No. 20-1143

In the Supreme Court of the United States

DENISE A. BADGEROW, PETITIONER

v.

GREG WALTERS, ET AL.

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

REPLY BRIEF FOR THE PETITIONER

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As petitioner already explained, this case is controlled by the FAA's plain text, and the competing statutory arguments are not close. No one disputes that Congress isolated the "look-through" approach in Section 4 as the sole exception to the well-pleaded complaint rule, and it did not repeat that key language in Sections 9 or 10. There is simply no basis for saying the "look-through" approach applies in those sections without judicially rewriting the statute.

In response, respondents look to create an alternate reality. They declare Section 4's "look-through" clause now somehow addresses *venue*, not jurisdiction. They ignore the well-pleaded complaint rule—and instead insist jurisdiction (as an ordinary "default") turns on what does *not* appear on the face of the filing. They pretend that all FAA pleadings are "adjuncts" to non-existent, hypothetical suits that never appear in any court. And they distort

petitioner's argument as offering two conflicting theories, rather than a unified approach—based on the clear jurisdictional test from the FAA's actual language.

Respondents' theory would require overturning bedrock jurisdictional doctrine and abandoning this Court's fidelity to the statutory text. Their position is demonstrably wrong and the judgment should be reversed.

ARGUMENT

A. The FAA's Text And Context Establish That *Vaden*'s "Look-Through" Approach Does Not Apply To Motions Under Sections 9 And 10

1. a. According to respondents, "the 'look-through approach' governs throughout the FAA." Br. 2. This is meritless. The "look-through" approach is a product of a single clause in a single section of the FAA. This Court in *Vaden* v. *Discover Bank*, 556 U.S. 49 (2009), endorsed the "look-through" approach for Section 4 *because that is what Section 4 expressly said* (see 556 U.S. at 62 ("[t]he text of § 4 drives our conclusion"))—not because that approach somehow already applied to all of 9 U.S.C. 1-16 as a "default rule" (contra Resp. Br. 34). Congress does not insert unique language in one section of an Act because it wants courts to presume the same rule applies everywhere it was excluded. *Salinas* v. *United States R.R. Ret. Bd.*, 141 S. Ct. 691, 698 (2021). Respondents have no basis for "artificially import[ing]" Section 4's isolated language into Sections 9 and 10. *Minor* v. *Prudential Sec., Inc.*, 94 F.3d 1103, 1107-1108 (7th Cir. 1996).

Nor can respondents explain what Section 4's "look-through" clause accomplishes if courts were *already* required to "look through" anyway. It is a cardinal rule of construction not to read core language as "insignificant" or "superfluous." *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001). And that rule has particular force here: the "look-

through" provision is not just some passing or minor clause—it was featured deliberately and prominently at the very outset of Section 4. Yet respondents cannot explain what possible function that key text performs under their view—or why Congress would have reiterated that language in Section 4 alone if the look-through analysis was somehow already required under "ordinary" jurisdictional doctrine. Resp. Br. 12.

In short, there is no conceivable textual basis for applying a "look-through" approach in Sections 9 and 10. Where Congress wanted federal courts to ignore the face of a petition (which seeks to enforce a state-law arbitration contract) and instead examine the underlying dispute, it told courts to do exactly that. But that language appears solely in Section 4. It does not appear in any other section; nor does it appear in a global provision that applies uniformly across the FAA—something that would have been easy enough for Congress to do. Compare, *e.g.*, 9 U.S.C. 6, 203 (illustrating that Congress knows precisely how to craft rules applicable to *all* FAA filings). Congress instead secured jurisdiction where it wanted a federal forum, and left targeted jurisdictional directives only in certain areas but not others. See Pet. Br. 18-20 (so explaining). Its reticulated scheme is entitled to respect.

b. In response, respondents argue that Section 4's "look-through" clause does play a role—just as "a venue provision, not a jurisdictional grant." Br. 12. This is perplexing on every level.

Respondents' theory is at odds with Section 4's plain text, which is couched in *jurisdictional* terms. It says nothing about venue, and it looks nothing like any ordinary venue provision. If respondents were correct that Congress designed this clause to effectively authorize venue in any court with jurisdiction, it would have simply said "any United States court"—since no court can exceed

its jurisdiction. It would have had no reason to frame the issue in jurisdiction garb.

Respondents' theory also runs headlong into *Vaden*. This Court's decision was all about jurisdiction; it did not utter a single word about venue. Indeed, the word "venue" does not appear anywhere in the Court's opinions (majority or dissent). The Court examined "a district court's subject-matter jurisdiction over a § 4 petition." 556 U.S. at 52-53. It expressly framed the question as deciding "whether federal-question jurisdiction exists," not whether the FAA pleading was filed in the right venue. *Id.* at 57. It framed its holding in jurisdictional terms: "The text of § 4 drives our conclusion that a federal court should *determine its jurisdiction*"—not venue—"by 'looking through' a § 4 petition to the parties' underlying substantive controversy." *Id.* at 62 (emphasis added). It explained the "look-through" analysis dictates whether "§ 4 of the FAA * * * *empower[s]* a federal court to order arbitration"—again focusing on jurisdictional power, not venue. *Id.* at 70 (emphasis added). And the dissent explicitly described the issue as "*§ 4 jurisdiction*"—concluding that the court "may exercise *jurisdiction* over this petition under § 4 of the Federal Arbitration Act." *Id.* at 80 (Roberts, C.J., dissenting) (emphases added). It is inconceivable that all nine members of this Court simply missed that they were unwittingly construing a venue provision.[1]

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[1] Respondents attack petitioner's theory as violating this Court's observations that the FAA does not independently create jurisdiction. *E.g.*, Resp. Br. 31. Petitioner has already explained why respondents' view is wrong (Br. 17 n.4), and the language quoted above underscores again why that is so. Moreover, wholly aside from Section 4, it is difficult to understand how else one might read Section 8 as anything other than a jurisdictional grant: "the court shall *

Nor did respondents manage to identify a *single* case, at any level, supporting their atextual theory. Respondents argue that *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Lauer*, 49 F.3d 323 (7th Cir. 1995), so held, but they are demonstrably wrong. That court did suggest Section 4 might contain a "venue" provision—*but not the "look-through" clause*. It focused on an entirely unrelated sentence as restricting venue. 49 F.3d at 327. Indeed, it specifically noted that the "look through" clause "does not * * * prescribe a venue." *Ibid.*[2]

Respondents likewise distort *Cortez Byrd Chips, Inc.* v. *Bill Harbert Constr. Co.*, 529 U.S. 193 (2000), as "describ[ing] § 4 as 'even more obviously permissive' than comparable venue provisions elsewhere in the FAA." Br. 24 (quoting 529 U.S. at 199). Yet *Cortez* did *not* label Section 4 as a "venue provision[]"; it only addressed Section 4 in comparing mandatory versus permissive commands, focusing solely on the word "may" in Section 4 as a permissive example—as in a party has the *option* to compel arbitration, but is not required to do so—but said *nothing* about Section 4 as a "venue rule" (contra Resp. Br. 24). Indeed, *Cortez* compared *other* FAA sections—*but not Section 4*—in explaining that the FAA had broadened certain venue requirements. See 529 U.S. 199-201.

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* * 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. This again confirms that the Court was addressing the *general presumption* that a suit arises under the law that creates the cause of action—not categorically rejecting isolated jurisdictional grants in every single section of the Act.

[2] Respondents' theory is nonsense on its own terms. Respondents say that Section 4 actually has *two* venue provisions, which apparently contradict each other. See Resp. Br. 23 (suggesting that the "look-through" clause outlines a broader venue before a later sentence "functionally narrows" that venue provision). That is not how Congress writes venue provisions.

Respondents finally argue that Congress "left no doubt" that Section 4 addresses "venue, not jurisdiction," when it "cribbed most of § 4" in 9 U.S.C. 204. Br. 24. Yet respondents' analogy to Section 204 breaks down looking to the precise language in each provision. Section 204 only uses *half* the Section 4 formulation, but not the jurisdictional component; it separately treats jurisdiction and venue; and its remaining clauses expressly address venue, with no comparable language in Section 4. And, of course, Section 4's title mentions "jurisdiction," while Section 204's mentions "[v]enue."

Even setting aside that "'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one'" (*Consumer Prod. Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 117 (1980)), the limited repetition of certain words ("save for") hardly establishes that the Congress that enacted the Convention in 1970 understood Section 4 as addressing venue—despite being framed exclusively in *jurisdictional* terms.

The upshot is clear: Congress framed Section 4 in jurisdictional language *to provide jurisdiction* where it otherwise would not exist. Respondents cannot sidestep the plain text by pretending Section 4's "look-through" clause is a venue provision.

2. Because respondents cannot identify any actual text authorizing a "look-through" approach in Sections 9 and 10, they instead try to flip the jurisdictional universe on its head. According to respondents, the "ordinary" rule is the "look-through" approach—it apparently applies as a "default" unless Congress says otherwise. Resp. Br. 12, 21, 34. Thus the lack of express language is irrelevant.

Respondents' made-up theory is exactly backwards. For over a century now, the well-pleaded complaint rule has governed the exercise of federal jurisdiction: it is "settled" that "a suit arises under the Constitution and laws

of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution." *Louisville & Nashville R.R. Co.* v. *Mottley*, 211 U.S. 149, 152 (1908); see *Vaden*, 556 U.S. at 60 (calling this the "longstanding" rule). When a federal issue does *not* appear on the face of the well-pleaded complaint, there is no jurisdiction—and that remains true even if the parties' underlying controversy theoretically could tee up a federal question. See *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 392 & n.7 (1987) ("[t]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint"; "'[j]urisdiction may not be sustained on a theory that the plaintiff has not advanced'").

Section 4's "look-through" clause is an express departure from that traditional doctrine—but Congress explicitly limited that exception to Section 4 alone. There is no equivalent grant of power in any other section of the Act. And without Section 4's express "look-through" exception, there is no federal-question jurisdiction in these cases. A party seeking relief under the FAA is seeking to enforce *an arbitration contract*. Indeed, *Vaden* itself effectively agreed that the FAA request is "reasonably" understood to "present[] principally contractually questions." 556 U.S. at 63. The only reason this Court offered to stray beyond the petition's face was "the statutory language" found in Section 4—which "directs courts to determine whether they would have jurisdiction 'save for [the arbitration] agreement.'" *Ibid.* Absent that textual "direct[ive]," there is no basis for looking to the "underlying controversy." *Ibid.*; see also, *e.g.*, *Goldman* v. *Citigroup Glob. Mkts. Inc.*, 834 F.3d 242, 252-253 (3d Cir. 2016).

This cornerstone rule dooms respondents' position. There is no "default" or "ordinary" rule for ignoring a party's *actual* filing and "looking through" to the underlying dispute (which was *not* at issue) to establish jurisdiction. The FAA's remedies enforce arbitration contracts, and such contracts are virtually always governed by state law—these FAA filings are thus facial pleas to enforce state-law rights. Yet, astoundingly, respondents do not even *mention* the well-pleaded complaint rule anywhere in their 47-page brief. Not once. They simply pretend it does not exist—while instead promoting an opposite rule contrary to this Court's decisions.

In short, the FAA's language could hardly be clearer. The well-pleaded complaint rule traditionally controls, but Section 4 created an express exception. There is no such exception anywhere else in the Act. There is no ambiguity. Respondents are asking the Court to apply the *identical* "look-through" clause from Section 4 in every other section—despite Congress's unmistakable inclusion of that language in Section 4 and its omission everywhere else. This is nothing short of a bald request for the judiciary to rewrite the statute. See *Empire Healthchoice Assurance, Inc.* v. *McVeigh*, 547 U.S. 677, 696 (2006) ("We have no warrant to expand Congress' jurisdictional grant 'by judicial decree.'").

3. As previously established, this plain-text reading of the FAA is bolstered by the Act's surrounding provisions. See Pet. Br. 18-20 (discussing 9 U.S.C. 8 and 9 U.S.C. 203). Where Congress wished to establish jurisdiction under the FAA itself, it did so expressly—and its choice not to extend similar authority for Sections 9 and 10 is telling.

Respondents weakly resist this conclusion. They first argue that Section 8 merely "preserves existing admiralty procedures" without "creat[ing] otherwise-nonexistent jurisdiction." Br. 33. But they cannot account for what

Section 8 actually says: "the court shall * * * 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. That unambiguous directive is squarely at odds with respondents' position.[3]

And respondents likewise are wrong that Section 203's jurisdictional grant can be brushed aside as a "special jurisdictional rule for international arbitrations." Br. 34. This misses the point, which is that the FAA provided *express* jurisdictional grants for certain provisions but not others. Congress's context-specific motivation for acting under Section 203 does not change the fact that it chose *not* to act under Sections 9 and 10. It is not the judiciary's job to unilaterally supplement Congress's work. See, *e.g.*, *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1542 (2021).

Finally, contrary to respondents' position, petitioner is not saying that Congress's decision to "grant[]" jurisdiction in some provisions "implicitly strip[s]" federal "jurisdiction in other[s]." Br. 32. Jurisdiction can always be found independently on the face of the well-pleaded filing. The point is that Congress's targeted *supplemental* authority cannot be applied everywhere when Congress isolated those powers in certain sections alone. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983).

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[3] Respondents argue that *Marine Transit Corp.* v. *Dreyfus*, 284 U.S. 263 (1932), "did not invoke § 8's admiralty-specific language when discussing the court's jurisdiction" to enforce an award. Br. 22. The Court's plain language established otherwise: "the District Court entered its decree upon the award * * * under the authority expressly conferred by section 8." 284 U.S. at 276.

B. Longstanding Jurisdictional Rules And Procedural Norms Further Promote The FAA's Plain-Text Reading

1. As petitioner explained, a plain-text reading of Sections 9 and 10 aligns the FAA with longstanding jurisdictional norms. Pet. Br. 21-23. Arbitration awards are contractual in nature; "if parties settle litigation that arose under federal law, any contest about that settlement needs an independent jurisdictional basis"—parties cannot automatically "return to federal court," even though the suit originally involved federal claims. *Magruder* v. *Fidelity Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016) (citing *Kokkonen* v. *Guardian Life Ins. Co.*, 511 U.S. 375 (1994)). In short, "[e]nforcement of the settlement agreement * * * is more than just a continuation or renewal of the dismissed suit"; it "requires its own basis for jurisdiction." *Kokkonen*, 511 U.S. at 378.

2. a. In response, respondents attack a strawman. According to respondents, petitioner's discussion of *Kokkonen*'s traditional jurisdictional rule was actually setting forth an entire "second" theory that independently authorizes the "look-through approach" any time until "the arbitral award issues." Br. 13, 28 (arguing that petitioner "offers two mutually incompatible" approaches).

Respondents are deeply confused. Petitioner has always had a single theory—the one found directly in the text of the FAA. That theory confirms that the Court's traditional well-pleaded complaint rule applies unless Congress set out an explicit exception in the FAA itself—as it did in Section 4. See, *e.g.*, *Goldman*, 834 F.3d at 252-253. But for all actions outside Section 4, the FAA pleading must independently qualify for jurisdiction on the face of the well-pleaded filing. Petitioner never said other-

wise—and certainly never said that the "look-through approach" applies to all FAA filings until the arbitration award issues.

In asserting otherwise, respondents are simply making it up. The fact that there is no jurisdiction over the arbitration settlement does not mean that there *is* jurisdiction until the settlement issues. Petitioner focused on the final stage because (as one might guess) that was the subject of the question presented. See Pet. I (asking whether jurisdiction exists "to confirm or vacate an arbitration award under Sections 9 and 10"—not to decide mid-arbitration filings under Sections 5 and 7). But petitioner never once suggested that a bright-line is crossed at the settlement itself. Contra Resp. Br. 34.

b. In any event, respondents misunderstand *Kokkonen*'s operative rationale. *Kokkonen* did not find jurisdiction lacking because settlement disputes *involve a settlement*; it found jurisdiction lacking because settlement disputes *involve contract-law issues*. See 511 U.S. at 381. "The facts to be determined with regard to such alleged breaches of contract are quite separate from the facts to be determined in the principal suit, and automatic jurisdiction over such contracts is in no way essential to the conduct of federal-court business." *Ibid.* When parties are left disputing state-law issues (instead of the underlying federal claims), "enforcement * * * is for state courts, unless there is some independent basis for federal jurisdiction." *Ibid.* Put simply, "claims alleged to be factually interdependent with * * * claims brought in an earlier federal lawsuit will not support federal jurisdiction over a subsequent lawsuit." *Peacock* v. *Thomas*, 516 U.S. 349, 355 (1996).

These principles again doom respondents' position. Arbitration is not the extension of a judicial action—it is a

substitute for it. FAA disputes over aspects of the arbitration (whether mid-stream or post-arbitration) all bear on *contractual* matters—the failure to "perform" under the arbitration contract or adhere to "procedures" outlined in the arbitration contract. *E.g.*, 9 U.S.C. 4, 5. The facts and issues addressed under the FAA have nothing to do with the underlying claim—the decision will ultimately turn on the arbitration-based issues. *E.g.*, *Goldman*, 834 F.3d at 254 ("When seeking to vacate the result of an arbitration that has already occurred, the movant is challenging the procedural propriety of the arbitration, which is unrelated to the subject matter of the underlying dispute."). When there is no pending federal claim in an actual federal suit, there is no anchor for asserting federal jurisdiction over such "interdependent" state-law issues. *Peacock*, 516 U.S. at 355.

Petitioner's view of the FAA "harmonizes" the FAA with these bedrock jurisdictional principles. *Magruder*, 818 F.3d at 288. Respondents' position, by contrast, is incompatible with settled jurisdictional doctrine.

C. Respondents' Other Jurisdictional Theories Are Legally And Logically Baseless

Rather than faithfully apply the FAA's plain text or this Court's established jurisdictional decisions, respondents offer a convoluted series of fanciful arguments to support jurisdiction. Each is profoundly mistaken.

1. According to respondents, it is unnecessary for parties to establish jurisdiction over an FAA filing itself because "FAA motions" are "adjuncts" to the parties' underlying dispute. Br. 15. In fact, according to respondents, it makes no difference whether that "underlying dispute" is even pending before any court (Br. 11); so long as a "federal court[] would [hypothetically] have jurisdiction over the parties' underlying controversy, federal courts have

jurisdiction over motions inextricably linked to that controversy." Br. 21. This theory is squarely at odds with settled law.

a. First and foremost, this Court has directly repudiated the core of respondents' position: "In a subsequent lawsuit involving claims with no independent basis for jurisdiction, a federal court lacks the threshold jurisdictional power that exists when ancillary claims are asserted in the same proceeding as the claims conferring federal jurisdiction." *Peacock*, 516 U.S. at 355. And this case is even a further step removed, as there was never an *original* suit conferring jurisdiction—the first relevant filing here was the "ancillary" request to confirm or vacate the arbitration award.

It is thus exactly wrong that respondents can rely on hypothetical non-actions that have never been filed: "The court must have jurisdiction over a case or controversy *before* it may assert jurisdiction over ancillary claims." *Peacock*, 516 U.S. at 355 (emphasis added). And simply calling the FAA filing an "adjunct" to the underlying dispute cannot cure the defect: "claims alleged to be factually interdependent with * * * claims brought in an earlier federal lawsuit will not support federal jurisdiction over a subsequent lawsuit." *Ibid.* It follows a fortiori that such claims related to a never-filed, non-existent lawsuit are also deficient.

Respondents nevertheless insist that courts can adjudicate motions in cases not before them, but their limited support falls woefully short. Respondents suggest that a federal court in actions removed from state court are somehow "adjudicat[ing] motions in controversies not then pending before the court." Br. 20-21. Not so at all: the notice of removal *transfers the entire action* to federal court. *E.g.*, 28 U.S.C. 1441(a), 1446(d). When a court eval-

uates a remand motion, it asks whether the *pending action* satisfies federal jurisdictional standards—and adjudicates that motion directly in the actual case. That has nothing to do with respondents' notion that a federal court somehow has jurisdiction over arbitration contracts because a federal court theoretically would have had jurisdiction had the underlying claim hypothetically been filed in federal court.[4]

Nor does Fed. R. Civ. P. 27 help respondents. See Resp. Br. 21. That rule provides a specific grant of power to take testimony in a *future* action in federal court. Fed. R. Civ. P. 27(a)(1)(A) ("the petitioner expects to be a party to an action cognizable in a United States court but cannot presently bring it or cause it to be brought"). It has its own look-through language (*ibid.*) that mirrors a specific equitable process that predates the Founding and was even recognized in the Judiciary Act of 1789. See, *e.g.*, *Arizona* v. *California*, 292 U.S. 341, 347 & nn.2-3 (1934); Act of Sept. 24, 1789, ch. 20, § 30, 1 Stat. 90. That is nothing like this situation, where the underlying action will *never* be pending in federal court, and the relief sought is to effectuate purely *contractual* rights. Rule 27 hardly supports a broad-based grant of hypothetical jurisdiction. Again, "[t]he court must have jurisdiction over a case or controversy *before* it may assert jurisdiction over ancillary claims." *Peacock*, 516 U.S. at 355 (emphasis added).

b. Respondents' theory also runs afoul of the well-pleaded complaint rule (again). That rule does *not* say that any freestanding motion establishes jurisdiction whenever some hypothetical embedded suit *might* qualify for

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[4] In any event, the removal statute—a *jurisdictional* provision—expressly authorizes the court to entertain the action. 28 U.S.C. 1441(a). There is no such jurisdictional grant in the FAA outside Section 4.

federal jurisdiction. It says that "a suit 'arises under' federal law 'only when the plaintiff's statement of his own cause of action shows that it is based upon [federal law].'" *Vaden*, 556 U.S. at 60 (quoting *Mottley*, 211 U.S. at 152).

The only "well-pleaded" filing here is one rooted entirely in the arbitration contract. The parties may seek to vindicate their contractual rights to dispose of an underlying suit, but it does not change the fact that the plea itself invokes independent contract rights (see 9 U.S.C. 2); is treated as its own "proceeding" (see Fed. R. Civ. P. 81(a)(6)(B)); and exists separately from the underlying dispute. In fact, the FAA's own provisions obviously contemplate FAA filings as standalone actions: the filings are called "petitions" and "applications"; many provisions specify the manner of service, venue, limitations period, and even *jurisdiction*. A party bringing an FAA "application" to enforce an arbitration right is *not* bringing the underlying dispute before the court—it is seeking specific performance of a state-law right. There is no obvious reason why courts would assess jurisdiction based on different claims *not* part of the pending action.[5]

Respondents counter that courts always entertain "adjunct" motions in pending actions without asking whether the motion independently supports jurisdiction. That is assuredly correct, but respondents overlook an essential missing element: *there is no pending action*. Courts need a jurisdictional anchor before adjudicating

[5] According to respondents, "[t]reating FAA motions as standalone suits also presents Article III adversarialness problems." Br. 14. This is puzzling. The only time a court is asked to resolve these issues is when parties disagree and cannot resolve the issue themselves. Each FAA filing presents a distinct contract-based dispute over the agreed-upon manner of settling a case in arbitration. It may only present a state-law issue, but it assuredly presents an *adversarial* state-law issue.

the accompanying motions. That anchor is indisputably absent here.[6]

In any event, respondents are not even correct that an FAA filing is a "motion." Section 6 does not say that FAA petitions and applications *are* motions—it says that they are heard *as* motions: "[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." 9 U.S.C. 6 ("Application heard as motion"). That treatment secures "streamlined" procedures for FAA filings, but it does not deem an application itself a motion, much less a mere "adjunct" to a (non-existent) underlying lawsuit. See *Hall St. Assocs., LLC* v. *Mattel, Inc.*, 552 U.S. 576, 582 (2008) ("An application * * * will get streamlined treatment as a motion, obviating the separate contract action that would usually be necessary to enforce or tinker with an arbitral award in court.").

c. Nor can respondents explain how their theory possibly squares with *Kokkonen*. Under respondents' view, a federal court has jurisdiction whenever an "adjunct" motion is intertwined with a federal claim that hypothetically could be filed in federal court. Resp. Br. 17 (highlighting the "express[] connect[ion] * * * to the parties' underlying substantive dispute"). Yet if that logic works for an arbitration award, why would it not also work for a settlement of a federal claim? The "underlying case" (pre-settlement)

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[6] Respondents are accordingly wrong that "Sections 9-11 are the arbitration analogues to Federal Rules of Civil Procedure 58-60." Resp. Br. 18. Those rules dictate procedures for motions in *real actions* (not hypothetical ones), pending in an actual court, after the court has properly exercised jurisdiction over a well-pleaded complaint—all features lacking here. But the arbitration aware is the perfect "analogue" to an out-of-court settlement—because that is exactly what it is. See Part B, *supra* (explaining how courts lack jurisdiction over such settlements).

concededly belongs in federal court; the parties resolved that federal claim in an out-of-court settlement (like the arbitration award); and the parties now dispute something about the settlement itself. If jurisdiction turns on the "underlying controversy," then *Kokkonen* would have come out the opposite way. See 511 U.S. at 378, 381.

2. Respondents also argue that, under petitioner's theory, all FAA motions are "standalone suits" that accordingly "qualify as 'proceedings' under" 28 U.S.C. 1337—and "§ 1337 would [then] confer federal jurisdiction over *all* FAA motions, including awards resolving state-law claims between non-diverse parties." Br. 30.

Yet Section 1337 does not apply for the same reason that Section 1331 does not apply—because the FAA itself (and particularly Section 4) implicitly forecloses it. See, *e.g.*, *Southland Corp.* v. *Keating*, 465 U.S. 1, 16 n.9 (1984). This Court has confirmed that there is no jurisdiction under "28 U.S.C. § 1331 * * * *or otherwise*." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 26 n.32 (1983). The phrase "arising under" has the same meaning in Sections 1331 and 1337. *Franchise Tax Bd. of State of Cal.* v. *Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 8 n.7 (1983) (this Court has "not distinguished between the 'arising under' standards of § 1337 and § 1331"). And any action that arises under an "Act of Congress regulating commerce" also arises under the laws of the United States. See 28 U.S.C. 1337(a); 28 U.S.C. 1331; see also *ErieNet, Inc.* v. *Velocity Net, Inc.*, 156 F.3d 513, 520 (3d Cir. 1998) ("any action that could be brought in federal court under § 1337 could also be brought under § 1331"). There is no reason the result suddenly changes by citing the different section.

Moreover, the FAA's text further undermines respondents' position. Unlike Sections 9 and 10, Section 4 requires courts to examine all statutes within "title 28,"

including Section 1337, when determining the existence of jurisdiction "save for" the arbitration agreement. 9 U.S.C. 4. The fact that Congress did not include any language in Sections 9 and 10 requiring courts to examine any statutes within title 28 gives rise to the presumption that Congress did not intend for courts to look to any of those statutes to establish jurisdiction. See *Salinas*, 141 S. Ct. at 698. There is simply no danger of Section 1337 overwhelming the federal courts under the FAA.

Finally, respondents can only avoid Section 1337's application under their own theory with the absurd contention that a freestanding FAA filing is not an "action *or proceeding*" under Section 1337. But see Fed. R. Civ. P. 81(a)(6)(B) (describing FAA filings as "proceedings"); Resp. Br. 29 (defining "proceeding" as "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"). Thus if Section 1337 creates any issues for petitioner, it creates the identical issues for respondents.

D. The FAA's Purpose And History Are Consistent With Reading Sections 9 And 10 To Mean What They Say

Respondents finally attack petitioner's theory as bad policy. Yet "this Court's task is to discern and apply the law's plain meaning as faithfully as [it] can, not 'to assess the consequences of each approach and adopt the one that produces the least mischief.'" *BP*, 141 S. Ct. at 1542. And respondents' policy arguments are wrong in any event.

1. Respondents insist that courts will find it unworkable to determine jurisdiction on the face of an application under Section 9 or 10. Br. 39. But diversity jurisdiction is not so difficult to assess: the parties are diverse (or not), and the amount in controversy is either above the thresh-

old (or not). See *Maine Cmty. Health Options* v. *Albertsons Cos., Inc.*, 993 F.3d 720, 723-724 (9th Cir. 2021) (performing this task in a Section 7 case). Indeed, the situation is no different than a dispute over *any other settlement*—a question courts routinely address without any obvious trouble.[7]

Respondents further ignore that their own theory offers it share of problems. How should courts treat claims narrowed during arbitration—or initially threatened but dropped before an arbitral demand is filed? What of arbitral counterclaims or consolidated proceedings? What happens when a party no longer contests certain claims post-arbitration but seeks to confirm or vacate other parts of the award? Do these answers turn on the arbitration rules or the (non-applicable) rules of civil procedure?

There may well be difficult questions under either side's view of the FAA. But there is also administrative simplicity in applying the traditional well-pleaded complaint rule to the *actual* filing in federal court—just as courts apply the identical rule to any other settlement dispute. Respondents have not explained why abandoning that bedrock jurisdictional command will produce greater certainty in the mine run of cases.

2. Respondents argue that limiting the "look-through" approach to Section 4 would "invite gamesmanship, as

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[7] Respondents are also simply wrong that the amount in controversy changes depending on whether a party is seeking to confirm or vacate the "same $0 award" in a "$20 million" case. Br. 40-41. The disputed amount is the same—just as in ordinary litigation the amount in controversy is not zero simply because a defendant insists he did nothing wrong. The confirmation of the $0 award protects the defendant from facing a $20 million claim in the future—just as vacating the $0 award exposes the defendant to the same amount. These questions are not difficult—at least when a party is not deliberately trying to make a scheme look more confusing than it actually is.

savvy parties would file 'protective' motions to compel arbitration." Br. 44. But those motions would fail under the FAA's own terms: in order to invoke Section 4, a party must be "aggrieved" by another party's failure or refusal to arbitrate. There is no such thing as a viable "protective" motion where both parties agree that arbitration is appropriate.

3. Respondents argue that petitioner's theory would eliminate federal jurisdiction over the broadest swath of FAA cases. Respondents, of course, do not explain why Congress would have wished to burden federal courts with mundane procedural challenges having nothing to do with any federal questions. And respondents never truly grapple with this Court's direct recognition of the limited federal role: "enforcement of the Act is left in large part to the state courts." *Moses H. Cone*, 460 U.S. at 26 n.32.

But respondents still vastly overstate their case. For example:

*According to respondents, petitioner's approach would mean Section 5 "would virtually never apply in federal court." Br. 38. But respondents ignore that any court retaining jurisdiction under Section 3 could appoint an arbitrator. And diversity jurisdiction would exist where parties are diverse and the amount in controversy exceeds the threshold amount.[8]

Respondents also ignore that Congress chose not to reference *federal* courts here at all (referring generically to "the court")—a possible indication that it viewed state courts as the primary forum for enforcing this provision.

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[8] It is not hard to imagine, for example, how a selecting the right arbitrator could potentially lead to a different outcome—which is why parties are often willing to litigate at great expense over arbitrator selection. Thus the proper appointment of arbitrators could indeed affect the overall outcome—which does indeed put the entire amount in controversy at stake.

*Respondents suggest that "federal courts would virtually always lack jurisdiction" on the face of applications to modify or correct arbitral awards under Section 11. Br. 40. But some corrections (*e.g.*, wrong decimal points or awards purporting to resolve *undecided* claims) could easily implicate the amount in controversy. Other federal courts will have supplemental jurisdiction over cases stayed under 9 U.S.C. 3. And the remainder can be resolved in state court, just as this Court has noted repeatedly in the past.

In the end, petitioner's approach has carried the day for decades in an overwhelming number of federal courts of appeals. Pet. Br. 25-26. Yet respondents and their amici could not muster a single empirical study or definitive analysis documenting any consistent problems in the Act's enforcement or application. The sky did not fall, and there is no reason to clog the federal courts with hundreds (or thousands) of mundane FAA filings when state courts have proven more than capable in effectively doing the job.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

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