No. ____

# In the Supreme Court of the United States

RASHID A. BUTTAR

PETITIONER,

v.

RACHAN DAMIDI REDDY,

RESPONDENT.

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

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Whether the District Court of North Carolina had personal jurisdiction over Petitioner after Petitioner moved to another country and the contacts which remained are enough to establish personal jurisdiction.

Whether the District Court of North Carolina had subject-matter jurisdiction under the New York Convention after Petitioner alleged a fraudulent arbitration agreement.

## PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Rachan Damidi Reddy

Rachid A. Buttar

## LIST OF PROCEEDINGS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Case No. 3:18-cv-00172-FDW-DSC
*RACHAN REDDY V. RASHID BUTTAR*
Summary Judgment GRANTED in favor of Rachan Reddy. Judgment Dated May 5, 2020. Judgment not reported but reproduced in the Appendix.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Case No. 20-1633
*REDDY v. BUTTAR*
Appeal DENIED, Lower Court grant of summary judgment AFFIRMED. Judgment reported as *Reddy v. Buttar*, No. 20-1633 (4th Cir. Jun. 24, 2022) and reproduced in the Appendix.
Judgment dated June 24, 2022.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Buttar respectfully requests that a Writ of Certiorari be issued to review the granting of summary judgment by the United States District Court for North Carolina and the subsequent affirmation of the same by the United States Court of Appeals for the Fourth Circuit.

## OPINIONS BELOW

The May 5, 2020, order granting summary judgment in favor of Respondent from the United States District Court For The Western District of North Carolina is reproduced in the Appendix ("App. 21-42").

The June 24, 2022, order from the United States Court Of Appeals For The Fourth Circuit is reproduced in the Appendix. ("App. 1-19"). This order is published as *Reddy v. Buttar*, No. 20-1633 (4th Cir. Jun. 24, 2022).

## BASIS FOR JURISDICTION IN THIS COURT

The United States Court Of Appeals For The Fourth Circuit entered judgment on June 24, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides:

> No person shall be deprived of life, liberty, or property without due process of law.

## STATUTORY PROVISIONS INVOLVED

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3, codified at 9 U.S.C. §§ 201-208.

## STATEMENT OF THE CASE

### A. Concise Statement of Facts Pertinent to the Questions Presented.

As explained by the Fourth Circuit Court of Appeals – Petitioner and Respondent were engaged in a transaction for the sale of real property in the Philippines. After a dispute leading up the statute of limitations, Respondent initiated arbitration proceedings in Singapore. Notably, Singapore does not bare any relation to the transaction or the parties, other than an arbitration clause found in a contested arbitration agreement.[1] Prior to the hearing in Singapore, Petitioner consulted with his foreign counsel who advised him to show appear at the Singapore arbitration because Petitioner was claiming that the arbitration clause was fraudulent. Specifically, Petitioner asserted that Respondent forged his signature, as the contract provided by Respondent was the actual executed contract. As such, his foreign counsel did not want him to avail himself to the jurisdictional purview of Singapore.

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[1] The underlying contract for sale efficacy that detailed that all claims shall be arbitrated in Singapore was disputed by Petitioner.

Afterwards Respondent obtained an award against Petitioner of $1.55 million, plus legal fees and arbitration costs, he commenced this action in the Western District of North Carolina to enforce the award under the New York Convention (the "Convention").

In the District Court, Petitioner claimed that the District Court lacked subject-matter jurisdiction, given that the arbitration clause was not enforceable in Singapore in the first place and that Petitioner is no longer domiciled in North Carolina's western district. The court denied Buttar's jurisdictional challenges and granted Reddy summary judgment, enforcing the award to the full extent requested. In doing so, the district court rejected Buttar's challenge to its subject matter jurisdiction, noting that 9 U.S.C. § 203 expressly provides that "'[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States' and that 'district courts of the United States . . . shall have original jurisdiction over such an action or proceeding.'" (Quoting 9 U.S.C. § 203).

The court observed that any challenge to whether the purchase agreement was signed went at most to "the merits of the case" and whether the petition stated a claim, not to the court's subject matter jurisdiction. (Quoting *Sarhank Grp. v. Oracle Corp.*, 404 F.3d 657, 660 (2d Cir. 2005)).

As to Buttar's challenge to personal jurisdiction, the court, after allowing jurisdictional discovery and conducting a hearing, concluded that Buttar's contacts with North Carolina were sufficient

to justify exercising general personal jurisdiction over him.

Petitioner then appealed to the Fourth Circuit Court of Appeals on the same grounds. The Fourth Circuit affirmed the District Court's ruling.

### B. Procedural History

Respondent commenced this action on April 6, 2018 after an arbitration award dated April 10, 2015, just days before the expiration of the statute of limitations.

On May 5, 2020, the District Court granted Respondent summary judgment and enforced the award. The Fourth Circuit then affirmed the District Court on June 24, 2022.

Now, this Petition for Writ of Certiorari follows.

## REASONS TO GRANT THIS PETITION

### I. THE DISTRICT COURT DID NOT POSSESS PERSONAL JURISDICTION OVER PETITONER BECAUSE PETITIONER ESTABLISHED A NEW DOMICILE IN NEW ZEALAND.

This petition brings to the Court's attention the apparent Circuit split and lack of uniformity regarding domicile and establishing personal jurisdiction over an individual[2] that has since moved from the forum state. Significantly, Petitioner moved from North Carolina and sold his business, but remained on-board as a consultant, years before this suit came to fruition. Also, the suit is unrelated to his business in North Carolina. At the District Court, Respondent opposed Petitioner's jurisdictional challenge by way of general jurisdiction. As such, the inquiry and analysis herein is dictated by general jurisdiction jurisprudence.

The due process clause of the Fourteenth Amendment places a limitation on the circumstances in which a state may assert personal jurisdiction over a nonresident defendant. The seminal case of *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) established what has since become known as the "minimum contacts" test for personal jurisdiction:

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[2] Notably, much of legal literature relevant to this matter pertain to corporate domicile.

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

The type of contacts necessary to satisfy the due process clause was explained by the Supreme Court in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958):

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

General personal jurisdiction allows a court to "hear any claim against [a] defendant, even if all the incidents underlying the claim occurred in a different State." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017). And for individuals, "the paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Goodyear*

*Dunlop Tires Operations, S.A. v. Brown,* 564 U.S. 915, 924 (2011).

"Thus, domicile is established by an objective physical presence in the state or territory coupled with a subjective intention to remain there indefinitely." *Washington v. Hovensa LLC*, 652 F.3d 340, 344, 55 V.I. 1265 (3d Cir. 2011); see also *Johnson v. Advance Am., Cash Advance Ctrs. of S.C., Inc.*, 549 F.3d 932, 937 n.2 (4th Cir. 2008) (*citing Miss. Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 48 (1989)) (noting that to establish a domicile in a State, it must be shown that the individual has a physical presence in that State with "an intent to make [that] State a home.") And once established, a domicile "is presumed to continue until it is shown to have been changed," with the burden of proof residing with the person claiming the domicile has changed. *Mitchell v. United States*, 88 U.S. 350, 353 (1874).

To determine "how far back from either the accrual or filing of the claim they will look; most courts use a 'reasonable time' standard yielding timeframes of roughly three to seven years." *Delphix Corp. v. Embarcadero Techs., Inc.*, 749 Fed. Appx. 502 (9th Cir. 2018) (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984).

A Second Circuit case that gives direct consideration to what constitutes a "reasonable time" to look back for minimum contacts is *Metropolitan Life Insurance Co. v. Robertson-Ceco Corp.*, which ruled that a six-year time frame was reasonable where a one-year time frame was not. *Metropolitan Life Ins.*

*Co. v. Robertson-Ceco Corp.*, 84 F.3d 560 (2d Cir. 1996). The court concluded that in general jurisdiction cases, "district courts should examine a defendant's contacts with the forum state over a period that is reasonable under the circumstances—up to and including the date the suit was filed" in order to determine whether the defendant's contacts meet the requirements for general jurisdiction. *Metro. Life Ins. Co.*, 84 F.3d at 569 (internal quotation marks omitted). The court left the determination of what time period would be "reasonable" to the discretion of the district court.[3] The court did not, however, explain further why the district court's selection of a one year period for the purposes of its decision was an abuse of this discretion, nor did it explain why the period should end earlier, at the point when suit was filed

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[3] Contacts for general jurisdiction purposes are assessed within a reasonable time prior to the filing of a complaint. See, e.g., *Mold-Ex, Inc. v. Mich. Technical Reps., Inc.*, No. 304CV307MCRMD, 2005 WL 2416824, at *5 (N.D. Fla. Sept. 30, 2005) ("[C]ontacts are commonly assessed over a period of years prior to the filing of a complaint."); *Young v. Hair*, No. 7:02-CV-212-F1, 2004 WL 1084331, at *3 n.1 (E.D.N.C. Jan. 26, 2004) ("[T]he defendants purposefully availed themselves of North Carolina by directing all their sales to this state some five months prior to the commencement of the lawsuit."); *United States v. Subklew*, No. 003518 CIVGRAHAM, 2001 WL 896473, at *3–4 (S.D. Fla. June 5, 2001) ("[D]istrict courts considering general jurisdiction cases should examine a defendant's contacts with a forum state over a period that is reasonable under the circumstances—up to and including the date the suit was filed . . . . [T]he Court finds that it is unreasonable to consider [the defendant's] contacts with [the forum state] over a thirteen year period." Rather, the Court based its decision on the five years prior to the filing of the action.)

rather than when the claim arose, or later, when the defendant filed its motion to dismiss.

Other courts have also considered contacts for some period prior to the filing of the complaint in order to determine whether a defendant had systematic and continuous contact with the forum state. See *Noonan v. Winston Co.*, 135 F.3d 85, 93 & n.8 (1st Cir. 1998) (stating that a foreign corporation's contacts with the forum state for a two-year period prior to the filing of the complaint would be considered in assessing minimum contacts for general jurisdiction); *Wilson v. Belin*, 20 F.3d 644 (5th Cir. 1994) (considering all of the defendant's contacts with the forum state over a five-year period in assessing general jurisdiction); *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370 (5th Cir. 1987) (considering the defendant's contacts with the forum state over a five-year period prior to the time the complaint was filed); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325 (9th Cir. 1984) (considering the defendant's contacts with the forum state over a three-year period prior to the time the complaint was filed); *Haas v. A.M. King Indus., Inc.*, 28 F. Supp. 2d 644, 648–49 (D. Utah 1998) (noting "[t]he important time for assessing this type of presence is at the time of suit, not years earlier, or years later" and stating that "the appropriate time period for assessing [the defendant's] contacts with [the forum state] is several years prior to and including the time the complaint was filed").

Other courts have also measured the continuous and systematic contact required for general jurisdiction only up to the time the claim arose. In *Modern Mailers v. Johnson & Quin, Inc.*, 844

F. Supp. 1048 (E.D. Pa. 1994) a district court considered whether it had general jurisdiction over a defendant based upon its sales of products in the forum state. The defendant argued that the court should consider only those sales that occurred from December 1992 to the summer of 1993 because "general jurisdiction may only be based on those contacts that occurred at the same time as the activities which gave rise to the lawsuit." The trial court determined, however, that although "general jurisdiction must exist at the time the cause of action arises, the court's examination of forum contacts is not limited to those that coincided with the activities that gave rise to the lawsuit." The court reasonably concluded that determining whether a defendant has continuous and systematic contacts with the forum state requires the court "to look at the defendant's activities within the state over a period of time."

The Second Circuit has expressly rejected the concept of general jurisdiction based on the contacts between the defendant and the forum state at the time the claim arose and instead mandated that contacts be sufficient at the time the lawsuit was filed. In *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro In Amministrazione Straordinaria*, 921 F.2d 21 (2d Cir. 1990), the Second Circuit considered whether the state of New York could exercise general jurisdiction over the Palestine Liberation Organization ("PLO"). The court concluded that, although the contacts in the record were sufficient to establish general jurisdiction over the PLO at the time the claim arose, the record was unclear whether the contacts continued up to the time

that the complaints were filed. In particular, the court found that the passage of the Anti-Terrorism Act of 1987 might have caused the PLO to cease its nondiplomatic activities in New York. Therefore, the Second Circuit remanded the case to the district court to determine whether "the PLO's non-[United Nations]-related contacts with New York provided a sufficient basis for jurisdiction at the time each of the complaints was filed."

A different case from the Second Circuit ruled that only the defendant's contacts leading up to the events giving rise to the suit may be considered, and not any contacts between such events and the suit's filing. *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione,* 937 F.2d 44 (2d Cir. 1991).

In the First Circuit, the court ruled that a plaintiff may use all of a defendant's contacts with the jurisdiction up until the filing of the complaint to show continuous contact with the forum, even if those contacts occurred after, and unrelated to, the events leading to the suit. *Harlow v. Children's Hosp.*, 432 F.3d 50 (1st Cir. 2005). On the other hand, a defendant cannot use a move away from contacting the jurisdiction after the events that give rise to the suit to argue that jurisdiction is improper. *Id.* In other words, in determining if minimum contacts exist, "contacts should be judged when the cause of action arose, regardless of a later lessening or withdrawal." *Cambridge Literary Prop., Ltd. v. W. Goebel Porzellanfabrik G.mbH & Co.*, 295 F.3d 59 (1st Cir. 2002).

Wright and Miller address it only briefly by suggesting that, because general jurisdiction focuses on whether there are continuous and systematic contacts between the defendant and the forum, rather than on the connection between the cause of action and the forum, "a court should consider all of a defendant's contacts with the forum state prior to the filing of the lawsuit, rather than just those contacts that are related to the particular cause of action the plaintiff asserts." 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND § 1067.5 (3d ed. 2002).

Accordingly, Petitioner asserts that that Petitioner's contacts with the State of North Carolina were too tenuous and insubstantial to support personal jurisdiction consistent with the "traditional notions of fair play and substantial justice" required to meet the test of due process under the Fourteenth Amendment to the Constitution. *International Shoe Co. v. Washington*, 326 U.S. at 316.

At the District Court, Petitioner explained that he moved to New Zealand prior to the suit. He provided legal proof of such that was disputed by Respondent. However, the rebuttal provided by Respondent fails to show that Petitioner did not move to New Zealand with the intent to stay there. It had been nearly 5 years since Petitioner left North Carolina and the detritus of contacts that remained were not related to the suit and were unreasonably used as evidence that North Carolina remained domiciled in North Carolina. It is worth noting that Petitioner got divorced in North Carolina and moved

thereafter and did not return for an extended period for over five years. It begs the question of how far the jurisdictional reach when a defendant clearly moves and abandons a domicile. Admittedly, Petitioner provided proof of residency in New Zealand by following the New Zealand process. He had an attorney write an affidavit supporting such fact. Respondent then responded with an expert who disapproved of the evidence provided by Petitioner. However, it is without a doubt that Petitioner did in fact move to New Zealand and started the process of remaining there well before the initiation of this action. Any "look back" to incidental conduct dating back several years is an unreasonable application of the facts and does not override the conduct establishing New Zealand as Petitioner's new domicile.

Overall, every Circuit court appears to agree that a defendant's contacts with the jurisdictional forum up until the events that led to the cause of action, whether tied to the cause of action or not, are relevant to weighing "minimum contacts" for general jurisdiction. This consideration of pre-event contacts must span a "reasonable time." Given the lack of guidance and lack of uniformity in what a "reasonable time" can be defined as, this Court should grant this Petition and provide guidance to the lower courts.

## II. THE FOURTH CIRCUIT ERRED WHEN IT FOUND THAT THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION UNDER THE NEW YORK CONVENTION.

To begin, a federal court's jurisdiction is circumscribed and narrowly defined. "'Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Congressional grants of original jurisdiction are strictly interpreted, and the jurisdiction of federal courts must be "carefully guarded against expansion by judicial interpretation." *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 164 (2008) (citation and internal quotation marks omitted).

Chapter 2 of the FAA implements the New York Convention. See *Certain Underwriters at Lloyd's London v. Argonaut Ins. Co.*, 500 F.3d 571, 573 (7th Cir. 2007). "The goal of the Convention . . . was 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).

Only two proceedings arise under the New York Convention: "(1) an action to compel arbitration in accord with the terms of the agreement, and (2) at a later stage, an action to confirm an arbitral award."

*Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1286 (11th Cir. 2015) (citation and emphasis omitted), *cert. denied*, 136 S. Ct. 1158 (2016); *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1262-63 (11th Cir. 2011); *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1290-91 (11th Cir. 2004); see also *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 212 (4th Cir. 2002) ("As a preliminary matter, the Convention and its implementing legislation, 9 U.S.C. §§ 201 et seq., give federal district courts original jurisdiction over actions to compel or confirm foreign arbitration awards." (citing 9 U.S.C. §§ 203, 207)).

The defenses to enforcement are not merely the flip-side of the grounds Congress enacted to support vacating an award. The Convention only regulates post-award proceedings to confirm or enforce a Convention award. Accordingly, the Convention only provides defenses a party may raise in opposition to a petition to confirm. See New York Convention at art. V. The Convention expressly leaves actions to "set aside" or vacate awards to the local law of the country of primary jurisdiction. See New York Convention at art. V(1)(e).

In *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1292 (11th Cir. 2004), the court reasoned that "because the Convention uses mandatory language in establishing the prerequisites" for enforcement of an arbitration award, a party's failure to satisfy those prerequisites means "the [district] court is without power to confirm an award" and therefore lacks "subject matter jurisdiction to confirm

the award." The Convention does impose specific requirements for an agreement to be enforceable under its provisions — that it be in writing, contain an arbitration clause, and be signed by the parties.

In *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless*, 902 F.3d 1316 (11th Cir. 2018) (17-10944), 2017 WL 2875129, held that only signatories to an agreement to arbitrate may compel arbitration.

In *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) the Supreme Court made the legal distinction between "substantive arbitrability" and "procedural arbitrability".

> "Thus "procedural" questions which grow out of the dispute and bear on its final disposition" are presumptively not for the judge, but for an arbitrator, to decide. *John Wiley*, supra, at 557 (holding that an arbitrator should decide whether the first two steps of a grievance procedure were completed, where these steps are prerequisites to arbitration). So, too, the presumption is that the arbitrator should decide "allegation[s] of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Memorial Hospital*, supra, at 24-25. Indeed, the Revised Uniform Arbitration Act of 2000 (RUAA), seeking to "incorporate the holdings of the vast majority of state courts and the law that

> has developed under the [Federal Arbitration Act]," states that an "arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled."

See, *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002).

In *BRS v. BRQ and ANO'R* [2020] SGCA 108, the Singapore Court of Appeals confirmed that where it is apparent that a tribunal has not duly addressed a point raised by the parties, that failure can be a basis for setting aside an award.

Here, Petitioner promptly and unequivocally stated that he did not sign the document presented to the arbitrator – and by and through this advice of his foreign counsel did not appear at arbitration as a method of disclaiming the arbitrator's jurisdiction and cementing his claim of forgery. The Fourth Circuit mixed the issues by stating that this is a merits issue. That is patently untrue. Rather, this is a jurisdictional issue. Petitioner's claim of forgery does not go to the merits of the contract breach or the amount in controversy, rather it squarely addresses the veracity of the signatures and the jurisdiction of the arbitrator and the District Court. Notably, like in *BRS*, Petitioner asserts that the arbitrator did not adequately adjudicate the defense provided by Petitioner, and instead ruled against him for not appearing to arbitration. This conflicts with controlling Singapore law and therefore negates any scintilla of jurisdiction the District Court may have had.

## CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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