No. 25-4811

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAIGE HOLLAND-THIELEN, YAMAN ABDULHAK, SCOTT BECK, REBEKAH CLARK, DEBORAH LAWRENCE, CLAIR MALLON, TOM MOLINE, and ANDRE NADEAU,

Plaintiffs-Appellees,

v.

SPACE EXPLORATION TECHNOLOGIES CORP.,

Defendant-Appellant.

and

ELON MUSK,

Defendant.

Appeal from the United States District Court for the Central District of California
Case No. 2:24-cv-06972
The Honorable John A. Kronstadt

BRIEF OF AMICI CURIAE PUBLIC JUSTICE, NATIONAL WOMEN'S LAW CENTER, AMERICAN ASSOCIATION FOR JUSTICE, AND NATIONAL EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), Amici Curiae Public Justice, National Women's Law Center, American Association for Justice, and National Employment Lawyers Association are nonprofit organizations, do not issue stock, and have no parent corporations.

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INTRODUCTION

Passed with bipartisan support, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA" or "the Act"), Pub. L. No. 117-90, 136 Stat. 26 (2022) (codified at 9 U.S.C. §§ 401-402), gives survivors of sexual assault and sexual harassment the right to pursue their cases in court instead of being forced into secretive binding arbitration. Under the Act, "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, . . . no predispute arbitration agreement . . . shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to [a] sexual assault dispute or [a] sexual harassment dispute." 9 U.S.C. § 402(a).

Consistent with the EFAA, engineers at Defendant-Appellant SpaceX sought to bring a lawsuit in court to hold SpaceX accountable for the environment of sexual harassment they endured throughout their employment until they were fired in retaliation for speaking up about it. To avoid their claims coming to light, SpaceX asks this Court to defy common sense and hold that this case does not involve a "sexual harassment dispute" within the meaning of the EFAA and that, even if it does, the non-sexual harassment portions of the case should be forced into arbitration. Those arguments are contrary to the Act's plain text, longstanding case law, and the legislative history of the Act.

First, regardless of the merits of Plaintiffs' sexual harassment claims, Plaintiffs' claims of retaliation for reporting sexual harassment independently constitute a "sexual harassment dispute" that allows them to invoke the EFAA. As the Second Circuit and numerous district courts have found, retaliation for reporting sexual harassment is covered by the EFAA because it is "a dispute relating to conduct that is alleged to constitute sexual harassment." And that is true whether or not the retaliation claim is accompanied by a separate plausible sexual harassment claim. Moreover, contrary to SpaceX's argument, nothing in the EFAA requires the person asserting the retaliation claim to be the target of the sexual harassment they reported for the retaliation to be a "sexual harassment dispute" within the meaning of the Act.

Second, though Plaintiffs allege plenty of overtly sexual conduct, SpaceX asserts that Plaintiffs must arbitrate their claims because only conduct "of a sexual nature" is covered by the EFAA. But the EFAA directs the Court to look to "applicable law" for the definition of sexual harassment. Here, the applicable California law defines sexual harassment to include all sex-based harassment, whether or not motivated by sexual desire, including the type of conduct Plaintiffs allege. That is consistent with precedent of the Supreme Court and this Court interpreting Title VII to prohibit all harassment based on sex, regardless of its "sexual nature."

Third, because Plaintiffs have alleged a sexual harassment dispute, the statute is clear that the arbitration agreement is invalid as to their entire "case," not just the sexual harassment dispute itself. That is consistent with the legislative history, which shows that Congress intended to let survivors of sexual harassment elect to bring their entire case in court, rather than splitting claims between court and arbitration.

For these reasons, and those provided by Plaintiffs, this Court should affirm the district court's denial of SpaceX's motion to compel arbitration.

INTERESTS OF AMICI CURIAE[1]

Public Justice is a national public interest advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting to preserve access to justice for victims of corporate and governmental misconduct. The organization maintains an Access to Justice Project, which seeks to remove procedural barriers that unduly restrict the ability of workers, consumers, and other civil litigants from seeking redress in the civil court system. To that end, Public Justice has a longstanding practice of fighting against the unlawful use of mandatory arbitration clauses that deny workers and consumers their day in court. Public Justice has specifically advocated for full implementation of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, including by filing

[1] No party's counsel authored this brief in whole or in part, nor did a party, its counsel, or any other person contribute money to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E). The parties consent to the filing of this brief.

amicus briefs and serving as counsel in numerous cases regarding the interpretation and scope of the Act.

The National Women's Law Center ("NWLC") is a nonprofit organization that fights for gender justice in the courts, in public policy, and in our society, and works across issues that are central to the lives of women and girls, especially women of color, LGBTQI+ people, and low-income women. Since 1972, NWLC has worked to advance educational opportunities, workplace justice, health and reproductive rights, and income security. The NWLC Fund houses and administers the TIME'S UP Legal Defense Fund, which improves access to justice for those facing workplace sex harassment, including through grants to support legal representation. NWLC has participated in numerous workplace civil rights cases in federal and state courts, including through filing amicus briefs that highlight the critical importance of retaining litigation in court as an option for survivors of sexual violence seeking justice.

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employee rights cases, consumer cases, and other civil

actions, including claims for sexual harassment. Throughout its 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

Founded in 1985, NELA is the largest bar association in the country focused on empowering workers' rights attorneys. NELA and its sixty-nine circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to protecting the rights of workers in employment, wage and hour, labor, and civil rights disputes. MWELA and NELA members represent workers who have experienced sexual harassment and assault in the workplace, giving them a unique interest in ensuring that the EFAA is interpreted correctly by the courts.

ARGUMENT

I. Plaintiffs Have Alleged a "Sexual Harassment Dispute" Within the Meaning of the EFAA.

A. Plaintiffs' retaliation claims meet the EFAA's definition of a "sexual harassment dispute."

Plaintiffs allege that SpaceX fired them in retaliation for reporting sexual harassment. That is itself a "sexual harassment dispute" under the EFAA. As the Second Circuit has explained, "retaliation resulting from a report of sexual harassment is 'relat[ed] to conduct that is alleged to constitute sexual harassment'" and is thus covered by the EFAA. *Olivieri v. Stifel, Nicolaus & Co., Inc.*, 112 F.4th 74, 92 (2d Cir. 2024) (quoting 9 U.S.C. § 401(4)); *see also Cliff v. FreedomRoads,*

LLC, No. 3:25-CV-00296, 2026 WL 125625, at *2 (D. Nev. Jan. 16, 2026) (holding that a retaliation claim is itself a sexual harassment dispute covered by the EFAA); *Hix v. Dave & Buster's Mgmt. Corp*., No. 3:23-cv-623, 2023 WL 9425283 (D. Or. Nov. 14, 2023) (same); *Molchanoff v. SOLV Energy, LLC*, No. 23-CV-653, 2024 WL 899384, at *3 (S.D. Cal. Mar. 1, 2024) (same); *Johnson v. Everyrealm*, Inc., 657 F. Supp. 3d 535, 551 n.13 (S.D.N.Y. 2023) (same).

Any other interpretation of EFAA would run afoul of the statutory text. The EFAA defines a sexual harassment dispute as "a dispute *relating* to conduct that is alleged to constitute sexual harassment." 9 U.S.C. § 401(4) (emphasis added). And retaliation for reporting sexual harassment is necessarily related to the underlying sexual harassment. *Olivieri*, 112 F.4th at 92; *see also Hix,* 2023 WL 9425283, at *9 (explaining that a retaliation claim is "connected" to underlying sexual harassment when reporting that conduct is the alleged cause of retaliation). SpaceX does not dispute that retaliation for reporting sexual harassment can be a "sexual harassment dispute" under the EFAA, but it argues that Plaintiffs' retaliation claims here don't count because each Plaintiff has not established their own plausible sexual harassment claim. Opening Br. at 35-36. Even if Plaintiffs did fail to state plausible sexual harassment claims, *but see* Resp. Br. at 26-29, SpaceX is wrong that the EFAA would not apply to their retaliation claims for two reasons. First, retaliation is a sexual harassment dispute under the EFAA if it relates to conduct alleged to

constitute sexual harassment, regardless of whether the person alleging retaliation was the target of the harassment. Second, to the extent the EFAA imposes a plausibility standard, it is the retaliation claim that must be plausible, not the underlying harassment.

i. Even if Plaintiffs were not the direct target of the harassment, the EFAA still covers their retaliation claims.

Interpreting the EFAA, as Defendant does, to require plaintiffs to be the direct targets of the harassment for their retaliation claims to constitute a "sexual harassment dispute" goes against the Act's plain text. No part of the EFAA limits who can invoke its protections to "victims" or "targets" of the harassment. *See* 9 U.S.C. §§ 401, 402(a); *Hicks v. CEC Entm't Holdings I, Inc.*, No. 24-1120, 2025 WL 1770787, at *3 (D. Del. June 26, 2025) ("The text of the EFAA does not limit its reach to 'victims.'"). Instead, Congress used the broader term "person," providing that any "person alleging conduct constituting a sexual harassment dispute or sexual assault dispute" can invalidate their arbitration agreement. 9 U.S.C. § 402(a). That includes a person who alleges retaliation for reporting sexual harassment because that is a "sexual harassment dispute." *See Olivieri*, 112 F.4th at 92.

Congress could have limited the EFAA's applicability to only suits by victims of harassment if it intended the result SpaceX advocates, but it chose not to. In fact, Congress used the term "victim" in other areas of the statute, but not to limit who is covered. For example, § 401(3) extends the definition of "sexual assault dispute" to

include instances where the "victim lacks capacity to consent," but does not limit the ability to raise sexual assault or sexual harassment disputes to "victims." *See Hicks*, 2025 WL 1770787, at *3 (noting this language and that "Congress therefore could have limited the definition of 'sexual harassment dispute' to sexual harassment of which the complainant claims to be the victim" but did not do so).

Courts have found that the EFAA applies to a retaliation claim where, as here, a plaintiff reported sexual harassment that was targeted at other workers. For example, in *Hicks*, the court held that the language of the EFAA did not support defendants' argument that "the EFAA does not apply because Ms. Hicks does not allege that she herself was the victim of the illegal sexual harassment" she reported. 2025 WL 1770787, at *3. And in *Lambert v. New Start Capital LLC*, the court found that the EFAA covered the plaintiff's claim that she was fired for reporting sexual harassment of a coworker, even though she was not the direct target of the harassment. 799 F. Supp. 3d 258, 267, 281 (S.D.N.Y. 2025). Relying on *Olivieri*, the court in *Lambert* found that because the plaintiff alleged a "dispute relating to conduct that is alleged to constitute sexual harassment" under applicable law, the EFAA applied. *Id.* at 280-81. Other courts have also relied on the plain text of the EFAA to find that retaliation claims for reporting sexual harassment were covered by the EFAA, even if the plaintiff was not the target of the harassment. *See Usai v. Club Mgmt. Miami II, LLC*, 801 F.Supp.3d 1295, 1308 (S.D. Fla. 2025) (finding that

the plain language of the EFAA was applicable to a plaintiff's Title VII retaliation claim where plaintiff alleged he was retaliated against for reporting the sexual harassment of his colleagues to his employer); *Ramirez v. Domino's Pizza Supply Chain*, No. 24-cv-01731, 2024 WL 5452684, at *4 (D. Colo. Nov. 8, 2024), *report and recommendation adopted*, No.24-CV-01731, 2025 WL 414381 (D. Colo. Feb. 6, 2025) (same). On the other hand, SpaceX has cited no case that reads the limitations it argues for into the EFAA. This Court should similarly find that the EFAA's plain language applies to Plaintiffs' retaliation claims, even if they were not the targets of the harassment they reported.

ii. Plaintiffs' retaliation claims are still covered by the EFAA even if plaintiffs do not plead a plausible sexual harassment claim.

Even if the EFAA did incorporate a Rule 12(b)(6) plausibility standard (which it does not, Resp. Br. at 15-26), Plaintiffs need not separately plead a plausible sexual harassment claim for the EFAA to cover their plausible *retaliation* claims. In *Olivieri*, for example, the Second Circuit held that the EFAA covered the plaintiff's retaliation claim, even though the underlying sexual harassment fell outside the Act's temporal scope. 112 F.4th at 92. In applying the EFAA to the retaliation claim, the court did not analyze whether the plaintiff had stated a plausible claim for the underlying harassment before holding that the retaliation claim was a "sexual harassment dispute" to which the EFAA applied. *Id.* at 77-81, 92. That approach is consistent with the legislative history, which demonstrates an intention to allow

retaliation claims to proceed in court even when a sexual harassment claim is dismissed for failure to state a claim. *See* 168 Cong. Rec. S626 (daily ed. Feb. 10, 2022) (statement of Sen. Richard Durbin) (describing how, even without a sexual assault or sexual harassment claim, related claims can and should still proceed, and explaining that, to provide otherwise "would have the undesirable effect of hiding corporate behavior such as retaliation and discrimination against women who report assaults and harassment").

Applying *Olivieri*'s reasoning, district courts have also held that the EFAA covers retaliation claims without requiring a corresponding plausible sexual harassment claim (or any sexual harassment claim at all). *See, e.g., Diaz-Roa v. Hermes L., P.C.*, 757 F. Supp. 3d 498, 536 (S.D.N.Y. 2024) ("A plaintiff need not state a claim for sexual harassment to be considered to have made allegations relating to conduct that is alleged to constitute sexual harassment." (citation modified)); *Newton v. LVMH Moet Hennessy Louis Vuitton Inc.*, 746 F. Supp. 3d 135, 151 (S.D.N.Y. 2024) (holding that a standalone complaint for retaliation, unaccompanied by a sexual harassment claim, fell within the EFAA because it was based on "reporting and speaking out" about earlier sexual harassment), *vacated in part on other grounds*, No. 23-cv-10653, 2025 WL 1826583 (S.D.N.Y. July 2, 2025); *Clay v. FGO Logs., Inc.*, 751 F.Supp.3d 3, 17-18 (D. Conn. 2024) (concluding that EFAA covered retaliation claim even though sexual harassment claims were outside

EFAA's temporal scope); *cf. Lee v. Marriott Int'l, Inc.*, No. 25-CV-01169, 2025 WL 2689263, at *9 (N.D. Cal. Sept. 21, 2025) (explaining that the fact that plaintiff did not assert a cause of action for sexual harassment did not bar her from relying on the EFAA).

That follows the general logic of a retaliation claim, where the question is "whether the plaintiff was retaliated against for reporting sexual harassment, not the plausibility of the underlying harassment claim." *Diaz-Roa*, 757 F. Supp. 3d at 536. Indeed, to prove retaliation, "a plaintiff does not need to prove that the employment practice at issue was in fact unlawful." *Trent v. Valley Elec. Ass'n Inc.*, 41 F.3d 524, 526 (9th Cir. 1994). She must only show that she had a "reasonable belief" that the employment practice was unlawful." *Id.* Thus, even if Plaintiffs here did not establish plausible sexual harassment claims, they could still establish a plausible retaliation claim for reporting what they reasonably believed to be unlawful sexual harassment, and the EFAA still applies.

B. The EFAA's definition of "sexual harassment dispute" is not limited to conduct "of a sexual nature."

SpaceX argues that "sexual harassment" in the EFAA refers only to conduct "of a sexual nature" and not all sex-based harassment. Opening Br. at 28-31. That narrow view contravenes the EFAA's plain text, decades of California and federal case law, and the EFAA's legislative history.

The EFAA defines a "sexual harassment dispute" with reference to "sexual harassment under applicable Federal, Tribal, or State law." 9 U.S.C. § 401(4). Thus, contrary to SpaceX's contention, this Court does not need to decide the meaning of the phrase "sexual harassment" in the abstract as a matter of "ordinary usage," Opening Br. at 28, because the EFAA directs the Court where to look for the definition: the California laws that apply to this dispute. And none of the California statutes under which Plaintiffs bring their claims adopt SpaceX's limited definition of sexual harassment. As Plaintiffs explain, California's Fair Employment and Housing Act (FEHA) and its implementing regulations define sexual harassment broadly to include all sex-based harassment, regardless of whether the harassment is "sexual in nature" or motivated by desire. Resp. Br. at 27-28; *see also, e.g.*, *Taylor v. Nabors Drilling USA, LP*, 222 Cal. App. 4th 1228, 1240 (Cal. Ct. App. 2014) ("California courts have recognized that a sexual motive or interest is not required for sexual harassment under the FEHA."); *Pantoja v. Anton*, 198 Cal. App. 4th 87, 114 (Cal. Ct. App. 2011) (explaining that to establish a claim for "hostile environment sexual harassment" under FEHA, "[t]he plaintiff must show that the harassing conduct took place because of the plaintiff's sex, but need not show that the conduct was motivated by sexual desire").[2]

[2] As Plaintiffs also explain, Resp. Br. at 35-36, it has long been the case under both Title VII and FEHA that remarks constituting a hostile work environment need not

And even if it were appropriate to look to Title VII case law for the definition of "sexual harassment," a sexual harassment claim under Title VII does not require conduct of a sexual nature either. The Supreme Court and this Court have made clear that sexual harassment claims under Title VII are not limited to conduct that is lewd or sexual in nature. In *Oncale v. Sundowner Offshore Services., Inc.*, 523 U.S. 75, 80 (1998), the Supreme Court held that Title VII prohibits "sexual harassment of any kind that meets the statutory requirements," even if it is "motivated by general hostility to the presence of women in the workplace" rather than "sexual desire." Since *Oncale*, this Court has held the same. *See, e.g.*, *E.E.O.C. v. Nat'l Educ. Ass'n, Alaska*, 422 F.3d 840, 845 (9th Cir. 2005) (holding that district court erred in holding that Title VII harassment claim required conduct "of a sexual nature").

The EFAA's legislative history reaffirms that Congress did not intend to limit the phrase "sexual harassment" to conduct of a sexual nature. Congress specifically

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be "directed at" the plaintiff so long as they heard them and were affected by them. *See, e.g.*, *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1117 (9th Cir. 2004) ("if racial hostility pervades a workplace, a plaintiff may establish a violation of Title VII, even if such hostility was not directly targeted at the plaintiff."); *Lyle v. Warner Bros. Television Prods.,* 132 P.3d 211, 224 (2006) ("[A]n employee who is subjected to a hostile work environment is a victim of sexual harassment even though no offensive remarks or touchings are directed to or perpetrated upon that employee.") (quoting *Fisher v. San Pedro Peninsula Hospital*, 262 Cal. Rptr. 842, 853 n. 8 (Ct. App. 1989))). This is the backdrop against which Congress enacted the EFAA. *See Parker Drill-ing Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) ("It is a commonplace of statutory interpretation that Congress legislates against the backdrop of existing law.").

considered and rejected a version of the bill that would have defined a "sexual harassment dispute" more narrowly as a dispute relating to "[u]nwelcome sexual advances," "[u]nwanted physical contact that is sexual in nature," "[u]nwanted sexual attention, including unwanted sexual comments and propositions for sexual activity," conditioning benefits on sexual activity, or "[r]etaliation for rejecting unwanted sexual attention." H.R. 4445, 117th Cong. § 401(4) (July 16, 2021); 168 Cong. Rec. H984 (daily ed. Feb. 7, 2022). Instead, Congress adopted a broader definition that aligns the EFAA with Title VII and other laws prohibiting sexual harassment. *See* 9 U.S.C. § 401(4); 168 Cong. Rec. H991 (daily ed. Feb. 7, 2022) (statement of Rep. Robert Scott) (stating that the relevant amendment "encompasses a broader array of harassing conduct" because it "embrac[es] sexual harassment jurisprudence"); 168 Cong. Rec. S628 (daily ed. Feb. 10, 2022) (statement of Sen. Kristen Gillibrand) (stating that "[t]here are no new legal burdens to sexual harassment established in the bill" because "[i]t is all tied to existing Federal, State, and Tribal law").

Put simply, a plaintiff has alleged a "sexual harassment dispute" under the EFAA when they have alleged conduct that would constitute harassment under applicable law. There is no added requirement that the conduct be sexual in nature, and reading such a requirement into the EFAA would subvert the statute's text and create a new, difficult-to-apply standard for litigants and courts. Here, as Plaintiffs

describe in their brief, they have alleged actionable harassment under California law, and that is all that is required.

II. Because the EFAA Applies, Plaintiffs' Arbitration Agreements are Invalid as to the Entire Case.

Because each Plaintiff alleges a "sexual harassment dispute" under the EFAA, their arbitration agreements are invalid as to this entire case. SpaceX argues that even if the EFAA applies here, it applies only to the "the part of the plaintiff's allegations that relate to sexual harassment." Opening Br. at 40. It contends that the EFAA's text requires such a result, but under the EFAA, a predispute arbitration agreement is unenforceable "with respect to a *case* which . . . relates to [a] . . . sexual harassment dispute." 9 U.S.C. § 402(a) (emphasis added). This unequivocal text has led the vast majority of courts to have considered the question to conclude that an arbitration agreement is unenforceable as to "the entirety of the case relating to the sexual harassment dispute, not merely the discrete claims in that case that themselves either allege such harassment or relate to a sexual harassment dispute." *Johnson*, 657 F. Supp. 3d at 559; *see also Baldwin v. TPML Lexington LLC*, 23 Civ. 9899, 2024 WL 3862150, at *7 (S.D.N.Y. Aug. 19, 2024) (collecting cases). Thus, so long as some allegations in the complaint meet the definition of a "sexual harassment dispute," the arbitration agreement is invalid as to the entire "case."

A. Under its plain text, the EFAA applies to an entire "case."

This Court's analysis of the EFAA's scope must start, and can end, with the statutory text. *In re Stevens*, 15 F.4th 1214, 1217 (9th Cir. 2021). Because the statute does not define "case," the Court should "look to the ordinary meaning of the term when Congress enacted" the EFAA. Id. The "term 'case' is familiar in the law." *Johnson*, 657 F. Supp. 3d at 558. In ordinary parlance, "case" refers to "a suit or action in law or equity," not the individual causes of action that make up an entire suit. *Id.* at 558-59 (quoting *Case*, Merriam-Webster, https://www.merriam-webster.com/dictionary/case). The legal definition of "case" is consistent with this contemporary usage. A case is "[a] civil or criminal proceeding, action, suit, or controversy at law or in equity." *Case*, Black's Law Dictionary (12th ed. 2024). In other words, "case" "captures the legal proceeding as an undivided whole. It does not differentiate among causes of action within it." *Johnson*, 657 F. Supp. 3d at 559.

Ignoring this ordinary meaning, SpaceX relies on less common dictionary definitions to assert that the word "case" can sometimes "refer to the facts and arguments supporting a particular legal outcome." Opening Br. at 41. That may sometimes be true as a colloquial matter, for example when someone "makes the case" for a particular outcome, but legal sources consistently equate a case with the entire action, *see, e.g.*, *Case*, Black's Law Dictionary (12th ed. 2024); *Hohn v. United States*, 524 U.S. 236, 241 (1998) ("The words 'case' and 'cause' are constantly used

as synonyms in statutes … , each meaning a proceeding in court, a suit, or action.") (citation modified). Indeed, Congress uses the terms "case" and "action" interchangeably, even elsewhere in the FAA. For example, § 205 of the FAA is titled "Removal of *cases* from State courts," but the text addresses the removal of "*an action or proceeding* pending in a State court" that may be subject to arbitration. 9 U.S.C. § 205 (emphases added); *see also, e.g.*, 28 U.S.C. § 1452 (using "cases" and "civil action" interchangeably and distinguishing those from "any claim or cause of action in a civil action"). Moreover, this Court must read the words of the statute "in context," *In re Stevens*, 15 F.4th at 1217, and it simply would not have made sense for Congress to provide that an arbitration agreement was invalid as to "a case" in the amorphous colloquial sense rather than in the specific legal sense of the entire action.

Had Congress wanted to differentiate among causes of action within a particular suit, it could have easily done so, either by omitting "case" altogether and invalidating arbitration agreements only "with respect to the sexual harassment dispute," or by using the words "claim" or "cause of action" instead of "case." In ordinary legal parlance, those terms are not the same as "case" and instead refer to "the part of a complaint in a civil action specifying what relief the plaintiff asks for." *Claim*, Black's Law Dictionary (12th ed. 2024); *see also Johnson*, 657 F. Supp. 3d at 559-60 (citing dictionary definitions and cases defining "claim" and "cause of

action"). Indeed, Congress used the word "claim" in another part of the EFAA, clarifying that it applies only to "dispute[s] or claim[s] that arise[] or accrue[]" after its effective date. Pub. L. No. 117-90, § 3, 136 Stat. 26, 28. And it's well established that "when Congress includes particular language in one section of a statute but omits it in another," a court "presumes that Congress intended a difference in meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 161 (2018) (citation modified). This Court should give effect to the actual words in the statute and take Congress at its word that "case" means "case," not just the subset of allegations in a case that constitutes the "sexual harassment dispute." *See Simmons v. Himmelreich*, 578 U.S. 621, 627 (2016) ("Congress says what it means and means what it says.").

SpaceX protests (at 40) that this straightforward reading would render the requirement that the case relate to the sexual harassment dispute "entirely superfluous." A reminder: The EFAA provides that, "at the election of the person alleging conduct constituting a sexual harassment dispute," the agreement shall be invalid "with respect to a case which is filed under Federal, Tribal, or State law and relates to . . . the sexual harassment dispute." 9 U.S.C. § 402(a). According to SpaceX, the reference to the person "alleging conduct constituting a sexual harassment dispute," combined with the "case which is filed" language would alone be sufficient to sweep in the entire case. Opening Br. at 40. So, the argument goes,

the "relates to" phrase as Plaintiffs and nearly all district courts read it is superfluous unless it is read to narrow the EFAA's scope to only related *claims*. *Id.* at 40-41.

Not so. Without that phrase, the statute would be too broad: It would apply to *any* case brought by someone who was alleging a sexual harassment dispute against anyone, regardless of whether the case at issue had any relation to the sexual harassment dispute. The limiting language thus clarifies that the arbitration agreement is not invalid in general as to any case but instead is invalid only as to the particular case that "relates to" the sexual harassment dispute. At the same time, Congress specifically chose a phrase understood to have "expansive effect," *Diaz-Roa*, 757 F. Supp. 3d at 531, intending to sweep in not just cases in which a sexual harassment dispute is alleged, but also cases that do not themselves involve a sexual harassment dispute but relate to one, *id.* at 536 n.12 (listing cases interpreting phrases like "relates to" and "relating to" and concluding that the EFAA's "relates to" requirement "does not present a high bar").

It thus makes sense that the majority of courts to address the issue agree that, as *Johnson* described, the EFAA's "text is clear, unambiguous, and decisive" as to the scope of the "invalidation of the arbitration clause," which applies "to the entire 'case' relating to the sexual harassment dispute," rather than just "the claim or claims in which that dispute plays a part." 657 F. Supp. 3d at 558; *see Baldwin*, 2024 WL 3862150, at *7 (collecting cases).

SpaceX also argues that "[a]ny contrary rule would invite gamesmanship" because "[a] plaintiff could plead sexual harassment allegations alongside an entirely unrelated controversy in a bid to completely evade a clear promise to arbitrate." Opening Br. at 44. Even if policy concerns could override the plain text of a statute (and they can't), this concern "appears to be overstated," *Diaz-Roa*, 757 F. Supp. 3d at 533, particularly because generally applicable rules of joinder protect against plaintiffs being able to tack on unrelated claims, *see Johnson*, 657 F. Supp. 3d at 562 n.23. Under those joinder rules, it is entirely appropriate for a plaintiff to include multiple claims against the same defendant in one case, and SpaceX does not explain why it would be absurd or unreasonable to read the EFAA to allow such cases to move forward in court.

Instead, SpaceX takes aim at cases involving multiple plaintiffs, some of whom have sexual harassment claims and some of whom don't. That is not this case because each Plaintiff here has alleged a sexual harassment dispute. Response Br. at 26-44. In any event, that hypothetical situation should not change the plain meaning of the word "case" in the statute because other statutory language addresses it: The EFAA is clear that only "the person alleging conduct constituting a sexual harassment dispute" can invalidate *their* arbitration agreement as to the entire case. 9 U.S.C. § 402(a). No one is arguing that the EFAA allows a plaintiff not alleging a

sexual harassment dispute to also invalidate their arbitration agreement simply because they have joined their claims with someone who alleged one.

B. The legislative history confirms the EFAA applies to an entire case.

The legislative record confirms what is written in the statutory text: Congress intended the EFAA to have a broad scope, covering any case related to conduct alleged to constitute a sexual assault or sexual harassment dispute. As Senator Durbin explained, the "premise of this legislation is simple: Survivors of sexual assault or harassment . . . should be able to choose whether to bring a case forward [in court], instead of being forced into a secret arbitration proceeding where the deck is stacked against them." 168 Cong. Rec. S626 (daily ed. Feb. 10, 2022). And to give plaintiffs a meaningful opportunity to air their allegations of sexual assault or harassment in court, Congress understood that the EFAA would need to apply to an entire case. Senator Durbin put it plainly: "for cases which involve conduct that is related to a sexual harassment dispute or sexual assault dispute, survivors should be allowed to proceed with their full case in court regardless of which claims are ultimately proven. I am glad that is what this bill provides." *Id.* at S626-27.

Senator Gillibrand echoed this sentiment: "When a sexual assault or sexual harassment survivor files a court case in order to seek accountability, her single case may include multiple claims." *Id.* at S627. Rather than force a survivor to "relive that experience in multiple jurisdictions," claims must be able to "proceed together"

so that she can "realize the rights and protections intended to be restored to her by this legislation." *Id.*

The House was in accord. The House report, for example, emphasized that a "*suit*" by "an employee" who had been "assaulted, or harassed at work" should be permitted to move forward in a "court of law." H.R. Rep. No. 117-234 (2022), at 3 (emphasis added). That focus on a "suit" rather than a claim demonstrates an intent to keep the entire action whole. Similarly, Representative Bobby Scott emphasized that "the best reading of the language in the bill that refers to 'a case . . . [that] relates to a sexual harassment dispute' is that it was meant to encompass [] scenarios" in which a plaintiff brings both harassment and other "negative employment action" claims. 168 Cong. Rec. H991 (daily ed. Feb. 7, 2022) (first two alterations in original). These statements all make clear that the intention of Congress was to ensure that survivors could have their entire case—not just their allegations of sexual harassment—heard in court.

SpaceX resists this obvious legislative intent, claiming instead that Congress intended to exempt from arbitration only claims related to alleged assault or harassment. *See* Opening Br. at 42-43. In support of this argument, it cites senators' general agreement that the EFAA would not "take unrelated claims out of the contract [for arbitration]." Opening Br. at 42 (quoting 168 Cong. Rec. at S625 (statement of Sen. Lindsey Graham)); *see also id.* (quoting 168 Cong. Rec. at S625

(statement of Sen. Joni Ernst)). But these legislative generalities do not reach as far as SpaceX would stretch them. As a practical matter, a "case" can contain only those claims that are properly joined because they are brought against the same defendant, Fed. R. Civ. P. 18, "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences," Fed. R. Civ. P. 20, or concern common questions of law or fact, *id.* Thus, of course the EFAA does not cover claims that are wholly unrelated to the sexual-assault or sexual harassment dispute because such claims cannot be properly joined in a single case. However, as Senator Ernst emphasized, "harassment or assault claims" can be "joined" with other "employment claims" when there is a "key nexus" between the claims, 168 Cong. Rec. at S625—that is, when the claims are properly joined.

SpaceX emphasizes Senator Graham's comment that "if you have got an hour-and-wage dispute with the employer, you make a sexual harassment, sexual assault claim, the hour-and-wage dispute stays under arbitration unless it is related." Opening Br. at 43 (quoting 168 Cong Rec. at S625 (statement of Sen. Lindsey Graham)). But properly contextualized within the Senate's broader discussion, Senator Graham could have simply meant that tacked-on claims of sexual assault would not necessarily bring the whole case within the scope of the EFAA; the claims would have to be sufficiently related such that the requirements of joinder in the Federal Rules were met. *See* 168 Cong. Rec. at S625 (noting concern about "any

subsequent litigation manipulat[ing] the text to game the system" (statement of Sen. Joni Ernst)); *id.* (similar statement of Sen. Lindsey Graham); *id.* at S626 (statement of Sen. Richard Durbin acknowledging Senator Ernst's concern).

It is therefore not surprising that several courts have found that the EFAA allows properly joined sexual harassment and wage-and-hour claims to be brought together in court. *See Mera v. SA Hospitality Grp., LLC*, 23 Civ. 3492, 2025 WL 3202080, at *10 (S.D.N.Y. Nov. 17, 2025) (rejecting reliance on Senator Graham's statement because the statutory text was clear, and holding that magistrate judge erred in ruling that only sexual harassment claims, and not wage-and-hour claims, could proceed in court); *see also, e.g., Lambert v. New Start Cap. LLC*, 799 F. Supp. 3d 258, 281-82 (S.D.N.Y. 2025); *Baldwin*, 2024 WL 3862150, at *7-8.

Congress's actions also contradict SpaceX's reading of Senator Graham's statement. Congress did not move forward on another bill during the same session that would have limited the legislation to "claim[s]" of sexual assault between employees and employers, while allowing for arbitration for other claims in a case. *See* Resolving Sexual Assault and Harassment Disputes Act of 2021, S.3143, 117th Cong. (2021). Instead, Congress enacted the EFAA, which rejects the notion of claim-splitting by exempting from arbitration "any *case* which . . . relates to . . . a sexual harassment dispute." 9 U.S.C. § 402(a) (emphasis added).

CONCLUSION

For these reasons, the Court should affirm the district court's denial of SpaceX's motion to compel arbitration.

Respectfully Submitted,

s/ Shelby Leighton

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 6,075 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 14-point Times New Roman font.

Dated: February 24, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 24, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the appellate CM/ECF system.

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