No. 25-441

IN THE

Supreme Court of the United States

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

v.

HEALTH CARE SERVICE CORPORATION,
Respondent.

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

BRIEF IN OPPOSITION

MARTIN J. BISHOP
JASON MAYER
CROWELL & MORING LLP
300 N. LaSalle Dr.
Suite 2500
Chicago, IL 60611
(202) 624-2500

AMY M. PAULI
CROWELL & MORING LLP
1601 Wewatta, Suite 815
Denver, CO 80202
(303) 524-8660
apauli@crowell.com

DANIEL W. WOLFF
Counsel of Record
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 624-2500
dwolff@crowell.com

QUESTIONS PRESENTED

The No Surprises Act ("NSA") bans out-of-network health care providers from issuing surprise medical bills to patients for certain services covered by group or individual health plans. In addition to protecting patients from liability, the NSA creates a framework to address payment disputes between those out-of-network providers and health plans, including a statutorily mandated independent dispute resolution ("IDR") process in which a certified IDR entity chooses one of the parties' competing rate offers. Health plans make any payments for IDR determinations directly to providers, not patients—and the outcome of IDR cannot, as a matter of law, impact what is paid to or by plan beneficiaries. Further, the NSA provides that, except in narrow circumstances inapplicable here, an IDR determination "shall not be subject to judicial review[.]" 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Rather than allow private enforcement, Congress delegated broad authority to the agencies of jurisdiction to enforce compliance wih the NSA.

The questions presented are:

1. Whether plan beneficiaries have Article III standing (and providers have assignee standing) under ERISA to sue plans for the untimely payment of IDR awards to providers, where such payments are not owed by and have no impact on plan beneficiaries.

2. Whether the NSA creates an implied private right of action to enforce IDR awards in court when Congress barred judicial review of IDR awards except in specified circumstances not relevant here and delegated NSA enforcement to federal agencies.

CORPORATE DISCLOSURE STATEMENT

Respondent Health Care Service Corporation ("HCSC") has no parent corporation, and there is no publicly held corporation owning 10% or more of HCSC.

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INTRODUCTION

Petitioners seek review of two questions that do not warrant certiorari. The Court already answered the first question in *Thole v. U. S. Bank, N.A.*, 590 U.S. 538 (2020), when it held that ERISA beneficiaries whose benefits are entirely unaffected by the complained-of conduct lack Article III standing to sue. On the second, the statutory text is clear, there is no circuit split, the Fifth Circuit faithfully applied this Court's precedent, and federal district courts throughout the country are reaching the same conclusion as the Fifth Circuit.

This case involves the No Surprises Act ("NSA"), a consumer protection statute that bans surprise medical bills for out-of-network (i) emergency services, (ii) air ambulance services, and (iii) professional services provided at an in-network facility to patients covered by group or individual health plans. *E.g.*, 42 U.S.C. § 300gg-135.[1] The NSA protects patients from surprise billing in two principal ways. First, it bars out-of-network providers of the aforementioned services from billing a patient any more than the patient would be obligated to pay under their health plan if the same services had been provided by participating (*i.e.*, in-network) providers. 42 U.S.C. § 300gg-111(a)(1)(C). Second, the NSA takes patients out of the middle of surprise billing disputes by creating a separate framework for out-of-network providers and health plans to resolve them. *E.g.*, 42 U.S.C. § 300gg-112(b). That framework includes an IDR process in which a certified IDR

[1] The NSA appears in the Public Health Services Act, ERISA, and the Internal Revenue Code. *E.g.*, 42 U.S.C. §§ 300gg-111, 300gg-112; 29 U.S.C. §§ 1185e, 1185f; 26 U.S.C. §§ 9816, 9817.

entity ("IDRE") chooses one of the parties' competing rate offers as the final payment determination. *Id.* § 300gg-112(b)(2), (b)(4)–(6). At the conclusion of the IDR process, any payments pursuant to the IDR determinations must flow *from the plan directly to the provider*—with no involvement by or impact on the patient. *E.g.*, *id.* §§ 300gg-112(b)(6), 300gg-135.

The NSA also specifies that IDR determinations "shall not be subject to judicial review," except in limited circumstances not relevant to this dispute. *Id.* § 300gg-112(b)(5)(D) (incorporating *id.* § 300gg-111(c)(5)(E)). Instead, Congress delegated authority to the Departments of Health and Human Services ("HHS"), Labor ("DOL"), and Treasury (collectively, the "Agencies") to enforce compliance. 42 U.S.C. §§ 300gg-22(b)(2), 300gg-134 (providing for HHS enforcement for NSA non-compliance); 29 U.S.C. § 1132(a)(5) (providing for DOL enforcement for ERISA violations, including NSA non-compliance); 26 U.S.C. §§ 9834, 4980D (providing for Treasury enforcement for NSA non-compliance).

Respondent offers and administers health insurance and benefit plans, including those governed by ERISA. Petitioners provide air ambulance services but do not participate in Respondent's network of contracted providers. Petitioners sought additional payments from Respondent through the IDR process and received IDR determinations. When Respondent did not pay some of the IDR determinations within the 30-day period specified by the NSA, Petitioners filed this lawsuit against Respondent, asserting, among other things, an implied action to enforce the IDR determination and a claim for denial of ERISA benefits.

The district court dismissed the action, holding that the NSA does not provide Petitioners with a private cause of action to enforce IDR determinations in court, and that Petitioners lacked derivative standing to sue under ERISA. Applying *Thole* and other precedent from this Court, the Fifth Circuit affirmed. And the growing consensus among district courts facing the same questions is that the Fifth Circuit got it right. The petition should be denied for the following reasons:

First, there is no circuit split regarding Petitioners' lack of standing to bring an ERISA claim in this case. Petitioners assert standing as assignees of plan beneficiaries' claims for ERISA benefits. But plan beneficiaries are shielded from any liability for surprise medical bills beyond their in-network cost sharing. Plan beneficiaries also have no stake in—and thus no standing to enforce—IDR payment determinations. The NSA instead directs *plans* to issue qualified IDR payments directly to providers. 42 U.S.C. § 300gg-112(b)(6). Such payments are not benefits owed to plan beneficiaries, and indeed, beneficiaries' liability and benefits are entirely unaffected by the amount or timeliness of IDR payments. 42 U.S.C. § 300gg-135. This Court held in *Thole* that a plaintiff suing under ERISA must demonstrate a concrete injury-in-fact to show standing no differently than any other plaintiff suing in federal court. That holding squarely applies here, and thus there is no claim to assign. As in *Thole*, "[w]inning or losing this suit would not change the" plan beneficiaries' benefits, so there is no ERISA standing. 590 U.S. at 547. The purported "split" decisions cited by Petitioners, which pre-date *Thole*,

are not comparable because they both involved a "denial of plan benefits" owed to plan beneficiaries. That is not the case here.

Second, there is no reason for this Court to review whether the NSA grants a private cause of action to Petitioners to enforce IDR determinations in federal court. The NSA (1) expressly *bars* judicial review of IDR determinations, (2) contains no text authorizing confirmation and enforcement, and (3) delegates matters of enforcement to the Agencies. The Fifth Circuit correctly applied this Court's precedent in reaching its conclusion. There is no circuit split, and federal district courts are reaching the same conclusion as the Fifth Circuit.

STATEMENT

I. Surprise billing providers like Petitioners compelled Congress to act.

The United States predominantly uses a managed health care system. A central feature of managed health care involves group and individual health plans contracting with a network of doctors, hospitals, and other health care providers to provide quality and cost-efficient care to plan "members" (or beneficiaries). *See* H.R. Rep. No. 116-615, at 51 (2020). These "in-network" providers agree to accept the rates provided in their contract with a health plan and refrain from billing the patient beyond his or her in-network cost-sharing amount (*e.g.*, deductible, co-insurance, co-payment).

"Out-of-network" providers are the opposite: they do not agree to join the health plan's network, accept a negotiated rate for their services, or refrain from billing the patient beyond the patient's cost-share.

Instead, out-of-network providers "balance bill" patients the difference between the provider's "billed charge" – an "inflated," "non-market-based rate[]" – and the amount covered by the health plan. *See id.* at 51, 53, 57.

Sometimes, patients choose to obtain treatment from out-of-network providers. But there are also "[s]ituations in which patients have little or no control over whether a provider is in- or out-of-network[.]" *Id.* at 51. In those instances, out-of-network providers historically would issue "surprise medical bills" to patients. *See id.*

Prior to enactment of the NSA, air ambulance providers were frequent issuers of surprise medical bills. *Id.* at 52. They "hold substantial market power" and "face highly inelastic demands for their services because patients lack the ability to meaningfully choose or refuse [their] care[.]" *Id.* at 53. This dynamic enables them "to charge amounts for their services that … result[] in compensation far above what is needed to sustain their practice." *Id.* When the NSA was drafted, nearly 70% of air ambulance providers were out-of-network. *Id.* at 52–53. Congress deemed this system a "market failure" that was having "devastating financial impacts on Americans and on their ability to afford needed health care." *Id.*

II. Congress enacted the NSA to protect patients from surprise medical bills.

With the NSA, Congress banned out-of-network providers of (i) emergency services, (ii) air ambulance services, and (iii) professional services at in-network facilities from billing plan beneficiaries above the patient's in-network cost sharing for covered health

care services. *E.g.*, 42 U.S.C. §§ 300gg-131, 300gg-132, 300gg-135.

Congress also determined "that any surprise billing solution must comprehensively protect consumers by 'taking the consumer out of the middle' of surprise billing disputes." H.R. Rep. No. 116-615, at 55. Thus, it created a separate framework for these out-of-network providers and health plans to resolve disputes over surprise medical bills without any involvement from, or financial impact on, the patient. The framework only applies when the plan covers the service, and the only dispute is over the amount of payment for the provider. *See, e.g.*, 42 U.S.C. § 300gg-112(b)(1); 86 Fed. Reg. 36,872, 36,901 (July 13, 2021).

A. The NSA's IDR process limits judicial review to circumstances not presented here.

NSA-eligible providers who are dissatisfied with a health plan's payment for their services may initiate "open negotiations" and attempt to negotiate an agreed payment rate for 30 days. 42 U.S.C. § 300gg-112(b)(1)(A). If negotiations fail, then either party may initiate the IDR process for "qualified IDR" services within four days after the open negotiation period is exhausted. *Id.* § 300gg-112(b)(1)(B). The parties then select, or HHS appoints, a certified IDRE to make a payment determination. *Id.* § 300gg-112(b)(4)–(5).

The IDR process resembles "baseball-style" dispute resolution. H.R. Rep. No. 116-615, at 56–57. The provider and health plan each submit an offer of payment. 42 U.S.C. § 300gg-112(b)(5)(A), (B). The IDRE then picks one party's offer as the out-of-

network rate. *Id.* Payment "with respect to qualified IDR air ambulance services … shall be made directly to the nonparticipating provider not later than 30 days after the date on which such determination is made." *Id.* § 300gg-112(b)(6). The NSA further specifies that the IDRE's payment determination:

> (I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and
>
> (II) ***shall not be subject to judicial review***, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9.

42 U.S.C. §§ 300gg-111(c)(5)(E)(i), 300gg-112(b)(5)(D) (emphasis added).

Section 10(a)(1)–(4) of the Federal Arbitration Act ("FAA") provides that a United States court "may make an order vacating the award" in certain enumerated circumstances. 9 U.S.C. § 10(a)(1)–(4). The NSA does not cite any other provision of the FAA or otherwise contemplate any other form of judicial review.

B. Congress directed the Agencies to establish, implement, and enforce the NSA and IDR process.

Congress charged the Agencies (HHS, DOL, and Treasury) with establishing and implementing the IDR process. *See* 42 U.S.C. § 300gg-112(b)(2)(A); 29 U.S.C. § 1185f(b)(2)(A); 26 U.S.C. § 9817(b)(2)(A). Congress also vested those Agencies with

enforcement authority over payor and provider non-compliance with the NSA, including by imposing civil monetary penalties. 42 U.S.C. §§ 300gg-22(b)(2), 300gg-134 (providing for HHS enforcement for NSA non-compliance); 29 U.S.C. § 1132(a)(5) (providing for DOL enforcement for ERISA violations, including NSA non-compliance); 26 U.S.C. §§ 9834, 4980D (providing for Treasury enforcement for NSA non-compliance).

Thus, in constructing the IDR process, Congress created a comprehensive *regulatory scheme* subject to administrative enforcement mechanisms so health plans and providers alike would have incentive to comply. Under this authority, the DOL and HHS's Centers for Medicare & Medicaid Services ("CMS") oversee the IDR process, including "through complaint reviews and market conduct examinations." Gov't Accountability Off., GAO-24-106335, Private Health Insurance: Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging, at 36 (Dec. 2023) ("GAO-24-106335").[2] CMS maintains an online portal through which providers may submit complaints about the IDR process. *See* CMS, No Surprises Complaint Form.[3] In response to provider complaints of untimely IDR award payments, CMS and DOL have used their congressionally delegated enforcement authority to compel health plans "to pay the provider the determined award amount." *See* GAO-24-106335, at 36–37. According to the report,

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[2] https://www.gao.gov/assets/870/864587.pdf.

[3] https://nsa-idr.cms.gov/providercomplaints/s/ (last visited Dec. 9, 2025).

DOL had closed 11,485 of 12,585 complaints as of August 2023 (over 91%) and facilitated millions of dollars in additional payments from plans to providers. *Id.* at 39 & n.61.

The rollout and administration of the IDR process has been far from perfect. One of the primary challenges is that health care providers flooded the IDR process with far more disputes than the Agencies originally anticipated.[4] Shortly before it launched, the Agencies expected that "17,333 [disputes] will be submitted as part of the Federal IDR process each year." 86 Fed. Reg. 55,980, 56,066 (Oct. 7, 2021). Between January 1 and July 31, 2025, parties had initiated ***1.4 million*** disputes through the federal IDR process, which is more than ***80 times*** the original estimate for a full calendar year. CMS, *Independent Dispute Resolution Reports*.[5]

The Agencies and health plans have ramped up efforts to manage the staggering volume. As of July 2025, "96.5% of all IDR disputes submitted since the beginning of the program have either been resolved or are less than 30 business days old." CMS, *Fact Sheet: Clearing the Independent Dispute Resolution Backlog*,

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[4] *See* CMS, *Federal Independent Dispute Resolution Process – Status Update*, at 1 (Apr. 27, 2023), https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf (noting a volume of IDR disputes more than 14 times what had been estimated); GAO-24-106335, at 21 (noting a nearly 10-fold greater volume of IDR disputes in calendar year 2022 than anticipated).

[5] https://www.cms.gov/nosurprises/policies-and-resources/reports (last visited Dec. 9, 2025).

at 3 (Sep. 19, 2025).[6] And a recent survey found that in 2024, plans paid nearly three out of every four IDR determinations within 30 days.[7]

III. Petitioners sued Respondent seeking judicial review and enforcement of IDR determinations, and the lower courts dismissed their claims.

Petitioners sued Respondent seeking judicial review and enforcement of IDR determinations that they claimed Respondent had not paid within 30 days. Pet.App.18a.[8] Petitioners asserted two claims relevant here. First, they brought an action under the NSA's "Timely Payment" provision, 42 U.S.C. § 300gg-112(b)(6). *Id.* at 18a, 24a. Second, they asserted a claim for benefits under ERISA Section 502(a)(1)(B) on behalf of plan members who allegedly assigned their rights to benefits to Petitioners. *Id.* at 18a.

Respondent moved to dismiss Petitioners' claims under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). *Id.* at 18a-20a. The district court granted that motion. *Id.* at 20a. The court held that the NSA did not create a private action for Petitioners to enforce IDR determinations

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[6] https://www.cms.gov/files/document/fact-sheet-clearing-independent-dispute-resolution-backlog.pdf.

[7] AHIP/BCBSA Survey at 5, https://ahiporg-production.s3.amazonaws.com/documents/202510_AHIP_IB_No_Surprises_Act_Survey51.pdf.

[8] HCSC had paid many of the IDR determinations at issue in the Complaint at the time of filing, and it has since paid or ensured payment on all of the IDR determinations to which it was a party to the underlying IDR proceeding.

in court. *Id.* at 25a. As to the ERISA claim, it held that Petitioners lacked standing. *Id.* at 25a-28a.

The Fifth Circuit affirmed the district court's decision on both counts. On the NSA claim, the court held that Petitioners have no private cause of action because (1) "[t]he NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA" that are inapplicable here, (2) "Congress *has* incorporated § 9 [of the FAA] to create a private right of action" in other legislation "but declined to do so" with the NSA, and (3) Congress instead "empowered HHS to assess penalties against insurers for failure to comply with the NSA." *Id.* at 8a. On the ERISA claim, the court relied on *Thole*, 590 U.S. at 547, and concluded that "because the beneficiaries would lack Article III standing if they brought an ERISA claim on their own, [Petitioners] lack standing to bring a derivative ERISA claim as their assignees[.]" *Id.* at 13a. Central to the court's holding was that the plan beneficiaries would suffer no "actual harm" from Respondent's failure to timely pay IDR awards. *Id.*

Petitioners' motion for rehearing *en banc* was denied. Dkt. No. 107 at 1. This petition followed.

REASONS FOR DENYING THE PETITION

The usual reasons for this Court electing to wade into a case are lacking here.

There is no split among the Courts of Appeal about whether a plan beneficiary who suffers no concrete injury nonetheless has standing to bring an ERISA claim. Nor is the question independently deserving of the Court's attention, because the Court already answered it in *Thole*, 590 U.S. at 541–42. That is

likely why Petitioners' *amici curiae* do not join their argument that certiorari should be granted on petitioners' first question presented.

There is also no split of authority among the circuits on whether the NSA implies a right to confirm IDR awards in federal court, or anything so novel or pressing about the question that demands the Court's attention now. The Fifth Circuit's decision correctly applied this Court's precedents on implied rights of action. Except for circumstances not present here, the NSA's text expressly *bars* judicial review of IDR determinations. The NSA also delegates enforcement authority to the Agencies, and the DOL and HHS do in fact police compliance with the NSA, including payment of IDR awards. All district courts to have considered the question presented by Petitioners, save one, have agreed with the Fifth Circuit's holding and reasoning, and the one outlier predates the Fifth Circuit's ruling and is so unhelpful to Petitioners that they do not cite it.

The petition should be denied.

I. There is no circuit split as to Petitioners' lack of ERISA standing.

This Court's precedent holds that ERISA beneficiaries have no Article III injury-in-fact, and thus no standing to sue, as "the outcome of th[e] suit would not affect" them. *See Thole*, 590 U.S. at 541–42. *Thole's* holding is dispositive here.

As alleged assignees of Respondent's beneficiaries' rights, Petitioners contend they have standing to bring ERISA claims for Respondent's untimely payments of IDR determinations under the NSA because the delay constituted a denial of an ERISA

benefit. Pet. 15 (citing 29 U.S.C. § 1132(a)(1)(B)). But the NSA shields plan beneficiaries from any liability beyond the patient's in-network cost-share for covered out-of-network services. Plan beneficiaries also have no stake in the IDR process between the provider and the plan; they have nothing to assign. Thus, regardless of whether the plan issues payment to the provider according to the IDR determination, the beneficiary will be in the exact same position vis-à-vis the plan and the provider. *See Thole*, 590 U.S. at 541.

Petitioners' claim of a "2-1 circuit split" is illusory. Pet. 16–17. The two circuit court decisions that Petitioners identify in their favor pre-date *Thole* and are inapposite. Those cases address plan beneficiaries' standing to sue for benefits *owed to the beneficiaries*—not for payments to providers in which beneficiaries have no interest. The Fifth Circuit had no occasion here to determine whether a breach of contract alone constitutes injury under ERISA. Moreover, no circuit court has held that an ERISA plan beneficiary (or a provider to which he or she has assigned his claims) has standing to sue where the ERISA plan fails to timely pay an IDR determination rendered under the NSA. There is, therefore, no split of authority that warrants this Court's attention.

A. *Thole*'s holding that an ERISA plan beneficiary who suffers no injury lacks standing dictated the decision below.

ERISA authorizes a plan participant or beneficiary to file an action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). ERISA does not authorize health care

providers like Petitioners to bring such a claim. *See id.* To bring their Section 502(a)(1)(B) claim, Petitioners allege that they were assigned the right to plan benefits from Respondent's plan beneficiaries and may therefore stand in the shoes of the beneficiaries to enforce IDR determinations. Pet. 15. Their ERISA claim was appropriately dismissed for lack of standing.

To establish standing under Article III of the Constitution, a plaintiff must show:

> (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.

Thole, 590 U.S. at 540 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

Standing requires proof of "a concrete injury even in the context of a statutory violation." *Id.* at 538–39 (citation omitted); *see TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021) ("No concrete harm, no standing."). The injury must also be "particularized," meaning that it "must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560, n.1. As *Thole* observed, "there is no ERISA exception to Article III." 590 U.S. at 547.

In *Thole*, two participants in U.S. Bank's retirement plan brought a putative class action under ERISA, claiming mismanagement of the plan's investments. *Id.* at 540–41. The plaintiffs' retirement plan was a defined-benefit plan under which retirees

received a fixed payment each month, and the payments did not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions. *Id.* Thus, if plaintiffs "were to *lose* this lawsuit, [the beneficiaries] would still receive the exact same … benefits that they are already slated to receive, not a penny less," and if they "were to *win* this lawsuit, [the beneficiaries] would still receive the exact same [] benefits" they had thus far received and would receive going forward, and "not a penny more." *Id.* at 541. The Court concluded that "[t]he plaintiffs have no concrete stake in this dispute and therefore lack Article III standing." *Id.* at 547.

That is the case here. Plan beneficiaries are not impacted, and suffer no injury, when an ERISA plan fails to pay an IDR determination rendered under the NSA. They already received services from Petitioners, and the statute mandates that they are responsible for their in-network cost-sharing only, regardless of what occurs in the IDR process. *See* 42 U.S.C. § 300gg-135 (declaring that out-of-network air ambulance providers "***shall not bill, and shall not hold liable*,** [the] participant, beneficiary, or enrollee for a payment amount for such service furnished by such provider" beyond the patient's cost-sharing for the service) (emphasis added).

As Petitioners acknowledge, the NSA operates by "tak[ing] patients out of … payment disputes over out-of-network emergency medical care." Pet. 1. The IDR process is strictly for health plans and providers to resolve surprise billing disputes without involving or impacting the beneficiary. 42 U.S.C. § 300gg-112(b). Plan beneficiaries are not involved in the IDR process, they are not entitled to receive any portion of awards

issued through it, and regardless of the outcome, out-of-network providers are prohibited from seeking additional payments from the beneficiary for the services. *Id.* §§ 300gg-112(b), 300gg-135. So as in *Thole*, "[w]inning or losing this suit would not change the" beneficiaries' plan benefits. 590 U.S. at 547 (finding no injury-in-fact for plan beneficiaries' ERISA claim because they would receive same benefit amount no matter the lawsuit's outcome).

Although the Fifth Circuit relied on *Thole* in affirming that Petitioners lack standing, Pet.App. 12a–13a, Petitioners' only mention of *Thole* is buried in a footnote. *See* Pet. 22–23, n.4. They note *Thole* confirms that "[i]f [the beneficiaries] had not received their vested pension benefits, they would of course have Article III standing to sue and a cause of action under ERISA § 502(a)(1)(B) to recover the benefits due to them." *Thole*, 590 U.S. at 542. But for plan beneficiaries, the payment of IDR determinations are not "benefits ***due to them***." *Id.* (emphasis added); *see* 29 U.S.C. § 1132(a)(1)(B). Instead, the NSA states that payment for qualified IDR determinations "shall be made ***directly to the nonparticipating provider***[.]" *See* 42 U.S.C. § 300gg-112(a)(3)(B), (b)(6) (emphasis added); *accord* 29 U.S.C. § 1185f(a)(3)(B), (b)(6). Regardless of whether the health plan pays the IDR determination, the plan beneficiaries "would still receive the exact same … benefits that they are already slated to receive, not a penny less," and "not a penny more." *Thole*, 590 U.S. at 541.

Petitioners seek to "make standing law more complicated than it needs to be." *Id.* at 547. Here, the beneficiaries whose ERISA claims Petitioners seek to advance "lack Article III standing for a simple,

commonsense reason": "[w]inning or losing this suit would not change" what benefits are provided to them. *Id.* Thus, beneficiaries "have no concrete stake in this dispute and therefore lack Article III standing"—indeed, they have nothing to assign. *Id.* The Fifth Circuit correctly held that plan beneficiaries have no standing to sue for untimely payment of IDR determinations.

B. The Fifth Circuit's ERISA-standing holding does not create a circuit split.

Petitioners' claim that the Fifth Circuit's ERISA standing holding creates a 2-1 circuit split is a straw man. Unlike this case, the "split" decisions Petitioners identify from the Sixth and Eighth Circuits—which predate *Thole*—both involved a "denial of plan benefits" allegedly owed to a beneficiary under the terms of the plan. *Mitchell v. Blue Cross Blue Shield of N.D.*, 953 F.3d 529, 536 (8th Cir. 2020); *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018). Neither case addressed a claim, as here, to payments owed *exclusively* to a provider. Here, a plan's non-payment of an IDR determination is not a denial of plan benefits *owed to a beneficiary*.

In both *Springer* and *Mitchell*, the plaintiff beneficiaries claimed denial of benefits owed to them under the terms of their respective health plans. *Springer*, 900 F.3d at 287 (plaintiff "was denied health benefits he was allegedly owed under the plan"); *Mitchell*, 953 F.3d at 533 (plaintiffs claimed "air-ambulance benefits under an employee health plan"). The Article III injury question in each case was whether plaintiffs had standing to sue for benefits owed to them where the plaintiffs had agreed

to assign their benefits to providers. In these circumstances, the Sixth and Eighth Circuits held standing existed: plaintiffs had a concrete injury from denial of benefits *owed to them*, even where any litigation recovery would ultimately be directed to providers. *E.g.*, *Springer*, 900 F.3d at 287 ("[A] patient-assignor suffers a concrete injury whenever she is denied use of funds rightfully hers or the benefit of her bargain, regardless of whether she has directed the money be paid to a third party for her convenience.") (internal quotation marks and citation omitted).

Here, by contrast, the moneys owed to Petitioners via the IDR process are not bargained-for benefits owed to beneficiaries that beneficiaries have assigned to providers. To the contrary, these are amounts awarded under a statutorily-mandated process that are owed *exclusively to providers*. 42 U.S.C. § 300gg-112(a)(3)(B), (b)(6). Beneficiaries have no entitlement to or authority to direct these payments and therefore nothing to assign. Whether such payments are made does not and cannot impact beneficiaries under the NSA. Thus—even assuming *Springer* and *Mitchell* remain good law following *Thole*—those cases say nothing about IDR payments owed to emergency providers.

Regulations confirm this distinction. As the Agencies explained when establishing the IDR process, there is "a significant distinction" between an adverse benefit determination and a payment for a covered service that "may be disputed through the open negotiation process or through the IDR process." 86 Fed. Reg. at 36,901. Regarding the former, an adverse benefit determination occurs when the beneficiary is "personally liable for payment to a

provider[,]" and the decision "can be disputed through a plan's or issuer's claims and appeals process." *Id.* Regarding the latter, the Agencies specified:

[W]hen: (1) the adjudication of a claim results in a decision that does not affect the amount the participant, beneficiary, or enrollee owes; (2) the dispute only involves payment amounts due from the plan to the provider; and (3) the provider has no recourse against the participant, beneficiary, or enrollee, ***the decision is not an [adverse benefit determination] and the payment dispute may be resolved through the open negotiation or the IDR process***.

Id. (emphasis added).

IDR determinations do not implicate plan benefits or ERISA claim procedures. The Fifth Circuit correctly observed that the IDR "process exists entirely outside and independent of ERISA." Pet.App.13a. Because there is no "denial of plan benefits" when a health plan fails to timely pay an IDR determination, *Springer* and *Mitchell* are not comparable.

C. The Fifth Circuit's decision did not opine on breach of contract standing, so any such questions would not be resolved by this case.

This case does not implicate any questions over whether a breach of contract alone is sufficient to confer Article III standing. Petitioners brought a claim seeking benefits under Section 502(a)(1)(B) of ERISA. Pet.App.18a. The focus of such a claim is whether the participant or beneficiary is entitled "to recover benefits due to him under the terms of his plan[.]" 29 U.S.C. § 1132(a)(1)(B); *see Thole*, 590 U.S.

at 542. A beneficiary has no right to "benefits due to him" for the payment of IDR determinations "under the terms of his plan[.]" 29 U.S.C. § 1132(a)(1)(B). *Thole* directs that there is no standing to bring a Section 502(a)(1)(B) claim here.

For that reason and others, the Court should disregard Petitioners' charge that the Fifth Circuit "has contradicted itself and now stands on both sides of the split" given its opinion in *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445 (5th Cir. 2022). Pet. 20. "It is 'well-settled' in the Fifth Circuit that … 'one panel of our court may not over-turn another panel's decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our en banc court.'" *United States v. Perez-Gallan*, 125 F.4th 204, 209 (5th Cir. 2024) (citation omitted). And the Fifth Circuit can easily harmonize its opinion in this action with its decision in *Denning*.

In *Denning*, the Fifth Circuit held that plaintiff established "sufficient injury for standing purposes" when claiming that the defendant had breached contractual duties owed to her. 50 F.4th at 451–52. The court nonetheless affirmed dismissal for lack of standing because the plaintiff's claimed injury was not redressable. *Id.* Unlike *Denning*, here, beneficiaries are owed no contractual duty to receive IDR payments. And when the Fifth Circuit addressed Petitioners' "breach of contract" argument for the sake of the argument, it indicated that as in *Denning*, the claim would be subject to dismissal:

> Providers argue the injury to beneficiaries is nonetheless cognizable because the beneficiaries have suffered a breach of contract and so have been

> denied a benefit of their bargain with HCSC. We disagree. This technical violation, if it amounts to one, does no actual harm to the beneficiaries and is consequently an abstract theory insufficient for Article III injury. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021) ("Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." [Citation].)

Pet.App.13a.

Petitioners also overstate the existence of a broader circuit split on so called "breach of contract" standing. Most of the cases Petitioners cite predate *Thole* and *TransUnion*. *See Dinerstein v. Google, LLC*, 73 F.4th 502, 520, 522 (7th Cir. 2023) (distinguishing many of the same cases cited by Petitioners because they predated *TransUnion*, and holding that "an alleged breach of contract, without any corresponding actual harm, does not give rise to an Article III case or controversy"). And none of the cases Petitioners cite supports standing where no relevant contractual duties are owed *to the plaintiff*. *E.g.*, *Smith v. UnitedHealth Grp. Inc.*, 106 F.4th 809, 813 (8th Cir. 2024) (dismissing breach of contract action, and holding that beneficiaries alleged no "breach of contract as they are not contractually entitled to having a payment of approved benefits be made in cash"); *Glennborough Homeowners Assoc. v. USPS*, 21 F.4th 410, 415–17 (6th Cir. 2021) (declining to resolve whether breach of contract alone

establishes an injury-in-fact). In any event, *this* case—which concerns a statutory obligation to make payments to providers, not any contractual duty owed to beneficiaries—is not a proper vehicle to address *that* debate.

II. There is no reason for the Court to review whether the NSA provides a private cause of action.

Through the NSA, Congress not only removed beneficiaries from the middle of payment disputes between health plans and out-of-network providers, but also spared the courts from serving as the final arbiter of those disputes except in limited circumstances inapplicable here. The Fifth Circuit correctly held that Congress created no private right of action for providers to enforce IDR determinations in court. No other court of appeals has yet addressed the question, and nearly every district court that has done so has reached the same conclusion.

There is, therefore, no circuit split on this question. Nor does the Fifth Circuit's opinion conflict with this Court's precedents. And there is growing consensus among district courts that the Fifth Circuit's decision is correct. Nothing compels this Court's intervention.

A. The NSA does not create a private cause of action.

"[C]reating a cause of action is a legislative endeavor." *Egbert v. Boule*, 596 U.S. 482, 491 (2022). Absent Congress's clear statutory intent "to create not just a private right but also a private remedy," "a cause of action does not exist and courts may not create one, no matter how desirable that might be as

a policy matter, or how compatible with the statute." *Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001) (citation and internal quotes omitted). This aligns with ordinary statutory construction, where "the text of a law controls over purported legislative intentions unmoored from any statutory text," and courts "may not replace the actual text with speculation as to Congress' intent." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 815 (2024) (internal quotation marks and citation omitted).

Petitioners' contention that the NSA provides a private right of action fails on plain text. Pet. 24. The Fifth Circuit correctly held that the NSA does not create or imply a private right of action for Petitioners to enforce IDR determinations in court. "Indeed, the NSA's text and structure point in the opposite direction." Pet.App.6a. The NSA (1) expressly *bars* judicial review of IDR determinations, except in circumstances not relevant here, (2) omits text authorizing confirmation and enforcement, and instead, (3) delegates matters of enforcement to the Agencies. Pet.App.6a–10a.

The NSA's text directly refutes Petitioners' arguments regarding "structural" features of the Act. And Petitioner's policy arguments are irrelevant. "[P]rivate enforcement does not always benefit the public … [a]nd balancing those costs and benefits [of private enforcement] poses a question of public policy that, under our system of government, only Congress may answer." *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 385 (2025).

1. The NSA prohibits "judicial review" of IDR awards except

for the FAA's vacatur provisions.

In the NSA, Congress stated expressly that IDR determinations "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); Pet.App.6a. This statutory text forecloses Petitioners' request for judicial enforcement of IDR determinations.

As this text makes plain, no "judicial review" is permissible with one specified exception: under Section 10 of the FAA, which allows for vacatur of arbitration awards. The text conspicuously *omits* any authorization for judicial review under Section 9 of the FAA—*i.e.*, the provision authorizing confirmation of arbitration awards. That should be the end of the argument.

Petitioners argue that the statute's express limitations on judicial "review" impose no limitations on judicial "enforcement" of IDR determinations. But this argument is inconsistent with both statutory and judicial precedent. Congress and this Court routinely use the term "judicial review" to broadly describe private causes of action, including actions to vacate, modify, confirm, or enforce a dispute resolution award. *See, e.g.*, 33 U.S.C. § 2236(b)(2) (referring to civil action for "judicial review"); 42 U.S.C. § 10139(c) (same); 5 U.S.C. § 581(a) (statute entitled "Judicial Review" states that "any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9"); *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552

U.S. 576, 578 (2008) ("The Federal Arbitration Act … provides for expedited judicial review to confirm, vacate, or modify arbitration awards."); *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 611 (1993) (noting ERISA "provides for judicial review of the arbitrator's decision by an action in the district court to enforce, vacate, or modify the award").

There is thus no merit to Petitioners' contention that Congress "routinely distinguishes between these two functions," including "in the FAA," because Section 9 of the FAA addresses confirmation of awards, while Sections 10 and 11 address the bases for vacatur or modification of an award. Pet. 32.Petitioners ignore that Congress has explicitly characterized *all* of these functions—including confirmation—as forms of "review." *See* 5 U.S.C. § 581(a) ("[A]n action for *review* of such [arbitration] award" may be brought "only pursuant to the provisions of sections 9 through 13 of title 9.") (emphasis added). So too has this Court. *Mattel, Inc.*, 552 U.S. at 578. There is no basis to read the NSA's bar on all "judicial review" to implicitly authorize additional, unmentioned forms of judicial action.

This Court interprets statutes in harmony with existing statutes and common law. *See United States v. Hansen*, 599 U.S. 762, 778 (2023) ("When Congress transplants a common-law term, the old soil comes with it.") (internal quotation marks and citation omitted); *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 108 (2010) ("[C]ongressional enactments should be construed to be consistent with one another."). Thus, the NSA's prohibition of "judicial review" of IDR determinations, except "in a

case described in" the FAA's vacatur provisions, confirms that Congress did not intend to create a private right of action.

Rather than follow this Court's principles of statutory interpretation, Petitioners ignore the many statutes and common law cited by the Fifth Circuit that explain the meaning of "judicial review." *See* Pet. 31–32. And the sources they do cite do not support their position. For example, Petitioners claim that per Black's Law Dictionary, the term "judicial review" is limited to "review of another decisionmaker's decision to see if it should be *disturbed*." *Id.* at 31. But the Black's Law Dictionary definition is not so limited and does not even mention the term "disturbed." Judicial Review, *Black's Law Dictionary* (12th ed. 2024) ("A court's power to review the actions of other branches or levels of government[.]").

2. The NSA does not authorize private enforcement of IDR awards.

In addition to barring judicial review except for circumstances not relevant here, the NSA does not include text authorizing a private cause of action to enforce IDR determinations. Congress's choice is critical because in other similar statutes, it expressly authorized private enforcement. This omission from the NSA is revealing.

For example, FAA Section 9 authorizes judicial review to enforce an arbitration award where the parties have a written agreement to arbitrate their dispute. 9 U.S.C. § 9. And Congress has expressly incorporated FAA Section 9 in other dispute resolution legislation. *E.g.*, 5 U.S.C. § 580(c) ("A final

award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of" the FAA); 35 U.S.C. § 294(b) ("Arbitration of such disputes, awards by arbitrators and confirmation of awards shall be governed by title 9[.]"); 41 U.S.C. § 7107(a)(3) ("An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 to 13 of title 9[.]"). "[B]ut Congress chose not to incorporate § 9 into the NSA" or any other enforcement mechanism. Pet.App.8a. Instead, Congress "incorporated only parts of § 10" of the FAA. *See id.*

As this Court has held, that omission is key:

> It is a fundamental principle of statutory interpretation that "absent provision[s] cannot be supplied by the courts." … A textual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision.

Rotkiske v. Klemm, 589 U.S. 8, 14–15 (2019) (citations omitted).

This Court has recognized that similar omissions were purposeful and conclusive. *Sandoz Inc. v. Amgen Inc.*, 582 U.S. 1, 17 (2017) (explaining that "when Congress wished to provide a private damage remedy, it knew how to do so and did so expressly") (quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 572 (1979)); *e.g.*, *Azar v. Allina Health Servs.*, 587 U.S. 566, 576–77 (2019) (holding that the Medicare Act's borrowing of some but not all of the Administrative Procedure Act's exemptions via cross-reference

"strongly suggest[ed] [that Congress] acted 'intentionally and purposefully in the disparate' decisions") (citation omitted). The NSA authorizes specifically enumerated forms of judicial review not relevant here, but says nothing about a right to enforce the NSA's payment obligation in court. That ends the analysis. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019) (when "examination" of a statute's ordinary meaning "yields a clear answer, judges must stop").

3. Congress granted the Agencies authority to enforce a plan's failure to timely pay an IDR award.

The structure of the NSA further shows that Congress did not intend for Petitioners to privately enforce IDR determinations in federal court. "Instead, Congress took a different tack: it empowered HHS [and the other Agencies] to assess penalties against insurers for failure to comply with the NSA." Pet.App.10a.

In constructing the IDR process, Congress created a comprehensive regulatory scheme subject to administrative enforcement mechanisms so health plans and providers alike would have incentive to comply. Congress specifically charged the Agencies with enforcing the NSA's provisions, including non-payment or untimely payment of IDR determinations. 42 U.S.C. §§ 300gg-22(b)(2) (providing for HHS enforcement against payors for NSA non-compliance), 300gg-134 (providing for HHS enforcement against providers for NSA non-compliance); 29 U.S.C. § 1132(a)(5) (providing for DOL enforcement for ERISA violations, including NSA non-compliance).

Administrative enforcement in this context is not theoretical. The DOL and CMS have acted on their congressionally delegated authority by soliciting provider complaints and compelling health plans to pay IDR awards. *See* GAO-24-106335, at 36–37, 39.

The "express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Sandoval*, 532 U.S. at 290. And where Congress has enacted "a comprehensive legislative scheme including an integrated system of procedures for enforcement," "[t]he presumption that a remedy was deliberately omitted from a statute is strongest[.]" *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985) (quoting *Nw. Airlines, Inc. v. Transp. Workers Union of Am., AFL-CIO*, 451 U.S. 77, 97 (1981)). The Fifth Circuit correctly concluded that "[t]he NSA's structure conveys Congress's policy choice to enforce the statute through administrative penalties, not a private right of action." Pet.App.10a–11a.

4. Petitioners fail to show that Congress implied a private cause of action in the NSA to enforce IDR awards.

Given the structure of the NSA, it strains logic for Petitioners to insist that Congress (1) barred judicial review of IDR awards, except for specified circumstances not relevant here, (2) omitted text authorizing private enforcement, and (3) delegated enforcement and other authorities to the Agencies—yet simultaneously implied a private cause of action for providers. Petitioners cannot overcome Congress's clear intentions, as demonstrated by the text and structure of the NSA.

In attempting to meet their burden, Petitioners point to two NSA provisions they claim support their private cause of action: (1) the "binding" provision, which states that qualified IDR determinations are "binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim," and (2) the "Timing of Payment" provision, which states that payment for IDR awards involving "qualified IDR air ambulance services … shall be made directly to the nonparticipating provider not later than 30 days after the date on which such determination is made." 42 U.S.C. §§ 300gg-111(c)(5)(E)(i)(I), 300gg-112(b)(5)(D), (b)(6). But Petitioners are pressing an intention of Congress that the NSA's text does not support.

The NSA's administrative enforcement scheme is consistent with the "Timing of Payment" and "binding" provisions in the NSA. By making certain qualified IDR determinations "binding" and subject to payment within 30 days, the Agencies can wield their enforcement authority against health plans that fail to comply. And they have. *See* GAO-24-106335, at 35.

Moreover, the "binding" and "Timing of Payment" provisions do not demonstrate congressional intent to grant a private cause of action. Congress has shown that merely designating a dispute resolution determination as "binding" is insufficient to create a private right of action for judicial enforcement. *Compare, e.g.*, 5 U.S.C. § 580(c) ("A final award is binding on the parties to the arbitration proceeding, and ***may be enforced pursuant to sections 9 through 13*** of [the FAA].") (emphasis added) *with* 42 U.S.C. § 300gg-111(c)(5)(E) (IDR determinations

"shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts", and "***shall not be subject to judicial review***, except in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA]." (emphasis added). When Congress legislates and intends to grant private enforcement of a dispute resolution award, it does so explicitly. *E.g.*, 5 U.S.C. § 580(c); 35 U.S.C. § 294(b); 41 U.S.C. § 7107(a)(3). Congress did not do so here.

Moreover, Petitioners' attempt to draw parallels between arbitration and IDR falls flat. *See* Pet. 27–28. If parties submit to a binding arbitration agreement, then, by operation of FAA Section 9, they necessarily agree that the arbitration award will be subject to judicial confirmation. *See* 9 U.S.C. § 9; Pet. 27. But here, the parties have no agreement. IDR is statutorily compelled, and IDR proceedings are substantially more limited than arbitration. *E.g.*, *Freeman Pain Inst. P.A. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-02507, 2025 U.S. Dist. LEXIS 230402, at *12–15 (D.N.J. Nov. 24, 2025) (noting "that key differences permeate the IDR and arbitration frameworks"). Petitioner's authority on contract-based arbitration has no application here.

Congress's creation of a payment obligation, without more, also does not imply a private cause of action to enforce that obligation. For example, in an analogous federal statute, the Ninth Circuit and various district courts concluded that a federal statute's "directive that an insurer 'shall reimburse' the provider" did not create a private cause of action. *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F.4th 1011, 1015–16 (9th Cir. 2023); *accord Genesis Lab'y*

Mgmt. LLC v. United Health Grp., Inc., No. 21cv12057, 2023 WL 2387400, at *2–3 (D.N.J. Mar. 6, 2023) ("[E]ven if Congress intended to create a personal right of reimbursement for providers … there is nothing in the text or structure of those acts suggesting that Congress intended to afford a privately enforceable remedy to Plaintiff."); *GS Labs, Inc. v. Medica Ins. Co.*, No. 21-cv-2400, 2022 WL 4357542, at *10 (D. Minn. Sep. 20, 2022) ("[N]othing in the text or structure of the CARES Act suggests the intent to provide providers such as GS Labs with a privately enforceable remedy.").

The Court's holding in *Maine Community Health Options v. United States*, 590 U.S. 296 (2020), is not to the contrary. In *Maine*, the question was whether a provision in the Affordable Care Act ("ACA") stating that the federal government "shall pay" insurance plans was a "money mandating" statute that could be enforced against the federal government via the Tucker Act. *See id.* at 324 ("Statutory shall pay language often reflects congressional intent to create both a right and a remedy under the Tucker Act.") (internal quotation marks and citation omitted). Where a statute mandates compensation by the federal government, the Tucker Act "provide[s] an entire remedy" to sue the government for such compensation. 28 U.S.C. § 1491(a)(2). The Tucker Act thus opened the federal court to hear the claim, not the ACA's money mandating language. *See Maine*, 590 U.S. at 323–24 n.12 (stating the Tucker Act provides "the missing ingredient" to enforce a monetary obligation "not otherwise judicially enforceable") (citation omitted). With the NSA, Congress did not grant Petitioners a judicial remedy

to enforce the payment of IDR determinations via the Tucker Act or otherwise.

None of Petitioners' arguments demonstrate the congressional intent required to imply their proposed cause of action, and they cannot answer the statutory text that expresses instead an intent to preclude such an action.[9]

5. This Court is not the forum to resolve Petitioners' and their amici's grievances over the NSA.

Petitioners and their amici also warn of the potential negative consequences if there is no private enforcement of IDR awards. *E.g.*, Pet. 35; AMA Br. 11–18; EMS Alliance Br. 4–5. But the sky is not falling. Though providers are flooding the IDR process with more disputes than ever, CMS is ensuring those disputes get resolved promptly, health plans are timely paying most IDR determinations, and when

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[9] Amicus American Medical Association ("AMA") argues that the Fifth Circuit's holding runs headlong into the presumption against ineffectiveness, but the AMA misunderstands that presumption. The presumption against ineffectiveness directs the Court to honor what *the text* at issue says. *See* AMA Br. 11 (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("In construing a statute we are obliged to give effect, if possible, to every word Congress used.")); *id.* at 5 (citing Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation Of Legal Texts 63 (2012) ("The presumption against ineffectiveness ensures that *a text's* manifest purpose is furthered, not hindered.") (emphasis added)). Here, the text dictates that parties have no right to petition a federal court to confirm an IDR award. Nor does following that text render the IDR provisions nugatory, as Congress expressly provided for *administrative* enforcement.

they do not, CMS and DOL are wielding their enforcement authority. *See supra* at 12–13.[10]

Petitioners also ignore that "Congress may have had good reasons to provide only a general administrative remedy, together with a strictly limited form of judicial review," rather than private enforcement. Pet.App.11a. Given that Congress was banning exploitative surprise billing practices from the same aggressive providers who are now on track to initiate millions of IDR proceedings each year, "Congress may have judged it better to have an administrative enforcement mechanism handle most award disputes instead of throwing open the floodgates of litigation" every time a health plan does not pay an IDR determination within 30 days. *Id.*

In any event, "balancing those costs and benefits poses a question of public policy that, under our system of government, only Congress may answer." *Id.* at 385 (citing *Sandoval*, 532 U.S. at 286). Regardless of Congress's reasoning or the potential consequences of it, "courts may not create" a statutory right of action, "no matter how desirable that might be as a policy matter, or how compatible with the statute." *Sandoval*, 532 U.S. at 286–87.

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[10] Petitioners and their amici note that DOL filed an amicus brief with the Fifth Circuit supporting their position. The DOL, however, cannot establish a private right of action—only Congress can. And DOL's so-called "disclaimer" of "authority or ability to adequately enforce binding IDR awards," Pet. 33–34, cannot rewrite the statutory enforcement scheme created by Congress. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024).

B. There is no circuit split on this question, and the Fifth Circuit's decision does not conflict with this Court's precedents.

Petitioners ask this Court not to resolve a circuit split, but to disturb near uniformity among the federal courts on the issue for which they seek certiorari. That is not the typical role of this Court, and there is nothing atypical about this uniformity that justifies a departure from custom.

The district courts that have addressed this issue have nearly all reached the same conclusion as the Fifth Circuit. *See, e.g.*, *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-06288, 2025 U.S. Dist. LEXIS 231385, at *15–22 (D.N.J. Nov. 25, 2025); *E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co.*, No. 25 Civ. 255, 2025 U.S. Dist. LEXIS 157911, at *46–49 (S.D.N.Y. Aug. 14, 2025); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 25-cv-167, 2025 U.S. Dist. LEXIS 155594, at *4–5 (M.D. Fla. Aug. 12, 2025); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, 790 F.Supp.3d 129, 136–38 (E.D.N.Y. 2025); *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. CV-23-00876, 2024 U.S. Dist. LEXIS 62018, at *9 (D. Ariz. Apr. 4, 2024); *Los Robles Emergency Physicians Med. Grp. v. Stanford-Franz*, No. 23-cv-9487, 2024 U.S. Dist. LEXIS 23971, at *4 (C.D. Cal. Feb. 8, 2024).

The one outlier district court decision, which predates the Fifth Circuit's ruling, is so unhelpful that Petitioners do not even cite to it, despite the fact that they brought the case. *See Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F.Supp.3d 214, 225 (D. Conn. 2025). Notably, that court did not consider that

the statute provided for *agency* enforcement of IDR awards—a point not presented to it—and indicated in denying a motion for interlocutory review that it "is possible I would have reached a different conclusion" had the issue been raised. *See* No. 3:24-cv-00680, Dkt. No. 295. Federal courts have also universally declined to follow the decision. *See, e.g.*, Pet.App.9a, n.5 ("We are unconvinced" by *Aetna* and instead "follow the NSA's plain text and structure in concluding Congress created no general private right of action in the NSA."); *E. Coast Advanced Plastic Surgery*, 2025 U.S. Dist. LEXIS 157911, at *47–48 (rejecting *Aetna* and holding that "[t]he statutory text [in the NSA] thus forecloses of a private right of action to enforce IDR determinations"); *Farkas*, 790 F.Supp.3d at 137 ("The Court rejects that position" from *Aetna* that "the NSA provides a private cause of action."); *see Ne. Neurosurgical Assocs.*, 2025 U.S. Dist. LEXIS 231385, at *19–20 (refusing to follow *Aetna*); *Freeman Pain Inst.*, 2025 U.S. Dist. LEXIS 230402, at *19–20 (same).

There is no good reason for the Court to wade into an issue which is not in debate.

CONCLUSION

The petition should be denied.

December 10, 2025 Respectfully submitted,

DANIEL W. WOLFF
Counsel of Record
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 624-2500
dwolff@crowell.com

Counsel for Respondent