No. _____

In the Supreme Court of the United States

QUEST INTERNATIONAL MONITOR SERVICE, INC.,
Petitioner,

vs.

ROCKWELL COLLINS, INC.
Respondent.

On Petition for a Writ of Certiorari to the
United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Mohammed K. Ghods
Counsel of Record
Lori L. Speak
LEX OPUS
2100 N. Broadway, Suite 210
Santa Ana, CA 92706
(714) 558-8580
mghods@lexopusfirm.com
Counsel for Petitioner

August 31, 2021

QUESTIONS PRESENTED

This Court has recognized that while the Federal Arbitration Act (FAA) reflects a federal policy of favoring arbitration, "there is no federal policy favoring arbitration under a certain set of procedural rules." *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989). In this case, Petitioner Quest International Monitor Service, Inc. relied on the forum state's 100-day limitation period when it timely filed in Los Angeles Superior Court a petition to vacate an arbitration award. After removing the petition to federal court on diversity grounds, Respondent filed a motion to dismiss, contending that the petition to vacate was time-barred under the FAA's shorter three-month deadline. 9 U.S.C. § 12. The district court agreed, granting the motion to dismiss, denying the petition to vacate, and confirming the arbitration award.

The Ninth Circuit affirmed the district court's judgment based solely on timeliness, agreeing that Quest's petition to vacate was untimely under the FAA's shorter period. Given the prevalence of arbitrations and petitions related thereto, litigants throughout the country deserve to have certainty and fair advance notice as to which limitation period applies in state courts to avoid death of the case by removal. Thus, the questions presented in this case are:

1) Is the FAA's three-month limitation period for vacatur of an arbitration award a substantive provision of the FAA that must be applied to petitions to vacate filed in state court if the FAA substantively governs?

2) If the FAA's limitation period does not supplant the state limitation period in state court, may a petition to vacate timely filed under the forum state's procedural rules be rendered untimely by removal to federal court?

PARTIES TO THE PROCEEDING

Petitioner Quest International Monitor Service, Inc. was plaintiff in the District Court and appellant in the Court of Appeals.

Respondent Rockwell Collins, Inc. was defendant in the District Court and appellee in the Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Quest International Monitor Service, Inc. is a privately owned California corporation. No publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING iii

CORPORATE DISCLOSURE STATEMENT..... iv

TABLE OF AUTHORITIES..... viii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

BASIS FOR JURISDICTION IN THIS COURT..... 1

STATUTORY PROVISIONS AT ISSUE 2

STATEMENT OF THE CASE 2

I. The Ninth Circuit Extends the Reach of the FAA's Procedural Rules to State Court. 2

II. Brief Factual and Procedural Background. 6

REASONS WHY CERTIORARI IS WARRANTED 9

I. Certiorari Is Necessary to Clarify that Section 12's Three-month Limitation Period for Vacatur Is a Procedural Provision of the FAA that Does Not Apply to Petitions to Vacate Filed in State Court, Even for Petitions Governed Substantively by the FAA, or to Timely Petitions Removed to Federal Court, Unless the State's Limitation Period Defeats the FAA's Pro-arbitration Policy. 9

A. Federal Policy Favors Arbitration but Not Under a Particular Set of Rules. 9

B. The Ninth Circuit's Application of the Three-month Limitation Period is Wrong. ... 12

C. This Court Has Yet to Hold that Section 12 of the FAA Is a Procedural Provision Inapplicable in State Court or to Removed Petitions. 16

II. Certiorari Is Necessary to Ensure Uniformity Among State and Federal Courts on This Important Issue. 17

CONCLUSION 23

APPENDIX

Appendix A
Memorandum Opinion, United States Court of Appeals for the Ninth Circuit, *Quest Int'l Monitor Serv., Inc. v. Rockwell Collins, Inc.*, 845 F. App'x 591, 592 (9th Cir. 2021)
(Apr. 20, 2021).....App-1

Appendix B
Order (1) Granting Motion to Confirm Arbitration Awards (Doc. 9) and (2) Denying Petition to Vacate Arbitration Award, *Quest International Monitor Service, Inc. v. Rockwell Collins, Inc.*, Case No.

8:19-cv-02471-JLS-KES
(Mar. 10, 2020).....App-4

Appendix C
Judgment, United District Court,
Central District of California, *Quest International Monitor Service, Inc. v. Rockwell Collins, Inc.*, Case No.
8:19-cv-02471-JLS-KES
(Mar. 26, 2020).....App-13

Appendix D
Relevant Statutory
Provisions.....App-15
9 U.S.C. § 12.....App-15
Cal. Civ. Proc. Code § 1288 .....App-15

TABLE OF AUTHORITIES

CASES

Am. Exp. Co. v. Italian Colors Rest.,
570 U.S. 228 (2013).....9

Atlantic Painting & Contracting Inc. v. Nashville Bridge Co.,
670 S.W.2d 841 (Ky 1984) 12, 20

Buckeye Check Cashing, Inc. v. Cardegna,
546 U.S. 440 (2006).....10

Bunge Corp. v. Perryville Feed & Produce, Inc.,
685 S.W.2d 837 (Mo. 1985).....21

Butner v. Neustadter,
324 F.2d 783 (9th Cir. 1963).....13

Cable Connection, Inc. v. DIRECTV, Inc.,
44 Cal.4th 1334 (Cal. 2008).....18

Cronus Invs., Inc. v. Concierge Servs.
35 Cal.4th 376 (Cal. 2005).....17, 18

DIRECTV, Inc. v. Imburgia,
577 U.S. 47 (2015).....11

Eurocapital Group Ltd. v. Goldman Sachs & Co.,
17 S.W.3d 426 (Tex. App. 1999) 22

Felder v. Casey,
487 U.S. 131 (1988).....11, 15

Howlett By & Through Howlett v. Rose,
496 U.S. 356 (1990).....15

Johnson v. Gruma Corp.,
614 F.3d 1062 (9th Cir. 2010).....8, 14

Judge v. Nijjar Realty, Inc.,
232 Cal.App.4th 619 (Cal. Ct. App. 2014).....18

Los Angeles Unified Sch. Dist. v.
Safety Nat'l Cas. Corp.,
13 Cal.App.5th 471 (Cal. Ct. App. 2017).....18

Manson v. Dain Bosworth Inc.,
623 N.W.2d 610 (Minn. Ct. App. 1998).....21

Moscatiello v. Hilliard,
595 Pa. 596 (Pa. 2007).....11, 20

Moses H. Cone Mem'l Hosp. v.
Mercury Constr. Corp.,
460 U.S. 1 (1983).....11

NewSpin Sports, LLC v. Arrow Elecs., Inc.,
910 F.3d 293 (7th Cir. 2018).....11

Nitro-Lift Techs., L.L.C. v. Howard,
568 U.S. 17 (2012).....5, 10

Oltman v. Holland Am. Line, Inc.,
538 F.3d 1271 (9th Cir. 2008).....13

Preston v. Ferrer,
552 U.S. 346 (2008).....10

San Diego Cty. Dist. Council of Carpenters of United Bhd. of Carpenters & Joiners of Am. v. Cory,
685 F.2d 1137 (9th Cir. 1982).....19

Siegel v. Prudential Ins. Co. of Am.,
67 Cal.App.4th 1270, 1277
(Cal. Ct. App. 1998) 11, 18

Simmons Co. v. Deutsche Fin. Servs. Corp.,
243 Ga.App. 85 (Ga. Ct. App. 2000).....14, 21

Southland Corp. v. Keating,
465 U.S. 1 (1984).....10

St. Fleur v. WPI Cable Systems/Mutron,
879 N.E.2d 27 (Mass. 2008).....21

Swissmex-Rapid S.A. de C.V. v. SP Sys., LLC,
212 Cal.App.4th 539 (Cal. Ct. App. 2012).....18

Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.,
489 U.S. 468 (1989).....i, 9, 10

STATUTES

9 U.S.C. § 1.....*2*
9 U.S.C. § 2.....4, 8
9 U.S.C. § 12.....*passim*
28 U.S.C. § 1332.....7
28 U.S.C. § 1254(1).....2
Cal. Civ. Proc. Code §§ 1280–1294.4.....2, 8
Cal. Civ. Proc. Code § 1288.....2, 19

PETITION FOR WRIT OF CERTIORARI

Quest International Monitor Service, Inc. petitions for a writ of certiorari to review the judgment of the United States Court of Appeals affirming the district court's dismissal of Quest's petition to vacate as untimely.

OPINIONS BELOW

The Ninth Circuit's memorandum opinion affirming the judgment may be found at *Quest Int'l Monitor Serv., Inc. v. Rockwell Collins, Inc.*, 845 F. App'x 591 (9th Cir. 2021) and is reproduced in the Appendix hereto at App-1.

The district court's order denying Quest International Monitor Service, Inc.'s petition to vacate and granting Respondent Rockwell Collins, Inc.'s motion to dismiss and motion to confirm is reproduced at App-4. The district court's judgment is reproduced at App-13.

BASIS FOR JURISDICTION IN THIS COURT

The Ninth Circuit entered its memorandum opinion on April 20, 2021, dismissing Petitioner's appeal as untimely. On March 19, 2020, this Court issued an order extending the deadline to file a petition for writ of certiorari to 150 days due to the public health concerns surrounding Covid-19. Because the underlying judgment entered by the Ninth Circuit was filed before July 18, 2021, the 150-day deadline applies. Quest now files its timely

petition for certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AT ISSUE

Relevant portions of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and the California Arbitration Act, Cal. Civ. Proc. Code § 1280 *et seq.*, are reproduced beginning at App-15.

STATEMENT OF THE CASE

I. The Ninth Circuit Extends the Reach of the FAA's Procedural Rules to State Court.

This case concerns the scope of the Federal Arbitration Act (FAA), specifically its three-month limitation period for vacatur of an arbitration award set forth in 9 U.S.C. § 12. The expansive and improper application of section 12 resulted in the dismissal of a timely-filed petition to vacate.

Quest International Monitor Service, Inc. (Quest) undisputedly filed in California state court under the California Arbitration Act (CAA), a timely petition to vacate an arbitration award. *See* Cal Civ. Proc. Code § 1280 *et seq.*; § 1288 (setting forth the 100-day limitation period for petitions to vacate in California). Nonetheless, the Ninth Circuit held that the petition, removed to federal court based on diversity jurisdiction, was untimely under the FAA's three-month deadline. The Ninth Circuit's decision, however, improperly infringes on California's right to establish its own procedural rules and leaves

litigants subject to conflicting legal authorities on when vacatur must be sought.

The present dispute raises two significant issues. The first is whether the FAA's three-month limitation period applies at all to vacatur proceedings commenced in state court for awards governed substantively by the FAA. In other words, is the FAA's three-month limitation period a substantive element of the FAA applicable in both state and federal court. Second, if the FAA's three-month limitation period does not apply in state court proceedings, can that three-month period subsequently be applied upon removal to federal court to dismiss as untimely an otherwise timely-filed state court petition to vacate, essentially leading to death by removal.

At the outset, it is important to gain a clear understanding of the procedural posture of this case:

1) Quest originally filed its petition to vacate in state court. App-5. Respondent Rockwell Collins, Inc. (Rockwell) never challenged jurisdiction, venue, or timeliness of the petition in state court.

2) Rockwell elected to remove the petition to federal court based solely on diversity jurisdiction. App-5.

This is not a case in which the original civil complaint was filed in federal court. This is not a case in which a state court complaint was removed to federal court prior to the issuance of an arbitration award. This is not a case in which a party was

compelled by a federal court to participate in arbitration proceedings from which an arbitration award subsequently issued.

In this case, the parties arbitrated their contractual dispute without any prior litigation. Under the terms of the parties' agreement, judgment could be entered on the award in any court with jurisdiction. Quest elected to file its petition to vacate in California state court, the state in which the contract was signed, the state in which Rockwell maintained an office, Quest's home state, and the state in which Quest conducted business for Rockwell.

It is also important to be clear about what Quest is challenging on this Petition:

1) Quest is not challenging that the FAA's substantive provisions applied to the arbitration proceeding or judicial review of the award. The FAA substantively governed because the contract at issue evinced a transaction involving interstate commerce. 9 U.S.C. § 2.

2) Quest is not challenging that had the petition been filed in federal court, the FAA's three-month deadline for vacatur would have applied. In other words, Quest is not arguing that the CAA would have governed if Quest had initially filed its petition in federal court.

3) Quest is not challenging that the parties' agreement required Iowa substantive law to be

applied to the underlying claims adjudicated in the arbitration proceeding.

What Quest challenges is the Ninth Circuit's erroneous and expansive conclusion that the FAA's three-month limitation period governed the timeliness of Quest's petition to vacate at all. The federal courts in this case made two errors: (1) the Ninth Circuit treated section 12's three-month limitation period as a substantive element of the FAA applicable in both state and federal court; and (2) the district court, after removal from state court, applied the FAA's three-month period retroactively to dismiss a timely-filed complaint, thereby sanctioning the petition's death by removal. Neither approach comports with the purpose of the FAA, California courts' understanding of the FAA's application in state court, or this Court's prior holdings.

This Court has recognized that it is state courts, not federal courts, that are most frequently called upon to apply the FAA. "It is a matter of great importance, therefore, that state supreme courts adhere to a correct interpretation of the legislation." *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 17–18 (2012). Similarly, it is a matter of great importance that federal courts properly review arbitration-related matters removed from state court and set forth the proper reach of the FAA as it relates to state court proceedings.

This case provides an opportunity for the Court to address fundamental legal principles of great import to a broad class of litigants and courts alike: statutes of limitation and the relationship between state and

federal law. Review by this Court is necessary to ensure that federal courts properly limit the application of FAA procedural rules to federal courts and properly restrict the application of the FAA's limitation period upon removal from state court.

II. Brief Factual and Procedural Background

Quest is an Irvine, California corporation that provided engineering services for a decade on a project-by-project basis for the Tustin, California facility of Rockwell. App-5, 8. In July 2011, Rockwell approached Quest with a new project to provide assistance for an urgent problem regarding constantly-failing parts of audio and video inflight systems in certain commercial passenger airplanes. App-5. The parties signed a form Enterprise Commercial Product Support Agreement (the "PSA"), in Orange County, California in March 2012. App-5.

A contractual dispute arose between the parties resulting in an arbitration proceeding. App-5. The arbitrators issued the final award in favor of Rockwell and against Quest, awarding Rockwell the attorneys' fees incurred in arbitration. App-5. Quest paid the arbitration award in full following the arbitration proceedings, with a reservation of rights.

The PSA stated that judgment upon the award could be "entered in any court having jurisdiction thereof." Accordingly, on November 27, 2019, Quest filed a complaint for declaratory relief along with a

petition to vacate the award in Orange County Superior Court.[1] App-5.

On December 20, 2019, Rockwell removed the state action to federal court based solely on diversity. App-5. The district court had jurisdiction over the parties' claims under 28 U.S.C. § 1332.

On December 27, 2019, Rockwell filed a motion to dismiss Quest's complaint, including the petition to vacate, and to confirm the arbitration award. App-7. After taking the matters under submission without a hearing, the district court granted Rockwell's motions and denied Quest's petition to vacate on March 10, 2020. App-4 – App-12. It issued a judgment in favor of Rockwell and against Quest on March 26, 2020. App-13 – App-14.

In granting Rockwell's motion to dismiss, the district court stated that the request for vacatur was time barred, having been filed 95 days, rather than three months, after the arbitration award was issued. App-9. Without deciding whether the FAA's three-month deadline applied in state court, where the petition to vacate was originally filed, the district court concluded that "[f]or better or worse, the case is

---

[1] Because Quest's complaint included both a claim for declaratory relief and a petition to vacate and both were held barred by the FAA's three-month limitation period (App-3), a reversal by this Court based on timeliness would apply both to the petition and the claim for declaratory relief. Because the merits of the claims are not at issue, however, Quest focuses solely on the petition to vacate, which is the grounds for the application of the three-month limitation period in the first instance.

now in this Court, a federal court, meaning that both substantive and procedural FAA rules apply." App-9, n. 3.

Quest timely appealed, and the Ninth Circuit panel issued its memorandum opinion on April 20, 2021, affirming the district court's judgment solely on the ground that Quest's pleading was untimely. App-1 – App-3.

> The district court did not err in holding that Quest's petition to vacate the arbitration award was time-barred under 9 U.S.C. § 12. The Enterprise Commercial Product Support Agreement is a contract "evidencing a transaction involving commerce" for purposes of 9 U.S.C. § 2, and therefore "there is a strong default presumption that the FAA, not state law, supplies the rules for arbitration." *Johnson v. Gruma Corp.*, 614 F.3d 1062, 1066 (9th Cir. 2010) (cleaned up). Quest did not overcome this presumption because the contract does not "evidence a clear intent to incorporate state law rules for arbitration." *Id.* (cleaned up). Therefore, the California arbitration rules, Cal. Civ. Proc. Code §§ 1280–1294.4, are not applicable here. "[W]here the FAA's rules control arbitration proceedings, a reviewing court must also apply the FAA standard for vacatur," *Johnson*, 614 F.3d at 1067, including the three-month limitation period for filing a petition for vacatur.

App.-2.

REASONS WHY CERTIORARI IS WARRANTED

I. Certiorari Is Necessary to Clarify that Section 12's Three-month Limitation Period for Vacatur Is a Procedural Provision of the FAA that Does Not Apply to Petitions to Vacate Filed in State Court, Even for Petitions Governed Substantively by the FAA, or to Timely Petitions Removed to Federal Court, Unless the State's Limitation Period Defeats the FAA's Pro-arbitration Policy.

This Court should grant Quest's petition because certiorari is necessary to clarify that section 12's three-month limitation period for vacatur of an arbitration award is a procedural element of the FAA. Accordingly, that three-month period does not apply to petitions to vacate filed in state court, regardless of whether the arbitration and related judicial review are substantively governed by the FAA, unless the state's limitation period defeats the purposes of the FAA.

A. Federal Policy Favors Arbitration but Not Under a Particular Set of Rules.

Congress enacted the FAA in response to purported widespread judicial hostility to arbitration, thereby seeking to ensure that private agreements to arbitrate were enforced according to their terms. *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 232 (2013); *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S.

468, 478, (1989). While the FAA reflects the federal policy of favoring arbitration, "[t]here is no federal policy favoring arbitration under a certain set of procedural rules …." *Volt Info. Scis., Inc.*, 489 U.S. at 476.

This Court has recognized (1) that the FAA contains substantive and procedural provisions; and (2) that while the FAA's substantive provisions apply in both state and federal court, its procedural provisions may apply only in federal court. *See Preston v. Ferrer*, 552 U.S. 346, 349 (2008) ("The Act, which rests on Congress' authority under the Commerce Clause, supplies not simply a procedural framework applicable in federal courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration." (*citing Southland Corp. v. Keating,* 465 U.S. 1, 16 (1984))); *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 20 (2012) ("It is well settled that 'the substantive law the Act created [is] applicable in state and federal courts.'" (*quoting Southland Corp.,* 465 U.S. at 12, and *citing Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 446 (2006))); *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984) ("In holding that the Arbitration Act preempts a state law that withdraws the power to enforce arbitration agreements, we do not hold that §§ 3 and 4 of the Arbitration Act apply to proceedings in state courts. Section 4, for example, provides that the Federal Rules of Civil Procedure apply in proceedings to compel arbitration. The Federal Rules do not apply in such state court proceedings.").

In the end, "[n]o one disputes the general and unassailable proposition … that States may establish the rules of procedure governing litigation in their own courts." *Felder v. Casey*, 487 U.S. 131, 138 (1988). Simply stated, "as to procedural matters, the law of the forum controls." *NewSpin Sports, LLC v. Arrow Elecs., Inc.*, 910 F.3d 293, 300 (7th Cir. 2018).

Nonetheless, this control is not without limit, and the FAA does indeed demonstrate a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). This means that the federal pro-arbitration policy cannot be thwarted by state legislation or public policy. State laws, rules, or procedures that would thwart the execution of the FAA's purposes would be preempted. Conversely, and importantly, where a state's procedural rules do not thwart this federal policy, they are not preempted by the FAA. *See DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 51 (2015) (a state court rule or statute is not preempted unless it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress embodied in the Federal Arbitration Act").

In light of the above principles, section 12's three-month limitation period for vacatur of an arbitration award is simply a procedural mechanism applicable in federal court alone. California courts and other state courts have so held. *See, e.g.*, *Siegel v. Prudential Ins. Co.*, 67 Cal.App.4th 1270 (Cal. Ct. App. 1998); *Moscatiello v. Hilliard*, 595 Pa. 596 (Pa.

2007); *Atlantic Painting & Contracting Inc. v. Nashville Bridge Co.* 670 S. W. 2d 841 (Ky 1984). And unless a state court's limitation period for vacatur would prevent the execution of the FAA's pro-arbitration policy, the forum state's procedural rules should govern.

B. The Ninth Circuit's Application of the Three-month Limitation Period Is Wrong.

Despite the fact that the FAA does not favor arbitration conducted pursuant to a particular set of procedures, the federal courts in this case erred in two significant ways: (1) the district court erroneously applied the FAA limitation period to a petition timely filed in state court but subsequently removed to federal court; and (2) the Ninth Circuit erroneously treated section 12 as a substantive provision of the FAA, applicable even in state court proceedings.

First, the district court erred by misapplying the FAA limitation period to a removed petition that was timely filed in state court. The court's error is apparent in its order:

> Quest cites a California Court of Appeal case for the proposition that, while "[t]he FAA's substantive provisions are applicable in state as well as federal court, . . . the FAA's procedural provisions apply only to proceedings in federal court," *Judge v. Nijjar Realty, Inc.*, 232 Cal.App.4th 619, 630 (2014) (alteration in

> original). (*See* Opp'n at 16.) And, because this case was originally filed in state court, Quest argues, the Court must not apply Section 12 here. (*See id.* at 15–16.) For better or worse, the case is now in this Court, a federal court, meaning that both substantive and procedural FAA rules apply.

App-9, n.3. The district court's erroneous approach, however, leaves litigants vulnerable to death by removal, where an opposing party could render a timely-filed petition untimely by removing it to federal court based solely on diversity jurisdiction. Under the district court's logic, all litigants, including those pursuing judicial review in state court, would be required to comply with the FAA's three-month limitation period on the chance that the opposing party would remove the petition. Such a result would essentially gut the applicability of a forum state's procedural rules. The district court's analysis is contrary to both state and federal law, including the law that "[t]he federal court takes the case as it finds it on removal…." *Butner v. Neustadter*, 324 F.2d 783, 785 (9th Cir. 1963). *See also Oltman v. Holland Am. Line, Inc.*, 538 F.3d 1271, 1280 (9th Cir. 2008) (recognizing that had the defendant removed the case to federal court rather than moved to dismiss it, the timeliness of the plaintiff's claims would have been preserved).

Second, the Ninth Circuit, while affirming the district court's conclusion that the petition was untimely, did not specifically address the posture of the case: the petition had been timely-filed in state court. Instead, the Ninth Circuit concluded that

"[w]here the FAA's rules control arbitration proceedings, a reviewing court must also apply the FAA standard for vacatur …, including the three-month limitation period for filing a petition for vacatur." App-2, *citing Johnson v. Gruma Corp.*, 614 F.3d 1062, 1067 (9th Cir. 2010). By so holding, the Ninth Circuit appears to have concluded that regardless of whether the petition was filed in state or federal court, if the FAA governed the arbitration proceedings, all of its provisions for vacatur applied unless the parties' agreement explicitly and clearly invoked the CAA. App-2.

While this may be true for a petition filed in federal court, it is not true for a petition filed in state court. The CAA *procedural provisions* apply in California. Regardless of the controlling federal or state substantive law, the forum state's procedural rules apply in that forum. A Georgia court of appeal explained it well:

> The arbitration provision at issue indicates that Illinois law governs to the extent it is not inconsistent with the FAA. This does not mean, however, that the FAA or Illinois law governs the procedures, including appellate procedures, which apply in Georgia, where the suit was filed. Under the rule of *lex fori*, procedural or remedial questions are governed by the law of Georgia. Even where a claim is governed by substantive federal law, a state may apply its own procedural rules in its own courts, if those procedures do not defeat the objectives of the federal law."

Simmons Co. v. Deutsche Fin. Servs. Corp., 243 Ga.App. 85, 85-86, 88-89 (Ga. Ct. App. 2000).

Without any explanation or justification, the Ninth Circuit lumped section 12's three-month limitation period in with the other substantive provisions of the FAA. Such an approach contravenes the purpose of the FAA, California's right to establish its own procedural rules, and this Court's recognition that federal procedures apply in federal courts.

Both erroneous approaches practically mandate that litigants who choose a state court as the forum to seek vacatur will be required nonetheless to comply with the FAA's three-month limitation period rather than the forum state's limitation period. This is a direct threat to the "general and unassailable proposition … that States may establish the rules of procedure governing litigation in their own courts." *Felder v. Casey*, 487 U.S. at 138. *See also Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 372 (1990) ("[S]tates thus have great latitude to establish the structure and jurisdiction of their own courts. (Citations). In addition, States may apply their own neutral procedural rules to federal claims, unless those rules are pre-empted by federal law."). Furthermore, the erroneous interpretation by the federal courts leaves litigants like Quest caught between two conflicting interpretations of the law.

Because Quest's petition to vacate was originally and properly filed in state court, California procedural rules applied because California was the chosen forum, regardless of whether federal substantive law or another state's substantive law

controlled. Thus, the federal courts in this case, including the Ninth Circuit panel, erroneously applied a procedural provision of the FAA, namely section 12's three-month limitation period for vacatur, to a removed state court petition. This was wrong.

C. This Court Has Yet to Hold that Section 12 of the FAA Is a Procedural Provision Inapplicable in State Court or to Removed Petitions.

While the district court's "death by removal" approach and the Ninth's Circuit's usurpation of a state court's right to establish its own procedures are not justified by this Court's precedent or the purposes of the FAA, this Court has never expressly stated that section 12's limitation period is a procedural provision of the FAA limited to federal court. Given the importance of limitation periods to litigants and courts alike, the Court should grant certiorari in this case to establish definitively that section 12's three-month deadline is procedural and inapplicable in state court or to timely-filed state court petitions that are removed, even when the FAA substantively governs the arbitration proceedings.

This case offers the right vehicle to address this important question. The question is clearly presented. The district court and the Ninth Circuit both addressed the timeliness issue, and the Ninth Circuit's sole ground for affirmation was the failure to comply with the FAA's limitation period. Furthermore, additional percolation on this issue is

unnecessary. The FAA's limitation period has long existed, and courts have repeatedly addressed its application.

Finally, the Ninth Circuit panel decision here is irreconcilable with the purpose of the FAA, the right of state courts to control their own proceedings, and this Court's recognition that there is not a federal policy under the FAA favoring arbitration according to particular procedures. The Ninth Circuit decision is wrong and opens the door to serious overreach by federal courts and confusion for litigants, making intervention by this Court necessary.

II. Certiorari Is Necessary to Ensure Uniformity Among State and Federal Courts on This Important Issue.

Courts have reached different conclusions on whether the FAA's procedural provisions, including the FAA's limitation period for motions to vacate, control in state court. Therefore, it is crucial for this Court to resolve these conflicting decisions on this important issue. Litigants, like Quest, rely on the procedures of the forum state to ensure that their claims will be heard on the merits.

In this case, Quest specifically relied on California law, the forum which Quest appropriately selected to review the arbitration award. California courts have long held that the procedural provisions of the FAA, including the limitation period for petitions to vacate set forth in section 12, are procedural and do not apply in state court regardless of whether the

arbitration is governed by the FAA. *See Cable Connection, Inc. v. DIRECTV, Inc.*, 44 Cal.4th 1334, 1352 (Cal. 2008) ("the FAA's procedural provisions are not controlling, and the determinative question is whether CAA procedures conflict with the FAA policy favoring the enforcement of arbitration agreements"); *Siegel v. Prudential Ins. Co. of Am.*, 67 Cal.App.4th 1270, 1277 (Cal. Ct. App. 1998) (describing section 12 of the FAA as prescribing the procedure whereby a motion to vacate is presented to a court for decision in federal court); *Swissmex-Rapid S.A. de C.V. v. SP Sys., LLC,* 212 Cal.App.4th 539, 546 (Cal. Ct. App. 2012)*, as modified (Jan. 4, 2013)* ("the FAA's procedural provisions apply only to proceedings in federal court," specifically recognizing that portions of the FAA, *e.g.*, § 9, do not apply in state court proceedings); *Judge v. Nijjar Realty, Inc.*, 232 Cal.App.4th 619, 632 (Cal. Ct. App. 2014) ("federal procedural rules apply only where state procedural rules conflict with or defeat the rights Congress granted in the FAA); *Los Angeles Unified Sch. Dist. v. Safety Nat'l Cas. Corp.*, 13 Cal.App.5th 471, 482 (Cal. Ct. App. 2017) ("where, as here, the parties do not '*expressly* designate that any arbitration proceeding should move forward under the FAA's procedural provisions rather than under state procedural law'[citation], California procedures necessarily apply." (quoting *Cronus Invs., Inc. v. Concierge Servs.* 35 Cal. 4th 376, 394 (Cal. 2005)) (emphasis in original)).

Relying on this law, Quest timely filed its petition in California state court in accordance with the forum's procedural rules. The parties' agreement (the

PSA) does not mention the Federal Arbitration Act let alone require that the federal procedural provisions apply. Because nothing in the PSA required a different set of procedural rules to apply and because the state's procedural rules do not defeat the purposes of the FAA, the applicable statute of limitations for a petition to vacate an arbitration award in California is 100 days. Cal. Civ. Proc. Code § 1288.

In this case, the arbitration panel's final award was executed on August 22, 2019. App-5. The state court action, filed on November 27, 2019, was within 100 days of the final award. App-9. It can hardly be said that an additional 10 days, the difference between the FAA's limitation period and California's, thwarts the federal policy favoring arbitration. *See e.g.*, *San Diego Cty. Dist. Council of Carpenters of United Bhd. of Carpenters & Joiners of Am. v. Cory*, 685 F.2d 1137, 1142 (9th Cir. 1982) (finding no convincing reason why the three-month FAA limitation period would serve national labor policy better than the 100-day period provided under California law because only ten days separate the two limitation periods and no policy would have been thwarted by allowing the appellant the benefit of the ten extra days).

Several state courts have similarly concluded that the FAA's procedural provisions, including section 12, do not apply in state court:[2]

- Pennsylvania: *Moscatiello v. Hilliard*, 595 Pa. 596, 600, 603-04 (Pa. 2007) ("Does the Federal Arbitration Act's (FAA's) procedural provision which allows for a three-month time frame within which to challenge an arbitration award preempt the state procedural rule which sets the time limit at thirty days? … The federal policy favoring arbitration, set forth in the FAA, is limited to Congress's intent to make arbitration agreements enforceable. The FAA does not preempt the procedural rules governing arbitration in state courts, as that is beyond its reach. Thus, we hold there is no preemption.").

- Kentucky: *Atlantic Painting & Contracting Inc. v. Nashville Bridge Co.*, 670 S.W.2d 841, 846-47 (Ky 1984) ("[T]here is nothing in the federal Arbitration Act preempting state jurisdiction of the contract action filed by Atlantic/Buckeye and nothing in the Act remotely suggesting that the 'motion to vacate' procedure, including the three months time limitation set up for federal proceedings, has any application at all to such state action. The federal Arbitration Act covers both

[2] This is a non-exhaustive list of state cases. It is intended to be a sufficient showing of the need for resolution of the issue by this Court.

substantive law and a procedure for federal courts to follow where a party to arbitration seeks to enforce or vacate an arbitration award in federal court. The procedural aspects are confined to federal cases.").

- Georgia: *Simmons Co. v. Deutsche Fin. Servs. Corp.*, 243 Ga.App. 85, 85-86, 88-89 (Ga. Ct. App. 2000) ("It follows that procedural rules established by a state for the arbitration process that do not undermine the purposes and objectives of the FAA are not preempted.")

- Minnesota: *Manson v. Dain Bosworth Inc.*, 623 N.W.2d 610, 615 (Minn. Ct. App. 1998) ("because Minnesota's personal service requirements are procedural, the district court did not err by applying Minnesota's requirements instead of the corresponding FAA provision," noting that the "Supreme Court has not held that federal procedural rules apply to proceedings in state court, even when the FAA preempts a substantive state law.").

- Massachusetts: *St. Fleur v. WPI Cable Systems/Mutron*, 879 N.E.2d 27, 33 (Mass. 2008) (["[b]ecause the procedures in 9 U.S.C. § 4 do not apply to State courts, a State court may apply its own law"].)

Other state courts, however, have applied or at least suggested that the FAA's procedural provisions do apply in state court.

- Missouri: *Bunge Corp. v. Perryville Feed & Produce, Inc.,* 685 S.W.2d 837, 839–40 (Mo. 1985) (en banc) (when the Federal Act applies to a dispute, the state court "is obliged to apply federal law, and may not apply state law, substantive or procedural, [that] is in derogation of federal law.").
- Texas: *Eurocapital Group Ltd. v. Goldman Sachs & Co.*, 17 S.W.3d 426, 431 (Tex. App. 1999) ("When the very statute that creates a right of action incorporates an express limitation on the time within which the suit can be brought, the statute of limitation is considered substantive. Furthermore, we view FAA sections 10 and 12 together as part of an enforcement scheme intended to promote the federal policy favoring arbitration when the underlying contract concerns interstate commerce. … We hold that the three-month limitation of the FAA applies under the facts of this case.")

Therefore, because establishing the correct limitations period is essential to litigants and courts alike, review by this Court is necessary to allow the Court to reconcile divergent state court rulings and clearly establish the nature of section 12's limitation period. As noted above, additional percolation on this issue is unnecessary. Courts have addressed this issue over the course of decades. Litigants must have advance notice of the limitation period for vacatur of an arbitration award governed by the

FAA. This Court, therefore, should grant the petition and resolve this important question.

CONCLUSION

For the foregoing reasons, this Court should grant Quest's petition for certiorari.

Respectfully submitted,

Mohammed K. Ghods
Counsel of Record
Lori L. Speak
LEX OPUS
2100 N. Broadway, Suite 210
Santa Ana, CA 92706
(714) 558-8580
mghods@lexopusfirm.com
Counsel for Petitioner

August 31, 2021