No. 22-1202

In the Supreme Court of the United States

SPIRIT OF THE EAST, LLC, PETITIONER,

v.

YALE PRODUCTS INC.; ALAN LEIGH,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The petition states the question presented as:

Whether a court is prohibited from even considering public policy as a ground to vacate an arbitration award under the FAA when the award commands action in violation of criminal statutes.

CORPORATE DISCLOSURE STATEMENT

Respondent Yale Products Inc. has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

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BRIEF IN OPPOSITION

INTRODUCTION

This petition fails this Court's certiorari criteria in multiple respects. To start, petitioner vacillates on what the question presented even is, and neither of petitioner's proposed options actually implicates any division of authority. Courts are not split on the petition's narrow question presented (at i), which asks whether courts may consider "public policy as a ground to vacate" arbitration awards under the Federal Arbitration Act (FAA) when awards purportedly "command[] action in violation of criminal statutes."

Nor are courts split on the broader question the petition (at 13-14) raises as to whether courts may vacate arbitration awards on public-policy grounds. As petitioner (at 16-17) observes, the Eighth and Eleventh Circuits plus the Alabama, Arkansas, Florida, and Nebraska Supreme Courts agree that that the FAA provides the exclusive grounds for vacating arbitration awards. FAA § 10 enumerates only four grounds for vacatur: fraud or corruption, arbitrators' partiality, prejudicial "misbehavior," or the arbitrators "exceed[ing] their powers." 9 U.S.C. § 10. That list excludes a public-policy or illegality exception. As for the other courts petitioner (at 14) invokes, the Second, Fourth, Sixth, Seventh, Ninth, Tenth, and Federal Circuits and the Alaska Supreme Court either have not addressed public-policy challenges under the FAA or have left the question open. Petitioner cites no case vacating an award under the FAA on public-policy grounds.

On top of that, petitioner did not frame the case below as involving a freestanding public-policy or illegality exception to enforcing awards. Rather, petitioner pressed a statutory argument that the arbitrator "exceeded his power by 'mandating a criminal act,'" under § 10(a)(4) of the FAA. Pet.App.7-9, 21. Both the Eleventh Circuit and district court accordingly resolved this case by rejecting that statutory argument, with the Eleventh Circuit reaffirming the lack of a public-policy exception as an alternative point that petitioner had not squarely raised.

Moreover, neither question presented—whether the FAA lets courts vacate awards on public-policy grounds, or based on illegality—is sufficiently important to warrant this Court's attention. In the last 10 years alone, this Court has denied petitions for certiorari on similar questions at least five times, most recently in October 2022.

See Caputo v. Wells Fargo Advisors, LLC, 143 S. Ct. 375 (2022); *see infra* p. 17 n.4.

Nothing here justifies a different result. Indeed, whether the FAA allows courts to vacate awards on public-policy or illegality grounds are questions of diminishing significance. In recent years, parties have rarely mounted such challenges. When those challenges arise, courts uniformly reject them, either because the FAA does not authorize vacatur on atextual grounds or because the challenges fail on the merits regardless. Further, courts are uniformly adamant that any public-policy or illegality exception would not apply when, as here, the arbitrator considered and *rejected* that objection. This Court should not grant a case that would come out in respondent's favor in every court.

Finally, this Court's intervention is unnecessary because the Eleventh Circuit's decision is correct. FAA § 9 mandates that courts "must" confirm awards unless one of the FAA's enumerated grounds for disturbing awards in §§ 10 and 11 applies. 9 U.S.C. § 9. This Court has held that "the grounds for vacatur and modification provided by §§ 10 and 11" are "exclusive." *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008). And neither public policy nor illegality are enumerated bases for courts to second-guess arbitration awards. Courts cannot "rewrite the law" and engraft atextual exceptions onto the FAA's text. *Badgerow v. Walters*, 596 U.S. 1, 17 (2022).

STATEMENT

A. Statutory Background

The 1925 Federal Arbitration Act enshrines "a liberal federal policy favoring arbitration." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (citation omitted). Before the FAA, courts "routinely refused to enforce

agreements to arbitrate disputes." *Id.* Such "judicial hostility towards arbitration … manifested itself in a great variety of devices and formulas declaring arbitration against public policy." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 342 (2011) (citation omitted). For instance, courts invalidated arbitration agreements as "impermissible attempts to 'oust' courts of their jurisdiction" and permitted parties to revoke their consent to arbitration any time. *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1917 n.3 (2022).

In the FAA, Congress swept that "hostility" aside, recognizing that arbitration offered "quicker, more informal, and often cheaper resolutions for everyone involved." *Epic*, 138 S. Ct. at 1621 (citation omitted). Congress thus declared arbitration agreements "valid, irrevocable, and enforceable," 9 U.S.C. § 2, and charged courts with enforcing arbitration agreements. If parties move to compel arbitration under a valid agreement, the court "shall" order the parties to arbitrate. *Id.* § 4. And if arbitrators issue an award, the court "must grant" a motion to confirm "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11" of the FAA. *Id.* § 9.

"[O]nly in very unusual circumstances" does the FAA permit courts to review arbitration awards. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013) (citation omitted). Specifically, FAA §§ 10 and 11 "provide the FAA's exclusive grounds for expedited vacatur and modification" of awards. *Hall St.*, 552 U.S. at 584. Under § 10, courts may vacate awards only if the awards resulted from fraud or corruption, the arbitrators were partial, the arbitrators committed prejudicial "misbehavior," or the arbitrators "exceeded their powers." 9 U.S.C. § 10. And under § 11, courts may modify awards only when faced with obvious miscalculations, incorrect form, or awards

that materially exceed the scope of matters submitted to arbitration. *Id.* § 11. By cabining judicial second-guessing of arbitration awards, the FAA "maintains arbitration's essential virtue of resolving disputes straightaway." *Hall St.*, 552 U.S. at 588.

B. Factual and Procedural Background

This case involves petitioner's FAA § 10 motion to vacate an arbitration award. The arbitrator ruled for respondents and found that a valid and enforceable boat sale between the parties occurred.

1. In January 2019, the U.S. Marshal for the Southern District of Florida offered the *S/Y Spirit of the East* at a court-ordered sale. *Notice of U.S. Marshal Sale*, Daily Bus. Rev. (Jan. 15, 2019), https://bit.ly/3Q6QPhr. According to the U.S. Marshal, the boat bore "Malta Official Number 08776" and was offered "free and clear of all liens and encumbrances, and pre-existing claims on the property, whether recorded or otherwise." *Id.*

Respondent Yale Products, Inc. bought *Spirit of the East*, and the U.S. District Court for the Southern District of Florida confirmed the sale. Clerk's Confirmation of Sale, *Yale Prods., Inc. v. S/Y Spirit of the East*, No. 18-cv-62236 (S.D. Fla. Feb. 8, 2019), Dkt. 40.

In late 2020, Yale offered *Spirit* for sale for $299,000 through a licensed Florida boat broker. C.A. Appellant App. (C.A.App.) 24, 27-28. In April 2021, attorney Ian Prider, the managing member of petitioner Spirit of the East, LLC, toured *Spirit* in person with respondent Alan Leigh, Yale's sole officer and shareholder. Pet.App.2; C.A.App.78.

Prider then emailed Yale's broker to say that he had "spent some time going over the documentation" and saw "lots of problems with this vessel." C.A.App.77. Among

"the issues," Prider asserted that "the vessel simply is not Documented at all." C.A.App.77-78. Invoking those concerns, Prider offered $200,000—$99,00 less than the asking price—to buy *Spirit* "where is as is," subject to Yale delivering clear title. C.A.App.78. Prider offered to buy *Spirit* without clear title for $155,324.41. C.A.App.78.

Following negotiations, later in April 2021, the parties entered a purchase agreement for $220,000. C.A.App.77, 80. Yale offered *Spirit* "on an 'as is' basis" with "no warranties, expressed or implied," except for "good and marketable title." C.A.App.81 (capitalization altered). The deal would close "on or before May 10" once petitioner paid the $220,000 into escrow and Yale delivered title documents to petitioner. C.A.App.80-81 (capitalization altered). The parties agreed to submit "any dispute relating to this Agreement" to binding arbitration. Pet.App.3.

On May 6, 2021, Prider and Leigh gathered aboard *Spirit* and signed closing documents before a notary public. Pet.App.32-33. Leigh congratulated Prider on his new boat, and the two men shook hands. Pet.App.33. Prider deposited the $220,000 purchase price into escrow and declared that he would return with workmen that afternoon. Pet.App.3, 33.

Prider then took a stroll around *Spirit* and developed second thoughts. Pet.App.3. Prider claimed that the boat's starboard side showed damage and that its name and hull identification number were not painted on the exterior. Pet.App.3. Prider declared the deal off and demanded that the escrow agent refund the money. Pet.App.3. Leigh responded that the sale was complete because Prider had signed all the required paperwork before a notary. Pet.App.3.

Prider later raised another concern: The bill of sale listed the hull identification number for a small tender used to service *Spirit*, not *Spirit* itself. Pet.App.31. However, the bill of sale also listed the correct manufacturer's registration number engraved in *Spirit*'s engine room and included in the U.S. Marshal's notice of sale. Pet.App.32; C.A.App.84; *Notice of U.S. Marshal Sale*, *supra*.

2. Petitioner Spirit of the East, LLC filed for arbitration, demanding return of the purchase price, attorneys' fees, and $400,000 in damages. Pet.App.3, 31. Petitioner claimed the sale was never completed, Yale and Leigh acted fraudulently and failed to get the boat measured or provide a title guarantee, *Spirit* lacked proper documentation and registration and was encumbered by a Maltese mortgage, and the bill of sale listed the wrong hull identification number. Pet.App.31. Petitioner also claimed that Yale's alleged failure "to document or register the vessel makes it a crime under Florida law to sell the vessel." Pet.App.31.

In March 2022, after a two-day hearing, the arbitrator issued an award rejecting all of petitioner's arguments and directed the escrow agent to release the funds to Yale. Pet.App.34. The arbitrator recognized that "none of the issues raised by [petitioner] prevented a sale of the vessel from closing." Pet.App.33.

The arbitrator rejected petitioner's argument that the lack of registration made the sale illegal. As the arbitrator explained, "[n]o [hull identification number] was required because the vessel was foreign built and classified as a commercial vessel." Pet.App.33. "Under Florida law," petitioner could register *Spirit* after the sale. Pet.App.33. And while petitioner highlighted the incorrect hull identification number on the bill of sale, the bill of sale correctly identified the vessel "by name and manufacturer's official number." Pet.App.34. Moreover,

petitioner cited "[n]o Florida statute or regulation" that would prevent petitioner from correcting the error later. Pet.App.34. Regardless, the arbitrator noted, "[e]ven if it is a misdemeanor under Florida law to 'transfer' a vessel that was not registered or documented it would not prevent that transfer by sale from occurring." Pet.App.34.

3. Petitioner moved under FAA § 10 to vacate the award in federal district court; Yale moved to confirm the award under FAA § 9. Pet.App.17. Siding with Yale, the district court denied the motion to vacate and confirmed the award. Pet.App.17.

As relevant here, petitioner urged the court to vacate the award under § 10(a)(4) of the FAA, which provides for vacatur "where the arbitrators exceeded their powers." Petitioner claimed that the arbitrator "exceeded his power by 'mandating a criminal act,'" because the sale purportedly violated Florida laws requiring vessels to have proper title and documentation. Pet.App.21.

The district court rejected that "void-for-illegality argument," holding that the arbitrator did not "exceed his power" just because "he enforced a contract that one of the parties thought was void for illegality." Pet.App.24. Otherwise, the court explained, the FAA's limited review would "devolve into arguments that an arbitrator exceeds his power each time he reaches an erroneous legal conclusion when interpreting a contract." Pet.App.24. Permitting parties to challenge arbitrators' conclusions on legality would result in the "full-bore legal and evidentiary appeals" the FAA was enacted to avoid. Pet.App.25 (quoting *Hall St.*, 552 U.S. at 588). The district court thus repudiated petitioner's effort to "disguise[]" "Florida law arguments" that the arbitrator considered and rejected as ones "about the arbitrator's abuse of authority." Pet.App.25 n.2.

4. The Eleventh Circuit affirmed in an unpublished per curiam opinion. Pet.App.16. The court noted that "only § 10(a)(4)" of the FAA—whether "the arbitrators exceeded their powers"—"is at issue in this case." Pet.App.7. For § 10(a)(4) to apply, the court held, petitioner needed to show that the arbitrator did not "even arguably[] interpret[] the parties' contract." Pet.App.8 (quoting *Oxford Health*, 569 U.S. at 569).

The court held that petitioner could not carry that "heavy burden." Pet.App.8-9 (quoting *Oxford Health*, 569 U.S. at 569). Petitioner claimed "the arbitrator exceeded his authority by mandating a criminal act." Pet.App.9. But petitioner had "presented these same arguments to the arbitrator" and lost. Pet.App.9. Petitioner simply disagreed "with how the arbitrator interpreted and applied Florida law." Pet.App.9. That "quibble with the legal merits of the arbitration award" could not support vacatur under the FAA. Pet.App.13 n.6. Because "the arbitrator arguably construed and applied the contract, his arbitral decision must stand." Pet.App.10.

Although petitioner had framed its challenge as one under § 10(a)(4), the Eleventh Circuit noted that petitioner's claim really sounded in public policy. Pet.App.11. But considering the challenge on public-policy terms would not help petitioner, the court explained, because § 10 provides "the exclusive grounds for vacatur" under the FAA and "public policy" is not "a statutory ground for vacatur under § 10." Pet.App.7, 13.

REASONS FOR DENYING THE PETITION

This petition does not satisfy this Court's criteria for review. Start with the lack of any circuit split. The petition (at i) frames the question presented as whether courts may consider "public policy as a ground to vacate"

arbitration awards "under the FAA" when awards purportedly "command[] action in violation of criminal statutes." But no courts have taken petitioner's side on that issue; none recognize an unstated illegality exception authorizing vacatur of arbitration awards under FAA § 10. Elsewhere (at 13-14), the petition asserts a broader split over whether courts may vacate arbitration awards on public-policy grounds. But no courts post-*Hall Street* have embraced that atextual exception to the FAA either.

Further, this case is a poor vehicle for deciding either question presented. Petitioner did not argue for an independent public-policy or illegality exception before the district court or the Eleventh Circuit, instead pressing a statutory argument that the arbitrator "exceeded his power by 'mandating a criminal act,'" under § 10(a)(4) of the FAA. Pet.App.7-9, 21. Both courts rejected that argument, with the Eleventh Circuit tacking on as an alternative point that the FAA has no public-policy exception.

Moreover, whether public-policy or illegality grounds exist for vacating arbitration awards is not an important issue warranting review. Petitioner (at 26 & n.42) admits that public-policy challenges are "few," and illegality-related challenges are rarer still. And the existence of such exceptions is not outcome-determinative here. Even pre-*Hall Street*, Courts universally rebuffed public-policy or illegality challenges that required reviewing the merits of arbitrators' decisions. That is this case: The arbitrator considered and rejected petitioner's public-policy points.

Finally, this Court should deny review because the Eleventh Circuit's decision is correct. This Court has held that "the grounds for vacatur and modification provided by §§ 10 and 11" are "exclusive." *Hall St.*, 552 U.S. at 581. The § 10 grounds do not include public policy or illegality.

The FAA's text leaves no room for atextual exceptions. *Badgerow*, 596 U.S. at 11.

I. This Case Implicates No Circuit Split

1. The petition revolves around stand-alone public-policy and illegality grounds for vacatur, but the decisions below did not rest on that issue. The Eleventh Circuit observed, "only § 10(a)(4) is at issue in this case," and held that the arbitrator had not "exceeded his authority." Pet.App.7, 10. The district court held the same, denying petitioner's motion to vacate because the arbitrator did not "exceed his powers" under § 10(a)(4). Pet.App.24.

The decisions below mirrored what petitioner presented in its briefing and motion. In the Eleventh Circuit, petitioner argued that "the Arbitrator exceeded his authority by confirming an Award to consummate a crime." Spirit C.A. Br. 10-11. Likewise, petitioner told the district court that the "arbitration award must be vacated pursuant to 9 U.S.C. § 10(a)(4) because the arbitrator clearly exceeded his powers by mandating a criminal act." C.A.App.9-14 (capitalization altered). After rejecting petitioner's § 10(a)(4) argument, the Eleventh Circuit reaffirmed that public policy is not a ground for vacatur because petitioner's arguments, while framed as statutory ones, "largely rest[ed] on public policy grounds." Pet.App.11. Only in this Court did petitioner launch discrete public-policy and illegality arguments.

2. Regardless, there is no circuit split as to petitioner's question presented (at i): whether the FAA allows courts to vacate arbitration awards that purportedly "command action[] in violation of criminal statutes." Petitioner's only citation that actually concerns FAA vacatur on criminality grounds—*Visiting Nurse Association of Florida, Inc. v. Jupiter Medical Center, Inc.*, 154 So. 3d 1115 (Fla. 2014) (cited at Pet. 16-17)—fully

accords with the Eleventh Circuit's decision below. There, the Florida Supreme Court rebuffed a public-policy argument that an arbitration award violated state and federal kickback laws. *Id.* at 1122. The court explained: "[T]he FAA bases for vacating or modifying an arbitral award cannot be supplemented judicially." *Id.* at 1132. Petitioner (at 16-17) thus concedes that the Florida Supreme Court and Eleventh Circuit are totally aligned.

The only other case that petitioner (at 22-23) invokes involving attempted vacatur of an arbitration award that violated criminal law—*Titan Tire Corp. v. USW International Union*, 734 F.3d 708 (7th Cir. 2013)—has nothing to do with the FAA. That case arose under the Labor Management Relations Act (LMRA), not the FAA. *Id.* at 711. As the Seventh Circuit recognizes, "recourse to the LMRA" is distinct from recourse "to the FAA." *See Part-Time Faculty Ass'n v. Columbia Coll. Chi.*, 892 F.3d 860, 864 n.3 (7th Cir. 2018). The LMRA lacks similar language to FAA § 10 cabining the grounds for vacating awards. Instead, federal courts "fashion rules of federal common law" in LMRA cases. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 40 n.9 (1987). As petitioner (at 23) observes, the Seventh Circuit in *Titan* relied on this Court's LMRA cases to vacate the award as a matter of federal common law—an avenue that the Seventh Circuit has suggested would not be available under the FAA. *See Smart v. IBEW*, 315 F.3d 721, 724 (7th Cir. 2002).

All of petitioner's other cases (at 14-17) involve attempts to vacate arbitration awards on *different* public-policy grounds, not criminality. But petitioner cites no case even pre-*Hall Street* vacating an award under the FAA for purportedly violating the law, or for otherwise undermining public policy. And, since *Hall Street*, courts have backed off any supposed public-policy exception. *Infra* pp. 13-17.

3. The body of the petition (at 13-14) changes tack, claiming "a profound and incisive circuit split … over whether a court may vacate an arbitration award under the FAA based on public policy after *Hall Street*." But this Court's *Hall Street* decision unambiguously described the FAA's "grounds for vacatur" as "exclusive." 552 U.S. at 581. Far from spawning petitioner's asserted 8-6 split, *Hall Street* decisively reinforced that there is no atextual public-policy ground for vacating arbitration awards under the FAA. Jonathan A. Marcantel, *The Crumbled Difference Between Legal and Illegal Arbitration Awards:* Hall Street Associates *and the Waning Public Policy Exception*, 14 Fordham J. Corp. & Fin. L. 597, 623 (2009). As petitioner (at 16-17) concedes, six courts (at least two circuits and four States) have held that, after *Hall Street*, grounds for vacatur begin and end with text of the FAA.[1]

But petitioner (at 14-15) is incorrect that eight courts post-*Hall Street* have come out in favor of "a public-policy exception for vacating an arbitration award." Petitioner cites cases from the Second, Fourth, Sixth, Seventh, Ninth, Tenth, and Federal Circuits plus the Alaska Supreme Court. Tellingly, petitioner identifies no case post-*Hall Street* actually vacating an arbitration award under the FAA on public-policy grounds. As noted, petitioner's Seventh Circuit case involves the LMRA, not the FAA. *Supra* p. 12. A closer examination of petitioner's other cases reveals that none adopt petitioner's freestanding public-policy exception.

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[1] *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1323-24 (11th Cir. 2010); *Cavalier Mfg., Inc. v. Gant*, 143 So. 3d 762, 768-69 & n.5 (Ala. 2013); *Kilgore v. Mullenax*, 520 S.W.3d 670, 675 (Ark. 2017); *Visiting Nurse*, 154 So. 3d at 1132; *Seldin v. Est. of Silverman*, 939 N.W.2d 768, 787 (Neb. 2020); *Martinique Props., LLC v. Certain Underwriters at Lloyd's of London*, 60 F.4th 1206, 1208 (8th Cir. 2023).

Start with the Second Circuit, which entertained a challenge that an arbitration award that the challenger claimed "manifestly] disregarded the law" because it purportedly conflicted with a later-enacted federal law. *Schwartz v. Merrill Lynch & Co., Inc.*, 665 F.3d 444, 450-51 (2d Cir. 2011) (citations omitted) (cited at Pet. 15). The Second Circuit had recognized a pre-*Hall Street* "manifest disregard" exception as a "judicial gloss" on the text of the FAA's enumerated grounds for vacatur. *Id.* *Schwartz* did "not decide" whether the purported disregard of the law there was "a ground for vacatur of an arbitration award" because the arbitrators' decision fully complied with the law. *Id.* at 453-54. Reinforcing *Schwartz*' inaptness, petitioner (at 20) recognizes that its public-policy argument is distinct from the "manifest disregard" theory the Second Circuit invoked, and (at 4-5, 15 n.18, 22) repeatedly differentiates between "manifest disregard" and public-policy grounds for vacatur. Notably, none of the dozens of post-*Schwartz* Second Circuit FAA cases acknowledge any public-policy exception.

The Fourth Circuit has not adopted a public-policy exception, either. Petitioner (at 15) misportrays the unpublished opinion in *Wells Fargo Advisors, LLC v. Watts*, 540 F. App'x 229, 231 (4th Cir. 2013), as doing so. *Wells Fargo* simply rejected a public-policy argument on the merits without deciding whether the exception exists, because the challenger offered no "basis for vacating … the arbitration award on public policy grounds." *Id.* As petitioner (at 18) later admits, the Fourth Circuit "ha[s] remained on the sidelines," treating non-statutory grounds for vacatur as "an open question" after *Hall Street*. *Acceleration Acads., LLC v. Charleston Acceleration Acad., Inc.*, 858 F. App'x 606, 607 n.* (4th Cir. 2021).

The Sixth Circuit has not even come close to embracing public-policy grounds for vacatur under the FAA.

Petitioner's cited case (at 15) does not even involve a § 10 motion to vacate an arbitration award. Rather, in *PolyOne Corp. v. Westlake Vinyls, Inc.*, a party sought a declaration that an arbitration agreement impermissibly provided for de novo judicial review. 937 F.3d 692, 694 (6th Cir. 2019). The court noted an open question about how to remedy such an agreement, but did not "reach the merits of [the] argument" because the party had waived the issue. *Id.* at 701.

The Ninth Circuit's unpublished decision in *DeMartini v. Johns*, 693 F. App'x 534 (9th Cir. 2017) (cited at Pet. 15), also does not espouse a public-policy exception. There, the Ninth Circuit cited pre-*Hall Street* precedent permitting vacatur on public-policy grounds, but rejected the challenge on the merits. *Id.* at 537. The Ninth Circuit has since clarified that despite previously "suggest[ing]" that public policy "might" remain a ground for vacatur, § 10 "provides the exclusive means by which a court reviewing an arbitration award under the FAA may grant vacatur." *Golden v. O'Melveny & Myers LLP*, 2021 WL 3466044, at *1 (9th Cir. Aug. 6, 2021) (quoting *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 664 (9th Cir. 2012)). Taking the Ninth Circuit out of the split also knocks out Alaska, which merely imports Ninth Circuit FAA precedent, again by unpublished opinion. *Dunham v. Lithia Motors Support Servs., Inc.*, 2014 WL 1421780, at *6 & n.41 (Alaska Apr. 9, 2014) (cited at Pet. 15).

The Tenth Circuit's unpublished decision in *Kelly v. K12 Inc.*, 854 F. App'x 963 (10th Cir. 2021) (cited at Pet. 15), does not recognize a public-policy exception either. There, the Tenth Circuit cited pre-*Hall Street* public-policy standards in an unpublished decision, but rejected the challenge on the merits. *Id.* at 964. As that court has since explained, the Tenth Circuit has "not decide[d] whether any judicially created reasons to vacate an award survive

Hall Street." *Piston v. Transamerica Capital, Inc.*, 823 F. App'x 553, 557 (10th Cir. 2020).

The Federal Circuit too has not resolved—let alone embraced—a public-policy exception under the FAA. Petitioner (at 15 & n.20) confusingly cites *Bayer CropScience AG v. Dow AgroSciences LLC*, 851 F.3d 1302 (Fed. Cir. 2017), a case about patent attorneys' fees. From the quoted language, petitioner apparently meant *Bayer CropScience AG v. Dow Agrosciences, LLC*, 680 F. App'x 985, 993 (Fed. Cir. 2017). But that latter unpublished case involves the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, not the FAA. *Id.* at 991. Under the New York Convention, courts may refuse to enforce awards "contrary to … public policy." *Id.* at 992 (quoting N.Y. Convention art. V(2)(b)). That case offers no guidance on any public-policy exception under the FAA.

Finally, petitioner (at 18) claims that other circuits "appear poised to accept a rule recognizing a public-policy exception to vacatur after *Hall Street*," but offers no supporting authority. Other circuits simply have not weighed in. Petitioner's suggestion (at 18 n.32) that the D.C. Circuit claims a "general authority" to vacate awards on public-policy grounds is incorrect. The cited case merely recognizes public policy as grounds for vacatur in the labor context, not the FAA. *Nat'l R.R. Passenger Corp. v. Fraternal Ord. of Police*, 855 F.3d 335, 338 (D.C. Cir. 2017).

4. Petitioner (at 13-14 & n.13) says secondary sources recognize a split "over whether a court may vacate an arbitration award under the FAA based on public policy after *Hall Street*." In fact, one of petitioner's authorities confirms that after *Hall Street*, any public-policy exception has "withered on the vine." Marcantel, *supra*, at 625. The handful of secondary sources that discuss a "public-

policy" split invoke the same readily distinguished cases above.[2] The rest identify a different split altogether—whether courts can vacate arbitration awards when arbitrators manifestly disregard law.[3] As petitioner (at 20) recognizes, "manifest disregard of the law" is "not public policy"—the basis for these proposed exceptions differs, and petitioner raises only the latter ground.

II. This Case Does Not Warrant This Court's Review

This Court has denied at least five petitions raising whether courts may vacate arbitration awards under the FAA on public-policy or illegality grounds, most recently in October 2022.[4] This petition should fare no differently. Claims that arbitration awards violate public policy or are illegal rarely arise. Since *Hall Street*, no such challenges have succeeded. And this case, where the arbitrator fully

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[2] Bartholomew L. McLeay, *In Words of the Pandemic, Arbitration Jurisprudence Needs a Ventilator*, 2022 J. Disp. Resol. 1, 14 & n.102 (citing *Titan Tire*, *Schwartz*, *DeMartini*, *Wells Fargo Advisors*, and *Dunham*); Gary A. Watt et al., *May Arbitration Awards Violate Public Policy?*, Daily Journal (July 29, 2021) (similar).

[3] Sean C. Wagner, Note, *Unchecked: How* Frazier v. CitiFinancial *Eliminated Judicially Created Grounds for Vacatur Under the Federal Arbitration Act*, 64 Okla. L. Rev. 235, 249-50 & n.116 (2012); Stanley A. Leasure, *Arbitration Law in Tension After* Hall Street: *Accuracy or Finality?*, 39 U. Ark. Little Rock L. Rev. 75, 83-101 (2016); Matthew J. Brown, Comment, "*Final" Awards Reconceptualized: A Proposal to Resolve the* Hall Street *Circuit Split*, 13 Pepp. Disp. Resol. L.J. 325, 342 (2013).

[4] *Caputo v. Wells Fargo Advisors, LLC*, 143 S. Ct. 375 (2022) (whether FAA allows vacatur based on public policy and illegality); *Seldin v. Est. of Silverman*, 141 S. Ct. 2622 (2021) (whether FAA allows vacatur based on public policy); *Parallel Networks, LLC v. Jenner & Block LLP*, 581 U.S. 1000 (2017) (same); *Jupiter Med. Ctr. v. Visiting Nurse Ass'n of Fla.*, 575 U.S. 997 (2015) (whether FAA allows vacatur based on alleged illegality); *Watts v. Wells Fargo Advisors, LLC*, 574 U.S. 870 (2014) (same).

considered and rejected petitioner's public-policy and illegality arguments, would be an especially poor vessel, because the question presented would not be outcome-determinative. Even under petitioner's public-policy or illegality exception, courts would not review the merits of arbitrators' decisions—including, as here, where the arbitrator rejected arguments that the award would be illegal.

1. On petitioner's own account (at 26 & n.42), public-policy, let alone illegality, challenges to arbitration awards "appear to be few" and "are almost never successful" (citation omitted). Petitioner does not identify a single case vacating an arbitration award under the FAA on public-policy or illegality grounds after *Hall Street*. *Supra* pp. 11-17. This Court should not grant certiorari to weigh in on an issue that rarely arises and never matters to the ultimate enforcement of arbitration awards.

Petitioner (at 3) claims that "deficiencies in arbitration enforcement" risk "undermining" arbitration by, for example, allowing awards that order "transaction[s] in violation of state criminal statutes." But § 10's limited grounds for review are a feature, not a bug, keeping arbitration's "speed and simplicity and inexpensiveness" intact. *Epic*, 138 S. Ct. at 1623. When arbitrators "exceed[] their powers," § 10 permits courts to step in. 9 U.S.C. § 10(a)(4). Using that power, courts may, for instance, vacate arbitrators' awards that reflect the arbitrators' "own policy choice." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 677 (2010). Courts do not need a free-floating public-policy or illegality power on top of that textual basis for vacatur.

Petitioner (at 24-25) objects that States should not be "forced to reject vital public policies of their own states in order to shrink in tribute to a federal statute." That concern is minimal given how rarely public-policy or illegality challenges under the FAA arise. And this Court has left

open whether state courts must apply FAA § 10 at all. *Badgerow*, 596 U.S. at 8 n.2. Most States have their own, often broader, rules for vacating awards in state courts. Other States voluntarily track the FAA, refuting petitioner's view (at 24) that it is "awkward and discomfiting" for States to faithfully enforce FAA § 10. The Alabama Supreme Court, for example, gave "no consideration" to public-policy arguments that "clearly have no relation to § 10." *Cavalier*, 143 So. 3d at 769 n.5. Other States apply § 10 without hesitation. *E.g.*, *Kilgore*, 520 S.W.3d at 674-75; *Seldin*, 939 N.W.2d at 787; *Visiting Nurse*, 154 So. 3d at 1130-32.

Petitioner's assertion (at 25) that this case is "a microcosm of an alarming and growing number of illegal transactions in the marine industry," also overstates the stakes. Yale bought *Spirit of the East* at a U.S. Marshal's sale "free and clear of all liens and encumbrances, and pre-existing claims on the property, whether recorded or otherwise." *Notice of U.S. Marshal Sale*, *supra.* The U.S. Marshal identified the vessel as bearing a Maltese number, the same number engraved in *Spirit*'s engine room. As the district court observed, "the arbitrator concluded that the transaction was *not* unlawful, but explained why [petitioner's] claims failed" regardless. Pet.App.25 n.2. Petitioner's fact-bound disagreement with the arbitrator's analysis does not indicate that illegal maritime transactions are a threat arbitrators persistently ignore.

2. Moreover, the question presented is not outcome determinative. Even were this Court to hold that courts could vacate arbitration awards under the FAA on public-policy or illegality grounds, courts could not jettison an arbitrator's legal conclusions and fact findings. But that is what petitioner seeks here: The arbitrator considered and rejected petitioner's enforceability arguments after applying the relevant law to the facts.

Even pre-*Hall Street* decisions that entertained the possibility that courts might vacate arbitration awards on public-policy or illegality grounds agreed that any such exception would not let courts second-guess issues the arbitrators actually decided. For example, in *Remney v. PaineWebber, Inc.*, the Fourth Circuit refused to vacate an allegedly illegal award because the arbitrators found no "violation of the securities laws." 32 F.3d 143, 150 (4th Cir. 1994). And in *Seymour v. Blue Cross/Blue Shield*, the Tenth Circuit turned down an invitation to vacate an award on public-policy grounds when "the arbitrators could have reasonably construed the facts" to conform to state law. 988 F.2d 1020, 1025 (10th Cir. 1993). Even public policy, or illegality, does not permit parties to relitigate issues the arbitrators resolved.

Petitioner's claims would thus fail even under the rule petitioner advocates. Before the arbitrator, petitioner alleged that the sale of *Spirit* was unenforceable because Florida law criminalizes (1) selling an untitled vessel; (2) operating, storing, or using a vessel without a hull identification number; or (3) fraudulently supplying a bill of sale with an incorrect hull number. C.A.App.2, 11-12, 47-49, 63-64, 67 (citing Fla. Stat. §§ 328.03, 328.05, 328.07, 328.19, 328.21). But the arbitrator considered and rejected these arguments. Pet.App.33. Petitioner's vacatur request would require courts to directly review the arbitrators' legal and factual conclusions. Pet.App.10, 25-26. Even courts that considered public-policy or illegality grounds before *Hall Street* would not permit vacatur here.

III. The Eleventh Circuit's Decision Is Correct

The Eleventh Circuit correctly reaffirmed that no judicially created grounds for vacatur exist under the FAA.

1. The FAA commands that courts "must grant" motions to confirm arbitration awards, "unless the award is

vacated, modified, or corrected as prescribed in sections 10 and 11." 9 U.S.C. § 9. And § 10(a) lists just four grounds for vacatur: (1) corruption, fraud, or undue means; (2) arbitrators' partiality; (3) prejudicial "misbehavior"; or (4) the arbitrators "exceed[ing] their powers." Public policy and illegality did not make the cut. Courts "have no warrant to redline the FAA" and add language that is not there. *Badgerow*, 596 U.S. at 11.

This Court's decision in *Hall Street* resolves that no implicit public-policy or illegality exception exists under the FAA. Pet.App.13-14. In *Hall Street*, the parties agreed to an arbitration provision that permitted courts to vacate or modify arbitration awards that were unsupported by substantial evidence or clearly erroneous. 552 U.S. at 579. This Court held that the parties could not, by contract, modify the FAA's grounds for vacatur or modification. *Id.* at 584. The Court reasoned that "the text [of the FAA] compels a reading of the §§ 10 and 11 categories as exclusive." *Id.* at 586. "[E]xpanding th[ose] detailed categories would rub too much against the grain of the § 9 language," which "carries no hint of flexibility." *Id.* at 587. *Hall Street* thus "restricts the grounds for vacatur to those set forth in § 10 of the" FAA. *Citigroup Glob. Mkts., Inc. v. Bacon*, 562 F.3d 349, 350 (5th Cir. 2009). Extratextual exceptions, like public policy, are out.

Petitioner (at 20) tries to limit *Hall Street* to its facts, claiming that the Court rejected only contractual attempts to supplement the FAA, not judicial ones. But *Hall Street*'s reasoning is not so limited. The Supreme Court held that "the FAA has textual features at odds with enforcing a contract to expand judicial review following the arbitration," and that means courts should not "supplement[] judicially or contractually." *Visiting Nurse*, 154 So. 3d at 1130, 1132 (quoting *Hall St.*, 552 U.S.

at 586). As the Eleventh Circuit recognizes, "the categorical language of *Hall Street* compels such a conclusion." *Frazier*, 604 F.3d at 1324. If parties cannot supplement the FAA's grounds for vacatur, courts cannot either.

Contrary to petitioner's assertion (at 19-22), the Eleventh Circuit's decision does not violate this Court's precedent. Petitioner (at 19-21) cites various Supreme Court cases for the common-law axiom that courts may "refuse to enforce contracts made or applied in violation of public policy," including those involving "illegality." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 81 & n.7 (1982); *Bank of the U.S. v. Owens*, 27 U.S. 527, 538-39 (1829); *Coppell v. Hall*, 74 U.S. 542, 559 (1868). In petitioner's view (at 19-20), courts can likewise refuse to enforce arbitration awards on this basis because arbitration awards are based off contracts. But petitioner's cited cases just involve traditional breach-of-contract-type cases that courts decide in the first instance. Under the FAA, by contrast, Congress prescribed that "challenge[s] to the validity of … contract[s] as a whole, and not specifically to the arbitration clause, must go to the arbitrator." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006). Petitioner cannot use run-of-the-mill breach-of-contract cases to evade the FAA's limited grounds for vacating awards.

Petitioner incorrectly suggests that the Eleventh Circuit bypassed precedents of this Court recognizing public-policy grounds for vacating arbitration awards. Pet. 22-23 (citing *W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757 (1983); *E. Assoc. Coal Co. v. United Mine Workers*, 531 U.S. 57 (2000)). But *W.R. Grace* and *Eastern Associated Coal* both arose under the LMRA, not the FAA. *See W.R. Grace*, 461 U.S. at 760; *E. Assoc. Coal*, 66 F. Supp. 2d 796, 797 (S.D.W. Va. 1998). As discussed, *supra* p. 12, this Court has permitted federal courts to craft their own

federal-common-law rules under the LMRA. *United Paperworkers*, 484 U.S. at 40 n.9. But under the FAA, courts "may not engraft [their] own exceptions onto the statutory text." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019).

2. At minimum, the Eleventh Circuit correctly refused to permit petitioner to relitigate public-policy and illegality arguments that the arbitrator considered and rejected. The FAA simply does not permit courts to reconsider arbitrators' fact findings and legal conclusions.

Congress enacted the FAA with arbitration's "quicker, more informal, and often cheaper resolutions" in mind. *Epic*, 138 S. Ct. at 1621. Thus, Congress enumerated only a handful of instances where courts could step in to review arbitration awards, 9 U.S.C. §§ 10-11. These instances do not include "full-bore legal and evidentiary appeals" of arbitrators' awards. *Oxford Health*, 569 U.S. at 568 (citation omitted). Otherwise, arbitration would reduce into nothing but "a prelude to a more cumbersome and time-consuming judicial review process." *Id.* at 568-69 (citation omitted).

Notably, even in the LMRA context, where courts have broad power to enforce rules governing labor arbitration, *supra* p. 12, the "refusal of courts to review the merits of an arbitration award is the proper approach to arbitration." *United Paperworkers*, 484 U.S. at 36 (citation omitted). There too, the "federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *Id.* Thus, in *United Paperworkers*, this Court refused to vacate a labor award on public-policy grounds because doing so would have required the court to engage in "factfinding," or as the Court put it: "the arbitrator's task." 484 U.S. at 44-45.

This case illustrates how judicial second-guessing could grind the wheels of arbitration to a halt. Petitioner (at 25) insists that "there is not even an open question" that the arbitrator's award mandates criminal conduct because boat sales without proper documentation violate Florida criminal law. But as the arbitrator observed, those requirements do not apply to foreign vessels like *Spirit of the East* and petitioner cited "[n]o Florida statute or regulation" preventing petitioner from correcting any mistakes later. Pet.App.33-34; *see* Fla. Stat. § 328.03(2)(b). Petitioner's insistence that federal courts revisit the arbitrator's analysis of Florida boating law would eviscerate "arbitration's essential virtue of resolving disputes straightaway." *See Hall St.*, 552 U.S. at 588.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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NOVEMBER 3, 2023