No. 24-1215

IN THE

Supreme Court of the United States

MINISO DEPOT CA, INC., USA MINISO DEPOT, INC. AND LIN LI,

Petitioners,

v.

YONGTONG LIU,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Federal and state lower courts disagree on the scope of the voiding provision in the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA). *See* 9 U.S.C. § 402(a). Liu fails to show otherwise. The disarray has only grown. Another court has recently disagreed with the California Court of Appeal's conclusion that the EFAA permits voiding arbitration agreements as to claims unrelated to sexual harassment disputes in the same proceeding.

Liu's reading of § 402(a) defies the EFAA's statutory text, structure, and purpose, and decades of this Court's precedent. Liu posits that the use of a single word ("case") in a statute devoted entirely to sexual assault and sexual harassment disputes can void an arbitration agreement as to an entire legal proceeding, including claims wholly unrelated to sexual assault or harassment. Liu relies on three FAA provisions where "case" purportedly means an entire legal proceeding, but she is incorrect about the import of those provisions, and she fails to account for the various provisions that exclusively use "action" or "proceeding"—not "case"—to mean an entire legal proceeding.

Finally, Liu does not dispute that § 402(a)'s meaning is important for potentially thousands of cases every year. This case is an excellent vehicle to address this question, and Liu offers no real contrary argument.

The Petition should be granted.

ARGUMENT

I. Lower Courts Are Divided On The Question Presented.

Liu unsuccessfully tries to downplay the clear split that the Petition demonstrated has emerged amongst lower courts regarding the scope of the EFAA's voiding provision. BIO 7-13; *see* Pet. 12-16. As the Petition explained, some courts, including in the decision below, have adopted an expansive application where once a plaintiff states a claim for sexual harassment, a "pre-arbitration agreement is invalid and unenforceable with respect to the entire …. legal proceeding." *Diaz-Roa v. Hermes L., P.C.*, 757 F. Supp. 3d 498, 532 (S.D.N.Y. 2024), *appeal filed*, No. 24-3223 (2d Cir. Dec. 10, 2024); *see also* Pet. 13 n.3 (collecting cases). The California Supreme Court denied review of the decision below, and its rule now governs all trial courts in the nation's largest court system. *Contra* BIO 7 (arguing no state supreme court has had "time … to address the question presented").

By contrast, other courts have decided that "when a litigant files a case with multiple claims, the EFAA invalidates the otherwise enforceable arbitration agreement only as to the claims that are closely related to, or intertwined with, the sexual assault or sexual harassment dispute." *Bruce v. Adams & Reese, LLP,* No. 24-cv-00875, 2025 WL 611071, at *14 (M.D. Tenn. Feb. 25, 2025) (collecting cases), *appeal filed*, No. 25-5210 (6th Cir. Mar. 13, 2025); *see* Pet. 14 (collecting cases).

Liu addresses *Mera v. SA Hospitality Group, LLC*, 675 F. Supp. 3d 442 (S.D.N.Y. 2023), labeling it an "outlier" in adopting the latter interpretation. BIO 12. Liu is mistaken in her reading of cases purportedly exempting from arbitration claims unrelated to sexual harassment. Take, for example, *Zeng v. Ellenoff Grossman & Schole LLP*, No. 23-cv-10348, 2024 WL 4250387, at *3 (S.D.N.Y. Sept. 19, 2024) (cited at BIO 10, 12). That court declined to compel arbitration of any claims because the defendants failed to "provide[] any argument as to how Plaintiff's retaliation claim is not related to her claims regarding sexual harassment." *Id.* The court explained that the retaliation claim was thus "unlike wage and hour disputes unrelated to harassment claims." *Id.* Liu's misreading is not limited to *Zeng*. *See Turner v. Tesla, Inc.*, 686 F. Supp. 3d 917, 925-28 (N.D. Cal. 2023) (analyzing whether each claim was related to plaintiff's sexual harassment dispute) (BIO 8-9); *Ding v. Structure Therapeutics, Inc.*, 755 F. Supp. 3d 1200, 1218-19 (N.D. Cal. 2024) (same) (BIO 8).

The disagreement has only grown. In *Miles v. Greystar Management Services, LP*, the District of Nevada expressly disagreed with the California Court of Appeal and other courts, holding that the plaintiff's individual and class "wage-hour claims [we]re unrelated to her sexual harassment and retaliation claims," and thus were "subject to arbitration so long as the arbitration agreement is enforceable." No. 25-cv-00262, 2025 WL 2021337, at *3 (D. Nev. July 17, 2025) (granting in part motion to stay discovery). *Miles* found "persuasive" *Mera*, *Turner*, and *Molchanoff v. SOLV Energy, LLC*, No. 23-cv-653, 2024 WL 899384, at *4-5 (S.D. Cal. Mar. 1, 2024) in

requiring a court to assess each claim's relatedness. *Miles*, 2025 WL 2021337, at *3.

As the decision below demonstrates, state courts are also struggling to interpret the EFAA. *Compare Ruiz v. Butts Foods, L.P.*, No. W2023-01053-COA-R3-CV, 2025 WL 1099966, at *12 (Tenn. Ct. App. Apr. 14, 2025), *with O'Sullivan v. Jacaranda Club, LLC*, 206 N.Y.S.3d 562, 563-64 (App. Div. 2024); *see also* Pet. 15. In *O'Sullivan*, only one of multiple plaintiffs raised a claim subject to the EFAA. 206 N.Y.S.3d at 563. Other plaintiffs argued that because "their 'case' include[d] at least one 'claim' covered by the EFAA," the EFAA allowed them to "invalidate[]" *all* of their arbitration agreements. *Id.* The court rejected this argument, concluding, similar to *Mera*, that "the EFAA does not permit [the other plaintiffs] to avoid arbitration of their claims simply by adding [the] EFAA-protected claims to a single complaint." *Id.* at 563-64. Liu herself acknowledges *O'Sullivan* held "plaintiffs … could not void their arbitration agreements by joining another plaintiff" who asserts claims "covered by the EFAA." BIO 12.

In short, arbitration agreements face vastly different results depending on where parties litigate. There is no need to wait for more courts to weigh in. The Court should step in to resolve the conflict.

II. The Decision Below Is Wrong.

1. Liu embraces the California Court of Appeal's analysis, arguing that the EFAA's use of the word "case" means the "entire case" or "entire legal proceeding," and therefore invalidates the arbitration

agreement altogether. BIO 7, 14-15; Pet. App. 14a, 16a. Both Liu and the court below have missed the mark.

First, as explained in the Petition, the word "case" frequently delineates only a specific claim. Pet. 17-18. The ordinary definition of "case" includes a "cause," "controversy[] at law," or "question contested before a court of justice." Black's Law Dictionary (6th ed. 1990). Liu's own sources define "case" as a "general term" that can refer to a "cause" or "controversy." BIO 14 (quoting Black's Law Dictionary 195 (5th ed. 1979)). Liu fails to address these alternative definitions and other contexts where "case" narrowly refers to a single claim.

Liu also points to three FAA provisions in which "case" purportedly means the entire legal proceeding—§§ 4, 7, and 305. BIO 15. But "cases of admiralty," 9 U.S.C. § 4, is a term of art referring to *claims* within admiralty jurisdiction, "not an entire case." *Exist, Inc. v. Tokio Marine Am. Ins. Co.*, No. 22-civ-1679, 2024 WL 96347, at *2 n.3 (S.D.N.Y. Jan. 9, 2024) (quoting Robert Force, Fed. Jud. Ctr., *Admiralty & Maritime Law* 18 (2d ed. 2013)); *see also Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531 (1995). Section 7 refers to summoning witnesses in a "case" that is already in arbitration and thus does little to inform the meaning of "case" in § 402(a)'s exception to arbitration. Here, for example, § 7's procedures would govern only Liu's arbitrable claims; her sexual harassment claims would remain in federal court under the EFAA. Meanwhile, § 305 applies to arbitration agreements under the Inter-American Convention on International

Commercial Arbitration, and it uses "all other cases" to contrast when a different Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards) applies. It provides no support for reading "case" to mean the "entire legal proceeding" under § 402(a). In fact, that same chapter later refers to "actions and proceedings brought under this chapter." 9 U.S.C. § 307.

Liu fails to account for numerous FAA and EFAA provisions—including FAA provisions the EFAA amended[1]—that consistently use "action" when referencing an entire legal proceeding. Pet. 18 (citing 9 U.S.C. §§ 208, 307, 401(2), 402(a)). Because § 402(a)'s arbitration exception uses "case" instead, courts must "'presume[] that Congress intended a difference in meaning.'" *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 161 (2018); *see Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004). Because Liu does not contest that "case" sometimes means "claim," at best her arguments would show that § 402(a) is ambiguous. But any ambiguity favors Miniso's reading. Pet. 19-21.

Second, Liu's expansive interpretation of the word "case" renders other parts of the EFAA largely superfluous. In her view, so long as *one* claim is a sexual harassment claim, "the 'case' relates to sexual harassment." BIO 14. Under this interpretation, there would be no need for Congress's required

[1] By contrast, § 4 and § 7 were last amended in 1954 and 1951, and § 305 has not been amended since its 1990 enactment. Pub. L. No. 83-779, ch. 1263, § 19, 68 Stat. 1233 (1954); Pub. L. No. 82-248, ch. 655, § 14, 65 Stat. 715 (1951); Pub. L. No. 101-369, § 1, 104 Stat. 449 (1990).

"relates to" inquiry because *every* claim is nonarbitrable so long as *any* claim alleges sexual harassment.

But as the Petition established, the EFAA requires that claims have an actual "connection" to a sexual harassment dispute. Pet. 22. Section 402(a) refers expressly to "a case which … relates to … sexual assault … or … sexual harassment." The words "relate to" are "words of limitation." *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (interpreting ERISA statute preempting state laws that "relate to" employment benefit plans). Reading them too broadly here would "effectively read the[ir] limiting language … out of the statute." *Id.* at 661; *see also Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021) ("the phrase 'relate to' incorporates real limits").

Liu's expansive interpretation also renders a key part of § 402(b) unnecessary. That provision requires a court (and not an arbitrator) to determine "[t]he applicability of this chapter to an agreement to arbitrate *and the validity and enforceability of an agreement to which this chapter applies*." 9 U.S.C. § 402(b) (emphasis added). But under Liu's interpretation, what "validity and enforceability" questions would be left for a court to determine for such agreements? Once a court determines that the EFAA "applies" to a single sexual harassment claim, the arbitration agreement would be invalid and unenforceable altogether. This is not what Congress intended. Only Miniso's reading "give[s] effect" to all of the EFAA's provisions. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019).

Third, Liu fails to explain how one word in a provision devoted entirely to sexual assault and sexual harassment disputes can void the parties' agreement to arbitrate issues *wholly unrelated* to those disputes. Much less how that same word can overturn the rest of the FAA's statutory scheme without warning or explanation. *See* California Employment Law Counsel (CELC) Br. 2-3, 8-10 (explaining practical consequences of this interpretation). Had Congress intended to exempt an entire action from arbitration in cases like this one (where only some of the claims relate to a sexual harassment dispute), "it would have done so in a manner less obtuse." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 103 (2012); *see* Pet. 23.

2. Liu's proposed construction also ignores the structure and history of the EFAA. Pet. 19-21. Liu contends that the EFAA's title supports her interpretation of § 402(a) because "Congress intended to amend the FAA with respect to *disputes* involving sexual assault and harassment, not merely with respect to *claims* of sexual assault and harassment." BIO 15. But Liu misses the point. The EFAA amended the FAA *only* "with respect to … disputes involving sexual assault" or harassment, not those unconnected to such disputes, as Liu's reading would require. *Id.*

Indeed, because the FAA as a whole "'seeks broadly to overcome judicial hostility to arbitration agreements,'" this Court has required that its statutory exceptions "be afforded a narrow construction." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001) (citation omitted); *see* Pet. 19. Liu offers no response to this requirement. BIO 15. Narrowly construing § 402(a)'s arbitration exception means that

courts must continue to send arbitrable claims to arbitration. *Cf. KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011); *see* CELC Br. 3-5. Liu summarily states that the EFAA was enacted to "revers[e]" the FAA's general preference for arbitration in cases involving sexual harassment and assault. BIO 15. Nothing in the EFAA, however, overrides the FAA regarding disputes that do *not* involve sexual harassment and assault. *See supra* 4-8; Pet. 4-5, 19-20; *CompuCredit*, 565 U.S. at 103.

Moreover, as the Petition explained (at 20-21), the bill's co-sponsors understood "that only disputes that relate to sexual assault or harassment conduct can escape the forced arbitration clauses." 168 Cong. Rec. S627 (daily ed. Feb. 10, 2022) (remarks of Sen. Gillibrand); *accord* 168 Cong. Rec. S625 (daily ed. Feb. 10, 2022) (remarks of Sen. Graham) ("We do not intend to take unrelated claims out of the [arbitration] contract"). Although Liu dismisses these as "cherry-picked quotes from the legislative history," BIO 15-16, as co-sponsors of the bill, Senators Gillibrand and Graham's statements provide "clear evidence of congressional intent" which "may illuminate ambiguous text," *see Milner v. Dep't of Navy*, 562 U.S. 562, 572, (2011).

Liu cites the House Judiciary Committee's Report, BIO 16, but that only further supports Miniso's construction. In its "Section-by-Section Analysis," the Report "describes the bill as reported by the Committee": "New section 402 first provides that at the election of a person alleging conduct that constitutes a sexual harassment or sexual assault claim, no predispute arbitration agreement … shall be valid or

enforceable relating to *disputes described within the chapter*"—which is to say, sexual harassment disputes, not all disputes in the lawsuit even when unrelated to sexual harassment. H.R. Rep. No. 117-234, at 19 (2022) (emphasis added). The Report also describes a bipartisan coalition of state attorneys general who wrote Congress to explain that "'[e]nding mandatory arbitration of sexual harassment *claims* would help to put a stop to the culture of silence that protects perpetrators at the cost of their victims.'" *Id.* at 11 (emphasis added). Nowhere does the Report evince a purpose to exempt claims *unrelated* to sexual harassment from arbitration.

3. Most of Liu's 15 claims do not relate to a sexual harassment dispute. They focus on wage-and-hour violations (based on her alleged misclassification as an "exempt" employee) and adverse employment actions (after she complained about alleged unlawful business practices). Pet. 7-8; Pet. App. 6a. The trial court should have compelled arbitration of those claims. Pet. 22-24.

Liu asserts that "[a]ll" of her claims "are related to the sexual harassment she endured," because "[s]everal" allege retaliation for complaining about the harassment. BIO 17. Neither court below adopted this view. Pet. App. 17a, 31a-33a. And for good reason: Liu alleged retaliation for complaining about unlawful labor practices, not sexual harassment. Pet. 22. And Liu's argument ignores her wage-and-hour claims; she does not assert that the misclassification allegations are "related" to any sexual harassment. Even the court below recognized that Liu brought

both business-related claims and sexual-harassment claims. *See* Pet. App. 3a-6a (summarizing claims).

That is the crux of the matter before this Court: Even though the courts below acknowledged that Liu brought various claims unrelated to sexual harassment, they concluded that the EFAA exempted *all* her claims from arbitration. Pet. App. 17a, 31a-33a. This was error. The FAA requires courts to compel arbitration "in accordance with the terms of the agreement," 9 U.S.C. § 4, when that mandate has not been clearly "overridden by a contrary congressional command." *CompuCredit*, 565 U.S. at 98 (citation omitted). The trial court should have required Liu to arbitrate all claims unrelated to the sexual harassment dispute alleged in her complaint.

III. This Case Is An Excellent Vehicle To Review This Indisputably Important Question.

Liu does not dispute that the question presented is important. Nor could she credibly do so. Employees raise thousands of sexual harassment disputes each year. Parties need clarity on whether the agreements on which they have long relied are effectively a nullity once a sexual harassment dispute is alleged, no matter the number or breadth of other disputes raised in the same case. Pet. 25-26. Indeed, as the amicus explains, employers have expressly *excluded* sexual harassment claims from their arbitration agreements to ensure they are enforceable for other disputes. CELC Br. 4. This Court can and should act now to resolve the substantial uncertainty created by courts' contradictory interpretations of § 402(a).

Liu nonetheless contends that this case is a "terrible" vehicle for addressing the question presented, based on her incorrect contention that "[a]ll" of her claims "are related to the sexual harassment she endured." BIO 16-17. They are not. *Supra* 10-11. If this Court holds the EFAA does not preclude arbitrating unrelated claims, then the decision below requires reversal. Pet. 26-27.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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