No. 25-1408

IN THE

Supreme Court of the United States

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

Petitioner,

v.

RHEA ANN BROWN; GREGORY KEVIN MAZE,

Respondents.

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

BRIEF OF THE AMERICAN BANKERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The American Bankers Association (ABA) is the voice of the nation's $24.1 trillion banking industry and its 2.1 million employees. ABA members provide banking services, including credit card lending, in each of the 50 states and the District of Columbia. Among them are nationally chartered and state-chartered banks and savings associations of all sizes.

Review by this Court of the Fourth Circuit's decision below is critical to the ABA's members, constituent organizations, and affiliates (collectively, "members"). The Fourth Circuit's ruling, which created a clear conflict with the Second Circuit, injected significant uncertainty into the enforceability of arbitration agreements between many of the ABA's members and their customers. The ABA's members rely on these agreements to structure their operations effectively. Arbitration offers a predictable, efficient mechanism for resolving consumer disputes, including those arising during bankruptcy. The uncertainty engendered by the Fourth Circuit's ruling threatens to eviscerate these benefits, not just with respect to customers in the Fourth Circuit, but with respect to putative class members nationwide.

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[1] Pursuant to Supreme Court Rule 37.2, counsel for amicus curiae notified the parties on July 9, 2026, of its intention to file this brief, which was more than ten days prior to its due date. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amicus curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

The ABA therefore respectfully submits this brief in support of the petition.

INTRODUCTION & SUMMARY OF THE ARGUMENT

This case presents a recurring question at the intersection of the Federal Arbitration Act ("FAA") and the Bankruptcy Code that has great significance for banks, lenders, and their customers. Arbitration clauses are a common feature of consumer-credit relationships, including credit card agreements. With personal bankruptcy filings exceeding 500,000 per year—and steadily increasing—the enforceability of these agreements during bankruptcy is of paramount importance. When a borrower who agreed to arbitrate later seeks damages under 11 U.S.C. § 362(k) for an alleged violation of the automatic stay, the parties should know whether that claim will be arbitrable. The current split leaves that question without a uniform answer.

The conflict is direct and clear. In *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104, 108-10 (2d Cir. 2006), the Second Circuit held that a § 362(k) claim may be arbitrated where arbitration would not interfere with estate administration or the purposes of the automatic stay. The Fourth Circuit reached the opposite result here, holding that arbitration of respondents' § 362(k) claims would inherently conflict with the Bankruptcy Code's purposes. Pet. App. 13a. Judge King's dissent recognized the conflict: the majority's decision "needlessly created a circuit split with the Second Circuit." Pet. App. 24a (King, J., dissenting).

The costs of leaving that split unresolved are substantial. A circuit-dependent arbitrability rule complicates contract drafting, compliance systems, and litigation reserves, among other things. But it also threatens to undermine the efficiency that arbitration promises, virtually guaranteeing costly litigation over arbitrability and venue before any court or arbitrator reaches the merits.

This case presents an ideal vehicle for providing more general clarity over how to identify and resolve conflicts between the FAA and the Bankruptcy Code. As Petitioner argues, the touchstone of that analysis should be the text of the relevant statute, not a court's policy preferences. This Court's guidance in that regard would restore predictability in an area where lower courts have divided and where nationwide lenders and borrowers need a stable rule.

ARGUMENT

I. The Court Should Resolve The Split.

The Fourth Circuit held that arbitration of § 362(k) automatic-stay claims "would interfere and conflict with the strong and established policies and purposes of the Bankruptcy Code." Pet. App. 2a. In doing so, it directly contradicted the Second Circuit, which held that arbitration of a functionally identical claim "would not necessarily jeopardize or inherently conflict with the Bankruptcy Code." *MBNA*, 436 F.3d at 110. As Judge King correctly recognized in dissent, the panel majority "needlessly created a circuit split with the Second Circuit." Pet. App. 24a (King, J., dissenting). That split presents a host of significant real-world problems and requires this Court's resolution.

A. Millions of borrowers are subject to arbitration agreements, and hundreds of thousands of them declare bankruptcy each year.

The uncertainty generated by the Fourth Circuit's decision is far-reaching. In the credit card market alone, arbitration agreements bind millions of cardholders in the United States. Since the Court clarified the FAA's applicability to consumer contracts in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), arbitration agreements have become commonplace—prior estimates suggest that more than half of all cardholders are subject to them.[2] With more than 200 million Americans owning a credit card,[3] the arbitrability of related disputes is of pressing importance to the financial-services industry.

This is no less true of disputes arising during bankruptcy. The Administrative Office of the U.S. Courts reported more than 565,000 non-business bankruptcy filings in the year ending March 31, 2026, up more than 11 percent from the previous year and

[2] CFPB, *Arbitration Study* 9 (Mar. 2015), https://perma.cc/6US5-U35P (estimating that, during the study period, more than half of outstanding credit card loans were subject to arbitration agreements).

[3] CFPB, *The Consumer Credit Card Market* 18 (Dec. 2025), https://perma.cc/RQ6N-YL42.

more than 48 percent from 2021-2022.[4] As a leading source of unsecured consumer credit,[5] credit card issuers are frequent participants in bankruptcy proceedings. And with a majority of debtors likely bound by at least one arbitration agreement, the uncertainty created by the Fourth Circuit's split from the Second Circuit implicates hundreds of thousands of debtor-creditor relationships each year.

The cross-jurisdictional nature of consumer lending magnifies the uncertainty created by the split. Many of the ABA's members operate nationally, serving borrowers across multiple circuits. Borrowers routinely move from one circuit to another, and as a result, loans may be issued in one jurisdiction, subject to collection in a second, and subject to bankruptcy proceedings in a third. Under the current circuit conflict, it is impossible for lenders and borrowers to know with certainty whether their arbitration agreements will be enforced. Whether a § 362(k) claim can be resolved in arbitration, or whether it must be resolved by a bankruptcy court, becomes a function of geographic happenstance.

B. The split threatens to eviscerate the benefits of arbitration.

Left unresolved, the circuit conflict will exacerbate what arbitration seeks to avoid: costly litigation. This Court has repeatedly recognized the benefits of

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[4] Admin. Off. of the U.S. Cts., *Bankruptcies Increase 11.9 Percent* (Apr. 23, 2026), https://perma.cc/88YH-S2ML.

[5] *See* CFPB, *The Consumer Credit Card Market*, *supra* note 3, at 33.

arbitration in reducing the costs of resolving disputes, noting that the FAA embodies "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Arbitration offers a forum that is more streamlined and expeditious, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985), whose "informality" can "reduc[e] the cost and increas[e] the speed of dispute resolution," *Concepcion*, 563 U.S. at 345.

Those benefits are materially reduced if parties are forced to litigate arbitrability as a threshold issue. If the Court allows the circuit split to persist, litigation over venue will become endemic, as would be expected whenever one circuit's law offers a party advantages that another's does not. More litigation—particularly litigation over issues that precede the merits—only adds to the costs that an arbitration agreement was designed to avoid. As this Court has held, "the unmistakably clear congressional purpose [of the FAA is] that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 506 (2018) (quoting *Prima Paint Corp. v. Flood & Conklin Mfg.*, 388 U.S. 395, 404 (1967)).

The facts of this case exemplify the stakes for lenders. Respondents here brought a putative class action on behalf of "all individuals in the United States … who currently are in a consumer bankruptcy case or were formerly in a consumer bankruptcy case … from whom [Goldman Sachs] made a post-petition demand for pre-petition debt." Pet. App.

4a (alterations in original). This class purportedly includes similarly situated borrowers nationwide, not just those with bankruptcy cases in the Fourth Circuit. As this case illustrates, though most borrowers with binding arbitration agreements may reside elsewhere, a lender may nonetheless be drawn into nationwide class litigation by a class representative who files in the Fourth Circuit. A lender's expectation of arbitrability is thus defeated—with respect to *all* borrowers—by a single circuit's rule. This Court's intervention is needed to right this untenable result.

II. Exceptions To The Federal Arbitration Act Should Be Rooted In Statutory Text.

This Court has held that the FAA's mandate to enforce arbitration agreements can be overridden "by a contrary congressional command," as evidenced by a statute's text, legislative history, or "an inherent conflict between arbitration and the statute's underlying purposes." *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 226-27 (1987).

As Petitioner has explained, lower courts are divided more generally over how to identify non-arbitrable bankruptcy claims. Pet. 18-20, 31-32. Some courts, for example, treat the distinction between "core" and "non-core" bankruptcy claims as central, while others treat it as irrelevant. *Compare Moses v. CashCall, Inc.*, 781 F.3d 63, 71-73 (4th Cir. 2015), and *Continental Ins. Co. v. Thorpe Insulation Co.* (*In re Thorpe Insulation Co.*), 671 F.3d 1011, 1021 (9th Cir. 2012), *with Mintze v. Am. Gen. Fin. Servs., Inc.* (*In re Mintze*), 434 F.3d 222, 231 (3d Cir. 2006), *and Ins. Co. of N. Am. v. NGC Settlement Tr. & Asbestos Claims*

Mgmt. Corp. (*In re Nat'l Gypsum Co.*), 118 F.3d 1056, 1066-67 (5th Cir. 1997). The result is a growing patchwork in which the enforceability of an arbitration agreement can turn on a court's discretion—which often boils down to its assessment of proper bankruptcy policy—rather than a nationally uniform rule.

This case offers a clean vehicle for providing much-needed guidance. In particular, the Court should clarify that an "inherent conflict" between a provision of the Bankruptcy Code and the FAA, *McMahon*, 482 U.S. at 227, must derive principally from the provision's text and not a court's policy views. *See Epic Sys.*, 584 U.S. at 509 (the Court "must be alert to new devices and formulas" manifesting "judicial antagonism toward arbitration"). A statute's text is the most predictable way to assess whether it conflicts with the FAA—the clearest evidence available of a "congressional command," *McMahon*, 482 U.S. at 226. *See CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 104 (2012) ("Because the CROA is silent on whether claims under the Act can proceed in an arbitral forum, the FAA requires the arbitration agreement to be enforced according to its terms."); *cf. Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) (a statute's text "necessarily contains the best evidence of Congress' pre-emptive intent" (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993))).

Section 362(k) contains no express anti-arbitration command; it provides merely that an injured person "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C.

§ 362(k)(1). Congress knows how to prohibit arbitration when it chooses to—the Military Lending Act, for instance, bars mandatory arbitration clauses in certain consumer credit contracts between lenders and servicemembers or their dependents. 10 U.S.C. § 987(e)(3). The absence of comparable language in § 362(k) indicates that Congress did not intend to exclude such claims from arbitration. *See CompuCredit*, 565 U.S. at 103 ("When [Congress] has restricted the use of arbitration in other contexts, it has done so with a clarity that far exceeds the claimed indications in the CROA."). At a minimum, this demonstrates the need for this Court to clarify how much weight courts should give textual evidence versus purposive inferences in questions such as this one.

The legal uncertainty caused by the lower courts' confusion complicates lenders' contract drafting, compliance systems, claims handling, and litigation reserves. More pointedly, the present circuit split implicates potentially hundreds of thousands of debtors and their contractual relationships with lenders. The Court's timely resolution is needed to address the costly uncertainty that the Fourth Circuit's decision has exacerbated.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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July 23, 2026