

No. _____

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

PETITION FOR A WRIT OF CERTIORARI

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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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PETITION FOR A WRIT OF CERTIORARI

Petitioner Adrian Jules respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

INTRODUCTION

This case presents an important question of federal arbitration law that has divided the circuits: If a federal court stays a case pending arbitration, may the court use that initial exercise of jurisdiction as a hook to exercise jurisdiction over a post-arbitration application to confirm or vacate the arbitration award under Sections 9 or 10 of the Federal Arbitration Act (“FAA”), even if jurisdiction would otherwise be lacking? The circuit split, if left unresolved, will result in inefficiency, confusion, and forum-shopping. This Court should grant review to resolve the split.

This question arises because federal courts sometimes lack jurisdiction to decide an application to confirm or vacate an arbitration award even if the dispute giving rise to the arbitration arises under federal law. In *Badgerow v. Walters*, 596 U.S. 1 (2022), this Court held that a federal court may exercise jurisdiction over a Section 9 or 10 application only if an “independent jurisdictional basis” appears on “the face of the application itself.” *Id.* at 9. Thus, federal courts generally lack jurisdiction to consider “state-law-based, non-diverse Section 9 and 10 applications”—even if the parties arbitrate federal claims. *Id.* at 12. Suppose, for example, an employee and an employer from the same State arbitrate a Title VII dispute. Absent an arbitration agreement, a federal court would have jurisdiction over the Title VII

dispute. But if the parties arbitrate the Title VII dispute and a party subsequently files an application to confirm or vacate the award under Section 9 or 10 of the FAA, the federal court would lack jurisdiction under *Badgerow* because the arbitration agreement is a contract governed by state law between two parties from the same State.

Prior to arbitration, the FAA’s jurisdictional rules work differently. If a plaintiff files a lawsuit in federal court “upon any issue referable to arbitration,” Section 3 of the FAA requires the court to stay the case until the arbitration occurs. 9 U.S.C. § 3; *see Smith v. Spizzirri*, 601 U.S. 472, 476 (2024) (holding that when a party requests a Section 3 stay on a case referable to arbitration, a stay is mandatory). Thus, if an employee sues an employer from the same State under Title VII and the dispute falls within an arbitration agreement, the FAA would kick in and require the court to grant a stay. If a party refuses to arbitrate, the court may compel arbitration under Section 4 of the FAA. As with Section 3, a court’s authority to compel arbitration under Section 4 applies to all cases where the underlying dispute gives rise to federal subject-matter jurisdiction. *See Vaden v. Discover Bank*, 556 U.S. 49, 53 (2009).

But what happens when a court initially exercises jurisdiction over a case, stays the case under Section 3, and then, following the arbitration, the parties come back to the court seeking an order confirming or vacating the arbitration award? This question did not arise in *Badgerow* because the parties arbitrated their case without any federal-court involvement; the case did not

reach federal court until after the arbitration had already occurred.

This question has arisen repeatedly in the courts of appeals, resulting in a circuit split. In the decision below, the Second Circuit adhered to pre-*Badgerow* circuit precedent holding that a federal court’s pre-arbitration exercise of jurisdiction serves as an anchor that gives the court continuing jurisdiction over a subsequent Section 9 or 10 application, even if jurisdiction would otherwise be lacking. The Seventh Circuit reached the same conclusion in another post-*Badgerow* case. *See Kinsella v. Baker Hughes Oilfields Operations, LLC*, 66 F.4th 1099 (7th Cir. 2023). And several other courts of appeals have similar pre-*Badgerow* precedent endorsing this theory, which this petition will refer to as the “jurisdictional anchor” theory.

By contrast, in *SmartSky Networks, LLC v. DAG Wireless, Ltd.*, 93 F.4th 175, 181-83 (4th Cir. 2024), the Fourth Circuit rejected the “jurisdictional anchor” theory and held that a court must have an independent jurisdictional basis for a Section 9 or 10 petition. The Fourth Circuit expressly disagreed with both the Seventh Circuit’s decision in *Kinsella* and the district court’s decision in this very case (which the Second Circuit later affirmed). *See id.* at 184 n.8.

The Court should resolve the split in this case. There is no realistic possibility that the split will resolve on its own: the Fourth Circuit acknowledged and rejected the Seventh Circuit’s decision, while the Second Circuit acknowledged and rejected the Fourth Circuit’s decision. Further percolation is unlikely to be productive,

given that many circuits already have precedential opinions endorsing the “jurisdictional anchor” theory.

Moreover, the circuit split will result in inefficient litigation and forum-shopping. The Second Circuit’s rule, if allowed to stand, will create an incentive for parties to file federal court lawsuits or Section 4 petitions—even if both parties want to arbitrate and no judicial involvement is needed—in favorable jurisdictions solely for purposes of guaranteeing themselves a federal forum in a resultant application to confirm or vacate.

Finally, the Court should grant review because the Second Circuit’s decision is wrong. *Badgerow* interpreted the text of Sections 9 and 10, and the rule it derived from that text necessarily applies to *all* applications under Sections 9 and 10. Nothing in *Badgerow* or the text of the FAA suggests otherwise. The cases adopting the majority view largely rely upon stray statements in two of this Court’s earlier decisions, *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 201-02 (2002), and *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 275-76 (1932), neither of which concerned the jurisdictional requirements of Sections 9 and 10, and neither of which can override the plain text of the FAA.

This Court should grant certiorari and fulfill the FAA’s promise of enacting uniform nationwide policy in the sphere of arbitration.

OPINIONS BELOW

The summary order of the court of appeals, *see* Pet. App. 1a-10a, is unreported but is available at 2025 WL 1201914. The district court’s order confirming the

arbitration award, *see* Pet. App. 11a-28a, is likewise unpublished but available at 2023 WL 5935626.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered on April 25, 2025. *See* Pet. App. 1a-10a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The pertinent sections of the U.S. Code, 9 U.S.C. §§ 9 and 10, are reproduced in the appendix to this petition. *See* Pet. App. 29a-30a.

STATEMENT

A. Legal Background

1. “Federal courts are courts of limited jurisdiction” and “possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “[T]he burden of establishing [jurisdiction] rests upon the party asserting [it].” *Id.*

This Court has long recognized that the FAA is “something of an anomaly in the field of federal-court jurisdiction” because it “bestow[s] no federal jurisdiction but rather requir[es] an independent jurisdictional basis.” *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581-82 (2008) (citation omitted). Most often, the statutes supplying that independent jurisdictional basis are 28 U.S.C. § 1331, which grants courts jurisdiction over cases presenting questions of federal law, and 28 U.S.C. § 1332(a), which covers disputes between citizens of different States with an amount in controversy exceeding \$75,000.

Supposing a federal court has jurisdiction, what does the FAA permit it to do? Section 2, the Act’s main substantive provision, announces the general rule that arbitration agreements are “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. Section 3 states that the court may stay proceedings in the federal suit “until ... arbitration has been had in accordance with the terms of the agreement.” *Id.* § 3. That provision serves to ensure that “the parties can return to federal court if arbitration breaks down or fails to resolve the dispute.” *Smith v. Spizzirri*, 601 U.S. 472, 477 (2024). If a party refuses to arbitrate notwithstanding an arbitration agreement, Section 4 authorizes a court to compel arbitration. 9 U.S.C. § 4. Finally, Sections 9 and 10 authorize courts to confirm and vacate final arbitration awards. *Id.* §§ 9-10.

These different provisions are governed by different jurisdictional rules. Section 3 applies to all federal-court lawsuits in which the dispute is subject to an arbitration agreement. It creates a mandatory rule: “When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.” *Spizzirri*, 601 U.S. at 478. Likewise, a federal court has authority under Section 4 to compel arbitration in all cases where the underlying controversy would, save for the arbitration agreement, belong in federal court. *See Vaden v. Discover Bank*, 556 U.S. 49, 53 (2009).

By contrast, *Badgerow* held that a court assessing its jurisdiction to consider applications under Sections 9 and 10 “may look only to the application actually submitted to it” and may not look through the application to assess whether it would have had jurisdiction over the

underlying controversy. *Badgerow v. Walters*, 596 U.S. 1, 5 (2022). Any other result, the Court emphasized, would be “jurisdictional ‘expan[sion] 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 (“Compl.”), ¶ 2. On October 5, 2020, Petitioner filed a timely charge of discrimination against the Chateau Marmont¹ with the Equal Employment Opportunity Commission, which issued a right-to-sue letter on October 13, 2020. *See id.* ¶¶ 5-6. On December 11, 2020, petitioner sued respondents—Andre Tomes Balazs and several related corporate entities (the “LLC Defendants”)—in the Southern District of New York, alleging causes of action under both federal and California law. *See id.* ¶¶ 226-649. Petitioner’s initial complaint asserted jurisdiction under both 28 U.S.C. §§ 1331 and 1332. *See, e.g., id.* ¶ 1 (alleging violations of federal law giving rise to jurisdiction under Section 1331); *id.* ¶ 3 (invoking Section 1332).

Respondents moved the district court, pursuant to Sections 3 and 4 of the FAA, to compel arbitration and stay the lawsuit pending arbitration, *see* D. Ct. Dkt. 17, pointing to an arbitration agreement that petitioner entered into with the Chateau Marmont at the start of his employment, *see* D. Ct. Dkt. 20, at 2-3; D. Ct. Dkt. 19-1 (the “Arbitration Agreement”). Respondents argued that petitioner filed suit against them—“four entities

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

and persons who never were his employer”—solely to “avoid[] the contractual commitment [petitioner] made in the Arbitration Agreement” with the Chateau Marmont. D. Ct. Dkt. 20, at 1.

The district court held that the Arbitration Agreement was valid and binding on petitioner, *see* D. Ct. Dkt. 30 at 4-9, and that “[t]he plain language of [the Arbitration Agreement] establishe[d] that the parties intended to arbitrate all issues arising from Plaintiff’s employment,” including “whether [petitioner]’s claims fall under the Arbitration Agreement,” *id.* at 10. Hence, the Court held that “Plaintiff may not proceed on his claims in this proceeding until his claims are resolved in arbitration.” *Id.* at 11-12. The court “stay[ed] [the] proceedings pursuant to 9 U.S.C. § 3 while awaiting the outcome of any arbitration in the venue specified by the agreement.” *Id.* at 12.² The district court directed the parties to file joint reports on “the status of any arbitration in California” every 60 days thereafter. *Id.*

2. With the district court proceedings stayed, on August 3, 2021, petitioner filed an arbitration demand with JAMS, the arbitrator specified in the Arbitration Agreement. *See* D. Ct. Dkt. 96-1, at 2; D. Ct. Dkt. 19-1, at ECF No. 2. After an initial hearing, petitioner agreed to dismiss Balazs and the LLC Defendants from the arbitration and substitute the Chateau Marmont as the sole

² The court declined to issue an order formally compelling arbitration under Section 4 because Section 4 requires arbitration proceedings to occur “within the district in which the petition for an order directing such arbitration is filed,” while the parties’ Arbitration Agreement required the arbitration to occur in Los Angeles. *See* D. Ct. Dkt. 30 at 12.

respondent. *See* D. Ct. Dkt. 96-1; *see also* D. Ct. Dkt. 95 at 2.

On January 17, 2023, the arbitrator issued his decision (the “Final Award”). *See generally* D. Ct. Dkt. 96-1. The arbitrator found that petitioner had “failed to prove any of his claims” and so awarded him \$0. *See id.* at 16-17. The arbitrator also granted the Chateau Marmont’s request for sanctions of \$11,416.50 and \$23,026.50, respectively, against petitioner and his counsel, Thomas Farinella, for their conduct during the arbitration. *See id.* at 17-18.

3. Respondents then returned to the district court. On March 24, 2023, respondents filed an application to confirm the Final Award—on behalf of themselves and the Chateau Marmont—against both petitioner and Farinella pursuant to Section 9 of the FAA, 9 U.S.C. § 9. *See* D. Ct. Dkt. 95, at 1; D. Ct. Dkt. 117, at 1.

Petitioner opposed respondents’ application and filed a cross-application to vacate the Final Award.³ *See* D. Ct. Dkt. 106. Although petitioner opposed confirmation on the merits, *see id.* at 4-16, he also levied a more fundamental challenge, arguing that the district court lacked subject-matter jurisdiction to decide respondents’ application under this Court’s decision in *Badgerow*, *see id.* at 16-18. Petitioner asserted that the district court possessed neither diversity jurisdiction

³Following the issuance of the Final Award, Farinella withdrew from representing petitioner, appeared in the district court on his own behalf as an interested party, and likewise filed a motion to vacate the Final Award against him. *See* D. Ct. Dkts. 79, 85, 107.

nor federal-question jurisdiction over respondents' Section 9 application. *See id.*

In reply, respondents did not argue that their motion to confirm itself created any independent basis for federal jurisdiction. *See* D. Ct. Dkt. 107, at 1-2. Instead, they asserted that, because the district court had jurisdiction over petitioner's original complaint and issued a stay under Section 3, it retained jurisdiction to resolve the motion to confirm. *See id.*

On September 12, 2023, the district court entered an order confirming the Final Award. Pet. App. 11a-28a. On the jurisdictional question, the district court began by observing that, "[b]ecause of the federal questions presented" by petitioner's initial complaint, it "had subject matter jurisdiction when it stayed the action pending arbitration." Pet. App. 15a. The district court then cited this Court's decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 202 (2002), 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. And the district court concluded that *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. As the district court openly acknowledged, its conclusion that jurisdiction existed in this case depended entirely on the parties' underlying substantive dispute: "Federal question jurisdiction exists because Plaintiff filed this action asserting claims under federal law." *Id.* at 15a.

4. Petitioner appealed and, as relevant here, renewed his argument that the district court lacked subject-matter jurisdiction to confirm the Final Award. *See* Ct. App. Dkt. 153, at 16-18.⁴ Once again, respondents made no attempt to argue that federal jurisdiction existed based upon the face of the motion to compel. *See* Ct. App. Dkt. 241, at 29-31. Instead, they observed that the district court had both diversity and federal-question jurisdiction “when [the case] was initiated” and that the district court “retained jurisdiction and required the parties to file status reports during the pendency of the arbitration.” *Id.* at 29-30. From there, respondents relied upon *Cortez Byrd* to argue that the district court’s “jurisdiction did not evaporate simply because [petitioner] lost in arbitration.” *Id.* at 31.

The Second Circuit affirmed. At the outset, it recognized that the FAA “does not itself confer subject matter jurisdiction.” Pet. App. 5a (citing *Hall St. Assocs.*, 552 U.S. at 581-82). And it recognized that the motion to confirm “does not itself reveal a basis for” federal jurisdiction. *Id.* at 6a. Thus, if *Badgerow* governed, the district court would not have had jurisdiction to decide the motion to confirm.

But the court of appeals concluded that *Badgerow* did not govern. It explained that “*Badgerow* ... involved an action commenced ... for the sole purpose of vacating an

⁴ Farinella also appealed, but did not contest the district court’s subject-matter jurisdiction. *See generally* Ct. App. Dkt. 162. Additionally, while it never filed an appearance in the district court, the Chateau Marmont 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.

arbitral award, unlike the present action, which started as a federal question suit before it was stayed pending arbitration.” *Id.* at 6a. And like the district court below, the court of appeals characterized 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). It further explained that prior Second Circuit precedent—specifically, *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)—held the same: “[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).

The court of appeals acknowledged, however, that the “Circuits have split on the issue” following *Badgerow*. *Id.* (citing *SmartSky Networks, LLC v. DAG Wireless, Ltd.*, 93 F.4th 175, 177-78, 183-84 (4th Cir. 2024); *Kinsella*, 66 F.4th at 1103; *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 238 n.16 (3d Cir. 2024)). But the court of appeals observed that *Badgerow* did not “consider[] ... the reasoning in *Smiga* and *Marchant*, nor [of] other Supreme Court decisions articulating similar principles.” *Id.* And on that basis, the court of appeals concluded that *Badgerow* had not “‘entirely undermine[d]’ those [earlier] decisions” and that it was therefore “bound to apply them and conclude that the district court retained jurisdiction following its stay pending arbitration to confirm the resulting award.” *Id.*

REASONS FOR GRANTING THE PETITION

The case for certiorari is straightforward. There is a clear and acknowledged split among the courts of appeals on an important and recurring question about the power of federal courts to consider motions to compel or vacate arbitration awards. The majority view applied by the Second Circuit below—under which a district court may decide a motion to compel that does not itself present a federal question or concern diverse parties solely by virtue of the fact that the court earlier stayed the case pending arbitration—is inconsistent with the FAA and provides parties with a roadmap for evading *Badgerow*’s clear command. This case, which squarely presents this important issue, is a strong vehicle for resolving this question. The petition should be granted.

I. THERE IS A CLEAR, ACKNOWLEDGED SPLIT ON THE QUESTION PRESENTED.

As the Second Circuit acknowledged, the “Circuits have split on the issue” whether a district court that possesses jurisdiction to compel arbitration or stay proceedings pending arbitration retains jurisdiction to confirm or vacate the resulting arbitral award even absent an independent jurisdictional basis for considering such a request. Pet. App. 7a.

A. Several Circuits Have Adopted the “Jurisdictional Anchor” Theory.

The decision below rested on Second Circuit precedent holding that “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.”

Smiga, 766 F.2d at 705. That holding was based on the understanding that a motion to compel arbitration and a subsequent, follow-on motion to confirm or vacate form “one proceeding” rather than “separable controversies.” *Id.* (citing *Marchant*, 29 F.2d at 43). Thus, the Second Circuit held, a district court that has jurisdiction to enter an order compelling arbitration retains jurisdiction to confirm or vacate any resulting award even if the court could not, under *Badgerow*, decide the latter request if it were brought in its own action. Pet. App. 6a.

Several other courts of appeals have adopted the same “jurisdictional anchor” doctrine. The **Seventh Circuit** adopted the same view on materially identical facts in the post-*Badgerow* case of *Kinsella v. Baker Hughes Oilfield Operations, LLC*, 66 F.4th 1099 (7th Cir. 2023). Just as in this case, the plaintiff filed suit in federal court, and the district court subsequently “stay[ed] the case pending arbitration.” *Id.* at 1102.⁵ After the arbitrator issued a decision awarding the plaintiff \$0, he returned to the district court and moved to vacate the award. *See id.* The Seventh Circuit, after soliciting supplemental briefing on the question whether the district court had jurisdiction to decide that motion “in light of *Badgerow*,” held that it did. *Id.* at 1102-03. Exactly like in this case, the Seventh Circuit held that *Badgerow* did not disturb pre-*Badgerow* precedent recognizing the “jurisdictional anchor” theory. As the court explained, the district court had both federal-question and diversity

⁵ The district court subsequently “dismissed the case ‘without prejudice with leave to reinstate within 7 days of the arbitration ruling,’” a docket-management tactic that the Seventh Circuit recognized was “in effect a stay.” *Id.* at 1102-03.

jurisdiction over “the underlying suit,” and “[u]nder [Seventh Circuit] caselaw, the district court’s stay did not impact its jurisdiction to confirm or vacate the arbitration award.” *Id.* at 1103 (citing, *inter alia*, *Davis v. Fenton*, 857 F.3d 961, 962-63 (7th Cir. 2017)).

The **Tenth Circuit**, too, has endorsed the “jurisdictional anchor” theory. *Dodson Int’l Parts, Inc. v. Williams Int’l Co. LLC*, 12 F.4th 1212 (10th Cir. 2021), involved facts similar to this case. The plaintiff brought a federal-question suit in the district court; the district court compelled arbitration and stayed proceedings under Sections 3 and 4; and, after losing the arbitration, the plaintiff returned to the district court seeking to vacate the award. *See id.* at 1217-19. The Tenth Circuit held that, because “[t]he district court unquestionably had federal-question jurisdiction over the initial suit,” it “retained subject-matter jurisdiction to confirm the award.” *Id.* at 1227-28. Notably, the court recognized that this Court had recently granted certiorari in *Badgerow*, *see id.* at 1227 n.6, but it viewed *Badgerow* as inapposite because it concerned “freestanding suits to confirm or set aside an award when a court had not ordered the arbitration in the first place,” *id.* at 1227.

Likewise, the **Third Circuit** adopted the “jurisdictional anchor” theory in *Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240 (3d Cir. 2013). In that case, the plaintiff filed a federal-question complaint over which the district court “indisputably had federal-question jurisdiction.” *Id.* at 246. The parties then arbitrated, after which the plaintiff filed a motion to vacate the arbitration award. *Id.* at 244-45. The court observed that the district court “lacked any independent federal-

question jurisdiction to consider [the plaintiff]’s motion.” *Id.* at 246 n.5. Nonetheless, the Third Circuit held that the district court could consider the plaintiff’s application because it administratively closed the case without issuing a final order, and hence “never lost jurisdiction.” *Id.* at 246. In the Third Circuit’s view, “[b]ecause the [d]istrict [c]ourt retained jurisdiction, it correctly entered a final order when it denied [the plaintiff’s] motion to vacate.” *Id.* at 248-49.

In the post-*Badgerow* case of *George v. Rushmore Service Center, LLC*, 114 F.4th 226 (3d Cir. 2024), the Third Circuit reaffirmed its view that jurisdiction over a Section 10 application turns on whether the court had jurisdiction over the original complaint. The court concluded that it lacked jurisdiction over the application to vacate because it lacked Article III standing over the original complaint. *Id.* at 238-39. In reaching that conclusion, the court looked through the face of the Section 10 application at issue and concluded that the original complaint could not, in *that* case, serve as a jurisdictional anchor for the subsequent application. But the court also quoted the Seventh Circuit’s *Kinsella* decision for the proposition that “if a district court [*does*] ha[ve] an independent jurisdictional basis ... to hear a suit, that court’s jurisdiction ‘continues over’ both a motion to compel and a subsequent motion to vacate.” *Id.* at 238 & n.16 (quoting *Kinsella*, 66 F.4th at 1103).

The **Eleventh Circuit** applied the “jurisdictional anchor” theory in *PTA-FLA, Inc. v. ZTE USA, Inc.*, 844 F.3d 1299 (11th Cir. 2016). *PTA-FLA* involved the same basic fact pattern as this case: the district court compelled arbitration and stayed the case under Section 3,

and the prevailing party in arbitration returned to federal court seeking an order confirming the award—but there was no independent jurisdictional basis over the motion to confirm in light of a reduced amount in controversy. *See id.* at 1303-06. The Eleventh Circuit nonetheless held that the district court could exercise jurisdiction under the “jurisdictional anchor” theory. It applied circuit precedent holding that “when a federal district court grants a motion to compel arbitration it retains jurisdiction to confirm or vacate the resulting arbitration award under 9 U.S.C. §§ 9–10.” *Id.* at 1305 (quoting *TranSouth Fin. Corp. v. Bell*, 149 F.3d 1292, 1297 (11th Cir. 1998)). Thus, “because the district court had the power to compel arbitration, it retained the power to confirm the arbitration award against the original parties.” *Id.* at 1306.

The **Fifth Circuit** has applied the “jurisdictional anchor” theory for decades. In *T & R Enterprises, Inc. v. Continental Grain Co.*, 613 F.2d 1272 (5th Cir. 1980), the Fifth Circuit rejected the argument that the district court lacked jurisdiction to confirm an arbitration award under Section 9, holding that “once invoked, the power of [the district] court to enter a judgment on the arbitrator’s award which was an outgrowth of the original action was sufficient to satisfy the jurisdictional requirements.” *Id.* at 1279. The Fifth Circuit recently adhered to that view in a post-*Badgerow*, albeit unpublished, opinion. *See Rodgers v. United Servs. Auto. Ass’n*, No. 21-50606, 2022 WL 2610234, at *2 (5th Cir. July 8, 2022) (“[W]hen a district court with jurisdiction over a case refers the case to arbitration and orders it administratively closed, the court retains jurisdiction

over the case,” including over a “subsequent [application] to vacate or confirm an arbitration award after [the district court] reopens the case.”)⁶

The **Eighth Circuit** has similarly endorsed the “jurisdictional anchor” theory without extended analysis. *See Smart v. Sunshine Potato Flakes, L.L.C.*, 307 F.3d 684, 685-86 (8th Cir. 2002) (holding that, because “[t]he district court initially had diversity jurisdiction over this action,” it had “the further power to confirm any ensuing arbitration award” “[a]fter it entered a stay pending arbitration under 9 U.S.C. § 3” (citing *Cortez Byrd*, 529 U.S. at 202)).

B. The Fourth Circuit Has Rejected the “Jurisdictional Anchor” Theory.

As the Second Circuit acknowledged, the decision below conflicts with *SmartSky Networks, LLC v. DAG Wireless, LTD.*, 93 F.4th 175 (4th Cir. 2024).

The facts in *SmartSky* are materially indistinguishable from the facts here. After SmartSky filed a federal-question suit, the district court stayed the suit pending arbitration. *See id.* at 177-78. After the arbitrator found in favor of SmartSky, the parties returned to the district court and filed cross-motions to confirm and vacate the award. *See id.* at 178. When the district court confirmed the award, the defendants appealed, arguing that it lacked jurisdiction to do so under *Badgerow*. *See id.*

⁶ More recently, the Fifth Circuit issued another unpublished opinion “declin[ing] to address the ‘jurisdictional anchor’ theory” but noting the circuit split. *Wheatfall v. HEB Grocery Co., L.P.*, No. 24-20257, 2025 WL 1703637, at *2 n.1 (5th Cir. June 18, 2025).

The Fourth Circuit agreed, rejecting the view that “a complaint that asserts federal claims acts as a ‘jurisdictional anchor’ for subsequent FAA Section 9 and 10 applications when the case was previously stayed pursuant to Section 3 of the FAA.” *Id.* at 181. As the court explained, “[a]pplications made pursuant to Sections 9 and 10 of the FAA are not motions in a pending action; rather, they are separate actions independent of the related civil lawsuit.” *Id.* at 182. It went on: “At the time the parties filed their respective Section 9 and 10 applications, they were no longer litigating ... th[e] issues and claims” that gave rise to the original lawsuit and which were resolved in arbitration; “[i]nstead, the parties’ dispute [now] focused on the enforceability of the arbitral award.” *Id.* Thus, the Court concluded that, “[c]onsistent with *Badgerow*, ... the district court could not” “look through” the face of the Section 9 and 10 applications to claim jurisdiction based on the federal questions presented by SmartSky’s original complaint. *Id.* (citation omitted).

The Fourth Circuit then went on to rebut several counterarguments raised by SmartSky—many of which were adopted by the Second Circuit here.

First, the Fourth Circuit rejected as a “distinction without a difference” SmartSky’s argument “that *Badgerow* is distinguishable ... because, in *Badgerow*, no underlying federal court action served as a jurisdictional anchor.” *Id.* at 183-84. It observed that “[n]either *Badgerow* nor the plain language of the FAA suggests that Congress would have wanted the rules governing ‘freestanding’ Section 9 and 10 applications to differ from those applicable to applications filed in a case

previously stayed.” *Id.* at 184. Because *Badgerow* “plainly h[eld] that *all* Section 9 and 10 applications must have an independent jurisdictional basis clear on the face of the application,” the Fourth Circuit held that “the district court did not have or ‘retain’ subject matter jurisdiction to adjudicate the Section 9 and 10 applications because it had subject matter jurisdiction to stay the action under Section 3.” *Id.* (emphasis added).

Second, the Fourth Circuit rejected the argument that this Court’s prior precedents—specifically, *Cortez Byrd* and *Marine Transit*—required a different result. *See id.* at 184-85. The Fourth Circuit explained that *Cortez Byrd* “pertained to venue, not jurisdiction” and thus “d[id] not hold or find that a court that has subject matter jurisdiction to enter a stay retains jurisdiction to later enforce an arbitration award.” *Id.* at 185. And *Marine Transit* involved Section 8 of the FAA, which—unlike Sections 9 and 10—“expressly provides that a district court *may* ‘retain’ jurisdiction to enforce, vacate, or modify an award” relating to “libel suit[s] filed in admiralty.” *Id.* at 186-87 (emphasis added). Accordingly, the court concluded that neither *Cortez Byrd* nor *Marine Transit* “provide any escape from *Badgerow*’s holding that there must be an independent basis for subject matter jurisdiction for applications to enforce or vacate an arbitration award.” *Id.* at 187.

The Fourth Circuit acknowledged, but disagreed with, both *Kinsella* and the district court’s decision in this case (which the Second Circuit later affirmed). The Fourth Circuit noted that the *Kinsella* court “looked beyond the face of application to vacate the arbitration award to the underlying civil suit to assess the district

court’s subject matter jurisdiction.” *Id.* at 184 n.8. It stated: “Considering the clear mandates of *Badgerow* we cannot follow in the footsteps of our sister Circuit.” *Id.* Likewise, the court “decline[d] to adopt the reasoning of the *Jules* court because, as discussed, we are of the view that its reliance on *Cortez* is misplaced; *Badgerow* is applicable even when a case was previously stayed pursuant to Section 3.” *Id.*

II. THE COURT SHOULD RESOLVE THE CIRCUIT SPLIT IMMEDIATELY.

The Court should resolve the circuit split in this case. It is clear the split will not go away without this Court’s intervention. Following *Badgerow*, the Seventh Circuit reaffirmed its prior precedent adopting the “jurisdictional anchor” theory. The Fourth Circuit then rejected the “jurisdictional anchor” theory, expressly disagreeing with both the Seventh Circuit’s decision and the district court’s decision in this case. In the decision below, the Second Circuit affirmed the district court and held that the Fourth Circuit’s view was contrary to Second Circuit precedent. Thus, the circuits are at loggerheads, and only a decision from this Court will resolve the split.

Additional percolation is unnecessary. The circuits on both sides of the split have acknowledged and grappled with the opposing view; the circuits simply disagree. While future cases might deepen the split, there is no reason to think any such cases will further elucidate the question presented. Denying review will simply prolong the uncertainty.

Leaving the circuit split intact will cause inefficiency and practical problems. Under the “jurisdictional

anchor” theory, federal jurisdiction over a Section 9 or 10 application turns on whether a lawsuit or motion to compel arbitration was previously filed in federal court. For parties who desire a federal forum for a Section 9 or 10 application, the “jurisdictional anchor” theory thus creates an incentive to file useless federal-court lawsuits or Section 4 petitions in cases inevitably headed for arbitration. Creating an incentive to file useless lawsuits is bad in any context, and it is particularly bad in the context of the FAA, which is intended to minimize unnecessary federal litigation in arbitrable disputes. As Justice Breyer observed in his discussion of the “jurisdictional anchor” theory in his *Badgerow* dissent: “[T]o 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.” 596 U.S. at 26 (Breyer, J., dissenting) (quoting *Vaden*, 556 U.S. at 65 (quotation marks omitted)).

The circuit split will also cause forum-shopping, wasteful litigation, and races to the courthouse. Plaintiffs who want a Section 9 or 10 application to be litigated in state court will sue within the Fourth Circuit. Defendants who prefer a federal forum will move to transfer the case to a court within the circuits that have adopted the “jurisdictional anchor” approach, resulting in time-wasting litigation in a case inevitably bound for arbitration. Alternatively, defendants will rush to a court in a “jurisdictional anchor” circuit to file a petition to compel arbitration before the plaintiff can get its lawsuit on file. Plaintiffs may then seek to transfer the motion to compel to the Fourth Circuit, even if they have

no intention of resisting arbitration—leading to the bizarre spectacle of litigation on where to litigate a useless motion to compel arbitration.

This Court has emphasized that the FAA sets out a “national policy” in the sphere of arbitration, *Hall St. Assocs.*, 552 U.S. at 581 (citation omitted), and that the FAA should not be interpreted in a way that would “encourage and reward forum shopping,” *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984). Nor should the Court allow a circuit split to remain intact that would encourage and reward forum shopping. Because the status quo “encourage[s] gamesmanship,” *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 65 (2013), this Court should grant review now.

Finally, this case is an appropriate vehicle to resolve the split. It presents a typical fact pattern: the plaintiff sues, the court stays the case under Section 3, and the parties then return to the district court seeking to confirm the award. Petitioner raised his challenge to the district court’s subject matter jurisdiction before both the district court, *see* Pet. App. 15a-16a, and the court of appeals, *see id.* at 5a-7a. Respondents have never argued, either in the district court or in the court of appeals, that their Section 9 application (or petitioner’s Section 10 cross-application) would satisfy *Badgerow*’s requirements. *See* D. Ct. Dkt. 107, at 1-2; Ct. App. Dkt. 241, at 29-31. The Second Circuit therefore concluded that “the application [here] does not itself reveal a basis for diversity or [federal-question] jurisdiction.” Pet. App. 6a. The Second Circuit expressly based its decision on the “jurisdictional anchor” theory and acknowledged it was expanding a circuit split. There is no reason

to await a different certiorari candidate on an issue that this Court will inevitably decide.

III. THE SECOND CIRCUIT'S DECISION IS WRONG.

The Second Circuit erred in holding that district courts may “resolve ... state-law-based, non-diverse Section 9 and 10 applications,” *Badgerow*, 596 U.S. at 12, based solely on the happenstance of one party’s decision to invoke the district court’s jurisdiction prior to the commencement of arbitration. That interpretation of Sections 9 and 10 is inconsistent with the text and structure of the FAA. This Court’s decisions in *Cortez Byrd* and *Marine Transit*, far from supporting the Second Circuit’s decision, confirm that it is wrong.

First and foremost, the Second Circuit’s position cannot be squared with the text of the FAA. Nothing in “the plain language of the FAA suggests that Congress would have wanted the rules governing ‘freestanding’ Section 9 and 10 applications to differ from those applicable to applications filed in a case previously stayed.” *SmartSky*, 93 F.4th at 184. As the *Badgerow* Court observed, “Sections 9 and 10 do not mention the court’s subject-matter jurisdiction at all.” 596 U.S. at 11. Much less do they suggest that the proper method for assessing a court’s subject-matter jurisdiction turns on whether the district court considering the application previously entered a stay under Section 3, a provision that Sections 9 and 10 likewise “do not mention ... at all.” *Id.* The “jurisdictional anchor” approach adopted by the Second Circuit is entirely unmoored from the text of Sections 9 and 10.

A different provision of the FAA—Section 8—confirms the point. That provision states that, with respect only to libel and seizure actions brought in admiralty, “the party claiming to be aggrieved may begin his proceeding hereunder ... 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 language makes plain that Congress knows how to create a jurisdictional anchor when it wants to. But it did not do so in either Section 9 or Section 10. “[W]hen 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” and interpret the statute to give effect to that deliberate choice. *Badgerow*, 596 U.S. at 11 (quoting *Collins v. Yellen*, 594 U.S. 220, 248 (2021)). That principle requires rejecting the Second Circuit’s interpretation of Sections 9 and 10.

The Second Circuit’s rule also misapprehends the nature and purpose of a Section 3 stay. As this Court explained in *Spizzirri*, Section 3 ensures that “the parties can return to federal court if arbitration breaks down or fails to resolve the dispute.” 601 U.S. at 477. So, as Jules did here, a party might seek to lift a Section 3 stay based on an allegation that the other party refused to comply with the terms of the arbitration. *See* D. Ct. Dkt. 52, at 1. Or if the arbitrator determines that some of the plaintiff’s claims are *not* subject to arbitration, the plaintiff can ask the court to lift the stay so that the parties can litigate those claims. But where, as here, the arbitration

proceeding definitively resolved *all* of the plaintiff's claims, then there simply is no more federal case, and the stay's purpose has been satisfied. And the parties' subsequent dispute about the award's enforceability is "*another controversy*" over which the court must separately establish jurisdiction. *Badgerow*, 596 U.S. at 9, 12 (emphasis added); see *SmartSky*, 93 F.4th at 182 (explaining that Section 9 and 10 applications are "separate actions independent of the related civil lawsuit").

Neither *Marine Transit* nor *Cortez Byrd* support the Second Circuit's position. *Marine Transit* involved Section 8 of the FAA, which, as just discussed, see p. 25, *supra*, expressly provides that, in admiralty actions for libel against a vessel, the district court "shall retain jurisdiction to enter its decree upon [an arbitration] award"—that is, to confirm, vacate, or modify the award. 9 U.S.C. § 8. In those circumstances, the Court stated: "We do not conceive it to be open to question that, where the court has authority under the statute ... to make an order for arbitration, the court also has authority to confirm the award or to set it aside." *Marine Transit*, 284 U.S. at 275-76. But it is impossible to divorce that statement from the maritime context in which the case arose: *of course* that authority was not "open to question," *id.*, because Section 8 expressly grants it. *Marine Transit* cannot be read to announce "a blanket rule that a district court 'retains' jurisdiction" to decide subsequent Section 9 and 10 applications even where, as here, Section 8 is not implicated. *SmartSky*, 93 F.4th at 186-87.

Cortez Byrd likewise has no application here. *Cortez Byrd* sought to "resolve a split among the Courts of Appeals over the permissive or mandatory character of the

FAA’s *venue* provisions,” 529 U.S. at 196 (emphasis added), and thus had no occasion to opine about the separate, antecedent issue of *jurisdiction*. Indeed, there was no dispute in *Cortez Byrd* about subject-matter jurisdiction at all—the case was “a diversity action.” *Id.* at 198.

The *Cortez Byrd* Court held that an application to vacate an arbitration award could be made in “any district proper under the general venue statute.” *Id.* at 195. In reaching that conclusion, the Court observed that “[a] restrictive interpretation would ... place § 3 and §§ 9-11 ... in needless tension,” because a court that issued a Section 3 stay might, “[i]f [the] arbitration were then held outside the district of that litigation,” “lose venue” to decide “a subsequent proceeding to confirm, modify, or set aside the arbitration award.” *Id.* at 201-02. But concerns about a district court “losing venue” presuppose that the court possesses *jurisdiction*, as indeed both district courts in *Cortez Byrd* did. And it is in *that* context that the Court employed the language relied upon by the Second Circuit below, *see* Pet. App. 6a, stating that it had “previously held that the court with the power to stay the action under § 3 has the further power to confirm any ensuing arbitration award.” 529 U.S. at 202 (citing *Marine Transit*, 284 U.S. at 275-76). *Cortez Byrd*’s reference, in the context of a discussion about venue, to *Marine Transit*’s interpretation of Section 8, cannot be read “to set forth a blanket rule that a court that stays a case pursuant to Section 3 retains *subject matter jurisdiction* to enforce or vacate an award under Sections 9 and 10.” *SmartSky*, 93 F.4th at 185 (emphasis added).

Indeed, *Cortez Byrd*'s reasoning cuts the other way. This Court could not imagine "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." 529 U.S. at 202. The Second Circuit should have shared that skepticism here, as its rule does precisely what *Cortez Byrd* forbids—creates "different rule[s]" for subject-matter jurisdiction depending on whether "arbitration was ... preceded by a suit between the parties." *Id.* There is no sense in such a scheme.

For all of these reasons, the Second Circuit's interpretation of Sections 9 and 10 cannot stand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of April, two thousand twenty-five.

PRESENT:

GUIDO CALABRESI,
BARRINGTON D. PARKER, JR.,
WILLIAM J. NARDINI,
Circuit Judges.

ADRIAN JULES,
Plaintiff-Appellant,

THOMAS A. FARINELLA,
Interested-Party-Appellant,

v.

23-1253(L),
23-1283(Con)

ANDRE BALAZS
PROPERTIES, ANDRE
TOMES BALAZS, BALAZS
INVESTORS LLC, HOTELS
A.B., LLC,

Defendants-Appellees,

CHATEAU HOLDINGS,
LTD.,

*Intervenor.**

FOR PLAINTIFF-APPELLANT: Adrian Jules, *pro se*, Los Angeles, California.

FOR INTERESTED-PARTY-APPELLANT: Thomas A. Farinella, *pro se*, New York, New York.

FOR DEFENDANTS-APPELLEES AND
INTERVENOR: Alekzandir Morton, Pillsbury
Winthrop Shaw Pittman LLP, San Francisco, California;
Kenneth W. Taber, Pillsbury Winthrop Shaw Pittman
LLP, New York, New York.

* The Clerk of Court is respectfully directed to amend the caption as set forth above.

Appeal from a judgment of the United States District Court for the Southern District of New York (Lorna G. Schofield, *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Adrian Jules and Interested-Party-Appellant Attorney Thomas A. Farinella, both proceeding *pro se*, appeal from a judgment of the United States District Court for the Southern District of New York (Lorna G. Schofield, *District Judge*) confirming an arbitration award entered against them. Jules, represented by Farinella, sued Defendants-Appellees, asserting various employment discrimination and other claims under state and federal law. Pursuant to an arbitration agreement between Jules and Intervenor Chateau Holdings, Ltd. (“Chateau”), the district court stayed the proceedings pending arbitration (between Jules and Chateau) and granted Defendants-Appellees’ motion—in which Chateau purported to join despite not being a party to the action—to confirm the resulting award.

Collectively, Jules and Farinella challenge two orders of the district court. The first order denied Jules’s motion to lift the stay due to Chateau’s alleged material breach of the agreement during arbitration. The second order confirmed the arbitration award.¹ We assume the parties’ familiarity with the case.

¹ Although Jules challenges the district court’s order staying the proceedings pending arbitration, we decline to consider those arguments because they were raised for the first time in his reply

As to the first challenged order, we review *de novo* a district court’s conclusion that the parties intended an issue to be decided by an arbitrator, rather than a court. *See Wells Fargo Advisors v. Sappington*, 884 F.3d 392, 395 (2d Cir. 2018). Jules argues that the district court, not the arbitrator, was the proper authority to decide whether Chateau materially breached the arbitration agreement by allegedly failing to timely pay an arbitration fee. *See* Cal. Civ. Proc. Code. § 1281.98(a)(1).

The Supreme Court has held that questions of arbitrability are “for judicial determination unless the parties clearly and unmistakably provide otherwise.” *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002).² On the other hand, procedural questions that “grow out of the dispute and bear on its final disposition” are “presumptively” for the arbitrator to decide. *Id.* at 84. It is well established that parties may delegate “gateway issue[s]”—including questions of “whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy”—to the arbitrator. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–70 (2010).

Here, we need not decide which category the material breach issue falls under because, in any event, there exists “clear and unmistakable evidence that the parties” delegated this issue to the arbitrator. *Republic*

brief. *See, e.g., Graham v. Henderson*, 89 F.3d 75, 82 (2d Cir. 1996) (declining to consider an argument raised for the first time in a *pro se* litigant’s reply brief).

² Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

of Ecuador v. Chevron Corp., 638 F.3d 384, 394 (2d Cir. 2011). The arbitration agreement stated that “any dispute arising out of this Agreement will be determined by the arbitrator.” Record on Appeal, No. 19-1 at 3. Like the district court, we agree that an employee’s assent to such a broad arbitration clause required Jules “to submit [his] employment discrimination claims to arbitration.” *Gold v. Deutsche Atkiengesellschaft*, 365 F.3d 144, 146 (2d Cir. 2004). Further, the agreement expressly incorporated Judicial Arbitration and Mediation Services (“JAMS”) rules, which provided that the arbitrator would decide jurisdictional and arbitrability disputes. This constitutes further evidence of delegation. *Cf. Davitashvili v. Grubhub Inc.*, 131 F.4th 109, 117 (2d Cir. 2025) (“When parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties’ intent to delegate such issues to the arbitrator.”). The district court therefore correctly left this issue for the arbitrator to determine.

Turning to the order confirming the arbitration award, Jules first challenges the district court’s subject matter jurisdiction under *Badgerow v. Walters*, 596 U.S. 1, 9 (2022). A district court’s legal conclusion as to its subject matter jurisdiction is reviewed *de novo*. *Behrens v. JPMorgan Chase Bank, N.A.*, 96 F.4th 202, 206 (2d Cir. 2024).

The Federal Arbitration Act (“FAA”), *see* 9 U.S.C. § 1 *et seq.*, does not itself confer subject matter jurisdiction. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581–82 (2008). Accordingly, when faced with a petition to

compel arbitration under Section 4 of the FAA, a district court may “look through” the petition to determine whether it would have subject matter jurisdiction over the underlying controversy. *Vaden v. Discover Bank*, 556 U.S. 49, 53 (2009). If it would, the court has subject matter jurisdiction to adjudicate the Section 4 petition. *Id.*

For over a decade following *Vaden*, this Court and other Circuits applied the look-through approach to petitions to confirm or vacate an award under FAA Sections 9 and 10. *Trs. of N.Y. State Nurses Ass’n Pension Plan v. White Oak Glob. Advisors, LLC*, 102 F.4th 572, 594 (2d Cir. 2024) (collecting cases). But in *Badgerow*, the Supreme Court held that, when presented with an application to confirm or vacate an arbitral award under FAA Sections 9 and 10, a court assessing its subject matter jurisdiction must look to the face of the application alone, not the underlying substantive controversy, as it would when applying the look-through approach. *See Badgerow*, 596 U.S. at 4–5. Here, the application does not itself reveal a basis for diversity or subject matter jurisdiction.

Badgerow, however, involved an action commenced (in state court and then removed to federal court) 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. 596 U.S. at 5–6. And the Supreme Court has held that a “court with the power to stay the action under § 3 [of the FAA] has the further power to confirm any ensuing arbitration award.” *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 202 (2000); *see also Marine Transit*

Corp. v. Dreyfus, 284 U.S. 263, 275–76 (1932). This Court has held the same. See *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 705 (2d Cir. 1985) (“[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.” (citing *Marchant v. Mead-Morrison Mfg. Co.*, 29 F.2d 40, 43 (2d Cir. 1928))).

We have not considered whether *Smiga* and *Marchant* remain good law after *Badgerow*, and our sister Circuits have split on the issue. Compare *SmartSky Networks, LLC v. DAG Wireless, Ltd.*, 93 F.4th 175, 177–78, 183–84 (4th Cir. 2024), with *Kinsella v. Baker Hughes Oilfields Operations, LLC*, 66 F.4th 1099, 1103 (7th Cir. 2023); *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 238 n.16 (3d Cir. 2024). However, absent an express overruling or abrogation, we will not reconsider a prior panel’s binding decision unless it is “entirely undermine[d]” by an intervening decision of the *en banc* Court or the Supreme Court. See *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 274 (2d Cir. 2005). Because *Badgerow* considered neither the reasoning in *Smiga* and *Marchant*, nor other Supreme Court decisions articulating similar principles, we cannot conclude that it “entirely undermine[d]” those decisions. See *id.* We therefore consider ourselves bound to apply them and conclude that the district court retained jurisdiction following its stay pending arbitration to confirm the resulting award.

Next, Jules and Farinella protest the district court’s allowing Appellees to move to confirm the award when they were not parties to the arbitration agreement, as

well as its allowing Chateau to so move when it was not a party to the lawsuit. Like other issues of law, we review these aspects of the district court's decision *de novo*. See, e.g., *Dattner v. Conagra Foods, Inc.*, 458 F.3d 98, 100 (2d Cir. 2006).

Given the procedural irregularity of a non-party to the action filing a motion to confirm, we think that the “proper procedure would have been for the district court to construe [Chateau’s joining in the confirmation motion] as a motion to intervene under Federal Rule of Civil Procedure 24,” which “provides the mechanism by which non-parties who believe they have a valid and sufficient interest in a litigation” to assert their rights. *MasterCard Int’l Inc. v. Visa Int’l Serv. Ass’n, Inc.*, 471 F.3d 377, 382 (2d Cir. 2006). Nevertheless, given the FAA’s unambiguous text that “*any party to the arbitration* may apply to the court” for confirmation, see 9 U.S.C. § 9, we conclude that Chateau’s joining in the motion was permissible, as it was a party to the arbitration. See *MasterCard*, 471 F.3d at 382 (“The proper procedure would have been for the district court to construe [the Non-Party Appellant’s] letter submissions as a motion to intervene under Federal Rule of Civil Procedure 24.”).

We hasten to note, however, that we reach this conclusion based only on the unique factual circumstances of this case, and, as a general matter, non-parties seeking to assert their rights in a lawsuit must use Rule 24. See *MasterCard*, 471 F.3d at 382. While the Court has, in limited factual circumstances, allowed non-parties to an arbitration to confirm an award, see *Ass’n of Contracting Plumbers of City of N.Y. Inc. v. Loc.*

Union No. 2 United Ass’n of Journeymen, 841 F.2d 461, 466–67 (2d Cir. 1988), we decline to consider whether to expand those circumstances here because the issue of the award’s confirmation was properly before the court on Chateau’s motion. *Cf. MasterCard*, 471 F.3d at 382–83.

Finally, for substantially the reasons stated in its September 12, 2023, opinion and order confirming the award—which we review *de novo* as to legal conclusions and for clear error as to factual findings, *Beijing Shougang Mining Inv. Co. v. Mongolia*, 11 F.4th 144, 158 (2d Cir. 2021)—we agree with the district court that there was no reason to vacate the award under Section 10 of the FAA or either of the non-statutory bases for vacatur. In short, Jules and Farinella failed to meet their “heavy burden” of demonstrating that the award fell within the “very narrow set of circumstances delineated by statute and case law.” *Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co.*, 57 F.4th 372, 378 (2d Cir. 2023). The district court therefore properly confirmed the award.

We have considered Jules’s and Farinella’s remaining arguments and find them unpersuasive. Accordingly, we **AFFIRM** the judgment of the district court.

10a

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court

11a
Appendix B

UNITED STATES DISTRICT
COURT
SOUTHERN DISTRICT OF
NEW YORK

	X	
ADRIAN JULES,	:	
Plaintiff,	:	20 Civ. 10500 (LGS)
-against-	:	
ANDRE BALAZS	:	<u>OPINION AND</u>
PROPERTIES, et al.,	:	<u>ORDER</u>
Defendants.	:	
	X	
LORNA G. SCHOFIELD,		
District Judge:		

Defendants Andre Tomes Balazs, Andre Balazs Properties, Balazs Investors, LLC, and Hotels A.B., LLC and Respondent Chateau Holdings, Ltd. (“Chateau”) move for confirmation of an arbitral award issued on January 17, 2023 (the “Award”). Plaintiff Adrian Jules and his former counsel Thomas A. Farinella, as an interested party, each cross-move to vacate the Award. For the following reasons, the Award is confirmed. Defendants’ motion is granted, and Plaintiff and Farinella’s motions are denied.

I. BACKGROUND

On December 11, 2020, Plaintiff filed this lawsuit, asserting sixteen causes of action against Defendants under federal and California law which centered, in substance, on Plaintiff’s employment with Chateau.

Defendants then moved to compel arbitration before JAMS pursuant to an arbitration agreement between Plaintiff and Chateau. An order issued May 28, 2021, stayed this action pending the outcome of arbitration.

A preliminary arbitration hearing was held on January 21, 2022, at which Plaintiff stated he did not wish to amend his claims. On May 31, 2022, Plaintiff sought leave to amend to add Andre Balazs, the CEO of Andre Balazs Properties, as an additional respondent to the arbitration, despite having previously dismissed claims against him. Over Defendants' objections, the Arbitrator allowed Plaintiff to file a proposed amended complaint "alleg[ing] the predicate facts underlying any claims against Mr. Balazs." The Arbitrator noted that he would consider a motion for costs against Plaintiff if he had no good faith basis to bring claims against Mr. Balazs. Plaintiff untimely filed a proposed complaint. The Arbitrator denied the request for leave to amend, finding that the proposed complaint did not allege claims or predicate facts against Mr. Balazs and instead added new factual allegations and claims against Chateau and other entities not joined in the arbitration. Respondent moved to tax costs against Plaintiff. The Arbitrator *sua sponte* converted the motion into a request for sanctions and requested further briefing. Plaintiff did not submit sanctions briefing and instead stated his intention to withdraw from the arbitration. On October 6, 2022, the Arbitrator determined that Plaintiff's grounds for withdrawing were without merit and concluded that Respondent was entitled to an award of sanctions to be determined at the conclusion of the arbitration.

In parallel, on September 23, 2022, Plaintiff moved in this Court to lift the stay pending arbitration. On October 11, 2022, Plaintiff moved for a preliminary injunction and related relief, seeking, in substance, to lift the stay. Plaintiff's motions were denied. Plaintiff moved for reconsideration, which was also denied.

In advance of the arbitral hearing scheduled for December 5, 2022, Plaintiff filed disclosures of documents to be used and witnesses to be called at the arbitration hearing one week after the deadline to do so. At a final status conference on November 21, 2022, Plaintiff did not raise any issues related to his medical condition or request a continuance of the hearing. In the lead-up to the December 5 hearing, Plaintiff missed several filing deadlines and the deadline to complete his own deposition. One week before the hearing, Farinella reported that, for medical reasons, Plaintiff was unable to be deposed or participate in the hearing. Although the Arbitrator viewed Plaintiff's evidence of medical necessity as insufficient to postpone the hearing, the Arbitrator allowed Plaintiff to submit further written evidence of medical necessity. Plaintiff did so, and the Arbitrator found this evidence also insufficient. The Arbitrator set a special hearing for Plaintiff to provide further evidence of his medical condition not captured in his written submissions. Plaintiff did not appear at the special hearing, and the Arbitrator decided to proceed with the arbitral hearing. Plaintiff appeared briefly at the arbitral hearing via Zoom, with his microphone muted. After Plaintiff left the Zoom conference, Farinella refused to proceed or put on a case.

On January 17, 2023, the Arbitrator issued the Award, finding that Plaintiff had failed to prove any of his claims by a preponderance of the evidence. The Award also awarded sanctions to Defendants of \$11,416.50 and \$23,026.50 against Plaintiff and Farinella respectively. An order issued February 24, 2023, granted Farinella's request to withdraw from representing Plaintiff in proceedings in this District. Defendants now move to confirm the Award. Plaintiff and Farinella, as an interested party, move to vacate the Award.

II. LEGAL STANDARD

Ordinarily, confirmation of an arbitration decision is “a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” *Commodities & Mins. Enter. Ltd. v. CVG Ferrominera Orinoco, C.A.*, 49 F.4th 802, 809 (2d Cir. 2022).¹ A district court's role in reviewing an arbitration award is “narrowly limited and arbitration panel determinations are generally accorded great deference under the Federal Arbitration Act.” *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 103 (2d Cir. 2013); accord *Kellner v. Amazon*, No. 22-734, 2023 WL 2230288, at *1 (2d Cir. Feb. 27, 2023) (summary order). Courts exercise this “extremely deferential” review “in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation.” *Commodities & Mins. Enter. Ltd.*,

¹ Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, emphases, footnotes and citations are omitted.

49 F.4th at 809. Ultimately, “an arbitral decision even arguably construing or applying the contract must stand, regardless of a court’s view of its demerits.” *Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 109 (2d Cir. 2019).

A pro se litigant’s papers must be construed liberally “to raise the strongest arguments they suggest.” *Publicola v. Lomenzo*, 54 F.4th 108, 111 (2d Cir. 2022). Pro se litigants are accorded “special solicitude to protect them from inadvertent forfeiture of important rights because of their lack of legal training.” *Kotler v. Jubert*, 986 F.3d 147, 156 (2d Cir. 2021). Nonetheless, “pro se status does not exempt a party from compliance with relevant rules of procedural and substantive law.” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006); *accord Gerding v. Am. Kennel Club*, No. 21 Civ. 7958, 2023 WL 4583771, at *2 (S.D.N.Y. July 18, 2023).

III. DISCUSSION

A. Subject Matter Jurisdiction

Plaintiff challenges the Court’s subject matter jurisdiction. Subject matter jurisdiction exists over the parties’ motions. Federal question jurisdiction exists because Plaintiff filed this action asserting claims under federal law -- the U.S. Constitution, Title VII and the Americans with Disabilities Act. Because of the federal questions presented, the Court had subject matter jurisdiction when it stayed the action pending arbitration. District courts with jurisdiction to stay an action pursuant to 9 U.S.C. § 3 retain jurisdiction to confirm resulting arbitral awards. *See Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 202 (2000) (“[T]he court with the power to stay the action

under § 3 has the further power to confirm any ensuing arbitration award.”). *Badgerow v. Walters*, 142 S. Ct. 1310 (2022), which Plaintiff cites, does 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.

B. Motions to Vacate.

“The [Federal Arbitration Act (“FAA”)] provides a streamlined process for a party seeking a judicial decree confirming an award, an order vacating it, or an order modifying or correcting it.” *Seneca Nation of Indians v. N.Y.*, 988 F.3d 618, 625 (2d Cir. 2021). Section 10(a) of the FAA states four narrow grounds for vacating an arbitration award:

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

9 U.S.C. § 10(a)(1)-(4). In addition to the statutory grounds for vacatur, a district court may vacate arbitration awards where the arbitrators acted in manifest disregard of the law or when enforcement of an award would violate an explicit public policy. *See Smarter Tools Inc. v. Chongqing SENCi Imp. & Exp. Trade Co., Ltd.*, 57 F.4th 372, 383 (2d Cir. 2023); *Schwartz v. Merrill Lynch & Co.*, 665 F.3d 444, 452 (2d Cir. 2011); *accord Absolute Nev., LLC v. Grand Majestic Riverboat Co., LLC*, No. 19 Civ. 11479, 2022 WL 17669429, at *13 (S.D.N.Y. Dec. 14, 2022). Plaintiff and Farinella offer arguments for vacatur under each of the § 10(a) grounds and the two non-statutory grounds. Their arguments fail because the evidence is insufficient to “clear [the] high hurdle” for vacating the Award. *Beijing Shougang Mining Inv. Co., Ltd. v. Mongolia*, 11 F.4th 144, 160 (2d Cir. 2021).

1. Corruption, Fraud or Undue Means

A petitioner seeking to vacate an arbitral award under § 10(a)(1) “must adequately plead that (1) respondent engaged in fraudulent activity; (2) even with the exercise of due diligence, petitioner could not have discovered the fraud prior to the award issuing; and (3) the fraud materially related to an issue in the arbitration.” *Odeon Cap. Grp. LLC v. Ackerman*, 864 F.3d 191, 196 (2d Cir. 2017); *accord O’Connor-Roche v. RBC Cap. Mkts., LLC*, No. 22 Civ. 1467, 2022 WL 17798116, at *5 (S.D.N.Y. Dec. 19, 2022). Plaintiff alleges that the Final Award was procured by undue means because the Arbitrator denied Plaintiff’s request to postpone the arbitral hearing in light of Plaintiff’s

medical condition. To succeed on a claim under § 10(a)(1), Plaintiff must plead that “*respondent* engaged in fraudulent activity.” *Ackerman*, 864 F.3d at 196 (emphasis added). Here, Plaintiff alleges no fraud committed by Chateau or Defendants. Section § 10(a)(1) does not apply.

2. Arbitrator Partiality or Corruption

A district court can vacate an award under § 10(a)(2) “when there was evident partiality in the arbitrator,” as proven by clear and convincing evidence. *Certain Underwriting Members of Lloyds of London v. Fla. Dep’t of Fin. Servs.*, 892 F.3d 501, 505 (2d Cir. 2018); accord *Whittaker v. MHR Fund Mgmt. LLC*, No. 20 Civ. 7599, 2021 WL 9811715, at *4 (S.D.N.Y. Sept. 28, 2021). “Among the circumstances under which the evident-partiality standard is likely to be met are those in which an arbitrator fails to disclose a relationship or interest that is strongly suggestive of bias in favor of one of the parties.” *Scandinavian Reinsurance Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 72 (2d Cir. 2012); accord *Est. of Scherban v. Lynch*, No. 14 Civ. 6312, 2021 WL 2581278, at *6 (S.D.N.Y. June 23, 2021). Plaintiff alleges evident partiality of the Arbitrator based on two instances. Neither is availing.

First, Plaintiff alleges the Arbitrator was evidently partial by *sua sponte* converting Chateau’s request to tax costs into a request for sanctions. Plaintiff’s argument fails because the Arbitrator’s action was in response to Plaintiff’s explicit disregard of the Arbitrator’s instructions that Plaintiff could seek to replead in order to allege claims or predicate facts

against Mr. Balazs. In his proposed amended complaint, Plaintiff completely disregarded the Arbitrator's instructions and simply bolstered his allegations against the existing Defendants. The Arbitrator had warned Plaintiff in advance that such disregard could result in a taxing of costs. Because the rules governing the arbitration did not allow for taxing of costs, the Arbitrator converted Defendants' request for costs into one for sanctions. These circumstances fall far short of providing clear and convincing evidence of partiality such that "a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." *Fla. Dep't of Fin. Servs.*, 892 F.3d at 505; *see also Chen v. Chen Qualified Settlement Fund*, 552 F.3d 218, 227 (2d Cir. 2009) (per curiam) ("[A]dverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning . . . impartiality."); *Sakon v. Andreo*, 119 F.3d 109, 113 (2d Cir. 1997) (discussing district court's inherent power to award sanctions so long as the award is explained with specificity).

Second, Plaintiff alleges that the Arbitrator was evidently partial by issuing an order allowing Plaintiff to proffer all his evidence at the final hearing, rather than rule on admissibility in advance, "to avoid the risk of erroneous exclusion." Plaintiff argues that the failure to offer him a similar opportunity with respect to the proposed amended complaint constitutes bias or misconduct. If anything, this order demonstrates solicitousness to Plaintiff's claims and procedural rights. In any event, it is not clear and convincing evidence of the Arbitrator's evident partiality.

3. Arbitrator Misconduct

A district court can vacate an award under § 10(a)(3) “when 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.” *YLL Irrevocable Tr.*, 729 F.3d at 104. “Under prevailing Second Circuit law, if there exists a reasonable basis for the arbitrator’s considered decision not to grant a postponement, a court should be reluctant to interfere with the award.” *Parrella v. Orange Rabbit, Inc.*, No 20 Civ. 9923, 2021 WL 4462809, at *6 (S.D.N.Y. Sept. 29, 2021); *accord United Media Holdings, NV v. Forbes Media, LLC*, No. 16 Civ. 5926, 2017 WL 9473164, at *6 (S.D.N.Y. Aug. 9, 2017) (“The granting or denying of an adjournment falls within the broad discretion of appointed arbitrators.”). The relevant inquiry under § 10(a)(3) is whether the arbitrator’s decisions in conducting the proceeding “amount to a denial of fundamental fairness.” *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997); *accord YLL Irrevocable Tr.*, 729 F.3d at 104.

Plaintiff and Farinella both argue that the Arbitrator was guilty of misconduct because he failed to consider evidence of Plaintiff’s medical condition and failed to postpone the arbitral hearing based on this evidence. These arguments fail because Plaintiff and Farinella have not shown that the Arbitrator’s decision to proceed with the hearing rather than adjourn it was without a reasonable basis or a denial of fundamental fairness.

To the contrary, the record indicates that the Arbitrator gave Plaintiff and Farinella repeated chances to offer evidence of Plaintiff’s medical condition and

Carefully considered it. At the November 21, 2022, final pre-arbitration conference, Plaintiff did not request a continuance or argue that he was unable to prepare for the arbitration due to any medical condition. One week before the December 5, 2022, hearing date, Farinella reported that Plaintiff had recently been hospitalized due to an accident and that Farinella did not believe Plaintiff was medically fit to attend the hearing, even via Zoom. The Arbitrator then requested that Plaintiff submit medical documentation to substantiate that his medical condition was serious enough to warrant postponement, which Plaintiff did. The Arbitrator determined Plaintiff's evidence was insufficient to warrant postponement because the records were not signed by a physician, were dated months prior to the hearing date or otherwise failed to provide enough detail regarding Plaintiff's condition to conclude he could not participate, even via Zoom. Nevertheless, the Arbitrator scheduled a special hearing to allow Plaintiff to testify (via Zoom) as to any facts about his medical issues that were not captured in the documentation. Plaintiff did not attend. The Arbitrator then determined that the arbitration should go forward as scheduled at 1:00 P.M. on December 5, 2022.

The Arbitrator had a reasonable basis for not postponing the arbitration. *Bisnoff v. King*, 154 F. Supp. 2d 630 (S.D.N.Y. 2001), upon which Plaintiff relies is not binding and in any event, does not support vacatur. In *Bisnoff*, the court found circumstantial evidence -- including petitioner's failure to raise potential medical issues at a preliminary hearing, petitioner's failure to raise his medical issues until shortly before the hearing and the lack of sufficient medical documentation

substantiating petitioner's alleged ailment² -- provided a reasonable basis for the panel to deny adjournment. *Id.* at 639. Here, as in *Bisnoff*, Plaintiff similarly failed to raise any potential medical accommodations at the final status conference, requested an adjournment just one week prior to the arbitral hearing and did not provide medical documentation that indicated a serious enough condition to warrant postponement.

Nor was the Arbitrator's decision fundamentally unfair. *Tempo Shain Corp.*, also cited by Plaintiff, is distinguishable because there, a witness became temporarily unavailable during the arbitration when his wife was diagnosed with cancer, and the panel concluded the hearing without his testimony. 120 F.3d at 17-18. The Second Circuit found that this amounted to fundamental unfairness sufficient to vacate the arbitral award under § 10(a)(3). *Id.* at 21. That reasoning does not apply here because Plaintiff and Farinella refused to present any evidence or argument or otherwise participate in the hearing. "To demonstrate arbitral misconduct, the challenging party must show that his right to be heard has been grossly and totally blocked, and that this exclusion of evidence prejudiced him." *Fid. Brokerage Servs. LLC v. Deutsch*, No. 17 Civ. 5778, 2018

² Plaintiff's additional medical documentation, which was not submitted to the Arbitrator at the time he declined to postpone the hearing, is not considered. The inquiry is whether the Arbitrator had a reasonable basis at the time of his decision. Any new medical documentation that Plaintiff had not presented is not relevant to the inquiry. See *Tempo Shain Corp.*, 120 F.3d at 20 ("[A]rbitration determinations will not be opened up to evidentiary review."); accord *CRT Cap. Grp. LLC v. SLS Cap., S.A.*, No. 18 Civ. 3986, 2019 WL 1437159, at *5 (S.D.N.Y. Mar. 31, 2019).

WL 2947972, at *6 (S.D.N.Y. May 31, 2018), *aff'd*, 763 F. App'x 104 (2d Cir. 2019) (summary order). Plaintiff fails to meet this standard. Section 10(a)(3) does not apply.

4. Exercise of Arbitrator Power

Section 10(a)(4) provides for vacatur of an arbitration award when “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.” 9 U.S.C. § 10(a)(4). A district court’s review under § 10(a)(4) “focuses on whether the arbitrators had the power, based on the parties’ submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue.” *Beijing Shougang Mining Inv. Co., Ltd.*, 11 F.4th at 161 (stating the Second Circuit “consistently accord[s] the narrowest of readings” to this provision). An award should be vacated under § 10(a)(4) “only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice.” *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 663 (2010); *accord KT Corp. v. ABS Holdings, Ltd.*, 784 F. App'x 21, 24 (2d Cir. 2019) (summary order).

Plaintiff and Farinella argue for vacatur under § 10(a)(4) because the Arbitrator did not have the power to award sanctions under the arbitration agreement. This argument is incorrect.

The arbitration agreement states that “claims, disputes or controversies” between Plaintiff and Chateau “shall be addressed . . . by binding arbitration under the Federal Arbitration Act administered by JAMS pursuant to its Employment Arbitration Rules

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then in effect, and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness.” JAMS Rule 29 -- incorporated by the arbitration agreement -- states:

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses[] [and] any other costs occasioned by the actionable conduct, including reasonable attorneys’ fees....³

The Arbitrator awarded sanctions against Plaintiff and Farinella for failing to comply with the Arbitrator’s order as explicitly contemplated by JAMS Rule 29. Plaintiff cites California law and the California Arbitration Act (“CAA”) for the proposition that the award of fees and costs to prevailing parties in employment arbitrations is disfavored. As noted above, the FAA and the arbitration agreement, and not California Law or the CAA, determine the Arbitrator’s power to in carrying out the arbitration proceeding.

Farinella separately argues that the Arbitrator exceeded his power because he “considered Plaintiff’s failure to attend the arbitration hearing a waiver despite

³ JAMS, *Employment Arbitration Rules and Procedures Rule 29: Sanctions*, <https://www.jamsadr.com/rules-employment-arbitration/english#Rule-29> (last visited Sept. 11, 2023) (JAMS Rules effective as of June 1, 2021).

him being hospitalized and experiencing a medical emergency.” This, Farinella argues, was “in material breach of the arbitration agreement.” Farinella cites no evidence or provision of the arbitration agreement that demonstrates that the Arbitrator did not have the power to rule against Plaintiff after he failed to present any evidence or argument in support of his case. Farinella may dispute the Arbitrator’s ultimate decision, but the inquiry under § 10(a)(4) is only whether the Arbitrator had the power to come to such a decision. *See Beijing Shougang Mining Inv. Co., Ltd.*, 11 F.4th at 161. The Arbitrator did. Section 10(a)(4) does not provide any basis to vacate the award.

5. Manifest Disregard of the Law

A district court may set aside an arbitration award if it was rendered in manifest disregard of the law. “A litigant seeking to vacate an arbitration award based on alleged manifest disregard of the law bears a heavy burden, as awards are vacated on grounds of manifest disregard only in those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent.” *See Weiss*, 939 F.3d at 109. Vacatur under this standard is warranted only “when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice.” *Id.*

Plaintiff argues that the Arbitrator manifestly disregarded the law in allowing the arbitral hearing to proceed without the presentation of evidence or argument by Plaintiff, in violation of his due process rights. Plaintiff fails to prove a violation of his due process rights, because as discussed, the Arbitrator

afforded Plaintiff and Farinella ample opportunity to present Plaintiff's case. In any event, to establish manifest disregard, Plaintiff must show that the arbitration "intentionally defied the law." *STMicroelectronics, N.V. v. Credit Suisse Sec. (USA) LLC*, 648 F.3d 68, 78 (2d Cir. 2011); accord *LTF Constr. Co., LLC v. Cento Sols. Inc.*, No. 20 Civ. 4097, 2020 WL 7211236, at *5 (S.D.N.Y. Dec. 7, 2020). Plaintiff does not meet this "very high" standard. *STMicroelectronics, N.V.*, 648 F.3d at 74.

6. Violation of Public Policy

Finally, an arbitral award can be vacated when "the award itself, as contrasted with the reasoning that underlies the award, creates an explicit conflict with other laws and legal precedents and thus clearly violates an identifiable public policy." *Int'l Brotherhood. of Elec. Workers, Loc. 97 v. Niagara Mohawk Power Corp.*, 143 F.3d 704, 716 (2d Cir. 1998); accord *Riverbay Corp. v. Serv. Emps. Int'l Union, Loc. 32BJ*, No. 22 Civ. 10994, 2023 WL 3738984, at *5 (S.D.N.Y. May 31, 2023). For vacatur of arbitration award on public policy grounds, the public policy must be "well defined and dominant and must be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Schwartz*, 665 F.3d at 452. Courts may refuse to enforce arbitral awards "only in those rare cases when enforcement of the award would be directly at odds" with public policy. *Yukos Cap. S.A.R.L. v. Samaraneftgaz*, 592 F. App'x 8, 11 (2d Cir. 2014) (summary order).

Plaintiff argues that enforcement of the Award would violate public policy, in substance because

enforcement would amount to a waiver of his statutory rights in violation of the policy underlying various California statutes. This argument fails first because the FAA embodies “a federal policy favoring arbitration agreements, notwithstanding any state policies to the contrary.” *Tantaros v. Fox News Network, LLC*, 12 F.4th 135, 146 (2d Cir. 2021). The argument also fails on the merits because Plaintiff was given the opportunity to present his case in arbitration. Notwithstanding Plaintiff’s characterization, the Arbitrator did not refuse to hear evidence material to Plaintiff’s claims and decided all of the questions presented in the arbitration on the record before him. Plaintiff fails to show that enforcement of the Award would violate any public policy.

Farinella also argues that enforcement of the Award would violate public policy because of the Arbitrator’s award of sanctions. This argument is rejected because Farinella does not offer any “well defined and dominant” public policy concern or otherwise explain his assertion. *Schwartz*, 665 F.3d at 452.

C. Confirmation of the Award

Under the FAA, courts must grant a petition to confirm an arbitration award “unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11.” 9 U.S.C. § 9. No grounds exist to vacate or modify the Award under those sections. Defendants are entitled to confirmation of the arbitration award under the Court’s limited review in arbitration cases. *See Commodities & Mins. Enter. Ltd.*, 49 F.4th at 809. The Award is confirmed.

IV. CONCLUSION

For the foregoing reasons, the Award is confirmed. Defendants' Petition for confirmation of the Award is **GRANTED**. Plaintiffs and Farinella's Petitions to vacate the Award are **DENIED**.

The Clerk of Court is respectfully directed to enter judgment in favor of Defendants on Plaintiff's claims, close the motions at Dkt. Nos. 94 and 107 and terminate the case.

Dated: September 12, 2023
New York, New York

/s/ Lorna G. Schofield
Lorna G. Schofield,
United States District Judge

Appendix C

Relevant Statutory Provisions

9 U.S.C. § 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 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

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 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

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award is clearly inconsistent with the factors set forth in section 572 of title 5.