No. 24-960

In the Supreme Court of the United States

COINMARKETCAP OPCO, LLC, ET AL., PETITIONERS

v.

RYAN COX

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

REPLY BRIEF FOR THE PETITIONERS

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Cox acknowledges a decades-long, growing conflict among the courts of appeals as to whether federal statutes with nationwide service provisions give rise to nationwide personal jurisdiction, even when the accompanying venue provision is not satisfied. He himself argued below that this dispute "cannot be properly resolved absent a ruling of the Supreme Court." Br. in Opp. to Pet. for Rehearing En Banc (9th Cir.), ECF Doc. 56, p. 7. This conflict has far-reaching consequences for defendants haled into judicial districts with which they have no contacts and where no act at issue occurred. The Ninth Circuit's position on the issue grants plaintiffs an unfettered choice of forums in which to litigate, abrogating defendants' right to invoke the protections afforded by the Due Process Clause and by Congress under the venue laws.

While it is unsurprising that Respondent Ryan Cox wishes to continue litigating in the District of Arizona—his place of residence—his arguments opposing the petition are unavailing. His opposition rests on the assertion that a case involving the Commodity Exchange Act is not a suitable vehicle to resolve the question presented, even though the provisions at issue are "virtually indistinguishable" from the same provisions in the antitrust and securities statutes. Pet. App. 14a. Indeed, the Ninth Circuit felt "bound" to interpret the provisions in the Commodity Exchange Act as it had previously interpreted the Clayton Act, Securities Act, and Securities Exchange Act. Pet App. 14a n.6.

Because this case involves both domestic and foreign defendants that contested personal jurisdiction and venue under a federal statute with

paired venue and nationwide service provisions, and because Cox otherwise cannot establish venue or personal jurisdiction over Petitioners in the District of Arizona, this case is an ideal vehicle for resolving the split among the circuits, which will only continue to deepen absent a ruling by this Court.

The petition for a writ of certiorari should be granted.

A. Cox Acknowledges That A Conflict Exists Among The Circuits

1. Cox concedes that a circuit split "has lasted for decades" regarding whether plaintiffs must satisfy the special venue provision of a statute before reaping the benefit of the corresponding nationwide service provision. Br. in Opp. 1. Nonetheless, he argues that "there is no urgency here to rule on this issue as it continues to percolate through the Circuits." Br. in Opp. 3, 8. His conclusion is not logical. Further delay will only perpetuate dissonance across the circuits and implicate the constitutional and statutory rights of more defendants.

2. Cox also mischaracterizes the schism as an even "3-to-3 split." Br. in Opp. 8-14. As discussed in the petition, the circuit split is 3-1-1. See Pet. 11-17. Only the Ninth Circuit permits plaintiffs to wield a nationwide service provision independent of its accompanying venue provision to establish personal jurisdiction and venue in all judicial districts irrespective of a foreign or domestic defendant's contacts with the forum. See *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1179–

1181 (9th Cir. 2004); *Go-Video, Inc. v. Akai Elec. Co.*, 885 F.2d 1406, 1416 (9th Cir. 1989). The Fifth Circuit has simply held that it "examines the defendant's contacts with the United States as a whole to determine whether the requirements of due process have been met" under the Clayton Act's nationwide service provision, without addressing the question presented. *Access Telecom, Inc. v. MCI Telecomms. Corp.*, 197 F.3d 694, 718 (5th Cir. 1999). And the Third Circuit has emphasized that, due to the "crucial" distinction between foreign and domestic defendants for purposes of venue, a plaintiff may establish personal jurisdiction and venue over a *foreign* defendant by supplementing a nationwide service provision with the General Venue Statute, 28 U.S.C. § 1391. *In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288, 296–297 & n.10 (3d Cir. 2004).

3. Even circuits that agree on a holding have failed to coalesce around an accepted analysis. As Cox acknowledges, the inquiry turns on the meaning of the phrase "in such action" as found in the nationwide service provision. Br. in Opp. 14. The D.C. and Second Circuits have concluded that "in such action" plainly refers to a properly-venued action. *GTE New Media Servs., Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000); *Daniel v. Am Bd. of Emergency Med.*, 428 F.3d 408, 423–425 (2d Cir. 2005). By contrast, the Third, Seventh, and Ninth Circuits have concluded that it is not clear whether "in such action" refers to an action brought under the Clayton Act generally or an action qualifying under the venue provision specifically. *In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d at 296 n.10; *KM Enters., Inc.*

v. Glob. Traffic Techs., Inc., 725 F.3d 718, 730 (7th Cir. 2013); *Go-Video*, 885 F.2d at 1408.

How these three circuits addressed the ambiguity also differs markedly. The Seventh Circuit relied primarily on the canons of surplusage and absurd results to conclude that a plaintiff must satisfy the Clayton Act's special venue provision to avail itself of the privilege of nationwide service of process. *KM Enters.*, 725 F.3d at 730. The Ninth Circuit, on the other hand, based its contrary holding on the historical relationship between specific and general venue provisions, legislative intent, and the weight of case law. *Go-Video*, 885 F.2d at 1413 (foreign defendants); accord *Action Embroidery*, 368 F.3d at 1177–1180 (domestic defendants). And the Third Circuit found such discussion persuasive, at least as applied to foreign defendants. *In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d at 297 & n.10.

Given the fractured holdings and reasoning across the circuits, this Court's intervention is urgently needed to clarify this "surprisingly complex question" of law. *KM Enters.*, 725 F.3d at 722.

B. This Case Is An Ideal Vehicle To Resolve The Confusion Among The Circuits

This case cleanly presents the legal question at issue, notwithstanding Cox's attempt to muddy the waters. Only in the Ninth Circuit can Cox establish personal jurisdiction and venue over domestic defendants, like Petitioners, that have no contacts with the forum and where no act at issue occurred. Pet. 22-23.

1. Cox principally contends that this case is a poor vehicle because it concerns the Commodity Exchange Act rather than the more "widely-litigated Clayton Act." See Br. in Opp. 3-8 (cleaned up). Cox is wrong on the facts and the law.

Plaintiffs file more actions annually under the commodities and securities laws than under the antitrust laws. From 2020 to 2024, for example, private plaintiffs brought approximately 1,510 actions each year under the commodities and securities law, and about 530 actions under the antitrust laws. See Administrative Office of the U.S. Courts, Federal Judicial Caseload Statistics, U.S. District Courts—Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit (Dec. 31, 2020) (Table C-2), (Dec. 31, 2021) (Table C-2), (Dec. 31, 2022) (Table C-2), (Dec. 31, 2023) (Table C-2), and (Dec. 31, 2024) (Table C-2), https://tinyurl.com/rmvxf8fu (last visited June 9, 2025).

In any event, the language and structure of the statutes' nationwide service provisions are "virtually indistinguishable." Pet. App. 14a; see also Pet. 6 n.1 (comparing provisions). Cox's identification of minor variations in the wording of venue provisions, Br. in Opp. 5-7, makes no difference here. Because the inquiry is whether a plaintiff must satisfy the requirements of a special venue provision (whatever the scope) *before* receiving the benefit of the accompanying nationwide service provision, any difference in the scope of the statutes' special venue provisions is irrelevant to the question presented. It is thus immaterial whether the Court resolves the

issue under the Commodity Exchange Act or the Clayton Act.

2. These statutes also share a common legislative history. Congress sought to place commodity futures plaintiffs on equal footing with securities plaintiffs, and Congress modeled the special venue and service provisions under the securities laws after the Clayton Act's provisions. Pet. 5-6. In turn, the Clayton Act's legislative history demonstrates that Congress intended to give full effect to the special venue clause by coupling it with a nationwide service provision—to avoid situations where a plaintiff is unable to effect service within the expanded venue. Pet. 18-19. Although Cox asserts that there are "potential differences" in Congressional policy, intent, and amendment histories, he does not identify a single difference. See Br. in Opp. 5, 7.

3. Cox's argument that this Court's review "would risk significantly more confusion than currently exists" is unfounded. Br. in Opp. 2, 7. The opposite is true. Because Congress ultimately modeled the Commodity Exchange Act's venue and service provisions after the Clayton Act's provisions, this Court's resolution of the enduring confusion is both possible and sorely needed. Moreover, this circuit split will only continue to deepen, as the prior-construction canon compels courts to interpret the near-identical language under the commodities, securities, and antitrust laws the same. See, *e.g.*, Pet. App. 14a n.6 ("We are, of course, bound by our precedents."); *Fire & Police Pension Ass'n of Colorado v. Bank of Montreal*, 368 F. Supp. 3d 681, 695 n.11 (S.D.N.Y. 2019) ("Th[e] logic applies in equal force to

the CEA's service provision as it contains the same operative language the Second Circuit relied on in *Daniels*."). This Court has repeatedly granted review where, as here, Congress has used the same language across multiple statutes. See, *e.g.*, *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 376–377, 386 (2016) (reviewing Section 27 of the Securities Exchange Act which contained language "materially indistinguishable" from Section 22 of the Natural Gas Act); *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 267–268 (1992) (reviewing RICO provisions that Congress "modeled" on, and used "the same words" as, Section 4 of the Clayton Act).

4. Cox attempts to downplay the exceptional importance of this issue, asserting cynically that there has not been "a flood of CEA cases seeking to forum shop." Br. in Opp. 13. Yet Cox himself seeks to forum shop here. No defendant in this action had contacts—minimum or otherwise—with the District of Arizona, where Cox resides. By mixing and matching the Act's nationwide service provision with the General Venue Statute, the Ninth Circuit allows plaintiffs to manufacture nationwide venue *and* nationwide personal jurisdiction over any defendant, in contravention of this Court's precedent. Pet. 19-20. In adopting the statutory language at issue, "Congress was not willing to give plaintiffs free rein to haul defendants hither and yon at their caprice." *United States v. Nat'l City Lines*, 334 U.S. 573, 588 (1948); see also *Leroy v. Great W. United Corp.*, 443 U.S. 173, 185 (1979) ("Congress did not intend to provide for venue at the residence of the plaintiff or to

give that party an unfettered choice among a host of different districts.").

5. Finally, Cox claims that "this case is not final" and asks the Court to defer review until the lower courts have addressed the merits. Br. in Opp. 8. That argument misconstrues the current posture and the constitutional significance of the question presented. The district court below, upon granting Petitioners' motion to dismiss, issued a final judgment, see ER 32, and the Ninth Circuit stayed the mandate pending this Court's determination of the petition. As a general rule, courts should address issues relating to personal jurisdiction before reaching the merits because a defendant that is not subject to the court's jurisdiction cannot be bound by its rulings. See *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430–431 (2007).

* * * * *

Cox argued below that this decades-old circuit split "cannot be properly resolved absent a ruling of the Supreme Court." Br. in Opp. to Pet. for Rehearing En Banc (9th Cir.), ECF Doc. 56, p. 7. He is right. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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