No. 23-1130

IN THE

Supreme Court of the United States

UBER TECHNOLOGIES, INC., ET AL.,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal

REPLY BRIEF FOR PETITIONERS

JOSEPH E. BARAKAT
GIBSON DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
ALEXANDER N. HARRIS
PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com

Counsel for Petitioners

RULE 29.6 STATEMENT

The corporate-disclosure statement in the petition for a writ of certiorari remains accurate.

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Respondents cannot mask the conflict among the lower courts on the question whether state officials can litigate claims for monetary relief on behalf of people who agreed to arbitrate those claims. Some courts have rejected state officials' attempts to initiate enforcement actions that seek relief as "a substitute for the arbitration." *Olde Discount Corp.* v. *Tupman*, 1 F.3d 202, 209 (3d Cir. 1993). But the California Court of Appeal, like several other state courts, held that state actors can exploit an escape hatch from the Federal Arbitration Act. That conflict is stark and warrants this Court's review.

Respondents also have little to say in defense of the decision below on the merits. They intone that arbitration is a matter of consent and insist that they

never consented to arbitrate with Uber. But the consent principle cuts *against* respondents because drivers consented to arbitrate their claims against Uber. And although respondents (like the Court of Appeal) rely on *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279 (2002), that decision involved a federal statute authorizing a federal agency to sue and therefore did not address distinct preemption concerns under the Supremacy Clause.

As amici representing the academy, retailers, and other employers all urge, this Court should grant review to resolve this conflict and reaffirm that the FAA protects arbitration agreements from all manner of state-law incursions, even when spearheaded by state officials.

I. The Decision Below Exacerbated a Longstanding Conflict.

A. Respondents' attempts to minimize the conflict between the California Court of Appeal's decision and those of the Third and Ninth Circuits are unpersuasive.

To start, respondents try to downplay *Olde Discount* by misdescribing the case. The Third Circuit, respondents say, held only that the private signatories to the contract could not circumvent their arbitration agreement with a securities broker. Opp. 11. But respondents omit that the Third Circuit affirmed the district court's order enjoining not only the private signatories but also the Delaware Securities Commissioner. 1 F.3d at 206. Judge Greenberg relied on preemption to affirm the injunction preventing the "*state agency's* pursuit of an administrative remedy that would duplicate the remedy sought in an arbitra-

tion." *Id.* at 207 (emphasis added). In his concurrence, Judge Rosenn relied on contract law to affirm the "order enjoining the *Delaware Securities Commissioner* from pursuing the remedy of rescission of the claims which [we]re subject to the arbitration agreement." *Id.* at 216 (emphasis added). That judges of the Third Circuit rejected respondents' arguments for two independent reasons—rather than one—only heightens the need for this Court to resolve the confusion.

Respondents' treatment of the Ninth Circuit's decisions assumes away the premise of the question presented. They argue that the Ninth Circuit compelled arbitration in *Bennett* v. *Liberty National Fire Insurance Co.*, 968 F.2d 969 (9th Cir. 1992), and *Quackenbush* v. *Allstate Insurance Co.*, 121 F.3d 1372 (9th Cir. 1997), because the state officials "st[ood] in the shoes of" the party who signed the arbitration agreement. Opp. 12 (citation omitted). But the same is true here: Respondents stand in the shoes of drivers when they seek money on their behalf that the drivers would otherwise have to pursue in arbitration. Respondents also try to distinguish *Bennett* and *Quackenbush* on the theory that the state officials there "sue[d] under [the signatory's] contracts." *Ibid.* Again, the same is true here: Respondents challenge the contracts' designation of drivers as independent contractors instead of as employees—a claim that "'*aris[es] out of*' the contract" (*Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639, 652 n.4 (2022)) and falls squarely within the arbitration argument (Pet. App. 70a-71a, 104a-106a). Just as the drivers would be required to arbitrate a claim that the contracts should characterize them as employees, respondents must do the same when seeking monetary relief for the drivers on the same claims.

B. Respondents also do not dispute the key point warranting this Court's review: A mature body of caselaw has addressed the question presented in the past two decades since *Waffle House*. Pet. 31. In fact, respondents never argue that further percolation would benefit this Court's ultimate resolution of the issue. They cite no less than five other States whose courts have addressed the question in published opinions in addition to the California courts. Opp. 10. They also add the First and Fifth Circuits to their tally, even though neither addressed the preemption question that Uber raises. *Labor Relations Division of Construction Industries of Massachusetts, Inc.* v. *Healey*, 844 F.3d 318, 329 n.6 (1st Cir. 2016) (addressing collective-bargaining agreement governed by Labor Management Relations Act); *Iberia Credit Bureau, Inc.* v. *Cingular Wireless LLC*, 379 F.3d 159, 175 (5th Cir. 2004) (addressing state-law unconscionability defense). But even if respondents are right to claim these decisions as support for their side, that would only deepen the split and confirm the need for this Court's review.

II. The Decision Below Is Wrong.

The Court of Appeal's decision rests on the mistaken premise that *Waffle House* allows States to evade the FAA by assigning themselves claims covered by arbitration agreements. Pet. 21-27.

A. Respondents ground their opposition in the principle that "arbitration is a matter of consent." Opp. 20 (quotation marks omitted). As respondents see things, the lower courts were right to deny Uber's motions to compel arbitration because *they* did not cosign drivers' agreements with Uber. Opp. 14.

But this case *does* concern consensual arbitration agreements: those between Uber and the drivers.

And under this Court's precedents, such consensual arbitration agreements can bind nonsignatories who seek relief arising from the contract containing the arbitration agreement—that is, nonsignatories who "'stan[d] in the shoes'" of the signatory, to borrow respondents' phrase. Opp. 12; *see, e.g.*, *Arthur Andersen LLP* v. *Carlisle*, 556 U.S. 624, 631 (2009). The defendant need not prove a separate, additional arbitration agreement with the plaintiff who seeks to represent the signatory on a covered claim any more than the defendant need present its lawyer's signature on an agreement to arbitrate. Pet. 21-22; *see* Bermann Br. 13.

This principle runs in both directions: Whether a nonsignatory stands in the shoes of a signatory or authorizes a signatory to stand in his stead, the FAA requires enforcement of the arbitration agreement. In *Viking River*, for example, California law deputized a plaintiff who had agreed to arbitration to bring claims on behalf of the government (the "'real party in interest'"), which had not signed any arbitration agreement. 596 U.S. at 645-647 & n.2. This Court held that one arbitration agreement was enough—even without the government's separate consent. Because "nothing in the FAA categorically exempt[ed] claims belonging to sovereigns from the scope of [9 U.S.C.] § 2," the FAA applied so long as "[t]he contractual relationship between the parties [wa]s a but-for cause of any justiciable legal controversy between the parties." *Id.* at 652 n.4. The lesson: If a claim is covered by an arbitration clause, it cannot be brought in court—even by someone who did not sign the agreement.

Respondents eventually concede that "[g]overnment officials" like themselves "may" sometimes "be

required to arbitrate when they are a third-party beneficiary or assignee, or when they assume the assets of an entity and seek to enforce a contract agreed to by that entity that contains an arbitration clause." Opp. 19-20. This buried admission is critical. Again, no one disputes that arbitration is a matter of consent, but respondents overlook that what matters is the consent of the individual or entity *that owns the claim*—not the consent of the representative bringing the claim. Even under respondents' gloss of Uber's argument, they are acting as an "assignee" of claims that drivers agreed to arbitrate. *Ibid.* In other words, respondents are acting much like drivers' private counsel or a class representative—seeking to recover sums owed to drivers, hold in trust any money payable to drivers, and disburse the funds to them. Pet. 22, 28. The only difference is that California law discriminates against the enforcement of arbitration agreements by exempting *respondents* from the binding force of the arbitration agreements covering the claims they bring. Pet. 30 (citing Cal. Lab. Code §§ 180, 182). The FAA prevents that result, regardless of what California says about contract formation. *Contra* Opp. 20.

B. Respondents once again invoke *Waffle House* to argue that state law may authorize them to bring claims unburdened by the arbitration agreements covering those claims. Opp. 15-17. But as they quickly admit, *Waffle House* harmonized two federal statutes and did not engage in any form of preemption analysis. Opp. 15-16. The Court looked principally to the "statutory text" of Title VII, which was enacted after the FAA and which "unambiguously authorize[d]" the Equal Employment Opportunity Commission "to proceed in a judicial forum" irrespective of any arbitra-

tion agreement. 534 U.S. at 292. The Court also worried that holding the EEOC to the terms of a private arbitration agreement "would undermine the detailed enforcement scheme created by Congress" and "jeopardize the EEOC's ability to investigate and select cases from a broad sample of claims." *Id.* at 296 & n.11.

The reasons in *Waffle House* for harmonizing competing *federal* statutes do not carry over to determining whether federal law has preempted a *state* statute. Regardless of how clearly the California Legislature has authorized respondents' enforcement action or disapproved the federal policy supporting arbitration, the Legislature cannot enact a statute that "stand[s] as an obstacle to the accomplishment of the FAA's objectives." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 343 (2011). Respondents suggest (Opp. 16 n.4) that the FAA lacks a clear statement that it applies here—even though this Court has long held that the FAA applies in state court (*Southland Corp.* v. *Keating*, 465 U.S. 1, 15-16 (1984)) and recognized, in a case involving a California agency, that "[t]he FAA's displacement of conflicting state law is … well-established" (*Preston* v. *Ferrer*, 552 U.S. 346, 353 (2008) (quotation marks omitted)). Respondents' account of *Waffle House* turns this Court's settled preemption decisions upside down.

What's more, this Court's reasoning in *Waffle House* hinged on the fact that the claims belonged *solely* to the federal agency—not the worker. As the Court stressed, the "EEOC ha[d] exclusive jurisdiction over the claim," and "the employee ha[d] no independent cause of action." 534 U.S. at 291. The upshot was that the employee could not bind the EEOC to arbitrate claims that never belonged to the employee in

the first instance. *See id.* at 295 n.10. Respondents admit that these features led the Court to conclude the EEOC was not "a mere stand-in for the worker." Opp. 15. Those key features are absent here: Workers may sue—and have sued—to obtain the same relief as respondents seek to recover here. Pet. 25-26.

Respondents argue that this case comes within the logic of *Waffle House* because they have brought their claims "regardless of any driver's consent and not subject to any driver's control." Opp. 17. But the drivers' lack of consent and control makes the preemption problem in this case worse, not better. At least in *Waffle House*, the worker initiated EEOC proceedings. 534 U.S. at 283. Respondents seek to wield California law to replace drivers' contractually negotiated forum with no external check from the courts *or* drivers. The FAA does not leave the enforcement of arbitration agreements to state officials' whim.

C. To be clear, respondents may still bring their *own* law-enforcement claims for injunctive relief and penalties in court. As the Court held in *Preston*, "it may" be the case that the Labor Commissioner can use her "independent authority to enforce" state employment law by bringing her own claims "as an advocate advancing a cause before a tribunal." 552 U.S. at 358-359. *Those* actions serve the State's punitive purpose of "deterrence." Opp. 18. But California may not concoct procedural "devices and formulas" to evade arbitration by bringing *drivers'* restitutionary claims for them. *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 509 (2018).

III. The Petition Is an Ideal Vehicle to Resolve This Important, Recurring Question.

Review is necessary to put a stop to the latest artifice to circumvent the FAA: aggregating claims for

individualized relief under the guise of a state enforcement action. Given state courts' entrenched misreading of *Waffle House* to allow this maneuver, only this Court can protect private arbitration agreements and ensure the continued vitality of the FAA.

A. The decision below has nationwide ramifications that threaten to destabilize the FAA. As amici highlight, state actors have increasingly brought enforcement proceedings that are "class actions in all but name" because they "aggregate claims" for victim-specific relief "into a single massive proceeding." Retail Br. 9-10; *see also* Employers Br. 11-12. They have done so specifically to sidestep private arbitration agreements in open defiance of this Court's settled rule that "aggregation devices … cannot be imposed on a party to an arbitration agreement." *Viking River*, 596 U.S. at 664 (Barrett, J., concurring in part and concurring in the judgment). Indeed, the author of the statute authorizing the People's suit publicly denounced arbitration as "among the most harmful practices that have enabled widespread abuse to go undetected for decades." Employers Br. 13. And the Minnesota Attorney General has admitted that he filed suit on behalf of gig economy workers to end-run their arbitration agreements that made it "impossible" for them to "band together" and seek class relief. *Ibid.*

The frontal attack of state officials on the FAA presents a far greater threat to congressional policy than the EEOC action at issue in *Waffle House*. That case involved a claim on behalf of one individual—not a class—and "some of the benefits of arbitration [we]re already built into the EEOC's statutory duties." 534 U.S. at 290 n.7. And because the EEOC

filed suit in "fewer than two percent of all antidiscrimination claims" (*ibid.*) and remained "under the President's direction and Congress's close supervision" (Retail Br. 5, 15-16), this Court predicted that its decision would "have a negligible effect on the federal policy favoring arbitration" (*Waffle House*, 534 U.S. at 290 n.7). But state courts have taken this Court's modest decision concerning a federal agency as a permission slip to unleash rampant state enforcement actions on behalf of *thousands* of individuals, irrespective of their arbitration agreements or the FAA.

Respondents conspicuously make no effort to address this alarming pattern or to rebut amici's calls for this Court's intervention. Instead, respondents suggest that review is premature because States have not yet "delegate[d] their enforcement powers to *private* attorneys." Opp. 21. But that blinks reality. The California Legislature has explicitly delegated enforcement authority to a host of state and local actors, who in turn frequently retain private class-action attorneys to litigate claims that would otherwise be subject to arbitration. Retail Br. 10, 12-13. In fact, the County of Los Angeles recently hired a private plaintiffs' firm to sue a gig-economy platform for restitution on behalf of its customers. *Id.* at 12-13. And as respondents' silence confirms, nothing in the Court of Appeal's decision prevents this "legal shell game … to shuffle claims out of arbitration and into state courts." Employers Br. 5. This Court's review should not wait any longer given how far state officials have already strayed down this path.

B. The petition also provides a clean and unobstructed opportunity to resolve the application of *Waffle House* to state enforcement actions, as the Califor-

nia Court of Appeal squarely passed upon the question presented. Respondents point to a potpourri of supposed "vehicl[e]" issues, but none passes the smell test. Opp. 22.

First, respondents claim that this case does not involve the question presented because they sue "pursuant to their official duties" and not "on behalf of" the drivers. Opp. 22. But respondents rely on semantics, not substance. They do not dispute that their claims seek money that would be paid solely to the drivers. And the question in this case is whether respondents' state-law authorization to bring suit allows them to seek relief that would otherwise be resolved in arbitration. Uber and respondents evidently disagree about the answer to that question, but that shows adversity on the merits—not that any impediment exists to this Court's review.

Second, respondents maintain that drivers did not agree to arbitrate the claims at issue here because "[t]he agreements did not mention public enforcement actions brought by public officials." Opp. 22. Respondents ignore, however, that the arbitration agreements expressly waive the "right or authority for any dispute to be brought … as a representative action." Pet. App. 76a-77a, 110a-111a. And respondents do not deny that the vast majority of drivers entered these agreements. Pet. 9.

Third, respondents suggest that Uber somehow waived the question presented by "failing to contest [in this Court] the court of appeal's rejection of [its] equitable estoppel argument." Opp. 23. But equitable estoppel under state law is a separate ground from federal preemption for compelling arbitration—as the Court of Appeal recognized. Pet. App. 7a. Uber did not waive its federal claim by electing not to present

an additional state-law claim to this Court. *See* 28 U.S.C. § 1257(a).

Fourth, respondents argue that this Court's review would not resolve the entire controversy because some drivers did not agree to arbitrate. Opp. 23-24. Yet this Court has held, time and again, that when, as here, "a complaint contains both arbitrable and nonarbitrable claims, the [FAA] requires courts to 'compel arbitration of pendent arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums.'" *KPMG LLP* v. *Cocchi*, 565 U.S. 18, 22 (2011) (per curiam); *see*, *e.g.*, *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 20 (1983). State officials cannot evade this Court's review merely by joining some nonarbitrable claims to other arbitrable claims.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

JOSEPH E. BARAKAT
GIBSON DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
ALEXANDER N. HARRIS
PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com

Counsel for Petitioners

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