No. _____

IN THE

Supreme Court of the United States

JUAN CARLOS CELESTINO
CODERCH MITJANS,

Petitioner,

v.

EGI-VSR, LLC,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court can decide a substantive arbitrable dispute that an arbitration award left unresolved, on a petition to confirm the award under the Inter-American Convention on International Commercial Arbitration (the "Panama Convention").

PARTIES TO THE PROCEEDING AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner is Juan Carlos Celestino Coderch Mitjans, appellant in the Eleventh Circuit appeal below. Petitioner is an individual and has no parent company or publicly held company to disclose.

Respondent is EGI-VSR, LLC, appellee in the Eleventh Circuit appeal.

LIST OF DIRECTLY RELATED PROCEEDINGS

In the United States District Court for the Southern District of Florida

EGI-VSR, LLC v. Coderch Mitjans, No. 15-20098-Civ-Scola (June 1, 2018) (order confirming arbitration award)

In the United States Court of Appeals for the Eleventh Circuit

EGI-VSR, LLC v. Coderch Mitjans, No. 18- 12615 (June 25, 2020) (opinion below)

In the Supreme Court of the United States of America

Juan Carlos Celestino Coderch Mitjans, v. EGI-VSR, LLC, No. 20A38 (September 8, 2020) (order denying application for stay)

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PETITION FOR A WRIT OF CERTIORARI

Juan Coderch respectfully petitions for a writ of certiorari to review the judgment in this case of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals, App., *infra*, 1a-23a, is reported and available at 963 F.3d 1112. The district court order granting a motion to confirm an arbitration award, App., *infra*, 24a-36a, is unreported but available at 2018 WL 2465345.

JURISDICTION

The Eleventh Circuit issued its judgment on June 25, 2020. On March 19, 2020, this Court extended the deadline to file petitions for writs of certiorari in all cases to 150 days from the date of the lower court judgment or order denying a timely petition for rehearing. That order extended the deadline in this case to and including November 23, 2020. This Court has jurisdiction over the Eleventh Circuit's judgment pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Chapter 3 of the Federal Arbitration Act, 9 U.S.C. § 301, provides:

> The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

9 U.S.C. § 302 provides:

> 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.

9 U.S.C. § 307 provides:

> Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States.

Chapter 2 of the Federal Arbitration Act, 9 U.S.C. § 207 provides:

> Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

Article 5 of the Panama Convention, *Inter-Am. Convention on Int'l Commercial Arbitration*, S. Treaty Doc. No. 97-12 (June 9, 1978), provides:

> 1. The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:

a. That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified, under the law of the State in which the decision was made; or

b. That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or

c. That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or

d. That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement; that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or

e. That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which,

> or according to the law of which, the decision has been made.
>
> 2. The recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:
>
> a. That the subject of the dispute cannot be settled by arbitration under the law of that State; or
>
> b. That the recognition or execution of the decision would be contrary to the public policy ("ordre public") of that State.

Chapter 1 of the Federal Arbitration Act, 9 U.S.C. § 2, provides:

> 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.

9 U.S.C. § 10 provides:

> (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.

STATEMENT OF THE CASE

The Eleventh Circuit did in this case what this Court has repeatedly held courts may not do—delve into the merits of an arbitrable dispute. The exception the Eleventh Circuit carved out, purportedly in the name of expedience, stands in direct conflict with the decisions of this Court, decisions from other circuits, and with the Federal Arbitration Act's ("FAA") emphatic, overriding policy to enforce arbitration agreements. And since the Eleventh Circuit's court-made exception comes on a petition to confirm an international arbitration award under the Inter-American Convention on International Commercial Arbitration, S. Treaty Doc. No. 97-12, 1978 WL 219648 (June 9, 1978), known as the Panama Convention, the departure from established FAA precedent raises vitally important issues. This Court should grant review.

Juan Coderch appealed to the Eleventh Circuit a district court order confirming a Chilean arbitration award that directed him and several other parties to purchase from EGI-VSR, LLC ("EGI") shares in a Chilean wine company pursuant to a put right. The arbitral award ordered the purchase under a complex contractual formula in a Shareholders' Agreement, but the award did not perform the calculations. That left several unresolved, material, and arbitrable disputes over the amount of the purchase price. Mr. Coderch asked the district court to return the matter to arbitration to resolve them. Instead, the district court resolved the disputes itself, adopting EGI's proposed calculations. In the decision below, the Eleventh Circuit held the disputes over calculating the purchase price not only posed no obstacle to confirmation under the FAA, but the disputes could be decided by the district court, rather than the arbitrator, under "U.S. law." App., *infra*, 17a-20a.

The decision has far reaching consequences for how foreign commercial disputes are conducted and resolved under international treaties in arbitration. It also threatens one of the pillars of the FAA. It is beyond dispute that the "'primary' purpose of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010) (citation omitted). The decision below creates a sizeable exception to this fundamental law. As it has in many other recent cases, this Court should grant certiorari to correct the Eleventh Circuit's erroneous application of the FAA and reaffirm the "emphatic federal policy in favor of arbitral dispute resolution." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 631 (1985). Given this Court's continued and strong interest in enforcing arbitration

agreements under the FAA, particularly in the context of international arbitration, this Court should grant the petition.

A. Statutory Background.

Congress enacted the FAA to "reverse the longstanding judicial hostility to arbitration agreements." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). Section 2 of the FAA is the Act's "primary substantive provision." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). It guarantees that "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . 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. Section 2 reflects "both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011). The operative enforcement provision, § 2, requires courts to "place[] arbitration agreements on an equal footing with other contracts[] and . . . enforce them according to their terms." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63,67 (2010). This Court has stated "on numerous occasions that the central or primary purpose of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms." *Stolt-Nielsen*, 559 U.S. at 682 (citations, internal quotation marks omitted).

Chapter 3 of the FAA enforces the Panama Convention. 9 U.S.C. § 301. It also incorporates several provisions from Chapter 2, which enforces the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York

Convention"), 21 U.S.T. 2517, T.I.A.S. No. 6997 (Dec. 29, 1970). *See* 9 U.S.C. § 302. Courts treat the Panama and New York conventions as "substantively identical." *E.g.*, *TermoRio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 933 (D.C. Cir. 2007). Chapter 3's residual clause provides that "Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter." 9 U.S.C. § 307. As Justice Thomas explained with respect to the New York Convention, the provisions of the treaty "contemplate the use of domestic doctrines to fill gaps in the Convention." *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1645 (2020). The FAA's emphatic command in Chapter 1 to enforce arbitration agreements as written is therefore preserved in the New York and Panama Conventions. The common goal is "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

B. Factual and Procedural Background.

Viña San Rafael is among the twenty largest wine exporters in Chile. C.A. App. May 31, 2018 tr. 15:7-10. In 2005, EGI acquired 4,240,000 preferred shares in the company and later obtained approximately 3 million more shares, giving EGI about a 20% ownership stake. C.A. App. Doc 1 at 3. EGI paid in pesos the equivalent of around $17 million U.S. dollars and signed a Shareholders' Agreement. C.A. App. Doc 1-3. A group of eight Controlling

Shareholders also signed that agreement, together with two guarantors of the Controlling Shareholders' "obligations and liabilities." Juan Coderch was one of the guarantors. *Id*.

Section 10 of the Shareholders' Agreement gave EGI a "Put Right" if certain events occurred. *Id*. 8-9. On October 13, 2009, EGI claimed some events had occurred and sought to exercise the put right for all its shares. EGI has never revoked the claimed put right. App., *infra*, 3a n.2, 5a n.5. Mr. Coderch and the other Controlling Shareholders contested EGI's claim and instituted an arbitration in Santiago, Chile. C.A. App. Doc 1-5 at 2. The Shareholders' Agreement made arbitration mandatory: "Any difficulty or controversy arising among the parties with respect to the application, interpretation, duration, validity or execution of this agreement shall be submitted to Arbitration pursuant to the UNCITRAL rules, contemplated in Law 19,971 on International Commercial Arbitration Law. The Arbitration will be held in Santiago, Chile." C.A. App. Doc 1-3 at 11. A choice of law clause provides, "THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAW OF CHILE." *Id*.

In the arbitration, EGI sought a declaration that it was entitled to the put right and that as a consequence, "each and every one" of the Controlling Shareholders and guarantors was "obligated to buy and pay EGI [] for all their shares in VSR at the price agreed to in Section 10 of the Shareholders' Agreement." *Id*. at 25-26. Section 10 specifies that "the per share purchase price, payable in cash to holders of the Preferred Stock, shall be equal to one hundred and three percent (103%) of the per share Preferred Liquidation Preference…." *Id*. at 9. The "Preferred

Liquidation Preference," in turn, is defined as the "Preferred Purchase Price"—the "purchase price per share paid by" EGI—"plus 4% per annum thereon (based on a 360-day year), compounded semi-annually accruing from and after the date of the Preferred Closing" (i.e., the date EGI paid for its shares). *Id*. at 12.

The arbitration lasted two years. On January 13, 2012, the arbitrator ruled that EGI was entitled to the put right and ordered "each and every one of the respondents … to buy and pay for all the shares of the claimant, EGI-VSR, L.L.C., in the company Viña San Rafael SA in the way requested in the claim." *Id*. at 103. The award provides that the purchase transaction,

> must be carried out at the price agreed to in Section 10 of the Shareholder's Agreement of Viña San Rafael S.A., that is to say:
>
> a) The sum of 4,240,000 shares of preferred stock must be bought and paid for at a price equal to 103% of the Preferred Liquidation Price. The Preferred Liquidation Price corresponds to the amount of the Preferred Purchase Price per share, i.e., UF[1] 0.0782354, plus 4% a year (based on a year of 360 days), compounded semi-annually, starting from October 19, 2005.

[1] "UF" refers to the Unidad de Fomento, the Chilean inflation index.

b) The sum of 42,768 shares of preferred stock must be bought and paid for at a price equal to 103% of the Preferred Liquidation Price. The Preferred Liquidation Price corresponds to the amount of the Preferred Purchase Price per share, i.e., UF 0.07366925, plus 4% a year (based on a year of 360 days), compound semi-annually, starting from August 2, 2006.

c) The sum of 748,435 shares of preferred stock must be bought and paid for at a price equal to 103% of the Preferred Liquidation Price. The Preferred Liquidation Price corresponds to the amount of the Preferred Purchase Price per share, i.e., UF 0.060019, plus 4% a year (based on a year of 360 days), compounded semi-annually, starting from January 31, 2007.

d) The quantity of 620,508 shares of preferred stock must be brought and paid for at a price equal to 103% of the Preferred Liquidation Price. The Preferred Liquidation Price corresponds to the amount of the Preferred Purchase Price per share, i.e., UF 0.0600191, plus 4% a year (based on a year of 360 days), compounded semiannually, starting from October 11, 2007.

e) The sum of 1,892,738 shares of preferred stock must be bought and paid

> for at a price equal to 103% of the Preferred Liquidation Price. The Preferred Liquidation Price corresponds to the amount of the Preferred Purchase Price per share, i.e., UF 0.03892127, plus 4% a year (based on a year of 360 days), compounded semi-annually, starting from August 26, 2008.

Id. at 103-04 (emphasis added). The award did not perform any of the calculations or reduce the order to purchase shares to any specific price, nor did EGI ask the arbitrator to fix any specific purchase price. App., *infra*, 17a.

Chapter 3 of the FAA allows three years to petition to confirm an international arbitration award under the Panama Convention. 9 U.S.C. §§ 207 and 302. The day before the three-year deadline, EGI filed a petition solely against Mr. Coderch in the United States District Court for the Southern District of Florida to confirm the award. C.A. App. Doc 1. EGI included as part of its petition its own calculations of the purchase price in U.S. dollars, totaling nearly $29 million. *Id*. at 12-13.

Mr. Coderch moved to dismiss the case. C.A. App. Doc 21. Mr. Coderch objected to EGI's calculations of the purchase price, claiming they were grossly inflated and inconsistent with the formula in the award and Shareholders' Agreement. These objections, he argued, were arbitrable under the arbitration agreement, and he asked the district court to remand the disputes to arbitration in Chile. *Id*. at 19-20; C.A. App. Doc 32 at 10. He further maintained the award could not be confirmed as nonfinal and, even if the award's finding of entitlement to the put

right could be confirmed, the district court could not under any circumstances perform the calculations and enter judgment on the purchase price. *Id*.; C.A. App. May 31, 2018 tr. at 18:14-19:2.

The district court confirmed the award and denied Mr. Coderch's motion to dismiss. App., *infra*, 24a. The district court concluded EGI's calculations were correct and entered a final judgment in U.S. dollars in the amount EGI had calculated, $28,700,450.07, plus interest under 28 U.S.C. § 1961. *Id*. at 37a-38a. The judgment did not require EGI actually to deliver any shares. *Id*. Mr. Coderch timely appealed.

On June 25, 2020, the Eleventh Circuit affirmed the district court's confirmation of the arbitration award but vacated the order and judgment for miscalculating the purchase price and entering a money judgment. *Id*. at 23a. The court of appeals agreed with Mr. Coderch that the district court's order improperly converted the award from one of specific performance to a money judgment and had miscalculated the purchase price. *Id*. It disagreed that any issues remained to be arbitrated, however. *Id*. at 17a. The Court found that the award had done everything but perform the calculations. And though it acknowledged the disputes over the calculations, the Eleventh Circuit determined the district court was free to resolve them itself. The award had not specified a currency for the put price to be paid, but the Eleventh Circuit determined that the currency "does not matter so much…as long as the right conversion date is used." *Id*. at 17a. The award did not specify a conversion date either, but the Eleventh Circuit decided that the district court could apply U.S. law to determine that date. *Id*. at 18a-20a. Though Chilean law controlled under the arbitration agreement, the

Eleventh Circuit reasoned that the district court could apply the law of the United States since the petition had been filed under American law, the FAA. *Id*. at 19a-20a. Applying the United States' "breach day" rule, the court of appeals decided the proper date of conversion was the day the award was issued and not the date payment was due, as the district court found. *Id*. The Eleventh Circuit therefore vacated the judgment with instructions to the district court to re-calculate the put right price using the date of the award as the conversion date, and to enter a judgment of specific performance. *Id*. at 23a.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit decided the arbitration agreement here could be cast aside, enabling the district court to clean up unresolved calculation issues. Those issues were hardly trivial. Depending on how the calculations are done, the difference in the amount of the purchase price could be millions of dollars. This result raises a vital legal issue with respect to international arbitration. The prospect of converting contractual remedies controlled by foreign law in arbitration into domestic disputes to be decided by courts under U.S. law threatens to upend the goals of Chapter 3 and the Panama Convention. The decision stands in direct conflict with this Court's repeated statements on the enforcement of arbitration agreements and decisions from other circuits. The rigorous enforcement of arbitration agreements remains a critical part of the United States legal system, and this Court has granted review of cases that have challenged or undermined these principles term after term. *E.g.*, *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (underscoring the emphatic federal policy that "courts must 'rigorously

enforce' arbitration agreements according to their terms.") (citation omitted); *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012); *Concepcion*, 563 U.S. at 339; *Rent-A-Ctr.,* 561 U.S. at 68. This case poses a new threat to the goals of FAA arbitration, where important arbitrable issues get lost in the process of confirmation. This Court should grant review.

I. The decision below raises a vitally important issue involving international commercial arbitration.

The policy of promoting the FAA's stated purpose of enforcing arbitration agreements has particular importance in international arbitration. Earlier this year, this Court unanimously reversed an Eleventh Circuit decision that held nonsignatories could not be compelled to arbitration under Chapter 2 of the FAA, which incorporates the New York Convention. *GE Energy*, 140 S. Ct. at 1648. Because nonsignatories traditionally may be compelled to arbitrate under Chapter 1 of the FAA, Justice Thomas reasoned in his unanimous opinion that nothing in the New York Convention addressed and therefore could have conflicted with that domestic law. *Id*. at 1645. *GE Energy*'s pro-arbitration outcome underscores this Court's determined interest in ensuring enforcement of arbitration agreements, including if not *especially* ones controlled by international treaties.

In 2014, this Court decided an issue similar to the one presented in this case. *BG Group, PLC v. Republic of Argentina*, 572 U.S. 25 (2014), reviewed the reversal of an order confirming an international arbitration award under the New York Convention. The D.C. Circuit in *BG Group* had conducted a *de novo* review of a "local litigation requirement" contained in an

investment treaty between the United Kingdom and Argentina. The D.C. Circuit had decided for itself that the failure to comply with the requirement deprived the arbitrators of jurisdiction. *Id*. at 32. This Court granted certiorari to decide "who—court or arbitrator—bears primary responsibility for interpreting and applying the local litigation requirement to an underlying controversy?" The Court concluded that "the matter is for the arbitrators, and courts must review their determinations with deference." *Id*. at 29. In granting the petition, this Court in *BG Group* specifically highlighted "the importance of the matter for international commercial arbitration." *Id*. at 32. The decision stressed that importance throughout. In rejecting the dissent's argument that treaties warrant "a different kind of analysis" than domestic agreements to arbitrate, this Court observed, "[t]hat is a matter of some concern in a world where foreign investment and related arbitration treaties increasingly matter." *Id*. at 42.

This case implicates the same matter of great importance. It involves international investment (in a Chilean wine company) and a related arbitration agreement and treaty (the Panama Convention). This case also raises the same essential issue—*who* decides, court or arbitrator, a particular dispute. To be sure, the Eleventh Circuit did not conduct *de novo* review of the arbitrator's calculations of the purchase price. The arbitrator did not perform any calculations at all. C.A. App. Doc 1-5 at 103-04. But the fact that the Eleventh Circuit decided the calculation disputes in the first instance, rather than in *de novo* review of the arbitrator's decision, is a distinction without a difference. If the calculation of the purchase price is an issue for the arbitrator to decide—a fact no party

disputes—the court of appeals should not have delved into the merits under any circumstances.

The consistent theme in *GE Energy* and *BG Group* is that the same emphatically pro-arbitration policies underlying domestic arbitration agreements under Chapter 1 of the FAA govern international arbitration. And under Chapter 1, this Court has on multiple occasions policed the boundary between what issues arbitrators must decide and those a court may decide. When it comes to merits issues, questions of procedure, and other matters unmistakably designated to the arbitrator, court intrusion on the arbitrator's territory is strictly forbidden. *See, e.g.*, *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (recognizing "a court may not rule on the potential merits of the underlying claim that is assigned by contract to an arbitrator, even if it appears to the court to be frivolous") (internal quotes omitted) (citing *AT&T Technologies, Inc. v. Communications Workers,* 475 U.S. 643, 649–650 (1986) (holding a court has "'no business weighing the merits of the grievance because the agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious") (internal quotes omitted) (quoting *Steelworkers v. American Mfg. Co.,* 363 U.S. 564, 568 (1960)). This case creates an exception to the rule against courts deciding merits questions under the FAA, "unnecessarily complicating the law and breeding litigation from a statute that seeks to avoid it." *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 275 (1995).

The issue is also likely to recur. Allowing U.S. court determination of leftover merits issues from international arbitrations encourages parties to seek confirmation of partial or incomplete awards in

federal courts under the FAA, with the full benefits and remedies of U.S. law at their disposal. Such a result defeats the goals of international arbitration and the Panama Convention, "to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced...." *Scherk*, 417 U.S. at 520. These issues are, as *BG Group* emphasized, vitally important, as they arise from international investment and arbitration. *BG Group*, 572 U.S. at 32, 42. This Court has to date authorized no exception to the enforcement of arbitration agreements when arbitrability is uncontested, even when the arguments are frivolous. *Henry Schein*, 139 S. Ct. at 529.

This Court should grant review to ensure the *full* enforcement of arbitration agreements and guard against judge-made exceptions that undermine the goals of the FAA and Panama Convention.

II. The decision below stands in direct, irreconcilable conflict with decisions of other courts of appeals.

The FAA requires the court to vacate an arbitrator's award "where the arbitrators ... so imperfectly executed [their powers] that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). An incomplete arbitration award, which leaves substantial, arbitrable issues undecided, or that is "so badly drafted that the party against whom the award runs doesn't know how to comply with it," is therefore generally non-confirmable under the FAA. *Smart v. Int'l Broth. of Elec. Workers, Local 702*, 315 F.3d 721, 725 (7th Cir. 2002); *see Savers Prop. & Cas. Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburg, PA*, 748 F.3d 708, 717–18 (6th Cir. 2014) (holding the FAA

"preclude[s] the interlocutory review of arbitration proceedings and decisions").

The failure to reduce an award to a specific remedy does not alone exclude confirmation of an award. In *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), this Court found that an arbitrator's award requiring reinstatement of employees with back pay "minus pay for a 10-day suspension and such sums as these employees received from other employment," was not rendered unenforceable for failure "to specify the amounts to be deducted from the back pay." *Id.* at 595–96, 598. On the other hand, the Sixth Circuit's decision in *Savers Property* held that an arbitration panel's order to pay only those damages "capable of immediate calculation," while retaining jurisdiction to calculate other damages, resulted in an "interim award resolving only the matter of liability" and barred the district court from prematurely interfering in the arbitration. *Savers Property*, 748 F.3d at 718-19. In a different context, the Ninth Circuit held, in *Sunshine Mining Co. v. United Steelworkers of America, AFL-CIO, CLC*, 823 F.2d 1289 (9th Cir. 1987), that an arbitrator's finding of insubordination was incomplete when the arbitrator ordered a psychiatric examination, which never took place, to determine an ultimate question of whether the company had "just cause" to terminate an employee. *Id.* at 1295.

But even those courts that confirmed awards in disputes where arbitrable issues remained did so on the understanding that they were *partial* awards. *See Smart*, 315 F.3d at 726 (finding an award only on liability may leave "thorny remedial issues for future determination."); *Providence Journal Co. v.*

Providence Newspaper Guild, 271 F.3d 16, 20 (1st Cir. 2001) (deeming the arbitrator's award on liability "final" for purposes of confirmation but still a partial award). These decisions did not take the extraordinary step the Eleventh Circuit took here, of both confirming the award *and* deciding the arbitrable dispute itself. In *Enterprise*, for example, this Court reversed part of the Fourth Circuit's decision finding the award unenforceable, but not the conclusion that the judgment had to be "modified so that the amounts due the employees may be definitely *determined by arbitration*." *Enterprise*, 363 U.S. at 599 (emphasis added). And the Ninth Circuit's decision in *Sunshine* reversed the district court for doing exactly what the Eleventh Circuit authorized here—"substituting its interpretation for that of the arbitrator" when arbitrable issues remained for decision. In *Sunshine* the district court took the arbitrator's determination of insubordination as grounds for denying a terminated employee's grievance outright, though the arbitrator had made no final determination of "just cause" for the termination. In reversing the district court for resolving the dispute on its own, the Ninth Circuit found it "firmly established that the courts may resubmit an existing arbitration award to the original arbitrator for interpretation or amplification." *See Sunshine*, 823 F.2d at 1295. That decision stands in direct conflict with the Eleventh Circuit's decision here, where unresolved arbitrable issues of amount from a foreign arbitration *could* be decided by the district court under U.S. law.

The decision below carves out an exception to the FAA's foundational command for courts to enforce arbitration agreements, in situations where the court is able to resolve the dispute itself. Other circuits have

squarely rejected this extraordinary step. This Court therefore should grant review to resolve the split.

III. This case is an ideal vehicle for this Court's review.

The question presented is a purely legal question concerning whether the rule against court determination of merits issues may be relaxed when a party seeks confirmation of an award, but the arbitrator has left material disputes unresolved. There is no question about the scope of the arbitration agreement or its enforceability. EGI concedes that disputes over the purchase price of the relevant shares are arbitrable under the agreement. EGI br. at 31, No. 18-12615 (11th Cir. Nov. 13, 2018). The question presented is thus unclouded by factual disputes. Indeed, the factual issues are the very ones Mr. Coderch maintains must be decided by the arbitrator and not the court.

The Eleventh Circuit's decision in vacating the district court for miscalculations under the American "breach day" rule precludes any contention that the arbitrator left open only a "mechanical" or "ministerial" calculation. The array of unknown and undecided variables in the award substantially impacts the purchase price. Questions about what currency to use, what conversion date to apply, the computation of compounded interest in relation to EGI's election of the put right, and what law to apply, were all discussed or referenced in the decision below, if not decided. *See* App., *infra*, 3a-7a, 17a-20a. The Eleventh Circuit remanded to the district court for further litigation over the ultimate purchase price. But an arbitrator, bound to apply Chilean law, would almost certainly reach a different result than the district court applying American law. This Court's

review would avoid such a messy outcome, by ensuring the dispute is resolved in accordance with the parties' intent under the arbitration agreement.

IV. The Eleventh Circuit got it wrong.

This Court has repeatedly instructed lower courts to enforce arbitration agreements according to their terms. *See, e.g., Italian Colors*, 570 U.S. at 233; *CompuCredit*, 565 U.S.at 98; *Concepcion*, 563 U.S. at 339; *Rent-A-Center*, 561 U.S. at 67. The court of appeals ignored that emphatic instruction and instead held that courts may decide final remedies when the arbitrator failed to do so. That is reversible error. *See id*.

Other errors pervade the opinion. The Eleventh Circuit decided U.S. law can answer specific questions about conversion dates and currency since the petition arose under the FAA, despite the agreement's express choice of Chilean law. App., *infra*, 17a-20a. The central purpose of the FAA is to enforce arbitration agreements. Parties may agree on any procedure they wish, including what law to apply. *See Stolt-Nielsen*, 559 U.S. at 683 (reaffirming that "parties are generally free to structure their arbitration agreements as they see fit … and may agree on rules under which any arbitration will proceed") (citations, internal quotations omitted). Courts have no discretion to nullify an agreement to apply Chilean law to the purchase price of shares, or to calculate the price under their own preferred choice of law. *Id*. at 682 ("courts and arbitrators must give effect to the contractual rights and expectations of the parties.") (citations, internal quotations omitted).

And though EGI's petition arose under federal law, Chapter 3 of the FAA, that law *adopts* the

Panama Convention, not the other way around. *See* 9 U.S.C. § 301 ("The Inter-American Convention on International Commercial Arbitration of January 30, 1975, *shall be enforced* in United States courts in accordance with this chapter.") (emphasis added). The Panama Convention provides that an award's "*execution or recognition*" may be ordered "in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties." Inter-Am. Convention on Int'l Commercial Arbitration, Art. IV, 1978 WL 219648 *6 (emphasis added). But a substantive decision on the final purchase price of a put right is hardly a question of "execution or recognition"—it is an integral part of the put right dispute, which the parties indisputably agreed to arbitrate under the law of Chile. Merely filing a petition under the FAA does not open the door to courts applying American law to resolve arbitrable disputes when the parties specifically agreed to arbitrate under a different law. *See Henry Schein*, 139 S. Ct. at 529.

Implicit in the Eleventh Circuit's decision is the desire to bring a lengthy dispute to a close. But that is not a basis for a court to take the reins of an arbitrable dispute. As this Court has recognized, efficiency may be *a* goal of the FAA, but the "overriding goal" of the FAA is to "ensure judicial enforcement of privately made agreements to arbitrate." *Dean Witter Reynolds Inc. v. Byrd,* 470 U.S. 213, 219 (1985) (rejecting the contention that the FAA's "overriding goal" of the Arbitration Act was to "promote the expeditious resolution of claims"). When those two goals are in conflict, this Court has promoted the unflagging obligation of courts to enforce arbitration agreements, "even where the result would be the possibly inefficient maintenance of separate proceedings in

different forums." *KPMG LLP v. Cocchi*, 565 U.S. 18, 22 (2011) (quoting *Dean Witter*, 470 U.S. at 218). This Court's decision in *Dean Witter* underscored the point: "[w]e therefore are not persuaded by the argument that the conflict between two goals of the Arbitration Act—enforcement of private agreements and encouragement of efficient and speedy dispute resolution—must be resolved in favor of the latter in order to realize the intent of the drafters."). *Dean Witter*, 470 U.S. at 221. In this case, the Eleventh Circuit erroneously elevated expedience over enforcement of the arbitration agreement.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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