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 AND GREGORY KEVIN MAZE,

Respondents.

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

BRIEF IN OPPOSITION

Malissa L. Giles
Tracy A. Giles
GILES & LAMBERT PC
129 E. Campbell Ave.
Suite 300
Roanoke, VA 24011

Theodore O. Bartholow, III
Counsel of Record
Karen L. Kellett
KELLETT & BARTHOLOW, PLLC
11300 N. Central Expy.
Suite 301
Dallas, TX 75243
(214) 696-9000
thad@kblawtx.com

QUESTION PRESENTED

The filing of a bankruptcy petition "operates as a stay" of creditors' efforts to collect debts outside the context of the bankruptcy case. 11 U.S.C. § 362(a). The bankruptcy court may enforce that automatic stay through contempt proceedings under 11 U.S.C. § 105(a) and a supplemental damages remedy under 11 U.S.C. § 362(k). Petitioner Goldman Sachs Bank USA concedes that a private arbitration agreement cannot strip the bankruptcy court of its authority to enforce the automatic stay under Section 105(a). Pet. 27-28. The question presented is:

Whether the court of appeals correctly held that an arbitration agreement likewise cannot strip a bankruptcy court of the authority to award the supplemental remedy provided by Section 362(k).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

Legislative Materials

Other Authorities

INTRODUCTION

Under 11 U.S.C. § 362(a), a bankruptcy petition "operates as a stay" of efforts to collect the debtor's pre-petition debts outside of bankruptcy. That automatic stay is an essential safeguard against "damaging disruptions to the administration of a bankruptcy case." *Taggart v. Lorenzen*, 587 U.S. 554, 565 (2019). The bankruptcy court may enforce the stay through contempt proceedings under 11 U.S.C. § 105(a) and a supplemental damages remedy Congress authorized when it added Section 362(k) to the Bankruptcy Code.

Petitioner Goldman Sachs Bank USA defied the automatic stay by repeatedly demanding payment from respondents Rhea Brown and Gregory Maze even after they specifically told Goldman it was violating the stay. In response to those flagrant violations, respondents sought relief under both Section 105(a) and Section 362(k). The bankruptcy court denied Goldman's motion to compel arbitration, and the district court and Fourth Circuit affirmed.

Goldman now asserts that the Fourth Circuit disobeyed the Federal Arbitration Act (FAA) and created a circuit split by refusing to compel arbitration of respondents' Section 362(k) request. But Goldman concedes that an arbitration agreement *cannot* prevent a bankruptcy court from granting monetary and other relief for stay violations under Section 105(a). That concession—along with other fatal flaws—demolishes each element of Goldman's case for certiorari.

First, Goldman asserts that the Fourth Circuit's decision conflicts with *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006). But the debtor in *Hill* did not invoke Section 105(a), so the Second Circuit did not even consider, much less endorse, the bizarre bifurcation Goldman urges here—sending a Section 362(k) request to arbitration but keeping an overlapping Section 105(a) request in bankruptcy court. Even as to Section 362(k) alone, the Fourth Circuit specifically distinguished *Hill* because it is far from clear that the *Hill* court would have compelled arbitration of a Section 362(k) request in the context of an open Chapter 13 case like Ms. Brown's. And in any event, a future panel of the Second Circuit would likely revisit *Hill* if given the opportunity.

Second, the question presented seldom arises and lacks practical importance when it does. On Goldman's telling, this case is about allowing creditors to avoid the cost of litigation in bankruptcy court. But even if Goldman were right that respondents' Section 362(k) request is subject to arbitration, Goldman concedes that creditors would still have to litigate the same issues—and could be subject to monetary relief—in Section 105(a) proceedings in bankruptcy court.

Third, this case would not be an appropriate vehicle for considering the question presented even if that question otherwise warranted this Court's review. Again, this case involves enforcement of the automatic stay in an ongoing Chapter 13 case, a scenario no other court of appeals has considered. In addition, if the Court were going to take up the arbitrability of automatic stay remedies at all, it should do so in a case that would allow it to consider both Section 362(k) and Section 105(a). Here, Goldman's concession takes Section 105(a) off the table. And even as to Section 362(k), Goldman waived the position it asks this Court to endorse by telling the bankruptcy court that it had discretion to deny arbitration.

Fourth, Goldman is wrong on the merits. Judge Niemeyer's opinion for the Fourth Circuit explained why it would be untenable to allow a private contract to deprive a bankruptcy court of the authority to protect the integrity of its own proceedings by enforcing the automatic stay. Recognizing the force of those arguments, Goldman concedes that the Bankruptcy Code displaces the FAA as to relief under Section 105(a). But given that concession, Goldman cannot explain why a private contract should strip the bankruptcy court of the supplemental remedy that Congress deemed essential to the effective enforcement of the automatic stay. Nor can it justify forcing parties to litigate the very same dispute before two different tribunals—a regime that would guarantee wasteful duplication and risk conflicting judgments.

Finally, Goldman badly misses the mark by invoking decisions compelling arbitration of various non-bankruptcy claims. The "singular nature" of bankruptcy often calls for exceptions to the usual legal rules. *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 369 n.9 (2006). "In fact, the very essence of bankruptcy laws is the modification or impairment of contractual obligations" and the centralization of disputes that would otherwise be heard in disparate tribunals. *In re Marshall*, 721 F.3d 1032, 1068 (9th Cir. 2013) (citation omitted). Accordingly, everyone agrees that the Bankruptcy Code sometimes displaces the FAA. Indeed, Goldman itself concedes that it displaces the FAA as to requests for relief for violations of the automatic stay under Section 105(a). The Fourth Circuit simply recognized that the same logic applies to parallel requests for Section 362(k)'s supplemental remedy.

This Court has previously declined to review decisions refusing to compel arbitration of requests for damages for violations of a similar debtor protection, the discharge injunction imposed by 11 U.S.C. § 524. *See GE Retail Capital Bank v. Belton*, 141 S. Ct. 1513 (2021) (No. 20-481); *Credit One Bank, N.A. v. Anderson*, 586 U.S. 823 (2018) (No. 17-1652). It should do the same here.

STATEMENT OF THE CASE

A. Legal background

1. "Through various provisions, the Bankruptcy Code offers debtors a fresh start by discharging and restructuring their debts in an 'orderly and centralized' fashion." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 390 (2023) (citation omitted). Chapter 7 of the Code allows an individual debtor to secure "a discharge of prepetition debts following the liquidation of the debtor's assets by a bankruptcy trustee." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). Chapter 13, in contrast, "allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period." *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). The Chapter 13 case remains open during that period, and the plan is subject to amendment if the debtor's financial situation changes. 11 U.S.C. § 1329(a).

Congress created specialized bankruptcy courts to administer cases under the Code. 28 U.S.C. § 151. Congress authorized those non-Article III courts to "hear and determine" a set of "core" proceedings centrally involved in the administration of a bankruptcy case. *Id.* § 157(b)(1). This Court has held that under Article III, a proceeding may be treated as "core" only if it "stems from the bankruptcy itself or would necessarily be resolved" in the process of allowing creditors' claims against the bankruptcy estate. *Stern v. Marshall*, 564 U.S. 462, 499 (2011).

2. It would be impossible to have an "orderly and centralized" bankruptcy process, *Coughlin*, 599 U.S. at 390, if creditors could unilaterally pursue the debtor's assets outside of the bankruptcy. Before the Bankruptcy Code, Congress addressed that problem by authorizing courts to stay or enjoin collections. Former Fed. R. Bankr. P. 401 advisory committee's note (1976). To "relieve[] the bankrupt from the necessity of filing an application for a stay or an injunction," this Court later adopted a rule making a stay automatic upon the filing of a bankruptcy petition. *Id.*

When Congress enacted the Bankruptcy Code in 1978, it codified and expanded the automatic stay in 11 U.S.C. § 362(a). Under Section 362(a), the filing of a bankruptcy petition "operates as a stay" of specified collection proceedings, including "any act to collect, assess, or recover a claim against the debtor that arose before the commencement" of the bankruptcy case. *Id.* § 362(a)(6). That stay is one of the Code's "fundamental debtor protections." *Midlantic Nat'l Bank v. New Jersey Dep't of Env't Prot.*, 474 U.S. 494, 503 (1986) (citation omitted). It also protects creditors and the bankruptcy process by "maintain[ing] the status quo and prevent[ing] dismemberment of the estate" through the unilateral actions of individual creditors. *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 42 (2020) (citation omitted).

3. As originally enacted, Section 362 did not include an explicit enforcement mechanism. But 11

U.S.C. § 105(a) broadly authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out" the Code. Section 105(a) allows a bankruptcy court "to impose civil contempt sanctions," including monetary relief. *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). And in the years after Section 362's enactment, "contempt orders issued under section 105(a), including awards of damages, were routinely used to punish violations of the automatic stay." *In re Spookyworld, Inc.*, 346 F.3d 1, 8 (1st Cir. 2003) (collecting cases).

In 1984, Congress supplemented that contempt remedy by enacting the provision now codified at Section 362(k). Section 362(k) provides that "an individual injured by any willful violation" of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1). Section 362(k) "expands upon the discretionary nature of contempt" by making compensatory damages mandatory for willful violations and authorizing punitive damages in some cases. *In re Chateaugay Corp.*, 920 F.2d 183, 186 (2d Cir. 1990).

Section 362(k) provides "an additional right of individual debtors" that does not "foreclose recovery under already existing remedies." 130 Cong. Rec. 6,504 (Mar. 26, 1984) (Rep. Rodino). Even after the enactment of Section 362(k), therefore, Section 105(a) continues to give courts an "independent statutory power[] to award monetary and other forms of relief for automatic stay violations." *Jove Eng'g, Inc. v. IRS*, 92 F.3d 1539, 1554 (11th Cir. 1996). And debtors injured by violations of the automatic stay often seek and obtain relief, including "actual damages," under both “11 U.S.C. §§ 362(k)(1) and 105(a).” *In re Schullo*, 2024 WL 922859, at *6 (Bankr. N.D. Ala. Mar. 4, 2024); *see, e.g.*, *In re Paige*, 678 B.R. 588, 602-03 (Bankr. S.D. Ohio 2026); *In re Tanner*, 2023 WL 6884714, at *6-8 (Bankr. N.D. Ga. Oct. 18, 2023); *In re Robinson*, 2023 WL 6205602, at *4 (Bankr. E.D. La. Sept. 21, 2023).

B. The present controversy

1. In 2023, respondents filed separate bankruptcy petitions in the Western District of Virginia. Pet. App. 2a-3a. Ms. Brown filed under Chapter 13; Mr. Maze filed under Chapter 7. *Id.* Both petitions listed credit card debts owed to Goldman as the operator of the Apple Card program. *Id.*

“Within days” after respondents filed their bankruptcy petitions, “the Bankruptcy Noticing Center electronically transmitted notice of the filings to Goldman Sachs, warning it of the automatic stay imposed by the Bankruptcy Code.” Pet. App. 3a. Despite that notice, “Goldman Sachs continued efforts to collect the credit card debt from both Brown and Maze.” *Id.* Goldman demanded payment from Brown “by email, writings, and telephone calls for more than six months, even though she had informed Goldman Sachs representatives by email, telephone, and her legal counsel that its collection efforts violated the bankruptcy court’s automatic stay.” *Id.* Similarly, Goldman demanded payment from Mr. Maze “for more than three months.” *Id.* When Mr. Maze tried to direct a Goldman representative to his bankruptcy lawyer, she told him that it “was not her job to call his bankruptcy counsel, but it was his job to pay his bills.” *Id.* (brackets omitted).

2. Seeking to halt and redress those violations, respondents filed an adversary proceeding against Goldman. Pet. App. 3a. They requested a declaratory judgment, "injunctive relief, compensatory damages, punitive damages, and attorneys fees." *Id.* 4a. And they explicitly relied on both "§ 362(k) and § 105." *Id.*; *see* Compl. ¶ 71, ECF No. 1. Declaratory and injunctive relief are not among the enumerated remedies in Section 362(k).[1]

Goldman moved to compel arbitration, invoking the arbitration clause in respondents' Apple Card agreements. Pet. App. 4a-5a. The bankruptcy court denied the motion. *Id.* 30a-43a. Among other things, it explained that the automatic stay is fundamental to the administration of a bankruptcy case and that "[t]o permit a party other than the bankruptcy court" to identify and punish violations of the stay "would undermine the court's ability to enforce both its own orders and the Bankruptcy Code." *Id.* 42a-43a (citation omitted). The district court affirmed. *Id.* 44a-52a.

3. The Fourth Circuit affirmed as well. Pet. App. 1a-25a.

a. The Fourth Circuit began by recognizing that the FAA generally requires courts to "rigorously enforce agreements to arbitrate." Pet. App. 8a (citation omitted). But "like any statutory directive," the FAA "may be overridden by a contrary congressional command." *Id.* 10a (quoting *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987)). "[I]n the circumstances of this case," the court found such a command

[1] Respondents' complaint also sought to represent a class under Federal Rule of Bankruptcy Procedure 7023, but no motion for class certification has been filed. Pet. App. 4a; *see id.* 42a n.9.

in the Bankruptcy Code because compelling arbitration would "conflict with the strong and established policies and purposes" of the Code. *Id.* 2a.

At the outset, the Fourth Circuit explained that a request for relief under Section 362(k) "arises from a violation of the bankruptcy court's stay, which falls within the authority of the bankruptcy court" and is "foundational" to the court's administration of a bankruptcy case. Pet. App. 11a. Thus, a request for relief under Section 362(k) "is 'as core' as any claim that arises from bankruptcy proceedings." *Id.*

The Fourth Circuit made clear that "the categorization of a claim as 'core' may not automatically render the claim non-arbitral." Pet. App. 11a. But because core proceedings are central to a bankruptcy court's administration of a bankruptcy case, arbitration of such claims is "more likely" to pose a conflict with the Bankruptcy Code. *Id.* 12a (citation omitted). And here, the court concluded that compelling arbitration would conflict with the Code in multiple ways.

First, the automatic stay serves to "centralize disputes over the debtor's assets and obligations in one forum, thus protecting both debtors and creditors from piecemeal litigation and conflicting judgments." Pet. App. 12a (citation omitted). Compelling arbitration of Section 362(k) requests would undermine that centralization and diminish the bankruptcy court's authority to "monitor[] and enforce[]" the "ongoing status" of the automatic stay. *Id.*

Second, compelling arbitration would "undermine the 'shield' created by the automatic stay," which gives debtors a "breathing spell" from dealings with creditors outside of the bankruptcy. Pet. App. 14a (citation omitted). Allowing creditors to compel debtors to engage in "[a]rbitration beyond the walls of the bankruptcy court" to protect their rights under the Code "would diminish, if not eliminate, this breathing spell." *Id.*

Third, "[a] fundamental purpose of the Bankruptcy Code is to assure that bankruptcy laws be uniform and be uniformly enforced." Pet. App. 14a; *see* U.S. Const. art. I, § 8, cl. 4. The lack of judicial review of arbitral decisions means that "there is no ability to assure their uniformity through appeal to the courts and ultimately the Supreme Court." Pet. App. 15a.

Fourth, Congress created bankruptcy courts staffed by specialists because it recognized that "bankruptcy is a discrete and comprehensive process deserving dedicated and experienced judges." Pet. App. 16a. Compelling arbitration would "bypass the expertise of bankruptcy judges in favor of private arbitrators, who may not even be lawyers." *Id.* 15a.

Fifth, compelling arbitration "would constrict the remedies that Congress authorized in the Bankruptcy Code." Pet. App. 17a. Section 362(k) authorizes punitive damages, which serve to "discourage future violations" by other parties. *Id.* But such awards cannot deter if they are not public. *Id.* "[R]elegating awards of punitive damages to the *private forum* of arbitration" would thus prevent them from serving their statutory function. *Id.*

The Fourth Circuit held that those "inherent conflicts," taken together, "amply demonstrate that arbitration here would conflict with the underlying purposes of the Bankruptcy Code." Pet. App. 18a. In so doing, the court distinguished *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006), which compelled arbitration of a Section 362(k) request.[2] The Fourth Circuit emphasized that *Hill* had relied on the "peculiar circumstances" presented in that case, including the fact that the only debtor "had already received her discharge, and her Chapter 7 bankruptcy case had been closed." Pet. App. 20a. Here, in contrast, Ms. Brown's Chapter 13 case remains open, which renders *Hill* "inapposite." *Id.*

b. Judge King dissented. Pet. App. 23a-25a. He concluded that arbitration of respondents' Section 362(k) request would not conflict with the Bankruptcy Code because granting or denying the request would not "add nor subtract a new creditor" or "'frustrate creditor distribution.'" *Id.* 23a (citation omitted).

4. The Fourth Circuit denied Goldman's motion for a stay pending the filing of a petition for a writ of certiorari. Pet. App. 26a-29a. As a result, litigation is proceeding in the bankruptcy court, which held a hearing on Goldman's motion to dismiss on August 13, 2026. ECF No. 56.

REASONS FOR DENYING THE WRIT

I. This case does not implicate any circuit conflict warranting this Court's review.

Goldman asserts that the Fourth Circuit's decision conflicts with *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006), and implicates a broader methodological disagreement about the relevance of the core/non-core distinction in determining arbitrability. Pet. 12-20. But *Hill* is distinguishable and may no longer be good law in any event. And the

---

[2] When *Hill* was decided, Section 362(k) was codified at 11 U.S.C. § 362(h).

abstract methodological disagreement Goldman posits does not exist and would not warrant this Court's intervention even if it did.

1. Goldman principally contends that the Fourth Circuit departed from the Second Circuit's decades-old decision in *Hill.* Pet. 13-18. For at least three reasons, *Hill* does not establish any circuit conflict warranting this Court's review.

First, *Hill* is distinguishable because the debtor in that case invoked only Section 362(k), not Section 105(a). In fact, when an amicus tried to raise an argument based on Section 105(a), the creditor noted that the argument was "divorced from the circumstances of this case" because "Ms. Hill filed a complaint under § 362[k] for damages, not a motion for contempt." Reply Br. at 18, *Hill*, *supra* (No. 04-2086). The Second Circuit thus did not even mention Section 105(a)—let alone opine on the proper result where, as here, debtors seek relief under both Section 362(k) and Section 105(a). Accordingly, *Hill* would not require a court in the Second Circuit to compel arbitration in a case like this one.

Second, *Hill* is also distinguishable because the Second Circuit relied heavily on the fact that the debtor's "estate [had] been fully administered and her debts ha[d] been discharged, so she no longer require[d] [the] protection of the automatic stay and resolution of the claim would have no effect on her bankruptcy estate." 436 F.3d at 109. The Second Circuit called that the "most important[]" reason for its holding. *Id.* And it has since emphasized that feature of *Hill* in declining to compel arbitration in a case involving "an ongoing bankruptcy matter" where the relevant debtor protection (there, the discharge injunction under Section 524) was still in effect and thus "eligible for active enforcement" to address ongoing or future violations. *In re Anderson*, 884 F.3d 382, 390 (2d Cir.), *cert. denied*, 586 U.S. 823 (2018).

This case involves just such an "ongoing bankruptcy matter" because Ms. Brown's Chapter 13 case remains pending and the automatic stay is thus still in effect and "eligible for active enforcement" in the same sense as the discharge injunction in *Anderson*. 884 F.3d at 390; *see* Pet. App. 20a. Accordingly, as the Fourth Circuit specifically recognized, *Hill* is "inapposite" and "we cannot determine whether the *Hill* court would have ruled the same way had it been faced with an arbitration issue in an ongoing bankruptcy proceeding, as we are here." Pet. App. 20a.

Goldman tries to downplay Ms. Brown's ongoing case, asserting that the confirmation of her Chapter 13 plan means that the case is "effectively settled or closed." Pet. 7; *see id.* at 16, 26. That is demonstrably wrong. A Chapter 13 case remains active until the debtor *completes* the payments required by the plan and receives a discharge—a process that takes three to five years. 11 U.S.C. § 1328; *see Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). Throughout that period, the automatic stay remains in place. 11 U.S.C. § 362(c)(2). Ms. Brown thus has a live request for an injunction against future violations of the stay by Goldman during her still-active Chapter 13 case.

In addition, Ms. Brown's plan remains subject to modification if her financial circumstances change. 11 U.S.C. § 1329(a). That means that any award under Section 362(k) could increase the recovery for Ms. Brown's creditors: "[F]or bankruptcy cases proceeding under Chapter 13, the estate also includes property—

and therefore claims—that the debtor acquires after the bankruptcy case commences but before it is closed." *Keathley v. Buddy Ayers Constr., Inc.*, 146 S. Ct. 1532, 1536 (2026). In *Hill*, by contrast, the Second Circuit emphasized that "any damages that might be awarded" would "not be part of [Hill's] bankruptcy estate." 436 F.3d at 110.

Goldman also objects that Mr. Maze's Chapter 7 case is closed—which means that, in Goldman's view, "the circumstances in *Hill* are materially identical to those in Maze's case." Pet. 16. But the Fourth Circuit did not separately assess Ms. Brown's and Mr. Maze's cases, because Goldman did not ask it to do so. Goldman filed an undifferentiated motion to compel arbitration of both respondents' Section 362(k) requests, and the Fourth Circuit analyzed them together—which is precisely why the court regarded the presence of Ms. Brown's open case as a sufficient basis for distinguishing *Hill*.[3]

Third, and in any event, there are good reasons to think the Second Circuit would revisit *Hill* if given the opportunity to do so. In the two decades since *Hill*, the Second Circuit has never invoked that decision to compel arbitration. Instead, it has issued two other decisions that substantially undercut *Hill*'s reasoning. As noted above, the Second Circuit held in *Anderson* that the Bankruptcy Code displaces the FAA and

[3] Goldman errs in asserting that respondents conceded below that they "would lose this case under the Second Circuit's rule." Pet. 3; *see* Pet. 17. Respondents argued below—and still maintain—that *Hill* was wrongly decided. Resp. C.A. Br. 27-28. But they had no occasion to address the multiple grounds on which this case is distinguishable from that one.

precludes arbitration of a Section 105(a) request seeking relief for a violation of the discharge injunction. 884 F.3d at 390-91. In so doing, the court held that "enforcement of injunctions is a crucial pillar of the powers of the bankruptcy courts" and that "the bankruptcy court alone" has the authority to interpret and enforce an injunction arising from a bankruptcy case. *Id.* The Second Circuit reaffirmed that holding in *In re Belton*, 961 F.3d 612, 614-17 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 1513 (2021).

Precisely the same logic applies to the automatic stay. The *Hill* court believed that enforcement of the automatic stay can be sent to arbitration because the stay is not "closely related to an injunction." 436 F.3d at 110. But like the discharge injunction created by Section 524, the automatic stay is "equivalent to a court order." 3 *Collier on Bankruptcy* ¶ 362.12[2] (16th ed. 2026) (*Collier*). Indeed, the fact that the automatic stay is treated as an injunction is the only reason why it is enforceable by contempt under Section 105(a). *Id.*; *see Taggart v. Lorenzen*, 587 U.S. 554, 560-61 (2019).[4]

[4] Of course, the automatic stay is not literally a court-ordered injunction. But neither is the discharge injunction. Instead, Section 524 provides that a discharge in bankruptcy "operates as an injunction" against efforts to collect discharged debts. 11 U.S.C. § 524(a)(2). Using parallel language, Section 362(a) provides that the filing of a bankruptcy petition "operates as a stay," eliminating the pre-Code practice of requiring the debtor to affirmatively seek a stay from the court. *Id.* § 362(a); *see supra* at 5. As this Court has explained, "the term 'stay' is commonly used to describe an *order*" issued by the court to suspend alteration of the status quo. *City of Chicago v. Fulton*, 592 U.S. 154, 158 (2021) (emphasis added). And the bankruptcy court has exclusive authority to determine the scope and duration

If it were confronted with the issue again, the Second Circuit would have to reconsider *Hill*'s holding in light of *Anderson*, *Belton*, and bankruptcy courts' conceded authority to enforce the automatic stay through contempt proceedings under Section 105(a). And that reconsideration would not require en banc proceedings. A Second Circuit panel may "reexamine [an earlier panel's] conclusion" in light of arguments that were waived or otherwise not properly presented in the prior case. *Belton*, 961 F.3d at 616. That principle applies here because arguments based on Section 105(a) were not properly presented—and thus not considered—in *Hill*. *See supra* at 12. At minimum, therefore, this Court's intervention would be premature unless and until the Second Circuit reaffirms *Hill* after full consideration of the relevant issues.[5]

2. Goldman also asserts that the circuits are "more generally divided over what role, if any, the distinction between 'core' and 'non-core' claims plays" in determining arbitrability. Pet. 18; *see* Pet. 31-32 (raising the level of generality even further to "confusion" about arbitration in bankruptcy writ large). But this Court does not grant certiorari to review vaguely defined disagreements about methodology; there must be a "real" conflict on "the same

---

of the stay, as well as to authorize otherwise-barred collection efforts before or after they occur. 11 U.S.C. § 362(d)-(f). The statute's text and structure thus make clear that the automatic stay, though invoked by the filing of a bankruptcy petition, is equivalent to a court order.

[5] Throughout its discussion of the purported circuit split, Goldman also invokes decisions by various "bankruptcy and district courts." Pet. 18; *see* Pet. 14-16. Those decisions cannot create a conflict warranting this Court's review. Sup. Ct. R. 10.

matter of law," "not merely an inconsistency in dicta" or "general principles." Steven M. Shapiro et al., *Supreme Court Practice* § 4.3 (11th ed. 2019).

In any event, the abstract disagreement Goldman posits is illusory. As Goldman concedes, no circuit treats "core" status as categorically precluding arbitration. Instead, like the Fourth Circuit here, other courts of appeals treat it as "relevant" but not "dispositive." *In re Thorpe Insulation Co.*, 671 F.3d 1011, 1021 (9th Cir. 2012); *see, e.g.*, *In re Elec. Mach. Enters., Inc.*, 479 F.3d 791, 796-97 (11th Cir. 2007); *Hill*, 436 F.3d at 108; *see also* Pet. App. 11a-12a. And even Goldman appears to recognize the relevance of the core/non-core distinction, conceding that arbitrating a core claim is "*more likely* to create an 'inherent conflict'" with the Code—the same formulation the Fourth Circuit used. Pet. 25; *see* Pet. App. 12a.

Goldman asserts that the Fifth and Third Circuits have taken a different approach by deeming core status "irrelevant." Pet. 19-20. But the decisions it cites merely recognized that the core/non-core distinction is not dispositive. *See In re Mintze*, 434 F.3d 222, 229 (3d Cir. 2006); *In re Nat'l Gypsum Co.*, 118 F.3d 1056, 1067 (5th Cir. 1997). Indeed, the Fourth Circuit quoted with approval the Fifth Circuit's observation that "where a *core* proceeding involves adjudication of federal bankruptcy rights wholly divorced from inherited contractual claims, the importance of the federal bankruptcy forum provided by the Code is at its zenith." Pet. App. 11a (quoting *In re Nat'l Gypsum*, 118 F.3d at 1068)) (emphasis altered). Courts in the Third Circuit likewise recognize that the core/non-core distinction can be relevant in deciding arbitrability. *See, e.g.*, *In re BBCK One Holding Corp.*, 2024 WL

4772408, at *4 (Bankr. D.N.J. Nov. 13, 2024); *see also Thorpe*, 671 F.3d at 1021 (noting agreement between the Third, Fourth, and Fifth Circuits).

II. The question presented is not important.

Goldman and its amicus assert that the "practical stakes" of the question presented warrant this Court's attention because there are many bankruptcy cases where a violation of the automatic stay could in theory lead to a request for relief under Section 362(k). Pet. 33; *see* ABA Br. 4-5. But the question presented actually arises in only a miniscule fraction of those cases. In fact, in the four decades since Section 362(k)'s enactment, that question has yielded just two circuit-court decisions—and the last court of appeals to address the issue did so in 2006. An issue that has yielded just two circuit-court decisions in 40 years hardly cries out for this Court's review.

Goldman also maintains that the Fourth Circuit's decision "imperils the enforceability of arbitration agreements." Pet. 33. Similarly, its amicus fears "costly litigation" if Section 362(k) requests cannot be forced into arbitration. ABA Br. 5. But that ignores the practical implications of Goldman's own position. In cases where debtors can seek damages under Section 362(k), they can also seek relief—including monetary relief—under Section 105(a). *See supra* at 6-7. And Goldman *concedes* that an agreement to arbitrate is not enforceable as to such a request. Pet. 27-28.

Accordingly, even if this Court granted certiorari and adopted Goldman's position on the merits, Goldman and other creditors would still be required to litigate automatic stay disputes in bankruptcy court—and could still be subject to monetary awards under

Section 105(a). And it is Goldman's position, not the Fourth Circuit's, that would multiply "litigation costs." ABA Br. 5. Under the Fourth Circuit's view, a bankruptcy court can adjudicate a debtor's entitlement to relief under Section 105(a) and Section 362(k) in a single proceeding. Goldman, in contrast, would compel the parties to litigate the same issues simultaneously before both the bankruptcy court (under Section 105(a)) and an arbitrator (under Section 362(k)). That sort of needless duplication is not a recipe for "reducing the cost of resolving disputes." ABA Br. 6.

III. This case would not be an appropriate vehicle for deciding the question presented.

Even if the arbitrability of Section 362(k) requests otherwise warranted this Court's review, this case would not be an appropriate vehicle in which to address the issue for at least three reasons.

First, this case involves a request for Section 362(k) relief in an ongoing bankruptcy case—Ms. Brown's Chapter 13 proceeding. *See supra* at 13-14. No other court of appeals has even considered that scenario. Accordingly, even if Goldman were right that *Hill* establishes a certworthy conflict over the arbitrability of a Section 362(k) request in a closed Chapter 7 case like Mr. Maze's, the Court should not grant a petition that would *also* require it to address the very different scenario presented by Ms. Brown's case. That is particularly true because Goldman did not argue below that the two cases should be analyzed separately, so the Fourth Circuit did not conduct such a separate analysis. As this Court often emphasizes, it is "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Second, if this Court were going to take up the arbitrability of automatic stay disputes at all, it should do so in a case that would allow it to address both Section 362(k) and Section 105(a). Although Goldman has conceded (correctly) that Section 105(a) requests are not arbitrable, other creditors have taken the opposite position. *See, e.g.*, Reply at 18, *Hill*, *supra*; *cf. Belton*, 961 F.3d at 614-17 (describing a creditor's attempt to compel arbitration of a request to enforce the discharge injunction under Section 105(a)); *Anderson*, 884 F.3d at 387-90 (same). This case would not allow the Court to resolve the arbitrability of requests under Section 105(a), which is inextricably bound up with the arbitrability of requests under Section 362(k).

Third, Goldman affirmatively waived its current argument about Section 362(k) by representing to the bankruptcy court that the court "ha[d] discretion in deciding whether or not to send [respondents'] claims to arbitration." Goldman Reply in Supp. of Mot. to Compel at 1, ECF No. 20; *see* C.A. J.A. 133 (same). Respondents raised that waiver problem in the Fourth Circuit, but the court had no occasion to reach the issue because it rejected Goldman's new position on the merits. *See* Resp. C.A. Br. 9-10, 18-20. This Court should not grant certiorari based on a claim of error that the petitioner invited the trial court to commit.

IV. The Fourth Circuit's decision is correct.

The Fourth Circuit correctly declined to compel arbitration of respondents' Section 362(k) request. Goldman's contrary arguments are decisively undercut by its concession that the FAA does not require arbitration of a parallel request for relief under Section 105(a). Indeed, Goldman makes no attempt to justify its unprecedented suggestion that parallel requests for overlapping relief for the same violation should be split between an arbitrator and a court.

1. Although Goldman briefly asserts otherwise (Pet. 25), the Fourth Circuit did not rest its decision on the core/non-core distinction. Instead, the court grounded its holding in five specific conflicts between arbitration of Section 362(k) requests and the Bankruptcy Code. Pet. App. 12a-18a. Goldman quibbles with various aspects of that analysis. It contends, for example, that some of the conflicts the Fourth Circuit identified would not by themselves justify a refusal to compel arbitration. Pet. 28-31. But the Fourth Circuit did not suggest that any one of those conflicts would have been independently sufficient; instead, it relied on all of them together. Pet. App. 18a. And Goldman ultimately *agrees* with the Fourth Circuit's central insight: Given the automatic stay's "fundamental" role in the administration of a bankruptcy case, the bankruptcy court must have the authority to interpret and enforce it—and cannot be stripped of that authority by a private agreement to arbitrate. *Id.* 12a.

Recognizing the force of that insight, Goldman now insists that its position "would not interfere—in the slightest—with the bankruptcy court's authority to police stay violations itself under Section 105(a)." Pet. 27. According to Goldman, "[e]ven if private Section 362(k) claims are sent to arbitration, the bankruptcy court retains full authority to police—and punish—stay violations" under Section 105(a). Pet. 28. In other words, Goldman affirmatively concedes that the Bankruptcy Code displaces the FAA and precludes arbitration of a debtor's request for relief for a violation of the automatic stay under Section 105(a).

2. That concession solves one problem for Goldman, but it creates a host of others. Oddly, Goldman never acknowledges that this very case includes a request for relief under Section 105(a) as well as Section 362(k). Pet. App. 4a. Goldman does not spell out what a bankruptcy court confronted with a motion to compel arbitration in such a case is supposed to do, but the necessary implication of its position is that the court must bifurcate the dispute—sending the Section 362(k) request to arbitration while keeping the Section 105(a) request for itself. And Goldman makes no attempt to justify such a bizarre regime.

First, Goldman cannot reconcile its position with its concession that bankruptcy courts must retain "full authority to police—and punish—stay violations." Pet. 28. Section 362(k) reflects Congress's judgment that the pre-existing contempt remedy under Section 105(a) was *not* sufficient to police and punish stay violations, and that a supplemental damages remedy was required. Having conceded that bankruptcy courts should have full authority to enforce the stay, Goldman cannot justify depriving them of a remedy Congress deemed essential to effective enforcement.

The closest Goldman comes to responding to that fundamental problem is its assertion that awarding relief under Section 362(k) cannot be the exclusive province of bankruptcy courts because Congress purportedly "gave state courts concurrent jurisdiction over Section 362(k) claims." Pet. 26. But the only authority Goldman cites for that assertion is a single decision by an intermediate state court. Pet. 26-27 (citing *City of New London v. Speer*, 322 A.3d 407 (Conn. App. Ct. 2024)). That decision is an outlier. The prevailing view—confirmed by the "leading treatise," *Bullard v. Blue Hills Bank*, 575 U.S. 496, 505 (2015)—is that bankruptcy courts have "exclusive jurisdiction over sanctions for a stay violation" under Section 362(k). *Collier* ¶ 362.12[3]; *see, e.g.*, *In re Benalcazar*, 283 B.R. 514, 522 (Bankr. N.D. Ill. 2002) (collecting cases establishing that "it is generally accepted that only the bankruptcy court has authority to punish parties for violating the automatic stay"). And even if state courts might in some circumstances have concurrent jurisdiction, Goldman does not cite any precedent for splitting requests for relief for the same stay violation across two different tribunals.

Second, Goldman's novel position is a recipe for waste, conflict, and confusion. It would needlessly force creditors and debtors (whose resources are by definition limited) to litigate the same dispute simultaneously before a bankruptcy court and a private arbitrator. The court might find a violation of the automatic stay, while an arbitrator considering the same facts could reach the opposite conclusion. Here, for example, Goldman has not conceded that it violated the stay—so compelling arbitration would risk a situation where the arbitrator and the court disagree about how the stay applies in a pending case.

Even if the court and the arbitrator agreed on the merits, Goldman's position would create thorny remedial problems. A court considering parallel requests for relief under Section 362(k) and Section 105(a) can avoid awarding duplicative or incompatible relief for the same violation. *See, e.g.*, *In re Snowden*, 769 F.3d 651, 661 (9th Cir. 2014) (upholding an award under Section 362(k) while declining to award relief for the same injuries under Section 105(a)). But how is a court hearing a Section 105(a) request supposed to do that if the debtor's request for relief under Section 362(k) is still pending before an arbitrator (or vice versa)? Goldman does not acknowledge that problem, much less offer a solution. Nor has any court adopted—or even considered—the cumbersome bifurcated regime Goldman now asks this Court to bless.

3. Finally, Goldman's concession refutes one of the central themes of its petition. Goldman emphasizes that this Court has never held that another statute displaces the FAA. Pet. 2 (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 516 (2018)). And Goldman notes that the Court's precedents set a high bar for such displacement, requiring an "irreconcilable" conflict with the FAA. *Id.* (quoting *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227, 239 (1987)); *see* Pet. 21-23. But Goldman itself recognizes that the Bankruptcy Code clears that high bar as to a request for relief for a stay violation under Section 105(a)—even though Section 105(a), like Section 362(k), "nowhere mentions arbitration or the FAA," Pet. 23.

The question in this case thus is not *whether* the Bankruptcy Code displaces the FAA—everyone agrees that in some circumstances it does. Instead, the only question is *the extent* of the displacement. And having conceded that bankruptcy courts should retain full authority to interpret and enforce the automatic stay, Goldman offers no good reason to carve off a single enforcement tool and force it into private arbitration.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Theodore O. Bartholow, III
Counsel of Record
Karen L. Kellett
KELLETT & BARTHOLOW, PLLC
11300 N. Central Expwy.
Suite 301
Dallas, TX 75243
(214) 696-9000
thad@kblawtx.com

Malissa L. Giles
Tracy A. Giles
GILES & LAMBERT PC
129 E. Campbell Ave.
Suite 300
Roanoke, VA 24011

August 24, 2026