No. 25-1408

In the Supreme Court of the United States

GOLDMAN SACHS BANK USA, d/b/a Marcus by Goldman Sachs,

Petitioner,

v.

RHEA ANN BROWN; GREGORY KEVIN MAZE,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This case presents a clear circuit conflict over whether the FAA requires arbitration of a debtor's private Section 362(k) automatic-stay claim. The stakes are substantial—the split creates "a host of significant real-world problems" for lenders and borrowers, implicating "hundreds of thousands of debtor-creditor relationships each year." ABA Amicus Br. 4-5. The Fourth Circuit's decision fails to heed the FAA's and this Court's clear command to enforce arbitration agreements unless doing so inherently conflicts with another federal statute. Certiorari is warranted.

On the circuit split, respondents do not deny that Maze's Section 362(k) claim in this case is substantively and procedurally identical to the claim the Second Circuit sent to arbitration in *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006). As respondents candidly argued below, the Fourth Circuit's precedent "simply cannot be reconciled with *Hill*." Resp.CA4.Br. 27. The split is real.

On the merits, respondents identify no actual conflict between arbitrating their private Section 362(k) claim and the Bankruptcy Code. Instead, they manufacture a false equivalency between that claim and a motion for contempt under Section 105(a), which all agree is not arbitrable. Respondents' related warning about the specter of duplicative Section 362(k) and contempt proceedings is unrealistic as a practical matter and irrelevant to the conflict analysis. It also has no bearing on this case, where respondents brought no contempt motion and instead initiated a nationwide class action that cannot be used for contempt.

Respondents' other arguments fare no better. They downplay Section 362(k)'s importance even though it provides their only independent cause of action and the only route they identify to certifying a class action. And respondents' vehicle argument mischaracterizes GS Bank's argument below and ignores that flawed bankruptcy rulings often evade circuit-court review.

The Court should grant review.

ARGUMENT

I. THE CIRCUIT CONFLICT IS REAL

This case implicates two acknowledged conflicts: a direct split with *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006), over arbitration of Section 362(k) claims, and a broader split over the significance of "core" status in bankruptcy arbitration.

1. Below, respondents repeatedly conceded that Fourth Circuit precedent on the arbitrability of Section 362(k) claims "simply cannot be reconciled with [the Second Circuit's decision in] *Hill*." Resp.CA4.Br. 27; *see* MTC Opp. 16, Bankr.Ct.Dkt.19 (calling *Hill* "incompatible with applicable Fourth Circuit precedent"). The BIO now calls (at 11-16) *Hill* "distinguishable" on three grounds. None works.

First, respondents distinguish respondent Brown from plaintiff Hill. They stress (at 13-14) that Brown's Chapter 13 case remains open, her stay is operative, and a recovery might affect her plan.

Those points have no force whatsoever as to Maze, as respondents essentially admit (at 14). Maze's

Chapter 7 case is closed, his stay has expired, and estate administration is over—exactly as in *Hill*. Pet.16. Indeed, respondents themselves told the bankruptcy court that applying *Hill* would require "Chapter 7 bankruptcy debtors (like Mr. Maze in this case)" to "arbitrat[e]." MTC Opp. 16. That concedes a "clear circuit split." Pet.App.28a (King, J., dissenting).

Hill also requires arbitrating Brown's Section 362(k) claim. Respondents emphasize (at 13-14) that Brown's claim belongs to her Chapter 13 estate. But *Hill* asks whether arbitration would "affect an ongoing reorganization"—not whether the estate owns a claim. 436 F.3d at 109-10. Arbitration would have no such effect. Brown's confirmed plan does not depend on a Section 362(k) monetary recovery; at most, a future recovery might support plan modification—the same way winning the lottery might. But that consequence is an effect of receiving money, not of arbitration. An arbitral award and a bankruptcy-court judgment would have the same potential effect on Brown's plan.

Respondents observe (at 14) that "the Fourth Circuit did not separately assess Ms. Brown's and Mr. Maze's cases." True—but it should have. And their assertion (at 14) that GS Bank never asked for a debtor-specific analysis is incorrect. GS Bank's opening brief explained that "it is helpful to review the status of each Plaintiff's bankruptcy case" to "see how arbitration … would not interfere with the administration of Plaintiffs' bankruptcy estates," Pet.CA4.Br. 29-30, then did precisely that: explaining why Maze's recovery would have "zero impact" on estate administration while separately addressing Brown's confirmed plan, *id.* at 29-31, and mapping each debtor onto "*Hill*'s facts," *id.* at 31-34; *see* Pet.CA4.Reply. Br. 9. The Fourth Circuit's categorical rule treated that analysis as irrelevant.

Second, respondents note (at 12) that *Hill* involved "only Section 362(k), not Section 105(a)." But the circuit split—and this case—is about Section 362(k). Whether or not a debtor files a motion for contempt under Section 105(a) has no bearing on whether arbitrating its private Section 362(k) claim conflicts with the Bankruptcy Code.

As explained further below, Section 362(k) and a Section 105(a) contempt motion are distinct procedural vehicles for challenging an automatic-stay violation. This case involves only the former. *Infra* 7-10. Indeed, respondents' own description of *Hill* underscores how closely its facts match this case: There, as here, the debtor "'filed a complaint under [Section] 362[k] for damages, not a motion for contempt [under Section 105(a)].'" BIO12.

Third, respondents suggest (at 11) that *Hill* "may no longer be good law" after *Anderson v. Credit One Bank, N.A.* (*In re Anderson*), 884 F.3d 382 (2d Cir. 2018), and *Belton v. GE Cap. Retail Bank*, 961 F.3d 612 (2d Cir. 2020). That suggestion is unfounded.

Those cases concerned enforcement of the Section 524 discharge injunction through contempt, not adjudication of a private statutory claim. Far from retreating from *Hill*, *Anderson* expressly "[f]ollow[ed] the logic of … *Hill*." 884 F.3d at 389-90. It distinguished *Hill* because Section 524, unlike Section 362(k), creates no private cause of action: Discharge violations are remedied through "contempt"—proceedings that "cannot be described as 'claims' subject to arbitration" at all. *Id.* at 390-91; *see Belton*, 961 F.3d at 617.

The cases therefore fit neatly together. *Hill* sends private Section 362(k) claims to arbitration; *Anderson* and *Belton* keep contempt with the bankruptcy court. *See* Robert M. Lawless, *Reframing Arbitration & Bankruptcy*, 96 Am. Bankr. L.J. 701, 721-29 (2022) (Lawless) (distinguishing Section 362(k) claims from enforcement of Section 524 injunction); *infra* 7-8. This distinction also explains why this Court's certiorari denials in *Anderson* and *Belton* have no bearing here. BIO4.

2. Respondents fare no better in dismissing (at 16-18) the broader split over the role of "core" status in bankruptcy arbitrability. As the petition explained, the Fourth and Ninth Circuits give "core" status independent weight; the Third and Fifth Circuits do not. Pet.19-20.

Respondents call that conflict a "vaguely defined disagreement[] about methodology." BIO16-17. In fact, the dispute is over a concrete "matter of law," *id.*: Does core status carry independent weight in deciding arbitrability? That legal question recurs whenever courts confront arbitration of a core bankruptcy claim. Pet.20.

Respondents say that the Third and Fifth Circuits merely regard core status as "not dispositive." BIO17. The cited opinions go further. *In re Mintze* held that the core/noncore distinction "does not … affect" the arbitrability inquiry. 434 F.3d 222, 229 (3d Cir. 2006). *In re National Gypsum* likewise explained that the core/noncore distinction "conflates" the "mere identification of the [proceeding's] jurisdictional basis" with the required inherent-conflict inquiry.

118 F.3d 1056, 1067 (5th Cir. 1997). Yet the Fourth Circuit here treated core status as erecting a "high bar" to arbitration. Pet.App.11a-12a.

A factor that creates a "high bar" in one circuit but "does not … affect" the inquiry in another presents a concrete disagreement of law. Indeed, courts and commentators have repeatedly recognized this disagreement. Pet.20; *see, e.g.*, Paul F. Kirgis, *Arbitration, Bankruptcy, and Public Policy: A Contractarian Analysis*, 17 Am. Bankr. Inst. L. Rev. 503, 518-20 (2009) ("The Split on Arbitration of Core Claims"). Respondents ignore them all.

II. THE DECISION BELOW IS WRONG

1. Respondents offer nothing persuasive on the merits. The FAA requires arbitration unless Congress has made a contrary intent "'clear and manifest.'" *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018). The petition explained why each of the Fourth Circuit's asserted "inherent conflict[s]" between arbitration and the Bankruptcy Code fails. Pet.25-31. Respondents answer that these inadequate rationales somehow become adequate when added "together." BIO21. But zero plus zero is zero. Respondents still do not explain how arbitration of *these* claims would impact administration of *these* estates, much less how arbitration is "irreconcilable" with the statutory scheme. *Epic Sys.*, 584 U.S. at 511. And they do not dispute that the Fourth Circuit's rationales have no stopping point: Centralization, uniformity, and bankruptcy expertise can be invoked just as readily against arbitration of countless other bankruptcy claims. Pet.33-34.

2. Unable to defend the decision on its own terms, respondents try to spin GS Bank's longstanding point

that compelling arbitration of Section 362(k) claims will not eliminate the bankruptcy court's authority to address "contempt" under Section 105(a). Pet.27-28. Respondents treat that narrow point as conceding that *all* Section 362(k) claims must remain in court, too. BIO1, 3, 21-22, 24. Their logic seems to be that Section 105(a) contempt motions and private Section 362(k) claims must be treated the same for arbitration purposes because they are essentially equivalent.

Respondents are wrong: Contempt motions invoking Section 105(a) and Section 362(k) claims are analytically and procedurally distinct in important ways. As relevant here, Section 105(a) does not create a freestanding claim or cause of action; it merely authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. *See* 1 *Norton Bankruptcy Law and Practice 3d* § 13:4 (2026, online). Section 362(k), meanwhile, *does* create a "private cause of action." *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 481, 484-85 (4th Cir. 2015).

This contempt/private-claim distinction matters to the arbitration analysis: As Professor Lawless explained, "[a] motion for contempt" invokes the court's inherent power to enforce its own orders, and an "agreement between the debtor and [creditor] cannot deprive the court"—a "third party"—"of its authority to punish contempt." Lawless 722, 728. But in a private Section 362(k) claim, the debtor seeks "to recover damages for its own benefit"—not to "vindicate the court's authority"—so any concerns about vindicating judicial authority "melt away." *Id.* at 729. GS Bank's recognition that contempt implicates core judicial power and is not arbitrable has no bearing on the distinct Section 362(k) issue here.

3. The contempt/private-claim distinction also defeats respondents' *Epic Systems* rejoinder. Respondents reason that if contempt remains in court without an express anti-arbitration command, statutory silence cannot support arbitration of Section 362(k) claims either. BIO24. But as explained, contempt proceedings remain with the court because they invoke the court's own power to enforce its orders. With contempt, there is no private "claim" triggering arbitration in the first place. Lawless 701, 722, 728-29.

4. Respondents' final objection (at 23) is that allowing parallel contempt and Section 362(k) proceedings would produce "waste, conflict, and confusion." That case-management concern is unlikely to arise in practice and cannot supply the "inherent conflict" required to displace the FAA.

In the real world, debtors harmed by an automatic-stay violation are unlikely to pursue duplicative relief under Section 362(k) and contempt in separate proceedings, given Section 362(k)'s clear advantages over contempt. Section 362(k)'s liability test is demanding but nonetheless makes damages "easier to impose" than contempt, *In re Chateaugay Corp.*, 920 F.2d 183, 186-87 (2d Cir. 1990), which is available only "if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct," *Taggart v. Lorenzen*, 587 U.S. 554, 557 (2019). Section 362(k) imposes mandatory actual damages on proof of harm and expressly authorizes punitive damages, while Section 105(a) relief is entirely "'discretionary.'" BIO6; *see In re Del Mission Ltd.*, 98 F.3d 1147, 1152-53 (9th Cir. 1996). And because the contempt power belongs to the court that issued the injunction, contempt cannot be pursued in a nationwide class action like the one respondents seek here. *See, e.g.*, *Bruce v. Citigroup Inc.*, 75 F.4th 297, 302-07 (2d Cir. 2023); *In re Crocker*, 941 F.3d 206, 216-17 (5th Cir. 2019). Respondents recognized that very limitation on contempt below. Br. 57-58, D.Ct.Dkt. 23.

Even if a Section 362(k) action and contempt motion might theoretically be brought in parallel proceedings, this Court has long held that the FAA requires arbitration even when nonarbitrable matters remain in court and "piecemeal litigation" results. *KPMG LLP v. Cocchi*, 565 U.S. 18, 19-20 (2011) (per curiam); *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217, 222-23 (1985) (rejecting potential preclusion as basis to deny arbitration). Courts manage sequencing and preclusion as those issues arise; such concerns do not override the FAA at the outset.

In fact—and directly contrary to respondents' assertion (at 24)—courts routinely compel arbitration of private claims while retaining contempt jurisdiction. *See, e.g.*, *PRL USA Holdings, Inc. v. U.S. Polo Ass'n, Inc.*, 2015 WL 1442487, at *6-7 (S.D.N.Y. Mar. 27, 2015). What respondents call (at 22) "bizarre" is in fact the ordinary consequence of enforcing the FAA.

Finally, it bears emphasis that respondents' case-management concern does not apply to this case. Despite respondents' repeated suggestions otherwise (at 1, 8, 19-22), they never initiated a Section 105(a) contempt proceeding here. Contempt is pursued by "motion" in the bankruptcy case. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Respondents filed no such motion; they instead sought a nationwide class action that asserted one cause of action under Section 362(k). Section 105(a) appeared only as authority for ancillary injunctive relief on that Section 362(k) claim. CA4 Appendix 27, 29.

GS Bank accordingly moved to compel arbitration of the entire action, and respondents never argued that any separate Section 105(a) or contempt matter would remain behind if GS Bank prevailed. To the contrary, respondents insisted that arbitrating claims like theirs would "strip" courts of their contempt powers altogether. MTC Opp. 12-13. This case presents no question of bifurcating a contempt proceeding from a Section 362(k) claim.

III. THE QUESTION PRESENTED IS IMPORTANT AND SHOULD BE RESOLVED HERE

1. The practical stakes of the question presented are substantial. As the ABA explains, the circuit split impacts hundreds of thousands of debtor-creditor relationships each year, with enforceability of the same arbitration agreement turning on geographic happenstance. ABA Amicus Br. 4-5. The decision below "virtually guarantee[s] costly litigation over arbitrability and venue" before reaching the merits of a Section 362(k) claim—and greater pressure to settle rather than incur the costs of that fight. *Id.* at 3-6.

Respondents try to downplay (at 18) the importance of the issue by noting that only two circuits have weighed in. But the split creates "real-world problems"—injecting uncertainty into contract drafting and litigation planning, shaping whether lenders invoke arbitration, and increasing settlement pressure. ABA Amicus Br. 4. In any event, the issue is frequently litigated in bankruptcy and district courts across the country. Pet.14, 16. And respondents do not deny that Section 362(k) disputes often settle along their long path from bankruptcy court to this Court. Pet.34. This petition offers a rare chance to resolve a conflict otherwise evading review. *Id.*

2. Respondents also claim (at 18-19) that Section 105(a) contempt is a practical substitute for Section 362(k) claims, so arbitration of the latter would make little real-world difference. That contradicts what they told the Fourth Circuit. Even while acknowledging that bankruptcy courts retain "contempt" authority, respondents argued that arbitrating their Section 362(k) claims would be "tantamount to immunity," foreclose enforcement of the automatic stay "on a collective basis," and leave the court "handcuffed" in assessing damages. Resp.CA4.Br. 42-43.

That rhetoric was over the top, but the underlying point was right: Contempt and Section 362(k) are not interchangeable. As explained, their liability rules, procedures, remedies, and reach all differ. *Supra* 8-9. Congress would not have created Section 362(k) if contempt already did the same work.

3. None of respondents' three purported vehicle defects holds water.

Respondents first object (at 19-20) that the Second Circuit has not addressed Brown's precise fact pattern—an open Chapter 13 case—so this Court would have to decide how a *Hill*-type standard applies to Brown in the first instance. That overstates the difficulty. Lower courts regularly apply *Hill* in ongoing bankruptcy cases, including Chapter 13 proceedings. *See, e.g.*, *In re Banks*, 549 B.R. 257, 266-

68 (Bankr. D. Or. 2016); *In re TexStyle, LLC*, 2012 WL 1345646, at *8-9 (Bankr. S.D.N.Y. Apr. 17, 2012). The Court would not be writing on a blank slate.

In any event, this Court routinely announces the governing legal standard and remands for application. It could do that here. And if the Court wishes to say more, having both a closed Chapter 7 case and an open, post-confirmation Chapter 13 case makes this a *better* vehicle by allowing the Court to illustrate how the correct standard operates across two common debtor postures. Pet.34.

Respondents next urge the Court (at 20) to wait for a case presenting both a Section 362(k) claim and a separate contempt proceeding under Section 105(a). This is the Section 105(a) fallacy yet again. The two are analytically distinct, *supra* 7-9, and there is no circuit conflict over contempt. Respondents offer no reason to postpone review of the acknowledged Section 362(k) conflict until some future case happens to present a separate contempt issue that itself does not warrant review.

Finally, respondents also briefly reprise (at 20) a phony waiver theory they have pressed repeatedly and unsuccessfully. They claim (at 20) GS Bank "affirmatively waived its current argument about Section 362(k) by representing to the bankruptcy court" that it had "'discretion'" to deny arbitration. Even a cursory review of the briefing shows otherwise. GS Bank's position has been consistent: A bankruptcy court may deny arbitration only upon finding an "inherent conflict" with the Bankruptcy Code, and none exists here. MTC 10-11, Bankr.Ct.Dkt.15; MTC Reply 2, 4; Opening Br. 18-22, D.Ct.Dkt.21; Pet.CA4.Br. 18-23; Pet.CA4.Reply.Br. 2-

8. That is why no court below gave this theory any credence. There is no waiver.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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