No. 23-899

In the Supreme Court of the United States

IFTIKAR A. AHMED,

Petitioner,

v.

OAK MANAGEMENT CORPORATION,

Respondent.

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

BRIEF IN OPPOSITION

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INTRODUCTION

Petitioner Iftikar Ahmed is a proven fraudster who stole nearly $100 million and fled to India to evade criminal justice in this country. His petition purports to present the question whether an arbitrator categorically "exceeds his powers" within the meaning of the Federal Arbitration Act by applying the so-called fugitive disentitlement doctrine in an arbitral proceeding. But the answer to that question is necessarily case-specific, turning entirely on the terms of the parties' agreement to arbitrate and the rules adopted for the arbitration.

Here, the Supreme Court of Connecticut held that it could not conclude under the deferential standard for judicial review of arbitral awards that "the parties' arbitration agreement, including the AAA rules incorporated into the agreement" forbade application of the doctrine. Pet. App. 48. Moreover, the court held that any error in applying the doctrine would have been harmless because Ahmed did not explain what "evidence, documentary or testimonial," he would have entered "if a hearing on liability had taken place." Pet. App. 58.

The petition does not acknowledge these obvious barriers to this Court's review. It instead latches on to the dissenting opinion below, which was based entirely on "arguments that [petitioner did] not make for himself" and reliance upon which would be "particularly unfitting when a court reviews an arbitration award." Pet. App. 38. In other words, the crux of the petition here is grounded on arguments that the lower court held were not preserved as a matter of state law.

Beyond that, the petition does not even attempt to conceal its true character as a bid for one-off error correction. The first 15 pages of the petition are devoted to a shockingly misleading statement of facts and proceed-

ings—perhaps unsurprising for a litigant guilty of serial misrepresentations and lies. The next 10 pages are allocated to a merits argument that asserts nothing but a misapplication of settled law to "the exceedingly unusual circumstances of the present case" (Pet. App. 60). When finally the petition turns to the "exceptional importance" of the case on page 26, its only contention is that the Court should grant review "to correct [the lower] court's erroneous application of the FAA" and "to prevent the inappropriate application of" settled legal principles to the never-to-be-repeated facts of this case. Pet. 26-27.

Against this background, the petition is easily denied. It presses arguments that the lower court held waived and asserts errors that the lower court held would have been harmless in any event. It does not contend that the lower courts are divided. It does not demonstrate that there is a discrete, unsettled legal principle over which there is general uncertainty or confusion. It does not implicate frequently recurring facts. All the petition offers is a misguided bid for error correction by a proven fraudster who has the temerity to ask for this Court's intervention on the ground that his flight from American criminal justice prevented him from mounting a complete defense to an arbitration concerning the very fraud from which he fled. This case is not remotely worth the Court's attention.

STATEMENT

A. Legal background

Congress enacted the Federal Arbitration Act in 1925 "in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011). The Act was designed to replace "judicial resistance to arbitration" with a "national policy favoring arbitration" and to "place[] arbitration

agreements on equal footing with all other contracts." *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 443 (2006).

The FAA's primary substantive provision is contained in 9 U.S.C. § 2, which provides that any agreement "to settle by arbitration a controversy * * * shall be valid, irrevocable, and enforceable, save upon such grounds exist at law or in equity for the revocation of any contract." The Act "supplies mechanisms for enforcing arbitration awards: a judicial decree confirming an award, an order vacating it, or an order modifying or correcting it." *Hall Street Associates, L.L.C.* v. *Mattel, Inc.*, 552 U.S. 576, 582 (2008). A court faced with a motion to confirm an arbitral award "must grant" the motion "unless the award is vacated, modified, or corrected." 9 U.S.C. § 9.

Section 10 provides the "exclusive" grounds for vacatur of an arbitration award. *Hall Street Associates*, 552 U.S. at 581. As relevant here, a court may set aside an arbitral award only "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 "where the arbitrators exceeded their powers." 9 U.S.C. § 10(a)(3), (4). The Court has cautioned against any approach to the FAA that would expand these exceptions, lest courts undermine "arbitration's essential virtue of resolving disputes straightaway." *Hall Street Associates*, 552 U.S. at 588.

All to say, the FAA does not "rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process." *Id.* (alteration in original) (quoting *Kyocera Corp.* v. *Prudential-Bache Trade Services, Inc.*, 341 F.3d 987, 998 (9th Cir. 2003)). Instead, a court may overturn a decision pursuant to an

arbitration agreement "only in very unusual circumstances." *First Options of Chicago, Inc.* v. *Kaplan*, 514 U.S. 938, 942 (1995).

This Court has repeatedly emphasized the "heavy burden" borne by parties challenging arbitral awards. *Oxford Health Plans LLC* v. *Sutter*, 569 U.S. 564, 569 (2013). "It is not enough * * * to show that the [arbitrator] committed an error—or even a serious error." *Stolt-Nielsen S.A.* v. *AnimalFeeds International Corp.*, 559 U.S. 662, 671 (2010). Courts do not sit to determine whether an arbitrator got the facts or the law right or wrong. *Paperworkers* v. *Misco, Inc.*, 484 U.S. 29, 38 (1987).

The narrowness of judicial review in this context is a recognition that, by agreeing to arbitration, the parties have entrusted a separate entity with the resolution of their claims. Where the parties have bargained for a third party to resolve their disputes, courts "should not undertake to review the merits of arbitration awards but should defer to the tribunal chosen by the parties finally to settle their disputes." *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 563 (1976). Any other approach would vitiate the parties' agreement, in contravention of § 9 of the FAA and the strong national policy in favor of arbitration. *Cf. United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960) ("[P]lenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final.").

Because arbitration agreements are contractual in nature, judicial review is limited to ensuring that an arbitrator fulfilled her contractual duties. Parties who bargain for arbitration are "free to set the procedural rules for arbitrators to follow if they cho[o]se." *Misco*, 484 U.S. at

39; accord *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 472, 479 (1989) ("[P]arties are generally free to structure their arbitration agreements as they see fit," including "the rules under which that arbitration will be conducted."). So long as arbitrators draw their decisions from the agreement, courts will enforce those decisions. This is especially true with respect to the arbitrator's chosen remedies. *United Steelworkers*, 363 U.S. at 597.

Critically, courts defer not only to the arbitrators' factual and legal conclusions, but also to their construction of the arbitration agreement itself. "Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits." *Oxford*, 569 U.S. at 569 (quoting *Eastern Associated Coal Corp.* v. *Mine Workers*, 531 U.S. 57, 62 (2000)).

Courts must enforce valid arbitration agreements according to their terms. *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U.S. 63, 67 (2010). "[T]he sole question" for a reviewing court is thus "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." *Oxford*, 569 U.S. at 569.

B. Ahmed's pervasive and long-running fraud

Oak Management Corporation is a private equity firm which manages various venture capital investment funds. Pet. App. 13. Oak employed Ahmed as an investment professional from 2004 to 2015. *Ibid.* In that role, Ahmed identified potential investments for Oak and negotiated the terms of those investments. *Ibid.* Ahmed also served as a managing member of various general partners of certain Oak funds. *Ibid.*

1. In 2015, Ahmed was arrested and indicted on various charges relating to an insider trading conspiracy unconnected to his work at Oak. Pet. App. 14; see also *United States* v. *Kanodia*, 2016 WL 3166370 (D. Mass. 2016). The government alleged that Ahmed received a tip from a friend of an upcoming merger and then traded on that insider information. *See* Superseding Indictment, *United States* v. *Kanodia*, No. 15-cr-10131 (D. Mass. June 29, 2016). He executed these trades through a wholly owned company. *SEC* v. *Ahmed*, 2021 WL 916266, at *1 (D. Mass. 2021). Ahmed later sold for a profit of more than $1,000,000, out of which he paid his tipster friend more than $200,000. *See* Superseding Indictment, *United States* v. *Kanodia*, No. 15-cr-10131. At the same time he was indicted, the SEC brought a civil enforcement action based on this same alleged conduct. *SEC* v. *Ahmed*, 2021 WL 916266, at *1.

Ahmed's bond was set at $9 million. *See United States* v. *Kanodia*, 15-cr-10131, D.I. 293 & Ex. A (D. Mass. Apr. 21, 2015) (order setting conditions of release). He posted bail and was released from custody. *Ibid.* As an additional condition of his release, Ahmed was prohibited from traveling outside of Connecticut, New York, and Massachusetts. *Ibid.*

As soon as Oak learned of the proceedings against Ahmed, it placed him on paid leave while it investigated the transactions and investments he had made in the scope of his employment. Pet. App. 129. Oak's investigation uncovered disturbing results, which Oak promptly shared with the SEC. Pet. App. 14.

2. In May 2015, the SEC filed a second civil enforcement action against Ahmed based on his conduct related to his employment with Oak. *SEC* v. *Ahmed*, 123 F. Supp.

3d 301 (D. Conn. 2015), aff'd sub nom. *SEC* v. *I-Cubed Domains, LLC*, 664 F. App'x 53 (2d Cir. 2016). In its complaint, the SEC alleged that over more than a decade Ahmed consistently and repeatedly defrauded Oak and its investors out of tens of millions of dollars for his own personal gain. Second Amended Complaint ¶ 1, *SEC* v. *Ahmed*, No. 3:15-cv-675 (D. Conn. Apr. 1, 2016).

The scope of Ahmed's fraud is astounding. At times, Ahmed misrepresented or altered the prices of the investments he brought to Oak's attention, pocketing the difference. *Id.* ¶ 2. In other cases, he misrepresented the exchange rate for foreign investments to inflate the cost of the deals. *Ibid.* In some instances, Ahmed misrepresented the financial condition of the companies which Oak was to purchase to justify his affirmative alterations of the purchase prices in the deal documents he presented to Oak. *Ibid.* And in still other investments, Ahmed "engaged in self-dealing by misrepresenting or concealing his personal stake as the counterparty in various transactions he entered into on Oak's behalf." Pet. App. 15.

To effectuate this fraud, Ahmed repeatedly fabricated and altered invoices for fictitious or inflated expenses in connection with Oak's investment in various companies. Second Amended Complaint ¶ 3, *SEC* v. *Ahmed*. He frequently generated fake invoices purportedly from a company that was the target of an Oak investment and presented the invoices to Oak for payment, pocketing the proceeds. *Ibid.* In parallel, he inverted this scam by generating fraudulent invoices to companies in which Oak had invested demanding payment or reimbursement—again, diverting any eventual payments. *Ibid.*

To conceal the fraud, Ahmed funneled his ill-gotten proceeds into multiple U.S. bank accounts he had opened

for that purpose. *Id.* ¶ 4. To Oak, he represented that these accounts belonged to companies involved in Oak's investments; to the companies, he claimed that the accounts were owned by Oak. *Ibid.* He even went so far as to register some of the accounts as "doing business as" companies in which Oak had invested. *Ibid.* Ahmed had Oak and other companies deposit money into these accounts and then later transferred the money to other accounts under his or his wife's control. *Ibid.*

Ahmed perpetuated his fraudulent scheme over more than ten years, involving at least ten separate companies in which Oak had invested. *SEC* v. *Ahmed*, 308 F. Supp. 3d 628, 638-648 (D. Conn. 2018).

3. In May 2015, a few weeks after his arrest and after SEC filed its two enforcement actions, Ahmed fled the United States for his native country of India. Pet. App. 15-16; *Ahmed*, 123 F. Supp. 3d at 306 n.1. He claims on his arrival in India he was arrested and detained for using invalid documents to enter the country. Pet. App. 16, 69. He was allegedly detained for 61 days in India until bail was posted and he was released in July 2015. *SEC* v. *Ahmed*, 2016 WL 10568257, *1 n.3 (D. Conn. 2016).[1] While

[1] Apart from declarations in various federal cases, Ahmed below submitted only a single unauthenticated document supporting his claim of detention in India, which the arbitrator did not credit in these proceedings. Pet. App. 69. The record contains no evidence concerning any additional impediment to leaving India following his 2015 release. *Ibid.*; Pet. App. 156 ("[T]he court notes little or no evidentiary confirmation of the plaintiff's claimed inability to leave India due to charges pending against him, charges that apparently had been pending for years."); Pet. App. 183 (noting that Amhed's "claim that his inability to return to the USA was due to Indian charges of illegal entry to the country" was "seemingly unsupported by anything in the record").

questions remain as to the condition and duration of Ahmed's detention (Pet. App. 69), one thing is clear: He "has deliberately flouted his bail conditions," "refus[ed] to return to Massachusetts," and "is a fugitive" from justice. *United States* v. *Ahmed*, 414 F. Supp. 3d 188, 190 (D. Mass. 2019). He has remained so since 2015.

Less than a month after his flight to India, a federal grand jury indicted Ahmed on charges of money laundering (and later, wire fraud and falsifying tax returns) in connection with his conduct as an Oak employee. Pet. App. 16, 69. Ahmed's absence prevented prosecutors from arresting him and formally charging him in those proceedings. *Ahmed*, 2016 WL 10568257 at *3.

Ahmed's fugitive status did not, however, forestall the various civil suits against him. The SEC obtained an *ex parte* temporary restraining order and then a preliminary injunction freezing more than $100 million of his assets for potential disgorgement, civil penalties, and prejudgment interest. *Id.* at *1 n.1. The Second Circuit affirmed. 664 F. App'x at 58.

Ahmed's refusal to return to America did impact certain aspects of the civil cases. In an order resolving the government's motion to stay discovery, the Massachusetts district court noted that unlike his codefendants, "Mr. Ahmed is currently a fugitive." *SEC* v. *Kanodia*, 153 F. Supp. 3d 478, 480 (D. Mass. 2015). It therefore approved a protective order prohibiting Ahmed's counsel from "provid[ing] any * * * Discovery Material to Defendant Ahmed, directly or indirectly." *SEC* v. *Kanodia*, No. 15-cv-13042, D.I. 72 (D. Mass. Jan. 14, 2016).

Such precautions were "impossible" in the Connecticut litigation, however, where Ahmed was proceeding pro se. *SEC* v. *Ahmed*, 2016 WL 10572640, at *1 (D.

Conn. 2016). The court there reasoned that "[a]ny order * * * permitting [Ahmed] to inspect and copy his investigative file would necessarily be contingent upon Defendant entering into an appropriate protective order." *Id.* at *2. But because Ahmed had "removed himself from the jurisdiction of the Court, the Court has no ability to enforce such a protective order, nor to sanction [Ahmed] in the event of any misuse of the produced documents." *Ibid.* The court therefore denied Ahmed access to aspects of discovery until he returned to the United States and executed an appropriate protective order. *Ibid.* The court later (repeatedly) denied Ahmed's motion to compel Oak to produce confidential documents "while he remained outside of its jurisdiction." *SEC* v. *Ahmed*, 2017 WL 5525837, *1 (D. Conn. 2017); *SEC* v. *Ahmed*, 2018 WL 1541902 (D. Conn. 2018).

In Connecticut, Ahmed invoked his right against self-incrimination under the Fifth Amendment and refused to participate in discovery. Pet. App. 17. The court granted summary judgment on liability in favor of the SEC. *SEC* v. *Ahmed*, 308 F. Supp. 3d at 673. In rejecting Ahmed's complaints that he was "treated unfairly, inappropriately denied access to evidence," and denied the ability to contest the SEC's allegations, the court noted that it was Ahmed who "chose to flee the United States shortly after this case was filed, in violation of his conditions of release in a criminal matter." *Id.* at 649. After proceedings on damages, the district court ordered Ahmed to pay the SEC more than $60 million in disgorgement, civil penalties, and interest. Pet. App. 18. Litigation in the Connecticut case is ongoing, and several of Ahmed's appeals are still pending with the Second Circuit. *Ibid.*

In Massachusetts, as fact discovery was concluding and expert discovery and summary judgment proceedings were about to begin, the district court stayed the case while Ahmed's assets were frozen to avoid potential prejudice from inability to hire experts. *SEC* v. *Kanodia*, No. 15-cv-13042, D.I. 137 (D. Mass. Jan. 12, 2017). During the stay, the SEC and Ahmed engaged in "protracted, albeit sporadic, settlement negotiations." *SEC* v. *Ahmed*, 2021 WL 916266 at *1. The court later lifted the stay and approved a consent judgment memorializing the parties' settlement. *Ibid.* Under the consent judgment, Ahmed was ordered to pay more than $2 million in disgorgement, prejudgment interest, and civil penalties. *Ibid.* Ahmed petitioned for relief from the consent judgment, and the court quickly denied relief. *Id.* at *2.

C. Arbitral proceedings

1. Oak terminated Ahmed's employment in 2015. Pet. App. 18. Several years later, Oak moved in the District of Connecticut to lift the litigation stay to allow it to pursue an arbitration claim against Ahmed. *Ibid.* The arbitration action concerned the same underlying facts as the Connecticut suit—Ahmed's fraud while employed by Oak—and sought damages not sought by or awarded to the SEC in the civil case. *Ibid.*

Ahmed's employment contract with Oak contained an arbitration clause, which specified that arbitration would occur in Connecticut and would be governed by Delaware law. Pet. App. 13. The parties agreed that arbitration would be administered under the 2013 Commercial Rules and Mediation Procedures of the American Arbitration Association. *Ibid.* Pursuant to that agreement, Oak filed an arbitration complaint in Connecticut alleging

breach of contract, breach of fiduciary duty, and common-law fraud. Pet. App. 18.

Ahmed denied the claims, raised various affirmative defenses, and asserted counterclaims against Oak based on a theory that Oak violated the employment agreement by reporting his misconduct to the SEC rather than turning immediately to arbitration. Pet. App. 18, 70. Oak argued, among other things, that Ahmed's fugitive status ought to prevent him from seeking affirmative relief in any judicial or arbitral forum. Pet. App. 18.

2. Almost immediately—even before an arbitrator had been appointed—Ahmed began sending seriatim emails to the AAA demanding that the complaint be dismissed or the proceedings delayed. Pet. App. 19. When the newly-appointed arbitrator scheduled a preliminary conference call (which would have permitted Ahmed to participate from India), a supposed "legal advisor" informed the arbitrator that Ahmed was ill and had been ordered sequestered for a full month of bedrest. Pet. App. 19.[2] The arbitrator gave Ahmed an opportunity to submit medical documentation as evidence of his inability to attend, but Ahmed failed to do so. Pet. App. 19-20.

The arbitrator then ordered briefing on whether to postpone the arbitration due to Ahmed's "inability" to attend an in-person hearing. Pet. App. 20. Rather than file a brief, Ahmed sent a lengthy email, "purportedly from his phone," again seeking a delay of the arbitration proceed-

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[2] At various points below, Ahmed alternately claimed to be represented by counsel and to be representing himself pro se. Pet. App. 19, 70, 195. Oak submitted an affidavit claiming that Ahmed had "misappropriated the name of an attorney in India to make it seem as if someone other than Ahmed was sending the emails regarding the obstacles to Ahmed's participation." Pet. App. 70.

ings because he supposedly had no personal computer and could not reach one because of India's COVID-19 lockdown. *Ibid.* Oak pointed to Ahmed's numerous, contemporaneous filings in the various pending civil and criminal actions against him, arguing that they demonstrated sufficient access to technology to permit his participation. The arbitrator ultimately noted that "all the documents [Ahmed] has filed in this Arbitration are in a legal format, utilizing properly sized paper; presented with proper captioning; presenting legal theories associated therewith, and citing case and legal authority in support thereof, in conformity with accepted legal procedure." Pet. App. 195.

The arbitrator declined to stay the arbitration, instead setting a May 2020 deadline for dispositive motions and a July hearing. Pet. App. 20. The order made clear that Ahmed "could appear at the hearing on the merits through Skype or another remote platform," and that he need not attend in person, as was common during the pandemic. Pet. App. 21. Seeking to ensure orderly proceedings, the scheduling order provided that "[n]either party is authorized to file any additional motions without first requesting permission from the [arbitrator]." *Ibid.*

Ahmed failed to comply with this directive. He submitted a flurry of additional communications urging postponement, which the arbitrator denied. *Ibid.* The arbitrator again instructed Ahmed to refrain from filing motions beyond those in the scheduling order without permission. *Ibid.* Nonetheless, Ahmed immediately sent several communications to the AAA seeking the arbitrator's disqualification. *Ibid.* The AAA informed the parties of its determination that the arbitrator should not be disqualified. Pet. App. 26.

Prior to the deadline for dispositive motions, Oak requested and obtained permission to file a motion for a protective order limiting Ahmed's personal access to confidential information like those in place in the Districts of Connecticut and Massachusetts. Pet. App. 21.

3. Ahmed filed timely motions for summary judgment and to dismiss—both of which were properly researched, argued, captioned, and formatted. Pet. App. 22, 195. Oak filed a motion to prevent Ahmed from accessing confidential documents as previously ordered by the arbitrator. Pet. App. 22. Simultaneously, Oak filed a "Motion for an Order Applying the Fugitive Disentitlement Doctrine," arguing that by virtue of his flight from justice, Ahmed had waived his rights to avail himself of the protections of the legal system for any action related to the facts giving rise to his fugitive status. *Ibid.*

The arbitrator resolved the motions without further briefing from the parties. Pet. App. 23. He cited to the several instances in which federal courts had already determined Ahmed was a fugitive. Pet. App. 194.[3] And the arbitrator noted several inconsistencies in Ahmed's myriad claims of inability to participate fully in the arbitration proceedings. Pet. App. 194-195.

The arbitrator then set out legal background concerning the fugitive disentitlement doctrine, which he observed "is an equitable Doctrine that operates as a waiver of a fugitive's due process rights in any action that is related to the facts giving rise to said fugitive's status, barring said fugitive from asserting both affirmative claims

[3] The arbitrator observed that Article X of the parties' arbitration agreement required that Delaware law apply, but explained that with respect to the issues at bar the laws of Delaware and Connecticut are similar. Pet. App. 195.

and contesting allegations against the related proceedings." Pet. App. 196. The arbitrator's order explained that, on a high level, the doctrine is intended "to prevent [a fugitive] from seeking relief from a judicial system that said fugitive has evaded," and that it "originally applied to criminal appeals but has been extended to related civil proceedings" and "to trial levels also." *Ibid.* (citing *Collazos* v. *United States*, 368 F.3d 190, 197 (2d Cir. 2004)).

The arbitrator then turned to the underlying arbitration agreement. The contract specified that arbitration would occur pursuant to the 2013 AAA rules. Pet. App. 13. The order noted that AAA Rule R-47(a) permits an arbitrator to grant any remedy or relief "if deemed justified and equitable." Pet. App. 196. Based on his findings, the arbitrator concluded that the fugitive disentitlement doctrine should apply and that Ahmed's defenses and counterclaims should be denied. Pet. App. 197.

Nonetheless, the arbitrator proceeded to address the merits of Ahmed's filings. Citing Delaware and Connecticut law, the arbitrator concluded that Ahmed's absence from the country tolled the statute of limitation for Oak's claims. *Ibid.* He explained that summary judgment is appropriate only when all material facts are undisputed, and that Ahmed's statement of undisputed facts actually only contained his "interpretation of what purports to be undisputed." Pet. App. 198. And the arbitrator concluded that nothing in Ahmed's motion to dismiss justified dismissal, particularly his theory that he embarked on a decade-long, multi-million-dollar fraud spree because he was inadequately supervised. *Ibid.*

The arbitrator's order reflected these factual and legal conclusions. It barred Ahmed from accessing confidential information. Pet. App. 198. It dismissed Ahmed's

counterclaims and struck his affirmative defenses. *Ibid.* It denied Ahmed's motions and prohibited him from contesting the allegations contained in Oak's Statement of Claim. Pet. App. 199. And finally, it converted the previously-scheduled July hearing into a damages hearing. *Ibid.*

4. Before the hearing, Oak provided Ahmed with the two nonconfidential exhibits it planned to introduce and explained that the remainder of its materials were confidential. Pet. App. 26. Ahmed again emailed the AAA seeking indefinite postponement of all proceedings. *Ibid.* He represented that he could not participate in person because he could not leave India, that he could not participate remotely because of the COVID-19 pandemic, and that he could not hire counsel due to lack of funds. *Ibid.* Oak objected, and the arbitrator ruled that the July hearing would go forward but would be held via Zoom due to COVID-19 restrictions. Pet. App. 26-27.

On the morning of the hearing, Ahmed's supposed attorney emailed the AAA again seeking postponement. This time, the communication explained that Ahmed was quarantined in a care facility due to a positive COVID-19 test and that he therefore could not access a computer or other video-conferencing device. Pet. App. 27. Oak objected, calling Ahmed's representations into question and noting that nearly all of the proceedings would concern confidential information which Ahmed could not view in any event. *Ibid.*

The arbitrator denied the request for postponement and the hearing went ahead. *Ibid.* Neither Ahmed nor his purported legal representative attended. *Ibid.* Afterwards, Oak provided Ahmed with its post-hearing brief and affidavits. Ahmed did not file a responsive brief. *Ibid.* The

arbitrator declared the hearings closed in August 2020. Pet. App. 28. The next day, Ahmed emailed the AAA to oppose the closure of proceedings and to oppose any eventual award in favor of Oak—but he did not move to reopen the hearing as permitted under AAA Rule R-40. *Ibid.*

Soon thereafter, the arbitrator issued an award in favor of Oak. The award explained that Ahmed had failed to appear for the hearing after proper notice by mail pursuant to the AAA rules. Pet. App. 28. It concluded that Ahmed engaged in "malicious, outrageous" conduct and displayed "evil motive and reckless indifference to the rights of his clients and employer, for which he * * * has shown little or no remorse." *Ibid.* The arbitrator awarded Oak approximately $57 million, most of which corresponded to compensation paid to Ahmed during his term of employment. *Ibid.* Nonetheless, the award granted Oak only $2 million in punitive damages—a fraction of what it had sought. Pet. App. 28-29.

D. Judicial review of arbitral proceedings

1. Ahmed next filed an application in Connecticut Superior Court seeking vacatur of the award under Connecticut Gen. Stat. § 52-418. Pet. App. 29. He argued that the award should be vacated under each of the statutory grounds of § 52-418, § 10 of the FAA (which shares identical language with the Connecticut statute), and corresponding Delaware statutes. *Ibid.* Additionally, he argued that the application of the fugitive disentitlement doctrine violated public policy. *Ibid.* Oak cross-moved to confirm the arbitral award. *Ibid.*

The trial court granted Oak's motion and denied Ahmed's. While it expressed some concerns about the consequences of the application of the fugitive disentitlement doctrine in general, the court found no error that would

rise to the level required to overturn the arbitral award in this case. Pet. App. 182-189. The court emphasized that its job was not "simply second-guessing the arbitrator or focusing on 'ordinary' errors of law or fact, but rather departures that are so consequential as to authorize" relief under the very narrow exceptions in the FAA. Pet. App. 187. While the fugitive disentitlement doctrine is not often applied, it has "been recognized both in general and in connection with" Ahmed's conduct underlying these proceedings. *Ibid.* And with respect to the damages hearing, the arbitrator concluded that Ahmed's "decision not to participate in the final arbitration hearing, where voluntariness was reasonably to be inferred given the rejection of the claimed medical excuse for inability to participate" constituted a "waiver of rights that could have been asserted at that hearing." Pet. App. 186.

The arbitrator thus had a "supplemental history to inform his decisions, including [Ahmed's] numerous efforts to delay or abort the arbitration proceedings, * * * and a perceived lack of credibility as to his claimed reason to be unable to participate in the July hearing." Pet. App. 187. And the court particularly noted that the AAA itself had rejected Ahmed's "detailed claims (similar to those presented [t]here)." Pet. App. 186.

The court concluded that while "[t]he orders may have been extreme, * * * the court cannot conclude that limits were crossed, under the circumstances presented." Pet. App. 189.

2. The Connecticut Supreme Court affirmed the confirmation of the arbitral award. It emphasized the narrowness of its task: "[a] court sits to determine only whether the arbitrator did his job—not whether he did it well, correctly, or reasonably, but simply whether he did it." Pet.

App. 31 (alteration in original) (quoting *Wachovia Securities, LLC* v. *Brand*, 671 F.3d 472, 478 (4th Cir. 2012)). "Irrespective of which ground" for vacatur is argued by the parties, "a court must afford substantial deference to the arbitrator's interpretation of the scope and meaning of the agreement's terms." Pet. App. 32. The result is "an unparalleled level of deference to the arbitrator" and a narrow construction of exceptions. Pet. App. 38.

Turning to the contract, the court again noted that "the question is not whether the arbitrator * * * erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract." Pet. App. 42 (quoting *Brotherhood of Locomotive Engineers & Trainmen* v. *Union Pacific Railroad Co.,* 719 F.3d 801, 803 (7th Cir. 2013)). Based on a review of Delaware law, the Connecticut Supreme Court concluded that Delaware courts would read Rule R-47(a) to allow remedies in the absence of express limitations, rather than requiring express permission. Pet. App. 43-46. The court further noted that Delaware courts recognize and apply the fugitive disentitlement doctrine and that no court—in Delaware or otherwise—"has expressly barred the application of the fugitive disentitlement doctrine to arbitration." Pet. App. 45.

The parties' agreement did not place any limitations on the arbitrator's authority to craft remedies. Pet. App. 47. And other provisions of the AAA rules contemplate sanctions that "impair or even abrogate [a] party's right to present his case." *Ibid.* Given that context, the court concluded that:

> Whether the arbitrator struck the proper balance in the present case, crafting orders that benefited Oak, the party that was timely prepared to present its case in the agreed on forum, to the detriment of Ahmed, the party who flouted the law and then attempted to use his absence to delay the proceedings, is not a question of exceeding authority but of exercising discretion.

Pet. App. 47. The court thus could not conclude that "the arbitrator did not draw the essence of his award from the parties' arbitration agreement, including the AAA rules incorporated into the agreement." Pet. App. 48.

With respect to Ahmed's argument that the application of the fugitive disentitlement doctrine here deprived him of a fair hearing, the court held that the record "belies Ahmed's characterization of the arbitrator's actions as completely depriving him of the ability to participate." Pet. App. 34. Under the AAA rules, an arbitration can proceed in the absence of a party who elects not to participate after receiving notice and failing to secure a postponement. Pet. App. 35 (citing AAA Rule R-31); Pet. App. 71 (noting that Rule R-31 was incorporated in the parties' agreement). Because the arbitrator reasonably discredited Ahmed's medical excuse given the utter lack of supporting evidence, Ahmed therefore "waived his right to participate in the damages hearing by failing to appear." Pet. App. 35. Thus, "[i]n light of Ahmed's own dilatory conduct that was itself frustrating the fairness of the proceeding," the court could not "conclude that the arbitrator's disentitlement order * * * implicated the fundamental fairness of the proceeding." Pet. App. 57.

The court alternately held that Ahmed failed to demonstrate prejudice as required by the vacatur exceptions. *Ibid.* "Nothing in the arbitration record indicates

what evidence, if any, Ahmed would have submitted had the fugitive disentitlement doctrine not been applied." Pet. App. 58. In fact, the court observed that the record made abundantly clear that the arbitrator *had*, in fact, considered Ahmed's many arguments. Pet. App. 34. The arbitrator rejected Ahmed's motion to dismiss and motion for summary judgment on the merits, for example. Pet. App. 197-198. The arbitrator limited punitive damage based on contributory negligence. Pet. App. 34. And the arbitrator considered and ruled on Ahmed's numerous motions and requests, even when they did not comply with his orders. *Ibid.* In the end, Ahmed's inability to offer arguments on damages stemmed from his refusal to attend the hearing. Pet. App. 58-59.

Finally, the court rejected Ahmed's argument that enforcement of the arbitral award would violate general public policy. Pet. App. 61-64. It explained that in considering this question, the court must assume the correctness of the arbitrator's interpretations and holdings and ask only whether enforcement of the resulting order would violate some policy external to the contract. Pet. App. 62. Ahmed invoked a general policy purportedly guaranteeing him an opportunity to know the evidence against him and present relevant evidence in his favor in an arbitration. Pet. App. 63. But the existence and immutability of that policy is contradicted by the existence of other AAA rules—incorporated in the parties' agreement by reference—which allow arbitrators to impose sanctions that impair parties' rights to present their cases in some circumstances. "Nothing indicates an intention to articulate a public policy that would allow courts to vacate an award when we presume that the arbitrator has

correctly interpreted the parties' agreement to authorize the relief ordered." Pet. App. 64.

3. In dissent, three Justices of the Connecticut Supreme Court argued that the AAA rules which the parties had incorporated into their contract precluded the application of the fugitive entitlement doctrine. Pet. App. 85-104. At bottom, the dissent would have held that Rule 47(a) of the AAA Rules, which authorizes the use of equitable remedies, does not authorize invocation of the doctrine. Pet. App. 93-95. The dissent would have held further that application of the doctrine prejudiced Ahmed (Pet. App. 104-120), replying on arguments that Ahmed himself never made (Pet. App. 38).

REASONS FOR DENYING THE PETITION

Certiorari should be denied. Ahmed's arguments are case-specific and do not implicate any issues of broad importance. He does not assert any division of authority on the questions presented and seeks only error correction. But not even that is warranted, given that the lower court held Ahmed's arguments were not properly preserved and that any error would, in any event, have been harmless. In all events, the tribunals below were all correct.

A. The questions presented are case-specific and unimportant

For starters, Ahmed makes no attempt to demonstrate a division of authority concerning any of the issues raised in his petition. There is none. As the Connecticut Supreme Court noted, no other court has addressed application of the fugitive disentitlement doctrine in arbitration under AAA Rule 47(a). Pet. App. 45.

1. The lack of a split in on these questions is unsurprising. On their own terms, they are not questions of general legal principles, but rather the meaning of various

independent contracts. "The FAA reflects the fundamental principle that arbitration is a matter of contract." *Rent-A-Center*, 561 U.S. at 67. Under basic principles of freedom to contract, "parties are generally free to structure their arbitration agreements as they see fit," including by "limit[ing] by contract the issues which they will arbitrate" and "specify[ing] by contract the rules under which the arbitration will be conducted." *Volt Information Sciences*, 489 U.S. at 479.

Once parties have done so, courts "must 'rigorously enforce' arbitration agreements according to their terms.'" *American Express Co.* v. *Italian Colors Restaurant*, 570 U.S. 228, 233 (2013). In each case, the question whether an arbitrator has "exceeded [his] power" in violation of FAA § 10(a)(4) reduces to whether or not the arbitrator rooted his order in the parties' contract. *Oxford*, 569 U.S. at 571-72.

The same is true for challenges under FAA § 10(a)(3), which requires a showing of *intentional* disregard for law in refusing to postpone a hearing, refusing to hear evidence, or in another way that prejudices a party. *See Wachovia Securities*, 671 F.3d at 480. Any inquiry into whether a procedural aberration occurred begins with consideration of what procedures the parties agreed to. A court faced with such a challenge must then undertake a fact-intensive analysis of the arbitrator's actions and the results (and hypothetical prejudices) to the parties.

The Connecticut Supreme Court's opinion below was thus expressly limited to "the parties' arbitration agreement, including the AAA rules incorporated into the agreement." Pet. App. 48. It framed the chief issues as whether the rules which the parties had selected authorized the relief the arbitrator ordered (Pet. App. 43) and

whether the arbitrator's decisions violated the parties' chosen procedures (Pet. App. 60-61). The dissent similarly spent nearly 20 pages analyzing the specific AAA rules at issue. Pet. App. 88-104, 105-107, 118. This Court's time would not be well spent reviewing the meaning of various contract terms like this.

Nor is there any doubt that parties *can* agree to submit claims to an arbitral forum that utilizes rule that a fugitive party forfeits some procedural protections, particularly when he fails to comply with the arbitrators' orders. As even the dissent below recognized, an arbitrator's access to punitive sanctions and equitable remedies is controlled by the arbitration agreement, and parties can opt to include or exclude those sanctions and remedies at their discretion. Pet. App. 91.

The dispute between the parties and between the majority and dissenting Justices below was one about the scope and nature of the rules the parties had chosen, not generally applicable principles of law. No further review would be appropriate.

2. Ahmed attempts to minimalize the absence of a split by pointing to other recent FAA cases. But this case is miles away from *Viking River Cruises* v. *Moriana*, 596 U.S. 639 (2022), in which the Court held a generally applicable California statute (invalidating a substantial category of arbitration agreements) preempted by the FAA. Nor is Ahmed's petition anything like *Kindred Nursing Centers Ltd.* v. *Clark*, 581 U.S. 246 (2017), or *Italian Colors*, 570 U.S. at 238-239, in which courts had invalidated broad swaths of bargained-for contracts. In those cases, courts fashioned doctrines to upset parties' expectations and agreements. In this case, the Connecticut Supreme

Court expressly declined to do so, leaving the agreement and arbitral award intact.

Instead, Ahmed's petition is a clear-cut plea for error correction. *See* Pet. 26 ("[T]he Court's review is warranted to correct a court's erroneous application of the FAA."). But "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

Further review would be especially inappropriate here because the facts of this case are likely never again to recur. The question here is, in essence, whether the AAA's rules incorporate the fugitive disentitlement doctrine among the equitable remedies which an arbitrator is entitled to order. Those rules are not statutes—they can be modified by the parties by contract, or by a third-party nongovernmental organization at any time. And their interpretation is at least largely the provenance of the AAA itself—courts have consistently held that deference is owed to the AAA's interpretations of its own rules. See, *e.g.*, *Appel Corp.* v. *Katz*, 217 Fed. Appx. 3, 4 (2d Cir. 2007); *Koch Oil, S.A.* v. *Transocean Gulf Oil Co.*, 751 F.2d 551, 554 (2d Cir. 1985); *Dockser* v. *Schwartzberg*, 433 F.3d 421, 424 (4th Cir. 2006). Indeed, the rules incorporated into the parties' contract themselves specify that "[t]he arbitrator shall interpret and apply [the] rules insofar as they relate to the arbitrator's powers and duties" and that "[a]ll other rules shall be interpreted and applied by the AAA." See American Arbitration Association, *Commercial Arbitration Rules and Mediation Procedures* R-8 (Oct. 1, 2013), perma.cc/RU5L-GKY8.

And fact patterns like the present one are "exceedingly unusual." Pet. App. 60. This case "arises under highly unusual, perhaps unprecedented, circumstances." Pet. App. 12. Ahmed is a notorious liar who fled the United States to avoid criminal justice. He has been adjudged as a fugitive by two separate federal district courts. And if that weren't unusual enough, the arbitration occurred at the height of a once-in-a-generation global pandemic, complicating judicial and arbitral proceedings and forcing all parties to adapt in unexpected ways. This Court's precedent would resolve only cases applying identical, party-selected contractual terms to a vanishingly rare set of facts. Simply put, this case is a unicorn, unlikely ever to be seen again.

B. This case would not be an appropriate vehicle for review of the questions presented even if they were worthy of review

Even if one-off error correction in a unique case were the stuff of certiorari review, there still would be several vehicle issues that stand in the way.

1. First and most obviously: *No* court, including the Connecticut Supreme Court below, has ever answered the first question presented. In fact, the majority below noted expressly that it did "not reach the question of whether the federally created doctrine of fugitive disentitlement applies to arbitration proceedings." Pet. App. 71. Nor did the court have "occasion to consider whether the facts of the present case justified the arbitrator's application of the fugitive disentitlement doctrine or the extent to which that doctrine was properly applied." Pet. App. 37. The only question before the Connecticut Supreme Court below was "whether the arbitrator drew the essence of the

equitable remedy from the underlying contract," which he plainly did. Pet. App. 46.

Given the narrowness of judicial review of arbitral awards, the courts below did not bless the fugitive disentitlement doctrine in some broad or abstract sense. Instead, they concluded only that "[t]he arbitrator did not disregard the contractual language and dispense his own brand of industrial justice," necessitating vacatur. Pet. App. 49 (quoting *United Food & Commercial Workers* v. *Illinois American Water Co.*, 569 F.3d 750, 755 (7th Cir. 2009)). In answering either question posed in the petition, then, this Court would be the first court anywhere to do so. But this Court is "a court of final review and not first view." *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012) (quoting *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 110 (2001) (per curiam)). Denial is warranted on that ground alone.

2. What's more, even a favorable resolution of the questions presented would make no difference for Ahmed in this case. The Connecticut Supreme Court held that Ahmed's claims fail for independent reasons. First, he did not demonstrate prejudice from the arbitrator's rulings. The arbitrator did *not* categorically bar Ahmed from participating in the July 21, 2020, hearing; instead, he moved the hearing to a virtual form where Ahmed could attend. Pet. App. 21. And, in fact, the evidence in the record shows that the arbitrator did consider all of the evidence and arguments that Ahmed actually submitted. Pet. App. 34. Second, Ahmed waived any arguments he may have had by failing to attend the hearing without justification. Pet. App. 31, 35. An opinion in this case thus would be advisory only.

C. The decision below is manifestly correct

Finally, Ahmed's arguments are wrong on the merits.

1. Ahmed devotes the first half of his argument to the contention that arbitrators *never* have the power to apply the fugitive disentitlement doctrine in arbitrations.

For one, this Court has suggested that absent express contractual limitations, arbitrators may award any relief that can be given by a court. *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995). This principle neatly disposes of the first question presented.

More fundamentally, Ahmed disregards the foundational principle that arbitrators derive their "powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution." *Stolt-Nielsen*, 559 U.S. at 682. To be sure, this Court has described the fugitive disentitlement doctrine as flowing from courts' "inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities." *Degen* v. *United States*, 517 U.S. 820, 823 (1996). And true enough, arbitrators draw their authority exclusively from the parties' agreement to arbitrate. *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 184 (2019). But rather than confirm Ahmed's argument, this distinction eviscerates it. There is no dispute that parties shape the universe of available remedies in arbitration through their arbitration agreements. *Misco*, 484 U.S. at 41. Thus, a contract for arbitration could say "The fugitive disentitlement doctrine shall apply to any arbitral proceedings." And that is, of course, what the arbitrator and courts below determined: AAA Rule R-47(a) allows an arbitrator to "grant any remedy or relief that the arbitrator deems just and equitable *and within the scope of the agreement of the parties*."

Thus, while an arbitrator "has no *general* charter to administer justice for a community which transcends the parties," nothing prevents the parties' from specifying particular forms of relief. *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960) (emphasis added). Ahmed focuses on whether arbitrators have *inherent* authority to employ the fugitive disentitlement doctrine, but he offers no reason why that authority could not result from the express agreement of the parties.

The Connecticut Supreme Court reasoned that Delaware law would recognize the fugitive disentitlement doctrine as among the equitable remedies the parties had incorporated into their own agreement. Pet. App. 43-45. And that conclusion assuredly was right. For his part, Ahmed fails to give any reason why that result is at all problematic. It is difficult to imagine the harm of allowing two parties to agree that, should either of them become a fugitive from justice and fail to comply with arbitral orders, that party will forfeit some of their procedural rights during a future arbitration.

2. Ahmed is also incorrect that the arbitrator's order below violated this Court's "limitations * * * set forth in *Degen*." Pet. 20. In that case, the Court curtailed courts' authority to employ "the harsh sanction of *absolute* disentitlement." 517 U.S. at 827 (emphasis added). But here, the arbitrator did not employ that remedy. In fact, the arbitrator dismissed Ahmed's motions on the merits (Pet. App. 197-198) and permitted Ahmed to attend and participate in the July hearing remotely or by representative (Pet. App. 21). He chose not to.

Ahmed makes little sense when he speculates that the arbitrator failed to address *Degen* because Ahmed's

fugitive status did not prejudice Oak. As the Connecticut Supreme Court explained, "[t]he arbitrator was not obligated to explain" his decision at all. Pet. App. 54. Thus, when an arbitrator is silent about his reasoning, courts must "confirm the award 'if any justification can be gleaned from the record.'" *Ibid.* (quoting *Kurke* v. *Oscar Gruss & Son, Inc.*, 454 F.3d 350, 354 (D.C. Cir. 2006)). And here, one need not search far for evidence of prejudice to Oak: Ahmed repeatedly used his absence to delay or dismiss the claims against him—in several instances arousing suspicion that he was baldly lying in his filings. The arbitrator acted well within the confines of *Degen* by entering the limited disentitlement order below.

And Ahmed is wrong that an erroneous application of the fugitive entitlement doctrine could justify vacatur in any event. There is no dispute that Ahmed is, in fact, a fugitive. His claim is thus at most a complaint that the arbitrator *misapplied* the fugitive disentitlement doctrine. But Ahmed cannot escape the narrow strictures of judicial review in this context "simply by labeling a claim of legal error as some other ground for vacating the award." Pet. App. 37; *Misco*, 484 U.S. at 38 ("Courts * * * do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts."). Ahmed's second question presented—which assumes the applicability of the fugitive disentitlement doctrine—thus would be doomed from the start.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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