

No. 25-83

IN THE
Supreme Court of the United States

ADRIAN JULES,
Petitioner,

v.

ANDRE BALAZS PROPERTIES, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

**BRIEF AMICUS CURIAE OF
THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA
IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE *AMICUS CURIAE*¹

The Chamber of Commerce of the United States (“Chamber”) is the world’s largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber has participated in many cases addressing the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1 *et seq.* These include cases specifically addressing the subject-matter jurisdiction of the federal courts, such as *Vaden v. Discover Bank*, 556 U.S. 49 (2009) and *Badgerow v. Walters*, 596 U.S. 1 (2022).

The Chamber has a strong interest in predictable jurisdictional rules governing the judicial forums in which arbitration clauses and the resulting awards can be reviewed. Many of the Chamber’s members rely upon arbitration clauses to provide a fair and efficient mechanism for resolving disputes without the costs of traditional litigation in court. Predictable jurisdictional rules help reenforce that system, consistent with the wishes of Congress expressed in the FAA. And, in the Chamber’s view, predictable rules that allow for a federal forum to maintain jurisdiction in cases like this one are consistent with the FAA’s text, track its statutory history, and serve its purpose of addressing state-court hostility to arbitration.

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Under Chapter 1 of the FAA, when a federal court properly exercises subject-matter jurisdiction to review an arbitration agreement and then issues a stay, it retains the power to consider subsequent cross-applications to confirm or to vacate the arbitration award arising out of that same proceeding. In addition to the reasons advanced by Respondents, five others support this conclusion.

First, it tracks the statutory history behind the FAA's enactment. As this Court and numerous arbitration scholars have repeatedly recognized, New York's arbitration law, N.Y. Arbitration Law, ch. 275, N.Y. Laws 1920 (McKinney) (hereinafter "*1920 New York Law*"), served as the "prototype of" the FAA. Harry Baum and Leon Pressman, *The Enforcement of Commercial Arbitration Agreements in the Federal Courts*, 8 N.Y.U. L.Q. Rev. 238, 243 (1930); see also Julius Henry Cohen & Kenneth Dayton, *The New Federal Arbitration Law*, 12 Va. L. Rev. 265, 269, 275 (1926). Only a year after New York's legislative enactment, that state's court of appeals unanimously interpreted its new arbitration law to preserve jurisdiction when a court stays its hand after deciding to enforce an arbitration agreement. *Matter of Berkovitz v. Arbib & Houlberg, Inc.*, 130 N.E. 288 (N.Y. 1921). Congress expressly modeled the FAA on New York's arbitration law and, while designing the federal statute, was cognizant of the *Berkovitz* decision. Judicial interpretations immediately following the FAA's adoption confirm this view: Agreement and award proceedings constituted a single, integrated case for purposes of federal subject-matter jurisdiction. See *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 275-276 (1932); *Marchant v. Mead-Morrison Mfg. Co.*, 29 F.2d 40 (2d Cir. 1928). In light of that

historical backdrop, the best interpretation of the FAA is that a federal court retains jurisdiction to entertain cross-applications to review or to vacate awards after issuing a Section 3 stay.

Second, this rule heeds this Court’s jurisprudence interpreting Chapter 1 of the FAA to take into account its implications for international commercial arbitration. See *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193 (2000). As *Cortez* recognized, Chapter 1 governs not only domestic arbitrations but also a slice of international ones too. Indeed, at the time of its enactment, Chapter 1 covered virtually *all* international commercial arbitrations because, in 1925, the United States was not a party to then-prevailing multilateral treaties. See I Gary B. Born, *International Commercial Arbitration* § 1.01[C][2] at 65 (3d ed. 2021) (hereinafter “*Born*”). Still today, Chapter 1 governs agreements and awards in international commercial arbitrations falling outside the New York Convention (governed by FAA Chapter 2) and the Panama Convention (governed by FAA Chapter 3). Petitioner’s view would create an anomaly in which a federal court would retain jurisdiction under Chapters 2 and 3 to review arbitration awards, but not under Chapter 1. There is little reason to think Congress would have intended this odd consequence, particularly given that Chapter 1 originally governed review of virtually all international commercial arbitration awards.

Third, this rule comports with this Court’s prior precedent interpreting the FAA to require courts to enforce arbitration agreements “according to their terms.” See *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 183-84 (2019) (quoting *Epic Systems Corp. v.*

Lewis, 584 U.S. 497, 506 (2018)). Those “terms” often include institutional rules (here the JAMS rules) incorporated by reference into the parties’ agreement. See JAMS Comprehensive Arbitration Rules & Procedures (June 1, 2021). Among those incorporated rules in this case, JAMS Rule 25 includes a bilateral agreement by the parties to “entry of judgment upon and in any court with jurisdiction.” That language, long utilized by arbitral institutions, works hand-in-glove with FAA Section 9 (and the New York arbitration law on which it was based). In relevant part, Section 9 specifies that judicial confirmation and vacatur proceedings may be brought “[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration” 9 U.S.C. § 9. So when a federal court, properly vested with subject-matter jurisdiction under *Vaden*, requires parties to arbitrate (whether by issuing a Section 3 stay or a Section 4 order), its role to enforce the parties’ agreement “according to its terms” does not extinguish simply when the arbitration commences; rather, the court retains jurisdiction to enforce such an “entry of judgment” term in cases where the parties do not voluntarily comply with the award.

Fourth, this rule overcomes lingering state judicial hostility to arbitration. As this Court has long recognized, Congress adopted the FAA to overcome judicial hostility to arbitration agreements and awards, especially among state courts. *Rodriguez de Quijas v. Shearson / Am. Express, Inc.*, 490 U.S. 477, 480 (1989); see also *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006); *Shearson / Am. Express Inc. v. McMahan*, 482 U.S. 220, 231-232 (1987); *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985). Following New York’s adoption of its arbitration law in 1920, the patchwork of rules prevailing in the several

states enabled a party trying to avoid participating in arbitration or paying an award to force its New York counterparty to sue in the courts of another state more hostile to arbitration than New York. The FAA offered a welcome antidote to this forum-shopping problem. By tracking New York's standards for the enforceability of arbitration agreements and awards, the 1925 federal enactment promised to enhance national uniformity both through its substantive standards and through clarifying the power of federal courts. Despite substantial progress over the past century, state-court hostility still festers in pockets of the United States. Preserving the subject-matter jurisdiction of the federal courts across agreement- and award-stage proceedings honors Congress' longstanding and long-recognized goals and spares parties the commerce-defeating inefficiency of seeking relief in hostile state forums.

Fifth, contrary to Petitioner's suggestion, permitting federal jurisdiction will not produce a parade of horrors. Even though essentially every circuit has employed some form of the "jurisdictional anchor" theory, Petitioner fails to cite any empirical evidence to prove that its feared flood of litigation has come to pass. *See* Br. at 33-36. Justice Breyer's dissent in *Badgerow* cannot fill the gap because *Badgerow* involved a standalone complaint that lacked jurisdiction whereas this case involves an application to confirm filed in an action that was already pending in federal court. *Compare Dodson Int'l Parts, Inc. v. Williams Int'l Co. LLC*, 12 F.4th 1212, 1227-28 (10th Cir. 2021).

For these reasons, along with those advanced by Respondents, the lower court's judgment should be affirmed.

ARGUMENT

Following the example set by New York a few years earlier, Congress in 1925 adopted the FAA to overthrow obsolete “judicial hostility to arbitration.” *Rodriguez de Quijas*, 490 U.S. at 480; *see also Buckeye Check Cashing, Inc.*, 546 U.S. at 443; *McMahon*, 482 U.S. at 231-232; *Dean Witter Reynolds Inc.*, 470 U.S. at 221. Closely modeling the original FAA on New York’s own arbitration statute, Congress aimed to address variations among the several states. A uniform federal standard, coupled with the availability of a federal forum, reduced the risk that state courts, hostile to arbitration, could frustrate arbitration agreements and awards that had grown increasingly essential to interstate and to international commerce. Otherwise, recalcitrant parties could continue to welch on their arbitration agreements or to thwart confirmation of arbitral awards by seeking refuge in the courts of states (or countries) that, unlike New York, were hostile to arbitration.

Consistent with that overarching purpose, the original federal enactment sets forth a series of requirements: a rule of substantive federal law generally requiring enforcement of arbitration agreements (§2), a requirement to stay litigation in federal court when seized with an enforceable arbitration agreement (§3), a power to compel arbitration (a form of specific performance of the arbitration agreement) when a recalcitrant party resisted its contractual obligation (§4), a power to appoint arbitrators when necessary (§5), a power to enforce subpoenas issued by arbitrators (§7), and a requirement presumptively to confirm arbitration awards subject to a limited number of defenses (§§9-11). Many provisions explicitly refer to the United States Courts, *see e, g.*, 9 U.S.C. §§ 3, 6, 9-11,

reflecting Congress' recognition that, for these rules to achieve their intended purpose, parties needed pathways to a federal forum.

Vaden addressed this need with respect to arbitration agreements. Citing language in Section 4,² *Vaden* carved one such path by allowing a district court to “look through” the petition to the underlying dispute in order to ascertain whether federal subject-matter jurisdiction would lie absent the arbitration clause. 556 U.S. at 62-65. For example, if the underlying action involved a claim of federal employment discrimination, ordinary principles of federal subject-matter jurisdiction would permit the district court to exercise authority over the motion to compel (or application for a stay, *see* 9 U.S.C. § 3). *See Vaden*, 556 U.S. at 70.

Badgerow addressed this need with respect to arbitration awards. Noting subtle linguistic differences between Section 4 and Sections 9 and 10 of the FAA, *Badgerow* held that *Vaden's* “look through” principle did not apply to *freestanding* applications to confirm or to vacate the award. 596 U.S. at 11-15. Instead, *Badgerow* concluded that the path to federal court would be found in an independent basis for federal subject-matter jurisdiction with respect to that freestanding post-award application. *Id.* at 18.

This case lies at the intersection of *Vaden* and *Badgerow*. Like *Vaden*, the look-through theory supported the exercise of federal subject-matter jurisdiction at the agreement-enforcement stage of the

² In relevant part, Section 4 provides that a party “may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties.”

proceeding (the underlying claim included several federal questions). Like *Badgerow*, the case involves the subject-matter jurisdiction of the federal courts over cross-applications to vacate and to confirm arbitral awards. The precise question, as both parties recognize, is whether federal subject-matter jurisdiction that unquestionably existed at the agreement-stage proceedings also encompasses jurisdiction over award-stage proceedings when the federal court exercises its power to stay proceedings under FAA Section 3. The answer to that question is “Yes.”

When a federal court stays proceedings under Section 3, the subject-matter jurisdiction properly exercised at the agreement-enforcement stage encompasses post-award proceedings to confirm or to vacate the award. This brief addresses five reasons, in addition to those advanced in Respondents’ brief, that this must be the rule.

A. Petitioner’s Reading Ignores Statutory History.

When interpreting a federal statute, this Court routinely consults the history against which the statute was enacted. *ZF Automotive U.S., Inc. v. Luxshare, Ltd.*, 596 U.S. 619, 628 (2022); *Cortez*, 529 U.S. at 199. As noted above, it is widely accepted that the FAA was enacted against the backdrop of, and largely modeled upon, New York’s 1920 arbitration law. See *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 287 (1995) (Thomas, J., dissenting, joined by Scalia, J.); *Southland Corp. v. Keating*, 465 U.S. 1, 34 (1984) (O’Connor, J., dissenting); see generally *I Born* at 157. Careful examination of the contemporaneous jurisprudence reveals that New York courts considered their jurisdiction over agreement-stage proceedings to extend to award-enforcement proceedings. This

paralleled more general principles of ancillary jurisdiction that federal courts likewise embraced at that time. Considered together, this statutory history supports Respondents' view.

New York adopted its arbitration law in 1920, just a few years before Congress adopted the FAA. Like Congress, New York's legislature did so to overcome longstanding judicial hostility to the enforcement of arbitration agreements and awards. See William Catron Jones, *Three Centuries of Commercial Arbitration in New York: A Brief Survey*, 1956 Wash. U. L.Q. 193 (1956). Like the FAA, New York's arbitration law granted courts the power to stay judicial proceedings pending arbitration. Compare 1920 New York Law §§ 3, 5 with 9 U.S.C. §§ 3-4.

In the years immediately following New York's enactment, its courts confronted a spate of interpretive questions. An important early decision, rendered only three years before the FAA's enactment, was then-Judge Cardozo's opinion for the New York Court of Appeals in *Berkovitz*. *Berkovitz* entailed constitutional and other challenges to New York's new arbitration law. In rejecting those challenges, Judge Cardozo, speaking for a unanimous court, addressed the issue of judicial jurisdiction:

If [the arbitration agreement] has been made and is valid, the court will stay its hand till the extrinsic fact is ascertained, and the condition thus fulfilled. That done, its doors are open for whatever measure of relief the situation may exact. Hamlyn & Co. v. Talisker Distillery, 1894, A. C. 202; Wilson v. Glasgow Tramways & O. Co., 5 Session Cases (Scot.) Fourth Series, 981, 992, quoted by Cohen, Commercial Arbitration and the Law, pp. 262,

263. The award will be enforced if valid, and for cause will be annulled. 'In common language where no attempt is made at logical accuracy,' it is sometimes said that the contract of arbitration 'ousts the jurisdiction' of the judges. *Wilson v. Glasgow Tramways & O. Co., supra*. 'In strictness, however, it does not oust the jurisdiction, but merely introduces a new plea into the cause' on which the judge as at common law is under a duty to decide. *Wilson v. Glasgow Tramways & O. Co., supra*. The situation is the same in substance as when effect is given to a release or to a covenant not to sue. *Jurisdiction is not renounced, but the time and manner of its exercise are adapted to the convention of the parties restricting the media of proof*. Long before the statute there was a like withholding of relief whenever the subject-matter of arbitration, instead of extending to all differences, was limited to some. *Prest., etc., D. & H. C. Co. v. Pa. Coal Co.*, 50 N. Y. 250; *Scott v. Avery*, [1855] 5 H. L. 811; *Hamilton v. Liverpool & L. & G. Ins. Co.*, 136 U. S. 242, 255, 10 Sup. Ct. 945, 34 L. Ed. 419. There was a like refusal to permit the litigation of the merits when the contract, though general, was no longer executory but had ripened into an award. The change resulting from the statute is one of measure and degree.

130 N.E. at 291-92 (emphasis added).

In announcing that broad rule of judicial jurisdiction, *Berkovitz* tracked contemporaneous developments in English law. Already in the late nineteenth century, England had modernized its arbitration act in 1889,

and English courts had begun to overthrow the ancient judicial hostility to enforcing agreements and awards. See English Arbitration Act 1889, 52 & 53 Vict. c. 49. Characteristic of the jurisprudential shift was *Hamlyn & Co. v. The Talisker Distillery*, [1894 H.L.] A.C. 202, a decision by the House of Lords relied upon by the New York Court of Appeals in *Berkovitz*. In relevant part, Lord Watson explained that, under English law, “[t]he jurisdiction of the Court is not wholly ousted by such a[n] [arbitration] contract. It deprives the Court of jurisdiction to inquire into and decide the merits of the case, *whilst it leaves the Court free to entertain the suit, and to pronounce a decree in conformity with the award of the arbiter.*” *Id.* at 211 (emphasis supplied). Thus, during the time between New York’s enactment of its arbitration law and Congress’ adoption of the FAA, New York courts, drawing on English jurisprudence, understood that a court seized with jurisdiction to decide whether to enforce an arbitration agreement retained jurisdiction over post-award proceedings. Sabra A. Jones, *Historical Development of Commercial Arbitration in the United States*, 12 Minn. L. Rev. 240, 246 (1928) (noting that the English Arbitration Act of 1889 “has been instrumental in bringing about the passage of the New York law of 1920 and our federal Act of 1925”).

Fresh against this backdrop, Congress adopted the FAA. When it did so, New York’s law, including *Berkovitz*, was central to its drafting decisions. *Arbitration of Interstate Commercial Disputes: Joint Hearings on S. 1005 and H.R. 646 before the Subcomms. of the Comms. On the Judiciary*, 68th Cong. 1st Sess. 38, 40 (1924) (hereinafter “1924 Hearing”) (“The proposed federal statute follows the form of the successful New York and New Jersey statutes with only such changes as seem necessary for the federal

statute.”); *Federal Commercial Arbitration: Hearings on S. 4213 and S. 4214 Before the Subcomm. of the S. Comm. On the Judiciary*, 67th Cong. 4th Sess. 18-23 (1923) (hereinafter “1923 Hearing”) (entering *Berkovitz* into the legislative record). Witnesses at multiple congressional hearings about the proposed federal legislation discussed the experience with New York law and specifically *Berkovitz*. 1923 Hearing at 14, 21; 1924 Hearing at 34. Unsurprisingly, then, the two laws bear significant structural similarities.

On the heels of the FAA’s enactment, federal courts endorsed this integrated view of federal subject-matter jurisdiction. See *Marine Transit Corp.*, 284 U.S. at 275-276. *Marine Transit* addressed a difficulty that had arisen in the wake of New York’s 1920 enactment, namely whether that enactment applied to federal courts in New York that were sitting in admiralty. While this Court had rejected a constitutional challenge to the application of New York’s arbitration law in New York state courts, *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924), federal courts sitting in admiralty held that it did not apply, see *Atlantic Fruit Co. v. Red Cross Line*, 276 Fed. 319 (S.D.N.Y. 1921). *Marine Transit* made clear that the FAA cured the difficulty and, in doing so, expressly held that a federal court with jurisdiction to stay an action pending arbitration retains the power to confirm any ensuing arbitral award. 284 U.S. at 275-76.

The Second Circuit took a similar view that agreement-stage and award-stage proceedings were one integrated case for purposes of federal subject-matter jurisdiction. See *Marchant*, 29 F.2d 40. In *Marchant*, a defendant sought to remove a case from New York courts at the agreement-enforcement stage and then, following an order remanding the case to

state court, renewed its removal petition at the award-enforcement stage. Holding that removal jurisdiction would not lie, the Second Circuit held that the entire matter constituted a single, integrated case. It rejected the view that effort to remove the award-enforcement proceeding constituted an independent case or controversy that could circumvent the bar on reviewability of remand orders. Thus, *Marine Transit* and *Marchant* reflect a consistent, contemporaneous understanding at the time of the FAA's enactment that, under the principle announced in *Berkovitz*, the agreement-enforcement and award-enforcement stages represented a single "case" for purposes of federal subject-matter jurisdiction.³

Thus, the FAA's "statutory history" supports the view that if a federal court concludes that an arbitration agreement "is valid" and "stay[s] its hand" until the conclusion of the arbitration, "its doors are open for whatever measure of relief the situation may exact," including cross-applications to confirm and to vacate the award. *Berkovitz*, 130 N.E. at 291-92.

³ New York practice was not to the contrary. *Marchant* claimed to see some tension between its view about integrated cases and the conclusion reached by the New York Court of Appeals in *Hosiery Mfrs. Corp. v. Goldston*, 143 N.E. 779 (N.Y. 1924). *Goldston* addressed an entirely distinct issue, namely the appellate jurisdiction of the New York courts under New York's "special proceeding" rule. But federal courts already well-established rules governing appellate jurisdiction, obviating any need to import unique principles of New York appellate procedure into federal practice.

B. Petitioner’s Reading Would Upset Expectations Around International Arbitrations Not Governed By The New York Convention Or Panama Convention.

While this case concerns domestic arbitration, Chapter 1 of the FAA sweeps more broadly. Indeed, at the time of its original enactment, the FAA also governed most international commercial arbitrations; in 1925, the United States was not a party to the then-prevailing multilateral treaties governing the subject like the Geneva Protocol of 1923. *See I Born* § 1.01[C][1] at 62-63. Given the legal landscape at that time, the FAA’s implications for international arbitration represented an important consideration for Congress. Both the FAA’s text, especially Section 1’s reference to “foreign commerce,” and the legislative history and contemporaneous commentaries reflect this recognition. *1924 Hearing* at 16-18 (Cohen testimony), 27-28 (Rose statement), 32-33 (Nichols testimony); Paul L. Sayre, *Development of Commercial Arbitration Law*, 37 *Yale L.J.* 595, 616 (1928); Richard C. Curtis, *A Comparison of the Recent Arbitration Statutes*, 13 *A.B.A. J.* 567 (1927).

While the United States has ratified several multilateral international arbitration treaties over the intervening century, Chapter 1 continues to carry implications for international arbitration. As this Court recognized in *Cortez*, Chapter 1 covers a slice of international commercial arbitrations that fall outside the New York Convention (Chapter 2) and the Panama Convention (Chapter 3). *I Born* at 160 & nn. 1156-57 (3d ed. 2021); Restatement (Third) U.S. Law of International Commercial Arbitration § 4.3 (2019).

That awareness of Chapter 1’s importance beyond the domestic sphere informed this Court’s decision in

Cortez. *Cortez* addressed how to interpret Chapter 1's venue provision, *see* 9 U.S.C. § 9, in light of the general federal venue statute, *see* 28 U.S.C. § 1391. To support its conclusion that Chapter 1's venue provision was permissive, the Court hinged part of its analysis on the consequences for international cases falling outside the New York and Panama Conventions. It noted that Chapters 2 and 3 of the FAA, the implementing legislation for the New York Convention and the Panama Convention, contained "liberal choice of venue" provisions. Interpreting Chapter 1's venue provisions as mandatory would, in the Court's view, have created a venue gap, contrary to Congress' purposes in creating a federal forum for the enforcement of international arbitration awards, including those falling outside the ambit of the two international conventions.

The same analysis can be applied to the jurisdictional question presented here. Chapters 2 and 3 contain express grants of federal subject-matter jurisdiction to support confirmation of awards falling under those treaties. *See* 9 U.S.C. §§ 203, 302. But Petitioner's view would make it more difficult for parties seeking confirmation of international arbitration awards not falling under those treaties to obtain a federal forum under Chapter 1. Given that choice, it makes more sense to interpret Chapter 1 to avoid creating this jurisdictional gap.

Cortez recognized as much when it observed that actions to confirm international awards in non-treaty arbitrations "would not necessarily be barred for lack of jurisdiction." 529 U.S. at 203. Indeed, elsewhere in the opinion, the *Cortez* Court reaffirmed its longstanding interpretation of the FAA that a "court with the power to stay the action under § 3 has the further power to confirm any ensuing arbitration award." 529

U.S. at 202 (citing *Marine Transit*, 284 U.S. at 275-276). While *Marine Transit* announced this principle in the context of an admiralty proceeding, *Cortez* extended it to a garden-variety commercial dispute, undercutting Petitioner’s effort (Br. at 37-39) to give *Marine Transit* a crabbed interpretation. In short, as in *Cortez*, “the fallout” for non-treaty international arbitration, “underscores the implausibility of the [Petitioner’s] interpretation [of Chapter 1]. It is ‘extra icing on a cake already frosted.’” *Van Buren v. United States*, 593 U.S. 374, 394 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 557 (2015) (Kagan, J., dissenting)).

C. Petitioner’s Reading Ignores The Entry-Of-Judgment Clause Contained In The Parties’ Agreement.

Petitioner’s reading would also impose an improper limitation on the district court’s ability to enforce parties’ arbitration agreements. Litigation over the enforceability of an agreement is not limited to requiring the parties to engage in the arbitration *simpliciter*. Rather, as this Court has recognized, the role for the federal courts envisioned by the FAA is to enforce arbitration agreements “according to their terms.” See *Concepcion*, 563 U.S. at 339; *Varela*, 587 U.S. at 183-84 (quoting *Lewis*, 584 U.S. at 506).

The “terms” of this arbitration agreement, like most contemporary ones, include a series of institutional rules, not limited to the bare bilateral agreement to arbitrate. Here, those rules were the institutional rules issued by JAMS and incorporated by reference into the parties’ agreement. Critical here is JAMS Rule 25 under which both parties agreed to the “entry of judgment upon and in any court with jurisdiction.”

That entry-of-judgment clause is important. It tracks language in Section 9 of the FAA specifying that a federal court can confirm the award “[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration.” 9 U.S.C. § 9. Section 9’s “entry of judgment” language is no accident. Like other provisions of the FAA, it was enacted in 1925 and modeled upon New York’s arbitration law to correct a pre-enactment practice. Under the pre-enactment practice, award creditors (that is, the parties prevailing in the arbitration) could not easily enforce an award when the award debtor (that is, the losing party) failed to honor it. *See generally* III *Born* § 25.10 at 3684. Rather, “the only recourse of the successful party was to sue in a court of law upon the award” where the award creditor was “subject to the delay always incident to any action at law and to defeat in proving the award itself.” Cohen, 12 Va. L. Rev. at 272. Indeed, if the award debtor renounced the agreement before the award was rendered, the award could be void. *See Park Const. Co. v. Independent Sch. Dist. No. 32*, 296 N.W. 475, 479-80 (Minn. 1941) (Peterson, J., dissenting) (extensively discussing common-law history of arbitration agreements and awards).

By including the entry-of-judgment clause, the FAA (and the New York legislation on which it was modeled) changed course. It empowered the award creditor to apply to confirm the award, effectively obligating the court to treat the award as if it had been a judgment rendered by the same court unless the award debtor proved one of the limited exceptions set forth in the arbitration law. *See Marine Transit*, 284 U.S. at 276. In the wake of the FAA’s enactment, periodically, but rarely, courts encounter awards (or awards pursuant to rules) lacking the entry-of-

judgment language, thereby denying the party the benefit of the FAA's protections. III *Born* § 25.10 at 3684-85 & n. 1455.

Here, however, JAMS Rule 25 offered that protection to both parties. So when the District Court stayed litigation pending arbitration (Pet. 8, 12a), it was not simply requiring the parties to arbitrate but it also was requiring the parties to observe their bilateral agreement to an entry of judgment pursuant to Rule 25. Thus, when Respondents, as the award creditors, returned to court following the successful arbitration, the District Court naturally retained jurisdiction to confirm the award as part of its previous decision to hold the parties to all aspects of their arbitral commitment, including the bilateral consent to entry of judgment.

D. Federal Jurisdiction Effectuates The FAA's Purpose To Counteract State Hostility To Arbitration.

Petitioner's view also fails to fulfill the purposes of the FAA—to overcome state-court hostility to arbitration and facilitate the speedy and inexpensive resolution of disputes out of court. This Court has recognized that arbitration confers many advantages over litigation. *Allied-Bruce Terminix Cos.*, 513 U.S. at 280; *see, e.g., Concepcion*, 563 U.S. at 345 (arbitration “reduc[es] the cost and increas[es] the speed of dispute resolution”); *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010) (“lower costs” and “greater efficiency and speed”); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) (emphasizing arbitration’s “simplicity, informality, and expedition”). It was to ensure that parties could enjoy these benefits and avoid judicial “hostility to arbitration” that led Congress to enact the FAA.” *Kindred*

Nursing Ctrs. Ltd. P'ship v. Clark, 581 U.S. 246, 254 (2017) (citation omitted).

Nonetheless, state courts have continued to skirt the FAA's command. *Concepcion*, 563 U.S. at 342; *Kindred Nursing Ctrs.*, 581 U.S. at 254; *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015). These rifts between state and federal courts regarding the arbitrability of disputes have arisen across the country in numerous forms despite this Court repeatedly reversing state-court decisions hostile to arbitration. See Note, *State Courts and the Federalization of Arbitration Law*, 134 Harv. L. Rev. 1184, 1194 (2021) (collecting cases and noting eight different ways state courts have attempted to avoid application of the FAA); Salvatore U. Bonaccorso, Note, *State Court Resistance to Federal Arbitration Law*, 67 Stan. L. Rev. 1145, 1156-65 (2015); James Dawson, *Contract After Concepcion: Some Lessons from the State Courts*, 124 Yale L.J. 233, 235-40 (2014). They include:

- (1) open defiance⁴;
- (2) finding that an arbitration agreement does not “involve” interstate commerce⁵;
- (3) permitting private

⁴ State judges in Montana, Alabama, and West Virginia explicitly opposed this Court's interpretation of FAA § 2. See *State Courts and the Federalization of Arbitration Law*, 134 Harv. L. Rev. at 1194 (noting that even after the Montana Supreme Court's opinion upholding a state law regulating arbitration agreements was reversed, two justices refused to sign a remand order stating this Court's opinion was “legally unfounded, socially detrimental and philosophically misguided”).

⁵ Despite this Court's holding in *Citizens Bank v. Alafabco*, 539 U.S. 52 (2003), that FAA § 2 extends to the full reach of Congress's Commerce Clause power and therefore applies to a debt-structuring deal in Alabama between an Alabama lender and construction company, state courts have still held that arbitration agreements do not involve interstate commerce. See e.g. *Favara v. Regent*

parties to evade arbitration by initiating *qui tam* or analogous actions⁶; (4) holding that a choice-of-law clause in an arbitration agreement incorporates state law contrary to the FAA⁷; (5) defining “arbitration” under § 2 narrowly under state law⁸; (6) holding

Aerospace Corp., No. B246718, 2013 WL 5832391, at *2 (Cal. Ct. App. Oct. 30, 2013) (holding that an employer did not prove an employment agreement involved interstate commerce within the meaning of § 2 even where the plaintiff’s job description involved responsibilities “in . . . other states, and other countries”).

⁶ Some state courts may use their regulatory power to correct legal wrongs even where an arbitration agreement would bar the victimized private party from suing. *See e.g. EEOC v. Waffle House, Inc.*, 534 U.S. 279, 293-96 (2002). However, California extends this principle to employees that are allowed to bring private suits on behalf of the state for violations of the civil labor code—thereby allowing employees to work around arbitration agreements in their employment contracts. *See e.g. Adolph v. Uber Techs., Inc.*, 532 P.3d 682, 691-92 (Cal. 2023) (holding that a plaintiff that filed a private attorneys’ general claim comprised of individual and non-individual claims could continue to litigate non-individual claims in court even where an order compelling arbitration of individual claims was validly entered).

⁷ Numerous state courts have overextended this Court’s holding in *Volt Info. Scis., Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 470 (1989), that the FAA does not preempt state law where the arbitration agreement includes a choice-of-law clause selecting state procedural law. *See e.g. Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 58 (1995) (rejecting the argument that contracting parties that agreed to include claims for punitive damages within the issues to be arbitrated could waive that right to arbitrate the issue via state law).

⁸ State courts graft procedural requirements onto the definition of “arbitration” in Section 2 and conclude that the FAA is inapplicable. *See e.g. Cheng-Canindin v. Renaissance Hotel Assocs.*, 57 Cal. Rptr. 2d 867, 874 (Cal Ct. App. 1996) (finding that

arbitration agreements void for unconscionability or duress⁹]; . . . (7) state courts' unfaithful application of the Supreme Court's separability precedents¹⁰]; and (8) state

a proceeding with a biased arbitrator was not an "arbitration" and therefore the FAA was inapplicable).

⁹ State courts have continued to invalidate arbitration agreements as unconscionable in a manner distinct from other contracts despite this Court's instruction in *Concepcion*. See e.g. *Brewer v. Mo. Title Loans*, 364 S.W.3d 486, 503 (Mo. 2012) (Price, J. dissenting) (explaining how the en banc majority decision ignores *Concepcion*); *Glob. Client Sols., LLC v. Ossello*, 367 P.3d 361, 371 (Mont. 2016).

¹⁰ Although many state courts have held that defenses to arbitration clauses must challenge the arbitration clause separately as required by this Court's decision in *Buckeye Check Cashing, Inc.*, 546 U.S. 440, some state supreme courts have ignored the separability issue and invalidated arbitration clauses on grounds that apply more generally to the contract containing the clause. See *Narayan v. Ritz-Carlton Dev. Co.*, 400 P.3d 544, 549-51 (Haw. 2017); *Brewer*, 364 S.W.3d at 492-96 (Mo. 2012). Further, even after this Court extended its separability doctrine to delegation clauses in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010), several state courts nonetheless held that the delegation clauses were insufficiently clear to allow an arbitrator to decide the arbitrability of the dispute. See e.g. *Ossello*, 367 P.3d at 375-76 (Mont. 2016); (McKinnon, J., dissenting) (arguing the majority "manufacture[d] an ambiguity" in the delegation clause and pointing to other contractual language evidencing an agreement to arbitrate arbitrability); *Pinela v. Neiman Marcus Grp., Inc.*, 190 Cal. Rptr. 3d 159, 169 (Cal. Ct. App. 2015) (holding an arbitration agreement invalid despite a delegation clause providing that "[a]ny dispute concerning this Agreement . . . is subject to arbitration under this Agreement and shall be determined by the arbitrator").

court-created procedural requirements for entry into a valid arbitration agreement¹¹.

State Courts and the Federalization of Arbitration Law, 134 Harv. L. Rev. at 1194.

Denying federal courts the authority to enforce awards in cases where they already have properly exercised jurisdiction would frustrate commercial parties' ability to rely on federal-court protection when structuring contractual agreements. It will also expose them to the risk of anti-arbitration sentiment in state court and invite gratuitous and wasteful litigation by which parties file extraneous actions and motions to destroy federal-court jurisdiction. The added costs, complexities, and risks of denying a federal forum for the enforcement of arbitral awards when a federal court already has properly exercised jurisdiction would undermine the FAA's benefits and harm the commercial interests it was designed to advance.

E. The Jurisdictional-Anchor Theory Has Not Produced Petitioner's Parade Of Horribles.

Finally, Petitioner argues that the jurisdictional-anchor theory will trigger a race to the courthouse to establish federal jurisdiction for the confirmation of arbitral awards (Br. at 33-36). This argument is flawed in several respects.

¹¹ This Court has struck down several states' attempts to impose unique formation requirements on arbitration agreements. *See e.g. Schumacher Homes of Circleville, Inc. v. Spencer*, 577 U.S. 1129 (2016) (mem.). Nonetheless, some states still have statutes that impose similar requirements. *See e.g. Ohio Rev. Code Ann. § 2711.23* (West). Others continue to impose differing formation requirements. *See e.g. Chilutti v. Uber Techs., Inc.*, 300 A.3d 430 (Pa. Super. 2023), *rev'd on other grounds*, No. 58 EAP 2024, 2026 WL 156181 (Pa. Jan. 21, 2026).

First, Petitioner’s argument lacks any empirical evidence despite years of applications of the jurisdictional-anchor theory both pre- and post-*Badgerow*. Petitioner cites no proof that its fears have come to fruition in any of the jurisdictions that employ the jurisdictional-anchor theory. Meanwhile, the cases that have assessed the jurisdictional-anchor theory do not reflect Petitioner’s concerns.

Petitioner only explicitly discusses the Second Circuit’s application of the jurisdictional-anchor theory in its brief (at 36-40), but the pro-anchor jurisdictions include the Second, Third, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits. See *Dodson Int’l Parts, Inc.*, 12 F.4th at 1227-28 (collecting cases). The Third and Seventh Circuits also approved of the jurisdictional-anchor theory after *Badgerow*. See *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 238 n. 16 (3d Cir. 2024); *Kinsella v. Baker Hughes Oilfields Operations, LLC*, 66 F.4th 1099, 1103 (7th Cir. 2023). Yet Petitioner has failed to identify a single case, article, or treatise validating its concerns.

Experience in the Seventh Circuit is especially instructive. That Circuit’s opinion in *Kinsella* is the oldest post-*Badgerow* case that approved of the jurisdictional-anchor theory and therefore created the longest test period for Petitioner’s hypothetical race to the courthouse.

But since that time, only seven cases have cited *Kinsella*’s jurisdictional-anchor theory. Five endorsed its holding and allowed the federal court to retain jurisdiction. See *Jules v. Andre Balazs Props.*, Nos. 23-1253(L), 23-1283(Con), 2025 WL 1201914 (2d Cir. Apr. 25, 2025); *George*, 114 F.4th at 238; *McConnell & Malek Enters. v. Proof Mark, Inc.*, No. 23-cv-00010-LJC, 2025 WL 2430610, at *2-4 (N.D. Cal. Aug.

22, 2025); *Teleport Mobility, Inc. v. Sywula*, Case No. 21-cv-00874-SI, 2025 WL 860498, at *5-6 (N.D. Cal. Mar. 18, 2025); *Rubash v. Volkswagen Grp. of Am., Inc.*, No. 21-cv-447-wmc, 2023 WL 5424098, at *1 (W.D. Wisc. Aug. 18, 2023). One case mentioned the jurisdictional-anchor theory in a footnote, but only in the context of the amount-in-controversy requirement for jurisdiction. *See Shelton v. Fed. Sav. Bank*, No. CV-25-00108-PHX-KML, 2025 WL 395290 (D. Ariz. Jan. 22, 2025) (dismissing a standalone complaint filed by *pro se* plaintiff to vacate an arbitration award they lost for failure to establish jurisdiction). The only case that disagreed with *Kinsella* is the Fourth Circuit in *SmartSky Networks LLC v. DAG Wireless Ltd.*, 93 F.4th 175 (4th Cir. 2024).

Notably, the *SmartSky* court also did not raise Petitioner’s parade of horribles and hypotheticals. *See id.* Of the seven cases that cite *SmartSky* related to its holding on the question presented in this petition, *none* reasoned or found that the jurisdictional-anchor theory was unwieldy, led to docket congestion, or involved a party filing a preemptive action to secure federal jurisdiction.¹²

¹² Two cases cited *SmartSky* and instead accepted the rationale in *Kinsella*. *See McConnell & Malek Enters.*, 2025 WL 2430610, at *2-4 (N.D. Cal. Aug. 22, 2025); *Sywula*, 2025 WL 860498, at *5-6 (N.D. Cal. Mar. 18, 2025). One case found no question that the court’s subject-matter jurisdiction existed, declined to extend *Badgerow* and *SmartSky* to a motion to transfer, and noted it was “rather curious” for the plaintiff to raise *Badgerow* and *SmartSky* when plaintiff was the party that sought the federal forum in the first place and bore the burden to establish subject-matter jurisdiction. *See France v. Bernstein*, No. 1:24-cv-448 (RDA/WEF), 2025 WL 350236, at *3-4 (E.D. Va. Jan. 30, 2025). In the four other cases that approved of *SmartSky*’s rationale, none involved or discussed any of the activities raised in Petitioner’s

Second, Petitioner relies on Justice Breyer’s dissent in *Badgerow* to argue that the jurisdictional anchor theory would promote gamesmanship and needless litigation being brought to secure federal jurisdiction. See Br. at 35-36. But Petitioner largely ignores the critical distinction between this case and *Badgerow*—that the federal court already had properly exercised jurisdiction and stayed the case pending arbitration. Put another way, *Badgerow* involved an independent proceeding whereas *SmartSky* incorrectly extended *Badgerow* to an embedded proceeding. See Philip J. Loree Jr., *The Fourth Circuit Weighs the Post-Badgerow Jurisdictional Anchor—and Finds It Won’t Set*, 142 *Alternatives* 73, 75 (May 2024) (noting that nothing in *Badgerow* foreclosed subject-matter jurisdiction in the embedded proceeding in *SmartSky*); *Dodson Int’l Parts, Inc.*, 12 F.4th at 1227-28 (noting the same distinction and holding that because the case before it involved an embedded proceeding it retained subject-matter jurisdiction to confirm the award). In embedded proceedings where the federal court already has jurisdiction, the jurisdictional-anchor theory is the most appropriate and efficient route. It prohibits parties like Petitioner from wasting judicial resources by converting a simple confirmation proceeding in a federal court into a state

parade of horrors. See *Marine Club Manager, Inc. v. RB Com. Mortg. LLC*, No. 23-1841, 2024 WL 3617552 at *1, n.1 (4th Cir. Aug. 1, 2024) (first federal-court filings were post-arbitration applications); *Hopper v. CarMax Auto Superstores, Inc.*, No. 3:24-MC-00110-KDB-SCR, 2024 WL 4530304, at *2 (W.D.N.C. Oct. 18, 2024) (same); *Griffin v. Santander Consumer USA*, No. 6:23-cv-6366-TMC, 2024 WL 1652567, at *3 n.1 (D.S.C. Apr. 17, 2024) (same); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO/CLC v. Huntington Ingalls Inc.*, No. 4:24-CV-19, 2024 WL 3823992 (E.D. Va. Aug. 13, 2024) (same).

court action to relitigate jurisdiction *and* the merits of an arbitral award.

If anything, Petitioner's proposed approach offers a recipe for wasting resources. Rather than harnessing the investment of time by a federal court that has already scrutinized the case when deciding to issue a Section 3 stay, Petitioner's approach squanders that investment by forcing both parties to start anew in a different court when filing cross-applications to vacate or to confirm the award. This Court should close the door on such tactics and embrace the jurisdictional-anchor theory to allow a federal court to retain jurisdiction to confirm or vacate an arbitral award under Sections 9 and 10 in embedded proceedings.

CONCLUSION

For the foregoing reasons, in addition to those advanced by Respondents, the judgment of the lower court should be affirmed.

Respectfully submitted,

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