

No. 25-83

IN THE
Supreme Court of the United States

ADRIAN JULES,
Petitioner,

v.

ANDRE BALAZS PROPERTIES, ANDRE TOMES BALAZS,
BALAZS INVESTORS, LLC, HOTELS A.B., LLC, CHA-
TEAU HOLDINGS, LTD., THOMAS A. FARINELLA,
Respondents.

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

BRIEF OF PETITIONER

SIMON A. DE CARVALHO
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 222-9350

ADAM G. UNIKOWSKY
Counsel of Record
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

QUESTION PRESENTED

Under Sections 9 and 10 of the Federal Arbitration Act, a party may apply to confirm or vacate an arbitration award. But federal courts have limited jurisdiction over Section 9 and 10 applications. In *Badgerow v. Walters*, 596 U.S. 1, 4, 9-11 (2022), this Court held that a federal court may exercise jurisdiction only if the application establishes diversity or federal-question jurisdiction on its face. A federal court may not exercise jurisdiction merely on the basis that the underlying dispute, save for the arbitration agreement, would have been justiciable in federal court. *See id.*

But what happens when a court initially exercises jurisdiction over the underlying dispute, stays the case pending arbitration, and is later faced with an application to confirm or vacate an arbitration award in the same case? The courts of appeals have sharply divided on the appropriate jurisdictional analysis. Several courts of appeals, including the Second Circuit below, have held that the initial exercise of jurisdiction creates a “jurisdictional anchor” that confers jurisdiction over a subsequent Section 9 or 10 application to confirm or vacate, even if jurisdiction would otherwise be absent. By contrast, the Fourth Circuit has held that a court must establish an independent basis for jurisdiction over a Section 9 or 10 application to confirm or vacate.

The question presented is:

Whether a federal court that initially exercises jurisdiction and stays a case pending arbitration maintains jurisdiction over a post-arbitration Section 9 or 10 application where jurisdiction would otherwise be lacking.

PARTIES TO THE PROCEEDING

Petitioner Adrian Jules was plaintiff-appellant in the court of appeals and plaintiff in the district court.

Respondents Andre Balazs Properties, Andre Tomes Balazs, Balazs Investors, LLC, and Hotels A.B., LLC were defendants-appellees in the court of appeals and defendants in the district court. Respondent Chateau Holdings, Ltd. was an intervenor in the court of appeals and a nonparty in the district court.

Respondent Thomas A. Farinella was an interested-party-appellant in the court of appeals and an interested party in the district court.

RELATED PROCEEDINGS

United States District Court for the Southern District
of New York:

Adrian Jules v. Andre Balazs Properties, et al.,
No. 1:20-cv-10500-LGS (Sept. 12, 2023)

United States Court of Appeals for the Second Circuit:

Adrian Jules v. Andre Balazs Properties, et al.,
Nos. 23-1253(L), 23-1283 (consol.) (Apr. 25, 2025)

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INTRODUCTION

Under Sections 9 and 10 of the Federal Arbitration Act (FAA), a party may apply to confirm or vacate an arbitration award. 9 U.S.C. §§ 9, 10. In *Badgerow v. Walters*, 596 U.S. 1 (2022), this Court held that federal courts have jurisdiction over Section 9 and 10 applications only if an independent basis for federal jurisdiction appears on the face of the application. For example, if the application establishes that the requirements for diversity jurisdiction are satisfied, a federal court may exercise jurisdiction. *Id.* at 8-9. But a federal court may not exercise jurisdiction on the mere ground that the underlying dispute arose under federal law. *Id.* In *Badgerow*, the parties had arbitrated federal claims, but their applications to confirm and vacate revealed no independent basis for federal jurisdiction. *Id.* at 9. Accordingly, this Court held that their applications had to be litigated in state court. *Id.* at 18-19.

In this case, like in *Badgerow*, two parties from the same state arbitrated a federal claim and then filed Section 9 and 10 applications in federal court. But the procedural posture differs in one respect. In *Badgerow*, the parties proceeded directly to arbitration and came to federal court only after that arbitration concluded. Here, by contrast, petitioner initially filed suit in federal court, and the court stayed the case pending arbitration under Section 3 of the FAA. The parties then returned to the district court after the arbitration concluded and filed their Section 9 and 10 applications. The question in this case is whether that procedural distinction makes a jurisdictional difference—that is, whether petitioner’s initial lawsuit served as a jurisdictional anchor that

established federal jurisdiction over the subsequent Section 9 and 10 applications, even when jurisdiction would otherwise be absent.

The answer is no. *Badgerow's* rule governs, and it resolves this case in petitioner's favor. Federal courts lack jurisdiction over Section 9 and 10 applications unless an independent jurisdictional basis appears on the face of the application. The presence or absence of a previously-stayed lawsuit does not make a difference.

The Court should reject the jurisdictional-anchor theory for a straightforward reason: there is no textual support for it anywhere in the FAA.

Sections 9 and 10 do not contain the slightest hint that applications associated with pre-existing lawsuits should be treated differently from freestanding applications. Section 3 does not support the jurisdictional-anchor theory either. It says that federal litigation must be stayed until "arbitration has been had," 9 U.S.C. § 3, but does not breathe a word about enlarging federal jurisdiction after the stay ends. Section 4 is of a piece: it permits courts to enter orders compelling arbitration, but in no way suggests that a court that does so automatically retains jurisdiction over subsequent Section 9 and 10 applications.

By contrast, Section 8 of the FAA, which addresses maritime arbitration agreements, *does* include explicit jurisdictional-anchor language. It states that after a court seizes a vessel, "the court shall then have jurisdiction to direct the parties to proceed with the arbitration *and shall retain jurisdiction to enter its decree upon the*

award.” 9 U.S.C. § 8 (emphasis added). No such language appears for non-maritime arbitrations.

As such, this case is *Badgerow* all over again. In *Badgerow*, this Court gave dispositive weight to Congress’s decision to include look-through jurisdictional language in Section 4 of the FAA but omit it from Sections 9 and 10. *See* 596 U.S. at 11. Here, likewise, the Court should give dispositive weight to Congress’s decision to include jurisdictional-anchor language in Section 8 of the FAA but omit it from Sections 9 and 10.

Badgerow’s reasoning forecloses the jurisdictional-anchor theory for an additional reason. As just noted, Section 4 of the FAA authorizes courts to issue orders compelling arbitration, and it includes explicit look-through language that Sections 9 and 10 lack. *Badgerow* inferred from that distinction that look-through jurisdiction is available under Section 4 but not Sections 9 and 10. But under the jurisdictional-anchor theory, a court that grants a Section 4 order *would* have jurisdiction over subsequent Section 9 and 10 applications—because the pre-existing order would serve as a jurisdictional anchor. In other words, *Badgerow*’s logic—that the textual difference between Section 4 and Sections 9 and 10 should be given effect—would cease to have practical significance in any case where Section 4 is actually *applied*. Congress could not have written such an eccentric statute.

The jurisdictional-anchor theory also conflicts with the FAA’s purpose. In enacting the FAA, Congress sought to encourage litigants to keep arbitrable claims *out* of court. The jurisdictional-anchor theory encourages litigants to bring arbitrable claims *into* court for the

purpose of ensuring federal jurisdiction over subsequent applications to confirm or vacate.

To avoid creating a perverse incentive to file unnecessary federal lawsuits, applications associated with pre-existing lawsuits should be treated the same as applications that are not. This Court has recognized that exact point with respect to jurisdiction under the FAA in the context of Section 4. *See Vaden v. Discover Bank*, 556 U.S. 49, 65 (2009). And this Court has recognized that exact point with respect to Sections 9 and 10 in the context of analyzing venue. *See Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 202 (2000). Here, the puzzle fits together only one way: the same principle should apply to jurisdiction under Sections 9 and 10.

Because the FAA definitively establishes that the jurisdictional-anchor theory is not available, the Court should not consider the doctrine of ancillary jurisdiction. That doctrine recognizes that courts have inherent authority to exercise “jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). But as this Court recently observed in a case involving Section 3, “the inherent powers of the courts may be controlled or overridden by statute or rule.” *Smith v. Spizzirri*, 601 U.S. 472, 477 (2024) (citation omitted). Here, any interstitial doctrine of ancillary jurisdiction has been overridden by the FAA’s plain text, which does not authorize look-through jurisdiction under Sections 9 and 10 in *any* case.

But if the Court considers the ancillary-jurisdiction doctrine, it should hold that the doctrine does not authorize jurisdiction in this case because Section 9 and 10 proceedings are not ancillary to pre-existing lawsuits. *Kokkonen* and *Badgerow*, read together, all but resolve this issue. In *Kokkonen*, this Court held that a court that dismisses a lawsuit based on a settlement lacks ancillary jurisdiction over a dispute arising from the settlement. *See* 511 U.S. at 381-82. In *Badgerow*, this Court repeatedly compared Section 9 and 10 applications to *Kokkonen*'s settlement disputes. *See* 596 U.S. at 9, 18. Merging these holdings together, the ancillary-jurisdiction doctrine does not apply to Section 9 and 10 applications.

A closer look at *Kokkonen*'s reasoning establishes that it applies with full force to this case. *Kokkonen* holds that settlement disputes are not factually interdependent with the underlying claims. *See* 511 U.S. at 380. The same is true for Section 9 and 10 applications. They concern the arbitration award, not the conduct at issue in the underlying claims.

Kokkonen further holds that ancillary jurisdiction over a settlement dispute does not vindicate a court order dismissing a case based on a settlement. *See id.* at 380-81. Here, likewise, exercising jurisdiction over Section 9 and 10 applications does not vindicate a court order staying a case pending arbitration. The stay order merely says that the federal court will stand down; state-court litigation of applications to confirm or vacate is perfectly consistent with that order.

Because the federal courts lacked jurisdiction, the Second Circuit's judgment should be reversed.

OPINIONS BELOW

The summary order of the court of appeals, Pet. App. 1a-10a, is unreported but available at 2025 WL 1201914. The district court’s order confirming the arbitration award, Pet. App. 11a-28a, is unpublished but is available at 2023 WL 5935626.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered on April 25, 2025. Petitioner filed a timely petition for certiorari on July 22, 2025. This Court granted the petition on December 5, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The pertinent sections of the U.S. Code, 9 U.S.C. §§ 3-4, 8-12, are reproduced in a statutory addendum to this brief. *See Add., infra*, 1a-6a.

STATEMENT OF THE CASE

A. Statutory Background.

This case presents a dispute over whether the district court had subject-matter jurisdiction to confirm or vacate an arbitration award under Sections 9 and 10 of the Federal Arbitration Act, or FAA.

This Court has characterized the FAA as “something of an anomaly in the field of federal-court jurisdiction.” *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581-82 (2008) (citation omitted). That is so because, although the FAA “authorizes a party to an arbitration agreement to seek several kinds of assistance from a federal court,” the FAA’s “authorization of a petition does not

itself create [federal] jurisdiction.” *Badgerow*, 596 U.S. at 4. “Rather, the federal court must have ... an ‘independent jurisdictional basis’ to resolve the matter.” *Id.* (citation omitted).

For instance, Section 3 of the FAA provides that if a suit is brought in federal district court “upon any issue referable to arbitration,” “the court in which such suit is pending ... shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.” 9 U.S.C. § 3. Section 3 does not itself confer a federal court with jurisdiction. Instead, if a federal court already has jurisdiction over a suit, and the suit includes an arbitrable claim, Section 3 instructs the federal court to stay the case pending arbitration.

Section 4 of the FAA provides that, if a party refuses to arbitrate in contravention of an agreement to do so, the court may enter an order compelling the party to arbitrate. 9 U.S.C. § 4. In *Vaden v. Discover Bank*, 556 U.S. 49 (2009), this Court held that Section 4’s “express language” counseled adoption of a “highly unusual” jurisdictional rule—what the Court called the “look-through rule.” *Badgerow*, 596 U.S. at 9, 12. Specifically, Section 4 states that a petition to compel may be filed in “any United States district court which, *save for [the arbitration] agreement*, would have jurisdiction under title 28.” 9 U.S.C. § 4 (emphasis added). That language, this Court held, directs a court to “imagine a world without an arbitration agreement, and to ask whether it would then have jurisdiction over the parties’ dispute.” *Badgerow*, 596 U.S. at 11. In other words, federal

jurisdiction over a motion to compel arbitration exists if the underlying controversy arises under federal law.

After arbitration has concluded, Sections 9 and 10 of the FAA authorize courts to enter orders “confirming the [arbitration] award,” 9 U.S.C. § 9, or, in certain circumstances, “vacating the award,” *id.* § 10(a). But Sections 9 and 10 “contain none of the statutory language on which *Vaden* relied” in adopting the look-through approach for Section 4. *Badgerow*, 596 U.S. at 11.

In *Badgerow*, this Court held that Congress’s decision not to include Section 4’s look-through language in Sections 9 or 10 meant that “the look-through method for assessing jurisdiction should not apply” to applications under those latter provisions. *Id.* Thus, federal jurisdiction *cannot* be established based on an underlying controversy that arises under federal law. Instead, a district court assessing whether it has jurisdiction to consider an application under Sections 9 or 10 “may look only to the application actually submitted to it.” *Id.* at 5. If “the face of the application itself shows that the contending parties are citizens of different States (with over \$75,000 in dispute), [o]r if it alleges that federal law (beyond Section 9 or 10 itself) entitles the applicant to relief,” then the court has jurisdiction to decide the application. *Id.* at 9. But if no independent jurisdictional basis appears on the face of the application, then the application “belongs in state court[.]” *Id.* at 18. Any other result, the Court made clear, would be impermissible “jurisdictional ‘expansion] by judicial decree.’” *Id.* at 12 (quoting *Kokkonen*, 511 U.S. at 377).

B. Procedural History

1. On March 19, 2020, petitioner Adrian Jules was fired from his job at the Chateau Marmont hotel in Los Angeles. *See* D. Ct. Dkt. 1, ¶ 2. After petitioner filed a timely charge of discrimination against Chateau Marmont,¹ the Equal Employment Opportunity Commission issued petitioner a right-to-sue letter. *See id.* ¶¶ 5-6. Then, on December 11, 2020, petitioner filed suit against Andre Tomes Balazs, Andre Balazs Properties, Balazs Investors, LLC, and Hotels A.B., LLC (the “Balazs Defendants”) in the Southern District of New York, alleging claims under both federal and California law. *See id.* ¶¶ 226-649.

The Balazs Defendants filed petitions to compel arbitration under Section 4 and, in the alternative, to stay the lawsuit pending arbitration under Section 3. *See* D. Ct. Dkt. 17, at 1-2; D. Ct. Dkt. 20, at 13-14. In support of these requests, they pointed to an arbitration agreement between petitioner and Chateau Marmont, *see* D. Ct. Dkt. 20, at 2-3; D. Ct. Dkt. 19-1 (the “Agreement”).

The district court granted the request to stay the case pending arbitration under Section 3. It determined that the Agreement was valid and binding on petitioner, *see* D. Ct. Dkt. 30, at 4-9, and that “[t]he plain language of [the Agreement] establishe[d] that the parties intended to arbitrate all issues arising from [petitioner]’s employment,” *id.* at 10. The district court thus concluded that petitioner “may not proceed on his claims in

¹Chateau Marmont’s legal name is Chateau Holdings, Ltd. *See, e.g.*, D. Ct. Dkt. 95, at 1.

this proceeding until his claims are resolved in arbitration.” *Id.* at 11-12.

The district court concluded, however, that it could not enter an order compelling arbitration under Section 4. The court explained that Section 4 permits courts to compel arbitration only “within the [same] district”—here, the Southern District of New York. *See* D. Ct. Dkt. 30, at 12 (quoting 9 U.S.C. § 4). But the parties’ Agreement required arbitration to occur in Los Angeles. *See id.* Accordingly, the district court denied the motion to compel and instead granted the Balazs Defendants’ request for a stay of proceedings pending “the outcome of any arbitration in the venue specified by the [A]greement.” *Id.*

2. With district court proceedings stayed, petitioner filed an arbitration demand with JAMS, as the Agreement required. *See* D. Ct. Dkt. 96-1, at 2; D. Ct. Dkt. 19-1, at ECF No. 2. At an initial hearing, petitioner agreed to dismiss the Balazs Defendants from the arbitration and substitute Chateau Marmont. *See* D. Ct. Dkt. 96-1, at 2; *see also* D. Ct. Dkt. 95, at 2.

The hearing was set for December 5, 2022. A week before the hearing, petitioner’s arbitration counsel, Thomas Farinella, informed the arbitrator that, for medical reasons, petitioner was unable to be deposed or participate in the hearing. Pet. App. 13a. Although petitioner submitted evidence of medical necessity, the arbitrator found that evidence insufficient. *Id.*

The arbitrator set a special hearing for petitioner to provide additional evidence of his medical condition. *Id.* After petitioner did not appear at the special hearing,

the arbitrator decided to proceed with the arbitration. *Id.* Petitioner appeared briefly at the arbitral hearing via Zoom, with his microphone muted. *Id.* After petitioner left the Zoom conference, Farinella refused to put on a case. *Id.*

On January 17, 2023, the arbitrator issued his Final Award in the matter. *See generally* D. Ct. Dkt. 96-1. The arbitrator awarded petitioner \$0, finding that he had “failed to prove any of his claims.” *See id.* at 16-17. The arbitrator also issued sanctions against petitioner and Farinella in the amount of \$11,416.50 and \$23,026.50, respectively, for their asserted misconduct during the arbitration proceedings. *See id.* at 17-18.

3. Respondents—the Balazs Defendants and Chateau Marmont²—returned to the district court and filed a Section 9 application to confirm the arbitration award against petitioner. *See* D. Ct. Dkt. 95, at 1; *see also* Pet. App. 11a. Petitioner opposed the Section 9 application and filed a cross-application to vacate the arbitration award under Section 10. *See* D. Ct. Dkt. 106.

Although petitioner asserted several bases for vacating the award, *see id.* at 4-16, he also raised a jurisdictional argument. Specifically, petitioner invoked this Court’s decision in *Badgerow* and argued that the district court lacked subject-matter jurisdiction to decide the Section 9 and 10 applications because the face of the parties’ applications did not reveal an independent

² Although Chateau Marmont never formally appeared in the district court, it sought leave to intervene in the appeal to defend the district court’s confirmation order, and the Second Circuit granted its request. *See generally* Ct. App. Dkts. 180, 181, 289, 290.

jurisdictional basis: the Section 9 and 10 applications presented no federal questions, and diversity jurisdiction did not exist because both petitioner and Chateau Marmont are California citizens. *See id.* at 16-18.

The district court confirmed the arbitration award under Section 9. Pet. App. 11a-28a. As to jurisdiction, the district court first recognized the undisputed point that it “had subject matter jurisdiction [over petitioner’s underlying lawsuit] when it stayed the action pending arbitration.” Pet. App. 15a. From there, the court cited this Court’s decision in *Cortez Byrd* for the proposition that “[d]istrict courts with jurisdiction to stay an action pursuant to 9 U.S.C. § 3 retain jurisdiction to confirm resulting arbitral awards.” Pet. App. 15a (citing 529 U.S. at 202). And the court reasoned that this Court’s decision in *Badgerow* “d[id] not change this result, because that case concerned jurisdiction over an action originally filed to confirm an arbitral award, rather than one filed to assert federal causes of action and stayed pending arbitration.” *Id.* at 16a. On the merits, the district court rejected petitioner’s numerous arguments that the arbitration award should be vacated. *Id.* at 16a-27a.

4. Petitioner appealed, renewing his argument that the district court lacked subject-matter jurisdiction. *See* Ct. App. Dkt. 153, at 16-18.

The Second Circuit affirmed. At the outset, it recognized that respondents’ Section 9 application “does not itself reveal a basis for” federal jurisdiction. Pet. App. 6a. That observation meant that, if the rule from *Badgerow* applied, the district court would lack jurisdiction to confirm the arbitration award.

But the Second Circuit held that *Badgerow* did not control. Like the district court below, the court of appeals observed that “*Badgerow* ... involved an action commenced ... for the sole purpose of vacating an arbitral award, unlike the present action, which started as a federal question suit before it was stayed pending arbitration.” *Id.* The court of appeals saw that difference as dispositive, because it interpreted this Court’s decision in *Cortez Byrd* as having “held that a ‘court with the power to stay the action under § 3 ... has the further power to confirm any ensuing arbitration award.’” *Id.* (quoting 529 U.S. at 202); *see also id.* at 6a-7a (citing this Court’s decision in *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 275-76 (1932), for the same proposition). And it determined that two prior Second Circuit decisions—*Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698 (2d Cir. 1985), and *Marchant v. Mead-Morrison Manufacturing Co.*, 29 F.2d 40 (2d Cir. 1928)—required the same result: “[A] court which orders arbitration retains jurisdiction to determine any subsequent application involving the same agreement to arbitrate, including a motion to confirm the arbitration award.” Pet. App. 7a (quoting *Smiga*, 766 F.2d at 705).

In the Second Circuit’s view, *Badgerow* did not “consider[] ... the reasoning in *Smiga* and *Marchant*, nor [in] other Supreme Court decisions articulating similar principles”—presumably, *Cortez Byrd* and *Marine Transit*. *Id.* Thus, the Second Circuit determined that *Badgerow* had not “entirely undermine[d] those [earlier] decisions.” *Id.* (citation omitted). It therefore held that “the district court retained jurisdiction following its stay pending arbitration to confirm the resulting award.” *Id.*

On the merits, the Second Circuit upheld the district court's determination that there was "no reason to vacate the award." Pet. App. 9a.

SUMMARY OF THE ARGUMENT

In *Badgerow*, this Court held that federal courts may exercise jurisdiction over Section 9 and 10 applications only if an independent basis for jurisdiction appears on the application's face. The Court should hold that *Badgerow* applies to all Section 9 and 10 applications, including those filed in cases where a federal court initially exercised jurisdiction over the parties' underlying dispute and stayed the case pending arbitration.

I. The FAA's text, structure, and purpose foreclose the Second Circuit's theory that a previously-filed federal lawsuit can serve as a jurisdictional anchor over later-filed Section 9 and 10 applications.

A. *Badgerow's* authoritative interpretation of Sections 9 and 10 resolves this case. *Badgerow* held that, to exercise jurisdiction over a Section 9 or 10 application, a federal court must locate an independent jurisdictional basis on the face of the petition. Nothing in Section 9 or 10 suggests that a different rule should apply based on the happenstance of a pre-existing federal suit between the parties. The FAA's provisions governing notice and service of applications under Sections 9 and 10 likewise indicate that Congress envisioned Section 9 and 10 applications as standalone actions requiring their own jurisdictional bases, not as motions in an underlying federal case.

The rest of the FAA confirms that conclusion: Sections 3 and 4 lend no support to the jurisdictional-anchor

theory, and Section 8 affirmatively refutes it. Section 3 says that a federal suit must be stayed until “arbitration has been had.” 9 U.S.C. § 3. It does not say that a federal court’s jurisdiction is enlarged once the stay ends. Section 4 likewise offers no suggestion that a court that compels arbitration retains jurisdiction to confirm or vacate the resulting award.

Section 8, by contrast, expressly permits a court that compels arbitration in a maritime dispute to “retain jurisdiction to enter its decree upon the [resulting] award.” 9 U.S.C. § 8. This Court should respect Congress’s considered legislative judgment and decline to extend the jurisdictional-anchor approach beyond the maritime context.

B. The Court’s reasoning in *Badgerow* further counsels against adopting the jurisdictional-anchor approach.

Badgerow turned in large part upon the textual distinction between Sections 9 and 10 of the FAA and Section 4. The latter provision contains express language authorizing courts to assess jurisdiction by looking through to the parties’ underlying dispute—language that is entirely missing from Sections 9 and 10. But under the jurisdictional-anchor approach, a court with jurisdiction under Section 4’s look-through approach has jurisdiction to decide a subsequent Section 9 or 10 application, rendering the textual distinction that *Badgerow* deemed dispositive entirely irrelevant in cases where Section 4 is actually invoked.

Badgerow’s analysis of the FAA’s purpose points in the same direction. While the FAA was enacted to overcome judicial reluctance to compel arbitration, this

Court “ha[s] never detected a similar congressional worry about judges’ willingness to enforce arbitration awards already made.” *Badgerow*, 596 U.S. at 18. So while Congress had good reason to adopt the expansive (and unusual) look-through rule under Section 4, it had no reason to deviate from the norm of state-court resolution for applications under Sections 9 and 10.

C. Indeed, it had every reason *not* to do so. The FAA aims “to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). Yet the jurisdictional-anchor theory incentivizes parties to file needless federal suits solely to secure a federal forum for post-arbitration proceedings—the very waste the FAA was designed to prevent. Justice Breyer recognized the jurisdictional-anchor theory’s counterproductive nature in his *Badgerow* dissent, and this Court declined to adopt a similarly counterproductive interpretation of Section 4 in *Vaden*. It should do so again here.

D. The Second Circuit’s contrary reasoning is unavailing. The circuit precedent it relied upon was not on point. And it was wrong to find support in this Court’s decisions in *Marine Transit* and *Cortez Byrd*. The former case arose under Section 8 of the FAA, and the Court’s endorsement of the jurisdictional-anchor theory can only be read in view of Section 8’s express language permitting it. And *Cortez Byrd* concerned venue, not jurisdiction, and it merely recited the holding from *Marine Transit*. Neither case comes close to suggesting—let alone holding—that the jurisdictional-anchor approach applies across the FAA. To the contrary, *Cortez Byrd*

rejected an argument much like respondents' argument here: that Sections 9 and 10 should have different venue rules depending on the existence (or not) of a pre-existing suit.

II. Nor can the jurisdictional-anchor approach be justified as a species of ancillary jurisdiction, which permits courts to exercise jurisdiction over certain matters "incidental to other matters properly before them." *Kokkonen*, 511 U.S. at 378.

A. At the outset, the FAA's text and structure preclude resort to the judge-made ancillary-jurisdiction doctrine. Federal courts may exercise only the jurisdiction that Congress by statute confers upon them, and what Congress gives it may take away. Because the FAA's carefully reticulated jurisdictional scheme—including its adoption of the jurisdictional-anchor approach in maritime cases (and *only* maritime cases)—forecloses the jurisdictional-anchor approach, courts may not claim such jurisdiction for themselves.

B. Regardless, ancillary jurisdiction does not apply on its own terms. *Kokkonen* held that courts may not exercise ancillary jurisdiction over disputes about settlement agreements just because the court had jurisdiction before the case settled. In *Badgerow*, this Court repeatedly analogized Section 9 and 10 applications to the settlement disputes at issue in *Kokkonen*. The inescapable inference is that ancillary jurisdiction does not apply to Section 9 and 10 applications either.

A closer look at *Kokkonen*'s reasoning confirms that the syllogism holds. *Kokkonen* explained that ancillary jurisdiction may lie in only two circumstances—(1) when

the new claims are factually interdependent with the underlying suit, and (2) when jurisdiction is necessary to vindicate a court's authority or effectuate its decrees. Neither basis applies here. The parties' Section 9 and 10 applications are not factually interdependent with petitioner's underlying federal employment claims; the applications ask whether the arbitrator engaged in misconduct in adjudicating the dispute, not whether petitioner was wrongfully terminated. And exercising jurisdiction over these applications would not vindicate the district court's Section 3 stay order. That order simply halted federal-court proceedings while arbitration unfolded. A state-court proceeding to confirm or vacate the award is perfectly consistent with that directive. Indeed, confirming the award in state court would *vindicate* the FAA's purpose of keeping arbitrable disputes out of federal court.

The district court lacked jurisdiction over the Section 9 and 10 applications in this case. The judgment of the court of appeals should be reversed.

ARGUMENT

Under Sections 9 and 10 of the FAA, a party to an arbitration may apply to confirm or vacate an arbitration award. In *Badgerow*, this Court held that federal courts may decide Section 9 and 10 applications only if an independent basis for federal jurisdiction appears on the face of the application. *See* 596 U.S. at 5. The mere fact that the parties' underlying dispute arose under federal law, *Badgerow* held, does not establish federal jurisdiction under Sections 9 and 10. *See id.* at 9-12.

In this case, like in *Badgerow*, the parties arbitrated federal claims and subsequently filed Section 9 and 10 applications, but no independent jurisdictional basis appeared on the face of the applications. Unlike in *Badgerow*, however, petitioner had previously filed a federal lawsuit, which was stayed pending arbitration under Section 3 of the FAA. The question presented is whether that initial lawsuit served as a jurisdictional anchor that allowed the court to entertain the Section 9 and 10 applications, even though without that initial lawsuit, jurisdiction would be lacking under *Badgerow*.

The answer is no. The FAA's text, structure, and purpose establish that an independent jurisdictional basis on the face of the application is required for all Section 9 and 10 applications, regardless of whether a federal lawsuit was previously filed.

The FAA's text is sufficiently clear that the Court need not, and should not, consider whether the judge-made doctrine of ancillary jurisdiction would justify the exercise of jurisdiction in this case. But if the Court reaches that issue, it should hold that the ancillary-jurisdiction doctrine does not apply on its own terms because Section 9 and 10 applications are not ancillary to the underlying federal proceeding.

The district court lacked jurisdiction over the Section 9 and 10 applications in this case. The Second Circuit's judgment should therefore be reversed.

I. THE FAA'S TEXT, STRUCTURE, AND PURPOSE FORECLOSE THE JURISDICTIONAL-ANCHOR THEORY.

The FAA's text, structure, and purpose establish

that, even when a federal lawsuit was previously filed, Section 9 and 10 applications require an independent jurisdictional basis on the face of the application.

A. The FAA’s Text And Structure Foreclose The Jurisdictional-Anchor Approach.

“Federal courts are courts of limited jurisdiction” and “possess only that power authorized by Constitution and statute.” *Kokkonen*, 511 U.S. at 377. Accordingly, “federal ‘district courts may not exercise jurisdiction absent a statutory basis.’” *Badgerow*, 596 U.S. at 11 (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005)). Nor may “the jurisdiction Congress confers ... ‘be expanded by judicial decree.’” *Id.* (quoting *Kokkonen*, 511 U.S. at 377).

In this case, no provision of the FAA provides a “statutory basis” for the exercise of federal jurisdiction over the parties’ Section 9 and 10 applications. *Id.*

1. Sections 9 and 10.

1. In *Badgerow*, this Court held that federal courts may exercise jurisdiction over Section 9 and 10 applications only if an independent jurisdictional basis appears on the face of the application. *See* 596 U.S. at 9-11. The Court rejected a “look-through” approach, under which a federal court could establish jurisdiction if the underlying controversy that was arbitrated arose under federal law. *Id.*

Badgerow’s interpretation of Sections 9 and 10 applies to this case. Here, just like in *Badgerow*, although the underlying controversy arose under federal law, it is uncontested that the Section 9 and 10 applications reveal

no independent jurisdictional basis. *See* Pet. App. 6a. Hence, Sections 9 and 10, as authoritatively construed in *Badgerow*, do not permit federal jurisdiction.

True, in this case, a pre-existing federal lawsuit was on file at the time the Section 9 and 10 applications were submitted. But nothing in Sections 9 or 10 suggests that a pre-existing lawsuit makes any jurisdictional difference. Congress rejected the look-through approach for Section 9 and 10 applications, with no exception for when the look-through approach reveals a case that is already on a federal court's docket.

Congress was well aware that, in some cases, applications under Sections 9 and 10 would follow earlier federal-court litigation that was stayed pending arbitration. After all, Sections 9 and 10 were enacted alongside Section 3 in a single federal statute. *See* United States Arbitration Act, ch. 213, 43 Stat. 883, 883-85 (1925). Congress could easily have created a special jurisdictional rule for cases in which a federal lawsuit was previously filed. It did not. Sections 9 and 10 treat applications linked to pre-existing lawsuits in exactly the same way as applications without such a link.

Courts may not “give the same statutory text different meanings in different cases.” *Clark v. Martinez*, 543 U.S. 371, 386 (2005). Thus, *Badgerow's* interpretation of Sections 9 and 10 applies in *all* cases, including cases where a pre-existing lawsuit is on file. Because there was no independent jurisdictional basis on the face of the application, the district court lacked jurisdiction.

2. Not only do Sections 9 and 10 lack any support for the jurisdictional-anchor theory, but they contain

powerful evidence pointing against that theory.

First, Section 9 directs that “[n]otice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding.” 9 U.S.C. § 9. It is thus the filing of the application that is the jurisdiction-conferring event, because only “*thereupon*” can the court claim jurisdiction. *Id.* (emphasis added). That language is inconsistent with the jurisdictional-anchor theory, which holds that the filing of an antecedent federal lawsuit—not the filing of the Section 9 application itself—confers jurisdiction.

Second, the phrase “*as though* he had appeared generally in the proceeding,” *id.* (emphasis added), suggests that the adverse party has not *actually* “appeared generally in the proceeding.” This makes sense if the Section 9 application is a new proceeding that requires a fresh jurisdictional basis. It does not make sense if such an application is merely a continuation of a pre-existing suit in which a party has *already* appeared generally.

Third, Section 9 includes detailed instructions governing service of applications to confirm, and Section 12 includes similar instructions for service of applications to vacate under Section 10. 9 U.S.C. §§ 9, 12.³ These instructions leave no room for the jurisdictional-anchor theory. If the jurisdictional-anchor approach were correct, then for district residents, there would be no need

³ Section 12 also addresses service for applications to modify or correct an award under Section 11. Although no Section 11 application is at issue here, the jurisdictional analysis for Section 11 applications would be identical to the analysis under Sections 9 and 10.

for Sections 9 and 12 to specify that “service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court,” 9 U.S.C. §§ 9, 12, because the application *would* be a motion in a pre-existing case that was already on file. And for district non-residents, it would make no sense for Congress to state that the application “shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court,” *id.* § 9, because the application could be served like any other motion without the marshal’s involvement. These provisions make sense only if Section 9 and 10 applications are new federal actions for which an independent jurisdictional basis is needed, rather than motions in previously-filed cases.

It is no answer to suggest that these provisions apply only to freestanding Section 9 and 10 applications. By their terms, these provisions apply to *all* Section 9 and 10 applications. Congress was well aware that pre-existing lawsuits might be filed and stayed under Section 3. Congress could have created different jurisdictional rules for applications with and without an “anchor”—just as it created different jurisdictional rules for residents and non-residents. But Congress chose to apply these provisions of Sections 9 and 10 regardless of whether a previously-filed suit was stayed. That choice shows that, in *every* case, Section 9 and 10 applications require an independent jurisdictional basis.

2. Section 3.

The district court in this case entered a stay under Section 3 of the FAA. But Section 3 also provides no support for the jurisdictional-anchor theory.

Section 3 provides that, if a lawsuit is filed in federal court “upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending ... shall ... stay the trial of the action *until such arbitration has been had* in accordance with the terms of the agreement.” 9 U.S.C. § 3 (emphasis added).

Under Section 3, when the “arbitration has been had,” *id.*, the stay ends. Nothing in Section 3 suggests that after the stay expires, the court’s jurisdiction is enlarged to encompass Section 9 and 10 applications over which it otherwise would have lacked jurisdiction under *Badgerow*.

Rather than *enlarging* federal jurisdiction, a Section 3 stay *preserves* federal jurisdiction. Section 3 states that the stay ends if “the applicant for the stay” is “in default in proceeding with such arbitration.” 9 U.S.C. § 3. Section 3 also ensures that “the parties can return to federal court if arbitration breaks down or fails to resolve the dispute.” *Spizzirri*, 601 U.S. at 477. Thus, if a plaintiff files a federal claim, the court stays the case pending arbitration, the proponent of arbitration refuses to proceed with arbitration or arbitration otherwise fails to resolve the dispute, and the parties return to federal court, the court may adjudicate the federal claim. When that occurs, the Section 3 stay allows the court to exercise the jurisdiction that was the initial basis for the federal suit.

But here, the arbitrator adjudicated all claims and issued an arbitration award: “a contractual resolution” of the parties’ claims. *Badgerow*, 596 U.S. at 9. Because arbitration did not “fail[] to resolve the dispute,”

Section 3 affords no “return ticket” back to federal court. *Spizzirri*, 601 U.S. at 477. And at that point, the parties’ dispute about the award’s enforceability is “another controversy” over which the court must separately establish jurisdiction. *Badgerow*, 596 U.S. at 9, 12.

To be sure, the Court in *Spizzirri* observed, citing Section 9, that “[t]he FAA provides mechanisms for courts *with proper jurisdiction* to assist parties in arbitration by, for example, ... facilitating recovery on an arbitral award.” 601 U.S. at 478 (emphasis added). “Keeping the suit on the court’s docket,” the Court continued, “makes good sense in light of this potential ongoing role.” *Id.* But the key phrase in that discussion is “with proper jurisdiction.” If a court has “proper jurisdiction” over subsequent applications—if, for example, the court has diversity jurisdiction—*then* the Section 3 stay might facilitate an “ongoing role” for the court. If the court *lacks* “proper jurisdiction,” however, Section 3 does not enlarge a court’s jurisdiction to cover such applications, so the “potential ongoing role” never materializes. Indeed, if the jurisdictional-anchor theory were correct, the Court would not have needed to include this careful jurisdictional caveat in its discussion, because the Section 3 stay would necessarily have vested the court with ancillary jurisdiction over any subsequent applications.

3. Section 4.

Nor does Section 4 of the FAA support the jurisdictional-anchor theory. Under Section 4, the court is authorized to “make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.” 9 U.S.C. § 4. In this case, there was no

Section 4 order: although respondents filed a Section 4 motion, the district court did not grant it because Section 4 applies only to arbitrations “within the district in which the petition for an order directing such arbitration is filed,” *id.*, and here, while the lawsuit was filed in New York, the parties’ Agreement required arbitration to occur in California, *see* D. Ct. Dkt. 30 at 12.

But even if a Section 4 order had been entered, the jurisdictional analysis would not change. Like Section 3, Section 4 contains no inkling that an order compelling arbitration could serve as a jurisdictional anchor for a Section 9 or 10 application. Instead, Section 4 merely authorizes the court to “direct[] the parties to proceed to arbitration.” 9 U.S.C. § 4. Once the parties comply with that order by arbitrating the dispute, Section 4 says nothing about conferring any additional authority to adjudicate post-arbitration disputes.⁴

4. Section 8.

Section 8 of the FAA—which expressly permits

⁴ Although the district court did not enter a Section 4 order, petitioner addresses Section 4 in this Section, as well as in Sections I.B and I.C, *infra*, because the necessary implication of respondents’ position is that courts issuing Section 4 orders can also apply the jurisdictional-anchor theory. Here, for example, if the Agreement permitted arbitration in New York, thus allowing the district court to enter a Section 4 order in conjunction with a Section 3 stay, then on respondents’ view, the jurisdictional-anchor theory would have allowed the district court to exercise jurisdiction over the Section 9 and 10 applications. Indeed, if the jurisdictional-anchor theory exists with respect to Section 3 stays, which merely stay the case pending arbitration, it would presumably apply with even greater force to Section 4 orders, which affirmatively mandate arbitration.

courts to retain jurisdiction to confirm or vacate arbitration awards after compelling arbitration in maritime cases—provides extremely strong evidence that Congress’s silence in Sections 3, 4, 9, and 10 with respect to the jurisdictional-anchor theory was intentional.

Section 8 provides:

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then ... the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration *and shall retain jurisdiction to enter its decree upon the award.*

9 U.S.C. § 8 (emphasis added).

The italicized text confirms that Congress knows how to create a jurisdictional anchor—knows, in other words, how to vest courts with ancillary jurisdiction over Section 9 and 10 applications—when it wants to. But it did not do so anywhere in Sections 3, 4, 9, or 10.

Two canons of statutory construction require giving effect to that distinction by refusing to adopt the jurisdictional-anchor theory under Sections 9 and 10. *First*, as *Badgerow* emphasized, “when Congress includes particular language in one section of a statute but omits it in another section of the same Act,’ [courts] generally take the choice to be deliberate.” 596 U.S. at 11 (quoting *Collins v. Yellen*, 594 U.S. 220, 248 (2021)). Indeed, *Badgerow*’s core rationale was that the Court should

give effect to Congress’s decision to include look-through language in Section 4 but exclude it from Sections 9 and 10. *See id.* If the distinction between Sections 9 and 10 and Section 4 should be given dispositive weight, as *Badgerow* holds, so too should the distinction between Sections 9 and 10 and Section 8. The Court should honor Congress’s decision to include jurisdictional-anchor language in Section 8 but exclude it from Sections 9 and 10.

Second, and relatedly, “[i]t is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’” *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation omitted). If a pre-existing suit could serve as a jurisdictional anchor even without express language, then the express jurisdictional-anchor language in Section 8—“shall retain jurisdiction to enter its decree upon the award”—would be surplusage.

Moreover, Congress’s decision to include jurisdictional-anchor language in Section 8, but exclude it from Sections 9 and 10, was no accident. Section 8 specifies that “the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party.” 9 U.S.C. § 8. Congress enacted this provision because, “if the aggrieved party could not seize the ship of his opponent, an arbitral award would be wholly unenforceable as the vessel might seldom or never again be within the jurisdiction of our courts.” *The Anaconda v. Am. Sugar Refin. Co.*, 322 U.S. 42, 46 (1944). And once a federal court is already exercising jurisdiction over the disputed vessel, it makes

sense to return to that federal court to confirm the award, because the court can enforce the judgment by awarding the disputed vessel to the prevailing party.

By contrast, in ordinary civil cases, the case does not begin with the district court exercising *in rem* jurisdiction over a seized *res*, and a state court tasked with confirming an arbitration award simply enters a money judgment. In those circumstances, there is no comparable need to return to the federal court that initially exercised jurisdiction. It thus makes perfect sense that the jurisdictional-anchor doctrine would apply in the context of maritime arbitrations only—which is why Congress expressly provided for the jurisdictional-anchor doctrine in the context of maritime arbitrations only. The Court should respect that legislative judgment.

B. *Badgerow's Reasoning Applies Here.*

Badgerow's reasoning confirms that petitioner's interpretation of the FAA is correct. Although the *Badgerow* Court did not expressly decide whether a pre-existing suit could serve as a jurisdictional anchor for subsequent Section 9 and 10 applications, every word of the Court's opinion in that case applies just as strongly, if not more strongly, to this case.

1. The core of the Court's reasoning in *Badgerow* turned on the textual distinction between Section 4 and Sections 9 and 10. In *Badgerow*, this Court explained that Section 4 contains explicit look-through language, conferring jurisdiction on federal courts in cases where, "save for [the arbitration] agreement, [the court] would have jurisdiction." 596 U.S. at 10 (quoting *Vaden*, 556 U.S. at 62 (quoting 9 U.S.C. § 4)). "Sections 9 and 10,"

by contrast, “contain none of the statutory [look-through] language on which *Vaden* relied.” *Id.* at 11. This distinction, the Court reasoned, was dispositive: “We have no warrant to redline the FAA, importing Section 4’s consequential language into provisions containing nothing like it.” *Id.* The Court went on: “Congress could have replicated Section 4’s look-through instruction in Sections 9 and 10.... But Congress did n[ot]. And its decision governs.” *Id.*

But if the Court adopts the jurisdictional-anchor approach, then a federal court that enters a Section 4 order *could* exercise ancillary jurisdiction over subsequent Section 9 and 10 applications. As such, the absence of look-through language in Sections 9 and 10 would be irrelevant. In other words, according to respondents, *Badgerow*—which rests on the textual distinction between Section 4 and Sections 9 and 10—has practical significance *only when Section 4 is not invoked*.

It is worth spelling out how counterintuitive respondents’ theory really is. *Badgerow* holds that Congress intended for federal courts to infer, from the textual distinction between Section 4 and Sections 9 and 10, that look-through jurisdiction is proper under Section 4 but an independent jurisdictional basis is needed under Sections 9 and 10. But if the jurisdictional-anchor approach is correct, then Congress intended for courts to draw that inference *only when there is no Section 4 order*. When no Section 4 order exists, respondents contend, Congress anticipated that federal judges would hunt through portions of the FAA that were not invoked, locate Section 4, identify the textual distinction between Section 4 and Sections 9 and 10, and give that

distinction dispositive weight in assessing jurisdiction under Sections 9 and 10.

But on respondents' view, when the court actually *does* compel arbitration under Section 4, and the parties return with Section 9 and 10 applications, the court should now *ignore* the careful textual distinction between Section 4 and Sections 9 and 10. Respondents claim that in that set of cases, this textual distinction has no practical significance because the pre-existing suit gives the court ancillary jurisdiction. Put more concisely, if respondents' theory is correct, then Congress wanted federal judges to infer that the wording difference between Section 4 and Sections 9 and 10 matters—but *only* when there is no Section 4 order fresh on the court's mind.

The Court should not attribute to Congress the intent to so thoroughly baffle the federal judiciary. If the textual distinction between Section 4 and Sections 9 and 10 matters (as *Badgerow* held it does), it surely must matter in cases that actually involve Section 4 orders.

2. *Badgerow's* analysis of statutory purpose also applies with equal force to this case.

As the *Badgerow* Court explained, “[t]he [FAA’s] statutory plan ... makes Section 9 and 10 applications conform to the normal—and sensible—judicial division of labor: The applications go to state, rather than federal, courts when they raise claims between non-diverse parties involving state law.” 596 U.S. at 18. That is true even though “those claims may have originated in the arbitration of a federal-law dispute,” because by the time a Section 9 or 10 application has been filed, “the

underlying dispute” is no longer “at issue.” *Id.* “Rather, the application concerns the contractual rights provided in the arbitration agreement, [a]nd adjudication of such state-law contractual rights ... typically belongs in state courts.” *Id.*

Although “Congress created an exception to those ordinary jurisdictional principles for Section 4 petitions to compel,” the Court explained that Congress had good reason not to wish “to extend that exception everywhere.” *Id.* Specifically, although “this Court has often said [that] the ‘preeminent’ purpose of the FAA was to overcome some judges’ reluctance to enforce arbitration agreements” by ordering specific performance compelling the parties to proceed to arbitration, *id.* (citing *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)),⁵ the Court “ha[s] never detected a similar congressional worry about judges’ willingness to enforce arbitration

⁵ The U.S. Reports are replete with similar statements. *See, e.g.*, *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995). And the FAA’s relatively sparse legislative history contains several references confirming the point. *See* 66 Cong. Rec. 984 (1924) (statement of Sen. Thomas J. Walsh) (stating that the FAA sought to “provide[] for the abolition of the rule that agreements for arbitration will not be specifically enforced”); H.R. Rep. No. 68-96, at 1-2 (1924) (“The need for the law arises from an anachronism of our American law. Some centuries ago, because of the jealousy of the English courts for their own jurisdiction, they refused to enforce specific agreements to arbitrate upon the ground that the courts were thereby ousted from their jurisdiction.”); S. Rep. No. 68-536, at 2 (1924) (“[I]t is very old law that the performance of a written agreement to arbitrate would not be enforced in equity, and that if an action at law were brought on the contract containing the agreement to arbitrate, such agreement could not be pleaded in bar of the action[.]”).

awards already made,” *id.* In those circumstances, “Congress might well have thought an expansion of federal jurisdiction appropriate for petitions to compel alone,” while “[a]pplications about arbitral decisions could and should follow the normal rules.” *Id.* The Court had no trouble “see[ing] why Congress chose to place fewer arbitration disputes in federal court than [the respondent in *Badgerow*] wishe[d].” *Id.* at 17.

All of that reasoning applies with identical force here. As *Badgerow* explains, Congress had sensible rationales for distinguishing between pre-arbitration and post-arbitration applications, and sensible rationales for limiting the number of post-arbitration applications filed in federal court. The strength of those rationales does not vary depending on whether a suit was previously filed.

Further, if Congress made the policy judgment that federal courts should not be flooded with Section 9 and 10 applications, it would not have silently countenanced the easy workaround of allowing parties to establish federal jurisdiction over Section 9 and 10 applications under a jurisdictional-anchor theory. Indeed, as explained in the next section, respondents’ position undermines Congress’s purpose by giving litigants the perverse incentive to file federal lawsuits that would otherwise be unnecessary.

C. The Jurisdictional-Anchor Theory Incentivizes the Filing of Useless Federal Lawsuits, Undermining the FAA’s Goals.

In enacting the FAA, Congress’s “clear intent” was “to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.”

Moses H. Cone, 460 U.S. at 22. Yet respondents' position encourages parties to an arbitrable dispute to come *into* court. Adopting the jurisdictional-anchor theory would give parties who wish to secure a federal forum for confirm-or-vacate proceedings under Sections 9 and 10 an incentive to engage in useless federal litigation for the sole purpose of creating a jurisdictional anchor.

For example, suppose Party A and Party B are in a dispute that both parties agree is arbitrable. Suppose further that Party A prefers a federal forum for subsequent confirm-or-vacate proceedings, while Party B prefers a state forum. If the jurisdictional-anchor theory prevails, then Party A now has an incentive to come to federal court and file a motion to compel arbitration purely for purposes of creating a jurisdictional anchor. This federal litigation is a waste of everyone's time and would exist only by virtue of the perverse incentives created by the jurisdictional-anchor theory.

Or suppose that Party A and Party B both agree that a dispute is arbitrable and both prefer a federal forum for subsequent confirm-or-vacate proceedings. The parties now have an incentive to quietly agree to initiate federal litigation in which Party A will move to compel or stay pending arbitration and Party B will only weakly oppose. The court must then expend resources assessing whether the litigation is collusive and hence not a "case or controversy" under Article III, *see United States v. Johnson*, 319 U.S. 302, 303-05 (1943)—again, a complete waste of time.

Or suppose Party A sends a demand letter threatening to initiate arbitration against Party B. Party B understands that the case is arbitrable, but wants a federal

court to adjudicate any subsequent confirm-or-vacate application. If the jurisdictional-anchor theory prevails, Party B now has an incentive to file a federal lawsuit against Party A, such as a preemptive declaratory-judgment action alleging that Party A’s claims should fail. If Party A is intent on arbitrating, it will then move to compel or stay pending arbitration, and it will win. But Party B will get what it really wanted: a federal case that serves as a jurisdictional anchor.

These incentives are irreconcilable with the FAA’s purpose of “mov[ing] the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.” *Moses H. Cone*, 460 U.S. at 22. Justice Breyer recognized as much in his dissent in *Badgerow*. He observed that some lower courts had held that “a federal-question lawsuit or Section 4 motion [could be used] as a jurisdictional anchor” for a subsequent Section 9 or 10 application. *Badgerow*, 596 U.S. at 26 (Breyer, J., dissenting). But, as Justice Breyer recognized, “to turn jurisdiction over these later motions on the presence or absence of a federal lawsuit or Section 4 motion is to turn jurisdiction on a ‘totally artificial distinction’—particularly when the very purpose of arbitration is to avoid litigation.” *Id.* (quoting *Vaden*, 556 U.S. at 65). Justice Breyer’s characterization of respondents’ position as both artificial and counterproductive was spot on. This Court should not presume that Congress has “enacted a self-defeating statute.” *Pugin v. Garland*, 599 U.S. 600, 607 (2023) (citation omitted) (collecting cases).

As Justice Breyer observed, *Vaden* made the same point. In *Vaden*, the petitioner asked the Court to create an asymmetrical regime in which a court could entertain

a Section 4 motion to compel only if a federal-question lawsuit was already on file. 556 U.S. at 65 (noting that the petitioner’s approach would “permit a federal court to entertain a § 4 petition only when a federal-question suit is already before the court, when the parties satisfy the requirements for diversity-of-citizenship jurisdiction, or when the dispute over arbitrability involves a maritime contract”). That is exactly analogous to what respondents seek here: an asymmetrical regime in which a court could entertain certain Section 9 and 10 applications only if a federal-question lawsuit is already on file.

Vaden rejected the petitioner’s approach, explaining that it would require a party to “seek[] federal adjudication of the very questions it wants to arbitrate rather than litigate.” *Id.* The Court explained that this approach “‘creates a totally artificial distinction’ based on whether a dispute is subject to pending federal litigation.” *Id.* (citation omitted). For the exact same reason, the Court should reject respondents’ approach to Sections 9 and 10. If jurisdiction under Section 4 should not turn on whether there is pending federal litigation, jurisdiction under Sections 9 and 10 should not either.

D. The Second Circuit’s Reasoning Is Unpersuasive.

The Second Circuit offered no persuasive reason for adopting the jurisdictional-anchor theory.

The Second Circuit declared itself bound by *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698 (2d Cir. 1985). *See* Pet. App. 6a-7a. *Smiga* contains no substantive reasoning; the court merely said that it was bound by *Marchant v. Mead-Morrison Manufacturing Co.*, 29

F.2d 40 (2d Cir. 1928). See *Smiga*, 766 F.2d at 705. But *Marchant* did not address any question of ancillary federal jurisdiction. Instead, it addressed essentially the inverse question from the one before this Court: whether, although an independent jurisdictional basis (diversity) *did* exist for an application to confirm an arbitration award, a federal court was barred from deciding that application by virtue of a state court’s earlier appointment of an arbitrator under the New York Arbitration Law. *Marchant*, 29 F.2d at 42-43. The case did not involve an application under Section 9 of the FAA; it instead involved an application under the New York Civil Practice Act, which a party unsuccessfully sought to remove to federal court. *Id.* at 42. *Marchant* therefore has little relevance here.

The Second Circuit also cited this Court’s decisions in *Marine Transit* and *Cortez Byrd*. Pet. App. 6a-7a. But neither case supports the jurisdictional-anchor theory.

Marine Transit was a maritime dispute under Section 8 of the FAA. The Court noted that “Section 8 explicitly provides that where a cause of action is otherwise justiciable in admiralty,” a party may begin the proceeding by libel and seizure of the vessel, and “the court may then ‘direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.’” *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 274 (1932) (citation omitted). Shortly thereafter, the Court observed: “We do not conceive it to be open to question that, where the court has authority under the statute, as we find that it had in this case, to make an order for arbitration, the court also has

authority to confirm the award or to set it aside for irregularity, fraud, ultra vires or other defect.” *Id.* at 275-76.

This language cannot reasonably be read as suggesting that the jurisdictional-anchor doctrine exists across the entire FAA. Instead, it must be read in the context of the Court’s prior observation that the relevant provision—Section 8 of the FAA—explicitly adopts the jurisdictional-anchor doctrine.

Of note, the Court viewed the matter as obvious: “We do not conceive it to be open to question.” *Id.* at 275. It offered no explanation for that conclusion, which was apparently not disputed. In context, the Court’s breezy statement makes sense only if it is a reference to the explicit language in Section 8, which does, indeed, establish that federal jurisdiction over the application to confirm was not open to question. Driving the point home, the Court in *Marine Transit* described the district court as having “entered its decree upon the award ... *under the authority expressly conferred by § 8.*” *Id.* at 276 (emphasis added).

Cortez Byrd is similar. That case concerned venue over Section 9 and 10 applications. *See Cortez Byrd*, 529 U.S. at 196 (stating that the Court granted review to “resolve a split among the Courts of Appeals over the permissive or mandatory character of the FAA’s venue provisions”). The Court held that an application under Section 10 could be made in “any district proper under the general venue statute.” *Id.* at 195.

Cortez Byrd had nothing to do with jurisdiction. It was undisputed in *Cortez Byrd* that the district court

had diversity jurisdiction over the Section 10 application at hand: the Court noted that venue “was clearly proper under the general venue statute, which provides, among other things, for venue *in a diversity action*.” *Id.* at 198 (emphasis added).

Against that backdrop, the *Cortez Byrd* Court, citing *Marine Transit*, stated: “We have ... previously held that the court with the power to stay the action under § 3 has the further power to confirm any ensuing arbitration award.” *Id.* at 202. But, like in *Marine Transit*, this language cannot reasonably be read as endorsing the jurisdictional-anchor theory. This is because, like in *Marine Transit*, jurisdiction over the application to confirm undisputedly existed. Instead, the Court was saying only that *if* federal jurisdiction exists—as it did in both *Cortez Byrd* and *Marine Transit*—then the federal court that initially exercised jurisdiction could confirm the arbitration award.

Far from supporting respondents, *Cortez Byrd* rejected an argument much like respondents’ argument here. In *Cortez Byrd*, the possibility that a court that previously stayed a case might nevertheless lack venue over a Section 9 or 10 application—although it had *jurisdiction* over such applications—was so nonsensical that the respondent, Harbert, conceded it could not be correct. *See id.* Harbert’s argument was that different venue rules should apply depending on whether the Section 9 or 10 application was preceded by a Section 3 stay (in which case venue would be proper in the court that issued the stay) or not (in which case venue would be proper only in the district of arbitration). *See id.* Harbert’s argument closely resembled respondents’

argument here, which is that different *jurisdictional* rules should apply depending on whether the Section 9 or 10 application was preceded by a Section 3 stay (in which case the court could exercise jurisdiction) or not (in which case it could not).

The Court rejected Harbert’s argument, using language that could be written for this case: “[Respondent] ... fails to explain why Congress would have wanted to allow venue liberally where motions to confirm, vacate, or modify were brought as subsequent stages of actions antedating the arbitration, but would have wanted a different rule when arbitration was not preceded by a suit between the parties.” *Id.* Here, likewise, Congress would not have wanted jurisdiction to turn on whether arbitration was preceded by a suit.

Vaden and *Cortez Byrd*, when considered together, virtually decide this case. *Vaden* holds that a pre-existing suit should make no difference when considering jurisdiction under Section 4. *Cortez Byrd* holds that a pre-existing suit should make no difference when considering venue under Sections 9 and 10. Combining those two holdings, a pre-existing suit should make no difference when considering jurisdiction under Sections 9 and 10. The Court should reject respondents’ invitation to introduce discord into an otherwise harmonious statutory scheme.

II. THE ANCILLARY-JURISDICTION DOCTRINE PROVIDES NO BASIS FOR JURISDICTION.

The FAA’s text, structure, and purpose establish that Section 9 and 10 applications require an

independent jurisdictional basis on the face of the application, regardless of whether a pre-existing suit was filed. The Court should end its analysis there without even considering whether the ancillary-jurisdiction doctrine might provide a separate font of jurisdiction. But even assuming that the FAA left some room for the ancillary-jurisdiction doctrine, that doctrine does not apply by its own terms to Section 9 and 10 applications.

A. Congress Displaced Any Gap-Filling Role the Ancillary-Jurisdiction Doctrine Might Play.

The ancillary-jurisdiction doctrine should play no role in this case.

The ancillary-jurisdiction doctrine “recognizes federal courts’ jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them.” *Kokkonen*, 511 U.S. at 378. At the time of the FAA’s enactment, the ancillary-jurisdiction doctrine was a body of largely judge-made law derived from principles of equity procedure. *See id.* at 378-79 (noting that doctrine derived from equity treatises and “can hardly be criticized for being overly rigid or precise”); *id.* at 380 (noting that lower courts purported to exercise “inherent power”).

But because Congress has plenary authority to establish the jurisdiction of inferior federal courts, *see, e.g., Palmore v. United States*, 411 U.S. 389, 400-01 (1973) (explaining that, under Article III, “the task of defining the[] jurisdiction [of the inferior federal courts], was left to the discretion of Congress”), Congress is free to legislate to modify or displace that judge-made doctrine, and

thus to delimit the precise circumstances (if any) under which courts can exercise ancillary jurisdiction, *see Sheldon v. Sill*, 49 U.S. (8 How.) 441, 448-49 (1850) (“Congress, having the power to establish the courts, must define their respective jurisdictions.... [and] may withhold from any court of its creation jurisdiction of any of the enumerated controversies.”). Thus, if Congress imposes statutory limits on jurisdiction, parties cannot evade those limits by invoking the ancillary-jurisdiction doctrine. *Cf. Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 34 (2002) (“[I]nvocation of ancillary jurisdiction ... does not dispense with the need for compliance with statutory requirements.”).

Here, the FAA is a carefully reticulated jurisdictional scheme that leaves no space for judge-made jurisdictional rules. Congress carefully identified the circumstances in which look-through jurisdiction should exist—*i.e.*, Section 4 petitions. And it carefully identified the circumstances in which ancillary jurisdiction should exist—*i.e.*, maritime cases. It did not authorize courts to inject jurisdictional doctrines of their own making. The Court should hold that the FAA’s text, structure, and purpose are incompatible with the jurisdictional-anchor doctrine and end its analysis there. *See O’Melveny & Myers v. FDIC*, 512 U.S. 79, 85 (1994) (courts should not “adopt a court-made rule to supplement federal statutory regulation that is comprehensive and detailed”).

Indeed, the Court made a closely similar point in *Spizzirri*. Although Section 3, by its terms, requires courts to stay cases pending arbitration, some lower courts had nonetheless exercised their purported

“inherent authority” to dismiss lawsuits in which all claims were arbitrable. 601 U.S. at 477. In *Spizzirri*, this Court put an end to that practice, explaining that “the inherent powers of the courts may be controlled or overridden by statute or rule,” and “Section 3 does exactly that.” *Id.* (citation omitted). This case is the flip side of *Spizzirri*. Just as courts may not invoke inherent authority to *curtail* their jurisdiction under Section 3 (as *Spizzirri* held), they may not invoke inherent authority to *enlarge* their jurisdiction under Section 3 by using it as an anchor to adjudicate post-arbitration applications.

B. Even On Its Own Terms, the Ancillary-Jurisdiction Doctrine Does Not Apply.

Even if this Court were to conclude that the FAA does not of its own force displace the ancillary-jurisdiction doctrine, that doctrine still would not apply on its own terms because Section 9 and 10 applications are not ancillary to the underlying proceedings.

In *Kokkonen*, this Court held that a district court that dismissed a suit following the parties’ settlement lacked ancillary jurisdiction to resolve a dispute arising from that settlement. 511 U.S. at 376-79. And the Court in *Badgerow* explicitly analogized Section 9 and 10 applications to *Kokkonen*’s settlement disputes. Citing *Kokkonen*, the Court explained that “quarrels about legal settlements—even settlements of federal claims—typically involve only state law, like disagreements about other contracts.” *Badgerow*, 596 U.S. at 9 (citing *Kokkonen*, 511 U.S. at 378-82). And the Court again cited *Kokkonen* when concluding that “[a]djudication of ... state-law contractual rights [via Section 9 and 10 applications]—as this Court has held in addressing a non-

arbitration settlement of federal claims—typically belongs in state courts.” *Id.* at 18 (citing *Kokkonen*, 511 U.S. at 381-82).

Thus, in *Kokkonen*, this Court rejected the ancillary-jurisdiction doctrine as applied to disputes arising from settlement agreements. In *Badgerow*, this Court directly analogized Section 9 and 10 applications to the disputes arising from settlement agreements addressed in *Kokkonen*. The ineluctable inference is that the ancillary-jurisdiction doctrine does not apply to Section 9 and 10 applications, either.

A closer look at *Kokkonen*’s reasoning confirms that the ancillary-jurisdiction doctrine does not apply. *Kokkonen* holds that courts may exercise ancillary jurisdiction for two purposes: “(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent, ... and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.” 511 U.S. at 379-80 (citations omitted). As in *Kokkonen*, neither rationale supports ancillary jurisdiction in this case.

- 1. Section 9 and 10 applications are not factually interdependent with the underlying federal claims.**

To begin with the first type of ancillary jurisdiction, courts may exercise jurisdiction over “claims having a factual and logical dependence on ‘the primary lawsuit.’” *Peacock v. Thomas*, 516 U.S. 349, 355 (1996) (citation omitted). In 1990, long after the FAA’s enactment, Congress codified this strand of the doctrine in the

supplemental-jurisdiction statute, 28 U.S.C. § 1367. *See Peacock*, 516 U.S. at 354 n.5. Section 1367 establishes that the district courts “shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367.

Kokkonen and *Peacock* establish that this type of ancillary jurisdiction does not apply here. *Kokkonen* held that breach-of-settlement-agreement claims are not “factually interdependent” with the underlying federal claims. 511 U.S. at 379-80. The Court reasoned that “the facts underlying [the] ... claim for breach of agency agreement” that was the subject of the now-dismissed lawsuit “and those underlying [the present] claim for breach of settlement agreement ha[d] nothing to do with each other.” *Id.* The Court reached a similar conclusion in *Peacock*, holding that allegations that assets were shielded from an ERISA judgment were not factually interdependent with the underlying ERISA dispute giving rise to that judgment. *See* 516 U.S. at 355-56.

Here, too, the question whether the arbitration award should be confirmed or vacated under the standards set out in Sections 9 and 10 “ha[s] nothing to do with” petitioner’s underlying claims. *Kokkonen*, 511 U.S. at 379-80. Petitioner’s underlying claims “centered, in substance, on [his] employment with Chateau [Marmont].” Pet. App. 11a. The Section 9 and 10 applications, by contrast, concern whether the arbitration award should be vacated on one of the grounds specified in Section 10, *see* 9 U.S.C. § 10(a)(1)-(4), or, if not,

confirmed and embodied in a judgment pursuant to Section 9. Petitioner argued, for example, that the arbitrator erred by refusing to adjourn the arbitration hearing in view of petitioner's medical condition. *See* D. Ct. Dkt. 106, at 12-16. That question has nothing to do with the issues teed up in petitioner's initial complaint; indeed, the parties did not even know about this issue until the arbitration concluded.

Accordingly, as in *Kokkonen*, "it would neither be necessary nor even particularly efficient that the[se issues] be adjudicated together." 511 U.S. at 380. Ancillary jurisdiction over Section 9 and 10 applications cannot be invoked on this basis. *See id.* ("No case of ours asserts, nor do we think the concept of limited federal jurisdiction permits us to assert, ancillary jurisdiction over any agreement that has as part of its consideration the dismissal of a case before a federal court.").

2. Adjudicating Section 9 and 10 applications would not vindicate the Section 3 court's authority or effectuate its decrees.

As to the second strand of the doctrine, ancillary jurisdiction over Section 9 and 10 applications is not necessary "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, [or] effectuate its decrees." *Kokkonen*, 511 U.S. at 380. In *Kokkonen*, this Court declined to permit the exercise of jurisdiction on these grounds, reasoning that "the only order [at issue] was that the suit be dismissed, a disposition that is in no way flouted or imperiled by the alleged breach of the settlement agreement." *Id.*

The same reasoning controls here. As in *Kokkonen*, no order of the district court would in any way be flouted or imperiled by allowing the Section 9 and 10 applications to proceed in state rather than federal court.

The sole relevant court order in this case was the entry of a stay under Section 3 of the FAA. Section 3 recites that federal litigation must be stayed until “arbitration has been had.” 9 U.S.C. § 3. Thus, as discussed, *see* pp. 24-25, *supra*, the stay order in this case expired on its own terms once the arbitration concluded. After arbitration is completed, in other words, there is no extant court order *at all*, much less an order capable of being flouted by a different court’s consideration of whether to confirm or vacate the arbitration award.

Kokkonen noted that “[t]he situation would be quite different if the parties’ obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal—either by separate provision (such as a provision ‘retaining jurisdiction’ over the settlement agreement) or by incorporating the terms of the settlement agreement in the order.” 511 U.S. at 381. “In that event,” *Kokkonen* held, “a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist.” *Id.* Here, however, the stay order does not state that the court would retain authority to adjudicate Section 9 and 10 applications, and any such order would likely exceed a court’s authority under Section 3.

Even focusing on the stay order while it was in place, nothing about a state-court application to confirm or vacate the award “flout[s]” a stay order. *Kokkonen*, 511 U.S. at 380. The stay order simply stated that the

federal court would stand down while the arbitration unfolded. A state-court proceeding to confirm or vacate the award—during which the federal court would continue to stand down—would not violate that order. In *Kokkonen*, this Court held that a court does not vindicate a dismissal order by un-dismissing a case for purposes of entertaining a dispute over a settlement. *See id.* at 380-81. Here, likewise, a court does not vindicate a stay order by un-staying a case for purposes of entertaining a Section 9 or 10 application.

Even if the stay order is treated as akin to a Section 4 order compelling arbitration, the analysis would not change. Section 9 and 10 applications do not seek to *enforce* an order compelling arbitration. Such applications instead rest on the premise that the parties *obeyed* that order, the arbitration occurred, and an arbitration award now exists. Put another way, the very fact that the parties proceeded with the arbitration and are now following the statutory procedure for challenging an arbitration award demonstrates that the court's order compelling arbitration *was* effectuated and its authority *was* vindicated.⁶

At the Section 9 and 10 phase, rather than focus on whether *the parties* obeyed the directive to arbitrate, the court assesses whether *the arbitrator* complied with applicable law. For example, the court assesses whether the arbitrators “were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the

⁶ For the same reasons, if there were an actual Section 4 order compelling arbitration, the analysis would be identical.

controversy.” 9 U.S.C. § 10(a)(3). A determination that the arbitrator did, or did not, commit such misconduct does not enforce a prior court order that merely required the parties to bring their claims before the arbitrator in the first place.

Further, in *Peacock*, this Court explained that the ancillary-jurisdiction doctrine does not apply where “the relief sought is of a different kind or on a different principle than that of the prior decree.” 516 U.S. at 358 (quotation marks, citation, and brackets omitted). Here, Section 9 and 10 orders are “of a different kind” and “on a different principle,” *id.*, from orders compelling arbitration. An order compelling arbitration is an award of specific performance of an arbitration agreement—effectively, an injunction requiring the parties to arbitrate. By contrast, a Section 9 or 10 order operates on the arbitration award itself, not the parties. It either transforms the arbitration award into a judgment or strips it of legal effect.

Indeed, the best way for a federal court to effectuate a Section 3 stay or a Section 4 order compelling arbitration would be to *decline* jurisdiction over Section 9 and 10 applications. The purpose of such orders is to ensure the parties abide by their contractual dispute resolution process. Applications to confirm or vacate arbitration awards are part of that process. And as *Badgerow* explains, “adjudication of such state-law contractual rights—as this Court has held in addressing a non-arbitration settlement of federal claims—typically belongs in state courts.” 596 U.S. at 18.

When a federal court compels arbitration or stays federal litigation pending arbitration and then allows

any post-arbitration disputes to be resolved in state court, it *vindicates* its earlier order by ensuring that the post-arbitration disputes are resolved in the forum where they belong. The Court should fulfill *Badgerow's* promise by allowing the contractual resolution of the parties' rights to proceed without unwarranted federal court intervention.

CONCLUSION

The judgment of the Second Circuit should be reversed.

Respectfully submitted,

SIMON A. DE CARVALHO
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 222-9350

ADAM G. UNIKOWSKY
Counsel of Record
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

STATUTORY ADDENDUM

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Statutory Addendum

Relevant Statutory Provisions

9 U.S.C. § 3

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 4

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration 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, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make

an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

9 U.S.C.A. § 8

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

9 U.S.C. § 9

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified

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in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S.C. § 10

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any

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other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

9 U.S.C. § 11

§ 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration--

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

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(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9 U.S.C. § 12

§ 12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.