*, Pet. i, 3, 24) that no lower court has embraced their position.

Petitioners separately urge (Pet. 13-24) this Court to grant review to address whether a change in precedent can ever provide a sufficient basis for relief under Rule 60(b)(6). But the courts below did not address that question. Having correctly determined that *AMG* did not bar the district court from imposing compensatory contempt sanctions, those courts had no occasion to address the appropriate treatment under Rule 60(b)(6) of a hypothetical decision that *did* preclude the exercise of that authority. This case accordingly would not provide an appropriate vehicle in which to address the first question presented. The petition for a writ of certiorari should be denied.

1. As the court of appeals correctly recognized, this Court's decision in *AMG* does not cast doubt on district courts' authority to impose compensatory contempt

sanctions against defendants who violate injunctions lawfully entered under Section 13(b) of the FTC Act.

a. The decision below flowed directly from this Court's longstanding precedent on contempt remedies. District courts have "inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani* v. *United States*, 384 U.S. 364, 370 (1966). They may "[v]indicat[e]" their authority by awarding compensatory sanctions, so that "a premium [is not] placed on violations" of the court's orders. *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 194 (1949). Thus, "[u]nder traditional principles of equity practice, courts have long imposed civil contempt sanctions to * * * 'compensate the complainant for losses' stemming from the defendant's noncompliance with an injunction." *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (quoting *United States* v. *United Mine Workers of America*, 330 U.S. 258, 303-304 (1947)); accord *Local 28 of Sheet Metal Workers' Int'l Ass'n* v. *EEOC*, 478 U.S. 421, 443 (1986). The court's power to award compensatory contempt sanctions is "measure[d] * * * by the requirements of full remedial relief." *McComb*, 336 U.S. at 193.

Of particular relevance here, this Court recognized in *McComb* that a district court has inherent power to award compensatory sanctions for violating an injunction, even if money damages would not be an available remedy in a statutory-enforcement suit regarding identical conduct. 336 U.S. at 193. There, the defendants had disobeyed an injunction requiring them to comply with several provisions of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.* See *McComb*, 336 U.S. at 189-190. The district court ruled that the FLSA gave it "no power" to award monetary sanctions, and the court of appeals affirmed. *Id.* at 190. But this Court

held that whether or not the government, "when suing to restrain violations of the [FLSA], is entitled to a decree of restitution," the district court had inherent power to order the contemnors to compensate victims for their "damages caused by * * * violations of the decree." *Id.* at 193.

Consistent with *McComb*, lower courts have repeatedly recognized that courts may order compensatory sanctions to remedy violations of an injunction, whether or not the plaintiff could have recovered damages for statutory violations if no injunction had been entered. See, *e.g.*, *FTC* v. *Pukke*, 53 F.4th 80, 102 (4th Cir. 2022) ("[T]here is 'no question' that courts 'have inherent power to enforce compliance with their lawful orders through civil contempt.'") (citation omitted), cert. denied, 144 S. Ct. 73 (2023); *American Airlines, Inc.* v. *Allied Pilots Ass'n*, 228 F.3d 574, 584 (5th Cir. 2000) ("There is a difference between a damage action [under a statute] * * * and a compensatory sanction issued by a court for disobedience of its mandates."), cert. denied, 531 U.S. 1191 (2001); *EEOC* v. *Guardian Pools, Inc.*, 828 F.2d 1507, 1515-1516 (11th Cir. 1987) (holding that back pay could permissibly be awarded as a contempt sanction even to plaintiffs who had not established their entitlement to that form of relief for violations of the underlying statute).

The court of appeals correctly applied that precedent in holding that *AMG* did not restrict the contempt sanctions available for violations of an injunction entered under Section 13(b). Pet. App. 15. Although "*AMG* limited district courts' authority to grant equitable monetary remedies under § 13(b)," *AMG* "did not address whether a district court could impose contempt sanctions for violating * * * an injunction." *Id.* at 10

(discussing *AMG*, 593 U.S. at 82). When a "district court enters an injunction, whether under § 13(b) or any other authority, it generally retains inherent contempt powers to remedy violations of its own orders," *id.* at 11, which powers "exist[] independently of the underlying statute's prescribed remedies," *id.* at 12. Thus, after petitioners violated the 2008 injunction, the district court "had the inherent power to vindicate its own authority by imposing the $40 million contempt judgment." *Ibid.*

b. Petitioners' contrary arguments (Pet. 28-35) are unpersuasive.

Petitioners emphasize that administrative agencies "have only those powers given to them by Congress." Pet. 30 (quoting *West Virginia* v. *EPA*, 597 U.S. 697, 723 (2022)). But that principle is irrelevant to the question presented here, which concerns the contempt power held by federal courts, not the prerogatives of administrative agencies. See, *e.g.*, *Shillitani*, 384 U.S. at 370. The question thus is not whether Congress empowered *the FTC* to impose contempt sanctions, but whether Congress limited the inherent power of federal courts to remedy violations of their own orders. See, *e.g.*, *McComb*, 338 U.S. 193-194.

Petitioners contend that "Congress has limited * * * the lower courts' power to award" compensatory contempt sanctions to the FTC, Pet. 28 (emphasis omitted), but they identify nothing in the text of the FTC Act (or in any other statute) to support that contention. The two FTC Act provisions that specifically reference "contempt" simply confirm that a party may be held in contempt for violating a court order requiring compliance with an administrative subpoena, 15 U.S.C. 49, or civil investigative demand, 15 U.S.C. 57b-1(h). Beyond that,

the Act says nothing about the remedies available for contempt. Accordingly, nothing in the statutory text purports to displace the "principle 'as ancient as the laws themselves'" that courts have equitable power to remedy violations of their own orders. *Pukke*, 53 F.4th at 103 (quoting 4 William Blackstone, *Commentaries on the Laws of England* 286 (8th ed. 1778)); see *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 47 (1991) (observing that this Court "do[es] not lightly assume that Congress has intended to depart from established principles such as the scope of a court's inherent power") (quoting *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982)) (internal quotation marks omitted).

Petitioners argue that, notwithstanding the FTC Act's silence regarding limitations on courts' contempt powers, the Act's structure gives rise to the "'necessary and inescapable inference'" that Congress intended to "restrict[] * * * what equitable monetary remedies the Commission can obtain in court for civil contempt of a Section 13(b) permanent injunction." Pet. 30 (citation omitted). In particular, they argue (Pet. 32) that, "[i]nsofar as Congress has not given the Commission the power to pursue compensatory equitable remedies" in a statutory enforcement case, it must follow that "a court lacks the power to award those remedies to the Commission" in a contempt case.

That argument is flatly inconsistent with this Court's decision in *McComb*. As discussed above, see pp. 8-9, *supra*, the Court held in *McComb* that a district court has inherent power to impose compensatory sanctions for violations of its own orders, even if a government agency would not be entitled to "restitution" when "suing to restrain violations of the [statute]." 336 U.S. at

193. That holding—which petitioners ignore—controls here.

This Court's decision in *AMG* is not to the contrary. Petitioners read *AMG* as establishing that the FTC "Act does not permit the Commission to obtain equitable monetary remedies in court under any circumstances without first * * * obtaining an administrative cease-and-desist order or suing to enforce an FTC rule." Pet. 31 (emphasis omitted). But the Court's decision in *AMG* did not speak in those categorical terms, nor did the Court have occasion to address monetary contempt sanctions. It simply held that, when the FTC brings a lawsuit under Section 13(b), it may obtain "injunctive but not monetary relief" for statutory violations that occurred in the past. *AMG*, 593 U.S. at 78. As the court of appeals explained, the decision "said nothing about how courts should *enforce* injunctions imposed under § 13(b). Neither the text of the Act nor [this] Court's decision in *AMG* expressly limits a district court's contempt powers in th[at] context." Pet. App. 13-14.[2]

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[2] Petitioners point (Pet. 31) to a pair of decisions addressing the impact of *AMG* "[o]utside the contempt context," but neither decision supports their argument. In *FTC* v. *On Point Capital Partners LLC*, 17 F.4th 1066 (11th Cir. 2021), the court cautioned that "nothing in this opinion should be construed as commenting on or having a legal effect on" the FTC's ability to obtain a compensatory contempt remedy in a related case. *Id.* at 1078. Even further afield is *Illumina, Inc.* v. *FTC*, 88 F.4th 1036 (5th Cir. 2023), which involved an appeal from an FTC administrative cease-and-desist order against an anticompetitive merger. *Id.* at 1045-1046. That case involved no monetary claims.

Petitioners also assert in passing (Pet. 36) that the district court's calculation of the sanctions in this case was "improperly

c. As a practical matter, petitioners' position would deprive the Commission of compensatory relief when a contemnor harms consumers by violating an injunction previously entered under Section 13(b). It is thus at odds with the very purpose of contempt, which empowers a court "to enforce its judgments and orders necessary to the due administration of law and the protection of the rights of suitors." *Young* v. *United States ex rel. Vuitton et Fils S. A.*, 481 U.S. 787, 798 (1987) (quoting *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324, 333 (1904)). And the power to *enter* an injunction that Section 13(b) expressly confers would be largely negated if courts were deprived of their usual tools for enforcing their own orders. See *Pukke*, 53 F.4th at 103 ("Without the ability to enforce its own orders, the judicial system becomes all bark and no bite.").

Petitioners contend (Pet. 34) that, under their position, a district court could still "impos[e] criminal * * * remedies" as well as "coercive incarceration and reasonable fines." But under longstanding principles, courts may seek to rectify abuses of the judicial process by awarding relief "'calibrated to the damages caused by' the bad-faith acts on which [the contempt judgment] is based." *Goodyear Tire & Rubber Co.* v. *Haeger*, 581 U.S. 101, 108 (2017) (quoting *International Union, United Mine Workers of America* v. *Bagwell*, 512 U.S. 821, 834 (1994)) (brackets omitted). To accomplish that objective, courts must be able to grant the "relief that is necessary" to ensure that victims are no worse off than they would have been if the contemnors had

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punitive." The court of appeals declined to consider that objection because petitioners "did not rely on [it] in their Rule 60(b) motion before the district court." Pet. App. 14 n.3. Any such argument accordingly is not properly presented here.

"compli[ed] with [the court's] decree." *McComb*, 336 U.S. at 193.

Moreover, petitioners' recognition that district courts may address contempt of Section 13(b) injunctions through coercive incarceration or fines is inconsistent with their underlying theory in this case. Petitioners argue (Pet. 3) that the district court's compensatory contempt judgment must be set aside because courts cannot impose, as contempt sanctions, any remedies that "are not directly available under Section 13(b)." See Pet. 2-3, 31-32. But Section 13(b) does not authorize coercive incarceration or fines either. And while petitioners note that other FTC Act provisions authorize criminal penalties and civil fines, see Pet. 34 (citing, *inter alia*, 15 U.S.C. 50), the same is true of compensatory remedies, see 15 U.S.C. 57b. Petitioners thus offer no plausible basis for concluding that the FTC Act withdraws district courts' inherent power to award compensatory contempt sanctions, while preserving district courts' inherent power to incarcerate contemnors or impose punitive fines.

d. As petitioners repeatedly concede (Pet. i, 3, 13, 25-28), the decision below is consistent with the approach taken by every other court that has addressed district courts' authority to impose contempt sanctions for violations of lawfully issued Section 13(b) injunctions. For example, the Fourth Circuit sustained a compensatory contempt sanction similar to this one, concluding that *AMG* did not affect the district court's authority to utilize that sanction to enforce an injunction entered under Section 13(b). *Pukke*, 53 F.4th at 102-103, 105-106. The Tenth Circuit likewise upheld a compensatory contempt sanction of attorney's fees, concluding that "*AMG Capital* did not excuse Appellants'

violation of the Injunction." *FTC* v. *Zurixx, LLC*, No. 22-4042, 2023 WL 2733500, at *6 (Mar. 31, 2023).

Petitioners invoke (Pet. 36) one district court's observation that, "at some point in the near future, it may be necessary to decide whether the FTC's request for monetary sanctions in the [contempt] Action is foreclosed by *AMG Capital*." *FTC* v. *Netforce Seminars*, No. 00-cv-2260, 2022 WL 1569076, at *3 (D. Ariz. May 18, 2022). But contrary to petitioners' implication (Pet. 36), that court was not suggesting a need for *this Court* to take up the issue; it was simply describing its *own* anticipated decisionmaking process in the case before it. See *Netforce Seminars*, 2022 WL 1569076, at *3. Once the issue was fully briefed, that district court found that "*AMG Capital* does not affect the scope of relief available in the Contempt Action." *FTC* v. *Noland*, 672 F. Supp. 3d 721, 801 (D. Ariz. 2023).

2. Petitioners separately urge review to address whether "a fundamental change in decisional law [can] independently support relief from a judgment under Rule 60(b)(6)." Pet. i; see Pet. 13-24. But the courts below had no occasion to consider that question, because they correctly recognized that *AMG* did not address district courts' contempt authority and thus would not have provided any basis for reversing the contempt judgment here even if *AMG* had been decided before that judgment became final. See Pet. App. 12, 15, 53. Indeed, petitioners' discussion of the Rule 60(b)(6) question (Pet. 13-24) does not include a single citation to the Petition Appendix in this case.

Because this Court is "a court of review, not of first view," it ordinarily does not grant a writ of certiorari to consider issues that "were not addressed by the Court of Appeals." *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7

(2005). Petitioners identify no sound basis for departing from that practice here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2024