26-1241-cv

United States Court of Appeals

for the

Second Circuit

RICHARD AGAG, MD,

Plaintiff-Appellee,

– v. –

CIGNA HEALTH AND LIFE INSURANCE COMPANY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF AND SPECIAL APPENDIX FOR DEFENDANT-APPELLANT

CAROLINE E. OKS
RYAN P. GOODWIN
STEPHEN R. DONAT
FBT GIBBONS LLP
One Gateway Center
Newark, New Jersey 07102

Attorneys for Defendant-Appellant

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a), Appellant Cigna Health and Life Insurance Co., by and through its undersigned counsel, hereby states the following:

1. Cigna Health and Life Insurance Company is a wholly-owned subsidiary of Connecticut General Life Insurance Company, which is a wholly-owned subsidiary of Connecticut General Corporation, which is a wholly-owned subsidiary of Cigna Holdings, Inc., which is a wholly-owned subsidiary of Cigna Holding Company, which is a wholly-owned subsidiary of The Cigna Group (f/k/a Cigna Corporation), a publicly traded corporation.

2. The Cigna Group has no parent corporation, and no publicly held corporation owns 10% or more of the stock of The Cigna Group.

Dated: August 7, 2026

s/ Caroline E. Oks
Caroline E. Oks
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Rules

Regulations

INTRODUCTION

Over the last two years, courts have considered whether Congress authorized a private right of action under the No Surprises Act ("NSA") for healthcare providers to seek confirmation of Independent Dispute Resolution ("IDR") determinations through Section 9 of the Federal Arbitration Act ("FAA"), or to privately enforce the statute and obtain damages. The District Court joined the vast majority of courts—including the Fifth Circuit and district courts within this Circuit—and found that Congress did not authorize a private right of action under the NSA. This appeal presents a new question: whether a cause of action is required at all for a district court to order confirmation. Because Appellee Richard Agag, MD's ("Agag") two-count Complaint hinged entirely on finding an implied right of action to confirm IDR determinations under Section 9 of the FAA or to privately enforce the statute, the District Court's determinations should have resulted in dismissal of Agag's Complaint in its entirety.

Instead, the District Court characterized the private right of action question as "misplaced." So long as Congress did not expressly "prohibit" or "preclude" confirmation, the Court reasoned it could bypass the cause of action requirement, order confirmation, direct entry of judgment, and award post-judgment interest. But ordering a remedy without any recognized right of action is contrary to governing law. The Supreme Court made plain just last term that "Congress, not the Judiciary, decides who may enforce the law." *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1551 (2026). Because the District Court granted confirmation of the IDR determinations despite finding that Congress did not authorize Agag the private right to bring such an action, the judgement should be reversed and this Court should direct dismissal in full.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1291 because Cigna timely appealed, JA-433, from a final judgment of the District Court, which confirmed the IDR determinations in favor of Agag while partially granting and partially denying Cigna's motion to dismiss, JA-432. The Court separately denied Agag's cross-motion for summary judgment as moot. JA-6, ECF No. 44.

STATEMENT OF ISSUES

1. Whether the NSA authorizes a private right of action for providers to confirm IDR determinations under Section 9 of the FAA or to privately enforce the NSA and obtain damages.

2. Whether the District Court erred in confirming IDR determinations after finding that Congress did not authorize a private right of action under the NSA for a provider to seek judicial confirmation of IDR determinations.

3. Whether the District Court violated the party presentation rule when it reached a "third conclusion" not presented by either party.

STATEMENT OF RELATED CASES AND PROCEEDINGS

While this case has not previously come before the Court, Cigna is party to a separate appeal pending before the Court concerning whether the NSA authorizes a private right of action for a provider to enforce an IDR determination. *See East Coast Advanced Plastic Surgery, LLC v. Cigna Health and Life Insurance Company*, No. 25-2204.

STATEMENT OF THE CASE

A. The No Surprises Act

Congress enacted the NSA to protect healthcare patients from "surprise medical bills" incurred when they receive covered emergency medical services from an out-of-network provider or non-emergent services from an out-of-network provider at an in-network health care facility. Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758–2890 (2020), *codified at* 42 U.S.C. § 300gg-111 *et seq.* When an insured patient receives medical care under such circumstances, the NSA: (1) limits the patient's financial liability to the provider for the medical care, and (2) removes the patient from billing disputes between the provider and the patient's healthcare benefits plan.

1. The NSA Banned Surprise Medical Bills and Limited Patients' Financial Responsibilities

The NSA prohibits a medical provider that is out-of-network with a patient's group health plan or health insurance issuer (collectively, "payer") from balance billing or otherwise holding the patient liable for unanticipated out-of-network care beyond the patient's in-network cost sharing responsibility. *See, e.g.*, *Jeffrey Farkas, M.D., LLC v. 1199SEIU Nat'l Benefit Fund*, 2026 U.S. Dist. LEXIS 71613, at *5 (E.D.N.Y. Apr. 1, 2026) ("*1199SEIU*") (citing 42 U.S.C. §§ 300gg-132(a)). A covered patient is thus held harmless for medical costs beyond ordinary plan costs such as the plan deductible, copayment, or coinsurance. *See* 42 U.S.C. §§ 300gg-131, 300gg-132. If a provider bills a patient beyond the in-network cost share, "the provider shall reimburse the [patient] for the full amount paid by the [patient] in excess of the in-network cost-sharing amount for the treatment or services involved, plus interest[.]" *Id.* at § 300gg-139(b). But "NSA protections are not universal and do not extend to *non-covered* items or services." *1199SEIU*, 2026 U.S. Dist. LEXIS 71613, at *4 (citing Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36,872, 36,891 (July 13, 2021)). Rather, NSA protections apply only to services "for which benefits are provided under the plan." 42 U.S.C. §§ 300gg-131(a), -132(a). When a service is not covered by a patient's health benefit plan, or when the patient voluntarily elects out-of-network care, the patient may remain liable for those costs. 42 U.S.C. §§ 300gg-131(a), -132(a), (b)(1).

2. The NSA Established a Non-Judicial Billing Dispute Resolution Process

Congress established a non-judicial dispute resolution process to channel billing disputes between providers and payers when they cannot agree on payment for NSA-eligible care. To set forth this new administrative scheme, "[t]he NSA simultaneously modified portions of the Public Health Service Act, the Internal Revenue Code, and the Employee Retirement Income Security Act." *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1079 (M.D. Fla. 2023), *aff'd sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110 (11th Cir. 2025).

Under the NSA, the out-of-network provider must submit the claim to the insured's health plan. 42 U.S.C. § 300gg-111(a)(1)(C)–(D). If dissatisfied with the payment determination, the provider may attempt to negotiate payment for the services. *See id.* at § 300gg-111(c)(1). If negotiations fail or the negotiation period is exhausted, the provider or payer may initiate the IDR process. *Id.* at § 300gg-111(c)(1)(B).

The IDR process resembles "baseball-style" arbitration: the provider and payer submit final offers, and a certified IDR Entity ("CIDRE") must select one of the two proposed amounts. *Mod. Orthopaedics of N.J. v. Premera Blue Cross*, 2025 U.S. Dist. LEXIS 215824, at *10 (D.N.J. Nov. 3, 2025). The parties are bound to the IDR determination absent a fraudulent claim or misrepresentation of facts to the CIDRE, 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), and payment, if any, is owed "not later than 30 days after the date on which such determination is made," *id.* at § 300gg-111(c)(6).

Two features of the NSA are particularly relevant here. *First*, Congress established a detailed administrative enforcement scheme to govern the IDR process. *Second*, Congress barred judicial remedies related to IDR determinations except in limited circumstances not applicable here.

(a) *Congress Created an Administrative Enforcement Scheme to Govern IDR Compliance*

Congress vested three federal agencies with authority over the IDR process: "the United States Department of Health and Human Services, Department of Treasury, Department of Labor, and the Secretaries of those agencies . . . are charged with implementing and administering the [NSA]." *Neurological Surgery Prac. of Long Island, PLLC v. U.S. Dep't of Health & Hum. Servs.*, 145 F.4th 212, 218 (2d Cir. 2025). "The Act delegates to the Departments the task of devising the implementing regulations needed to make the program work." *Id.* at 219 (explaining that the NSA "directs the Departments to 'establish by regulation one independent dispute resolution process . . . under which . . . a certified IDR entity . . . determines . . . the amount of payment' for services the Act covers" (alteration in original) (quoting 42 U.S.C. § 300gg-111(c)(2)(A)); *see also* 42 U.S.C. §§ 300gg-111(c)(1)(B), (c)(2)(A), (c)(4), (c)(9).

Regarding NSA enforcement, Congress specified a role for each of the three principal Departments, as well as state governments. *See, e.g.*, 42 U.S.C. § 300gg-22, § 300gg-134 (HHS enforcement); 29 U.S.C. §§ 1132(a)(5), 1185e (DOL enforcement); 26 U.S.C. §§ 4980D, 9834 (Treasury enforcement). Under this authority, HHS enforces payer and provider non-compliance with the IDR process. 42 U.S.C. § 300gg-22(b)(2) (authorizing enforcement against payers for NSA non-compliance); *id.* at § 300gg-134 (authorizing enforcement against providers for NSA non-compliance); *see also* 45 C.F.R. § 150.301 *et seq.* (governing the imposition of civil monetary penalties against payers). HHS is also empowered to impose per-day civil monetary penalties on payers for violations, *see* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150.301 *et seq.* The enforcement scheme provides administrative review and fair hearing processes for payers to challenge the imposition of monetary penalties, *id.* at § 300gg-22(b)(2)(D), and HHS may refer unpaid penalties to the Attorney General for judicial enforcement, *id.* at § 300gg-22(b)(2)(F), among other administrative remedies.

The Centers for Medicare & Medicaid Services ("CMS"), an agency within HHS, "oversee[s] the IDR process 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, https://www.gao.gov/assets/870/864587.pdf, at 36 (Dec. 2023) ("GAO-24-106335"). Providers may submit complaints against non-compliant payers for review and potential enforcement proceedings. *See id.* at 36–37. For providers who "believe an entity is not complying with the federal [IDR] process, or . . . want to report a violation of the protections of the No Surprises Act," CMS established an online portal through which providers may submit complaints regarding the IDR process violations.[1] If a payer fails to timely pay an IDR determination, CMS "require[s] the issuer to pay the provider the determined award amount." GAO-24-106335, at 36–37.

The NSA "was also codified under the DOL's authority to protect employee benefits." *Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, at *28 (citing 29 U.S.C. § 1185e). The "DOL has the broadest enforcement powers of the Departments, with sweeping authority to initiate investigations and civil enforcement proceedings." *Id.* (citing 29 U.S.C. §§ 1132(a)(3) & 1134(a)(3)). These enforcement powers have not gone unused. Indeed, "DOL has been responding to individual complaints relating to the IDR process and late or non-payments" of IDR determinations. *Id.* (citing GAO-24-106335 at 39–40).

Congress also vested Treasury with enforcement of the IDR process because "[t]he Treasury has a unique oversight role for health care plans governed by ERISA." *Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, at *28. "Like ERISA,

---

[1] *See* CTRS. FOR MEDICARE & MEDICAID SERVS., PROVIDERS: SUBMIT A BILLING COMPLAINT, https://www.cms.gov/nosurprises/policies-and-resources/providers-submit-a-billing-complaint (last visited August 5, 2026); CTRS. FOR MEDICARE & MEDICAID SERVS., NO SURPRISES COMPLAINT FORM, https://nsa-idr.cms.gov/providercomplaints/s/ (last visited August 5, 2026).

29 U.S.C. § 1191b(a), the NSA was codified into the Internal Revenue Code as part of Treasury's responsibility to enforce the NSA," which "incorporates compliance with the IDR process—including the timely payment of awards." *Id.* at *28–29 (citing 26 U.S.C. § 9816(c)(6)). Thus, "[w]here a group health plan is failing to comply with the requirements of these acts, the Treasury has the authority to levy an increasingly heavy excise tax for each day the party remains out of compliance." *Id.* at *29 (citing 26 U.S.C. § 4980D(b)(1)). Lastly, and separately, the NSA also permits states to implement their own "enforcement mechanisms and penalties . . . in accordance with applicable state law." *Id*. at *26 (citing 42 U.S.C. § 300gg-22).

(b) *Congress Barred Judicial Intervention Except in Limited Circumstances*

Congress explicitly confined judicial review of IDR determinations under the NSA. An IDR determination "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. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Section 10(a) of the FAA governs judicial review of actions to *vacate* arbitral awards. 9 U.S.C. § 10(a). Under Section 10(a), a party may seek vacatur "in the United States court in and for the district wherein the award was made" based on the circumstances in Section10(a)(1)–(4). *Id.*

Section 9 of the FAA governs actions for judicial *confirmation* of arbitral awards. 9 U.S.C. § 9. Unlike Section 10(a), Congress did not incorporate Section 9 into the NSA. Nor did Congress incorporate any mechanism for courts to confirm IDR determinations. *See generally* 42 U.S.C. § 300gg-111 *et seq*.

B. Relevant Procedural History

1. Agag's Two-Count Complaint Sought Relief in Accordance with 9 U.S.C. § 9 and Alleged a Violation of the No Surprises Act

Agag is a medical provider who alleges he rendered healthcare services to two patients whom he claims were beneficiaries of health plans administered by Cigna, JA-9, Compl. ¶¶ 5–6. Because Agag did not have a network contract with Cigna ("out-of-network") at the time he performed the services, and because the services were "rendered emergently/inadvertently," Agag claimed they were "subject to reimbursement pursuant to the NSA." JA-9, Compl. ¶¶ 7–8. Agag initiated the IDR process to dispute alleged underpayments. *See* JA-9–15. His complaint attached documentation showing that he was the prevailing party in five IDR proceedings. JA-19–35, Exs. A–E. Agag alleged that Cigna failed to timely pay within 30 days of each determination. *See* JA-10–15.

Agag's two-count Complaint asserted "subject matter jurisdiction pursuant to 28 U.S.C. § 1331" because the claims arose under the NSA and the FAA. JA-8. Count One, labeled "Plaintiff Seeks Relief In Accordance With 9 U.S. Code § 9," sought confirmation of the IDR determinations. JA-16. Count Two, labeled "Violation of the Federal No Surprises Act Regarding the Non-Payment of Awards," sought damages under the NSA. JA-17. Agag demanded: (a) an order confirming the IDR determinations, (b) an order directing Cigna to pay Agag $142,597.99; (c) attorney's fees, interest, and costs, and (d) other appropriate relief. JA-17.

2. Cigna's Motion to Dismiss and Agag's Cross Motions

Cigna moved to dismiss the complaint in its entirety under Rule 12(b)(1) for lack of federal question jurisdiction and Rule 12(b)(6) for failure to state a claim upon which relief can be granted. JA-36–81. Cigna argued that Section 9 of the FAA does not apply to confirm IDR determinations, and the NSA does not provide a private right of action to enforce IDR determinations and obtain damages, along with other defenses. JA-36–81. Agag opposed the motion and filed two cross-motions: one for summary judgment, JA-109, and one "pursuant to 9 U.S.C. § 9" to confirm the IDR determinations, JA-110. The District Court scheduled oral argument for April 17, 2026. JA-6, ECF No. 36.

C. The District Court's Decision

Two days before oral argument the District Court issued an order granting in part and denying in part Cigna's motion to dismiss and granting Agag's cross-motion to confirm the IDR determinations. JA-6, ECF No. 43. In a separate text order, the Court denied Agag's cross-motion for summary judgment as moot. JA-6, ECF No. 44. The Court also canceled oral argument. JA-6. The Court corrected and replaced its original order the following day. JA-403–431, ECF No. 45.

The Court granted Cigna's motion "with regard to Agag's request to confirm the IDR awards under Section 9 of the FAA and his request for damages under the NSA," but otherwise denied Cigna's motion. JA-431. Despite granting Cigna's motion to dismiss confirmation under Section 9, the Court nonetheless granted Agag's cross-motion for confirmation—which Agag brought "pursuant to 9 U.S.C. § 9." JA-110; *see also* JA-411 (explaining Agag cross moved "under 9 U.S.C. § 9").

The District Court acknowledged the District of Connecticut had split on the question of whether the NSA implicitly authorizes a private right of action. JA-403. The Court instead reached a "third conclusion": the court had "federal question jurisdiction under the NSA, and that a provider may seek confirmation of an IDR award in federal court under the NSA, but not the FAA, because the requested relief can be provided through a summary proceeding that does not involve a traditional private right of action or judicial review." JA-403–04. The Court also found that "Agag may not seek confirmation of an NSA IDR award under Section 9 of the FAA," JA-413, and that "the NSA does not create an implied private right of action that allows a provider to sue for damages under the statute," JA-419, JA-429.

The District Court found the "focus on the private right of action question is misplaced." JA-419. Because judicial confirmation was "purely ministerial," the Court reasoned no private right of action was required to order confirmation. JA-419. Agag never argued that a private right of action was unnecessary, or that the

Court possessed inherent ministerial authority to confirm. JA-82–108. Agag raised only Section 9 of the FAA as a legal basis to confirm the IDR determinations. JA-82–108, JA-392–401.

The Court directed the Clerk to "enter judgment confirming the IDR awards in the amount of $142,567.99 for Agag and against Cigna with post-judgment interest," and to close the case. JA-431. The Clerk entered judgment the following day. JA-432. Cigna filed its Notice of Appeal on May 1, 2026.[2] JA-433.

SUMMARY OF THE ARGUMENT

The NSA does not create an express or implied private right of action for Agag to seek confirmation of IDR determinations under Section 9 of the FAA or enforce the NSA in federal court. Without a right of action under the NSA to confirm or enforce IDR determinations, Agag's Complaint fails as a matter of law because Agag cannot state a claim upon which relief can be granted.

The District Court agreed with Cigna and did not find that Agag pled a cause of action under either count of the Complaint. As to Count One, which sought "relief in accordance with 9 U.S. Code § 9," JA-16–17, the District Court found unequivocally that "Agag may not seek confirmation of an NSA IDR award under Section 9 of the FAA," JA-419. As to Count Two, which sought damages for a

---

[2] Agag did not cross-appeal on the District Court's conclusion that the NSA does not authorize a private right of action to confirm or enforce IDR determinations.

"violation of the federal No Surprises Act regarding the non-payment of the IDR awards," JA-17–18, the District Court again found that "the NSA does not create an implied private right of action that allows a provider to sue for damages under the statute," JA-429. Without a cognizable cause of action under the NSA or FAA to support either count of Agag's complaint, nothing was left before the Court and Cigna's motion to dismiss should have been granted in full.

The District Court did not dismiss Agag's action. Instead, the Court ordered confirmation of the IDR determinations. JA-419. The Court did not state the basis for its authority to confirm the IDR determinations without a right of action authorized by Congress under the NSA. The Court found Agag's action required it to "act in a purely ministerial way," but did not define how it could engage in the ministerial action without a cognizable cause of action. Instead, the Court compared the proceedings to those that occur under two other statutes. JA-420 & n. 2. But the Court overlooked that both those statutes contain express rights of action—enacted by Congress—that allows litigants to obtain relief in federal district court. The Court thus erred when ordering a judicially manufactured remedy to a plaintiff without finding a private right of action under the applicable statute.

Compounding the error, and without a cause of action anchor, the District Court granted Agag's cross motion, which sought confirmation under Section 9 of the FAA, the very legal theory the Court found "does not apply to the facts of the case." JA-419. Because the Court found that "Agag may not seek confirmation of an NSA IDR award under Section 9 of the FAA," JA-419, it erred in granting Agag's cross-motion seeking confirmation of the IDR determinations "pursuant to 9 U.S.C. § 9," JA-110.

The District Court's "third conclusion," also violated the party presentation principle. Agag did not argue that the Court possessed an undefined inherent authority to confirm IDR determinations without a cause of action. In its pleading and cross-motion Agag asserted only FAA Section 9 as the legal basis for confirmation.

When applying the proper interpretive framework governing private rights of action review, dozens of courts, including the Fifth Circuit, have determined that Congress did not clearly and unambiguously authorize any private right for a provider to confirm IDR determinations. *See Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 1493 (2026). This Court should adopt those conclusions.

STANDARD OF REVIEW

This Court reviews legal issues, including issues of statutory interpretation, *de novo*. *United States ex rel. Weiner v. Siemens AG*, 87 F.4th 157, 161 (2d Cir. 2023). That includes a district court's legal conclusions on a motion to dismiss. *Fed. Hous. Fin. Agency v. UBS Ams. Inc.*, 712 F.3d 136, 140 (2d Cir. 2013).

Whether the District Court departed from the principle of party presentation is reviewed for abuse of discretion. *Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY FOUND THAT SECTION 9 OF THE FAA DOES NOT APPLY TO THE NSA

Section 9 of the FAA is not expressly incorporated into the NSA. The District Court joined numerous other courts in concluding that "Section 9 of the FAA does not apply" to the NSA and therefore "Agag may not seek confirmation of an NSA IDR award under Section 9 of the FAA."[3] JA-418. That determination is in line with many other courts that have dismissed similarly pleaded actions. *See, e.g.*, *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n*, 2025 U.S. Dist. LEXIS 252293, at *18 (S.D.N.Y. Dec. 5, 2025) (dismissing cause of action to confirm IDR determinations under Section 9 of the FAA "[b]ecause Congress clearly knows how to explicitly incorporate § 9, but chose not to do so in the NSA, I cannot supply the provision myself"); *Axis Neuromonitoring, LLC v. Aetna Inc.*, 824 F. Supp. 3d 217, 224 (D. Conn. 2026) (dismissing action for IDR confirmation explaining "the legislative decision to permit petitions brought under § 10(a) of the FAA, but not

[3] The Court dismissed Count One of Agag's Complaint which sought confirmation of the IDR awards "in accordance with 9 U.S. Code § 9." JA-16.

§ 9, suggests that Congress did not intend for federal courts to become involved with the enforcement of IDR awards—as compared to vacatur of them").

For the District Court to have concluded otherwise would require the Court to read Section 9 of the FAA into the NSA. But permitting a party to confirm an IDR determination under Section 9 is contrary to the "fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (internal quotations marks and citation omitted).

As the Fifth Circuit and other courts have explained, Congress is familiar with how to incorporate Section 9 of the FAA into a statute to create a private right of action, and has done so before. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 1493 (2026) (explaining that, by way of example, under 5 U.S.C. § 580(c) Congress incorporated the confirmation provisions of the FAA when providing that "'[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") (quoting 5 U.S.C. § 580(c)); *see also Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, at *14 ("Congress knows how to incorporate Section 9, yet it chose not to in the NSA."). "So, Congress knew how to create a private right of action in the NSA—and has done so elsewhere—but declined to do so," in the NSA. *Guardian Flight*, 140 F.4th at 276. "Obviously, then, when Congress wished to provide" a mechanism for judicial review, "it knew how to do so and did so expressly." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 572 (1979).

II. CIGNA'S MOTION TO DISMISS SHOULD HAVE BEEN GRANTED IN FULL BECAUSE THE DISTRICT COURT CORRECTLY FOUND THAT THE NSA DOES NOT AUTHORIZE A RIGHT OF ACTION FOR JUDICIAL CONFIRMATION OF IDR DETERMINATIONS

Congress did not authorize a private right of action under the NSA for providers to seek judicial confirmation of IDR determinations under Section 9 of the FAA or to privately enforce IDR determinations and obtain damages. There is no dispute that the NSA does not *expressly* authorize such rights. Nor does the text and structure of the NSA unambiguously demonstrate that Congress impliedly intended to create a private right of action for a provider to seek confirmation or enforcement of IDR determinations in federal court. In fact, "the NSA's text and structure point in the opposite direction." *Guardian Flight*, 140 F.4th at 275. Congress established an administrative enforcement scheme stretched across several federal agencies and the states to enforce IDR determinations, and authorized administrative remedies to aggrieved providers. Going further, Congress also barred judicial review of IDR determinations except in narrow circumstances not applicable here.

Under the guiding interpretive framework governing private rights of action set forth by the Supreme Court and this Court, these textual and contextual clues inform congressional intent and foreclose recognizing an implied right. Most courts—including the Fifth Circuit and dozens of district courts—have concluded that Congress did not intend to create a private right of action under the NSA to confirm IDR determinations and have dismissed actions like Agag's.[4] And even if it were a close call—which it is not—an inferred right must clear a high bar.

[4] *See* JA-207–208 & n.1 (collecting cases); *see also PHI Health, LLC v. Health Care Serv. Corp.*, 2026 U.S. Dist. LEXIS 174288 (N.D. Ill. Aug. 5, 2026) ("*PHI Health II*"); *SpecialtyCare, Inc. v. Kaiser Found. Health Plan, Inc.*, 2026 U.S. Dist. LEXIS 157374 (N.D. Cal. July 15, 2026); *PHI Health, LLC v. Health Care Serv. Corp.*, 2026 U.S. Dist. LEXIS 138829 (N.D. Ill. June 23, 2026); *SpecialtyCare Inc. v. Health Care Serv. Corp.*, 2026 U.S. Dist. LEXIS 121472 (N.D. Ill. June 2, 2026); *SpecialtyCare Inc. v. Health Care Serv. Corp.*, 2026 U.S. Dist. LEXIS 121475 (N.D. Ill. June 2, 2026); *SpecialtyCare Inc. v. Health Care Serv. Corp.*, 2026 U.S. Dist. LEXIS 121478 (N.D. Ill. June 2, 2026); *Advanced Monitoring Servs. Holdings, LLC v. Blue Cross Blue Shield of Okla.*, 2026 U.S. Dist. LEXIS 132155 (N.D. Okla. May 14, 2026), *R. & R. adopted*, 2026 U.S. Dist. LEXIS 132156 (N.D. Okla. June 2, 2026); *Williams v. Transworld Sys.*, 2026 U.S. Dist. LEXIS 79579 (N.D. Cal. Apr. 10, 2026); *Advanced Vascular Assocs. v. Horizon Blue Cross Blue Shield of N.J.*, 2026 U.S. Dist. LEXIS 75135 (E.D. Pa. Apr. 7, 2026); *Jeffrey Farkas, M.D., LLC v. 1199SEIU Nat'l Ben. Fund*, 2026 U.S. Dist. LEXIS 71613 (E.D.N.Y. Apr. 1, 2026); *T.V. Seshan, M.D., P.C. v. Aetna, Inc.*, 2026 U.S. Dist. LEXIS 71883 (S.D.N.Y. Mar. 30, 2026); *Neuroshield Network Se., LLC v. Phx. Adm'rs, LLC*, 2026 U.S. Dist. LEXIS 67059 (N.D. Ohio Mar. 30, 2026); *Axis Neuromonitoring, LLC v. Aetna Inc.*, 824 F. Supp. 3d 217 (D. Conn. 2026); *Conn. Gen. Life Ins. Co. v. E. Coast Advanced Plastic Surgery, LLC*, 2026 U.S. Dist. LEXIS 38843 (S.D.N.Y. Feb. 24, 2026); *SpecialtyCare, Inc. v. UMR, Inc.*, 2026 U.S. Dist. LEXIS 34914 (D. Del. Feb. 20, 2026), *R. & R. adopted*, 2026 U.S. Dist. LEXIS 65325 (D. Del. Mar. 26, 2026), *appeal docketed*, No. 26-1769 (3d Cir. Apr. 15, 2026); *SpecialtyCare, Inc. v. Cigna Healthcare Inc.*, 2026 U.S. Dist. LEXIS 34911 (D. Del. Feb. 20, 2026), *R. & R. adopted*, 2026 U.S. Dist. LEXIS 65340 (D. Del. Mar. 26, 2026), *appeal docketed*, No. 26-1768 (3d Cir. Apr. 15, 2026); *Worldwide Aircraft Servs, Inc v. United Healthcare*, 2026 U.S. Dist. LEXIS 29847 (M.D. Fla. Feb. 13, 2026); *SpecialtyCare Inc. v. Meritain Health, Inc.*, 2026 U.S. Dist. LEXIS 26722 (D. Del. Feb. 9, 2026), *R. & R. adopted*, 2026 U.S. Dist. LEXIS 55009 (D. Del. Mar. 17, 2026), *appeal docketed*, No. 26-1864 (3d Cir. Apr. 16, 2026); *Advanced Monitoring Servs. Holdings, LLC v. Usable HMO, Inc.*, 2026 U.S. Dist. LEXIS 17737 (E.D. Ark. Jan. 28, 2026); *GuardION Med., LLC v. MedCost Benefit Servs., LLC*, 2026 U.S. Dist. LEXIS 14888 (M.D. Ga. Jan. 27, 2026); *SpecialtyCare Inc. v. Aetna, Inc.*, 2025 U.S.

Despite correctly recognizing that "the NSA does not create a private right of action for providers" JA-413, JA-429, the District Court erred by not granting Cigna's motion to dismiss in full on those grounds.

A. It is Undisputed that the NSA Does Not Include an Express Private Right of Action

The polestar of private rights of action analysis is that "Congress determines who may sue to enforce federal law." *FS Credit*, 146 S. Ct. at 1552. "[L]ike substantive federal law itself, private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Thus, "creating a cause of action is a legislative endeavor." *Egbert v. Boule*, 596 U.S. 482, 491 (2022).

"When Congress creates a private right of action, it usually does so expressly." *FS Credit*, 146 S. Ct. at 1552. That is not the case here. No court has held that the NSA creates an *express* private right of action to confirm IDR determinations, and Agag did not argue otherwise below. JA 83–109; *see, e.g.*, *Guardian Flight*, 140 F.4th at 275 ("[T]he NSA contains no express right of action to enforce or confirm an IDR award"); *Axis Neuromonitoring*, 824 F. Supp. 3d at 223 ("[T]he NSA clearly

---

Dist. LEXIS 264619 (M.D. Pa. Dec. 23, 2025), *appeal docketed*, No. 26-1114 (3d Cir. Jan. 22, 2026); *SpecialtyCare, Inc. v. MedCost, LLC*, 2026 Del. Ch. LEXIS 110 (Del. Ch. Feb. 16, 2026).

does not contemplate an express private right of action to enforce or confirm an IDR award”).

B. Applying the Applicable Framework Governing Whether a Statute Authorizes a Private Right of Action, an Overwhelming Majority of Courts Have Found No Private Right of Action Under the NSA

When Congress did not expressly authorize a right of action, an implied right can only be found upon “explicit evidence of Congressional intent.” *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695, 697 (2d Cir. 2010). A plaintiff must show that Congress “unambiguously conferred” a new private right despite the lack of express text authorizing a cause of action. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 332 (2015). That high bar was set before two decisions last term where the Supreme Court stressed that it had “‘sworn off the habit’ of implying private rights of action[.]” *FS Credit*, 146 S. Ct. at 1555 (quoting *Sandoval*, 532 U.S. at 287 (citation modified)); *see also Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882, 1890 (2026) (explaining “[t]he Court has ‘rejected the practice of fashioning rights of action as [it] see[s] fit” (quoting *FS Credit*, 146 S. Ct. at 1553)).

Prior to *FS Credit* and *Cisco*, courts “rarely” found private rights “by implication.” *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014), *cert. denied*, 576 U.S. 1028 (2015). But “[i]mplied rights of action are disfavored, and [this Court] will not read a statute as creating one in the absence of clear evidence of legislative intent to do so.” *Peterson v. Bank Markazi*, 121 F.4th 983, 1003 (2d

Cir. 2024), *cert. denied sub nom. Clearstream Banking, S.A. v. Peterson*, 145 S. Ct. 2819 (2025) (citation modified). Because Congress knows how to authorize a right of action, the bar to show that Congress intended to authorize such a right but neglected to do so explicitly is considerably high. This Court "begin[s] with the presumption that Congress did not intend one." *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 116 (2d Cir. 2007). That presumption reflects Article III limitations: authorizing a right of action where Congress did not intend one is "difficult to reconcile with the Constitution's separation of legislative and judicial power." *FS Credit*, 146 S. Ct. at 1553 (citation modified). The plaintiff bears the burden to overcome that presumption. *See Suter v. Artist M.*, 503 U.S. 347, 363 (1992).

In a series of decisions beginning with *Alexander v. Sandoval*, the Supreme Court recalibrated its implied rights of action analysis and closely cabined the circumstances when it would be appropriate—if ever—to find that Congress impliedly authorized a right that it did not expressly define. *See Sandoval*, 532 U.S. at 287 (explaining that recognizing remedies through implied causes of action occurred during an "*ancien regime*" and the Court has "not returned to it since"). To ascertain whether a statute authorizes a private right of action, "[t]he judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Id.* at 286–87. "Statutory intent . . . is determinative," because "[w]ithout it, 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." *Id.* As this Court recognized, *Sandoval* "strictly curtailed the authority of the courts to recognize implied rights of action." *Lopez v. Jet Blue Airways*, 662 F.3d 593, 596–97 (2d Cir. 2011).

In *FS Credit*, the Court tightened the standard, explaining that "[r]ather than augmenting statutes, we interpret them." 146 S. Ct. at 1553. "If a statute does not spell out a right of action, we examine the statute's text and structure to determine whether it implicitly provides one." *Id*. Certain statutory features guide this analysis. "Language that 'focus[es] on the person regulated rather than the individuals protected' does not fit the bill." *Id.* (quoting *Sandoval*, 532 U.S. at 289). The Court also examines whether an administrative remedial scheme already exists in the statute. *Id.* at 1553–55. "And language establishing an express 'remedial scheme' elsewhere in the statute may 'foreclose a private cause of action to enforce even those statutes that admittedly create substantive private rights.'" *Id.* at 1553 (quoting *Sandoval*, 532 U.S. at 290 (citation modified)). Thus, when a statute contains both rights-creating language and a preexisting remedial scheme, the remedy Congress expressly enacted will foreclose a remedy Congress did not. *Id.*

Even before *FS Credit* and *Cisco*, almost every court found that Congress did not create a private right of action under the NSA for providers to seek confirmation of IDR awards. *See, e.g.*, *Guardian Flight*, 140 F.4th at 276 ("We will not find an implied right of action where Congress expressly forecloses it."); *Axis Neuromonitoring*, 824 F. Supp. 3d at 224 ("The Court thus concludes, as have most courts to consider the issue, that the NSA does not create an implied right of action."); *E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co.*, 2025 U.S. Dist. LEXIS 157911, at *47 (S.D.N.Y. Aug. 14, 2025) ("join[ing] the substantial majority of courts to consider the issue" and declined "to recognize an implied right of action within the NSA") *appeal docketed*, No. 25-2204 (2d Cir. Sept. 15, 2025); *T.V. Seshan*, 2025 U.S. Dist. LEXIS 252293, at *28 (finding "an implied right of action is incongruous with the detailed statutory scheme," and joining "the substantial majority of courts to consider the issue, and decline to recognize an implied right of action under the NSA" (citation modified)); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, 790 F. Supp. 3d 129, 137 (E.D.N.Y. 2025) (declining to "impermissibly invent a cause of action to confirm an award under the NSA").

As one court interpreting the NSA observed: "To the Court's knowledge, no case decided since *Sandoval* has found an implied private right of action where Congress enacted administrative enforcement provisions like those present here outside of this context." *SpecialtyCare, Inc. v. Kaiser Found. Health Plan, Inc.*, 2026 U.S. Dist. LEXIS 157374, at *11 (N.D. Cal. July 14, 2026).

C. The District Court Correctly Found That a Provider Has No Private Right to Enforce the NSA and Obtain Damages

The District Court correctly found that "the NSA does not create an implied private right of action that allows a provider to sue for damages under the statute." JA-429. Like its determination on Count One, the Court again joined the Fifth Circuit and dozens of district courts in concluding that Congress did not impliedly authorize a private right under the NSA.[5] *See, e.g.*, *Guardian Flight*, 140 F.4th at 273 (affirming dismissal because "the NSA does not contain a private right of action"). Courts have based their determinations on several factors, including the lack of any express right of action, the strong presumption against implied rights, and two features Congress installed in the NSA: an express administrative enforcement scheme with delegated administrative powers, and an explicit bar on judicial review except in limited circumstances not applicable here. The existence of either ends the inquiry.

1. The NSA Bars Judicial Review Except in Limited Circumstances Not Applicable Here

Starting with the statutory text, Congress explicitly barred judicial review under the NSA except for actions to vacate IDR determinations. The broad judicial review bar evinces Congress's intention not to create a private right of action to

[5] Like Count One, the Court dismissed Count Two of Agag's Complaint which sought damages for a "violation of the Federal No Surprises Act regarding the non-payment of awards." JA-17.

confirm or enforce an IDR determination.

Under the NSA, IDR determinations "*shall not be subject to judicial review*," except in an action brought under Section 10(a)(1)–(4) of the FAA, which authorizes courts to *vacate* arbitral awards, and is thus not applicable here. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (emphasis added). Congress thus declined to incorporate an express confirmation or enforcement mechanism and limited judicial review of IDR determinations solely to vacatur actions. *See T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *25 ("The Court cannot ignore the plain language of the statute and interpret language forbidding judicial review except to vacate an award to mean forbidding judicial review except to vacate *or enforce* an award." (citation modified)). The NSA's "bar on judicial review strongly suggests Congress did not insert a private right of action into the statute." *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of N.J.*, 2025 U.S. Dist. LEXIS 231385, at *16 (D.N.J. Nov. 25, 2025).

The Fifth Circuit concluded that the "NSA's plain text bars this suit" because courts cannot "find an implied right of action where Congress expressly forecloses it." *Guardian Flight*, 140 F.4th at 276. Thus, except for vacatur actions, Congress closed the door to any other judicial involvement in the IDR process. *See id.* at 275 ("The NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA.").

2. The Structure of the NSA Provides Administrative Remedies to Enforce IDR Determinations

The omission of a private right of action comports with the NSA's structure. Rather than provide private enforcement rights, Congress vested three administrative agencies and the states with enforcement authority over the IDR process, including IDR determinations.

As to HHS, Congress amended the Public Health Service Act to incorporate existing administrative enforcement mechanisms into the NSA. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 320 (2014) (explaining the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme" (citation omitted)). HHS oversees provider complaints—including those concerning late or non-payment of IDR determinations—and compels IDR payment when appropriate. *See* 42 U.S.C. §§ 300gg-111(a)(2), -134(b)(3); *see also* GAO-24-106335, at 36. Congress empowered HHS to impose per-day monetary civil penalties for statutory violations, including failure to comply with IDR determinations. *See* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150.301 *et seq.* (subjecting payers under CMS's enforcement authority to the imposition of civil monetary penalties for failure to comply with PHSA requirements); *see also Guardian Flight*, 140 F.4th at 277 (explaining HHS authority under NSA). Providers who want to report an NSA violation for IDR non-payment may submit complaints to HHS through a dedicated online portal.

The enforcement scheme further sets forth administrative review and fair hearing processes for payers to challenge the imposition of monetary penalties for NSA violations. 42 U.S.C. § 300gg-22(b)(2)(D). If those measures fail, HHS may refer disobedient payers to the Attorney General for judicial enforcement. *See id.* at § 300gg-22(b)(2)(F).

As detailed above, Congress also assigned enforcement roles to the Departments of Treasury and Labor, as well as to the states. The Department of Labor, for instance, announced $67 million in Fiscal Year 2025 NSA recoveries from handling 27,000 complaints.[6] The scope of enforcement authority reflects Congress's attention to the long-standing roles each department, and the states, have in health care regulation. *See Mod. Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, at *28–29 (detailing enforcement powers of HHS, DOL, and the Treasury). Thus, Congress "empowered HHS to assess penalties against insurers for failure to comply with the NSA," rather than creating a judicial remedy. *Guardian Flight*, 140 F.4th at 277.

The existence of an administrative remedy is strong evidence Congress intended it to be exclusive. *See Sandoval*, 532 U.S. at 290–91 (noting that the

---

[6] *See* U.S. DEP'T OF LABOR, *EBSA RESTORES NEARLY $1.4 BILLION TO EMPLOYEE BENEFIT PLANS, PARTICIPANTS, AND BENEFICIARIES*, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results (last visited August 6, 2026).

inclusion of a remedial scheme in the statute shows Congress "intended to preclude" any other remedy); *FS Credit*, 146 S. Ct. at 1555 ("[T]he express provision of one method of enforcement suggests that Congress intended to preclude others." (citation modified)).

Several courts, including within the Second Circuit, have concluded that the NSA's coordinated enforcement scheme shows Congress did not intend to imply a separate private right to seek judicial relief. *See generally Axis Neuromonitoring*, 824 F. Supp. 3d at 224 (explaining the NSA "provides for alternative enforcement mechanisms, suggesting Congress chose agency enforcement, not litigation, as the tool for enforcing IDR awards"); *T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *26–27 ("[B]ecause the statute supplies an administrative remedy, it does not appear that Congress intended to imply a judicial remedy as well."); *Freeman Pain Inst. of P.A. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-02507, 2025 U.S. Dist. LEXIS 230402, at *17 (D.N.J. Nov. 24, 2025) ("Congress created a robust system of administrative enforcement of IDR awards instead of judicial enforcement.").

The interpretive framework used in *FS Credit* is conclusive here. The Court focused on the Investment Company Act's ("ICA") agency enforcement scheme in concluding that "Congress's decision to create a comprehensive agency enforcement scheme" shows that Congress did not imply a right for private parties to enforce the statute. 146 S. Ct. at 1554. And like the ICA, the NSA has an existing right of action for vacatur of IDR determinations, which also weighs against "conclud[ing] that Congress implicitly created a private remedy in one provision when it explicitly did so in another." *Id.* at 1555.

The District Court joined a minority approach that has questioned whether the NSA's administrative enforcement scheme is sufficient enough to police IDR determinations. JA-427 ("I cannot conclude that the NSA provides for an administrative remedy that is so comprehensive that a federal court is barred from confirming an IDR award."). But the Court's decision was issued before *FS Credit* and *Cisco*, which further a line of cases emphasizing that courts not measure the effectiveness of Congress's chosen remedial scheme or otherwise attempt to weigh Congress's policy choices. *See Sandoval*, 532 U.S. at 287–88 (explaining that courts "may not create [a private right of action] no matter how desirable that might be as a policy matter, or how compatible with the statute"); *Lexmark Int'l*, *v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014) (reiterating that "a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied"). Policy considerations, such as whether penalties for statutory violations are sufficiently comprehensive or whether the overall remedial scheme is potent enough to deter noncompliance is at odds with the Supreme Court's refrain not to "second guess Congress's decision[s]." *Rotkiske*, 589 U.S. at 14.

The Second Circuit has also expressly refused to consider policy choices when considering whether a statute implies a private right of action, "mindful of *Sandoval*'s command." *See Cenzon-DeCarlo*, 626 F.3d at 698. Several other courts also have declined to weigh the sufficiency of Congress's NSA scheme. *Guardian Flight*, 140 F.4th at 277 ("[T]he wisdom of Congress's policy choice is beyond our judicial ken."); *Worldwide Aircraft Servs. v. United Healthcare*, 2025 U.S. Dist. LEXIS 233132, at *5 (M.D. Fla. Nov. 28, 2025) ("[T]he desirability of enforcement to further statutory goals cannot support the creation of an implied private cause of action in the absence of legislative intent to do so as shown by the terms of the statute itself.").

* * * * *

Because the District Court determined Agag could not state a cause of action under either Count One or Count Two of its Complaint, the Court should have granted Cigna's motion to dismiss in full.

III. A PROVIDER IS NOT ENTITLED TO JUDICIAL CONFIRMATION OF IDR AWARDS UNDER THE NSA WITHOUT A PRIVATE RIGHT OF ACTION

A. Without a Private Right of Action Under the NSA, Providers Cannot State a Claim Upon Which a Court Can Confirm the IDR Determinations

The District Court found that (1) Section 9 of the FAA does not apply to IDR determinations, (2) the NSA does not provide a private right of action for providers to seek damages for non-payment of IDR determinations, but (3) the Court may nonetheless "confirm" IDR determinations as a ministerial function without a right of action under the NSA. But the Court erred in confirming the IDR determinations under a statute that authorized no private right or remedy while finding the cause of action requirement "misplaced." JA-419.

To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007). "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679.

"Determinations that a federal statute does not provide a private right of action are typically subject to dismissal under [Rule 12(b)(6)] for failure to state a claim." *Fair v. Verizon Commc'ns Inc.*, 621 F. App'x 52, 53 (2d Cir. 2015) (citing *Republic* *of Iraq v. ABB AG*, 768 F.3d 145, 171 (2d Cir. 2014) (affirming district court's dismissal under Rule 12(b)(6) that Foreign Corrupt Practices Act does not provide a private right of action); *Lopez v. Jet Blue Airways*, 662 F.3d 593, 597 (2d Cir. 2011) (affirming district court's dismissal under Rule 12(b)(6) that the Air Carrier Access Act does not provide a private right of action); *George v. NYC Dep't of City Planning*, 436 F.3d 102, 103 (2d Cir. 2006) (affirming district court's dismissal under Rule 12(b)(6) that the Coastal Zone Management Act does not provide a private right of action)).

A statute must "display[] an intent to create not just a private right but also a private remedy," to entitle any right to relief. *Sandoval*, 532 U.S. at 286. Courts are "'limited solely to determining whether Congress intended to create the private right of action asserted,'" and "[i]f the statute does not itself so provide, a private cause of action will not be created through judicial mandate." *Ziglar v. Abbasi*, 582 U.S. 120, 133 (2017) (quoting *Redington*, 442 U.S. at 568.).

Supreme Court precedent is clear: "the question whether a litigant has a 'cause of action' is analytically distinct and *prior to* the question of what relief, if any, a litigant may be entitled to receive." *Davis v. Passman*, 442 U.S. 228, 239 (1979) (emphasis added); *see also Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 65–66 (1992) (explaining that remedies are distinct from "whether such a right exists in the first place" (citing *Passman*, 442 U.S. at 239)). Without the existence of both a right and remedy, "a cause of action does not exist and courts may not create one[.]" *Sandoval*, 532 U.S. at 286–87; *see also FS Credit*, 146 S. Ct. at 1554 (distinguishing between a remedy and a cause of action). When Congress does not create a private right of action under a federal statute, federal courts may not apply remedies because "[r]aising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals." *Sandoval*, 532 U.S. at 287.

Connecticut General Life Insurance Company v. East Coast Advanced Plastic Surgery is informative. The Southern District of New York dismissed a counterclaim seeking equitable relief after having previously found that the NSA does not create a private right of action. *Conn. Gen. Life Ins. Co. v. E. Coast Advanced Plastic Surgery, LLC*, 2026 U.S. Dist. LEXIS 38843 (S.D.N.Y. Feb. 24, 2026) ("*Cigna v. ECAPS*"). Because the counterclaim sought relief from a statute without a cause of action, it "fail[ed] the first step" of a two-step analytical framework. *Id.* at *18. Only when first finding that a statute creates a right of action "does the Court reach the second step, which requires it to assess the available remedies for violations of that right." *Id.* The court declined to create a "free-floating private right of action in equity for a non-existent statutory right of action." *Id.* at *17.

The District Court here overlooked step one and (mis)applied a remedy after finding Congress did not create a right. Because the Court correctly found that

Congress did not authorize a right for providers like Agag to seek judicial confirmation of IDR determinations in federal court, Agag failed the first step. Once the inquiry fails step one, as here, the Court should have dismissed the Complaint in full for failure to plead a cause of action.

B. The Court Did Not Have Authority to Confirm an IDR Determination Once it Concluded That a Right of Action Under the NSA Does Not Exist

The District Court's "third conclusion"—that a congressionally authorized private right of action is unnecessary for confirmation—is a path no other court has taken. Courts have issued more than 50 decisions on whether Congress created a private right under the NSA for providers to seek confirmation or enforcement. JA-404. Nearly all concluded that Congress did not authorize an express or implied right of action and dismissed claims like Agag's. *See, e.g.*, *Guardian Flight*, 140 F.4th at 275 (holding that the NSA does not contain an express or implied right of action to confirm or enforce an IDR award); *T.V. Seshan M.D*, 2025 U.S. Dist. LEXIS 252293, at *28 (joining "the substantial majority of the courts to consider the issue," and "declin[ing] to recognize an implied right of action under the NSA) (citation modified). Even the small minority of cases granting confirmation or enforcement did so only after finding an implied right of action. *See PHI Health, LLC v. Optimum Choice, Inc.*, 826 F. Supp. 3d 654, 668 (D. Md. 2026) (finding a "very narrow" implied private right of action).

Courts have also since found the decision here "not persuasive." *Advanced Monitoring Servs. Holdings, LLC*, 2026 U.S. Dist. LEXIS 132155, at *25 (finding decision here, along with other minority decisions, "(1) ignore or downplay the NSA's express preclusion on all types of judicial review; (2) wrongly conclude that the term 'judicial review' does not extend to 'judicial enforcement'; and/or (3) fail to adequately analyze, or incorrectly analyze, the effect of the NSA's comprehensive administrative enforcement scheme"); *see also PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *7–8 (rejecting findings reached by District Court here when "join[ing] the majority and find[ing] there is no implied right of action within the NSA"). Courts have also disagreed with the District Court that confirmation does not involve enforcement of substantive rights. In *PHI II*, the Court found that confirmation "seeks to enforce a substantive right to payment of the NSA awards," and that "[t]he Court cannot avoid the private right of action question by reframing enforcement or confirmation of the NSA awards as a purely ministerial task." 2026 U.S. Dist. LEXIS 174288, at *12–13.

1. Limited Inherent Authority Does Not Extend to Confirmation of IDR Awards Absent a Right of Action Under the NSA

Without a congressionally authorized right of action under the NSA, courts have no authority to confirm IDR determinations. If a statute does not display an intent to create both a private right and private remedy, federal courts are not permitted to create either under the guise of their inherent or equitable powers. *Sandoval* 532 U.S. at 286–87.

The District Court did not identify the source of authority it exercised to confirm the IDR awards in place of a private right of action. But inherent powers, from whatever origin, do not support confirmation here. The Court also analogized confirmation under the NSA to proceedings that occur in actions to confirm arbitration awards under Section 9 of the FAA and to register foreign judgments under 18 U.S.C. § 1963 where courts ordinarily do not review the merits of the underlying decisions. Neither statute is applicable. The focus on the "proceedings" under those statutes misses the threshold inquiry. In both statutes Congress authorized an unmistakable express right—to obtain judicial confirmation under the FAA and to register foreign judgments in other courts. The distinction drawn from those statutes between substantive review and ministerial confirmation is therefore misplaced. JA-419–20. The Court erred in concluding it had undefined atextual power to grant Agag confirmation, which neither of those statutes support.

To the extent the District Court relied on its inherent authority to confirm the IDR determinations, that authority is exceedingly limited. Inherent powers "are not articulated in the Constitution or statutes" but exist to "assist the federal courts in exercising their enumerated judicial powers, such as managing their dockets and courtrooms." *Wright and Miller*, § 3521 Constitutional Basis of the Judicial Power of the Federal Courts, 13 Fed. Prac. & Proc. Juris. § 3521 (3d ed.). Courts are careful not to exceed the limited scope of inherent power so as not to violate separation of powers between Congress and the judiciary. *See, e.g.*, *United States v. Ray*, 375 F.3d 980, 983, 995–96 (9th Cir. 2004). Courts have invoked inherent power "to regulate the conduct of the members of the bar as well as to provide tools for docket management." *Eash v. Riggins Trucking Inc.*, 757 F.2d 557, 561 (3d Cir. 1985) (en banc). (explaining three categories of inherent powers). This authority includes the power to "impose silence, respect, and decorum, in their presence, and submission to their lawful mandates," *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); to control order and dignity of the court, including to sanction for contempt, *Armstrong v. Guccione*, 470 F.3d 89, 100–01 (2d Cir. 2006); and to transfer cases, *United States v. Liounis*, 179 F.4th 124, 131 (2d Cir. 2026). *But see United States v. Kyles*, 601 F.3d 78, 82 (2d Cir. 2010) (noting courts "lack inherent authority to order restitution," unless authorized explicitly by statute). The District Court's exercise of ministerial authority here exceeded these narrow limits.

To the extent the court viewed its authority to grant Agag confirmation of the IDR awards through its equitable powers, those are also not applicable here. Equitable authority "is not freewheeling." *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025). The authority to issue equitable remedies, is limited to suits in equity and only to those remedies historically available in equity "at our country's inception."

Id. at 841. Without a cause of action under the NSA, the Court lacked authorization to fashion an equitable remedy because "[f]ederal courts cannot reach out to award remedies when the Constitution or laws of the United States do not support a cause of action." *Franklin*, 503 U.S. at 74 (explaining the authority to provide appropriate relief, including equitable relief, is derived from a cognizable cause of action). Because the NSA does not provide a cause of action, or confer remedial authority to the courts, the Court's inherent equitable powers are not applicable here.[7]

For these reasons, the District Court's focus on whether Congress *precluded* it from invoking ministerial authority inverts the ordinary interpretive right of action framework. JA-421 ("The NSA's bar on judicial review does not preclude confirmation of the IDR award[s]"); JA-425 ("The NSA's administrative framework does not prohibit judicial confirmation"). Requiring Congress to establish affirmative barriers to prevent courts from exercising ministerial authority in a statute without a private right of action would turn controlling Supreme Court jurisprudence on its head. Nonetheless, Congress both barred most judicial review and enacted an express administrative remedial scheme, either of which is

---

[7] Nor did the District Court find that judicial confirmation of IDR determinations issued under the NSA is a "remed[y] traditionally accorded by courts of equity at our country's inception."[7] *CASA*, 606 U.S. at 841 (internal quotation marks omitted).

independently sufficient to preclude a court's inherent equitable power but together leaves no doubt as to Congress's intent.

The NSA's judicial review bar is broad. "Judicial review" encompasses actions seeking to confirm, modify, or enforce an IDR determination. *See Guardian Flight*, 140 F.4th at 275 ("The term 'judicial review' is broad enough to include a court's order to enforce an IDR award."). The Fifth Circuit's reading comports with how Congress has used the term and how courts have interpreted it. For instance, "courts interpreting other statutes, including the FAA, have held that 'judicial review' includes actions that seek to confirm or enforce a dispute resolution award." *Id.* at 275–76 & n.4 (citing *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 611 (1993) (explaining ERISA "provides for *judicial review* of the arbitrator's decision by an action in the district court to enforce, vacate, or modify the award" (emphases added)).

Despite finding Section 9 inapplicable to the NSA, the District Court nevertheless looked to the FAA, and Section 9 particularly, for guidance on whether Congress intended to bar judicial confirmation. JA-422. But the Court overlooked that the Supreme Court also interprets the FAA as "provid[ing] for expedited *judicial review* to confirm, vacate, or modify arbitration awards." *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 578 (2008) (emphasis added).

The distinction drawn by the District Court between "judicial review" and "review" is at odds with the Fifth Circuit and defeated by prior congressional enactments.[8] JA-421 In *Guardian Flight*, the Fifth Circuit concluded that "judicial review" and "judicial enforcement" (or "judicial confirmation") "is a distinction without a difference." 140 F.4th at 275. That conclusion is backed by other statutes demonstrating that confirmation, including under FAA, requires a cause of action. *See* 5 U.S.C. § 581(a) ("[A]ny 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" of the FAA (emphasis added). Congress also routinely uses the term "judicial review" in reference to private causes of action, showing that the term is broad enough to include a court's order confirming an IDR determination. *See, e.g.*, 33 U.S.C. § 2236(b)(2) (referring to "civil action for judicial review"); 42 U.S.C. § 10139(b) (referring to a "civil action for judicial review"). Congress is presumed to know the settled understanding that "judicial review" encompasses the full range

[8] The Court's reliance on the dictionary definition of "judicial review" is further misplaced for two reasons. JA-422. *First*, in this instance a CIDRE, which is a creature created by Congress and implemented by regulation for the sole purpose of adjudicating IDR disputes, is the functional equivalent of an "administrative body." *Judicial Review*, Black's Law Dictionary (12th ed. 2024). *Second*, the Court's attempt to distinguish between "review" and "judicial review" overlooks that "review" cross references "judicial review." *Review*, Black's Law Dictionary (12th ed. 2024).

of vacatur, confirmation, modification, and enforcement actions and "expect[s] its enactment to be interpreted in conformity with them." *Cannon v. Univ. of Chi.*, 441 U.S. 677, 699 (1979); *see also Armstrong*, 575 U.S. at 330 (explaining under the prior-construction canon "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute is presumed to incorporate that interpretation" (internal quotation marks omitted)).

Most recently, the Supreme Court interpreted the scope of a "no judicial review" provision under the Temporary Protected Status ("TPS") statute, 8 U.S.C. § 1254a(b)(5)(A). *Mullin v. Doe*, 146 S. Ct. 2121 (2026). Like the NSA, the TPS barred a "determination" from judicial review. *Compare* 8 U.S.C. § 1254a(b)(5)(A) *with* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Applicable here, the Court's broad interpretation of the "no judicial review" bar applied to both substantive and nonsubstantive claims. *Mullin*, 146 S. Ct. at 2134.

Interpreting Congress's intention behind the judicial review bar as restricting substantive review but impliedly *authorizing* nonsubstantive review strains the text. JA-421–422. Instead, Congress "says what it means and means what it says." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). The more "natural reading" is that Congress intended to bar the IDR process from any judicial remedy other than vacatur actions. *Republic of Sudan v. Harrison*, 587 U.S. 1, 8 (2019). "Federal courts have previously found this distinction critical, as the NSA provides only a private right of action to vacate an IDR award, not to enforce it." *Worldwide Aircraft Servs., Inc. v. Freedom Life Ins. Co. of Am.*, 2025 U.S. Dist. LEXIS 256246, at *6 (M.D. Fla. Dec. 11, 2025). Like in *Mullin* the "no judicial review" provision of the NSA "is clear, and its plain meaning is very broad." *Mullin*, 146 S. Ct. at 2133.

The judicial review bar also must be interpreted alongside the NSA's other significant feature: its preexisting administrative remedial scheme. By establishing the IDR process for resolving disputes over unpaid services and providing for administrative enforcement of that process, the NSA also reflects Congress's intent to preclude a duplicative equitable remedy or alternative exercise of judicial powers. *See, e.g.*, *Armstrong*, 575 U.S. at 327–28 (holding that courts cannot invoke "equitable" authority to "circumvent Congress's exclusion of private enforcement" and its "intent to foreclose equitable relief"). And as this Court has held, the availability of "alternative mechanisms" to enforce a statute "strongly suggest that Congress did not intend to imply a superfluous private right of action." *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020).

As set forth above, Congress enacted a detailed administrative remedial scheme to govern the IDR process. "That the NSA 'provided an alternative method' of enforcement suggested 'that Congress intended to preclude others." *Cigna v. ECAPS*, 2026 U.S. Dist. LEXIS 38843, at *18 (quoting *Armstrong*, 575 U.S. at 328). Congress's choice to create an agency enforcement scheme supports the conclusion that Congress intended to foreclose ministerial or equitable judicial relief. Courts "have no warrant to revise Congress's scheme simply because it did not 'affirmatively' preclude the availability of a judge-made action at equity." *Armstrong*, 575 U.S. at 329 (citing *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 75 (1996)).

At bottom, had Congress wanted to authorize judicial confirmation of IDR determinations—just like had Congress wanted to create a private right of action—it could have and has done so before. *See Guardian Flight*, 140 F.4th at 276. "Instead, Congress took a different tack: it empowered HHS to assess penalties against insurers for failure to comply with the NSA." *Id.* at 277. And "[w]hen a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." *Transamerica Mortg. Advisors v. Lewis*, 444 U.S. 11, 20 (1979). But when Congress has not created a private right of action, courts lack authority to "augment" a statute and fashion a remedy to address a nonexistent right. *FS Credit*, 146 S. Ct. at 1553.

2. Arbitral Confirmation Under Section 9 of the FAA and Registration of a Foreign Judgment Under 28 U.S.C. § 1963 Are Not Applicable Here

Confirming IDR determinations under the NSA is also not "analogous" actions seeking confirmation of arbitration awards under Section 9 of the FAA. JA-419. Section 9, unlike the NSA, creates an express right to seek judicial confirmation of an arbitration award. *See Jules v. Andre Balazs Props.*, 146 S. Ct. 1209, 1215 (2026) ("The FAA authorizes a party to an arbitration agreement to seek several kinds of assistance from a federal court." (citation modified)). That distinction is critical. Under Section 9, Congress authorized a right for a prevailing party "to apply to the court so specified for an order confirming the award." 9 U.S.C. § 9. No comparable authorization exists under the NSA, as the District Court acknowledged. JA-418. So while Congress plainly established a right to seek judicial confirmation of an arbitration under Section 9 of the FAA, Congress did not incorporate that process into the NSA or authorize any other confirmation mechanism.

Courts, including the District Court here, have found the text and structure of the NSA wholly incompatible with the FAA. *See, e.g.*, *Freeman Pain Inst.*, 2025 U.S. Dist. LEXIS 230402, at *12 ("While there are superficial similarities between an IDR determination and an arbitration, the FAA is clear that it applies only where parties 'in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration.'" (quoting 9 U.S.C. § 9)). The lack of a written agreement consenting to IDR "removes the IDR process entirely from eligibility for confirmation under the FAA[.]" *Id.* at *12–13; *see also* JA-417

("Without a written agreement to arbitrate, I cannot enter an order confirming the award pursuant to Section 9.").[9]

Nor are there "parallels" to registration of foreign judgments under 28 U.S.C. § 1963. JA-420 n.2. Section 1963 permits "plaintiffs to register and enforce federal district court judgments in a different district." *In re Enf't Of Philippine Forfeiture Judgment Against All Assets of Arelma, S.A.*, 153 F.4th 142, 156 (2d Cir. 2025), *cert. denied sub nom. Roxas v. United States*, 146 S. Ct. 1511 (2026), *and cert. denied sub nom. Duran v. United States*, No. 25-744, ___ S. Ct. ___ (U.S. June 29, 2026) ("*Arelma*"). There is no authority "suggesting that a § 1963 registration is not a claim in its own right." *Id.* In fact, "§ 1963 *is more than 'ministerial'* and is more than a mere procedural device for the collection of the foreign judgment." *Stanford v. Utley*, 341 F.2d 265, 268 (8th Cir. 1965) (emphasis added); *see also Arelma*, 153 F.4th at 156 (citing *Stanford*).

Like Section 9 of the FAA, Congress set forth an express right to seek registration of judgments in another court under 28 U.S.C. § 1963. *See* 28 U.S.C. § 1963 (proving that a registered judgment "shall have the same effect" as the

[9] Section 9 of the FAA is also reserved for summary actions and Agag did not proceed summarily. JA-419 (explaining the confirmation of an arbitration award is a summary proceeding). "[T]he Second Circuit has made clear that '[a]ctions to confirm arbitration awards . . . are straightforward proceedings in which *no other claims* are to be adjudicated.'" *Farkas*, 790 F. Supp. 3d at 134 (quoting *Ottley v. Schwartzberg*, 819 F.3d 373, 377 (2d Cir. 1987)).

underlying judgment). That alone distinguishes an action under Section 1963 from the NSA, where no private right to IDR confirmation exists.

Accordingly, Section 9 of the FAA and 28 U.S.C. § 1963 both authorize private rights of action whereas the NSA does not. That a court does not ordinarily undertake a substantive merits review in actions brought under Section 9 or Section 1963 is irrelevant. JA-420. The District Court's focus on how "proceedings are handled" in a Section 9 or Section 1963 is misplaced and cannot support the use of inherent authority to provide a judicial remedy without a cause of action. JA-419.

3. The Exercise of Inherent Authority Cannot Replace a Nonexistent Cause of Action

The Supreme Court's decisions in *FS Credit* and *Cisco*, both issued after the District Court's decision, express limitations on the authority to fashion private rights or remedies under federal statutes absent preexisting congressional authorization. In both *FS Credit* and *Cisco* the Court restated that it had "rejected the practice of fashioning rights of action as we see fit," because "[h]ome-grown causes of action are difficult to reconcile with the Constitution's separation of legislative and judicial power." *Cisco*, 146 S. Ct. at 1890 (quoting *FS Credit*, 146 S. Ct. at 1552–53 (citation modified)).

In *Cisco*, the Court rejected the past practice "to provide redress if Congress remained silent," and pulled back "narrow authority to create causes of action" under the Alien Tort Statute. 146 S. Ct. at 1886, 1890. *Cisco* "close[d] the door" on courts creating new causes of action because "asserting such authority would intrude on . . . Congress's prerogative to provide rights of action[.]" *Id.* at 1886. The same principles apply here. If courts lack authority to independently create causes of action, it follows that courts may not substitute inherent ministerial authority where no right of action exists. The NSA's preexisting administrative remedial scheme also forecloses any ability for courts to create a cause of action because "if Congress has created 'an alternative remedial structure,' then '*that alone*' precludes the creation of a cause of action." *Cisco*, 146 S. Ct. at 1891 (quoting *Ziglar*, 582 U.S. at 137).

IV. THE DISTRICT COURT ERRED IN CONFIRMING THE IDR DETERMINATIONS UNDER A LEGAL BASIS NOT RAISED BY EITHER PARTY

The District Court erred in its judgment because it both dismissed and granted confirmation of the IDR determinations under Section 9 of the FAA. Because Agag brought both its claim for confirmation and its cross-claim for confirmation only under Section 9, the Court could not have dismissed one and granted the other. The District Court's Order is in irreconcilable conflict.

Relatedly, neither party argued the legal basis on which the Court granted confirmation. The Court rejected outright Agag's claim for confirmation under Section 9 of the FAA and then adopted an independent theory of authority that the Court acknowledged departed from how "courts that have dealt with similar claims" had analyzed the question. JA-419. Because Agag only asserted that Section 9 applied to its confirmation claim and cross-motion, the District Court violated the party presentation principle by confirming the IDR determinations on grounds Agag did not plead or argue.

A. The District Court Could Not Have Confirmed the Awards Under Section 9 of the FAA Because it Dismissed Agag's Claim For Confirmation Under the Same Legal Theory

Agag squarely grounded both its claim for confirmation and its cross motion for confirmation under Section 9 of the FAA. Count One of Agag's Complaint sought confirmation under Section 9 of the FAA: "Plaintiff Seeks Relief In Accordance With 9 U.S. Code § 9." JA-16. Within Count One, Agag further cited Section 9 along with cases that allegedly supported its Section 9 confirmation theory.[10] JA-16–17, Compl. ¶ 67–69. Nor did Agag broaden its theory for confirmation in its cross-motion. Agag's cross-motion for confirmation made plain that it sought "an order Confirming the Arbitration Awards . . . pursuant to 9 U.S.C. § 9." JA-110. Agag's briefing also addressed only Section 9 of the FAA as the legal basis for confirmation. JA-94–104; JA-398–401. In short, Agag presented no basis for confirmation other than Section 9, which the District Court squarely rejected.

[10] Count Two sought damages, not confirmation of the IDR determinations, and therefore could not have been used as a basis for confirmation. JA-17. The District Court found that "the NSA does not create an implied private right of action that allows a provider to sue for damages under the statute." JA-429.

The District Court made clear that "Section 9 of the FAA does not apply to the facts of this case, and Agag may not seek confirmation of an NSA IDR award under Section 9 of the FAA." JA-418. The Court granted Cigna's motion to dismiss Agag's claim and cross-motion for confirmation both brought under Section 9 of the FAA. JA-431. Since the District Court had granted dismissal of Agag's cause of action seeking confirmation under Section 9 of the FAA (Count One), the Court erred when it also granted Agag's cross-motion brought under Section 9. JA-431, JA-432. The District Court's Opinion illustrates this error: "Agag's Motion to Confirm is similar to a request a party might make under Section 9 of the FAA." JA-420. But the Court misread Agag's motion. Agag's cross-motion to confirm was not "similar" to a Section 9 request; Agag explicitly moved "pursuant to 9 U.S.C. § 9." JA-110. Because the District Court cannot both dismiss confirmation under Section 9 and order confirmation under Section 9, its conflicting Order should be set aside.

B. Under the Party Presentation Principle, the District Court Erred When It Granted Confirmation Under a "Third Conclusion"

Agag did not assert any legal basis for IDR confirmation other than under Section 9 of the FAA. The District Court's "third conclusion"—that it could grant confirmation without any recognized right of action—was neither pleaded nor raised. The District Court abused its discretion by departing from the principle of party presentation.

"Federal courts adhere to the principle of party presentation." *Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (citing *Clark v. Sweeney*, 607 U.S. 7, 9–10 (2025) (*per curiam*)). As "courts are 'essentially passive instruments of government,' [they] rely on the parties to 'frame the issues for decision' and decide 'only the questions presented.'" *Id.* (quoting *United States v. Sineng-Smith*, 590 U.S. 371, 375–76 (2020)); *see also United States v. Graham*, 51 F.4th 67, 80 (2d Cir. 2022) ("The party presentation rule reflects the principle that courts normally decide only the questions presented by the parties." (citation omitted)).

The issues before the District Court were (1) whether the NSA authorized providers the right to obtain confirmation of IDR determinations under Section 9 of the FAA; and (2) whether the NSA provided a private right of action for providers to enforce alleged violations and obtain damages. The District Court answered both in the negative. As to confirmation, the District Court rejected the theories the parties presented and litigated before it, and rather, supplied a new basis for relief. Agag never asserted that confirmation was available directly under the NSA as a ministerial, non-private-right-of-action summary proceeding; Agag tied confirmation exclusively to Section 9 of the FAA. JA-410 ("In Count One, Agag requests an order confirming, under Section 9 of the FAA, the five IDR awards described above."); *see also* JA-110. And Agag's briefing did not cite any other basis for confirmation. JA-82–109.

Accordingly, Agag neither advanced nor advocated for the theory underlying the District Court's decision. *See Sineng-Smith*, 590 U.S. at 375–76 (explaining the general rule that parties are represented by counsel who "are responsible for advising the facts and argument entitling them to relief"). The District Court's "third conclusion" impermissibly "add[ed] to the issues raised" by the parties. *Graham*, 51 F.4th at 80.

The District Court neither held oral argument nor requested supplemental briefing, so the Court never questioned the parties on its ministerial authority to confirm the IDR determinations. And every other court prior to the District Court here had decided these issues through the lens of whether the NSA provided an express or implied private right of action. Because the District Court's novel "third conclusion" had not been reached by *any* court, Cigna had no notice that the Court would deem the private right of action question "misplaced" and forge its own argument about the scope of its ministerial authority. The District Court therefore "'grant[ed] relief' based on a claim that [Agag] 'never asserted and that [Cigna] never had a chance to address[.]" *Margolin*, 146 S. Ct. at 1288 (quoting *Clark*, 607 U.S. at 9).

The party presentation error is particularly glaring because the District Court dismissed *both* counts of Agag's Complaint, yet still entered judgment in favor of Agag. JA-418; JA-429. With neither claim as a basis for relief and with Agag's cross-motion brought only under Section 9 of the FAA, Agag presented no alternative legal basis upon which the Court could grant relief, and certainly did not present the basis ultimately used by the Court to grant relief here. JA-110. The District Court respectfully "violated the party-presentation principle when it decided a case different from the one [Agag] advanced." *Margolin*, 146 S. Ct. at 1288 (citation modified).

CONCLUSION

For the foregoing reasons, the Court should reverse confirmation of the IDR awards and remand with instructions to dismiss the Complaint in its entirety and with prejudice.

Dated: August 7, 2026

s/ Caroline E. Oks
Caroline E. Oks
Ryan P. Goodwin
Stephen R. Donat
FBT GIBBONS LLP
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500
coks@fbtgibbons.com
rgoodwin@fbtgibbons.com
sdonat@fbtgibbons.com

Attorneys for Appellant
Cigna Health and Life Insurance Company

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B), the word limit of Local Rule 32.1(a)(4) (A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f): this document contains 12,840 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because: this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font Times New Roman.

Dated: New York, New York
August 7, 2026

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25(d), on August 7, 2026, I caused Plaintiff-Appellant Cigna Health and Life Insurance Company's Brief, Special Appendix, and Joint Appendix to be electronically filed with the Clerk of the United States Court of Appeals for the Second Circuit through the Court's CM/ECF system, and thereby to be served upon all counsel appearing in this case.

Dated: August 7, 2026

s/ Caroline E. Oks
Caroline E. Oks

SPECIAL APPENDIX

TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Richard Agag, MD, **Plaintiff,** **v.** **Cigna Health and Life Insurance Company,** **Defendant.**	No. 3:25-cv-00498 (SRU)

ORDER ON MOTION TO DISMISS AND CROSS-MOTION TO CONFIRM

The plaintiff, Richard Agag, is a physician specializing in plastic and reconstructive surgery. He alleges that he has not been reimbursed by the defendant, Cigna Health and Life Insurance Company ("Cigna"), for out-of-network services he provided to two patients who were insured by Cigna. He seeks an order confirming various awards in his favor that resulted from the independent dispute resolution ("IDR") process outlined in the No Surprises Act ("NSA"). In response, Cigna moves to dismiss his complaint on the grounds that Agag does not have a private right of action to seek confirmation of those awards in federal court and that I do not have subject matter jurisdiction to decide this case.

My decision represents the third time that a judge in the District of Connecticut has weighed in on whether a health care provider may seek confirmation in federal court of an NSA IDR award when a health insurance company refuses to pay that award. The first concluded that the NSA provides an implied private right of action for providers to seek confirmation in federal court. *See Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214 (D. Conn. 2025). The second concluded that it lacked subject matter jurisdiction over the case because neither the Federal Arbitration Act ("FAA") nor the NSA provides any basis for a provider to seek confirmation in federal court. *See Axis Neuromonitoring, LLC v. Aetna Inc.*, 2026 WL 795260

(D. Conn. Mar. 20, 2026). In doing so, it largely agreed with the Fifth Circuit, the only appellate court so far to rule on the issues presented in this case. *See Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271 (5th Cir. 2025). Today, I reach a third conclusion: that I have federal question jurisdiction under the NSA, and that a provider may seek confirmation of an IDR award in federal court under the NSA, but not the FAA, because the requested relief can be provided through a summary proceeding that does not involve a traditional private right of action or judicial review.

For the following reasons, Cigna's Motion to Dismiss, Doc. No. 25, is **GRANTED** with regard to Agag's request to confirm the IDR award under the FAA and his request for damages under the NSA, but **DENIED** otherwise. Agag's Cross-Motion to Confirm, Doc. No. 33, is **GRANTED**.

I. Background

A. The No Surprises Act

The No Surprises Act ("NSA") protects medical patients from "surprise medical bills" that may arise when a patient receives emergency medical care from an out-of-network health care provider or non-emergency medical care from an out-of-network provider at an in-network health care facility. 42 U.S.C. § 300gg-111, et seq. The NSA does so by prohibiting out-of-network providers from holding patients liable for more than a patient's in-network cost-sharing responsibility. *Id.* §§ 300gg-131, -132. If a provider bills a patient an amount greater than their in-network cost-sharing responsibility, the provider must "reimburse the enrollee for the full amount paid by the enrollee in excess of the in-network cost-sharing amount for the treatment or services involved, plus interest, at an interest rate determined by the Secretary [of Health and Human Services]." *Id.* § 300gg-139(b).

A physician seeking reimbursement for costs in excess of the in-network cost-sharing amount paid by the patient must submit a claim directly to the patient's health insurance plan. *Id*. §§ 300gg-111(b)(1)(C)-(D). The health insurance company administering that plan then has 30 days either to render an initial payment or to issue a notice of claim denial. *Id*. § 300gg-111(a)(1)(C)(iv)(I). If an out-of-network provider disagrees with the payment amount or the denial of the claim, the provider may, during the 30-day period beginning on the day the provider receives an initial payment or claim denial, initiate "open negotiations" with the health insurance company to determine the appropriate reimbursement amount. *Id*. § 300gg-111(c)(1).

i. The IDR Process

If open negotiations do not conclude in an agreement between the provider and the health insurance company, either side "may, during the 4-day period beginning on the day after such open negotiation period, initiate the independent dispute resolution process" laid out under the NSA. *Id*. § 300gg-111(c)(1)(B). The IDR entity selected for the dispute must, within 30 days of being selected, choose between the two payment-amount offers individually submitted by the provider and the health insurance company. *Id*. § 300gg-111(c)(5)(A). After the IDR entity determines the appropriate award, a health insurance company must pay the award "directly to the [provider] not later than 30 days after the date on which such determination is made." *Id*. § 300gg-111(c)(6).

In deciding which offer to select, an IDR entity must consider a variety of factors. *See id*. § 300gg-111(c)(5)(C). Among those factors is the "qualifying payment amount," which generally refers to "the median of the contracted rates recognized by the [health insurance] plan or issuer . . . for the same or a similar item or service that is provided by a provider in the same or similar specialty and provided in the geographic region in which the item or service is furnished[.]" *Id*. § 300gg-111(a)(3)(E)(i)(I). The IDR entity uses that calculation when it assesses which offer to select during the IDR process, meaning that the "qualifying payment amount" may differ from the payment determination ultimately made by the IDR entity. *See id.* § 300gg-111(c)(7)(A)(v) (suggesting that "the payment amount determined (or agreed to)" may "exceed[] the qualifying payment amount"). Indeed, a health insurance company does not necessarily need to submit the "qualifying payment amount" calculation as its offer during the IDR process. *See id.* § 300gg-111(c)(7)(B)(iii) (noting that "the amount of the offer submitted . . . by the group health plan or health insurance issuer" may be "a percentage of the qualifying payment amount"). Put differently, the qualifying payment amount is the amount a health insurance company reasonably *should* pay when an out-of-network provider makes a claim for services covered by the NSA.

The NSA states that the IDR entity's 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 the paragraphs (1) though (4) of section 10(a) of title 9.

Id. § 300gg-111(c)(5)(E)(i). Section 300gg-111(c)(5)(E)(i)(II) of the NSA references 9 U.S.C. § 10(a), which is part of the FAA. The FAA governs arbitration agreements and the arbitral process. *See* 9 U.S.C. § 1, et seq. An arbitration agreement is generally defined under the FAA as "[a] written provision . . . to settle by arbitration" a dispute that arises between the parties. *Id.* § 2. The FAA deems written arbitration agreements to be valid unless certain exceptions apply. *See id.* The FAA also authorizes federal courts to enter an arbitration award into judgment when "the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to arbitration." *Id.* § 9. A federal court, however, is not required to confirm an arbitration award and enter judgment. A court may, under Section 10(a), vacate an arbitration award under the following circumstances:

(1) where the award was procured by corruption, fraud, or undue means;
(2) where there was evident partiality or corruption in the arbitrators, or either of them;
(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Id. § 10(a).

ii. Administrative Framework

The NSA empowers the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury to oversee much of the independent dispute resolution ("IDR") process. 42 U.S.C. § 300gg-111(c)(2)(A). For instance, the NSA instructs those three Secretaries to "establish a process to certify" IDR entities that will mediate the process. *Id*. § 300gg-111(c)(4)(A). Parties that engage in the IDR process may either select their own IDR entity or have the Department of Health and Human Services ("HHS") appoint an IDR entity. *Id*. § 300gg-111(c)(4)(F).

If the health insurance company fails to pay the IDR award to the provider within 30 days of the IDR entity's determination, the NSA authorizes HHS to impose civil monetary penalties on the company. *Id*. § 300gg-22(b)(2)(C). A health insurance company that disputes the civil monetary penalty may seek a hearing before HHS, *id*. § 300gg-22(2)(D), and—after that administrative hearing—a review of the penalty by a federal district court. *Id*. § 300gg-22(b)(2)(E)(i). If a health insurance company does not request a hearing before the HHS, the civil monetary penalty "shall constitute a final and unappealable order." *Id*. § 300gg-22(2)(D)(i). When a health insurance company still does not pay the penalty "after it has become a final and unappealable order, or after [a federal district court] has entered final judgment in favor of

[HHS]," HHS "shall" refer the matter to the Attorney General, who "shall recover" the penalty "in the appropriate United States District court." *Id.* § 300gg-22(b)(2)(F)(i).

In addition, the NSA instructs HHS to establish several rules. For instance, it orders HHS to create an audit process to ensure that health insurance companies "are in compliance with the requirement of applying a qualifying payment amount" under the NSA. *Id.* § 300gg-111(a)(2)(A)(i). That process is intended to ensure that health insurance companies are using the qualifying payment amount calculation when they process claims made under the NSA. It does not address whether those amounts are actually paid out to providers.

The NSA also requires HHS to establish "a process to receive complaints of violations" of the statute. *Id.* § 300gg-111(a)(2)(B)(iv); *see also id.* § 300gg-134(b)(3) (instructing HHS to "establish a process to receive consumer complaints of violations . . . and provide a response to such complaints within 60 days of receipt of such complaints"). Accordingly, HHS has set up a "No Surprises Help Desk" that is administered, at least in part, by the Center for Medicare and Medicaid Services ("CMS"). *See No Surprises Act: How to Get Help and File a Complaint*, Center for Medicare and Medicaid Services (Aug. 2023), https://www.cms.gov/files/document/nsa-helpdesk.pdf. Providers who wish to report a violation of the NSA may contact the No Surprises Help Desk by phone or submit an online complaint. *See Providers: submit a billing complaint*, Center for Medicare and Medicaid Services (Feb. 4, 2026), https://www.cms.gov/nosurprises/policies-and-resources/providers-submit-a-billing-complaint. The NSA does not prescribe what steps CMS takes to resolve a complaint submitted through the No Surprises Help Desk.

B. Factual Background

Agag is a physician who specializes in plastic and reconstructive surgery. Compl., Doc. No. 1, ¶ 5. He does not have a network contract with Cigna and is therefore an out-of-network provider for patients who are the beneficiaries of health plans issued by or administered by Cigna. *Id.* ¶ 7. That includes the two patients relevant to this action. *Id.* ¶ 6. The services rendered by Agag to the two patients in this case were done so "emergently/inadvertently." *Id.* ¶ 8.

On January 7, 2022, Agag performed surgery for Patient M.P. at Saint Mary's Hospital in Waterbury, Connecticut. *Id.* ¶ 24. Following Patient M.P.'s treatment, Agag submitted four claims to Cigna: two for $9,226.40 each, one for $7,700.00, and one for $31,752.40. *Id.* ¶¶ 25, 35, 45, 55. Cigna effectively denied all those claims. *Id.* ¶¶ 26, 36, 46, 56 (noting for all four claims that "Defendant allowed payment to Plaintiff in the amount of $0.00"). Agag disputed Cigna's payment determination and initiated open negotiations, which did not resolve the two parties' payment dispute. *Id.* ¶¶ 27, 37, 47, 57. Consequently, Agag initiated the IDR process. *Id.* ¶¶ 28, 38, 48, 58.

On December 19, 2024, ProPeer Resources, LLC—the certified IDR entity assigned to evaluate those claims—ruled in Agag's favor on all four claims, awarding $5,535.84 each for the first two claims, $7,700.00 for the third claim, and $26,296.31 for the fourth claim. *Id.* ¶¶ 30 (describing Arbitration Dispute DISP-2001877), 40 (DISP-2001876), 50 (DISP-2001874), 60 (DISP-2001871). Cigna failed to pay any of those payment amounts within 30 days of the awards. *Id.* ¶¶ 32, 42, 52, 62. Agag claims that he still has not received payment for any of those awards. *Id.* ¶¶ 33, 43, 53, 63.

On April 14, 2023, Agag performed surgery on Patient M.L. at Backus Hospital in Norwich, Connecticut. *Id.* ¶ 13. Following the surgery, Agag submitted a claim to Cigna seeking $196,000.00 in payment. *Id.* ¶ 14. Cigna responded by effectively denying the claim. *Id.* ¶ 15 ("Defendant allowed payment to Plaintiff in the amount of $0.00."). Agag subsequently initiated an open negotiation period, which did not resolve the two parties' payment dispute. *Id.* ¶¶ 16-17. He then initiated the IDR process. *Id.* ¶ 17. On March 6, 2024, Federal Hearings and Appeals Services, Inc.—the certified IDR entity assigned to decide that dispute—ruled in Agag's favor and awarded $97,500.00 to Agag under Arbitration Dispute DISP-878778. *Id.* ¶ 19. Cigna did not pay that payment amount within 30 days. *Id.* ¶ 21. Agag claims that he has still not received the $97,500.00 owed to him. *Id.* ¶ 23.

Combined, the five IDR awards mean that Cigna owes Agag a total of $142,567.99.

C. Procedural History

On March 27, 2025, Agag filed his complaint against Cigna. *See id.* In Count One, Agag requests an order confirming, under Section 9 of the FAA, the five IDR awards described above. *Id.* ¶¶ 66-71. In Count Two, Agag alleges that Cigna, by not paying him those awards, has violated the NSA and caused him $142,567.99 in damages. *Id.* ¶¶ 72-79. Agag's complaint requests an order confirming the five IDR awards described above, as well as an order directing Cigna to pay the combined $142,567.99 owed to him under those IDR awards. *Id.* at 11.

Cigna responded to Agag's Complaint by filing a motion to dismiss on September 26, 2025. *See* Def.'s Mot. to Dismiss, Doc. No. 25. Cigna makes two principal arguments in its motion. First, Cigna argues that the NSA does not provide a private right of action to seek judicial confirmation of IDR awards. Def.'s Mem. of L. in Supp. of Mot. to Dismiss Pl.'s Compl., Doc. No. 25-1, at 1-2. In doing so, Cigna asserts that I lack subject matter jurisdiction over this case and that Agag fails to state a claim upon which relief can be granted. *See id.* at 11. Secondly, Cigna argues that even if the NSA did provide a private right of action under 9 U.S.C. § 9, Agag has run out of time to request a judicial confirmation of the IDR award in Patient M.L.'s case, because 9 U.S.C. § 9 sets out a one-year time limit for confirmation of arbitration awards, and the IDR award was made on March 6, 2024, more than a year before Agag filed his complaint. *Id*. at 2.

On November 21, 2025, Agag filed a Cross-Motion to Confirm. Pl.'s Mem. of L. in Opp'n to Def.'s Mot. to Dismiss Compl. and in Supp. of Pl.'s Cross-Mots. to Confirm and for Summ. J., Doc. No. 33. He emphasizes that under 9 U.S.C. § 9, a court must grant a petition to confirm an arbitration award unless Cigna has moved to vacate the awards, which it has not. *Id*. at 18.

II. Motion to Dismiss Under Rule 12(b)(1)

Agag claims that I have subject matter jurisdiction because the dispute "arises under" both the FAA and the NSA. In response, Cigna argues that Section 9 of the FAA does not apply to the facts of this case and that the NSA does not provide a private right of action for Agag to bring his case in federal court. Accordingly, Cigna moves to dismiss the case under Fed. R. Civ. P. 12(b)(1).

A. Legal Standard

"Customarily, a federal court first resolves any doubts about its jurisdiction over the subject matter of a case before reaching the merits or otherwise disposing of the case." *Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 155 (2d Cir. 1996). That is because "if [a court] must dismiss the complaint for lack of subject matter jurisdiction, the accompanying defenses and objections become moot and do not need to be determined." *Rhulen Agency, Inc. v. Alabama Ins. Guar. Ass'n*, 896 F.2d 674, 678 (2d Cir. 1990) (internal citation omitted). "A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). To survive a motion brought under Rule 12(b)(1), a plaintiff "has the burden of proving by a preponderance of the evidence that [subject matter jurisdiction] exists." *Id.* (citing *Malik v. Meissner*, 82 F.3d 560, 562 (2d Cir. 1996)).

"The federal courts are 'courts of limited jurisdiction, defined (within constitutional bounds) by federal statute.'" *Trustees of New York State Nurses Ass'n Pension Plan v. White Oak Glob. Advisors, LLC*, 102 F.4th 572, 593-94 (2d Cir. 2024) (quoting *Badgerow v. Walters*, 596 U.S. 1, 7 (2022)). "Congress has granted those courts jurisdiction over two main kinds of cases." *Badgerow*, 596 U.S. at 7 (2022). The first is when there is complete diversity of citizenship between the plaintiff and the defendant, and when the amount-in-controversy exceeds $75,000. 28 U.S.C. § 1332(a). The second is when the plaintiff sets forth a colorable claim "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

B. The FAA Does Not Provide a Basis for Jurisdiction

Agag argues that I have subject matter jurisdiction under the FAA. Section 9 of the FAA, however, does not by itself establish federal question jurisdiction. *Badgerow*, 596 U.S. at 8. Instead, for a federal court to have subject matter jurisdiction over a petition to confirm an arbitration award under Section 9, there must be a "jurisdictional basis independent of the FAA" that "appear[s] on 'the face of the application itself.'" *White Oak Glob. Advisors*, *LLC*, 102 F.4th at 596 (quoting *Badgerow*, 596 U.S. at 9). Because the FAA cannot independently establish federal question jurisdiction and Section 9 of the FAA does not even apply to the facts of this case, *see infra* Section III(b), I conclude that the FAA cannot be a basis for federal question jurisdiction under 28 U.S.C. § 1331. *See also Axis Neuromonitoring, LLC*, 2026 WL 795260, at *4 (quoting *Badgerow*, 596 U.S. at 11).

C. The NSA Provides a Basis for Jurisdiction

I next turn to whether the NSA, standing alone, provides an independent basis for federal question jurisdiction. Cigna argues that a court cannot have subject matter jurisdiction to hear a case "arising under" the NSA because the NSA did not create a private right of action. I address that question in Section III(c) of this opinion. For purposes of the jurisdictional analysis, I will assume that the NSA does not create a private right of action for providers.

"Typically, an action arises under federal law if the law 'creates the cause of action asserted.'" *Badgerow*, 596 U.S. at 7-8 (quoting *Gunn v. Minton*, 568 U.S. 251, 257 (2013)). That does not mean, however, that a federal cause of action is required for a court to have federal question jurisdiction. *Grable & Sons Metal Prods. Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 317 (2005). Indeed, "[i]t is firmly established . . . that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction . . . ." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998).

A federal court has jurisdiction "if the right of the petitioners to recover under their complaint will be sustained" under one construction of a federal law but not another, "unless the claim clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Id.* (cleaned up). Put differently, "[d]ismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.'" *Id.* (quoting *Oneida Indian Nation of N.Y. v. County of Oneida,* 414 U.S. 661, 666 (1974)).

The jurisdictional inquiry under Section 1331 is therefore distinct from the right of action inquiry that Cigna focuses on. Under Section 1331, what matters is that the claim arises under federal law on the face of the well-pleaded complaint, *see generally Louisville & Nashville R.*

Co. v. Mottley, 211 U.S. 149 (1908), not whether the NSA expressly entitles relief to an aggrieved party. Here, Agag alleges that Cigna violated a federal statute—the NSA—and he does so on the face of his well-pleaded complaint. That alone is enough for me to conclude that I have federal question jurisdiction to hear this dispute.

Concluding otherwise would ignore the low bar that exists for federal question jurisdiction. Federal question jurisdiction may exist even when a state-law claim, rather than a federal-law one, is at issue. *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citing *Grable*, 545 U.S. at 314) (explaining that a court can have subject matter jurisdiction over a state-law claim if the state-law claim "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities"). I see no reason why a purely federal statute like the NSA—even if it may not provide a private right of action—should have less of a jurisdictional hook than some state-law claims. Hearing a dispute under the NSA does not implicate the sort of federalism concerns that a suit based exclusively on state-law claims would. In the absence of any proof that Congress wanted to insulate the NSA from any federal court involvement, I conclude that I have subject matter jurisdiction over this case. *See Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 810 (1986) (observing that "in exploring the outer reaches" of federal question jurisdiction, a court must make "sensitive judgments about congressional intent, judicial power, and the federal system").

Therefore, because Agag's claim "arises under" the NSA, Cigna's Rule 12(b)(1) motion to dismiss is denied.

III. Motion to Dismiss Under Rule 12(b)(6)

Cigna also moves to dismiss Agag's Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Specifically, Cigna argues that neither the FAA[1] nor the NSA provides a private right of action, and that the NSA's text forecloses a federal court's ability to confirm an NSA award. I address each argument in turn below.

A. Legal Standard

A motion to dismiss for failure to state a claim under Rule 12(b)(6) is designed "merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in support thereof." *Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc.*, 748 F.2d 774, 779 (2d Cir. 1984) (quoting *Geisler v. Petrocelli*, 616 F.2d 636, 639 (2d Cir. 1980)).

When deciding a motion to dismiss under Rule 12(b)(6), the court must accept the material facts alleged in the complaint as true, draw all reasonable inferences in favor of the plaintiff, and decide whether it is plausible that the plaintiff has a valid claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007); *Leeds v. Meltz*, 85 F.3d 51, 53 (2d Cir. 1996).

Under *Twombly*, "[f]actual allegations must be enough to raise a right to relief above the speculative level," and assert a cause of action with enough heft to show entitlement to relief and "enough facts to state a claim to relief that is plausible on its face." 550 U.S. at 555, 570; *see also Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint,

[1] In the alternative, Cigna argues in its Rule 12(b)(6) motion that if the FAA applies, Agag is time barred from seeking confirmation of the award granted for Patient M.L. because Section 9 of the FAA "imposes a one-year statute of limitations on the filing of a motion to confirm an arbitration award[.]" Def.'s Mem. of L. in Supp. of Mot. to Dismiss Pl.'s Compl., Doc. No. 25-1, at 29-30 (quoting *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152, 158 (2d Cir. 2003)). I conclude in Section III(b) of this opinion that the FAA does not apply to the facts of this case, and therefore I reject Cigna's statute of limitations argument. If there is any limitations period that applies to this case, it would need to be drawn from the state or federal limitations provision most analogous to the NSA. Because Cigna does not suggest any alternative limitations period, I do not resolve what that period might be.

they must be supported by factual allegations."). The plausibility standard set forth in *Twombly* and *Iqbal* obligates the plaintiff to "provide the grounds of his entitlement to relief" through more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555 (quotation marks omitted). Plausibility at the pleading stage is nonetheless distinct from probability, and "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of [the claims] is improbable, and . . . recovery is very remote and unlikely." *Id.* at 556 (quotation marks omitted).

B. The FAA Does Not Apply Here

Cigna argues in its Rule 12(b)(6) motion that Agag cannot seek confirmation of an NSA IDR award under the FAA. I agree that the FAA does not apply to the facts of this case. Section 9 requires that there be an "agreement" by the parties that a judgment "shall be entered upon the award made pursuant to the arbitration . . . ." 9 U.S.C. § 9. Agag concedes that, as an out-of-network provider, he does not have any contract with Cigna. Compl., Doc. No. 1, ¶ 7; *see Robinson v. Macy's Inc.*, 772 F. Supp. 3d 253, 260 (D. Conn. 2025) (quoting *Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 118 (2d Cir. 2012)) (explaining that a threshold question under Section 9 is "whether the parties have indeed agreed to arbitrate"). He also fails to provide any evidence that there is "[a] written provision" to arbitrate that would satisfy Section 9's "agreement" requirement. *See* 9 U.S.C. § 2; *see also Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of N.J.*, 2025 WL 3514300, at *3 (D.N.J. Dec. 8, 2025) (observing that "confirmation of an arbitration award under § 9 requires the existence of an 'agreement' or 'contract' where parties agree to aspects of arbitration including venue, forum, and the arbitration selection process").

The parties only engaged in the IDR process because a statute authorized the IDR process as a dispute resolution mechanism. *See Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue*

Shield of N.J., 790 F. Supp. 3d 129, 136 (E.D.N.Y. 2025) (internal citation omitted) (noting that arbitration under the FAA assumes an agreement or contract to arbitrate, and the NSA's IDR is statutorily compelled). Without a written agreement to arbitrate, I cannot enter an order confirming the award pursuant to Section 9. *See Tomczak v. Raymour and Flanigan Furniture Co.*, 2014 WL 3385164, at *1 (W.D.N.Y. July 9, 2014) (emphasis in original) (quoting *Varley v. Tarrytown Associates, Inc.*, 477 F.2d 208, 210 (2d Cir. 1973)) (highlighting how Section 9 is available "*only* where the parties in their agreement have agreed that a judgment of the court shall be entered upon the award").

The fact that the NSA references 9 U.S.C. § 10(a) does not change my conclusion. The NSA states that an IDR entity's determination "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). Paragraphs (1) through (4) of Section 10(a) list four circumstances where a federal court may vacate an arbitration award. The NSA conspicuously excludes the actual text of paragraph (a) of Section 10, which refers to arbitration awards, and only incorporates paragraphs (1) through (4), which explain reasons for vacating an award. Read in conjunction with paragraphs (1) through (4) of Section 10(a), Section 300gg-111(c)(5)(E)(i)(II) of the NSA therefore forbids judicial review of an IDR award unless: (1) "the award was procured by corruption, fraud or undue means," (2) "there was evident partiality or corruption in the arbitrators," (3) "the arbitrators were guilty of misconduct" or misbehavior, or (4) "the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." The term "arbitrators" covers IDR entities under the NSA. *See Arbitrator*, *Black's Law Dictionary* (12th ed. 2024) (defining arbitrator as "[a] neutral person who resolves disputes between parties").

It is also relevant that Congress did not reference Section 9 anywhere in the text of the NSA. "It is a fundamental principle of statutory interpretation that 'absent provision[s] cannot be supplied by the courts.'" *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012)). Without proof that Congress viewed NSA IDR awards as equivalent to written agreements to arbitrate under the FAA, Section 9 cannot be applied to this case. *Med-Trans Corp. v. Capital Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1084 (M.D. Fla. 2023)), *aff'd sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan, Inc.*, 160 F.4th 1110 (11th Cir. 2025) ("Neither the NSA nor the FAA says that the FAA bears on the NSA outside the four explicitly incorporated paragraphs. The Court will not assume otherwise.").

Congress had multiple reasons not to incorporate Section 9 in the NSA. As Chief Judge Shea explained, "while IDR awards under the NSA are binding once they are issued—without further action by the parties or any court—the same is not true of arbitration awards under the FAA . . . ." *Guardian Flight v. Aetna*, 789 F. Supp. 3d at 227. Indeed, whereas arbitration awards under the FAA "must be given force and effect by being converted to judicial orders by courts," *Key Inv. Servs., LLC v. Oliver*, 691 F. Supp. 3d 496, 502 (D. Conn. 2023) (internal citation omitted), IDR awards "are rendered in the absence of any arbitration agreement and immediately trigger the payment obligations set forth in" the NSA. *Guardian Flight v. Aetna*, 789 F. Supp. at 227. Because arbitration awards under the FAA are fundamentally different than IDR awards under the NSA, it makes sense that Congress chose purposefully to not include Section 9 of the FAA in the NSA. *See also PHI Health, LLC v. Optimum Choice, Inc.*, 2026 WL 850453, at *9 (D. Md. Mar. 27, 2026) (observing differences between arbitration awards under the FAA and IDR awards under the NSA).

Therefore, Section 9 of the FAA does not apply to the facts of this case, and Agag may not seek confirmation of an NSA IDR award under Section 9 of the FAA.

C. A Private Right of Action is Not Required to Seek Confirmation of an IDR Award

Cigna next argues that the NSA does not provide a private right of action for Agag to seek confirmation of the IDR award in federal court. District courts that have dealt with similar claims have focused almost exclusively on whether a private right of action exists under that statute, with most concluding that the NSA does not provide a private right of action. *See, e.g.*, *East Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, 2025 WL 2371537, at *17 (S.D.N.Y. Aug. 14, 2025). But at least two district courts have concluded that the NSA does provide a private right of action. *See Guardian Flight v. Aetna*, 789 F. Supp. 3d at 227–28; *PHI Health, LLC*, 2026 WL 850453, at *7.

That focus on the private right of action question is misplaced. A private right of action is only required when a party seeks to enforce *substantive* rights in federal court, or at least when the party seeks a determination of the merits of a particular claim. *See Private Right of Action*, *Black's Law Dictionary* (12th ed. 2024) (emphasis added) (defining "private right of action" as "[a]n individual's right to *sue* in a personal capacity to enforce a legal claim"). Here, Agag's motion to confirm asks me to act in a purely ministerial way and enter as a judgment an earlier binding determination that Cigna is obligated to pay Agag a specific sum of money for services covered under the NSA.

Although Section 9 of the FAA does not apply to the facts of this case, Agag's request is analogous to how confirmation proceedings are handled under the FAA. The Second Circuit has explained that confirmation of an arbitration award under the FAA is "a summary proceeding that merely makes what is already a final arbitration award a judgment of the court . . . ." *D.H.*

Blair & Co., Inc. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (internal citation omitted). Accordingly, a court does not evaluate the merits of the arbitration award unless an enumerated exception applies. *See Manor House Cap., LLC v. Pritsker*, 2015 WL 273684, at *2 (S.D.N.Y. Jan. 15, 2015) (internal citation omitted). In that way, a district court's role is sharply circumscribed. *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) (cleaned up) ("There is nothing malleable about 'must grant,' which unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions applies."). I discuss the parallels between the structure of the FAA and the NSA in more detail later in this opinion, but I note here the similarities between Agag's motion and FAA confirmation hearings to highlight how courts may engage in summary enforcement proceedings regardless of whether a private right of action exists.

Ultimately, Agag's Motion to Confirm is similar to a request a party might make under Section 9 of the FAA. He does not ask me to consider the merits of the IDR award or to recognize any substantive right under the NSA. All he asks me to do is to confirm earlier judgments by IDR entities that themselves considered the merits of both parties' claims.[2] The traditional right-of-action analysis therefore does not apply here, and the cases cited by Cigna are not on point because they all deal with plaintiffs asserting new substantive rights. *See, e.g.*,

[2] Although 28 U.S.C. § 1963 does not apply here by its terms, I see parallels between a request to register a foreign judgment under 28 U.S.C. § 1963 and a request to confirm an IDR award under the NSA. Even if not perfectly analogous, the two proceedings are similar in that neither involves the recognition of a new substantive right or an adjudication of the merits of a claim. When a federal court registers a foreign judgment under 28 U.S.C. § 1963, it does not look to whether a right of action exists. *See G&A Strategic Invs. I LLC v. Petroleos de Venezuela, S.A.*, 810 F. Supp. 3d 463, 467 (S.D.N.Y. 2025) ("Once registered in another district, it is as if the judgment was entered by a district court of that district . . . ."). Instead, a court merely ensures that it has subject matter jurisdiction before registering that foreign judgment. *See CSX Transp., Inc. v. Filco Carting Corp.*, 2011 WL 2713487, at *2 (E.D.N.Y. July 11, 2011) (explaining that 28 U.S.C. § 1963 applies once "the party seeking to enforce a registered judgment against a third party can establish federal jurisdiction"). Just as registration of a foreign judgment leaves untouched an earlier assessment of the merits by a separate district court, Agag's request to confirm the IDR award does not ask me to evaluate the merits of the dispute between Agag and Cigna—*i.e.*, how much Cigna should pay Agag. The merits of that dispute, like that of a separate district court judgment in the Section 1963 context, were already evaluated by the IDR entities that ruled in Agag's favor.

Alexander v. Sandoval, 532 U.S. 275, 279 (2001) (evaluating whether private plaintiffs could make disparate impact claims under Title VI of the Civil Rights Act of 1964); *Republic of Iraq v. ABB AG*, 768 F.3d 145, 169-171 (2d Cir. 2014) (discussing whether a private right of action exists to sue under the Foreign Corrupt Practices Act).

D. The NSA's Bar on Judicial Review Does Not Preclude Confirmation of the IDR Award

Cigna also argues that the text of Section 300gg-111(c)(5)(E)(i)(II) of the NSA forecloses a federal court's ability to take up this case. That provision states that IDR awards "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). I concluded earlier that Section 300gg-111(c)(5)(E)(i)(II) forbids a court from engaging in judicial review of an IDR award unless one of the circumstances enumerated in paragraphs (1) through (4) of 9 U.S.C. § 10(a) is present during the IDR process.

A central question then is what constitutes "judicial review." Cigna proposes a broad definition of "judicial review" and argues that the statute only permits a federal court to hear "complex, fact-determinative actions to *vacate* IDR awards," and not actions to *enforce* IDR awards. Def.'s Mem. of L. in Supp. of Mot. to Dismiss Pl.'s Compl., Doc. No. 25-1, at 26-27 (emphasis added). The Fifth Circuit—the only appellate court so far to rule on the issue—endorsed a similar reading. *See Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th at 275.

I conclude that merely confirming an IDR award does not constitute judicial review. The Fifth Circuit notes that the term "is broad enough to include a court's order to enforce an IDR award" because "'[r]eview' includes '[p]lenary power *to direct and instruct an agent or subordinate*, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.'" *Id.* (emphasis in original) (quoting *Review*, *Black's Law Dictionary* (12th ed. 2024)). The Fifth Circuit does not identify who the "agent or subordinate" being directed or instructed might be in a proceeding that merely confirms an IDR award. I also question why the Fifth Circuit looked to the dictionary definition of the term "review" when Congress specifically used the term "*judicial* review." That focus on "review" rather than "judicial review" violates the surplusage canon, which "reflect[s] an assumption applicable to 'all sensible writing: Whenever a reading arbitrarily ignores linguistic components . . . the reading may be presumed improbable.'" *Feliciano v. Dep't of Trans.*, 605 U.S. 38, 51-52 (2025) (quoting Scalia & Garner, *Reading Law* 174).

A better approach would look at the dictionary definition of the phrase that Congress used in the NSA. *See* Scalia & Garner, *Reading Law* 101 (explaining under the general-terms canon that "general words . . . are to be accorded their full and fair scope. They are not to be arbitrarily limited."). That phrase—"judicial review"—can be defined in at least three ways:

> 1. A court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional. 2. The constitutional doctrine providing for this power. 3. A court's review of a lower court's or an administrative body's factual or legal findings.

Judicial Review, *Black's Law Dictionary* (12th ed. 2024). Confirming an IDR award does not implicate any of these definitions of judicial review. No action has been taken by another branch of government. No constitutional doctrine is involved. And confirmation does not constitute review of a court or administrative body's factual or legal findings.

The Fifth Circuit cites to an ERISA case to show that the Supreme Court has used the term "judicial review" to encompass "actions that seek to confirm or enforce a dispute resolution award." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th at 275-76 (citing *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust,* 508 U.S. 602, 611

(1993)). But a single ERISA case that the drafters of the NSA may not have even considered does not establish how Congress defined "judicial review" in the NSA.

Instead, to understand what Congress meant in the NSA when it limited judicial review to the four circumstances laid out in Section 10(a) of the FAA, it is more helpful to look at the statute that we know Congress considered when it drafted the NSA—the FAA. Case law is clear regarding a federal court's role in a confirmation proceeding under the FAA: a court "'*must* grant' the [arbitration] award 'unless the award is vacated, modified, or corrected.'" *D.H. Blair & Co., Inc.*, 462 F.3d at 110 (emphasis added) (quoting 9 U.S.C. § 9). And "a court may change or vacate an arbitration award *only* where" a list of circumstances enumerated in Sections 10 and 11 of the FAA exist. *Tomczak*, 2014 WL 3385164, at *3 (emphasis in original) (discussing Section 9 of the FAA).

There is a clear parallel structure between the FAA and the NSA. Recall that Section 300gg-111(c)(5)(E)(i) of the NSA states that the IDR award "shall be binding upon the parties involved" and "shall not be subject to judicial review" unless one of four grounds for vacating the award is present. "Binding" means that the award has "legal force" and "require[s] obedience." *See Binding*, *Black's Law Dictionary* (12th ed. 2024). With that definition in mind, Section 300gg-111(c)(5)(E)(i) of the NSA essentially says that an IDR award must have legal force and that a court may only conduct judicial review, *i.e.*, consider its merits, when the award is subject to a motion to vacate. *See* Scalia & Garner, *Reading Law* 114 (explaining that, under the mandatory/permissive canon, "when the word *shall* can reasonably be read as mandatory, it ought to be so read"). The NSA, furthermore, lays out that an award may only be vacated when paragraphs (1) through (4) of Section 10 of the FAA apply. If an IDR award requires obedience and may only be vacated if paragraphs (1) through (4) of 9 U.S.C. § 10(a) applies, it is almost identical to the framework laid out in the FAA. A court therefore must confirm the award unless a party moves to vacate it under paragraphs (1) through (4) of 9 U.S.C. § 10(a). *See D.H. Blair & Co. Inc.*, 462 F.3d at 110.

The parallel structure between the FAA and the NSA is also helpful because Congress knew about the FAA when it constructed the NSA, and under the FAA, a court does not engage in judicial review when it confirms an award. During a confirmation proceeding under the FAA, the decision whether to confirm an arbitral award "is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmation or grounds for refusal to confirm." *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007). Because confirmation of an arbitral award is not intended to involve complex factual determinations, a court does not review "an administrative body's factual or legal findings" when it confirms that award. *Judicial Review*, *Black's Law Dictionary* (12th ed. 2024); *see also Tomczak*, 2014 WL 3385164, at *3 (quoting *Willemijn Houdstermaatschappij, BV v. Standards Microsystems Corp.*, 103 F.3d 9, 12 (2d Cir.1997)) (noting that a court's "review" of an arbitration award is "severely limited"). To reiterate, "[a] petition brought under the FAA is not an occasion for *de novo* review of an arbitral award, nor an occasion for the court to conduct a reassessment of the evidentiary record." *Eletson Holdings, Inc. v. Levona Holdings Ltd.*, 731 F. Supp. 3d 531, 566 (S.D.N.Y. 2024) (cleaned up). Rather, in a confirmation proceeding, a court must enter judgment for the party seeking confirmation unless there is a motion to vacate under the FAA. *See Trustees Of the UNITE HERE Nat'l Health Fund v. JY Apparels, Inc.*, 535 F. Supp. 2d 426, 429 (S.D.N.Y. 2008).

Because I am not examining the merits of the IDR entity's determination or assessing which of the offers provided by Agag and Cigna should have been selected, I am acting just as I would in a FAA confirmation proceeding. In that context, as is the case here, I am not reviewing "an administrative body's factual or legal findings." I am therefore not engaged in judicial review, and the statute does not bar confirmation of the IDR awards at issue today. *See also PHI Health, LLC*, 2026 WL 850453, at *9 (concluding, based in part on how the Administrative Procedure Act views "judicial review," that "judicial review" means "to challenge" a decision, not to enforce or confirm a determination); *Reach Air Medical Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1115 (11th Cir. 2025) (suggesting that, in FAA and NSA cases, a court only engages in judicial review when it considers whether to vacate an award).

E. The NSA's Administrative Framework Does Not Prohibit Judicial Confirmation

Finally, Cigna argues that even if the award is "binding" upon the parties, that language does not mean that a federal court can confirm it and thereby permit enforcement of the award. That is because, according to Cigna, the NSA lays out a comprehensive administrative scheme that allows providers like Agag to enforce the IDR award, and "[t]he existence of a detailed administrative remedy is strong evidence that Congress intended it to be the exclusive remedy." Def.'s Mem. of L. in Supp. of Mot. to Dismiss Pl.'s Compl., Doc. No. 25-1, at 20-21 (citing *N.Y. Inst. of Dietetics v. Great Lakes Higher Educ. Corp.*, 1995 WL 562189, at *4 (S.D.N.Y. Sept. 21, 1995)). The Fifth Circuit adopted that view, as have district courts across the country. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th at 277; *East Coast Advanced Plastic Surgery, LLC*, 2025 WL 2371537, at *17; *Mitchell F. Reiter MD PC*, 2025 WL 3514300, at *4; *Worldwide Aircraft Servs. Inc. v. Freedom Life Ins. Co. of Am.*, 2025 WL 3551397, at *2 (M.D. Fla. Dec. 11, 2025); *Axis Neuromonitoring, LLC*, 2026 WL 795260, at *6-7.

The NSA simply does not set out a "detailed administrative remedy" for enforcing IDR awards. Although the NSA authorizes HHS to impose civil monetary penalties on health insurance plans that do not pay the IDR award within 30 days, those penalties are paid to the United States government, not to the provider. *See* 42 U.S.C. § 300gg-22(b)(2)(C); *see also PHI Health, LLC*, 2026 WL 850453, at *10 (commenting that the prescribed monetary penalties are only "payable to the government" and not providers). Furthermore, even if health insurance companies that face civil monetary penalties are offered an opportunity to challenge the civil monetary penalty before an administrative law judge, that hearing focuses on the legitimacy of the civil monetary penalty, not the IDR award itself. *See* 42 U.S.C. § 300gg-22(b)(2)(D). Under the current system, moreover, a provider does not have *any* right to be heard before an administrative law judge when an IDR award remains unpaid.

Although the statute provides that the Attorney General "shall recover the amount assessed by action in the appropriate United States district court," that federal court action is designed only to recover the civil monetary penalty owed by the health insurance company to the HHS. *Id*. § 300gg-22(b)(2)(F)(i). The procedure does not compel the health insurance company to pay the IDR award to the provider. *See PHI Health, LLC*, 2026 WL 850453, at *10 ("Nothing in the No Surprises Act authorizes HHS (or DOL or Treasury or any state agency for that matter) to order a payor that is in violation of the Act to comply with an IDR determination."). Indeed, it is conceivable that a health insurance company could choose to pay the civil monetary penalty but not the IDR award, because a civil monetary penalty under the NSA is $100 per day, 42 U.S.C. § 300gg-22(b)(2)(C), whereas an IDR award, like in the case of Patient M.L. here, can be many times that amount. *See* Compl., Doc. No. 1, ¶ 19 (stating that the IDR award for Patient M.L. is $97,500.00). Once a civil monetary penalty is paid, any case against a non-paying health insurance company theoretically closes until the provider refiles a complaint. When there is a significant disparity between a civil monetary penalty and an IDR award—*e.g.*, $100 per day vs.

$97,500—a health insurance company has significant incentive to choose paying the former amount many times over (974 times in Patient M.L.'s case) instead of ever paying the provider. A health insurance company can therefore effectively ignore the IDR award under the NSA's administrative framework.

Cigna also highlights the considerable rulemaking authority vested in the HHS to oversee the NSA. For instance, it points out how the NSA authorizes the HHS to create an audit process to ensure that health insurance companies "are in compliance with the requirement of applying a qualifying payment amount" under the NSA. 42 U.S.C. § 300gg-111(a)(2)(A)(i)(I). That audit process, however, does not investigate whether IDR awards are being paid to out-of-network providers. *See Guardian Flight v. Aetna*, 789 F. Supp. 3d at 229 ("Nothing in § 300gg-111 suggests that these audits would evaluate health plans' and insurers' compliance with the NSA's Timing of Payment provision . . . ."). Although the NSA requires the HHS to establish a process by which providers may submit complaints—and CMS has set up a "No Surprises Help Desk" to accept provider complaints—it is not clear what steps, if any, CMS takes to resolve a complaint. CMS plausibly could do anything from imposing a civil monetary penalty—which I already concluded is by itself not an adequate remedy—to threatening a health insurance company with stricter enforcement actions. But without knowing the administrative process addressing payment of the IDR award to a provider, I cannot conclude that the NSA provides for an administrative remedy that is so comprehensive that a federal court is barred from confirming an IDR award. *See PHI Health, LLC*, 2026 WL 850453, at *10 ("[T]he limited availability of civil monetary penalties under the No Surprises Act is not an 'enforcement scheme,' let alone one that is 'comprehensive.'").

To reiterate, an administrative 'remedy' that does not lead to the provider being paid is not a remedy at all. I reject a construction of the statute that bars judicial confirmation of an IDR award simply because there exists some semblance of an administrative scheme that does not ensure that the provider will be paid without the need to go to federal court. *See United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and dissenting in part) (defining the "presumption against ineffectiveness" canon as "the idea that Congress presumably does not enact useless laws").

F. The NSA Does Not Provide a Private Right of Action for a Provider to Seek Damages

In addition to confirmation of the five IDR awards at issue, Agag requests an order directing Cigna to pay $142,567.99 in damages, as well as attorney's fees, interests, and costs. Compl., Doc. No. 1, at 11. For Agag to obtain damages as opposed to confirmation of the IDR award, he needs to show that the NSA created a private right of action for providers to sue in federal court. *See Private Right of Action*, *Black's Law Dictionary* (12th ed. 2024) (defining "private right of action" as "[a]n individual's right to sue in a personal capacity to enforce a legal claim"). That is because, unlike his request for confirmation, his claim for damages seeks to enforce substantive rights under the NSA.

To determine if a statute provides a private right of action, a court begins "with the text and structure of" the statute. *Sandoval*, 532 U.S. at 288. Agag does not point to any section of the NSA that expressly allows for a provider to seek damages in federal court. That is because the NSA "contains no explicit provisions" to that effect. *See Republic of Iraq*, 768 F.3d at 170. There is therefore not an express private right of action that would allow providers like Agag to sue for damages under the NSA.

Even when there is not an express private right of action, a private right of action may exist impliedly if the statute displays "an intent to create not just a private right but also a private remedy." *Id.* (internal citation omitted); *but see Olmsted v. Pruco Life Ins. Co. of N.J.*, 283 F.3d 429, 432 (2d Cir. 2002) (cautioning that a court "cannot ordinarily conclude that Congress intended to create a right of action when none was explicitly provided"). On the private remedy requirement, "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Sandoval*, 532 U.S. at 290. I concluded earlier that the text of Section 300gg-111(c)(5)(E)(i) authorizes a provider to seek confirmation of an IDR award in federal court. For that reason, and because Agag provides no evidence that Congress intended to create a remedy other than confirmation, I conclude that the NSA does not create an implied private right of action that allows a provider to sue for damages under the statute.

Therefore, Cigna's Rule 12(b)(6) motion to dismiss is GRANTED with regard to Agag's request to confirm the IDR awards under Section 9 of the FAA and his request for damages under the NSA, but DENIED otherwise. Agag may seek confirmation of the IDR awards under Section 300gg-111(c)(5)(E)(i) of the NSA.

IV. Agag's Cross-Motion to Confirm

Agag moves for an order confirming the five IDR awards at issue in this case. *See* Doc. No. 33. Although those IDR awards are already "binding" under the NSA—meaning that Cigna has an obligation to pay those amounts to Agag—Agag has no way to compel payment of those awards without obtaining a court judgment. Confirmation of an IDR award therefore matters for much the same reason as it does in the FAA context. "Armed with a court order the winning party has a variety of remedies available to enforce the judgment." *Florasynth Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984).

Cigna argues that Agag's Cross-Motion to Confirm should be denied because the NSA only covers "disputes over the amount of payment for certain covered services," and "Cigna's denials relate to coverage, not reimbursement." Def.'s Reply Mem. of L. in Further Supp. of Mot. to Dismiss Pl.'s Compl. and in Opp'n to Pl.'s Cross-Mots. to Confirm and for Summ. J., Doc. No. 36, at 17, 19. Put more simply, Cigna suggests that I should not confirm the five IDR awards at issue because "the services provided [by Agag] are not benefits covered under the terms of [the two patients'] health plan[s]." *Id.* at 19.

Cigna is asking me to review the IDR entities' factual and legal findings and therefore to engage in judicial review. Cigna does so even though it had earlier argued that I may not confirm an IDR award because doing so would entail judicial review. The NSA prohibits judicial review with limited exceptions. Cigna essentially argues that I may not engage in judicial review when doing so is to its detriment (*i.e.*, confirming an unpaid IDR award) but that I should engage in judicial review when doing so is to its advantage (*i.e.*, not confirming an unpaid IDR award).

Judicial review of an NSA IDR award is *only* permissible when a party moves to vacate an award under the grounds outlined in paragraphs (1) through (4) of Section 10(a) of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). I already concluded that I do not engage in judicial review by merely confirming an IDR award. If Cigna wants to challenge the merits of an IDR award, then it needs to move to vacate the award under Section 300gg-111(c)(5)(E)(i)(II). But Cigna has not moved to vacate the awards at issue here.[3]

[3] It may well be too late for Cigna to move to vacate these IDR awards. Although I do not decide the statute of limitations, I note that the most clearly analogous statute of limitations to file a motion to vacate an arbitration award is three months from its entry. See 9 U.S.C. § 12 ("Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.").

In the absence of a motion to vacate, I may only deny a motion to confirm if there is evidence of "a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved." *Id*. § 300gg-111(c)(5)(E)(i)(I). Because Cigna does not provide evidence that Agag engaged in fraud or misrepresentation, Agag's Cross-Motion to Confirm is GRANTED. *See Reach Air Medical Servs. LLC*, 160 F.4th at 1115 (observing the "strong legal presumption that arbitration awards will be confirmed under the FAA," which carries over to "the newly codified NSA, which has expressly incorporated some sections of the [FAA]").

V. Conclusion

For the foregoing reasons, Cigna's Motion to Dismiss, Doc. No. 25, is **GRANTED** with regard to Agag's request to confirm the IDR awards under Section 9 of the FAA and his request for damages under the NSA, but **DENIED** otherwise. Agag's Cross-Motion to Confirm, Doc. No. 33, is **GRANTED**.

The Clerk is directed to enter judgment confirming the IDR awards in the amount of $142,567.99 for Agag and against Cigna. Post-judgment interest shall accrue from the date of the entry of the judgment. The Clerk shall close this case.

SO ORDERED at Bridgeport, Connecticut this 15th day of April 2026.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG,

Plaintiff,

v. 3:25-cv-00498-SRU

CIGNA HEALTH AND LIFE
INSURANCE COMPANY,

Defendant.

JUDGMENT

This action came on for consideration on defendant's motion to dismiss and plaintiff's cross-motion to confirm before the Honorable Stefan R. Underhill, United States District Judge. The Court, having reviewed all papers filed in conjunction with the motions, entered an order on April 15, 2026, granting the plaintiff's cross-motion to confirm, granting the defendant's motion with respect to Agag's request to confirm the IDR awards under Section 9 of the FAA and his request for damages under the NSA, and otherwise denying the defendant's motion to dismiss, for the reasons stated in the ruling. It is therefore;

ORDERED, ADJUDGED, and DECREED that judgment shall enter confirming the IDR awards in the amount of $142,567.99 for the plaintiff, RICHARD AGAG, and against defendant CIGNA HEALTH AND LIFE INSURANCE COMPANY. As stated in the ruling, post-judgment interest shall accrue from the date of the entry of this judgment and this case is closed.

Dated at Bridgeport, Connecticut, this 16th day of April 2026.

DINAH MILTON KINNEY, Clerk

By: /s/ Julia Reis
Deputy Clerk

EOD: 4/16/2026