No. _____

IN THE
Supreme Court of the United States

IFTIKAR AHMED,
Petitioner,
v.
OAK MANAGEMENT CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Connecticut Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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February 14, 2024

QUESTIONS PRESENTED

In *Degen* v. *United States*, 517 U.S. 820, 823-24 (1996), this Court delimited the "fugitive disentitlement doctrine," an "inherent power" of "[c]ourts invested with the judicial power of the United States." The Court explained that federal courts "have certain inherent authority to protect their proceedings," but that "[t]he extent of these powers must be delimited with care" because "there is a danger of overreaching." *Id*. at 823. Thus, while "federal courts do have authority to dismiss an appeal . . . if the party seeking relief is a fugitive while the matter is pending," the doctrine does not "allow a court in a civil forfeiture suit to enter judgment against a claimant because he is a fugitive from . . . a related criminal prosecution." *Id.* at 823-24.

This case is, to our knowledge, the first time the fugitive disentitlement doctrine has been applied in arbitration. The arbitrator held that Petitioner's fugitive status from an unrelated federal criminal case permitted the arbitrator to strike Petitioner's defenses and counterclaims and bar him from contesting Respondent's allegations, resulting in an uncontested $56 million damages award.

In affirming the judgment confirming the award, a 4-3 majority of the Connecticut Supreme Court acknowledged that the use of the doctrine in the arbitration was "perhaps unprecedented."

The questions presented are:

1. Under the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 10(a)(4), does an arbitrator "exceed[] [his]

powers" by applying the fugitive disentitlement doctrine to disentitle a party who is a fugitive from a federal court proceeding, given the doctrine is an inherent power possessed only by courts?

2. Under the FAA, if an arbitrator may permissibly apply the fugitive disentitlement doctrine to protect a federal court's proceedings, does his failure to comply with the limitations this Court set forth in *Degen* v. *United States* and other caselaw on the doctrine constitute a violation of 9 U.S.C. § 10(a)(3), (a)(4), or public policy?

PARTIES TO THE PROCEEDING

Petitioner Iftikar Ahmed was the appellant below.

Respondent Oak Management Corporation was the appellee below.

STATEMENT OF RELATED PROCEEDINGS

Ahmed v. Oak Management Corporation, No. FST-CV20-5023509-S, Connecticut Superior Court Judicial District of Stamford/Norwalk at Stamford. Judgement entered September 21, 2021.

Ahmed v. Oak Management Corporation, SC 20677, Connecticut Supreme Court. Judgement entered October 17, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully submits this petition for a writ of certiorari to review the judgment of the Connecticut Supreme Court.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court is reported at 348 Conn. 152 and reproduced at Appendix ("App.") 1. The judgment of the Superior Court of Connecticut is unpublished but available at 2021 WL 4896145 and is reproduced at App. 125.

JURISDICTION

The Supreme Court of Connecticut filed its published decision on October 17, 2023. On Petitioner's application, and by order of January 9, 2024, this Court extended the time within which to file a petition for writ of certiorari to February 14, 2024. This petition is thus timely, and the Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

9. U.S.C. § 2 provides that:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at

law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

9 U.S.C. § 10 provides, in relevant part:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> . . .
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

STATEMENT OF THE CASE

This case presents a vitally important question concerning the application of inherent powers of federal courts in arbitrations governed by the Federal Arbitration Act ("FAA"). For over a century and a half, this Court has repeatedly taught lower courts that arbitration "should receive every encouragement from courts" and that courts shall give great deference to an arbitrator's judgement "for error, either in law or fact," if—*and only if*—that decision occurs "after a full and fair hearing of the parties." *Burchell* v. *Marsh*, 58 U.S. 344, 349 (1854). The foundational requirement of a full and fair hearing was enshrined in the FAA, which provides that awards may be vacated if arbitrators are "guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy" or "exceed[] their powers." 9 U.S.C. § 10(a)(3), (4).

This bargain—that arbitrators receive broad authority to decide substantive questions of fact or law if they follow basic procedural rules—allows arbitrators to receive broad deference while protecting the arbitration system through procedural safeguards that prevent an arbitration from turning into an unreviewable kangaroo court or a Star Chamber. That bargain was broken here, as Petitioner was expressly denied his right to be heard. The arbitrator entered a $56 million award—exceeding the sole participating party's requested relief—without allowing the other party to oppose it, including not allowing Petitioner to even see the evidence against him.

As the dissent in the Connecticut Supreme Court's sharply divided 4-3 decision explained, the arbitrator

violated "[t]he principle that each party is entitled to an opportunity to be heard," a right that is "so fundamental to our conception of fairness that it is a rare case in which it is transgressed. When it is violated, vacatur is consistently the result." App. 107.

Remarkably, Respondent's position was that the arbitrator was justified in depriving Mr. Ahmed of any semblance of due process under the "fugitive disentitlement doctrine": a doctrine that neither this Court nor, apparently, any other court has held an arbitrator who is not vested with the judicial power may apply, and the use of which is flatly barred by the FAA's textual requirement that parties have an opportunity to be heard.

This Court has previously stepped in to reverse lower courts when they have inappropriately applied the fugitive disentitlement doctrine, *see Degen* v. *United States*, 517 U.S. 820 (1996), and this Court's scrutiny is warranted again because the right to be heard is a core principle of adjudicative fairness that implicates serious due process concerns. *Id.* at 828.

As demonstrated by this Court's frequent grants of review in cases involving the FAA, commercial arbitration is a critical part of our legal system. Parties' willingness to agree to arbitrate, however, is undermined if parties fear that arbitrators may entirely deny the opportunity of a fair hearing. The Court's intervention is necessary to safeguard the FAA's commitment to procedural safeguards and uphold the predictability and basic fairness of arbitral proceedings.

This case is an appropriate vehicle for the Court's review. Indeed, this is the rare case in which the asserted fugitive had counsel in the court proceedings below, allowing this Court to review the case after it has been fully litigated.

I. Factual Background

Relationship Between the Parties. Petitioner Iftikar Ahmed worked for Respondent Oak Management Corporation ("Oak"), a venture capital firm, between 2004 and 2015. During his time at Oak, Mr. Ahmed's job entailed recommending companies to invest in. His recommendations were often highly successful, and Mr. Ahmed was well compensated by Oak for his efforts, receiving a base salary as well as additional compensation tied to the companies for which he had investment responsibilities.

On April 2, 2015, Mr. Ahmed was arrested for alleged insider trading unrelated to his employment at Oak. *See United States* v. *Kanodia* (D. Mass. No. 15-cr-10131). While out on bond, Mr. Ahmed traveled to India. Mr. Ahmed has since asserted that restrictions attendant to an arrest upon his arrival in India prevent his return to the United States. The district court in Mr. Ahmed's criminal case deemed him a fugitive. *See United States* v. *Ahmed*, 414 F. Supp. 3d 188, 189 (D. Mass. 2019).

SEC Civil Enforcement Action. On May 6, 2015, the SEC filed a civil enforcement action against Mr. Ahmed in the United States District Court for the District of Connecticut (the "SEC Action"), based in part on other fraud that Oak had allegedly uncovered

after performing an investigation following Mr. Ahmed's arrest for insider trading. App. 129. In September 2018, the district court granted summary judgment to the SEC. App. 129. That decision was affirmed on June 28, 2023, and a separate petition to this Court from that judgment was filed on January 5, 2024.

During the district court proceedings, the district court issued a protective order regarding certain confidential materials, barring Mr. Ahmed from accessing those materials. App. 130. Citing, inter alia, the fugitive disentitlement doctrine, the district court reasoned that because Mr. Ahmed had "removed himself from the jurisdiction of the Court, the Court has no ability to enforce such a protective order nor to sanction [Mr. Ahmed] in the event of any misuse of the produced documents." App. 130.

Critically, the district court did *not* apply the fugitive disentitlement doctrine to bar Mr. Ahmed from contesting the case against him, putting in evidence, or otherwise raising affirmative defenses and counterclaims.

The Underlying Arbitration. On June 10, 2019, Oak commenced the underlying arbitration in relation to alleged fraud at issue in the SEC action. Oak claimed that Mr. Ahmed owed it $20 million in "compensatory damages," $15 million in "consequential damages," and other "legal fees and other related costs." App. 130.

Mr. Ahmed—who was *pro se* and unrepresented throughout the arbitration—filed his answer a month later, which contained defenses as to both liability and

damages as well as affirmative counterclaims seeking restoration of the forfeited assets. App. 130, 135.

The arbitrator set a case schedule with a dispositive-motions deadline of May 15, 2020, and a "hearing on the merits" on July 21, 2020. Appl. to Vacate Arbitration Award at 17, *Ahmed* v. *Oak Mgmt. Corp.*, No. 20-5023509 (Conn. Super. Ct. Sept. 22, 2020). Following that scheduling meeting, Oak informed the arbitrator that it intended to file a motion "prohibiting Mr. Ahmed access to confidential documents and other information produced in this proceeding." App. 198. Mr. Ahmed objected, among other things, that he "has every right to view the evidence." Pl.'s Reply to Def.'s Opp'n to Pl.'s Appl. to Vacate Arbitration Award at 24, *Ahmed* v. *Oak Mgmt. Corp.,* No. 20-5023509 (Conn. Super Ct. Feb. 8, 2021); Appellant's App. at 308, *Ahmed* v. *Oak Mgmt. Corp.*, S.C. 20677 (Conn. Dec. 13, 2021). Over Mr. Ahmed's objection, the arbitrator granted Oak's request to file such a motion, setting the due date for that motion for May 15, 2020, the same date as the dispositive-motions deadline for both parties. App. 21; Appellant's App. at 310, *Ahmed* v. *Oak Mgmt. Corp.*, S.C. 20677 (Conn. Dec. 13, 2021). The arbitrator directed Oak to address "the right of the Respondent to view the evidence against him in order to have a fair hearing and an enforceable decision." Appellant's App. at 310, *Ahmed* v. *Oak Mgmt. Corp.*, S.C. 20677 (Conn. Dec. 13, 2021). He stated that Mr. Ahmed had a "right to respond to [Oak's] Motion . . . not later than June 8, 2020." *Id.*

Mr. Ahmed filed two dispositive motions on May 15, 2020: a motion to dismiss and a motion for summary judgment, along with a statement of undisputed

facts. App. 22. Oak also filed two motions. The first motion was the anticipated Motion for a Confidentiality Order, which stated that the evidence Oak intended to introduce at the hearing "contain[ed] confidential information that is subject to the federal protective orders currently in place [in the SEC Action]." App. 22. According to Oak, this meant that Mr. Ahmed should be barred from accessing any document that Oak deemed "confidential" in the arbitration, purportedly lest the arbitrator "enable the violation of federal court orders by a criminal fugitive." Def.'s Cross-Mtn. to Confirm the Award at 33, *Ahmed* v. *Oak Mgmt. Corp.,* No. 20-5023509 (Conn. Super. Ct. Dec. 4, 2020); Pl.'s Mem. of Law in Supp. of Appl. to Vacate at 7, *Ahmed* v. *Oak Mgmt. Corp.,* No. 20-5023509 (Conn. Super. Ct. Apr. 12, 2021).

The second motion—which Oak had not previously mentioned to Mr. Ahmed or the arbitrator—was styled as a "Disentitlement Motion." App. 22. Oak's Disentitlement Motion claimed that Mr. Ahmed's "fugitive status" operated as a "waiver of [his] due process rights in any action related to the facts giving rise to his or her fugitive status." Appellant's App. at 185-186, *Ahmed* v. *Oak Mgmt. Corp.*, S.C. 20677 (Conn. Dec. 13, 2021). According to Oak, this meant that Mr. Ahmed should be barred "from asserting both affirmative claims and contesting allegations asserted against him in related proceedings." *Id*. Meanwhile, to reiterate, the District Court in the SEC Action did ***not*** rule that Mr. Ahmed had no due process rights or could not contest the allegations against him.

Despite giving Mr. Ahmed a due date of June 8, 2020 to respond to Oak's two motions, the arbitrator

granted both of those motions in their entirety on May 22, 2020, over two weeks before that date and thus without waiting for Mr. Ahmed to respond. App. 23, 25. Specifically, the arbitrator declared that Mr. Ahmed's alleged fugitive status "operates as a waiver of [his] due process rights," and (i) barred Mr. Ahmed from contesting the allegations in Oak's Statement of Claim, (ii) struck all of his affirmative defenses, (iii) dismissed all of his counterclaims, and (iv) prohibited Mr. Ahmed from "accessing, in any manner," unspecified "confidential documents and information." App. 25. The arbitrator also denied Mr. Ahmed's dispositive motions in their entirety. App. 25. With liability a foregone conclusion, the arbitrator ruled that "[t]his case will proceed to hearing as previously scheduled as a hearing in damages." App. 25.

Before the hearing was to commence, Mr. Ahmed fell ill and requested that the hearing be postponed. App. 27. When asked whether it would consent to a postponement of the hearing, Oak's counsel responded with the same assertion it made to Mr. Ahmed back in June: "Putting aside credibility issues with respect to Mr. Ahmed's health, *much if not all of the testimony today concerns confidential information that Mr. Ahmed would not be permitted to access."* App. 27 (emphasis added). The hearing thus proceeded without Mr. Ahmed. In the award that later issued, the arbitrator explained: "A hearing in damages was held on July 21, 2020 . . . . Respondent [Mr. Ahmed], by reason of the COMMON LAW DOCTRINE OF FUGITIVE DISENTITLEMENT DOCTRINE, having been previ-

ously applied, was not present and did not participate." App. 28; Appellant's App. at 258, *Ahmed* v. *Oak Mgmt. Corp.*, S.C. 20677 (Conn. Dec. 13, 2021).

The day after the hearing closed on July 22, 2020, the arbitrator requested a number of additional items from Oak (and Oak alone), including an affidavit from an Oak corporate officer detailing the "specific items that [Oak] is claiming as damages in this case" and an affidavit from Oak's counsel affirming the amount and necessity of the amount claimed as legal fees. App. 27, 139. Each of these factual documents was served fully redacted to Mr. Ahmed. App. 27. Mr. Ahmed was not given an opportunity to respond to these submissions or put his own evidence into the record, and to this day, Mr. Ahmed (and his counsel) has never been permitted to access the itemized damages listed in the affidavits.

Nevertheless, completing a proceeding in which Mr. Ahmed could not contest liability, advance counterclaims, or see the evidence against him, the arbitrator issued an award in Oak's favor on August 26, 2020 (the "Award"). The Award consisted of $56.6 million total damages, which exceeded Oak's initial requests in its Statement of Claim. Appl. to Vacate Arbit. Award at 17, *Ahmed* v. *Oak Mgmt. Corp.,* No. 20-5023509 (Conn. Super. Ct. Sept. 22, 2020); Award of Arb., *Oak Mgmt. Corp.* v. *Ahmed,* No. 01-19-0001-8061 (Am. Arb. Ass'n Aug. 26, 2020).

II. Procedural Background

On September 21, 2020, Mr. Ahmed filed an application in the Superior Court in the Judicial District of Stamford/Norwalk to vacate the arbitrator's award. In

his application, Mr. Ahmed asserted that the arbitrator's award (i) violated the statutory requirements of Connecticut General Statutes § 52-418, (ii) contravened public policy, and (iii) violated the Federal Arbitration Act. App. 4. On February 24, 2021, after counsel entered appearance on Mr. Ahmed's behalf, the trial court granted counsel leave to file a replacement brief in support of Mr. Ahmed's application to vacate the award. Pl.'s Mem. of Law in Supp. of Appl. to Vacate at 10, *Ahmed* v. *Oak Mgmt. Corp.,* No. 20-5023509 (Conn. Super. Ct. Apr. 12, 2021).

On September 21, 2021, the trial court issued the order below denying Mr. Ahmed's application to vacate the arbitrator's award and granting Oak's cross-application to confirm the award. In its order, the trial court noted the "draconian net effect of the arbitrator's rulings . . . striking all affirmative claims, striking all defenses, [and] granting a right of the defendant to submit all confidential information with the plaintiff to receive only redacted versions," and acknowledged that under the arbitrator's confidentiality order, Oak was permitted to "redact everything of substance" relating to its damages calculations, "with no apparent oversight," even where information (such as Mr. Ahmed's compensation) "presumptively could not be confidential." App. 185. The result, according to the trial court, was that "there was no input from the plaintiff, including [the] ability to challenge the submissions of the defendant." App. 185.

Despite emphasizing that the arbitral "proceedings challenge[d] the court's perspective of what a fair hearing should be," the trial court ultimately declined to grant vacatur. App. 186. The trial court likened the

arbitrator's conduct during the proceedings to "a tribunal's authority to enter a nonsuit or dismissal or default," in that even if "this court might disagree with another court's decision to enter a default or nonsuit, a mere disagreement is not indicative of an order warranting reversal." App. 187. The trial court also stated its belief that it was "required" to disregard "'ordinary' errors which, in a judicial context, might warrant reversal." App. 188. Thus, while the arbitrator's orders precluding Mr. Ahmed from mounting any defenses or counterclaims "may have been extreme," and even though the "defendant applied [the confidentiality order] over-broadly," the trial court declined to find that "limits were crossed." App. 189.

On October 8, 2021, Mr. Ahmed filed an appeal to the Connecticut Appellate Court of the trial court's decision denying his application to vacate the arbitration award. On February 8, 2022, pursuant to Connecticut Practice Book § 65-1, the case was transferred to the Connecticut Supreme Court.

III. The Connecticut Supreme Court's Decision

In his briefing before the Connecticut Supreme Court, Mr. Ahmed argued both under the FAA and Connecticut law that, among other things, (1) "an arbitrator may not apply the fugitive disentitlement doctrine . . . because the doctrine flows exclusively from the *judicial* power" while "arbitrators' sole authority comes from the parties' agreement"; (2) the arbitrator's "total deprivation of [Mr. Ahmed's] procedural rights" by invoking the fugitive disentitlement doctrine to "exclude[] all evidence, counterclaims, and arguments from Mr. Ahmed" on liability was severely

prejudicial and violated § 10(a)(3) as well as public policy. Brief of Plaintiff-Appellant Ahmed at 26-27, 43-44, 49, *Ahmed* v. *Oak Mgmt. Corp.*, S.C. 20677 (Conn. March 31, 2022).

The Connecticut Supreme Court acknowledged that the use of the fugitive entitlement doctrine in an arbitration was "perhaps unprecedented" and recognized "the gravity of the arbitrator's rulings." App. 12-13. But the court held that, by a 4-3 vote, regardless of whether the arbitrator's "rulings were legally correct or equitable," the parties were bound by their consent to an arbitration clause and that the arbitrator's actions were functionally unreviewable. App. 12-13, 67. The court concluded that Mr. Ahmed's federal law claims failed, and, in doing so, explicitly rejected any distinction between state and federal law. App. 65.

First, the court below reasoned that "[m]indful of the unusual and challenging circumstances facing the arbitrator, and precipitated by Ahmed's own actions, we cannot conclude that the award *necessarily* falls outside the scope of the arbitrator's authority." App. 49.

Second, the court below concluded that Mr. Ahmed could not argue that "the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy," *see* 9 U.S.C. § 10(a)(3), because Mr. Ahmed did not "establish that he was substantially *prejudiced* by the arbitrator's misconduct." App. 8. The court below reasoned that Mr. Ahmed "identifie[d] no evidence, documentary or testimonial, that he had been prepared to offer if a hearing on liability had taken place. . . . Nor does he

claim that he had any other basis, through cross-examination or otherwise, to impeach Oak's allegations." App. 58. The court below admitted that Mr. Ahmed did "identify several topics on which he would have offered argument or unspecified evidence, but each of them relate[d] to" damages proceedings, which the court below concluded he could have taken part in. App. 58.

The dissent concluded that vacatur was warranted here because "[f]ederal and state courts have consistently held that vacatur is warranted when the arbitration proceedings were fundamentally unfair." App. 106. Notably, the dissent observed that "[t]he majority has not identified any case in which a court has enforced an arbitral award that was decided on an ex parte dispositive motion, without allowing each side an opportunity to be heard. App. 108-9.

The dissent explained that the majority's fundamental error was incorrectly relying "on the oft cited principle that courts may not set aside an arbitrator's award simply because he 'committed serious error, or the decision is incorrect or even whacky.'" App. 96 (internal citation omitted). The dissent noted that "[t]he majority's reliance on that principle [was] misplaced," because "[a]lthough courts defer to the factual and legal determinations of the arbitrator on the merits, they also 'rigorously enforce' the terms of the arbitration agreement." App. 96 (internal citation omitted). Indeed, the dissent explained that "[i]t is '[p]recisely because arbitration awards are subject to such judicial deference . . . [that] it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded." App. 96 (internal citation omitted). It is plain that "[w]hen an

arbitration agreement incorporates specific guidelines meant to ensure that the parties have an equal opportunity to be heard and are otherwise treated fairly, an arbitrator who violates them is not acting within the scope of his authority, and, therefore, the resulting orders are entitled to no deference." App. 97.

Finally, the dissent turned to the majority's argument that "even if the arbitrator engaged in misconduct," Mr. Ahmed "failed to establish that he was prejudiced by the arbitrator's actions." App. 109. The dissent explained that "a ruling on a dispositive motion that decides the issue of liability certainly affects the case. The arbitrator's application of the fugitive disentitlement doctrine not only affected the result, in a very real sense, ***it was the result***." App. 110 (emphasis added).

The dissent rejected the majority's requirement that Mr. Ahmed identify a specific outcome-changing argument he would have made, reasoning that "[t]o require this sort of explanation before vacating an arbitral award issued in an arbitration proceeding that was dismissed before a hearing on the merits would subvert the interests of judicial economy that arbitration is meant to promote. To show prejudice, it is enough that the arbitrator exceeded his authority." App. 110.

The dissent also reasoned that "[c]ourts that have considered similar or lesser procedural claims under comparable or identical statutes have likewise held that deprivations of the type that occurred in the present case are prejudicial per se, requiring vacatur as a matter of law." App. 111 (collecting cases).

Petitioner now seeks review by this Court.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Is Wrong and Conflicts with the FAA and Precedent from This Court.

A. An Arbitrator May Not Apply the Fugitive Disentitlement Doctrine to Protect a Federal Court Proceeding.

An arbitrator necessarily "exceed[s] [his] powers," 9 U.S.C. § 10(a)(4), when he applies the fugitive disentitlement doctrine against a party who is a fugitive from a federal court proceeding to disentitle him—i.e., strike his defenses and bar him from contesting the allegations against him.

While the doctrine flows from the "inherent authority" of "[c]ourts invested with the judicial power of the United States" to "protect their proceedings and judgments in the course of discharging their traditional responsibilities" and is "delimited with care," *Degen*, 517 U.S. at 823, "the task of an arbitrator is to interpret and enforce a contract, not to make public policy," *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 (2010). Indeed, this Court has repeatedly emphasized "the basic precept that arbitration 'is a matter of consent, not coercion.'" *Stolt-Nielsen*, 559 U.S. at 681 (quoting *Volt Info. Sciences, Inc.* v. *Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). In contrast, the fugitive disentitlement doctrine does not flow from a power granted under a consensual accord between parties to a dispute—it is instead a "most severe" "sanction" that flows from the

"judicial power of the United States." *Degen*, 517 U.S. at 823, 828.

The doctrine has evolved over time and usage to permit federal courts to protect their "proceedings and judgments" in different contexts. *Id.* at 823. In the first case to acknowledge the doctrine, *Smith* v. *U.S.*, this Court "refuse[d] to hear a criminal case in error" from the concern that the "convicted party" could not "be made to respond to any judgment we may render." 94 U.S. 97, 97 (1876). Over time, this Court has affirmed that "federal courts do have authority to dismiss an appeal or writ of certiorari if the party seeking relief is a fugitive while the matter is pending." *Degen*, 517 U.S. at 824. In that prototypical case, although "an escape does not strip the case of its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resources of the Court for determination of his claims." *Molinaro* v. *New Jersey*, 396 U.S. 365, 366 (1970).

But the Court has also placed careful limitations on the use of the doctrine, exactly because it represents the efforts of "one branch of the Government, without benefit of cooperation or correction from the others, undertak[ing] to define its own authority." *Degen*, 517 U.S. at 823. Thus, "its use" must "be a reasonable response to the problems and needs that provoke it." *Id.* In *Degen*, this Court explained, the doctrine does not "allow a court in a civil forfeiture suit to enter judgment against a claimant because he is a fugitive from, or otherwise is resisting, a related criminal prosecution." *Id.* "A court's inherent power is limited by the necessity giving rise to its exercise," and

disentitlement in a civil case would mean "the justice would be too rough." *Id.* at 829.

As the preceding discussion makes plain, an arbitrator has no power to apply the fugitive disentitlement doctrine to protect a federal court's proceedings by disentitling one of the parties. As is well settled, an arbitrator "has no general charter to administer justice for a community which transcends the parties." *United Steelworkers of America* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581 (1960). An arbitrator "is not a public tribunal imposed upon the parties by superior authority" and does not wield the judicial power, *id.*; rather, the arbitrator "derives his or her powers from the parties' agreement," *Stolt-Nielsen*, 559 U.S. at 682. While an arbitrator may be "implicitly authorize[d] . . . to adopt such procedures as are necessary to give effect to the parties' agreement," the power to disentitle a party who is a fugitive from an unrelated federal court case is "not a term that the arbitrator may infer solely from the fact of the parties' agreement to arbitrate." *Id.* at 665, 685.

Despite identifying a range of cases in which arbitrators generally exercise equitable powers, the court below did not identify a single case permitting arbitrators to apply the fugitive disentitlement doctrine, let alone to the extent the arbitrator did, or identify any provision of the FAA that grants such a power.

Nor would it make sense for arbitrators to wield the powers granted by the doctrine. As this Court has explained, there are several possible rationales for a

court vested with the judicial power to apply the fugitive disentitlement doctrine, none of which apply to arbitrations.

First, this Court has explained in some cases, if "the party cannot be found, the judgment on review may be impossible to enforce"—a consideration for courts, not arbitrators, who do not enforce judgments. *Degen*, 517 U.S. at 824. Second, this Court has held that "an appellant's escape 'disentitles' him 'to call upon the resources of the Court for determination of his claims.'" *Id.* (citing *Molinaro*, 396 U.S. at 366). Because arbitration is a form of private resolution, the resources of the courts are not implicated.

Third, courts may apply disentitlement to "discourage[] the felony of escape and encourage[] voluntary surrenders," and thereby to "promote[] the efficient, dignified operation" of those courts. *Id.* (cleaned up). Arbitration proceedings have no criminal jurisdiction, of course, and no role in promoting the dignified operation of criminal courts.

The FAA guards against arbitrators who stray from "interpret[ing] and enforc[ing] a contract" to "mak[ing] public policy." *Stolt-Nielsen*, 559 U.S. at 672 (concluding arbitrator "exceeded [his] powers" under § 10(a)(4)). Arbitrators have no warrant to impose a disentitlement sanction flowing from the judicial power of the United States—a matter of inherent authority and policy that federal courts, not arbitrators, decide.

The Connecticut Supreme Court disclaimed the need to determine "whether the federally created doctrine of fugitive disentitlement applies to arbitration,"

because it deemed that the arbitrator was "draw[ing] the essence of his award from the parties' arbitration agreement" and was "'even arguably' construing the contract." App. 48 n.13. But, as discussed, the fugitive disentitlement doctrine is an inherent power of courts vested with the judicial power of the United States—an arbitrator has no power to apply it at all.

B. Even if the Doctrine Permissibly Applied in Arbitration, Its Use Must Conform to the Limitations This Court Set Forth in *Degen* v. *United States* and Elsewhere.

Even if an arbitrator had some authority to apply the doctrine to disentitle parties who are fugitives from federal court proceedings, an arbitrator exceeds his powers under § 10(a)(4), contravenes § 10(a)(3), and subverts public policy (*see* § 2) where he enters a blanket disentitlement in contravention of the limitations set forth in *Degen* and other caselaw. In this case, neither the arbitrator nor the Connecticut Supreme Court purported to apply this Court's limitations on the use of the doctrine to protect the integrity of federal court proceedings.

Because the use of the doctrine to disentitle a party is "most severe," the Court has "delimited" the doctrine by requiring that it "be a reasonable response to the problems and needs that provoke it." *Degen*, 517 U.S. at 823-24, 828. In that case, the Court explained that imposing "the harsh sanction of absolute disentitlement" in a civil case against a party for being a fugitive from a different criminal case "would be an arbitrary response to the conduct it is supposed to redress or discourage." *Id.* at 828. Instead, courts should

seek to use their "usual authority to manage discovery" and the case to manage any dilemmas arising from a party's fugitive status. *Id.* at 826.

The Court's teachings have led to essential limitations on the disentitlement power, as lower courts have explained. First, "a federal court's discretion to dismiss a fugitive's case flows from its 'inherent power' to protect its *own* 'proceedings and judgments' – not another court's." *In re Kupperstein*, 943 F.3d 12, 22 (1st Cir. 2019) (internal citation omitted); *see id.* ("The Supreme Court has twice rebuffed courts for dismissing one case to punish flight from another, noting that the escape wouldn't frustrate the dismissing court's judgment or impact its process."). "Relying on *Degen* and *Ortega-Rodriguez*, several courts have rejected the use of dismissal to sanction litigants for dodging another court's orders when the snub didn't impact the case on appeal." *Id.* at 23 (citing cases); *see Empire Blue Cross & Blue Shield* v. *Finkelstein*, 111 F.3d 278, 282 (2d Cir. 1997) ("[A] fugitive whose absence severely prejudices a proceeding may forfeit the right to appeal an adverse judgment entered *in that case*.").

Second, and relatedly, absolute disentitlement can only be justified by "actual prejudice," such as "delay or frustration in determining the merits of [the case] or in enforcing the resulting judgment." *Degen*, 517 U.S. at 825; *see Kupperstein*, 943 F.3d at 25 (same; citing cases). In *Degen*, the Supreme Court explained that to the extent there are concerns about the fugitive obtaining and unfair advantage in the criminal case, those concerns should in the first instance be addressed by managing discovery, "limiting the form of

proof," or "in an extreme case even the theories it permits the absent party to pursue." 517 U.S. at 827. Blanket disentitlement in a different, albeit related case, is "too blunt an instrument" where alternative means of addressing concerns exist. *Id.* at 828. For that reason, the Supreme Court prohibited simply "striking [the litigant's] claims and entering summary judgment against [the litigant] as a sanction" as "an arbitrary response to the conduct it is supposed to redress or discourage." *Id.* at 828.

Neither the court below nor the arbitrator determined that the limits this Court set forth in *Degen* and elsewhere on application of the fugitive disentitlement doctrine applied in arbitration—indeed, the arbitrator did not purport to apply this Court's limitations on the application of the doctrine. An arbitrator's blanket disentitlement in such a fashion necessarily gives rise to a violation of § 10(a)(3), (a)(4), and public policy.

Degen instructs that the scope of disentitlement must be tailored to "the necessity giving rise to its exercise." 517 U.S. at 829. Here, the arbitrator did not even attempt to justify the disentitlement by reference to legitimate concerns that any "criminal prosecution . . . might be compromised" or "risk in this case of delay or frustration in determining the merits of the . . . claims or in enforcing the resulting judgment." *Degen*, 517 U.S. at 825. Indeed, no such concerns would be valid here. And even if the arbitrator had purported to do so (he did not), this Court should grant review to make clear an arbitrator commits error warranting vacatur where—as the arbitrator did here—the adjudicator "strike[s] [the litigant]'s filing and grant[s] judgment against him" when the adjudicator "has the

means to resolve" concerns "without resorting to a rule forbidding all participation by the absent claimant." *Id.* at 826, 829.

Moreover, a blanket disentitlement amounts to a refusal to allow one party "to testify," which qualifies as "fundamental unfairness and misconduct sufficient to vacate [an] award pursuant to section 10(a)(3) of the FAA." *Tempo Shain Corp.* v. *Bertek, Inc.*, 120 F.3d 16, 21 (2d Cir. 1997). Federal courts have consistently and emphatically held that "[a]ll parties in an arbitration proceeding are entitled to notice and an opportunity to be heard." *Totem Marine Tug & Barge, Inc.* v. *N. Am. Towing, Inc.*, 607 F.2d 649, 651 (5th Cir. 1979). Indeed, "courts seem to agree that a fundamentally fair hearing requires only notice, opportunity to be heard and to present relevant and material evidence and argument before the decision makers, and that the decisionmakers are not infected with bias." *Bowles Fin. Grp., Inc.* v. *Stifel, Nicolaus & Co.*, 22 F.3d 1010, 1013 (10th Cir. 1994); *see also Global Gold Mining, LLC* v. *Ayvazian*, 612 F. App'x 11, 14-15 (2d Cir. 2015).

Every federal court to squarely address this question has held that violating a party's right to be heard requires vacating the award. Although "only a miniscule proportion of awards is vulnerable in court," an award issued after "the basic right to present and test evidence on issues of fact had not been accorded" means that the award "falls squarely and patently within this minute class." *Cofinco, Inc.* v. *Bakrie & Bros., N.V.*, 395 F. Supp. 613, 615 (S.D.N.Y. 1975).

The record brooks no doubt that Mr. Ahmed had no hearing before the arbitration panel, let alone a full

and fair one—and thus the arbitrator blatantly violated § 10(a)(3). The arbitral process here was, in the trial court's words, a "seemingly uniquely onerous scenario" in which the arbitrator "[p]reclud[ed] any defense to any claim of" Oak and went "straight to a hearing in damages—with no access to the actual substance of the claimed damages due to redaction." App. 173-74. Indeed, the arbitrator expressly declared that Mr. Ahmed had no "due process rights," and that he was "barred from contesting the allegations contained within Claimant's Statement of Claim," that his counterclaims were "dismissed," and that his affirmative defenses were "stricken." App. 196, 198-99. The unsurprising effect of the arbitrator's rulings was a default liability judgment in favor of Oak—a deprivation of any liability hearing.

In the decision below, the Connecticut Supreme Court stated that any denial of Mr. Ahmed's right to a full hearing was harmless because Mr. Ahmed had not specifically identified prejudice. App. 57. This reasoning is plainly incorrect. As the dissent explained, "[c]ourts that have considered similar or lesser procedural claims under comparable or identical statutes have likewise held that deprivations of the type that occurred in the present case are prejudicial *per se*, requiring vacatur as a matter of law." App. 111 (collecting cases). Complete disentitlement is a more severe penalty than denial of the right to counsel of choice, yet this Court has had "little trouble concluding that erroneous deprivation of the right to counsel of choice" constitutes structural error because it has "consequences that are necessarily unquantifiable and indeterminate" and "bears directly on the framework

within which the trial proceeds." *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (cleaned up). Because an inquiry into prejudice would require speculation into any "differences in the defense that would have been made" if Mr. Ahmed had been permitted to be heard, including the effect of "such intangibles as argument style," attempting "[h]armless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe." *Id.*

Finally, while the court below admitted that "judicial approval of certain practices would undermine confidence in the legitimacy of the arbitral process," it held that the public policy extended only as far as the same statutory grounds that it had found did not require the award to be vacated. App. 64. This is wrong. The long history of the public policy requirement that parties be given an opportunity to be heard in arbitration, *see Burchell*, 58 U.S. at 349, remains enforceable. *See United Paperworkers Int'l Union, AFL-CIO* v. *Misco, Inc.*, 484 U.S. 29, 42 (1987); 9 U.S.C. § 2; *Joyner* v. *Peerless Indem. Ins. Co.*, No. 610-CV-664, 2010 WL 2367803, at *1 (M.D. Fla. June 14, 2010).

II. The Questions Presented Are Exceptionally Important.

The issues presented are exceptionally important and deserve this Court's review. *See* Sup. Ct. R. 10(a). As in many other recent cases, the Court's review is warranted to correct a court's erroneous application of the FAA. It is critical that parties to arbitration agreements have confidence that basic structural safeguards are followed. Allowing this decision to go uncorrected would inject unnecessary uncertainty into parties to arbitration agreements.

As the dissent cogently explained, "[i]t is '[p]recisely because arbitration awards are subject to such judicial deference . . . [that] it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded." App. 96 (citing *Goldfinger* v. *Lisker*, 68 N.Y.2d 225, 231, 500 N.E.2d 857, 859 (1986)). Indeed, the "general reluctance to disturb arbitration awards must yield . . . to the clear necessity of safeguarding the integrity of the arbitration process" when one party is "denied . . . the opportunity to respond." 500 N.E.2d at 861.

This Court has previously intervened when the fugitive disentitlement doctrine has been inappropriately applied by courts precisely because use of the extraordinary power bequeathed by the doctrine goes to the fundamental right to be heard and implicates due process concerns. *Degen*, 517 U.S. at 828. Moreover, this Court has previously, and recently, intervened when state courts misinterpret the FAA, despite the typical lack of a split in such cases. *See Kindred Nursing Ctrs. Ltd. P'ship* v. *Clark*, 581 U.S. 246, 248 (2017);

Viking River Cruises, Inc. v. *Moriana*, 596 U.S. 639 (2022).

The Court should act to prevent the inappropriate application of a judge-fashioned doctrine in arbitral proceedings, as it has done before, *e.g. Am. Exp. Co.* v. *Italian Colors Rest.*, 570 U.S. 228, 239 (2013), and ensure that the arbitration system maintains the certainty, predictability, and fairness that is critical to its continued effectiveness.

III. There Are No Vehicle Problems Precluding This Court's Review

The questions presented are squarely presented by the Connecticut Supreme Court's published decision, with no vehicle problems.

First, the court below addressed Mr. Ahmed's claims under the FAA. *See* App. 65 (holding Mr. Ahmed's "claims under the FAA fail for the reasons . . . articulated" regarding the state-law claims, as the state statute is "virtually identical" to the FAA).

Second, although the Connecticut Supreme Court disclaimed the need to "reach the question of whether the federally created doctrine of fugitive disentitlement applies to arbitration proceedings," it recognized that Mr. Ahmed had in fact raised that issue. App. 71 n.13; *see id.* at 77 n.24 (recognizing that Mr. Ahmed "assert[ed] that the fugitive disentitlement doctrine could not justify the arbitrator's deprivation of his rights because this doctrine does not apply . . . to arbitration generally, as the purpose of the doctrine is to protect the integrity of judicial proceedings").

Third, the court below recognized that Mr. Ahmed argued that "arbitrators have no authority to apply the fugitive disentitlement doctrine to abrogate [his] rights" under the parties' agreement. App. 40.

Thus, the questions presented are squarely implicated in the decision of the court below. Moreover, Mr. Ahmed was represented by counsel in the courts below, allowing full presentation of these issues upon review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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