No. 20-1143

In the Supreme Court of the United States

DENISE A. BADGEROW, PETITIONER,

v.

GREG WALTERS, THOMAS MEYER, AND RAY TROSCLAIR, RESPONDENTS.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether federal courts have subject-matter jurisdiction to confirm or vacate an arbitration award under §§ 9 and 10 of the Federal Arbitration Act, 9 U.S.C. §§ 9, 10, where the only basis for jurisdiction is that the underlying dispute involved a federal question.

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JURISDICTION

The court of appeals entered judgment on September 15, 2020. Petitioner filed a petition for a writ of certiorari on February 12, 2021, which was granted on May 17, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and other statutory provisions are reprinted in the appendix to this brief, *infra* App.1a-16a.

STATEMENT

Enacted in 1925, the Federal Arbitration Act (FAA) enshrines a strong "national policy favoring arbitration" by prohibiting courts from treating arbitration agreements worse than other contracts. *Vaden v. Discover*

Bank, 556 U.S. 49, 58 (2009) (citation omitted); 9 U.S.C. § 2. The FAA authorizes various procedural devices whereby parties can request judicial assistance in facilitating arbitration of the parties' underlying disputes. These motions cover the lifespan of the underlying dispute: parties can ask courts to stay pending cases that should be arbitrated (§ 3), to compel arbitration (§ 4), to appoint arbitrators (§ 5), to subpoena witnesses (§ 7), and to confirm, vacate, or modify arbitral awards (§§ 9-11).

The question here is whether federal courts have jurisdiction over motions to confirm or vacate arbitral awards where the parties' underlying dispute concededly presents a federal question. Because the FAA itself does not supply jurisdiction, the answer depends on whether these motions are bound up with the parties' underlying dispute, or whether these motions must themselves present a standalone basis for federal jurisdiction. The answer is clear: FAA-authorized motions are adjuncts to the parties' underlying substantive dispute. Thus, federal courts have jurisdiction over these motions when they have jurisdiction over the underlying controversy. In other words, the "look-through approach" governs throughout the FAA.

The look-through approach has long governed federal jurisdiction over all sorts of motions. And the FAA's text imposes that approach here. Multiple FAA provisions make pellucid that *all* FAA motions are inextricably linked to the parties' underlying controversy. Section 6 provides that the FAA's procedural devices should be treated as "motions," *i.e.*, as adjuncts to the controversy. Section 12 confirms that requests to "vacate, modify, or correct an award" are "motion[s]." Other FAA provisions—§§ 2, 4, 5, and 7—continue the theme by referring to the underlying "case" or "controversy" between the

parties. And the "award" at issue in §§ 9, 10, and 11 reflects the arbitrators' resolution of the parties' underlying controversy.

The FAA thus works as an integrated whole to ensure that parties can enlist federal courts to facilitate resolution of federal disputes through arbitration. Applying a single, familiar jurisdictional test to all FAA motions also embodies the cardinal virtues of administrative simplicity and predictability. And if §§ 9 and 10 motions to confirm or vacate awards are bound up with the parties' underlying controversy, petitioner agrees that federal courts have jurisdiction over petitioner's motion to vacate the award, because the underlying dispute here involves a federal question. Pet. I, 31.

Petitioner instead contends that motions to confirm or vacate arbitral awards initiate their own standalone lawsuits that require a separate basis for federal jurisdiction. But petitioner's theories behind that conclusion are inconsistent. Petitioner's primary theory claims the mantle of the text, but rests on a negative inference. Petitioner reasons that 9 U.S.C. § 4, governing petitions to compel arbitration, expressly grants federal jurisdiction over § 4 petitions if jurisdiction over the underlying substantive dispute exists. Br. 16, 17 n.4. Because other FAA provisions contain no such language, other FAA motions—including § 5 motions to appoint arbitrators, § 7 petitions to enforce witness subpoenas, and §§ 9-11 motions to confirm, vacate, or modify awards—need their own jurisdictional hooks. *See* Br. 13, 16; Pet. 30.

But then, petitioner proposes another approach based on an analogy to the settlement context. Under that approach, issuance of an arbitral award is a jurisdictional Rubicon: Congress "permit[s] the 'look through' approach for pre-arbitration motions in live federal disputes." Br. 21. That look-through approach thus governs

§ 3 motions to stay court proceedings, § 4 petitions to compel arbitration, § 5 motions to appoint arbitrators, and § 7 petitions to subpoena witnesses. Apparently, motions arising *before* arbitral awards are adjuncts to the parties' underlying controversy. But after the award issues, for all "post-arbitration activity" (Br. 21), *i.e.*, motions to confirm, vacate, or modify awards under §§ 9-11, federal courts need some independent basis for jurisdiction.

Something has gone awry when the two pillars of petitioner's position yield opposite jurisdictional tests for the same FAA motions. Both of petitioner's approaches also would perversely shut the federal courthouse doors to most FAA motions altogether—even though Congress repeatedly signaled throughout the FAA that "United States district court[s]" would hear many, if not all, FAA motions. Few motions, viewed in isolation, would create a basis for federal jurisdiction; many are non-adversarial. Even assuming parties can bring FAA motions in state court (as opposed to relying on state-law devices), state courts also generally require adversarialness, and would often lack jurisdiction as well. Thus, in many cases, petitioner would consign parties to only one option: state-court motions under state arbitration laws. It is unthinkable that Congress intended *state* courts as the only place where parties could confirm many arbitral awards, including awards resolving disputes over which *federal* courts have exclusive jurisdiction, like Patent Act, Bankruptcy Act, or Sherman Act disputes.

Petitioner's approaches would also be unworkable for whatever small category of FAA motions could conceivably present federal diversity jurisdiction in their own right. Despite promising a "remarkably straightforward answer" to a "significant jurisdictional question" (at 12), petitioner never says how federal courts should sort through complex questions about whether a motion, in

isolation, satisfies diversity jurisdiction. Both of petitioner's approaches would also force federal courts to toggle between the look-through approach and finding standalone jurisdiction depending on the type of motion involved. The FAA ensures that parties resolving disputes through arbitration have quick and easy access to courts. Petitioner's labyrinthine jurisdictional rules would defeat this important objective.

A. Factual Background

Respondents Gregory Walters, Thomas Meyer, and Ray Trosclair are the former principals of a now-defunct Louisiana financial advising practice. The practice employed petitioner Denise Badgerow through a related corporation, REJ Properties, Inc., from 2014 until 2016, first in an administrative role and then as an associate financial advisor. *Badgerow v. REJ Props., Inc.* (*REJ*), 383 F. Supp. 3d 648, 652 (E.D. La. 2019).

Respondents had individual franchise agreements with Ameriprise, a publicly traded financial services company. As part of petitioner's employment with REJ, petitioner signed two agreements with Ameriprise. *Badgerow v. Walters* (*Walters*), No. 19-cv-10353 (E.D. La.), Dkt. 5-2, Ex. B, at 1, Ex. C, at 1. The arbitration provisions in those agreements required petitioner to submit "any dispute, claim or controversy" with Ameriprise or its "[a]ffiliates" (such as respondents) to arbitration. *Id.* Ex. B, at 4, Ex. C, at 5. The arbitration provisions incorporated the arbitration rules of the Financial Industry Regulatory Authority (FINRA), the private organization that regulates securities professionals. *Id.*

Petitioner agreed to a third arbitration agreement with FINRA itself as part of her required registration statement to work in the securities industry. That arbitration provision again required petitioner to arbitrate

under FINRA rules "any dispute, claim or controversy" that might arise with a FINRA member firm—here, Ameriprise. *Walters*, No. 19-cv-10353, Dkt. 5-2, Ex. D ¶ 15A.5.

In July 2016, respondent Walters fired petitioner because her coworkers found her "to be discourteous and unprofessional." *REJ*, 383 F. Supp. 3d at 656.

B. Procedural Background

Petitioner then launched multiple proceedings in multiple forums:

The EEOC Charge. In September 2016, petitioner filed a charge with the Equal Employment Opportunity Commission, alleging that REJ discriminated against her based on her sex and paid her less than male employees. REJ responded with documentation showing that the company paid petitioner the same or more than her male counterparts and detailed the unprofessional conduct that prompted her termination. In June 2017, the agency dismissed the charges. *Id.* at 653, 664.

The FINRA Arbitration. In October 2016, petitioner initiated a FINRA arbitration against respondents and Ameriprise, but not REJ, seeking damages stemming from her termination. *REJ*, No. 17-cv-9492 (E.D. La.), Dkt. 27-2, Ex. C. FINRA selected New Orleans as the hearing location. Petitioner's FINRA complaint asserted various state-law claims, including wrongful termination, stemming from allegations that respondent Walters fired her after petitioner informed Ameriprise that REJ had purportedly violated federal securities regulations and FINRA rules. *Id.* at 2-4.

The Federal-Court Lawsuit. In September 2017, while the arbitration was pending, petitioner filed a federal lawsuit in the U.S. District Court for the Eastern District of Louisiana against Ameriprise and REJ—but not

against respondents. *REJ*, No. 17-cv-9492, Dkt. 1. Petitioner's federal complaint alleged that she was fired in retaliation for contacting Ameriprise—not about alleged federal securities-law violations, but about alleged sex discrimination by REJ. *Id.* at 2.

Petitioner's federal complaint included numerous federal-law claims, including that REJ (1) violated Title VII by allegedly engaging in sex discrimination and (2) violated the Equal Pay Act by paying her less than male colleagues. *Id.* at 8-10. Petitioner also alleged that Ameriprise was "jointly liable" under each of these federal laws as a "joint employer" with REJ. *Id.* at 13.

Ameriprise and REJ moved to compel arbitration under § 4 of the FAA, 9 U.S.C. § 4. *REJ*, No. 17-cv-9492, Dkt. 26-1, 27-1. In January 2018, the district court ordered petitioner to arbitrate her claims against Ameriprise, and stayed the suit against Ameriprise pending arbitration under 9 U.S.C. § 3. BIO.App.7a. The court denied REJ's motion to compel arbitration, reasoning that REJ was not party to the arbitration agreements. BIO.App.9a. Thus, petitioner's claims against REJ proceeded in federal court. Most of those claims resolved in REJ's favor on summary judgment; the court dismissed the remaining federal claim pursuant to a "Joint Stipulation of Dismissal" in May 2021. *REJ*, No. 17-cv-9492, Dkt. 239.

Back to FINRA Arbitration. In the arbitration, petitioner amended her complaint against respondents and Ameriprise to include the federal claims that petitioner had asserted against Ameriprise in federal court. *Walters*, No. 19-cv-10353, Dkt. 5-2, Ex. F, at 16-17. In December 2018, the FINRA arbitrators issued their award in favor of Ameriprise and respondents, dismissing all of petitioner's claims. *Id.* Ex. A.

The Federal-Court Motion to Confirm the Award. As noted, after compelling arbitration of petitioner's claims against Ameriprise, the federal district court for the Eastern District of Louisiana retained jurisdiction over the case. Thus, in April 2019, Ameriprise filed an unopposed motion in that federal court seeking to confirm the arbitration award under 9 U.S.C. § 9. *REJ*, No. 17-cv-9492, Dkt. 146.

REJ filed a companion motion asking the federal court to confirm the award as to respondents. *REJ*, No. 17-cv-9492, Dkt. 152. Petitioner opposed that motion on the ground that respondents procured the arbitration award by fraud by making erroneous legal arguments in the arbitration. *REJ*, No. 17-cv-9492, Dkt. 153, at 5. Petitioner also argued that respondents were not parties to the federal case, and that respondents either should have intervened in the federal lawsuit to seek confirmation of the award or "file[d] a separate action in state *or* federal court confirming the award." *Id.* at 4 (emphasis added). In other words, petitioner at this point proposed that federal courts would have jurisdiction over respondents' motion to confirm the award.

In June 2019, the federal court confirmed the arbitration award "as to all parties to that proceeding," *i.e.*, as to Ameriprise and respondents. BIO.App.16a. The court rejected petitioner's allegations that respondents had procured the award through fraud as "legally frivolous" and "utterly absurd." BIO.App.14a. The court also deemed petitioner's fraud allegations untimely, since petitioner failed to bring a motion to vacate the award within the three-month period required by 9 U.S.C. § 12. BIO.App.16a.

The State-Court Motion to Vacate the Award. In May 2019—two weeks after Ameriprise filed its federal-court motion to confirm the award, but before the federal

court acted—petitioner filed a state-court action in Louisiana's Orleans Parish District Court to vacate the same award, on the same ground she asserted in federal court, namely that respondents purportedly obtained the award by fraud. Petitioner named only respondents, not Ameriprise, as defendants. *Walters*, No. 19-cv-10353, Dkt. 1-2, at 13-17.

Removal to Federal Court. Respondents removed the state-court motion to vacate to the U.S. District Court for the Eastern District of Louisiana, which assigned the case to the same federal judge considering the FAA motions to confirm the arbitral award. *Walters*, No. 19-cv-10353, Dkt. 1. Respondents filed another § 9 motion to confirm the award. *Walters*, No. 19-cv-10353, Dkt. 5. Petitioner moved to remand to state court, arguing that the federal court lacked jurisdiction because her ground for vacating the award arose under Louisiana law. Pet.App.14a.

The federal district court denied petitioner's motion to remand and again confirmed the award as to respondents. In addressing jurisdiction, the court "err[ed] on the side of assuming" that the "look through approach" applies to motions to vacate. Pet.App.15a n.5. Because that approach would confer jurisdiction, the court reasoned, petitioner could "raise this issue on appeal" to let the Fifth Circuit decide whether that approach applied. *Id.*

The court then held that the parties' underlying controversy presented a federal question under 28 U.S.C. § 1331. The court explained: "Badgerow included as part of the arbitration her joint employer claims [against Ameriprise] that were grounded on federal employment law." Pet.App.16a. Federal-question jurisdiction thus existed over the underlying controversy notwithstanding petitioner's "artfully pleaded" motion to vacate that

named only respondents, but not Ameriprise, as defendants. *Id.* On the merits, the court confirmed the award, observing that petitioner had reasserted the same fraud allegations the court had "already determined to be legally frivolous." Pet.App.13a.

The Fifth Circuit's Decision Below. The Fifth Circuit affirmed, holding that federal courts determine their jurisdiction over motions to confirm or vacate arbitral awards "by looking through an FAA petition to the parties' underlying substantive controversy." Pet.App.6a (cleaned up). "If 'looking through' to the claims involved in the underlying dispute (in this case, the FINRA arbitration proceeding) shows that the dispute itself … could have been brought in federal court, then federal jurisdiction lies over the FAA petition." *Id.*

The Fifth Circuit concluded that the underlying controversy presented a federal question because petitioner had claimed that Ameriprise was jointly liable for REJ's supposed violations of Title VII and the Equal Pay Act. Because that federal claim and the state-law claims against respondents all "arose from the same common nucleus of operative fact," the Fifth Circuit found pendent jurisdiction over the entire controversy under 28 U.S.C. § 1367(a). Pet.App.9a.

The New State-Court Case. In April 2019, four months after losing in arbitration, petitioner sued respondents and REJ in Lafourche Parish District Court asserting claims virtually identical to those the arbitrators rejected. In January 2020, the state district court dismissed that complaint on res judicata grounds. *Badgerow v. REJ Props. Inc.*, No. C-138185 (La. Dist. Ct. Jan. 21, 2020), Dkt. 6. That decision is now final.

SUMMARY OF ARGUMENT

I. Federal courts have subject-matter jurisdiction over motions to confirm or vacate arbitral awards under §§ 9 and 10 of the FAA when those courts have jurisdiction over the underlying dispute.

A. Parties can take federal controversies to a federal judge or an arbitrator. When parties choose arbitration, the FAA offers myriad procedural tools for federal courts to help, from compelling arbitration to confirming an arbitral award. 9 U.S.C. §§ 4, 9. Two textual features of the FAA demonstrate that these tools operate like ordinary motions. First, §§ 6 and 12 define applications under the FAA as "motions." *Id.* §§ 6, 12. Second, the FAA repeatedly refers to the parties' "case," "controversy," existing lawsuit, or an "award" resolving the controversy, making clear that the FAA's procedural mechanisms are simply adjuncts to resolving the underlying dispute. *Id.* §§ 2, 4-5, 7, 9-11. And the FAA throughout presupposes these motions will be brought in federal court as a matter of course. *Id.* §§ 3-4, 7, 9-11.

B. The FAA's text and structure resolve this case. When a party makes a motion, federal courts need not determine whether they have an independent jurisdictional basis to hear the motion when the underlying case concededly belongs in federal court. That default rule applies whether or not someone has already filed an underlying federal lawsuit. And that default applies to the FAA, as the Court recognized in *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263 (1932). Nothing in §§ 9 or 10 of the FAA strips federal courts of the jurisdiction they otherwise have over the parties' dispute.

C. Section 4 does not dictate a different result. That provision directs parties to file petitions to compel arbitration in "any United States district court which, save for

such agreement [to arbitrate], would have jurisdiction" over the underlying controversy. 9 U.S.C. § 4. Petitioner contends that this language provides a freestanding jurisdictional grant and would be superfluous if federal courts already determined jurisdiction over FAA motions by looking to the underlying controversy.

But § 4 is a venue provision, not a jurisdictional grant. Section 204 of the FAA, which addresses "[v]enue" for international arbitration actions, uses nearly identical language. 9 U.S.C. § 204. Section 4 expands venue to the limits of jurisdiction, which was a significant change from the restrictive default regime in place when Congress enacted the FAA.

D. Recognizing that FAA motions are adjuncts to the underlying controversy comports with the precept that jurisdictional rules should be simple and uniform. The ordinary look-through approach also furthers Congress' goal of speedy access to the courts to vindicate arbitration agreements and ensuing awards.

II. Petitioner offers two irreconcilable theories of when federal courts have jurisdiction over FAA motions: either FAA motions are standalone suits requiring an independent basis for jurisdiction absent a freestanding jurisdictional grant in the FAA; or FAA motions are adjuncts until the arbitral award issues, but require freestanding jurisdiction afterwards. Those theories produce different results for motions to appoint arbitrators (§ 5) or compel witnesses (§ 7). Neither theory is right.

A. Petitioner's view that motions under §§ 9 and 10 are standalone suits would perversely mean that federal courts have jurisdiction over *every* such motion under the FAA. Under 28 U.S.C. § 1337, U.S. district courts have original jurisdiction over "any civil action or proceeding arising under any Act of Congress regulating commerce."

The FAA is undoubtedly an act regulating commerce, and if FAA motions are standalone lawsuits, then they are certainly "proceedings." The ironic upshot of petitioner's approach would be to create a federal forum for *all* FAA motions, including motions to confirm awards resolving state-law controversies.

B. Petitioner's competing theories fail on their own terms. Sections 4 and 8 are not freestanding jurisdictional provisions. This Court has repeatedly declared that the domestic FAA does not create federal jurisdiction. While chapters 2 and 3 of the FAA provide jurisdiction over international arbitration proceedings, Congress provided jurisdiction there because international controversies almost never create federal-question or diversity jurisdiction. Congress had no corresponding need to expand jurisdiction under the domestic FAA.

C. Petitioner's second theory—that the look-through approach flips off once the arbitral award issues—likewise fails. Petitioner analogizes arbitral awards to settlement agreements, and contends that federal courts have jurisdiction over federal lawsuits but not disputes over settlement agreements. From that purported rule, petitioner infers that federal courts lose jurisdiction over FAA motions when the arbitral award issues, absent some new basis for jurisdiction.

Petitioner's analogy fails on two levels. First, the relevant jurisdictional moment in settling federal claims is when the court dismisses the lawsuit, not when parties agree to settle. The analogous moment in arbitration is when the court enters an order confirming the award. So petitioner's own analogy means that courts *can* look to the underlying controversy for motions to confirm or vacate, just like courts enter orders of dismissal or reject a settlement after parties agree to settle. Second, courts lose ju-

risdiction post-settlement only if parties dismiss the lawsuit without incorporating the settlement agreement. But orders confirming arbitration awards incorporate the award and therefore function like an order incorporating a settlement, leaving federal courts with jurisdiction.

D. Treating FAA motions as standalone lawsuits for jurisdictional purposes would be unworkable. The FAA repeatedly refers to federal courts, showing that Congress thought federal judges would hear FAA motions at least sometimes. But it is hard to fathom how FAA motions would ever present federal questions in their own right. Treating FAA motions as standalone suits also presents Article III adversarialness problems. Most States impose similar adversarialness requirements. Many FAA motions might never be heard in *any* court, much less a federal one.

Perhaps some small number of motions could satisfy diversity jurisdiction. But if so, significant jurisdictional difficulties would arise there, too. For many FAA motions, identifying the relevant parties for diversity purposes or the amount-in-controversy would be fraught. And in a single controversy, parties would have to jump between state and federal court depending on the motion being brought.

E. No policy argument justifies this unworkable regime. Petitioner would relegate many parties to using state procedural mechanisms that conflict with the FAA's streamlined approach, even when the claims involved are *exclusively* federal. Congress did not detail the procedures to confirm or vacate arbitration awards just to see them never apply.

ARGUMENT

I. Federal Courts Have Jurisdiction Over FAA Motions If Jurisdiction Exists Over the Parties' Underlying Controversy

The FAA's text, structure, and purpose all show that if federal courts have jurisdiction over the parties' underlying controversy, federal courts have jurisdiction to entertain motions arising from that dispute, including §§ 9 and 10 motions to confirm or vacate arbitral awards.

A. FAA Motions Are Adjuncts to the Parties' Underlying Controversy

Two interlocking textual features of the FAA demonstrate that parties embroiled in an underlying federal dispute can file FAA motions in federal court, including §§ 9 and 10 motions to confirm or vacate awards. First, the FAA defines its procedures as *motions*. Second, multiple FAA provisions link these motions with the parties' underlying *controversy*. Because the FAA's procedural mechanisms are adjuncts to the parties' underlying controversy, the FAA allows parties to file motions to confirm or vacate arbitral awards resolving federal disputes in federal court.

1. The FAA authorizes various procedural devices that allow parties to enlist courts in facilitating arbitration. Section 3 authorizes "application[s]" to stay judicial proceedings pending arbitration. Section 4 allows parties to "petition" courts to compel arbitration, then twice refers to such requests as "application[s]." Section 5 provides for "application[s]" to courts to appoint arbitrators when the arbitration agreement is silent or the prescribed process breaks down. Section 7 allows "petition[s]" to courts to subpoena witnesses for the arbitration. And

§§ 9, 10, and 11 authorize "application[s]" to courts to confirm, vacate, or modify the arbitrators' award resolving the parties' dispute.

The FAA's text mandates that these procedural devices operate like ordinary motions. Section 6 provides that "[a]ny application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of *motions*, except as otherwise herein expressly provided." 9 U.S.C. § 6 (emphasis added). Section 12 drives the point home for vacatur and modification of awards, which § 12 repeatedly calls "motion[s]" and equates with "motion[s] in an action in the same court" for purposes of notice and service of process. *Id.* § 12; *accord id.* § 13 (referring to "motions" in the heading and a "party moving" for the confirmation or modification of an award).

The FAA's direction that these procedural devices are "motions" is all but dispositive, because "motions" are mechanisms for obtaining a court ruling *within* an existing case, not their own freestanding suits. *See A Modern Dictionary of the English Language* 446 (1911) ("motion in court" means "an application to a court of justice or to a judge … to have a rule or order made which is necessary to the progress of the action"); *accord* John C. Townes, *Studies in American Elementary Law* 474 (1911) ("motion" means an application, "in the progress of litigation, … to have the court take some action which is incidental to the main proceeding").

Thus, "[t]he term 'motion' has *never* been commonly understood to denote a vehicle for initiating a new and freestanding lawsuit." *In re Wild*, 994 F.3d 1244, 1257 (11th Cir. 2021) (en banc). FAA motions fit the bill: they "bring before the court for ruling some material but incidental matter" to the parties' arbitration. *See* 56 Am. Jur. 2d Motions, Rules, and Orders § 1 (2021).

2. "[T]he structure of the FAA as a whole" also makes "evident … that Congress envisioned" a motion under the FAA "not as a freestanding lawsuit, but as an adjunct to the underlying substantive controversy between the parties in arbitration." *Me. Cmty. Health Options v. Albertsons Cos.*, 993 F.3d 720, 725 (9th Cir. 2021) (Watford, J., concurring) (cleaned up). The FAA operates as an integrated whole during the entire lifecycle of the underlying controversy, authorizing recourse to the courts "to take actions necessary to ensure that the parties' underlying controversy is successfully resolved through arbitration." *Id.*; *accord McCormick v. Am. Online, Inc.*, 909 F.3d 677, 682 (4th Cir. 2018).

The FAA throughout refers to the parties' underlying "controversy" as the common thread. Start with § 2, the FAA's "centerpiece" provision guaranteeing equal treatment and enforceability of arbitral agreements. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985). Section 2 provides that a "written provision in … a contract … to settle by arbitration *a controversy*" or an agreement "to submit to arbitration an existing *controversy* … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (emphases added). Congress thus sought to ensure judicial enforcement of arbitral agreements to resolve the parties' underlying controversy.

Ensuing FAA provisions reflect that objective. Provision after provision expressly connects motions to the parties' underlying substantive dispute:

Section 3 instructs any federal court entertaining a lawsuit to grant a motion to stay that lawsuit if the suit was brought on "any issue referable to arbitration." 9 U.S.C. § 3. A federal court with jurisdiction over the lawsuit, *i.e.*, the underlying dispute, thus also has jurisdiction

over the request to stay that lawsuit pending arbitration. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983).

Section 4 authorizes parties to petition to compel arbitration in whatever court would have had jurisdiction over "*the controversy between the parties*," *i.e.*, the parties' underlying substantive dispute. 9 U.S.C. § 4 (emphasis added); *Vaden*, 556 U.S. at 62.

Section 5 authorizes "either party *to the controversy*," *i.e.*, the substantive controversy between the parties, to ask courts to appoint arbitrators if the arbitrator-selection process breaks down. 9 U.S.C. § 5 (emphasis added).

Section 7 allows arbitrators to summon witnesses to testify or bring evidence "deemed material as evidence *in the case*." 9 U.S.C. § 7 (emphasis added). Section 7 then authorizes petitions to a court to enforce those summonses. *Id.* Again, the petition and the case are inextricably entangled. *See Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 382 (2002); *Me. Cmty. Health*, 993 F.3d at 725 (Watford, J., concurring).

Sections 9, 10, and 11 allow parties to enlist courts to convert arbitral awards into judicial orders, with or without modifications, or to vacate the award. 9 U.S.C. §§ 9-11, 13. Under these provisions, courts are taking actions with respect to the "award," *i.e.*, the arbitrators' final decision resolving the parties' underlying controversy.

Sections 9-11 are the arbitration analogues to Federal Rules of Civil Procedure 58-60, which themselves do not grant subject-matter jurisdiction but authorize courts to convert jury verdicts into court judgments or to vacate verdicts. Likewise, §§ 9, 10, and 11 let parties convert arbitral awards into court judgments to conclusively resolve the parties' underlying dispute or vacate an award. Post-

verdict motions in ordinary civil actions are not independent lawsuits. Likewise, motions to confirm, vacate, and modify awards are adjuncts to the parties' controversy.

Taken as a whole, the FAA authorizes motions to courts to facilitate arbitration of an underlying substantive controversy from cradle to grave. *See McCormick*, 909 F.3d at 682. The motions themselves do not confer federal jurisdiction; the underlying controversy performs that function. In other words, "the arbitration agreement limits the remedies a federal court may employ but does not affect the court's jurisdiction." *Doscher v. Sea Port Grp. Sec., LLC*, 832 F.3d 372, 388 (2d Cir. 2016). And the FAA throughout presupposes that motions will be brought in federal court, by repeatedly referring to "United States district court[s]" as places to file these motions. 9 U.S.C. §§ 4, 7, 10; *see also id.* §§ 3, 9, 11 (similar); *infra* p.37.

B. FAA Motions Require Federal Courts to Look to the Underlying Controversy

1. Federal courts have jurisdiction over motions when they have jurisdiction over the "underlying action." *See U.S. Cath. Conf. v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988). Thus, federal courts entertain motions for temporary restraining orders, to compel discovery, to disqualify counsel, to change venue, to seal records, to provide relief from judgments, and to grant post-judgment attorney's fees so long as courts have jurisdiction over the underlying substantive dispute.[1]

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[1] *E.g.*, *T St. Dev. LLC v. Dereje & Dereje*, 586 F.3d 6, 11 (D.C. Cir. 2009) (court had jurisdiction over motion to enforce settlement "while the underlying suit remains pending"); *Alabama v. U.S. Army Corps of Eng'rs*, 382 F. Supp. 2d 1301, 1317 (N.D. Ala. 2005) ("if the court had subject matter jurisdiction over … the original complaint, the court had jurisdiction to enter various orders and allow subsequent

That jurisdictional rule applies equally to FAA motions. *Me. Cmty. Health*, 993 F.3d at 725 (Watford, J., concurring). The FAA itself does not displace that default rule, because the FAA does not create or restrict federal jurisdiction over the motions the FAA authorizes. Rather, "for jurisdiction over controversies touching arbitration, the [FAA] does nothing." *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581-82 (2008); *see Vaden*, 556 U.S. at 59, 66; *Moses H. Cone*, 460 U.S. at 25 n.32.

The fact that parties might resolve their underlying federal dispute in arbitration, rather than in court, does not change the calculus. Federal courts do not lose "jurisdiction over a substantive dispute between the parties that they would otherwise be empowered under § 1331 to hear, merely because of the presence of an arbitration agreement." *Doscher*, 832 F.3d at 388. The FAA creates a "procedural mechanism that provides an alternative to litigation." *McCormick*, 909 F.3d at 683. "By agreeing to arbitrate a [federal] statutory claim, a party … only submits to [its] resolution in an arbitral, rather than a judicial, forum." *Mitsubishi*, 473 U.S. at 628. The same goes for diversity jurisdiction under 28 U.S.C. § 1332. "An agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum-selection clause that posits not only the situs of suit but also the procedure to be used in resolving the dispute." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974).

The FAA is not alone in authorizing federal courts to adjudicate motions in controversies not then pending before the court. Take notices to remove state-court civil

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amendments"); *cf. Enable Miss. River Transmission, L.L.C. v. Nadel & Gussman, L.L.C.*, 844 F.3d 495, 501 (5th Cir. 2016) (court denied motion to disqualify counsel because it lacked subject-matter jurisdiction over "the underlying suit").

actions. *See* 28 U.S.C. § 1446. To rule on such a motion, the district court asks whether it has subject-matter jurisdiction over the underlying controversy, *id.* § 1441(a), not whether the notice of removal itself establishes federal jurisdiction. In short, district courts look to the underlying controversy, *see Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 87 (2014), just as courts do under the FAA.

Similarly, Federal Rule of Civil Procedure 27 permits preemptive federal-court motions before any federal suit exists. That rule authorizes petitions "to perpetuate testimony about any matter cognizable in a United States court" where the petitioner expects to be a party to such an action "but cannot presently bring it or cause it to be brought." Fed. R. Civ. P. 27(a)(1). As with removal, courts do not ask if the petition itself establishes federal jurisdiction, instead looking to whether "federal jurisdiction would exist" "in the contemplated action." *In re Application of Deiulemar Compagnia Di Navigazione S.p.A.*, 198 F.3d 473, 484 (4th Cir. 1999) (citation omitted).

In sum, the FAA embodies the default rule that if federal courts would have jurisdiction over the parties' underlying controversy, federal courts have jurisdiction over motions inextricably linked to that controversy. "[I]f the district court would have been able to exercise subject-matter jurisdiction over [the underlying] controversy, it necessarily has jurisdiction" to hear FAA motions "in connection with the ongoing arbitration proceeding." *Me. Cmty. Health*, 993 F.3d at 725 (Watford, J., concurring). "In each instance the underlying complaint actually or potentially before the arbitrators should be examined to see whether it would yield federal question jurisdiction" or some other basis for federal jurisdiction "in the absence of the arbitration clause." 1 Ian R. Macneil et al., *Federal Arbitration Law* § 9.2.3.3 (1996).

2. The above conclusion comports with this Court's precedent interpreting the FAA shortly after its enactment. *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263 (1932), addressed federal jurisdiction over a motion to confirm an award issued after an arbitration by looking to the parties' underlying controversy. Because that controversy sounded in admiralty, "[t]he subject matter of the controversy thus lay within" federal jurisdiction. *Id.* at 272. The Court did "not conceive it to be open to question that, where the court has authority under the [FAA] … to make an order for arbitration, the court also has authority to confirm the award or to set it aside for irregularity, fraud, *ultra vires* or other defect." *Id.* at 275-76 & n.3.

Petitioner (at 19 n.5) distinguishes *Marine Transit* as an admiralty-specific rule that "turned on the unique language of Section 8," which authorizes federal courts to retain jurisdiction throughout an admiralty arbitration. But *Marine Transit* did not invoke § 8's admiralty-specific language when discussing the court's jurisdiction "to confirm [an] award or to set it aside for irregularity, fraud, *ultra vires* or other defect." 284 U.S. at 275-76. Rather, *Marine Transit* cited §§ 10-12, which govern motions to vacate or modify awards and procedures for vacating and modifying awards in *all* types of arbitrations. *See* 284 U.S. at 276 n.3.

Other contemporaneous interpretations of the FAA bolster this reading. Julius Cohen, the statute's principal drafter, explained: "The Federal courts are given jurisdiction to enforce such agreements whenever under the Judicial Code they would have had jurisdiction of an action or proceeding arising out of the controversy between the parties." Julius Henry Cohen & Kenneth Dayton, *The New Federal Arbitration Law*, 12 Va. L. Rev. 265, 267 (1926); *see also* Imre S. Szalai, *The Federal Arbitration Act and the Jurisdiction of the Federal Courts*, 12 Harv.

Negot. L. Rev. 319, 341 (2007) (recounting history). Similarly, the American Bar Association the year the FAA was enacted stated that "jurisdiction exists in those cases in which, under the Judicial Code, the Federal courts would normally have jurisdiction of the controversy between the parties." ABA Committee on Commerce, Trade & Commercial Law, *The United States Arbitration Law and Its Application*, 11 A.B.A. J. 153, 154 (1925).

C. Section 4 Does Not Transform Other FAA Motions into Freestanding Suits

Petitioner (at 13, 15-18) primarily relies on § 4, which directs parties to file petitions to compel arbitration in "any United States district court which, save for such agreement [to arbitrate], would have jurisdiction … of the subject matter of a suit arising out of the controversy between the parties." 9 U.S.C. § 4. Petitioner (at 18) argues that if the whole FAA embodied the look-through approach, § 4 would be superfluous. Petitioner is incorrect.

1. Section 4 is a *venue* provision, not, as petitioner claims, a freestanding jurisdictional grant. Br. 16, 17 n.4, 20; *see infra* pp.30-32. Section 4's text does not employ classic jurisdiction-creating language, like that "district courts shall have original jurisdiction" over particular controversies. *E.g.*, 28 U.S.C. §§ 1330-1333, 1335, 1337-1340, 1343-1348, 1350-1358, 1361-1363, 1368-1369.

Instead, § 4 supplies filing directions to parties: "A party … may petition any United States district court which, save for such [arbitration] agreement, would have jurisdiction" over the parties' dispute. Then § 4 functionally narrows venue further to a district where the arbitration can take place. Section 4 does so by providing that the arbitration must occur "within the district in which the petition for an order directing such arbitration is filed."

Thus, § 4 prescribes when parties may seek to compel arbitration, then "establishes the appropriate *venue* in which they may do so." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lauer*, 49 F.3d 323, 327 (7th Cir. 1995) (emphasis added). The Court in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.* described § 4 as "even more obviously permissive" than comparable venue provisions elsewhere in the FAA, meaning that § 4 prescribes a broader venue rule. 529 U.S. 193, 199 (2000).

Congress left no doubt that § 4 is a rule about venue, not jurisdiction, because Congress cribbed most of § 4 in an analogous venue provision governing international arbitrations, 9 U.S.C. § 204. Entitled "Venue," § 204 prescribes that "action[s] or proceeding[s] over which the district courts have jurisdiction" under § 203 "may be brought in any such court in which *save for the arbitration agreement* an action or proceeding *with respect to the controversy between the parties* could be brought." *Id.* § 204 (emphases added). By contrast, the preceding provision, § 203, is entitled "Jurisdiction; amount in controversy." *Id.* § 203. It is not plausible that Congress viewed § 204's language as governing venue with respect to international arbitrations, yet employed highly similar language in § 4 for jurisdictional purposes.

Statutory history reinforces that § 4 is all about venue. When the FAA was enacted in 1925, the federal venue statute severely curtailed access to federal court by confining parties to "the district in which the defendant resided." *Cortez Byrd*, 529 U.S. at 199-200 (discussing 28 U.S.C. § 112(a) (1926)). Section 4 overrode that statutory default in favor of a broader venue rule: parties can file petitions to compel arbitration wherever the parties could have brought suit over their underlying controversy, but parties must then conduct their arbitration within the same venue.

In practice, § 4 often gives parties free choice of venue in any federal district court (so long as they are able to arbitrate there). But "[s]everal statutes," including ones in existence in 1925, "give the United States District Court for the District of Columbia special subject matter jurisdiction." Wright & Miller, *Federal Practice and Procedure* § 3681 (4th ed. 2021). When the underlying controversy implicates those statutes, § 4 would restrict venue more.

Vaden complements these points. The question there was how federal courts should tell whether they have jurisdiction over § 4 petitions to compel arbitration: should they apply the look-through approach, or gauge jurisdiction based on the face of the motion? 556 U.S. at 57. The Court held the former based on § 4's reference to "jurisdiction … of a suit arising out of the controversy between the parties," which the Court interpreted to mean the parties' underlying substantive dispute. *Id.* at 62-63.

Section 4 is thus a venue rule that expressly incorporates the rule for subject-matter jurisdiction. Because § 4 explicitly refers to the FAA's underlying jurisdictional rule, the section's language supported the Court's application of the look-through approach. *Id.* at 62. *Vaden* casts no doubt on the ordinary rule that federal courts have jurisdiction over motions if they have jurisdiction over the underlying controversy. *Vaden* simply did not need to delve into that rule, because § 4 itself mentions the look-through approach.

2. Petitioner (at 16-17) is similarly incorrect that § 4's language implicitly bars the look-through test for other FAA motions. Other FAA provisions do not mention district-court jurisdiction over the parties' underlying controversy because these other provisions prescribe different *venue* rules. For instance, § 7 authorizes filing petitions to subpoena witnesses for the arbitration in "the

United States district court for the district in which such arbitrators … are sitting." 9 U.S.C. § 7.

Further, the Court in *Cortez Byrd* already held that §§ 9, 10, and 11 set venue requirements, explaining that "Section 9 of the FAA governs venue for the confirmation of arbitration awards," then pointing to similar language in §§ 10 and 11. 529 U.S. at 197-98; *see* 4 Macneil, *supra*, § 38.3.1.1 (calling § 9 a "venue requirement"). Specifically, § 9 lets parties seek confirmation of awards in the judicial district "specified" in the arbitration agreement, or in "the United States court in and for the district within which such award was made." 9 U.S.C. § 9. Sections 10 and 11 likewise authorize parties to file motions to vacate or modify awards in the district where the arbitration occurred. *Id.* §§ 10-11. These provisions thus expanded venue beyond the 1925 default of where the defendant resides. *Cortez Byrd*, 529 U.S. at 199-200.

Finally, § 4 resembles other statutes where Congress has tied venue for particular actions to jurisdictional tests. For instance, in the habeas context, Congress explicitly tethered venue for various habeas-related applications to the federal district court "that would have jurisdiction" to hear the habeas corpus application. *See*, *e.g.*, 28 U.S.C. § 2262 (pre-application motion to stay execution); *id.* § 2263 (motion for extension of time to file habeas application); *cf. id.* § 1391 (premising venue on "personal jurisdiction" in some cases but not others). By referring to jurisdiction in these venue provisions, Congress did not implicitly strip federal courts of jurisdiction by omitting that language elsewhere.

* * *

Applying the above principles here, the federal district court had jurisdiction over petitioner's motion to va-

cate and respondents' motion to confirm the award because federal jurisdiction undisputedly exists over petitioner's causes of action. Petitioner asserted federal claims against Ameriprise under Title VII and the Equal Pay Act. *Supra* p.7. The underlying controversy thus presents a federal question under 28 U.S.C. § 1331.

Further, petitioner's state-law claims against respondents undisputedly arise from the same common nucleus of operative facts as her claims against Ameriprise, namely the circumstances of her termination. *Supra* pp.6-7. The federal court thus would have supplemental jurisdiction over those claims under 28 U.S.C. § 1367. Pet.App.9a; *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164-65 (1997).

D. The Same Jurisdictional Test Should Apply to All FAA Motions

When deciding between competing jurisdictional approaches, this Court looks for a "single, more uniform interpretation" whenever possible. *Hertz Corp. v. Friend*, 559 U.S. 77, 92 (2010). "[A]dministrative simplicity is a major virtue" for jurisdictional rules. *Id.* at 94. Especially "in the area of subject-matter jurisdiction," the Court has cautioned against "vague boundar[ies] … wherever possible." *Id.* (citation omitted). Plus, "[s]imple jurisdictional rules … promote greater predictability" by helping parties know where to file and by helping courts swiftly resolve threshold issues. *See id.*

Treating FAA motions as adjuncts to the underlying controversy for jurisdictional purposes embodies those virtues. *McCormick*, 909 F.3d at 684; *Ortiz-Espinosa v. BBVA Sec. of P.R., Inc.*, 852 F.3d 36, 46 (1st Cir. 2017). Federal courts assess whether jurisdiction exists over the parties' underlying controversy every day, aided by a deep body of caselaw. *See Me. Cmty. Health*, 993 F.3d at

726 (Watford, J., concurring). Parties, too, can readily predict which court will have jurisdiction over particular motions and plan accordingly. And courts and litigants alike can sidestep litigation over threshold jurisdictional issues.

In any jurisdictional context, the "sensible test that is relatively easier to apply" has the advantage. *Hertz*, 559 U.S. at 96. If any statute cries out for a single, easy-to-apply jurisdictional test, the FAA is it. Congress designed the FAA "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone*, 460 U.S. at 22. The FAA furthers an "unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011).

Clear rules as to how courts can tell if they have jurisdiction over a particular motion thus further the FAA's mission of facilitating arbitration. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 275 (1995). Turning judicial encounters into costly litigation quagmires over complex jurisdictional tests (*see infra* pp.40-43) would destroy all the benefits of arbitration and leave parties without the timely and seamless judicial assistance the FAA sought to provide.

II. Petitioner's Approach Is Untenable

Petitioner offers two mutually incompatible accounts of when a federal court has jurisdiction over FAA motions. Petitioner first argues (at 15-19) that because §§ 4 and 8 are purportedly express jurisdictional grants, every other FAA motion, viewed in isolation, must present its

own freestanding basis for jurisdiction. Second, petitioner argues (at 21-22) that the parties' underlying controversy determines federal courts' jurisdiction over pre-award motions under the FAA. But, post-award, the motion-in-isolation approach takes over. Those theories produce different jurisdictional tests for the same FAA motions. Under the first, federal courts must find some freestanding jurisdictional hook for §§ 5 and 7 motions. Under the second, these same motions are bound up with the parties' underlying dispute for jurisdictional purposes.

Further problems abound. If FAA motions are standalone proceedings, 28 U.S.C. § 1337 would create federal jurisdiction over all FAA motions, even where no federal jurisdiction would exist over the underlying controversy. Both of petitioner's theories also produce implausible outcomes and unworkable jurisdictional rules.

A. Section 1337 Supplies Federal Jurisdiction If FAA Motions Are Freestanding Suits

Section 1337 vests federal district courts with "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce." 28 U.S.C. § 1337; *see id.* § 41(8) (1911) (original enactment). Section 1337 is a "broad grant of general jurisdiction." *Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297, 300 (1943). Under petitioner's theory that motions to confirm or vacate awards are standalone suits, they would readily qualify as "proceedings" under § 1337. *See Black's Law Dictionary* 947 (2d ed. 1910) ("proceeding" meant "any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object").

Motions to confirm or vacate awards under FAA §§ 9 and 10 also "aris[e] under" an "Act of Congress regulating

commerce." 28 U.S.C. § 1337. The FAA applies only to contracts "involving commerce" that contain arbitration provisions, 9 U.S.C. § 2, and "rests on the authority of Congress to enact substantive rules under the Commerce Clause," *Southland Corp. v. Keating*, 465 U.S. 1, 11 (1984). And §§ 9 and 10 motions to confirm or vacate arbitral awards obviously "arise under" the FAA. For parties to avail themselves of the FAA's procedures for confirming or vacating awards, they must have arbitrated pursuant to contracts involving commerce. Thus, despite touting the benefits of state-court enforcement, petitioner's theory produces a strange result. If FAA motions were indeed their own standalone suits, § 1337 would confer federal jurisdiction over *all* FAA motions, including awards resolving state-law claims between non-diverse parties.

B. Petitioner's Reliance on Sections 4 and 8 Is Flawed

Petitioner (at 16, 17 n.4, 18-20) interprets §§ 4 and 8 as expressly "grant[ing]" federal courts jurisdiction and notes that chapters 2 and 3 contain express jurisdictional grants in the international arbitration context. Because other FAA provisions lack similar "jurisdictional language," petitioner argues, federal courts cannot hear any other FAA motions absent some freestanding source of jurisdiction over the motion itself. Br. 15. This theory makes a mess of the FAA.

1. Petitioner portrays §§ 4 and 8 as affirmative, "isolated" grants of federal jurisdiction. Br. 17 n.4. Indeed, it is not clear how rejecting the look-through approach for other motions would be "logically possible without construing § 4 to expand federal jurisdiction." *Doscher*, 832 F.3d at 384. But that characterization defies four decades of this Court's precedents. Petitioner's question presented thus states: "As this Court has confirmed, the FAA *does not itself confer federal-question jurisdiction*; federal courts must have an independent jurisdictional

basis to entertain matters under the Act." Br. I (emphasis added). This Court thus has held that the FAA:

- "does not create any independent federal-question jurisdiction," *Southland*, 465 U.S. at 15 n.9; *Moses H. Cone*, 460 U.S. at 25 n.32 (same);
- "does nothing" with respect to "jurisdiction over controversies touching arbitration," *Hall St.*, 552 U.S. at 581-82;
- "bestows no federal jurisdiction but rather requires … an independent jurisdictional basis over the parties' dispute," *Vaden*, 556 U.S. at 59 (cleaned up); and
- has a "nonjurisdictional cast," *id.*

Petitioner (at 17 n.4) footnotes the above precedents as just rejecting "the limited argument that any action invoking the FAA automatically raises a federal question." But the Court presumably did not spend decades categorically holding that the FAA lacks jurisdictional underpinnings while somehow overlooking that two provisions are "isolated jurisdictional grant[s]." Br. 17 n.4 (emphasis omitted). As a leading treatise concludes: "It is plain that Congress intended the FAA to have no effect on federal jurisdiction. This means, as illustrated by the language of both FAA § 4 and FAA § 8, not only that Congress was not creating federal jurisdiction, but also that it was not reducing federal jurisdiction." 1 Macneil, *supra*, § 9.2.3.3.

Petitioner's same footnote (at 17 n.4) claims that this Court has "never once suggested that *Section 4's isolated jurisdictional grant* cannot itself support federal jurisdiction." But *Vaden* holds that "§ 4 of the FAA does not enlarge federal-court jurisdiction; rather, it confines federal courts to the jurisdiction they would have 'save for the arbitration agreement.'" 556 U.S. at 66 (cleaned up). *Vaden* added: "Like §4 itself, the Declaratory Judgment Act

does not enlarge the jurisdiction of the federal courts." *Id.* at 70 n.19.

Vaden drove home the point by repeatedly comparing § 4 to chapter 2 of the FAA, which (unlike § 4) "demonstrate[s] that when Congress wants to expand federal-court jurisdiction, it knows how to do so clearly." 556 U.S. at 59 n.9 (cleaned up); *see id.* at 65 n.15. *Moses H. Cone* similarly says that, under § 4, "there must be diversity of citizenship or some other *independent* basis for federal jurisdiction before the order can issue." 460 U.S. at 25 n.32 (emphasis added).

2. Petitioner (at 18-20) also invokes FAA § 8 (admiralty arbitrations) and chapters 2 and 3 (international arbitrations). Petitioner (at 20) claims these provisions show that Congress knew how to "textually provide[] tailored jurisdiction" and was "assuredly aware of the need to craft *some* jurisdictional rule where it indeed wished federal courts to exercise jurisdiction."

But that argument proves too much. Ordinarily, granting (or really just mentioning) jurisdiction in some provisions does not implicitly strip federal courts of jurisdiction in other provisions where Congress is silent. The strong presumption is that when Congress wants to bar federal courts from entertaining certain types of proceedings, Congress must use clear language. *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013).

Regardless, these provisions do not mean what petitioner says. Section 8 authorizes a party to an admiralty case to "begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party," 9 U.S.C. § 8, *i.e.*, by seizing a ship and filing a federal-court complaint (a "libel," in admiralty parlance). *See Libel*, *Black's Law Dictionary* (11th ed. 2019). "[T]he 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.

Petitioner argues (at 18-19 & n.5) that § 8 creates a unique jurisdictional rule that authorizes an admiralty court to "retain" jurisdiction over the entire lifecycle of an arbitrable controversy. Petitioner (at 18-19) infers that a different rule must apply in civil, non-admiralty cases because Congress "omitted any similar authority" for federal courts "to enforce an award on the back-end if jurisdiction exists to compel arbitration on the front-end."

That reading of § 8 is doubly incorrect. First, § 8 preserves existing admiralty procedures; it does not create otherwise-nonexistent jurisdiction. In § 8, "Congress plainly and emphatically declared that although the parties had agreed to arbitrate, the traditional admiralty procedure with its concomitant security should be available to the aggrieved party." *The Anaconda v. Am. Sugar Refining Co.*, 322 U.S. 42, 46 (1944).

Second, under petitioner's reasoning, by instructing federal courts to retain jurisdiction throughout an admiralty case but omitting similar language elsewhere, the FAA implicitly bars federal courts from retaining jurisdiction in non-admiralty cases. But the law is the opposite. If a federal court grants a petition to compel arbitration in a non-admiralty case, the court retains jurisdiction to grant, modify, or vacate an ensuing award. *E.g.*, *Jolley v. Paine Webber Jackson & Curtis, Inc.*, 864 F.2d 402, 405 (5th Cir. 1989); *PMS Distrib. Co. v. Huber & Suhner, A.G.*, 863 F.2d 639, 642 (9th Cir. 1988); *Univ. Life Ins. Co. of Am. v. Unimarc Ltd.*, 699 F.2d 846, 848-49 (7th Cir. 1983).

Chapters 2 and 3 also do not help petitioner. Those provisions create federal jurisdiction over any "action or proceeding" that falls under the New York or Panama

Conventions, which "shall be deemed" to present a federal question over which federal district courts have "original jurisdiction." 9 U.S.C. §§ 203, 302; *see Vaden*, 556 U.S. at 59 n.9. Congress had to create a special jurisdictional rule for international arbitrations because the default rule—that federal jurisdiction would exist over motions to enforce or vacate these arbitral awards so long as jurisdiction exists over the parties' underlying dispute—would virtually always foreclose federal jurisdiction. Unlike domestic arbitrations, international arbitrations often resolve claims that arise entirely under foreign law. *See* 4 Macneil, *supra*, § 44.9.4.2. Chapters 2 and 3 thus created federal jurisdiction in circumstances where the ordinary look-through approach would not do the trick.

C. Petitioner's Settlement Analogy Is Flawed

Petitioner (at 13-14, 21-23) proposes a different theory based on an analogy to settlements, namely that issuance of an arbitral award marks the jurisdictional turning point. Under this view (at 21), before the award, the FAA "permit[s] the 'look-through' approach for pre-arbitration motions in live federal disputes." But after the award, all FAA motions need an independent jurisdictional basis. This theory rests on a faulty analogy between arbitral awards and contractual settlements of litigation.

1. Petitioner's analogy starts off by invoking the putative "longstanding jurisdictional and procedural norm[]" that "when parties settle *and dismiss* a federal suit," any ensuing disputes over the settlement need some independent jurisdictional basis to get to federal court. Br. 21 (emphasis added). As petitioner seems to acknowledge (at 24), the settlement itself is *not* the pivotal point when federal courts may lose jurisdiction. *But see* Br. 21, 23 (repeatedly suggesting that the settlement itself is the line). The suit-ending act is the ensuing federal-court dismissal. Parties can file a motion for a stipulated

dismissal that has automatic effect, or the court can issue an order of dismissal. Fed. R. Civ. P. 41(a)(1)-(2); *Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019); *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 378 (1994).

Similarly, in arbitration, the pivotal, case-ending moment is confirmation of the award, not merely the arbitrators' issuance of the award. "[T]he dispute the parties went to arbitration to resolve is 'live' until the arbitration award is confirmed and the parties have an enforceable judgment in hand." *Teamsters Local 177 v. UPS*, 966 F.3d 245, 252 (3d Cir. 2020). Arbitral awards are like settlement agreements, not like dismissals of federal suits. The equivalent of dismissal is a court's judgment confirming the award. Put differently: §§ 9 and 10 motions asking courts to confirm or vacate the award arise *before* the case-ending act of confirmation. So, under petitioner's settlement analogy, those motions are bound up with the underlying controversy and the look-through approach applies. Indeed, district courts have jurisdiction to enforce settlement agreements before dismissal.[2]

2. Petitioner's analogy rests on further inaccuracies. Petitioner is incorrect (at 13) that settlements (or even settlements and dismissals) "virtually always" mark the end of federal jurisdiction over the underlying case. But as this Court explained in *Kokkonen*, whether federal courts have jurisdiction over post-settlement disputes depends heavily on what any court order of dismissal says. 511 U.S. at 381.

Federal courts retain jurisdiction over ensuing litigation over the settlement if the court's "order of dismissal"

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[2] *E.g.*, *T St. Dev.*, 586 F.3d at 11; *Wilson v. Wilson*, 46 F.3d 660, 664 (7th Cir. 1995); *Hrywnak v. Newman*, 2007 WL 9815678, at *4 (N.D. Ill. May 15, 2007).

incorporates the settlement terms. *Id.* By converting a settlement into a federal court order, breaches of the settlement "would be a violation of the order," conferring "ancillary jurisdiction to enforce the agreement." *Id.* Similarly, in many circuits, federal courts retain jurisdiction over post-settlement litigation if a party uses a breach of a settlement agreement to "reopen[] … the dismissed suit." *See id.* at 378. By contrast, post-settlement disputes require some independent basis for federal jurisdiction only if the parties settle a federal lawsuit, move the court for a stipulated dismissal, and obtain a ministerial order of dismissal that does *not* incorporate the settlement. Those were the circumstances of *Kokkonen*. *Id.* at 377-78, 380-82.

Here, federal orders under § 9 operate just like the kind of settlement-embodying court orders that *Kokkonen* said would *preserve* federal jurisdiction over post-settlement disputes. *See id.* at 381. When a court grants a motion to confirm or modify an arbitral award, the court issues an "order … for the entry of judgment" that "shall have the same force and effect, in all respects, as … a judgment in an action." 9 U.S.C. § 13. And that judgment "may be enforced as if it had been rendered in an action in the court in which it is entered." *Id.* Thus, if a federal court grants a motion to confirm an award, the ensuing order converts the award into the equivalent of a federal-court judgment. *Id.*

In sum, petitioner's analogy confirms that *all* FAA motions that precede that final judgment—which is to say, all FAA motions—are bound up with the parties' underlying dispute.

D. Petitioner's Approach Produces Implausible Results

Both of petitioner's theories also require federal courts to ascertain if the "dispute" presented in various

FAA motions "itself qualifies for federal jurisdiction." Br. 14; *see id.* at 16. Petitioner's theories produce contradictory answers as to whether that test would apply to motions under §§ 5 and 7; at a minimum, petitioner's standalone-jurisdiction test would govern §§ 9 and 10 motions to confirm or vacate awards. Yet petitioner says little about how this test would operate, beyond suggesting that each motion itself must present a federal question under 28 U.S.C. § 1331, satisfy diversity jurisdiction under § 1332, or sound in admiralty under § 1333. Br. 24; Pet. 30. That ill-defined test would create far-fetched results.

1. **FAA Nullification**. Petitioner's position would close the federal courthouse doors to many FAA motions. Petitioner (at 14) agrees that "non-diverse parties" would be "relegate[d]" to state court, but most FAA motions could not satisfy diversity jurisdiction either.

That result would be news to Congress, which provided throughout the FAA that motions could be heard by a "court[] of the United States," 9 U.S.C. § 3, a "United States district court," *id.* §§ 4, 7, or a "United States court," *id.* §§ 9-11. "[T]here is no explicit provision for post-award enforcement in state courts." *Ortiz-Espinosa*, 852 F.3d at 43. The enforcement of motions to confirm or vacate awards under §§ 9 and 10 was "obviously intended by Congress to [take place in] federal, not state, courts." 4 Macneil, *supra*, § 38.1.8. Indeed, this Court has left open whether any FAA provisions besides §§ 1-2 *ever* apply in state court. *See Vaden*, 556 U.S. at 71 & n.20; *Allied-Bruce*, 513 U.S. at 289-91 (Thomas, J., dissenting).

Even assuming all FAA provisions apply in state court, petitioner's approach would deprive many of those courts of jurisdiction as well. Divorced from the underlying controversy, many FAA motions are non-adversarial, and "[m]ost state courts that have addressed the issue also forbid nonadversarial suits." F. Andrew Hessick,

Cases, Controversies, and Diversity, 109 Nw. U. L. Rev. 57, 72 & n.110 (2015) (collecting cases). So *no* court might have jurisdiction over many of these motions. Those glaring "anomalies" alone warrant rejecting petitioner's interpretation. *See Cortez Byrd*, 529 U.S. at 203; *Vaden*, 556 U.S. at 65 (rejecting FAA reading that would raise "curious practical consequences"). Specifically:

Section 5 allows "either party to the controversy" to apply to the court to appoint the arbitrator if the arbitration agreement fails to specify an appointment method, or a party fails to comply. 9 U.S.C. § 5. Under petitioner's approach, § 5 would virtually never apply in federal court. Viewed in isolation, the bare appointment of arbitrators involves no federal cause of action.

Nor is there an obvious basis for diversity jurisdiction: how would the appointment of arbitrators satisfy the $75,000 amount-in-controversy requirement under 28 U.S.C. § 1332? Federal courts also would lack Article III jurisdiction over all *unopposed* § 5 motions, which would never present "a real, substantial controversy between parties having adverse legal interests." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). Even assuming § 5 applies in state courts, unopposed § 5 motions would present justiciability problems in the many state courts that "forbid nonadversarial suits." Hessick, *supra*, at 72 & n.110.

Section 7 allows a "petition" to the "United States district court" in the district where the arbitrators are located for an order to "compel the attendance of such person or persons" or "punish said person or persons for contempt." 9 U.S.C. § 7. Yet petitioner's approach would make the federal-court § 7 petition an endangered species. Whether witnesses must comply with arbitrators' subpoenas raises no federal question. And it is anyone's

guess how courts should ascertain whether such motions satisfy diversity jurisdiction. *Infra* p.41.

Section 9 motions to confirm arbitration awards are summary proceedings that present no federal question. *See* 4 Macneil, *supra*, § 38.1.1. Many § 9 proceedings involve no dispute at all. So long as a party applies for "an order confirming the award" within a year, the court "must grant" the motion. 9 U.S.C. § 9. If the losing party wishes to oppose, that party must separately move to vacate or modify the award within three months after the award "is filed or delivered." *Id.* §§ 9, 12.

Thus, if § 9 motions must present some standalone jurisdictional basis, federal courts would almost always lack jurisdiction. It is hard to see how any motion to confirm would present a federal question. Nor would the parties be adverse at the time of filing in many cases; motions to confirm are often unopposed. And, as noted, the lack of adversarialness could rule out state-court jurisdiction as well. Congress surely did not require courts to confirm arbitral awards and give them "the same force and effect, in all respects, as … a judgment in an action," *id.* § 13, only to sabotage most courts' authority to hear these motions.

Section 10 empowers "the United States court in and for the district wherein the award was made" to grant a motion to vacate an award on limited grounds: fraud in obtaining the award; arbitrator bias; prejudicial arbitrator misconduct; or where the arbitrators exceeded their powers. 9 U.S.C. § 10. Because these grounds are not independent causes of action, motions to vacate would virtually never present federal questions under petitioner's approach. *See* Br. 22. And it is unclear how courts would apply diversity-jurisdiction criteria. *Infra* pp.41-42.

Section 11 authorizes "the United States court in and for the district wherein the award was made" to entertain

motions to modify awards to correct obvious mistakes. Specifically, courts can correct "an evident material miscalculation of figures"; awards that erroneously reach matters not submitted to the arbitrators; and non-substantive "imperfect[ions] in matter of form." 9 U.S.C. § 11. Again, if courts must ascertain jurisdiction purely on the basis of such motions, federal courts would virtually always lack jurisdiction. None of these grounds presents a federal question; many would never implicate an amount in controversy; and many would be non-adversarial, ruling out both federal and most state jurisdiction.

In sum, under petitioner's theory, many FAA motions would rarely, if ever, apply in federal court—contrary to the FAA's repeated expression that federal courts would entertain these motions. Petitioner (at 25) invokes "the significant role that state courts have always played in enforcing arbitration rights." But it is far from clear that such state-court litigation would involve the motions the FAA prescribes. Congress surely did not go to the trouble of fashioning reticulated procedures for seeking judicial assistance in facilitating arbitrations, only to build in a statutory self-destruct mechanism that would frequently prevent parties from invoking the FAA's procedures anywhere.

2. **Problems Determining Diversity Jurisdiction**. Even if some FAA motions could theoretically satisfy federal jurisdictional prerequisites in isolation, petitioner's approach would provoke uncertainty as to whether an FAA motion satisfies diversity jurisdiction.

Petitioner does not say how courts should ascertain whether an FAA motion satisfies the criteria for federal diversity jurisdiction under 28 U.S.C. § 1332. If diversity jurisdiction must appear on the face of a motion, then complex questions would ensue. Ordinarily, diversity exists only if all plaintiffs are citizens of different States

from all defendants. *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

But various motions raise hard questions about who counts for diversity purposes. Take § 7 petitions to compel enforcement of arbitrators' subpoenas of witnesses. 9 U.S.C. § 7. Who counts as parties for diversity purposes—the arbitrators? The subpoenaed witness? The parties to the underlying arbitration? Some combination thereof? *Compare Wash. Nat'l Ins. Co. v. OBEX Grp. LLC*, 958 F.3d 126, 134 (2d Cir. 2020) (applicants and witnesses), *with Amgen, Inc. v. Kidney Ctr. of Del. Cnty. Ltd.*, 95 F.3d 562, 567-68 (7th Cir. 1996) (underlying parties). Or take § 10 motions to vacate filed by "aggrieved" non-parties. 9 U.S.C. § 10(c). If the losing party in the arbitration does not support vacatur, is that party now aligned with the winner for diversity purposes?

Trying to apply the amount-in-controversy requirement to the four corners of various FAA motions raises further quandaries. For instance, how would petitioner calculate the amount in controversy involved in § 7 petitions to compel witnesses? *See Me. Cmty. Health*, 993 F.3d at 726 (Watford, J., concurring). Maybe the party seeking the testimony must quantify the testimony's potential value to the underlying controversy—a task likely requiring time-consuming and costly experts. *Id.* at 722-23 (majority op.).

Section 9 motions to confirm and § 10 motions to vacate present further wrinkles. Suppose the arbitrators rendered an award of $0 after rejecting a $20 million claim. Is the amount in controversy for purposes of § 9 motions to confirm or § 10 motions to vacate simply the amount of the award? That approach would rule out diversity jurisdiction in all cases where the arbitrators dismissed the complaint, no matter how much money was at stake in the underlying proceedings.

By contrast, if the arbitrators' denial of the $20 million payout sufficed to confer diversity jurisdiction, asymmetries would result. The party seeking to vacate the award could plead enough on the amount-in-controversy front to get that § 10 motion into federal court. Yet a party that filed a § 9 motion to confirm that very same $0 award would not satisfy diversity jurisdiction. Congress cannot possibly have intended to fragment litigation over the same award into different forums.

Petitioner's approach exemplifies the drawbacks of "[c]omplex jurisdictional tests," which "complicate a case, eating up time and money," breed "appeals and reversals [and] encourage gamesmanship," squander judicial resources, and generate unpredictability. *Hertz*, 559 U.S. at 94. And having to iron out the unknowns just to gain a federal foothold would destroy the FAA's mission of streamlined dispute resolution at "lower costs." *AT&T*, 563 U.S. at 348.

To sidestep these conundrums, many federal courts of appeals have defined the amount in controversy in motions to confirm, vacate, or modify arbitral awards as the amount in controversy in the underlying proceeding.[3] But if petitioner agrees with those decisions, and the motion and the underlying dispute are inextricably linked for amount-in-controversy purposes, the game is up. There is no principled basis for looking at the underlying dispute to gauge the amount in controversy, but not federal-question jurisdiction.

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[3] *E.g.*, *Pershing, L.L.C. v. Kiebach*, 819 F.3d 179, 182-83 (5th Cir. 2016); *Karsner v. Lothian*, 532 F.3d 876, 883-84 (D.C. Cir. 2008); *Theis Res., Inc. v. Brown & Bain*, 400 F.3d 659, 664-65 (9th Cir. 2005); *Richard C. Young & Co. v. Leventhal*, 389 F.3d 1, 3 (1st Cir. 2004); *Am.'s MoneyLine, Inc. v. Coleman*, 360 F.3d 782, 786-87 (7th Cir. 2004); *Jumara v. St. Farm Ins. Co.*, 55 F.3d 873, 877 (3d Cir. 1995).

3. **Fractured Multi-Forum Litigation**. Petitioner's approach would also force parties to toggle between state and federal court when filing different motions to facilitate the *same* arbitration of their underlying dispute. Congress could not have intended that federal courts would hear petitions to compel arbitration, but would be powerless to enforce awards issuing from that exact arbitration. *McCormick*, 909 F.3d at 682-83; *Ortiz-Espinosa*, 852 F.3d at 46; *Doscher*, 832 F.3d at 386.

Conversely, federal courts could have jurisdiction over some FAA motions, but not petitions to compel arbitration, which petitioner (at 24) portrays as central to "the FAA's core objective" of "compelling arbitration." If the federal court lacked jurisdiction over the underlying controversy, the federal court would also lack jurisdiction over a § 4 petition to compel arbitration. *Vaden*, 556 U.S. at 62. But under petitioner's approach, the federal court might yet have jurisdiction over § 7 petitions to subpoena recalcitrant witnesses in the arbitration, say if the witnesses provided diversity. "Why would Congress have wanted federal courts to intervene to enforce a subpoena issued in an arbitration proceeding involving a controversy that itself is not important enough, from a federalism standpoint, to warrant federal-court oversight?" *Me. Cmty. Health*, 993 F.3d at 726 (Watford, J., concurring).

Lower courts have addressed some of these anomalies by holding that, if a federal court has jurisdiction over a party's § 4 petition to compel arbitration, the court retains jurisdiction over all ensuing motions, all the way through confirmation or vacatur. *See id.* at 725 (collecting cases). And petitioner apparently had no objection to that premise below. Petitioner did not oppose Ameriprise's § 10 motion to confirm the award, even though the basis for federal jurisdiction was that the federal court had pre-

viously granted Ameriprise's § 4 motion to compel arbitration. *Supra* p.8. "If that view is correct, though, it must be because the [ensuing motion] is simply an adjunct to the underlying controversy between the parties in arbitration." *Me. Cmty. Health*, 993 F.3d at 725 (Watford, J., concurring). So "[w]hy should the nature of the jurisdictional analysis change" if a party does not file a motion to compel but instead files some later-arising motion "in federal court related to the underlying controversy?" *Id.* at 725-26.

Petitioner's position imposes equally untenable results. Either jurisdiction is piecemeal, and different motions implicating the same arbitration must go to state and federal courts, producing the antithesis of the swift dispute resolution the FAA promises. Or parties could blunt those anomalies by filing a motion to compel arbitration in federal court and anchoring jurisdiction. But that course would invite gamesmanship, as savvy parties would file "protective" motions to compel arbitration in federal court just to ensure back-end jurisdiction over motions to confirm or vacate the ensuing award. *See Doscher*, 832 F.3d at 387. Either way, petitioner's approach invites the kind of "overly complex jurisdictional administration" that this Court eschews. *Hertz*, 559 U.S. at 96. Such "unnecessar[y] complicat[ion]" of the FAA serves only to "breed[] litigation from a statute that seeks to avoid it." *Allied-Bruce*, 513 U.S. at 275.

E. Petitioner's Approach Undermines the FAA

"[E]ven the most formidable policy arguments cannot overcome a clear statutory directive." *BP P.L.C. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1542 (2021) (internal quotation marks omitted). But the FAA contains no statutory directive for courts to employ peti-

tioner's multiple jurisdictional tests across a unitary statute. And the dearth of any reason for Congress to have adopted petitioner's convoluted approaches is striking.

Petitioner (at 24) infers from silence in the FAA's legislative history that Congress was unconcerned with whether courts would enforce or vacate arbitral awards, and only cared about combatting the "reluctance of courts to compel arbitration." But Congress envisioned a "central role" for federal courts in enforcing arbitration agreements from the start all the way to confirming or vacating the award. *Ortiz-Espinosa*, 852 F.3d at 43; *accord McCormick*, 909 F.3d at 683; *Doscher*, 832 F.3d at 387.

Compelling arbitration on the front end is meaningless without an enforceable award on the back end. The FAA's concern with "courts' refusals to enforce agreements to arbitrate," *Allied-Bruce*, 513 U.S. at 270, encompasses preventing courts from improperly vacating awards by holding that the arbitration agreement was never enforceable at all. Regardless, even were Congress indifferent to back-end enforcement of arbitration agreements, it does not follow that Congress wanted to inflict a welter of jurisdictional rules on federal courts and have them juggle different approaches depending on the type of FAA motion involved.

Petitioner thus relegates most parties to FAA-covered arbitration agreements to state-law procedures for enforcing arbitration awards. That lost access to the FAA's streamlined procedures in *any* forum is a huge deal. Contrary to petitioner's rosy portrayal (at 25), state-law substitutes for confirming or vacating awards are not FAA replicas. Many States require more "searching review" of the arbitral proceedings in court than the FAA. *See Hall St.*, 552 U.S. at 590.

For example, several States' laws allow for vacating an arbitral award based a court's reassessment of the legal and factual issues decided by the arbitrators. *E.g.*, Ga. Code Ann. § 9-9-13(b)(5) (providing court review for "manifest disregard of the law"); *Finn v. Ballentine Partners, LLC*, 143 A.3d 859, 865 (N.H. 2016) (allowing vacatur where the "arbitrator misapplied the law to the facts" (internal quotation marks omitted)); *Berkshire Wilton Partners, LLC v. Bilray Demolition Co.*, 91 A.3d 830, 835 (R.I. 2014) (allowing vacatur where the arbitrator "reache[d] an irrational result").

Worse, under petitioner's view, the FAA would consign parties arbitrating *exclusively* federal claims like bankruptcy and patent claims to filing many motions relating to that arbitration in state court. *See*, *e.g.*, 35 U.S.C. § 294 (applying the FAA to patent arbitrations). In many cases, parties in these arbitrations would have to rely on state-court confirmation procedures to convert arbitral awards resolving exclusively *federal* questions into state-court judgments, subject to state-court enforcement procedures and state preclusion rules. *See* Restatement (Second) of Judgments § 86 (a judgment's preclusive effect is governed by "the law of the state in which the judgment was rendered"). This Court should not assume Congress made the "particularly strange" choice to give state courts the *sole* role in enforcing arbitral agreements concerning claims over which Congress gave federal courts exclusive jurisdiction. *Ortiz-Espinoza*, 852 F.3d at 47.

Petitioner's remaining arguments downplay the seriousness of the anomalies that her position produces. Petitioner (at 25-26) says that "the sky did not fall and … parties have continued looking to arbitration" even when lower courts required a freestanding jurisdictional basis for § 4 petitions to compel arbitration in the lead-up to *Vaden*. But the fact that people will pick arbitration anyway

is no reason to choose complex jurisdictional rules that "invite[] greater litigation and can lead to strange results." *Hertz*, 559 U.S. at 94. Especially in the FAA, where efficiency is paramount, one jurisdictional test should rule all motions.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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STATUTORY APPENDIX

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Federal Arbitration Act
Chapter 1—General Provisions
9 U.S.C. §§ 1-16

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of

any contract.

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

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

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

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply

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

§ 5. Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming

of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

§ 6. Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

§ 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting

may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

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

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

§ 9. 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.

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

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

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

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

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

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

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

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

Notice of a motion to vacate, modify, or correct an

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

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§ 14. Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

§ 15. Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

§ 16. Appeals

(a) An appeal may be taken from—

(1) an order—

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is

subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

Federal Arbitration Act
Chapter 2—Convention on the Recognition and Enforcement of Foreign Arbitral Awards

9 U.S.C. § 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. § 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

Federal Arbitration Act
Chapter 3—Inter-American Convention on International Commercial Arbitration

9 U.S.C. § 302. Incorporation by reference

Sections 202, 203, 204, 205, and 207 of this title shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

District Courts; Jurisdiction

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

District Courts; Jurisdiction

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and (2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

* * * * * *

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

District Courts; Jurisdiction

28 U.S.C. § 1337. Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however,* That the district courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 11706 or 14706 of title 49, originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.