No. 25-1528

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAURA O'DELL; HOLLY ZIMMERMAN; LAUREN MILLER,
individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

– v. –

AYA HEALTHCARE SERVICES, INC.,

Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of California
No. 3:22-cv-01151-CAB-MMP (Hon. Cathy Ann Bencivengo)

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It 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 regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.[1]

Many of the Chamber's members and affiliates regularly rely on arbitration agreements in their contractual relationships. Arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with litigation in court. Based on the policy reflected in the Federal Arbitration Act (FAA), the Chamber's members and affiliates

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), the Chamber affirms that no party or counsel for a party authored this brief in whole or in part and that no person or entity other than the Chamber, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

have structured millions of contractual relationships around the use of arbitration to resolve disputes.

The Chamber's members have done so in reliance on the FAA's protection of individualized arbitration and the mandate to enforce arbitration agreements according to their terms. The extraordinary decision below—giving non-mutual preclusive effect to two arbitrators' decisions in proceedings involving other plaintiffs—flies in the face of these principles. And, if upheld, it would transform the individual arbitration to which the parties agreed to a fundamentally different and broader proceeding—akin to a class or collective arbitration—that is inconsistent with the FAA and the parties' agreement. The Chamber accordingly has a significant interest in this case and in reversal of the judgment below.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The plaintiffs asserting claims against defendant Aya Healthcare Services, Inc.—over 200 of them—each agreed to resolve their claims by individual arbitration. And their arbitration agreements also delegated to the arbitrator the authority to resolve questions of arbitrability, including whether the arbitration agreement is enforceable.

Four of the plaintiffs asked arbitrators to decide the enforceability of Aya's arbitration agreement. Two concluded that it was enforceable; two others concluded that it was not.

Despite these conflicting results, the District Court gave preclusive effect to the two decisions declaring the agreement unenforceable. The court applied federal common law on the doctrine of nonmutual offensive collateral estoppel, ruling that the over 200 opt-in plaintiffs could invoke those decisions in court to avoid their own arbitration agreements entirely—including their agreements to have an arbitrator decide the enforceability of those agreements.[2]

As Aya persuasively explains (Br. 27-48), the District Court's decision rests on a misapplication of preclusion principles under either California or federal law, and it can and should be reversed for that reason alone. The Chamber writes separately to emphasize that the District Court's novel application of nonmutual offensive collateral estoppel unnecessarily and inappropriately places that doctrine on a collision course with the FAA.

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[2] This is a putative collective action under the Fair Labor Standards Act, in which plaintiffs opt in to join the lawsuit.

It is by now established that the FAA requires courts "to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018). But instead of limiting the arbitrators' decisions to the parties to those arbitrations, the District Court determined that the decisions of two arbitrators blocked Aya from arbitrating the disputes of over two hundred other plaintiffs. The agreement has no language empowering an arbitrator to make such a far-reaching decision, and the FAA prevents the District Court from effectively rewriting rather than enforcing the parties' agreement. By giving those two arbitrators' decisions preclusive effect, the District Court also invalidated and nullified the arbitration agreements of the hundreds of remaining plaintiffs.

The District Court's approach also runs afoul of the FAA by transforming the individualized arbitration to which the parties had agreed into a fundamentally different form of dispute resolution entirely—one in which the results of the arbitration can affect countless non-parties, much like a class arbitration.

That approach expands the issues to be arbitrated far beyond what the parties agreed. And the result is to dramatically raise the stakes of

the arbitration and therefore undermine the key benefits of arbitration—including its informality, which results in cheaper and faster dispute resolution. A single loss before a single arbitrator could pressure a defendant to settle even questionable claims if the initial arbitrator's ruling is allowed to have nonmutual offensive collateral estoppel effect. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350-51 (2011). The FAA does not allow courts to transform the nature of arbitration, and thus "make[] arbitration artificially unattractive," in this way. *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 656 (2022).

Finally, nonmutual offensive collateral estoppel is already an adventuresome innovation, and one that was unheard of at the time Congress enacted the FAA in 1925. *Cf. Concepcion*, 563 U.S. at 349 (noting that "class arbitration was not even envisioned by Congress when it passed the FAA in 1925"). This Court should thus be exceptionally wary of endorsing the District Court's extension of the doctrine to this novel setting.

In short, because Congress did not intend for federal preclusion principles to override the FAA's protection of individual arbitration

agreements, the FAA does not permit the District Court's interpretation of those principles to be applied to Aya's arbitration agreements here.

ARGUMENT

I. The District Court Erred In Applying Nonmutual Offensive Collateral Estoppel.

A. The District Court's Application Of Nonmutual Offensive Collateral Estoppel Is Inconsistent With The FAA.

1. The "principal purpose of the FAA" is to "ensur[e] that private arbitration agreements are enforced according to their terms." *Concepcion*, 563 U.S. at 344 (quoting *Volt Info. Scis., Inc. v. Bd. of Trustees*, 489 U.S. 468, 478 (1989)). "Parties may generally shape" arbitration agreements "to their liking," such as by specifying "the issues subject to arbitration" and "the rules by which they will arbitrate." *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184 (2019). Significantly, they also may "limit *with whom* a party will arbitrate its disputes." *Concepcion*, 563 U.S. at 344.

Arbitration agreements, like the ones in this case, typically provide for "one-on-one arbitration" using "individualized" procedures. *Epic*, 584 U.S. at 502. The FAA "protect[s] pretty absolutely" that choice and instructs courts "to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings." *Id.*; *see also Concepcion*, 563 U.S. at 344.

In addition, because the FAA "envision[s]" an "individualized form of arbitration," *explicit* agreement of the parties is required to depart from that individualized form of arbitration. *Lamps Plus*, 587 U.S. at 183-84. The Supreme Court has explained that, when construing an arbitration agreement, courts must "give effect to the contractual rights and expectations of the parties," because "an arbitrator derives his or her powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010) (quotation marks omitted).

Thus, because class-arbitration procedures would result in a "fundamental[]" departure from the type of arbitration envisioned by the FAA, the Court made clear that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen*, 559 U.S. at 684; *see Lamps Plus*, 587 U.S. at 183 (explaining that "an ambiguous agreement" does not suffice).

The Supreme Court also has upheld agreements "to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy."

Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 68-69 (2010). Such a delegation clause is "simply an additional, antecedent agreement" to arbitrate that should likewise be enforced according to its terms. *Id.* at 70; *accord Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019).

2. The District Court's application of nonmutual offensive collateral estoppel is inconsistent with the FAA and these principles for at least two overarching reasons.

First, it violates the FAA's mandate to "enforce arbitration agreements according to their terms." *Epic*, 584 U.S. at 502. It instead *nullifies* the arbitration agreements of hundreds of opt-in plaintiffs.

Plaintiffs' arbitration agreements require individual arbitration; they do not allow any claimant to pursue a "class, collective, or representative" arbitration on behalf of other claimants. 2-ER-34. And they delegate to the arbitrator "the authority to resolve all portions of the dispute, including disputes relating to the interpretation or enforceability of" the arbitration agreement. 2-ER-33. Combined, then, these provisions limit the arbitrator's authority to deciding the enforceability of Aya's ar-

bitration provision as to the parties to that individual arbitration proceeding *only*—not in proceedings involving other claimants.

The District Court erred in effectively expanding the issues before the arbitrator in two arbitrations—the ones where it favored the result—by according those arbitrators' awards preclusive effect. That expansion swept far beyond what the contract allows, in direct violation of the FAA's protection of "the freedom of parties to determine 'the issues subject to arbitration[.]'" *Viking River*, 596 U.S. at 659 (quoting *Lamps Plus*, 587 U.S. at 184). The FAA forbids expanding the range of arbitrable issues beyond "those issues [an individual has] specifically has agreed to submit to arbitration." *Id.* at 659-60 (quotation marks omitted). Because "arbitrators wield only the authority they are given," *Lamps Plus*, 587 U.S. at 184, the District Court should not have expanded the arbitrators' powers to resolve issues involving *other* claimants.

By doing so, the District Court's approach also necessarily *invalidated* the arbitration agreements of all of the remaining plaintiffs—including their agreements to have an arbitrator decide whether Aya's arbitration provision is enforceable.

When parties agree to delegate arbitrability to an arbitrator, "the

courts must respect the parties' decision as embodied in the contract," and allow an arbitrator to resolve the question of arbitrability; that is so even if a court thinks that the argument that a dispute falls within the scope of the arbitration agreement is "frivolous" or "wholly groundless." *Henry Schein*, 586 U.S. at 69-71.

The District Court's approach is little different in practice from the judicially-created exceptions that the Supreme Court rejected in *Henry Schein*. The District Court refused to enforce each plaintiff's arbitration agreement and its delegation clause because it viewed the decisions of the two arbitrators who deemed Aya's arbitration clause unenforceable more persuasive than the decisions of the two arbitrators who did not. 1-ER-7. But *Henry Schein*'s holding is clear: the District Court lacked the power to make its own judgment about that issue and instead was required to enforce each plaintiff's agreement to have an arbitrator decide that question. Contrary to the District Court's view that it would be "extremely unfair" to require each plaintiff to arbitrate his or her dispute over the "enforceability of Defendant's arbitration agreement" (1-ER-8), that is exactly what the parties agreed to and what the FAA required the District Court to honor.

The flaws in the District Court's approach are not limited to delegation clauses. The same conflict with the FAA would occur if a court accorded preclusive effect in other cases to any issue that the parties agreed would be decided in an individual arbitration that is limited solely to the parties to that arbitration.

Second, and relatedly, the District Court's decision interferes with the "fundamental attributes of arbitration" protected by the FAA. *Concepcion*, 563 U.S. at 344. These attributes include arbitration's informality, which allows for the cheaper and faster resolution of disputes. *Id.* at 345. In the type of arbitration envisioned by the FAA—traditional, individualized arbitration—parties agree to "'forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution,'" which include "'lower costs'" and "'greater efficiency and speed.'" *Lamps Plus*, 587 U.S. at 184-85 (quoting *Stolt-Nielsen*, 559 U.S. at 685).

By adopting a legal rule that massively increases the importance and scope of a single arbitral proceeding—and therefore discourages the use of arbitration's informal procedures—the District Court made "arbitration artificially unattractive." *Viking River*, 596 U.S. at 656.

As the Supreme Court explained in *Concepcion*, the FAA's protection of informal procedures reflects a balancing act. Such procedures "have a cost" because "[t]he absence of multilayered review makes it more likely that errors will go uncorrected." 563 U.S. at 350. But "[d]efendants are willing to accept the costs of these errors in arbitration, since their impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts." *Id.*

By contrast, when the claims of many claimants "are aggregated and decided at once, the risk of an error will often become unacceptable." *Concepcion*, 563 U.S. at 350. The Court remarked that it found it "hard to believe that defendants would bet the company" in informal arbitral proceedings, and "even harder to believe that Congress would have intended" to allow legal rules that "force such a decision." *Id.* at 351.

Yet that is exactly what the District Court's approach does here. The District Court's expansive preclusion rule "greatly increases risks to defendants" and overrides the parties' choice of informal, individual arbitration that resolves the dispute between only the parties to that arbitration. *Concepcion*, 563 U.S. at 350. And dressing up the ruling as the mere application of preclusion doctrine does not salvage the District

Court's error. "Just as judicial antagonism toward arbitration before the Arbitration Act's enactment 'manifested itself in a great variety of devices and formulas declaring arbitration against public policy,' *Concepcion* teaches that we must be alert to new devices and formulas that would achieve much the same result today." *Epic*, 584 U.S. at 509 (quoting *Concepcion*, 563 U.S. at 342).

The District Court's decision to reshape individualized arbitration by expanding the reach of a pair of arbitrators' decisions a hundredfold is precisely the type of "device[] and formula[]" that is incompatible with the FAA. Indeed, the District Court's stated view that it would be "extremely unfair" to enforce each plaintiff's arbitration agreement according to its terms (1-ER-8) only underscores that its application of preclusion doctrine rests on impermissible hostility to arbitration.[3]

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[3] Aya argues (Br. 27-32) that the District Court erred in applying federal common law rather than California law. It's notable that California law does *not* give an arbitration award nonmutual collateral estoppel effect unless the parties have contracted for it. *See Vandenberg v. Superior Ct.*, 982 P.2d 229, 242-43 (Cal. 1999). As one District Court in this Circuit has put it, "California law treats nonnonmutual issue preclusion as the default for arbitration proceedings." *Lag Shot LLC v. Facebook, Inc.*, 545 F. Supp. 3d 770, 781 (N.D. Cal. 2021) (citing *Vandenberg*, 982 P.2d at 242-43). The District Court's application of preclusion is therefore plainly incorrect if California law applies. But even assuming that the District Court here applied the correct body of law, it offered no persuasive reason

B. The District Court Improperly Expanded The Limited Circumstances In Which Nonmutual Offensive Collateral Estoppel Is Appropriate.

Even assuming federal rather than California law on nonmutual offensive collateral estoppel applies, the District Court's application of the doctrine also is problematic because it dramatically expands a common-law doctrine rooted in a court's inherent equitable powers. Courts do not have wide latitude to extend nonmutual offensive collateral estoppel doctrine to new settings—particularly in this case, when the expansion intrudes into the statutory protections Congress enacted in the FAA.

"Collateral estoppel is an equitable doctrine." *Nations v. Sun Oil Co.*, 705 F.2d 742, 744 (5th Cir. 1983). The Supreme Court has cautioned that courts exercising their equitable powers must not "depart from all precedent and assume an unregulated power of administering abstract justice at the expense of well-settled principles." *Heine v. Bd. of Levee Comm'rs*, 86 U.S. 655, 658 (1873); *see also Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 327 (1999) (rejecting "relief

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for manufacturing a conflict between federal and state preclusion law—particularly when doing so runs headlong into the FAA.

sought by respondents [that] does not have a basis in the traditional powers of equity courts."); *Liu v. SEC*, 591 U.S. 71, 99 (2020) (Thomas, J., dissenting) ("[T]he Founders accepted federal equitable powers only because those powers depended on traditional forms.").

At the time Congress adopted the FAA, offensive collateral estoppel required mutuality—that is, the parties in the earlier and later proceedings had to be identical. It was not until over fifty years later that the Supreme Court set aside the mutuality requirement for collateral estoppel under federal common law in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326-28 (1979). As a result, "[u]ntil relatively recently," *id.* at 326, it was "a principle of general elementary law that the estoppel of a judgment must be *mutual*," *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111, 127 (1912) (emphasis added). *Accord Montana v. United States*, 440 U.S. 147, 153 (1979) (mutuality requirement is a "fundamental precept of common-law adjudication"); RESTATEMENT (FIRST) OF JUDGMENTS § 93 (1942) cmt. d ("[F]indings [of law or fact] . . . do not, however, affect persons who are not parties or privies to the action and the judgment."). That mutuality principle was "of ancient origin, being

found in the Year Books and in the Roman law." Comment, *Privity and Mutuality in the Doctrine of Res Judicata*, 35 Yale L. J. 607, 608 (1926).

Moreover, and at minimum, it should *always* be improper to apply nonmutual offensive collateral estoppel when, as in this case, courts or arbitrators have reached conflicting results on the issue. The Supreme Court has recognized that it is "unfair" to defendants to give estoppel effect when there are "inconsistent" judgments, some of which favor the defendant. *Parklane Hosiery*, 439 U.S. at 330 & n.14; *see* Aya Br. 42-46.

Those principles strongly caution against accepting the District Court's expansion of nonmutual offensive collateral estoppel in this case. "As with any inherent judicial power," courts "ought to be reluctant to approve its aggressive or extravagant use, and instead . . . should exercise it in a manner consistent with our history and traditions." *Missouri v. Jenkins*, 515 U.S. 70, 124 (1995) (Thomas, J., concurring). And caution is particularly appropriate here because Congress passed the FAA against the backdrop of the pre-*Parklane Hosiery* legal regime—in other words, at the time federal common law required mutuality for any judgment to have preclusive effect. Thus, Congress did not intend—and could

not have intended—for principles of *nonmutual* offensive collateral estoppel to override the FAA's protection of individual arbitration agreements.

II. At All Events, Arbitration Agreements That Specifically Forbid Giving Nonmutual Offensive Collateral Estoppel Effect To An Arbitrator's Decisions Should Be Enforced.

For the reasons just explained, the District Court's ruling in the context of Aya's arbitration provision was deeply misguided. But regardless of how the Court resolves this appeal, it should make clear that, when parties expressly provide that an arbitrator's decisions will *not* be given preclusive effect in proceedings involving other parties, those agreements are fully valid and enforceable under the FAA. *See Lag Shot*, 545 F. Supp. 3d at 781 (rejecting unconscionability challenge to term in arbitration agreement providing that an arbitrator's decision would not be binding in cases involving other parties).

Many companies enter into such agreements, and for good reason: a contractual agreement to limit the reach of an arbitration to the dispute between the parties is entirely consistent with the traditional form of one-on-one arbitration protected by the FAA. *See* pages 6-8, *supra*. And no generally applicable principle of contract law would prevent enforcing

that express agreement "according to [its] terms" under the FAA. *Epic*, 584 U.S. at 502; *see* 9 U.S.C. § 2; *Lag Shot*, 545 F. Supp. 3d at 781.

To be clear, however, no such express statement disclaiming the preclusive effect of an arbitration award in cases involving other parties is or should be required. Instead, that is the default rule required by the FAA. As the Supreme Court has explained, "[n]either silence nor ambiguity" in an arbitration agreement "provides a sufficient basis for concluding" that the parties to that agreement "agreed to undermine the central benefits of arbitration itself." *Lamps Plus*, 587 U.S. at 186. Because, as explained above (at 8-13), giving nonmutual offensive collateral estoppel effect to an arbitrator's decision does just that, far more than mere "silence or ambiguity" on the preclusion issue is needed to transform the nature of the arbitration proceeding into one that resolves issues in cases involving other parties.

CONCLUSION

The Court should reverse the decision below.

Dated: June 18, 2025

Respectfully submitted,

s/ *Archis A. Parasharami*

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), undersigned counsel certifies that this brief:

(i) complies with the type-volume limitation of Rule 29(a)(5) because it contains 3,491 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Word for Microsoft 365 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: June 18, 2025

s/ *Archis A. Parasharami*
Archis A. Parasharami

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 June 18, 2025. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ *Archis A. Parasharami*
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