No. 19-1250

In The
Supreme Court of the United States

VICTOR ALLEN CLARK,

Petitioner,

vs.

CELEBRITY CRUISES, INC. and
ROYAL CARIBBEAN CRUISES LTD.,

Respondents.

**On Petition For Writ Of Certiorari
To The District Court Of Appeal Of Florida,
Third District**

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court has jurisdiction to review a Florida intermediate appellate court's application of Florida common law permitting intended third-party beneficiaries to enforce forum selection clauses in a private contract.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Royal Caribbean Cruises Ltd. is a global cruise holding company which in turn owns 100% of the cruise line Celebrity Cruises, Inc. Royal Caribbean Cruises Ltd. is publicly traded on the New York Stock Exchange under the symbol "RCL."

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INTRODUCTION

Petitioner Victor Allen Clark ("Petitioner") is a Nicaraguan citizen and resident who signed an agreement with a Turk & Caicos Islands-based personnel leasing company to provide art auction services on cruise ships. Petitioner agreed that any dispute or controversy arising out of his work onboard would be litigated in the courts of the Turks & Caicos Islands. When Petitioner filed suit against Respondents Celebrity Cruises, Inc. ("Celebrity") and Royal Caribbean Cruises Ltd. ("RCCL," together with Celebrity, "Respondents") in Florida state court, Celebrity and RCCL successfully sought enforcement of the forum selection clause based on Florida law providing that an intended third-party beneficiary of a choice of forum clause may enforce it. No federal issue was resolved by the Florida courts in dismissing Petitioner's complaint in favor of the Turks and Caicos Islands venue.

Accordingly, the decision for which Petitioner seeks review, *Clark v. Celebrity Cruises, Inc.*, 271 So. 3d 1169, 1171 (Fla. Dist. Ct. App. 2019), *review denied*, No. SC19-866, 2019 WL 6248554 (Fla. Nov. 22, 2019), presents no question of federal law. The Florida Court of Appeal simply applied Florida contract law with respect to the identification of third-party beneficiaries and the enforcement of forum selection clauses. The Florida court made clear that it "express[ed] no opinion as to the merits of, or defenses to, [Petitioner's] claims," including defenses based on the Jones Act, which were left for resolution by Turks and Caicos Islands courts. *Clark*, 271 So. 3d at 1171 n.5.

This Court has no jurisdiction to consider state court rulings on issues of state law. 28 U.S.C. § 1257(a).

Further, there is no reason for this Court to review the instant matter even if it had jurisdiction to do so. The principles applied by the Florida state court are consonant with those applied by federal courts. The petition should be denied.

STATEMENT OF THE CASE

Petitioner, the plaintiff below, is a Nicaraguan citizen and resident who claims to have been injured while working on cruise ships owned by Respondents. Petitioner filed a personal injury lawsuit against both cruise lines in the Circuit Court in and for Miami-Dade County, Florida (*i.e.*, the Florida trial court).

Petitioner, however, had previously signed an agreement with a third-party staffing agency providing that "any and all legal proceedings arising from or related in any way to [his] services for" the staffing agency or "relating to" his services in selling art on cruise ships "shall be brought only in a court in the Turks & Caicos Islands." The authenticity and execution of that agreement, called an "Independent Contractor Agreement" or "ICA," has never been disputed in the Florida courts. The parties to the ICA, as relevant to this case, are Caribbean Staffing Solutions, Inc. ("CSS"), a Turks & Caicos Islands-based personnel staffing company, and Petitioner, a Nicaraguan citizen.

The identical forum selection agreement had previously been upheld under Florida law on findings that the Turks & Caicos Island courts (which are part of the British legal system) presented an adequate alternative forum, and that no public or private interests were presented which overrode the parties' forum selection clause. *Durkovic v. Park W. Galleries, Inc.*, 217 So. 3d 159, 160 (Fla. Dist. Ct. App. 2017) (holding that "[t]he Turks and Caicos Islands are a British Overseas Territory whose courts are part of the British common law system. Appeals from the highest courts in the Turks and Caicos Islands lie with the highest courts in the United Kingdom of Great Britain and Northern Ireland. [T]he courts of the Turks and Caicos Islands are capable of deciding the choice of law issues, determining whether the contractual provisions limiting liability and recovery are operative, and applying the Jones Act, if appropriate.").

On Respondents' motion to dismiss, the trial court enforced the forum selection agreement in accordance with its terms, dismissing Petitioner's claims without prejudice to his pursuit in the contractually mandated and adequate forum.

Petitioner's underlying personal injury claim has never been the subject of discovery nor put at issue—the only issue resolved has been whether intended third-party beneficiaries may enforce the forum selection clause in Petitioner's agreement.

Petitioner applied to work on cruise ships through CSS, which hires independent contractors to provide staffing to third-party art auction firms, including non-party Park West Galleries, Inc. ("Park West," called a "third-party auction firm" or "TPAF" in the ICA). Park West sells artwork on cruise ships under contractual arrangements with various cruise lines, including Respondents.[1]

Petitioner and CSS signed the ICA on August 8, 2014. The ICA provided the legal framework under which Petitioner would provide services on a "voyage by voyage basis" as later might be requested and accepted by Petitioner, CSS, and Park West. Petitioner's duties would be exclusively performed "on cruise ships operating in international waters." Petitioner's ability to work was contingent on a certificate of medical fitness "in a form acceptable to the cruise lines."

Petitioner's compensation would be paid by CSS. R. 199 ¶ 3.A. CSS also provided "medical coverage," "as required by Maritime Labour Convention 2006[2] and by the Flag State of the vessel to which the IC is assigned and where the IC obtains the illness or injury."

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[1] The Petition attacks the bona fides of CSS and Park West, but those attacks, while disputed, are not relevant to the jurisdictional issues presented here.

[2] The Maritime Labour Convention of 2006 ("MLC") is an international labor organization convention designed to regulate safety, healthcare protection, medical care, welfare and social security protection for seafarers. *See* 3 Robert Force & Martin J. Norris, *The Law of Seamen* App. E (5th ed. 2018). The MLC has not been ratified by the United States. *Id.*

R. 100 ¶ 3.G. Further, CSS would pay ICC "maintenance and cure" in the event Petitioner was "signed off the ship and must return to his country of residence." *Id.* The compensation from CSS would be Petitioner's sole compensation. R. 101 ¶¶ 3.H-J.

Multiple provisions in the ICA were for the express benefit of the cruise lines on whose ships Petitioner would be working. Petitioner was required to use the "Cruise Line/Ship's Grievance process," R. 103 ¶ 6; R. 117-118, with respect to any claim of "breach of seafarers' rights under the MLC." *Id.* The ICA prohibited any "adverse action" against Petitioner for filing a grievance under the ship's grievance procedure. R. 103 ¶ 6.B; R. 117.

Further, Petitioner agreed to execute any paperwork required by the cruise line and to "abide by orders of the Master and officers for services on board the cruise ship." R. 108 ¶ 11.D. He further agreed that he would abide by the cruise line's "code of behavior and dress code," R. 109 ¶ 11.F, and wear any uniform required by the cruise line. *Id.* ¶ 11.H. Petitioner agreed to avoid conduct which could harm passengers of the cruise line. R. 110 ¶ 12.

The cruise lines were also the express beneficiary under the ICA of a release of claims against them. The ICA provides that "IC [*i.e.*, independent contractor] is not and shall never be considered an employee of, or independent contractor for, any cruise ship or cruise line on whose ship IC performs services" and that ICC "irrevocably and unconditionally releases" claims

against any "cruise ship and cruise line on which IC performs services." R. 107 ¶ 10.C. While Petitioner contends that this provision is unenforceable—an issue which, under the decision sought to be reviewed, was expressly left for Turks & Caicos Islands courts to resolve—the language certainly underlines an intent to benefit the cruise lines in the ICA.

Finally, and of greatest significance, the ICA contained a forum selection clause:

> The parties agree that, except as provided with section 18(B) below [dealing with enforcement of covenants not to compete] **any and all legal proceedings arising from or relating in any way to IC's services for company or for any TPAF, or arising from or relating to this Agreement** or any alleged breach thereof, **shall be brought only in a court in the Turks & Caicos Islands.** For that purpose, IC irrevocably consents to the jurisdiction of the Turks & Caicos Islands and **waives any right IC may have to contest such jurisdiction or initiate legal proceedings in any other forum**.

R. 111 ¶ 18.A (emphasis added).

Following Florida precedent, which generally enforces forum selection clauses in contracts, the Florida courts enforced the forum selection clause agreed upon in Petitioner's contract. Florida law on this point is well-settled. *E.g.*, *Manrique v. Fabri*, 493 So. 2d 437 (Fla. 1986) ("Florida courts have long recognized that forum selection clauses . . . are presumptively valid");

Allstate Fire & Cas. Ins. Co. v. Hradecky, 208 So. 3d 184 (Fla. Dist. Ct. App. 2016); *Estate of Stern v. Oppenheimer Trust Co.*, 134 So. 3d 566 (Fla. Dist. Ct. App. 2014); *Espresso Disposition Corp. 1 v. Santana Sales & Mktg Group, Inc.*, 105 So. 3d 592, 594 (Fla. Dist. Ct. App. 2013). "Absent a showing that a mandatory forum selection clause is unreasonable or unjust, a trial court must enforce the clause." *Hradecky*, 208 So. 3d at 187 (citing *Manrique*, 493 So. 2d at 440).

As stated above, the same Florida intermediate appellate court that issued the instant decision had earlier upheld the very same forum selection clause in *Durkovic v. Park West Galleries, Inc.*, 217 So. 3d 159 (Fla. Dist. Ct. App. 2017). In *Durkovic*, the Court "accepted as true" the allegation that the plaintiff was entitled to relief under the Jones Act, 46 U.S.C. § 30104, but dismissed the plaintiff's claim under the forum selection clause, noting that the courts of the Turks & Caicos Islands, as part of the respected British common law system, were fully "capable of deciding the choice of law issues, determining whether the contractual provisions [in the ICA] limiting liability and recovery are operative, and applying the Jones Act, if appropriate." *Id.* at 160.

Following *Durkovic*, and finding that the plain language of the agreement applied to claims brought against cruise lines as well, the trial court dismissed Petitioner's action, without prejudice to pursuit of his claims in the contractually mandated forum. On appeal, the intermediate Florida court affirmed, *Clark v. Celebrity Cruises*, 271 So. 3d 1169 (Fla. Dist. Ct. App.

2019), finding that the cruise lines were intended third-party beneficiaries of the ICA. Again, as in *Durkovic*, the Florida court expressly declined to rule on any issue of federal law, leaving the issues of choice of law in general and in particular the applicability of the Jones Act to Petitioner's claims, to the courts of the Turks & Caicos Islands. As the court said in footnote 5 of its opinion: "[W]e express no opinion on the merits of, or defenses to, Clark's claims. This includes, as noted in footnote 3, the validity and enforceability of the subject release provision [relating to the cruise lines]. As we stated in *Durkovic*, 'the courts of the Turks & Caicos are capable of deciding the choice of law issues, determining whether the contractual provisions limiting liability and recovery are operative, and applying the Jones Act, if appropriate.'" *Clark v. Celebrity Cruises, Inc.*, 271 So. 3d 1169, 1171 n.5 (Fla. Dist. Ct. App. 2019), *review denied*, No. SC19-866, 2019 WL 6248554 (Fla. Nov. 22, 2019).

THE PETITION SHOULD BE DENIED

I. This Court Lacks Jurisdiction Over This Petition.

This Court should deny the Petition because it presents no issue of federal law. The Florida appellate court did not rule on any issue of federal law, nor rely on any federal authority. Consequently, this Court has no jurisdiction under Petitioner's proffered basis, 28 U.S.C. § 1257(a). This statute, by its clear terms, applies only when a state court of last resort decides a

federal question. The Florida Supreme Court was not presented with any federal question, and only ruled that there was no conflict within Florida law warranting its review of the result in *Clark*. Moreover, the intermediate Florida appellate court decision expressly did not rule on any federal question, and only applied Florida precedents with respect to forum selection clauses and the identification of third-party beneficiaries. Because this Court has no jurisdiction to consider issues of Florida law, the Petition for review must be denied.

There is no dispute as to the plain language of Section 1257(a) governing review of state court decisions:

> It is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it.

Lynch v. People of New York ex rel. Pierson, 293 U.S. 52, 54 (1934); *accord Durley v. Mayo*, 351 U.S. 277 (1956).

Petitioner attempts to avoid the dispositive fact that no federal question was addressed by arguing that the appellate court decision "failed to address governing federal statutes" and "misapplied federal precedent established pursuant to this Court's constitutional

grant of admiralty and maritime jurisdiction." Petition, at 1. First, failing to address or decide a federal issue is insufficient to confer jurisdiction. Second, the Florida court did neither of the actions alleged by Petitioner.

The *Clark* court did not "fail to address" the Jones Act relied on by Petitioner, but left resolution of the factual and legal issues to the contractually mandated court (which would also decide whether or not the Jones Act applies at all). Nor did the *Clark* court "misapply" (or even discuss) any federal precedent. At page 16, Petitioner acknowledges that the Florida court "refused to consider the federal question presented." A federal issue which was *not addressed* is, quite obviously, no basis for this Court's jurisdiction under 28 U.S.C. 1257(a).

The sole reed on which Petitioner claims he is entitled to a Florida forum is this Court's hoary precedent of *Boyd v. Grand Trunk Western R. Co.*, 338 U.S. 263 (1949), which held under the Federal Employer's Liability Act ("FELA") that a contract limiting a plaintiff's choice of forum was invalid under FELA. Leaving aside the disputed issue of the applicability of *Boyd* in a Jones Act case, *see Terrebone v. K-Sea Transportation Corp.*, 477 F. 3d 271, 280-283 (5th Cir. 2007); *Lindo v. NCL (Bahamas) Ltd.*, 652 F. 3d 1257, 1286-1287 (11th Cir. 2011), this Court has clearly held that states are allowed to follow their own forum selection or forum non conveniens law and are not bound by federal procedural precedents. *American Dredging Co. v. Miller*, 510 U.S. 443 (1994). In *American Dredging*, which was

concededly governed by the Jones Act, this Court upheld a decision of the Louisiana Supreme Court that state forum non conveniens law was not preempted by federal law. As this Court said, "venue under the Jones Act is a matter of federal housekeeping that has been prescribed only for federal courts" and "what we have prescribed for the federal courts with regard to *forum non conveniens* is not applicable to the States." *Id.* at 457.

Following this Court's *American Dredging* precedent, the Florida courts have held that they will enforce a reasonable forum selection clause calling for a foreign forum without first resolving the choice of law issue of whether the Jones Act applies at all. *Tananta v. Cruise Ships Catering & Services, Intl., N.V.*, 909 So. 2d 874, 881-884 (Fla. Dist. Ct. App. 2004) (en banc).

The issue of whether federal law applies, which depends on the citizenship of the plaintiff (here, a Nicaraguan citizen), the flag of the vessel (foreign), and six other factors, *see Lauritzen v. Larsen*, 345 U.S. 571 (1953) and *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970), has thus never been addressed or resolved in this case, nor has a record on these factors even been created. The contention that a federal issue was resolved by the Florida courts in *Clark* is simply false.

A simple reading of the *Durkovic* and *Clark* decisions confirms that the two dispositive issues addressed—*viz.*, were the cruise lines third-party beneficiaries entitled to enforce the ICA, and were the forum selection clauses contained in the ICA

enforceable—were resolved under principles of Florida law. No federal law or cases were substantively cited or discussed in any way. Plainly, this Court lacks jurisdiction of this case.

II. There Is No Conflict in the Law Which Would Warrant This Court's Intervention.

Assuming that there were jurisdiction (which there is not), the opinion for which review is sought is a particularly poor choice for review given this Court's scarce resources. Supreme Court Rule 10 states that the Court is not likely to accept a case without "compelling reasons," and will not accept for review a state court decision unless the court has decided an "important federal question" in conflict with other courts, or "an important question of federal law that has not been, but should be settled by this Court." None of those requirements are present here, and Petitioner's desire for a Miami venue, rather than the Turks & Caicos Islands court he agreed would resolve any dispute, is far from "compelling." Further, this Court, in *American Dredging*, signaled an unwillingness to oversee the "housekeeping" of the various state court's rulings on venue and forum selection, even where (unlike here) federal maritime jurisdiction plainly existed.

Far from a conflict, there is complete consistency between the principles of Florida law addressed in *Clark* and federal precedent. The forum selection clause ruling adopted by the Florida courts, in which forum selection clauses are presumptively valid and

often given controlling weight, maps onto the law adopted by this Court in *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974); *Atlantic Marine Constr. Co. v. U.S. Dist. Ct. for W.D. Texas*, 571 U.S. 49 (2013).

On the issue of whether the cruise lines are third-party beneficiaries of his ICA, Petitioner admits that if the cruise lines were intended to receive a "direct benefit" from the ICA, they are third-party beneficiaries thereof. Petition, at 23. This is essentially the standard applied in Florida. Again, there is no conflict and no reason for this Court to accept jurisdiction over this case, even if it were possible to do so.

Petitioner argues that "thousands of seamen across the United States have been deprived of jury trials through the use of tactical arbitration clauses." Petition, at 20-21. The point is irrelevant for two reasons. First, this case does not involve an arbitration clause. Second, while Petitioner seeks to challenge federal law that arbitration agreements will be enforced even in cases where it is clear that the Jones Act applies (which, to quote Petitioner, has been applied in "thousands" of cases), the law in this area is settled. *See Lindo*, *supra*, 652 F. 3d 1257 (11th Cir. 2011); *Harrington v. Atlantic Sounding Co.*, 602 F. 3d 113 (2d Cir. 2010); *Terrebone*, *supra*, 477 F. 3d 271 (5th Cir. 2007). Any challenge to the enforceability of an arbitration clause is doomed to failure under this Court's precedent. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991) (arbitration of ADEA claims compelled); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*

Inc., 473 U.S. 614 (1985) (arbitration of Sherman Act antitrust claims compelled). In any case, because the ICA at issue in this case called for a common law court rather than review by an arbitrator, the issue of the effect of an arbitration clause is not even presented.

While Petitioner says that the analysis of the *Clark* court diverged from that employed by this Court under "federal common law," Petition, at 22-23, any such divergence is imaginary given the particular language of the ICA applied by the *Clark* court. The Florida court did not apply federal common law, but even if (assuming *arguendo*) Florida case law is different from federal common law, it would not matter.

Finally, while Petitioner has noted that federal law has historically provided special solicitude for the rights of seamen, Petition at 19-20, this Court has recently confirmed that such a notion is largely obsolete:

> While sailors today face hardships not encountered by those who work on land, neither are they as isolated nor as dependent on the master as their predecessors from the age of sail. In light of these changes and of the roles now played by the Judiciary and the political branches in protecting sailors, the special solicitude to sailors has only a small role to play in contemporary maritime law.

The Dutra Group v. Batterton, ___ U.S. ___, 139 S.Ct. 2275, 2287 (2019). Petitioner, like any other contract party, has been held to his contractual promises under

Florida law. There is no surprise nor injustice in this result that calls for this Court's consideration.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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