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

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The No Surprises Act addressed the problem of "surprise" medical bills with a three-way bargain: patients receive emergency healthcare coverage, insurers' payment obligations for out-of-network care are capped at reasonable rates (via IDR), and out-of-network providers receive fair, prompt payment. The Fifth Circuit took a hatchet to this careful compromise. It held that insurers can ignore their contractual obligation to ERISA beneficiaries to pay for emergency healthcare, because patients are supposedly not injured by this breach. It also held that insurers can flout the statutory directive that they "shall" promptly pay "binding" IDR awards, because providers supposedly have no right of action to enforce those awards. The Fifth Circuit did all this without even acknowledging the Government's contrary views spanning two administrations.

Respondent HCSC urges this Court to forego review of the Fifth Circuit's destabilizing decision. But the case merits this Court's intervention on both Questions Presented.

First, HCSC attempts to dodge both the narrower and broader circuit splits on breach-of-contract standing by claiming there was no breach of contract here. That is wrong; the NSA's coverage mandate is a term in every ERISA plan, so an insurer that does not cover (i.e., pay for) emergency care denies the patient the benefit of her bargain. That means *Thole v. U.S. Bank, N.A.*, 590 U.S. 538 (2020), is inapposite; there is indeed a live, 2-1 split on whether an ERISA plan beneficiary has standing to sue *regardless of pocketbook injury* when the insurer fails to pay for

healthcare; and the decision below deepens the broader split on whether a breach of contract alone confers Article III standing. The Court should grant review and provide much-needed guidance on standing doctrine.

Second, HCSC takes a nothing-to-see-here approach to the Fifth Circuit's evisceration of providers' private right of action under the NSA to enforce payment. HCSC attempts to defend the decision's merits, even though the Fifth Circuit defied *Alexander v. Sandoval* by ignoring the key statutory text. HCSC also—like the Fifth Circuit—brushes off the United States' position and minimizes the disruption that will be caused (as Petitioners' *amici* attest) by allowing insurers to deny or delay payment with impunity. This Court should grant review on this question now because it is extraordinarily important and the decision below is contrary to the NSA's text and this Court's precedent.

HCSC identifies no vehicle issues.

ARGUMENT

I. THE COURT SHOULD GRANT THE ERISA-STANDING QUESTION.

HCSC cannot deny the divisions among the circuits on when a breach of contract confers standing. So it attempts to obfuscate whether there is a breach of contract here. There is, and so the Fifth Circuit's holding creates one circuit split and deepens another.

A. HCSC's Failure to Cover Emergency Healthcare Was a Contractual Breach.

HCSC's failure to pay for emergency healthcare services deprived participants of ERISA plan benefits and is a breach of contract. Pet.23.

The NSA mandates that plans include "coverage" for out-of-network emergency care as a benefit to participants. 42 U.S.C. §§ 300gg-111(a)(1), 300gg-112(a). Because the NSA is incorporated into ERISA, this is an *ERISA* coverage mandate. Pet.7, 23. As such, it "adds a mandatory term" to the relevant plans. *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 750 (2004). When an insurer fails to cover emergency healthcare, it breaches the contract with the participant. *See US Airways, Inc. v. McCutchen*, 569 U.S. 88, 102 (2013) (ERISA plans are contracts).

HCSC claims such participants suffer no breach because they (1) already received healthcare services and (2) are not liable for the balance of the provider's bill. BIO.15–17. But the NSA's *coverage* mandate governs *insurers*, not providers, and mandates that they "*cover* emergency services." 42 U.S.C. § 300gg-111(a)(1) (emphasis added). Healthcare *coverage* means "paid for" healthcare. 29 U.S.C. § 1191b(b)(1). After all, the "right to 'health care at no cost' (or at less cost …) is made possible only by arrangements to have one's health care provider reimbursed for … services." *Montefiore Med. Ctr. v. Teamsters Loc.* 272, 642 F.3d 321, 329 (2d Cir. 2011); *see* Pet.24.

Contra HCSC, BIO.17–18, it makes no difference if plan terms funnel a benefit "to a third party," *see Mitchell v. Blue Cross Blue Shield of N.D.*, 953 F.3d 529, 536 (8th Cir. 2020). So long as there is

consideration, a party may contract for benefits to flow to a third party. Pet.22. Under their ERISA plans—containing the NSA coverage requirements—participants pay premiums to insurers and, in exchange, insurers pay for emergency healthcare. Where a plan participant pays for a benefit and does not get it, that is breach.

Nor does it matter that patients do not participate in IDR or suffer an adverse-benefit determination while a provider-insurer "payment dispute" resolves "through the IDR process." BIO.18–19. IDR determines the "out-of-network rate"—the *amount*—that an insurer must pay a provider under the coverage mandate. *See* 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv)(II), 300gg-111(a)(3)(K)(ii)(II). Participants have no role in that determination. But, given the healthcare-coverage benefit they paid for, they *do* have a stake in whether payment is made.

All this was explained by the United States below. CA5 ECF 32 at 17–28. HCSC simply makes up its own version of how ERISA plans function in the NSA context, without acknowledging the Government's contrary view.[1]

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[1] HCSC mischaracterizes the Government's brief as filed only by the "DOL." BIO.34 n.10. It was submitted by the *United States*, explicitly representing the interests of the "Departments of Health and Human Services (HHS), Labor, and Treasury." CA5 ECF 32 at 1. But the DOL, charged with administering ERISA, surely understands what is and is not a breach of contract under an ERISA plan.

B. *Thole* Did Not Speak to Breach-of-Contract Standing.

HCSC argues that, under *Thole*, the ERISA plan participants here suffered no Article III injury. BIO.13–17. But *Thole* did not address the question presented here because there, the ERISA beneficiaries received their full financial benefits under the plan and thus asserted a claim for breach of fiduciary duty, not benefits owed to them. 590 U.S. at 541–42. Here, the relevant benefit is not payment of a specified sum but rather *healthcare coverage*, which HCSC failed to provide. *Supra* 3–4. A claim for failure to provide benefits is a contract claim. *Id.* To the extent *Thole* spoke to this issue, it *confirmed* that a party deprived of plan benefits suffers Article III injury. Pet.23 n.4.

Indeed, *Thole* cannot mean what HCSC claims, given this Court's decision a year later in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021). *TransUnion* did not cite *Thole* or suggest it limited when an intangible harm bears a sufficiently "close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts" to confer standing. *Id.* at 425.[2]

C. The Courts of Appeals Are Divided.

1. The Fifth Circuit's decision created a 2-1 circuit split on whether an ERISA plan beneficiary has standing to sue, regardless of pocketbook injury, when the insurer fails to pay for healthcare. Pet.16–17. HCSC claims the Eighth and Sixth Circuit cases are distinguishable. BIO.17–18. Not so.

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[2] HCSC does not address the historical sources on breach-of-contract injury. *See* Pet.21–22; Pet.18–19.

In *Mitchell*, the provider and participants had agreed that, if the participants sued, the provider would "waive" any claims (including balance bills) against them. 953 F.3d at 534. The insurer argued that, given the waiver, the participants had no stake in the litigation and were not injured by its failure to pay, *id.* at 535—precisely HCSC's argument. The Eighth Circuit disagreed, holding that participants are "injured when a plan administrator fails to pay a healthcare provider in accordance with the terms of their benefits plan," the waiver notwithstanding. *Id.* at 536.

Likewise, the Sixth Circuit held that the participant's standing "does not depend on allegation of financial loss" or "imminent risk" thereof, but "stem[s] from traditional principles of contract law." *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018) (citation omitted). The same principles apply here.

2. HCSC does not contest the broader split on whether breach of contract alone suffices for standing. *See* Pet.17–20. Instead, it claims (1) the split is not implicated because there is no breach; (2) the decision below "did not opine" on breach-of-contract standing; and (3) the split predates *Thole* and *TransUnion*. BIO.19–21. These arguments fail.

First, HCSC's failure to cover the participants' emergency healthcare constitutes a breach of contract. *Supra* 3–5.

Second, because breach-of-contract standing was the disputed issue below, the Fifth Circuit necessarily passed upon it. Indeed, the very language HCSC quotes from the opinion below calls out the "breach of

contract" issue and concludes, "[t]his technical violation, if it amounts to one, does no actual harm to the beneficiaries and is consequently … insufficient for Article III injury." BIO.20–21 (quoting Pet.App.13a).

Third, the split is not settling. The day after Providers filed their petition, the Sixth Circuit acknowledged the split, reaffirmed that, under *TransUnion*, a breach of contract alone confers standing, and specifically found *Thole* inapposite. *Clippinger v. State Farm Auto. Ins. Co.*, 156 F.4th 724, 733–34 & n.4 (6th Cir. 2025). That some courts on the other side of the split disagree, *e.g.*, *Dinerstein v. Google*, 73 F.4th 502, 520 (7th Cir. 2023), is just further reason this Court should grant review and clarify the law.

II. THE COURT SHOULD GRANT THE NSA PRIVATE-RIGHT-OF-ACTION QUESTION.

None of HCSC's arguments rehabilitate the Fifth Circuit's atextual private-right-of-action holding. While HCSC downplays the dire stakes of this petition and dismisses the views of the United States, review is warranted *now* because the Fifth Circuit's rule—which is taking hold in district courts—threatens to destroy an important statutory scheme contrary to the will of both coordinate branches.

A. The Decision Below Is Wrong.

1. *Alexander v. Sandoval* instructs courts that "statutory intent" determines whether a statute creates a private right and remedy. 532 U.S. 275, 286–88 (2001). The key statutory text here is the NSA's use of the term "binding" and its provision that insurers "shall" pay providers in 30 days. 42 U.S.C. §§ 300gg-111(c)(5)(E)(i)(I)&(c)(6), 300gg-

112(b)(5)(D)&(b)(6). But HCSC delays for pages before addressing that text, instead glossing the NSA's other provisions, supposed omissions, and administrative enforcement mechanisms. BIO.23–29. *Sandoval* does not endorse such a text-last inquiry.

2. The NSA makes IDR awards "binding." Although HCSC elsewhere pays lip service to the "old soil" principle, BIO.25, it never addresses the long line of precedent demonstrating that "binding" has always meant "enforceable in court," Pet.27–29. HCSC instead tries to deflect.

First, it says that the binding and enforceable nature of arbitration awards is ordinarily based on agreement, which is not present here. BIO.31. But Congress made IDR awards *statutorily* "binding." The question is what that means—and the answer, again, is "enforceable in court."

Second, HCSC cites other statutes that both make an award "binding" and incorporate the confirmation provision in the Federal Arbitration Act. BIO.30–31. At most, that indicates that if Congress wants awards to be enforceable *via the FAA's procedures* it says so. But no one argues that FAA confirmation procedures apply. "Binding," meanwhile, has meaning that predates and transcends the FAA. Pet.27–28. And courts understand statutes that make arbitration "binding" without additional enforcement language to mean "enforceable in court." *See, e.g.*, *Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 73 (D.D.C. 2002).

3. HCSC similarly skims past important authorities informing the shall-pay language. It again ignores "old soil": Founding-era courts treated statutes requiring one party to pay another as creating

a judicially enforceable obligation via an action on debt. Pet.30. HCSC also ignores this Court's view that "to say that A shall be liable to B is the *express* creation of a right of action." *Key Tronic Corp. v. United States*, 511 U.S. 809, 818 n.11 (1994) (citation omitted).

While HCSC at least acknowledges *Maine Community Health Options v. United States*, 590 U.S. 296 (2020), it downplays that decision's significance because it involved the Tucker Act, which provides for recovery against the United States. BIO.32. But *Maine Community* itself linked its analysis "precisely" to *Sandoval*'s right-and-remedy framework, 590 U.S. at 323–24 & n.12, and the dissent agreed the Court "infer[red] a private right of action," *id.* at 330 (Alito, J., dissenting). Congress's decision to use shall-pay language soon after must be given weight. Pet.30–31.

HCSC relies on lower court decisions interpreting the CARES Act as evidence that payment obligations do not create private rights of action. BIO.31–32. None of those decisions considered *Maine Community*, *Key Tronic*, or the relevant historical sources. Regardless, right or wrong, those decisions are inapposite. The CARES Act's payment provision did not concern a "binding" award—or any award—and, unlike here, *infra* 10–11, the statute included tailored, integrated enforcement provisions. *See, e.g.*, *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F.4th 1011, 1015–16 (9th Cir. 2023).

4. HCSC argues that the NSA's limit on judicial *review* precludes judicial *enforcement* of IDR awards. BIO.23–26. But the two concepts are distinct and often treated separately. *See, e.g.*, Pet.32 (discussing

FAA); 5 U.S.C. § 7123(a)–(c) (distinguishing petitions "for judicial review" and "for enforcement"). Indeed, no one would see a contradiction if the NSA said IDR awards are "binding *and enforceable in court*" while including the same strict limits on judicial review. True, Congress did not include those extra words. But the point is, limiting judicial review does not logically limit judicial enforcement, *especially* where, as here, enforcement is separately provided for.

HCSC points to statutes and decisions it claims use "judicial review" "broadly." BIO.24–25. But the cited statutes allow parties "adversely affected or aggrieved" by a decision—and thus seeking *to disturb* it—to sue. *See* 5 U.S.C. § 581(a); 33 U.S.C. § 2236(b)(2) (same); 42 U.S.C. § 10139(c) (similar). And while some courts have used "judicial review" as a shorthand for possible judicial actions under the FAA, passing use of a phrase is different from defining a term. "[J]udicial opinions are not statutes, and we don't dissect them word-by-word as if they were." *Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting).

5. HCSC next claims the NSA omits text authorizing private enforcement. BIO.26–28. But that begs the question whether the "binding" and shall-pay language do just that. And while HCSC (returning to a favorite theme) points to other statutes incorporating the FAA's confirmation provision, the NSA's omission of such a reference, again, simply indicates that Congress did not intend *FAA* enforcement.

6. Finally, HCSC's appeal to administrative enforcement (BIO.28–29) is unavailing. *Sandoval* instructs that, "[s]ometimes," even where a statute

affirmatively indicates intent for private enforcement, an alternative enforcement mechanism provides a "suggestion … so strong" as to "overbear" that textual evidence. 532 U.S. at 290–91. But the examples *Sandoval* cites involve "carefully integrated," "comprehensive" enforcement schemes. *See Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 145–47 (1985); *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 19–20 (1981). The patchwork of "enforcement" provisions HCSC cites, BIO.28, is nothing of the sort.

As the Government explained to the Fifth Circuit, those provisions pre-date the NSA, have more general reach, and assign different tools to different agencies governing different parties. CA5 OA at 12:48–15:10 tinyurl.com/whkjjr5d (describing the "preexisting statutory authority" involving "piecemeal jurisdiction" with different powers that would "not be comprehensive" and have not been employed in this context); *see also* Pet.33–34; CA5 ECF 47 (Providers' Reply) at 9–11. Like the Fifth Circuit, HCSC's failure to consider the Government's position undermines both the substance and credibility of its argument.

B. The Decision Below Urgently Needs Correction.

HSCS notes accurately that district courts are falling into line with the Fifth Circuit. BIO.35. But this domino effect cuts in favor of granting certiorari, not against it.

Absent swift correction by this Court, insurers will be emboldened in flouting NSA payment obligations. *See* EMS Ambulance Alliance Br. 15–16 (insurers already using Fifth Circuit as excuse not to pay); AMA

Br. 11–15 (similar). HCSC claims things are not so bad—eventually, they say, insurers mostly pay. BIO.33–34. Suffice it to say that HCSC presents a different story from the one the United States presented below, *see* CA5 ECF 32 at 13–14; Pet.34, or the one Providers' amici present here, *see* AMA Br. 11–18; EMS Ambulance Alliance Br. 11–20.

Of course "the sky is not falling" (BIO.33) *for insurers*. They get to collect premiums and then not pay (or delay payment while garnering the time value of money). But emergency healthcare providers have seen their common-law remedies supplanted by the NSA's guarantee of fair, prompt payment—only to have the rug pulled out by the Fifth Circuit and district courts misapplying *Sandoval* and misreading the NSA. The failure of the NSA's payment system threatens the already-fragile healthcare system upon which patients nationwide depend. Pet.34–36.

C. The Question Affects Coequal Branches.

HCSC nods in a footnote (BIO.34 n.10) to the Government's support for the Providers. The Fifth Circuit did not even give the Government a footnote. This collective back-of-the-hand to the United States is troubling enough for ERISA standing. *Supra* n.1. It is even more concerning for the private-right-of-action inquiry, where a key question is the Government's purported enforcement authority. The Executive Branch, across two administrations, has disclaimed the necessary authority and argued that NSA IDR awards are privately enforceable. Pet.33–34. It has gone unheeded.

Nor is the Executive the only Branch with interests at stake. In effect, the decision below invalidates a key

statutory provision. Congress balanced the interests of patients, insurers, and providers in the NSA. If insurers do not pay, the scheme will collapse. This Court should not let that happen without weighing in.

CONCLUSION

The Court should grant the petition.

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Respectfully submitted,

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