No. 20-1229

In the Supreme Court of the United States

JAMES W. ROBERTSON, SR., PETITIONER

v.

INTRATEK COMPUTER, INCORPORATED

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Section 4712 of Title 41 is a whistleblower protection statute that prohibits federal contractors and grantees from retaliating against employees who disclose waste or abuse. Section 4712 establishes a scheme of administrative and judicial remedies for employees who suffer prohibited retaliation, including the ability to "bring a de novo action at law or equity" in "the appropriate district court of the United States." 41 U.S.C. 4712(c)(2). The question presented is:

Whether the provision of Section 4712 specifying that the "rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment," 41 U.S.C. 4712(c)(7), renders unenforceable an arbitration agreement purporting to waive the judicial remedy provided in Section 4712(c)(2).

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. In 1925, Congress enacted the Federal Arbitration Act (FAA), 9 U.S.C. 1 *et seq.*, to "overcome judicial resistance to arbitration." *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 443 (2006). "The preeminent concern of Congress in passing the Act was to enforce private agreements into which parties had entered." *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U.S. 213, 221 (1985). The FAA provides that any covered arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. 2. If a suit is

brought concerning "any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending" must, "on application of one of the parties," stay the proceedings and refer the matter to arbitration in accordance with the parties' agreement. 9 U.S.C. 3.

Like any statutory directive, the FAA's strong presumption in favor of enforcing arbitration agreements must yield where "Congress itself" has overridden that presumption in another statute. *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (citation omitted). To establish an entitlement to proceed in court notwithstanding an otherwise-valid arbitration agreement covered by the FAA, a party opposing arbitration must show that Congress "has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Ibid.* (citation omitted).

2. In 2013, Congress enacted 41 U.S.C. 4712 as a pilot program to prohibit retaliation against whistleblowers who report abuses related to federal contracts. See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 828, 126 Stat. 1837. Three years later, Congress made the program permanent. See An Act to Enhance Whistleblower Protection for Contractor and Grantee Employees, Pub. L. No. 114-261, § 1, 130 Stat. 1362.

Section 4712 provides that, with exceptions not relevant here, an employee of a federal contractor or grantee "may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing" to enumerated officials or bodies "information that the employee reasonably believes" is evidence of specified types of waste or abuse, including a violation of the laws governing federal contracting. 41 U.S.C. 4712(a)(1).

Section 4712 establishes a detailed remedial scheme for employees who believe they were subjected to a prohibited reprisal. Such an employee must initiate the process by submitting "a complaint to the Inspector General of the executive agency involved." 41 U.S.C. 4712(b)(1). Unless the Inspector General finds that the complaint is frivolous, fails to allege a violation, or has previously been addressed in another "judicial or administrative proceeding initiated by the complainant," the Inspector General must submit a report within a specified period. *Ibid.* After receiving the Inspector General's report, the head of the relevant agency must either "issue an order denying relief" or direct the employer to take corrective action, which can include reinstating or paying compensatory damages to the complainant. 41 U.S.C. 4712(c)(1).

Section 4712(c) authorizes each of the parties to those administrative proceedings to seek judicial relief in specified circumstances. An employer or complainant "adversely affected or aggrieved" by an agency's corrective order or denial of relief may seek judicial review in the appropriate court of appeals. 41 U.S.C. 4712(c)(5). If the employer fails to comply with a corrective order, the agency or the complainant may "file an action for enforcement" in district court. 41 U.S.C. 4712(c)(4).

Alternatively, if the agency denies relief or fails to act within a prescribed period, the complainant "shall be deemed to have exhausted all administrative remedies." 41 U.S.C. 4712(c)(2). Once that occurs, Section 4712(c)(2) provides that "the complainant may bring a de novo action at law or equity * * * to seek compensatory damages and other relief" in "the appropriate district court of the United States." *Ibid.* Section

4712(c)(2) further provides that "[s]uch an action shall, at the request of either party to the action, be tried by the court with a jury." *Ibid.*

Finally, Section 4712(c)(7), the provision directly at issue here, directs that "[t]he rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment." 41 U.S.C. 4712(c)(7).

3. Petitioner, James W. Robertson, Sr., is a former employee of respondent, Intratek Computer, Inc., which provides information technology services to the Department of Veterans Affairs (VA). Pet. App. 27a. As part of his employment agreement with Intratek, Robertson agreed "to submit to binding arbitration any employment related controversy, dispute[,] or claim" and "waiv[ed] the right to a trial by jury of the matters covered by the Arbitration policy." *Id.* at 2a.

Robertson alleges that he was terminated in September 2015 in retaliation for reporting to Intratek management that the company was engaged in violations of the law, including bribery of agency officials to obtain contracts. Pet. App. 3a. Robertson further alleges that shortly after his termination, he informed the VA's Inspector General that he had been fired in retaliation for having complained about the company's illegal activities. *Id.* at 27a.[1]

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[1] In his complaint, Robertson alleged that he "told the Office of the Inspector General for Veterans Affairs that he had been fired for telling" Intratek that its "activities were illegal." Compl. ¶ 59. The lower courts did not question that allegation, Pet. App. 3a, 27a, and its accuracy is not relevant to the question presented. But the VA has informed this Office that its Inspector General did not understand Robertson to be asserting a claim of retaliation under Section 4712.

4. In 2018, Robertson filed a suit in federal district court against Intratek, its Chief Executive Officer (CEO), and a VA employee. Pet. App. 3a. Robertson alleged that the defendants had tortiously interfered with his business relationships and that Intratek had violated Section 4712 by firing him in retaliation for reporting misconduct. *Ibid.*

Intratek and its CEO moved to stay the suit and to compel arbitration. The district court referred the motion to a magistrate judge. After noting the absence of "any case law" interpreting Section 4712(c)(7)'s prohibition on agreements waiving the "'rights and remedies'" available under Section 4712, Pet. App. 35a (citation omitted), the magistrate judge concluded that Section 4712(c)(7) did not bar enforcement of the arbitration agreement and that all of Robertson's claims (including those against the VA employee) fell within the scope of the agreement. *Id.* at 26a-47a; see *id.* at 4a. The district court adopted the magistrate judge's recommendation, granted the motion to compel arbitration, and dismissed the case. *Id.* at 19a-25a.

5. The court of appeals affirmed in part, reversed in part, and remanded. Pet. App. 1a-18a.

The court of appeals explained that the question whether Section 4712's prohibition on the waiver of its "rights and remedies," 41 U.S.C. 4712(c)(7), precludes enforcement of an arbitration agreement was "one of first impression." Pet. App. 5a. The court took the view that Section 4712's anti-waiver provision does not evidence an intent to preclude a waiver of a judicial forum because "the jury trial is not itself a 'right' or 'remedy' created by § 4712." *Id.* at 9a. Instead, the court stated that "a jury trial is one way to vindicate a whistle-

blower's statutory *rights* after the whistleblower exhausts administrative *remedies*." *Ibid.* The court further reasoned that its analysis was consistent with this Court's precedents interpreting prohibitions on waivers of statutory rights and with the need for Congress to "speak with great clarity when overriding the FAA." *Id.* at 12a; see *id.* at 9a-12a.

The court of appeals noted that a prior draft version of Section 4712's anti-waiver provision would have prohibited the waiver of "[t]he rights and remedies provided for in this section[,] * * * *including by any predispute arbitration agreement, other than an arbitration provision in a collective bargaining agreement*." Pet. App. 13a (quoting 158 Cong. Rec. S6142 (daily ed. Sept. 11, 2012)). But in the court's view, that legislative history "d[id] nothing" to illuminate the meaning of the statute because Congress could have dropped the language either as duplicative (suggesting that the remaining reference to "rights and remedies" precludes agreements to resolve Section 4712 disputes by arbitration) or because Congress substantively disagreed with it (suggesting that the remaining language is consistent with an enforceable obligation to arbitrate). *Ibid.*

The court of appeals then determined that Robertson's arbitration agreement covered his claims against Intratek and its CEO, but did not cover his claims against the VA employee. Pet. App. 16a. Accordingly, the court remanded the case for further proceedings as to the VA employee. *Id.* at 16a, 18a.

DISCUSSION

Robertson contends (Pet. 5-29) that this Court should grant the petition for a writ of certiorari and hold that 41 U.S.C. 4712(c)(7) renders unenforceable an arbitration agreement purporting to waive an employee's

ability to file an action in federal district court under Section 4712(c)(2). Robertson is correct that Section 4712(c)(7) precludes a waiver of that judicial remedy, and the court of appeals erred in holding otherwise. But there is no circuit conflict on the question presented; to the contrary, this case appears to be the first one in which the question has arisen. In addition, the question presented does not have the practical importance Robertson suggests. The petition for a writ of certiorari should be denied.

A. Section 4712(c)(7) Prohibits Arbitration Agreements Waiving Section 4712(c)(2)'s Judicial Remedy

The FAA establishes a "liberal federal policy favoring arbitration agreements." *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612, 1621 (2018) (citation omitted). But "[l]ike any statutory directive, the [FAA's] mandate may be overridden by a contrary congressional command." *Shearson/Am. Express Inc.* v. *McMahon*, 482 U.S. 220, 226 (1987). To establish an entitlement to proceed in court, a party opposing arbitration in a case that would otherwise be governed by the FAA must show that Congress "evinced an intention to preclude a waiver of judicial remedies." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (citation omitted). The language of Section 4712(c)(7) establishes Congress's intent to do just that.

1. Section 4712(c) sets out the "Remedy and Enforcement Authority" for the prohibition on whistleblower reprisals provided by Section 4712(a). 41 U.S.C. 4712(c) (capitalization altered). Section 4712(c)(2) specifically provides that, after a complainant exhausts administrative remedies, "the complainant may bring a de novo action at law or equity * * * to seek compensatory damages and other relief available under this section in

the appropriate district court of the United States," and that "[s]uch an action shall, at the request of either party to the action, be tried by the court with a jury." 41 U.S.C. 4712(c)(2). Section 4712(c)(7) then provides: "Rights and remedies not waivable.—The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment." 41 U.S.C. 4712(c)(7) (capitalization altered). The question presented therefore turns on whether Section 4712(c)(2)'s process of seeking redress in court is one of the "remedies provided for" in Section 4712. *Ibid.* The statutory text and context confirm that it is.

The ordinary meaning of the word "remedy" includes "[t]he means of obtaining redress of a wrong or enforcement of a right." *American Heritage Dictionary of the English Language* 1485 (5th ed. 2016); see, *e.g.*, *Black's Law Dictionary* 1407 (9th ed. 2009) ("The means of enforcing a right or preventing or redressing a wrong[.]"); *Webster's Third New International Dictionary of the English Language* 1920 (2002) ("[T]he legal means to recover a right or to prevent or obtain redress for a wrong[.]"). In particular, as this Court's decisions illustrate, the term "remedy" is often used to refer to a cause of action that allows a plaintiff to proceed in court. Chief Justice Marshall, for example, famously quoted Blackstone's statement that "where there is a legal right, there is also a legal remedy by suit or action at law." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (quoting 3 William Blackstone, *Commentaries on the Laws of England* 23 (1768)).[2]

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[2] See also, *e.g.*, *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 209 (2004) (referring to "any state-law cause of action that duplicates,

As this Court has explained, the term "remedy" can also refer to the "specific relief obtainable at the end of a process for seeking redress," such as damages or an injunction, rather than to "the process itself." *Booth* v. *Churner*, 532 U.S. 731, 738 (2001); see, *e.g.*, *Black's Law Dictionary* 1407 ("legal or equitable relief"). The Court has looked to "statutory context" to choose between those meanings. *Booth*, 532 U.S. at 738. And here, the context leaves no doubt that Congress used "remedy" in the sense of the process of seeking redress. Section 4712 refers to circumstances in which a complainant will be "deemed to have exhausted all administrative remedies" and the date when those "remedies are deemed to have been exhausted." 41 U.S.C. 4712(c)(2). "It makes no sense to demand that someone exhaust 'such administrative redress' as is available; one 'exhausts' processes, not forms of relief." *Booth*, 532 U.S. at 739 (brackets omitted). Accordingly, statutory context confirms that Section 4712 used "remedies" to refer to the process for seeking redress, not the ultimate relief.

Further strengthening that inference, Section 4712 consistently refers to the specific relief obtainable at the end of the remedial process as "relief" rather than a "remedy." See 41 U.S.C. 4712(c)(2) ("an order denying relief"); *ibid.* ("compensatory damages and other relief"); 41 U.S.C. 4712(c)(3) ("order denying relief"); 41 U.S.C. 4712(c)(4) ("appropriate relief, including injunctive relief").

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supplements, or supplants the [statute's] civil enforcement remedy"); *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 284 (2002) (explaining that 42 U.S.C. 1983 "generally supplies a remedy for the vindication of rights secured by federal statutes"); *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 471 (1975) (noting that one statute preserves the "remedy of a suit" available under another statute).

The term "remedies" in Section 4712 thus refers to the processes Congress afforded to secure the right to be free from retaliation. Because those processes specifically include an action in court, 41 U.S.C. 4712(c)(2), Section 4712(c)(7)'s prohibition on waiving the "remedies provided for in this section" encompasses a waiver of judicial remedies. Congress has, in short, displaced the FAA by "evinc[ing] an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Gilmer*, 500 U.S. at 26 (citation omitted).

2. Section 4712 is one of several similar whistleblower protection statutes. Some of them include anti-waiver language materially identical to Section 4712(c)(7). See 6 U.S.C. 1142(g); 21 U.S.C. 399d(c)(2); 29 U.S.C. 218c(b)(2); 49 U.S.C. 20109(h), 31105(g). Others include the same text, but add language specifically referring to arbitration. For example, the Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, Tit. X, 124 Stat. 1955 (12 U.S.C. 5301 note), specifies that "the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement," except "an arbitration provision in a collective bargaining agreement." 12 U.S.C. 5567(d)(1) and (3). The statute adds that, subject to the same exception, "no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under this section." 12 U.S.C. 5567(d)(2). Other statutes include similar references to arbitration without the carveout for collective bargaining agreements. See 18 U.S.C. 1514A(e); 26 U.S.C. 7623(d)(5); 31 U.S.C. 5323(j); 49 U.S.C. 60129(e).

Those statutes show that Congress can be even more specific in precluding enforcement of some or all arbitration agreements, but they provide no sound reason to depart from the natural reading of Section 4712(c)(7). Even on the court of appeals' interpretation, Section 4712(c)(7)'s prohibition on the waiver of "remedies" renders an arbitration agreement unenforceable to the extent it prohibits an employee from invoking administrative remedies. Pet. App. 9a. The question thus is not *whether* Section 4712(c)(7) prohibits enforcement of arbitration agreements; it does. Instead, the question is merely *to what extent* it does so: Does it apply only insofar as an arbitration agreement purports to waive administrative remedies (as the court of appeals held) or does it also apply to the extent the agreement purports to waive judicial remedies (as Robertson contends)?

On that question, the parallel statutes including express references to arbitration reinforce the natural reading of Section 4712(c)(7). After setting forth similar remedial schemes, including both administrative and judicial remedies, those other statutes provide that their "rights and remedies" may not be "waived by any agreement, policy, form, or condition of employment, *including by any predispute arbitration agreement*." See, *e.g.*, 12 U.S.C. 5567(d)(1) (emphasis added). That further confirms that the "rights and remedies" in a provision like Section 4712 include the statute's judicial remedy.[3]

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[3] In addition, the specific reference to arbitration agreements in the anti-waiver provision of those statutes suggests that Congress's decision to reiterate that "no predispute arbitration agreement shall be valid or enforceable," see, *e.g.*, 12 U.S.C. 5567(d)(2), reflects a "belt-and-suspenders approach." *Guam* v. *United States*, 141 S. Ct.

3. The court of appeals erred in holding otherwise. The court of appeals first reasoned that a suit in court culminating in a jury trial is not itself a "remedy" covered by Section 4712(c)(7) because it is "the means [Section 4712] provides to secure" the rights created by the statute. Pet. App. 9a; see *ibid.* (stating that "a jury trial is one way to vindicate a whistleblower's statutory *rights* after the whistleblower exhausts administrative *remedies*"). But the court's apparent view that a means provided to secure statutory rights cannot be a remedy contradicts the plain meaning of the term "remedy," which in this context means the "process of seeking redress." *Booth*, 532 U.S. at 738; see pp. 7-10, *supra*.

The court of appeals was likewise mistaken in its view that this Court's decisions interpreting the FAA support its conclusion. Pet. App. 9a-12a. None of those decisions considered anti-waiver language that contains the key text here: a prohibition on waiving not just statutory "rights," but also statutory "remedies."

In *CompuCredit Corp.* v. *Greenwood*, 565 U.S. 95 (2012), for example, the Court held that the anti-waiver provision of the Credit Repair Organizations Act, 15 U.S.C. 1679 *et seq.*, 15 U.S.C. 1679f(a), did not preclude agreements to arbitrate claims brought under that statute. That provision barred waiver of "any *right* of the consumer under th[e] subchapter." *CompuCredit*, 565 U.S. at 99 (emphasis added; citation omitted). The Court explained that the Act did not "provide[] consumers with a right to bring an action in a court of law"; accordingly, the anti-waiver provision did not preclude

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1608, 1615 (2021); see, *e.g.*, *Facebook, Inc.* v. *Duguid*, 141 S. Ct. 1163, 1172 (2021). In light of the double reference to arbitration agreements, the redundancy is "both inescapable and unilluminating." *Seila Law LLC* v. *CFPB*, 140 S. Ct. 2183, 2210 (2020).

enforcement of the arbitration agreement. *Ibid.*; see *id.* at 99-103. That reasoning sheds little light on the interpretation of the anti-waiver provision at issue here, which expressly encompasses statutory "remedies."

Similarly, in *14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247 (2009), the Court considered a statutory provision that limited waivers of a "right" conferred by the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, 29 U.S.C. 626(f)(1). The Court explained that an arbitration agreement "does not waive the statutory right to be free from workplace age discrimination; it waives only the right to seek relief from a court in the first instance," and the Court determined that the Act did not confer "a substantive right to proceed in court." *Pyett*, 556 U.S. at 259, 265-266 (brackets, citation, and internal quotation marks omitted). Section 4712(c)(7), in contrast, specifically prohibits a waiver of the statute's "remedies," not just its substantive rights. 41 U.S.C. 4712(c)(7).

Finally, in an argument echoed by respondent, Br. in Opp. 15-18, the court of appeals invoked this Court's "insistence that Congress speak with great clarity when overriding the FAA." Pet. App. 12a. It is true that this Court has repeatedly "rejected efforts to conjure conflicts between the Arbitration Act and other federal statutes." *Epic Sys.*, 138 S. Ct. at 1627. But the Court has never suggested that courts may disregard the "plain import of a later statute" that "directly conflicts" with the FAA. *Dorsey* v. *United States*, 567 U.S. 260, 274 (2012) (quoting *Lockhart* v. *United States*, 546 U.S. 142, 149 (2005) (Scalia, J., concurring)). As in other contexts, one Congress cannot bind its successors "to use any 'magical passwords' to exempt a later statute" from

an earlier provision. *Ibid.* (citation omitted). Here, Section 4712(c)(7)'s specific prohibition on waivers of remedies overrides the FAA as to the narrow category of administrative and judicial remedies available under Section 4712. See *United States* v. *Estate of Romani*, 523 U.S. 517, 532 (1998) (explaining that courts will give effect to "the more specific statute" in the event of a conflict).[4]

B. The Question Presented Does Not Warrant Review In This Case

Although the court of appeals erred in holding that Robertson waived his right to pursue his Section 4712 claim in court rather than through arbitration, this Court's review is not warranted at this time.

1. There is no conflict among the circuits on the question presented. In fact, aside from the decisions in this case, the government is not aware of *any* decision by any court addressing Section 4712(c)(7). Cf. Pet. App. 5a (explaining that the question is "one of first impression" in the Fifth Circuit); *id.* at 35a (noting the absence of "any case law" interpreting Section 4712(c)(7)).

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[4] The United States has previously explained that the Court often looks "for evidence that Congress intended to address arbitration agreements in particular," meaning that "[a] statute's general reference to litigation rights, even when combined with a provision forbidding the waiver of statutory protections, is insufficient to overcome the FAA's presumption of enforceability." U.S. Br. at 18, *Epic Sys.*, *supra* (Nos. 16-285, 16-300, 16-307) (emphasis omitted). But Section 4712's specific prohibition on the waiver of the "remedies provided for in this section," 41 U.S.C. 4712(c)(7), supplies the clarity that was missing in *Epic Systems*. Again, even the court of appeals appeared to recognize that, despite the absence of a specific reference to arbitration in Section 4712(c)(7), an arbitration agreement that purported to waive *administrative* remedies could not be enforced. Pet. App. 9a.

Furthermore, Robertson has not cited, and the government is not aware of, any court of appeals decisions that address the interaction between the FAA and anti-waiver provisions of other statutes that contain similar "rights and remedies" language.

2. As the paucity of decisions addressing the question presented suggests, that question lacks the legal and practical significance necessary to justify this Court's review. Robertson's contrary arguments are unpersuasive.

Robertson first asserts that "the administrative scheme set up by Congress" in Section 4712 "would be made ineffective by mandatory arbitration." Pet. 10. Robertson is correct that enforcing arbitration agreements that waived employees' ability to invoke the detailed *administrative* process set out by Section 4712 would significantly undermine the statutory scheme. See 41 U.S.C. 4712(b) and (c). But this case does not present that situation: Robertson alleges that he *did* invoke the administrative process, and Intratek did not rely on the arbitration agreement to attempt to bar him from doing so. See Pet. App. 3a, 27a. And the court of appeals appeared to recognize that Section 4712(c)(7)'s anti-waiver provision would bar enforcement of any arbitration agreement that purported to prevent employees from invoking that administrative remedy.

Robertson next hypothesizes that an arbitration agreement might prevent employees from exercising their right under Section 4712(c)(4) to "join in an action" brought by an agency to enforce a corrective order issued at the end of the administrative process. Pet. 13-14 (citation omitted). But the court of appeals did not address that issue, and Robertson does not cite any case

in which it has arisen. Indeed, it is not obvious that arbitration agreements, which generally focus on the initiation of a new claim, would apply to a complainant's intervention in an agency's pending enforcement action. Cf. Pet. App. 2a (quoting the agreement in this case, which requires the employee to "submit to binding arbitration any employment related controversy, dispute[,] or claim between [the employee] and the Company" or its agents).

Finally, Robertson posits (Pet. 11-12) concerns about the "parallel proceedings" that could arise if an employee brought suit under Section 4712(c)(2) and was compelled to arbitrate, but the agency later completed the administrative process and brought an action in court to enforce the resulting order under Section 4712(c)(4). But again, Robertson cites no case in which such a scenario has come to pass, and the government is not aware of one. Indeed, it is not even clear that an agency *could* continue the administrative process after the employee filed suit. Under analogous statutes, courts have treated a filing in district court as depriving the agency of jurisdiction to continue adjudicating the employee's case, such that parallel proceedings generally do not occur. See, *e.g.*, *Stone* v. *Duke Energy Corp.*, 432 F.3d 320, 323 (4th Cir. 2005) (explaining, under the Sarbanes-Oxley whistleblower provision, that "when [the complainant] filed his first complaint in federal court[,] * * * jurisdiction became lodged in the district court, depriving the [agency] of jurisdiction"). And at least one district court has determined that an agency likewise loses jurisdiction over a Section 4712 complaint once an employee files an action in district court. See *Busselman* v. *Battelle Mem'l Inst.*, No. 18-05109, 2018 WL 10374542, at *5 (E.D. Wash. Oct. 24, 2018). Like

the other practical concerns Robertson raises, therefore, his fears about parallel proceedings appear to be overstated—and, at minimum, do not justify this Court's review in the first case in which the question presented has arisen.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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