No._____

In the

Supreme Court of the United States

Sergei Vinkov,

Petitioner,

v.

Brotherhood Mutual Insurance Company

Respondent

APPLICATION TO ASSOCIATE
JUSTICE ELENA KAGAN
FOR EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
CALIFORNIA COURT OF APPEAL (CDA 4/2)

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QUESTIONS PRESENTED

(1) Whether the doctrine of preclusion overrides the equitable estoppel to enforce arbitration under the Federal Arbitration Act, 9 U.S.C. § 1 et seq.?

INTRODUCTION

Pursuant to *Sup. Ct. Rule 13.5* Sergei Vinkov ("Vinkov") submits his application to Associate Justice Hon. Elena Kagan for relief in the form of an extension of a 34-day extension period, up to and including Monday, September 15, 2025 (33rd day falls on Sunday), within which to file a petition for a writ of certiorari in this case. Petitioner estimated the current jurisdictional deadline pursuant to 28 USC § 1257 and § 1254(1) as Tuesday, August 12, 2025 prompted by the discretional denial of review on 05/14/2025 within California Supreme Court **(App. l).**

This application complies with Rules 13.5 and 30.2 as it is being filed 10 days or more before the petition is due.

In support of a good cause appearance, the Applicant alleges the following:

1. Additional time is necessary to conduct retrospective research on jurisprudence of this Court to articulate the reasons for interventions of the highest court into lower proceedings and develop the arguments in the light of new authorities on the related subject. Petitioner anticipates to ask this Court to exam whether the doctrine of preclusion overrides the

equitable estoppel to enforce arbitration under the Federal Arbitration Act, 9 U.S.C. § 1 et seq.

The four essential elements to decide if issue preclusion applies are: 1) the former judgment must be valid and final; 2) the same issue is being brought; 3) the issue is essential to the judgement; 4) the issue was actually litigated. Petitioner previously appeared before this Court to contest the validity of the declaratory judgment in favor of insurance company under the Establishment and Case and Controversy Clauses (22-1032). Those questions are still to be open and not settled by this Court and it appear those recurring issues should be properly to brief on the merits stage in the discussion of jurisdictional limits of collateral estoppel application to arbitration enforcement proceedings. Now, Petitioner relies on the federal constitutional mandate coming from the Supremacy Clause which does not allow to restrict his ability to enforce arbitration against Insurer on the ground of issues of preclusion. "It is unfair for a signatory to an ... agreement to avoid arbitration by suing nonsignatories for claims that are based on the same facts and are inherently inseparable from arbitrable claims deriving from the agreement."

Gonzalez v. Nowhere Beverly Hills LLC, No. B328959, 23 (Cal. Ct. App. Dec. 3, 2024).

A former Justice Chin, from California Supreme Court, dissenting decades ago, indicated that denial of enforcement of arbitration agreements according to their terms frustrates the public policy (*Broughton v. Cigna Health plans*, 21 Cal.4th 1066 (1999)). Moreover, "the denial of the parties' right to their agreed-upon decision maker is thus the sort of miscarriage of justice that requires reversal without further harmless error analysis." (*Sandquist v. Lebo Automotive, Inc.*, 1 Cal.5th 233, 261 (Cal. 2016)). State statutory language supports Petitioner's position because 153 years ago, the California Legislature declared, "For every wrong there is a remedy." (Cal. Civ. Code § 3523) and Cal. Civ. Code § 3517 provides: "[n]o one can take advantage of his own wrong."

It appears that intervention of this Court is needed to articulate properly reasons to combat judicial hostility to arbitration within California courts. "This Court often reminds other judges that if one of our precedents "has direct application in a case," they must follow it, even if they dislike it—"leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v.*

Shearson/American Express, Inc., 490 U. S. 477, 484 (1989)." (Kagan dissent, in *Trump v Wilcox* 605 U. S. ____ (2025), slip at 4). The Supremacy Clause, U.S. Const., art. VI, cl. 2, mandates that the FAA preempts state decisions hindering arbitration. *AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 341* (2011). The California Court of Appeal's use of issue preclusion to bar arbitration imposes a state-law barrier, violating the FAA. This Court has consistently held that arbitration clauses are severable from the underlying contract, and disputes over the contract's validity or scope do not preclude enforcement of the arbitration clause. See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04 (1967). The California Court of Appeal's opinion is riddled with logical fallacies, as raised in Petitioner's rehearing petition, which collectively undermine the denial of arbitration and conflict with the FAA's mandate to enforce severable arbitration clauses (*Buckeye*, 546 U.S. at 445).

2. The extension will give the Applicant time to finalize the review of the split of authorities of the highest courts of the states on the application of equitable power of the court to enforcement of arbitration. Currently, Petitioner observes that the

application of collateral estoppel to bar arbitration enforcement is a contentious issue, with divergent approaches among federal circuit courts and state high courts. The key question is whether a prior judicial determination on a contract's substantive provisions (e.g., insurance coverage) precludes enforcement of a severable arbitration clause under the FAA, particularly when the prior ruling did not address arbitrability.

a) **Ninth Circuit and California Courts (Restrictive Approach)**:

• In *Vinkov v. Brotherhood Mutual Insurance Company* (Cal. Ct. App. 2025, No. E082818, unpublished opinion), the California Court of Appeal applied issue preclusion to bar arbitration, holding that a federal court's ruling on insurance coverage (no duty to defend, see petition 22-1032) precluded enforcing the policy's arbitration clause. This aligns with the Ninth Circuit's tendency to allow collateral estoppel to limit arbitration when a prior ruling resolves a related issue, even if arbitrability was not litigated. See, e.g., *Wolf v. Langemeier*, 689 F. App'x 510 (9th Cir. 2017) (affirming preclusion of arbitration based on prior state court judgment on contract validity). It creates obscured outcomes. Application of issue of preclusion to the declaratory judgment improperly extends the declaratory

relief beyond of party's request in coverage dispute for the purposes of enforcement of arbitration on escalated controversy and breach of arbitration agreement itself, this practice is not aligned to the equity jurisdiction of the federal court and supervisory power of this court should be properly employed.

• This approach treats arbitration clauses as non-severable when a prior ruling negates the contract's substantive obligations, conflicting with the FAA's severability doctrine (*Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006)).

b) **Second Circuit and New York Courts (Liberal Approach)**:

• The Second Circuit and New York's high court emphasize the severability of arbitration clauses, limiting the application of collateral estoppel to arbitration enforcement. In *Nat'l Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129 (2d Cir. 1996), the Second Circuit held that a prior ruling on insurance coverage did not preclude arbitration of related disputes, as the arbitration clause was severable and arbitrability was not previously litigated. Similarly, New York's Court of Appeals in *Am. Ins. Co. v. Messinger*, 43 N.Y.2d 184 (1977), enforced arbitration

despite prior litigation on policy coverage, citing the FAA's policy favoring arbitration.

• This approach prioritizes the FAA's mandate to enforce arbitration agreements independently, unless the prior ruling specifically voids the arbitration clause.

c) **Illinois Supreme Court (Intermediate Approach)**:

• The Illinois Supreme Court in *Peregrine Fin. Grp., Inc. v. Martinez*, 305 Ill. App. 3d 571 (1999), adopted a nuanced stance, holding that collateral estoppel applies to arbitration enforcement only if the prior proceeding resolved the specific issue of arbitrability or if the arbitration clause's enforceability was directly litigated. If the prior ruling addressed unrelated contract provisions (e.g., coverage), arbitration remains enforceable, aligning partially with the Second Circuit but requiring clear evidence of prior adjudication on arbitrability.

• This creates a middle ground, allowing preclusion in narrow circumstances but preserving the FAA's severability principle.

3. The Applicant is a self-represented party without a legal degree, and English is not his first language. The Applicant solely conducts legal research and produces extensive writing. The

extension will accommodate his capabilities to provide the proper outcomes of his writing before the Justices of this Court.

4. The Applicant suffers from the conflict schedule between his family obligations and the workload under the high stakes litigations potentially able to settle nationwide open legal questions. Petitioner is anticipating to apply to law schools, and his recent LSAT preparation schedule is also overlapping the timeline of preparation of his petition.

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended by a 34-day extension period, up to and including Monday, September 15, 2025.

This application is resubmitted upon the receipt of the notice of deficiencies under Rule 13.5, dated May 28, 2025.

Respectfully submitted,

Sergei Vinkov
Pro Se
June 3, 2025

CERTIFICATE OF COMPLIANCE WITH RULE 33

I, Sergei Vinkov, the Applicant *Pro Se,* hereby certify that the foregoing application for extension does not exceed the 9,000 words limitations set in *Sup. Ct. Rule 33.*

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June 3, 2025