No. 24-1266

IN THE

Supreme Court of the United States

JUMP TRADING, LLC,

Petitioner,

v.

NICK PATTERSON, individually and on behalf of all others similarly situated, and MICHAEL TOBIAS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF FCA US LLC AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

FCA US LLC makes motor vehicles sold under the brand names Chrysler, Dodge, Jeep, Ram, FIAT, and Alfa Romeo. Retail dealerships sell and lease FCA vehicles to consumers under contracts that sometimes contain arbitration agreements. Those agreements often have delegation clauses requiring arbitration of gateway arbitrability disputes, such as disputes over whether the agreement covers a claim.

Because FCA is not a signatory to the contracts between dealerships and consumers, it has a strong interest in the law governing arbitration of disputes between signatories and nonsignatories of an arbitration agreement, including arbitration of gateway arbitrability disputes. FCA regularly litigates these issues and confronts the inefficiencies, confusion, and unpredictability that results from the 5-4 circuit split described in the petition.

SUMMARY OF ARGUMENT

The petition presents an opportunity for the Court to answer an important question that has fractured the courts of appeals. It is a question that frequently arises in litigation involving various industries and claims. And it is a question that has one answer under *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019), but a different answer under the decisions of at least four circuit courts.

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[1] Counsel for amicus curiae timely notified all parties of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than amicus curiae funded the preparation or submission of this brief.

The question is whether courts can interpret an arbitration agreement to determine for themselves whether it covers claims against a nonsignatory *even if* the agreement has a delegation clause requiring arbitration of all gateway arbitrability disputes.

That question arises in many contexts. Relying on doctrines like estoppel, agency, and alter ego, nonsignatories to arbitration agreements routinely seek to compel signatories to arbitration. For example, a company that uses a job-placement agency to find temporary workers might not directly contract with the workers and thus seek to enforce an arbitration agreement in a contract between the workers and the job-placement agency. *E.g.*, *Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279, 287 (4th Cir. 2023). A real-estate brokerage company that does not directly contract with consumers might seek to enforce an arbitration agreement in a contract between a realtor and a consumer. *E.g.*, *Burnett v. Nat'l Ass'n of Realtors*, 75 F.4th 975, 983 (8th Cir. 2023). Or an automaker that does not sell vehicles directly to consumers might seek to compel consumers to arbitration based on an arbitration agreement in the sales contracts between consumers and dealerships. *E.g.*, *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122 (2013).

When the signatory and nonsignatory disagree about whether the claims against the nonsignatory are arbitrable, who resolves that dispute? The answer under *Henry Schein* is an arbitrator. There, the Court unanimously explained that "a court *may not decide*" a gateway arbitrability dispute if the

arbitration agreement has a valid delegation clause requiring arbitration of threshold arbitrability disputes. 586 U.S. at 69 (emphasis added). Yet rather than follow that teaching, the Ninth Circuit below construed an arbitration agreement with a valid delegation clause, found that the agreement does not cover claims against a nonsignatory, and refused to compel arbitration of an arbitrability dispute between a signatory and a nonsignatory.

That decision exacerbates an entrenched and widely recognized circuit split. *See* Pet. 13-25. Today, the same delegation clause in the same arbitration agreement is arbitrable in five circuits but is not arbitrable in four circuits. So plaintiffs seeking to avoid arbitration can forum-shop—something that has huge implications for putative nationwide class actions. If class plaintiffs sue in a circuit that allows courts to resolve threshold arbitrability disputes despite a delegation clause, all members of the putative class might avoid arbitration even if they signed an agreement with a delegation clause requiring arbitration of arbitrability disputes.

The judicial disagreement over the question presented "greatly frustrate[s] any relative uniformity in the enforcement of arbitration agreements." *Boys Markets, Inc. v. Retail Clerks Union, Loc. 770*, 398 U.S. 235, 246 (1970). It also causes delays and inefficiencies, which are antithetical to the goals of arbitration. Today, before litigants make progress resolving the *merits* of a claim, they often spend months—or even years—fighting about *who* should decide a threshold

arbitrability dispute. These delays can even occur in courts where the law has been clear for years (like the Ninth Circuit) because litigants (like those here) preserve their competing positions in preparation for the day this Court intervenes, answers the question presented, and unifies the law. The Court should do that now.

ARGUMENT

I. The Question Presented Frequently Arises In Many Contexts.

A. Nonsignatories Often Seek To Enforce Arbitration Agreements Against Signatories.

This Court has "recognized that arbitration agreements may be enforced by nonsignatories through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel." *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 437 (2020) (quotation marks and citation omitted). These and other "traditional principles of state law" allow nonsignatories to enforce arbitration agreements against signatories. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (quotation marks and citation omitted). *See generally P.R. Fast Ferries LLC v. Seatran Marine, LLC*, 102 F.4th 538, 549 (1st Cir. 2024) ("Federal courts, including this court, have relied on equitable estoppel when requiring arbitration between a signatory and nonsignatory of an arbitration agreement." (citing cases) (quotation marks omitted)).

Under these doctrines, a nonsignatory can enforce an arbitration clause incorporated by reference into another contract to which the nonsignatory is a party. *E.g.*, *Imp. Exp. Steel Corp. v. Miss. Valley Barge Line Co.*, 351 F.2d 503, 506 (2d Cir. 1965). A nonsignatory insurance company can compel arbitration as a third-party beneficiary to a contract. *E.g.*, *Spear, Leeds & Kellogg v. Cent. Life Assurance Co.*, 85 F.3d 21, 28 (2d Cir. 1996). And a nonsignatory agent of a signatory can compel signatories to arbitration. *E.g.*, *Boston Telecomms. Grp., Inc. v. Deloitte Touche Tohmatsu*, 278 F. Supp. 2d 1041, 1048 (N.D. Cal. 2003), *aff'd*, 249 Fed. Appx. 534, 539 (9th Cir. 2007).

Many other examples exist. Relying on an arbitration agreement between a nurse and a staffing agency, a nonsignatory hospital can use equitable estoppel to compel arbitration of the nurse's wage-and-hour claims against the hospital. *See Franklin v. Cmty. Reg'l Med. Ctr.*, 998 F.3d 867, 876 (9th Cir. 2021); *see also Reeves v. Enter. Prods. Partners, LP*, 17 F.4th 1008, 1009 (10th Cir. 2021) (compelling arbitration of a welding inspector's claims against an energy company based on an arbitration agreement between the inspector and a staffing company). An airline can use equitable estoppel to compel a consumer to arbitrate breach-of-contract claims based on an arbitration agreement the consumer accepted when booking a flight on a third-party website. *See Herrera v. Cathay Pac. Airways Ltd.*, 94 F.4th 1083, 1092 (9th Cir. 2024). And a nonsignatory loan servicer can use equitable estoppel to compel a consumer to arbitration based on an agreement

between the consumer and the bank that originated the loan. *See Neal v. Navient Sols., LLC*, 978 F.3d 572, 578 (8th Cir. 2020); *see also Sherer v. Green Tree Servicing LLC*, 548 F.3d 379, 383 (5th Cir. 2008).

Nonsignatory defendants have also successfully invoked equitable estoppel to compel arbitration of disputes between licensors and sublicensees, *see, e.g.*, *PRM Energy Sys., Inc. v. Primenergy, L.L.C.*, 592 F.3d 830, 833-36 (8th Cir. 2010); between customers and contractors or subcontractors, *see, e.g.*, *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp.*, 659 F.2d 836, 837-39 (7th Cir. 1981); and between clients and their attorneys, accountants, or financial advisers, *see, e.g.*, *Carlisle*, 556 U.S. at 626-27.

The examples could continue, but the point is this: The question presented could arise anytime a nonsignatory to an arbitration agreement with a delegation clause tries to use traditional principles of state law to enforce the agreement against a signatory. And nonsignatories do that all the time.

B. The Question Presented Impacts Many Types Of Industries.

The question presented recurs frequently. *See, e.g.*, *Zirpoli v. Midland Funding, LLC*, 48 F.4th 136, 140 (3d Cir. 2022) ("We are once again confronted with the 'mind-bending issue' of arbitration about arbitration." (citation omitted)). One scholar has noted that arbitration of gateway arbitrability disputes "has become one of the most important and unsettled areas on the docket," with "more than two hundred decisions dealing with delegation clauses" in

2016 alone. David Horton, *Arbitration About Arbitration*, 70 Stan. L. Rev. 363, 370 (2018). Lower-court decisions "are a tangled mess," and "[t]he mist descends at the first step in the analysis, where courts disagree about how to tell whether a contract assigns gateway matters about the arbitration to the arbitrator." *Id.*

The cases involved in the 5-4 circuit split span many types of industries and claims. *See* Pet. 13-25. For example, the First Circuit's decision in *Apollo Computer, Inc. v. Berg*, 886 F.2d 469 (1st Cir. 1989), involved a contract dispute between a manufacturer and the assignees of a computer distributor, where the assignees sought to enforce a delegation clause in an arbitration agreement between the manufacturer and the distributor. *See id.* at 470. The Second Circuit's decision in *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205 (2d Cir. 2005), involved an indemnification dispute with underlying patent infringement claims against an electronics company that sought to enforce an arbitration agreement in a contract between a predecessor entity and another company. *See id.* at 207. The Sixth Circuit's decision in *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842 (6th Cir. 2020), involved an antitrust dispute against Domino's Pizza, which sought to enforce an arbitration agreement between a franchisee and an employee of the franchisee. *See id.* at 843. And the Eighth Circuit's decision in *Eckert/Wordell Architects, Inc. v. FJM Properties of Willmar, LLC*, 756 F.3d 1098 (8th Cir. 2014), involved a construction dispute where a nonsignatory corporation sought to

compel a signatory developer to arbitration. *See id.* at 1099.

The issue also often arises in lawsuits against automakers. Many states prohibit automakers from selling vehicles directly to consumers. *See, e.g.*, Cal. Veh. Code § 11713.3.[2] As a result, automakers are rarely in direct privity with consumers. To get the benefits of arbitration, then, automakers rely on estoppel and other doctrines to seek the benefits of arbitration agreements that consumers execute when buying or leasing a vehicle from a dealership. Indeed, the Ninth Circuit opinion that drove the decision below involved consumer-fraud claims against Toyota. *See Kramer*, 705 F.3d 1122.

Because of the circuit split, the ability of automakers to enforce arbitration agreements between consumers and dealerships depends on where a plaintiff files suit.

For instance, district courts in the Sixth Circuit routinely require consumers to arbitrate gateway arbitrability disputes with automakers when the underlying arbitration agreement between the consumer and dealership has a delegation clause. *See, e.g.*, *Fisher v. FCA US LLC*, 769 F. Supp. 3d 587, 603 (E.D. Mich. 2025) ("[I]t is for the arbitrator, not the Court, to decide whether [FCA], as a non-party to

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[2] Some states have enacted similar restrictions against winemakers. *See generally* Maureen K. Ohlhausen & Gregory P. Luib, *Moving Sideways: Post-*Granholm *Developments in Wine Direct Shipping and Their Implications for Competition*, 75 Antitrust L.J. 505 (2008).

the vehicle sales contracts, may enforce the Arbitration Provisions."); *Ross v. Nissan of N. Am., Inc.*, 728 F. Supp. 3d 841, 851 (M.D. Tenn. 2024) ("[A]n argument that a non-signatory lacks the ability to invoke the arbitration agreement . . . is one of enforceability of the arbitration agreement generally, and thus is delegated to the arbitrator under the delegation provision." (emphasis omitted)); *Kappes v. FCA US LLC*, 2024 WL 4339980, at *3 (E.D. Mich. Sept. 27, 2024) ("[T]he issue of whether FCA can enforce the plaintiffs' arbitration agreement is an issue for the arbitrator to decide."); *Bernardoni v. FCA US LLC*, 2024 WL 3103316, at *4 (E.D. Mich. June 20, 2024) (requiring arbitration of dispute over whether FCA could compel a consumer to arbitration because "the contract language unambiguously delegates to the arbitrator all threshold questions of arbitrability"); *Battle v. Gen. Motors, LLC*, 2024 WL 51025, at *3 (E.D. Mich. Jan. 4, 2024) ("[T]he gateway question of whether GM can compel Castaneda to arbitrate must be decided by an arbitrator."); *Harrison v. Gen. Motors LLC*, 651 F. Supp. 3d 878, 886 (E.D. Mich. 2023) ("[T]hat these named plaintiffs did not contract with GM does not bar the Court from delegating questions of arbitrability, including that very issue, to the arbitrator."); *Simpson v. Nissan of N. Am., Inc.*, 2023 WL 5120240, at *6 (M.D. Tenn. Aug. 9, 2023) (applying Sixth Circuit precedent to compel arbitration of threshold arbitrability dispute between consumer and Nissan); *Lyman v. Ford Motor Co.*, 2023 WL 2667736, at *4 (E.D. Mich. Mar. 28, 2023) ("[U]nder binding Sixth Circuit precedent . . . , where an arbitration agreement contains a clear

delegation clause, the arbitrator must determine issues of arbitrability—including any challenge to Ford's ability to enforce the arbitration agreement as a non-signatory."); *Cunningham v. Ford Motor Co.*, 2022 WL 2819115, at *4 (E.D. Mich. July 19, 2022) ("Because the Delegation Clause delegates questions of arbitrability to the arbitrator, it is for the arbitrator, not this Court, to decide whether Ford, as a non-party to the Sales Contracts, may compel Tri-State and Weiss to arbitrate their claims.").

Decisions from district courts in the Ninth Circuit regularly reach the opposite result. *See, e.g.*, *Young v. Hyundai Motor Am. Inc.*, 2024 WL 5154070, at *3 (C.D. Cal. Nov. 11, 2024), *appeal docketed* No. 24-7249 (9th Cir. Dec. 2, 2024) (concluding that "this Court will determine the gateway issue of arbitrability" despite a delegation clause); *Ralls v. BMW of N. Am., LLC*, 2023 WL 8192538, at *6 (C.D. Cal. Aug. 14, 2023) (reasoning that, under Ninth Circuit precedent, BMW cannot enforce an arbitration agreement between a dealership and a consumer); *Qi Ling Guan v. BMW of N. Am., LLC*, 2021 WL 148202, at *1 (N.D. Cal. Jan. 15, 2021) (refusing to compel arbitration of arbitrability dispute between BMW and consumer); *Jurosky v. BMW of N. Am., LLC*, 441 F. Supp. 3d 963, 967-68 (S.D. Cal. 2020) ("[T]he issue of whether the instant dispute is arbitrable given BMW's status as a nonsignatory need not be decided by an arbitrator."); *Messih v. Mercedes-Benz USA, LLC*, 2021 WL 2588977, at *7 (N.D. Cal. June 24, 2021) (rejecting argument of

Mercedes-Benz "that the question of whether it can compel arbitration must be answered by an arbitrator, not a court"); *Schulz v. BMW of N. Am., LLC*, 472 F. Supp. 3d 632, 638 (N.D. Cal. 2020) ("The Court may decide the question of arbitrability because BMW does not have the contractual right to enforce the delegation clause." (cleaned up)); *Kim v. BMW of N. Am., LLC*, 408 F. Supp. 3d 1155, 1158 (C.D. Cal. 2019) (concluding that whether BMW can enforce an arbitration agreement "is not a question for the arbitrator").

Indeed, FCA is currently challenging in the Ninth Circuit a district court's decision that a consumer's claims against FCA are not arbitrable even though the underlying arbitration agreement has a delegation clause requiring arbitration of gateway arbitrability disputes. *See Olson v. FCA US LLC*, No. 24-6527 (9th Cir.). The automaker in *Young* also has appealed that decision to the Ninth Circuit.

Automakers face the same differential treatment in other circuits. *Compare McCabe v. Ford Motor Co.*, __ F. Supp. 3d __, 2025 WL 951253, at *9 (D. Mass. Mar. 28, 2025) ("Courts in this district have consistently followed *Apollo* in finding that the standing of a non-signatory to enforce an arbitration agreement is an issue of arbitrability, and thus an issue properly delegated to an arbitrator when the contract contains a delegation clause."), *with O'Connor v. Ford Motor Co.*, 2023 WL 130522, at *6 (N.D. Ill. Jan. 9, 2023) ("[T]he issue of whether

Defendant has any right as a non-signatory to compel arbitration with Plaintiffs goes to contract formation and must be decided by the Court.").

Courts from different circuits have even reached different conclusions under the same language in a delegation clause. *Compare Kim*, 408 F. Supp. 3d at 1157-58 (construing delegation clause to hold that arbitrability dispute involving a nonsignatory "is not a question for the arbitrator"), *with Bossart v. Gen. Motors LLC*, 2022 WL 3573855, at *4 (E.D. Mich. Aug. 19, 2022) (holding that same language in delegation clause "clearly and unmistakably delegates questions of arbitrability to the arbitrator"), *and O'Connor v. BMW of N. Am., LLC*, 2020 WL 5260416, at *2-3 (D. Colo. July 23, 2020) (applying same language to conclude that arbitrability dispute "should be resolved by an arbitrator").

This judicial disagreement over the question presented makes a nonsignatory's ability to enforce a delegation clause "dependent . . . on the particular forum in which it is asserted." *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984). That disparity undermines the Arbitration Act's "goal of promoting a uniform, pro-arbitration federal policy." Tamar Meshel, *Closing the Enforcement Gap: Third-Party Discovery Under the FAA and the Federal Rules of Civil Procedure*, 70 U. Kan. L. Rev. 1, 6 (2021).

C. The Lack Of Clarity Surrounding The Question Presented Deprives Parties Of The Benefits Of Arbitration And Encourages Forum-Shopping.

The uncertainty surrounding the question presented injects additional costs and delays into litigation. Parties now must spend time litigating *who* must decide whether a claim is arbitrable rather than litigating or arbitrating *whether* the claim is arbitrable—and then litigating or arbitrating the merits of the claim. This extensive litigation over *who* decides nonsignatory questions frustrates a main goal of arbitration: to "secure a fair and expeditious resolution" of disputes. *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 85 (2002).

The uncertainty also undermines the goal of the Federal Arbitration Act. Congress passed that statute because, "in [its] judgment[,] arbitration had more to offer than courts [had to that point] recognized—not least the promise of quicker, more informal, and often cheaper resolutions for everyone involved." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505 (2018). The Arbitration Act reflects a "clear" congressional intent "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983); *see also Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 185 (2019) (noting arbitration offers "greater efficiency and speed" than litigation (quotation marks and citation omitted)).

These benefits apply not only to arbitrating the merits of disputes but also to arbitrating arbitrability

questions. The point of delegating those questions to an arbitrator via a delegation clause is to let an arbitrator decide them quickly and efficiently because litigating arbitrability disputes often requires significant time and resources.

This case is a good example. Respondents filed their lawsuit in June 2022, and yet the parties have not made any real progress resolving the merits because they have been tied up litigating *who* should decide whether the claims are arbitrable. And three years is fast compared to *Henry Schein*, where the parties spent nearly a decade litigating an arbitrability dispute. *Compare Henry Schein, Inc. v. Archer White Sales, Inc.*, 592 U.S. 168, 168 (2021) (dismissing second grant of certiorari as improvidently granted), *with* Complaint, *Archer & White Sales, Inc. v. Henry Schein, Inc.*, No. 2:12-cv-00572 (E.D. Tex. Aug. 31, 2012), ECF No. 1.

Uncertainty over who decides arbitrability disputes also forces parties and courts to devote time and resources to resolving gateway questions, delaying consideration of the merits. The "uncertain judicial interpretation," in turn, "creates incentives for wasteful game-playing by each party." Albert Choi & George Triantis, *Strategic Vagueness in Contract Design: The Case of Corporate Acquisitions*, 119 Yale L.J. 848, 882 (2010).

If left undisturbed, the circuit split also will continue to "encourage and reward forum shopping." *Southland*, 465 U.S. at 15. Plaintiffs who do not want to arbitrate have an incentive to seek relief in the Fourth, Fifth, Eighth, or Ninth Circuits, where

precedents often allow plaintiffs not only to litigate arbitrability disputes but also to avoid arbitration altogether.

Finally, the circuit split undermines the ability of defendants to manage disputes predictably. For example, FCA sells its vehicles in all circuits but is subject to different rules based on where a lawsuit is filed. In the Ninth Circuit, FCA must incur the additional time and expense associated with litigating arbitrability disputes in court—as in the *Olson* case now on appeal. *See supra* pp. 10-11. But in other circuits like the Sixth, arbitrability disputes are routinely sent to arbitration and resolved in a more efficient and less expensive arbitral forum. *See supra* pp. 8-10.

The Court should grant review to unify the law and eliminate these inefficiencies that for years have burdened parties and courts.

II. The Ninth Circuit Got It Wrong And Exacerbated A Circuit Split.

A. The Answer To The Question Presented Is Straightforward Under *Henry Schein*.

The Federal Arbitration Act "reverse[s] the longstanding judicial hostility to arbitration agreements." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). The statute reflects "a liberal federal policy favoring arbitration." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (quotation marks and citation omitted); *see also Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*,

473 U.S. 614, 631 (1985) (noting the "emphatic federal policy in favor of arbitral dispute resolution").

The statute "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217-18 (1985) (citations omitted). "The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of the arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone*, 460 U.S. at 15, 24-25.

The same rules apply when the issue for arbitration is not the *merits* of a claim but the gateway issue of *arbitrability*. *See Henry Schein*, 586 U.S. at 65, 68. As this Court unanimously explained in *Henry Schein*, if an arbitration agreement "delegates the arbitrability issue to an arbitrator, a court *may not decide* the arbitrability issue." *Id.* at 69 (emphasis added). The presence of such a delegation clause means "a court possesses *no power* to decide the arbitrability issue." *Id.* at 68 (emphasis added).

The analysis in this case is straightforward under *Henry Schein*. Because the valid arbitration agreement has a valid delegation clause requiring arbitration of "any" arbitrability dispute, App. 12a, the Ninth Circuit had "no power" to decide any gateway arbitrability dispute and should have sent the dispute to arbitration, "even if the court [thought] that the argument that the arbitration agreement applies to a particular dispute is wholly groundless"—or even "frivolous," *Henry Schein*, 586 U.S. at 68. The

Ninth Circuit below therefore erred in construing the agreement and deciding for itself whether the agreement covers the claims against petitioner.

Henry Schein made no exception to the rule that a delegation clause strips courts of their power to resolve threshold arbitrability disputes. So it does not matter whether the arbitrability dispute is between two signatories or between a signatory and a nonsignatory. All arbitrability disputes must go to arbitration, "even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless." *Henry Schein*, 586 U.S. at 68.

The Ninth Circuit concluded that this rule of *Henry Schein* does not apply when an arbitrability dispute involves a nonsignatory. App. 2a ("But *Henry Schein* did not involve nonsignatories."). By creating an exception to *Henry Schein*'s categorical rule and letting courts construe an arbitration agreement to decide whether claims against a nonsignatory are arbitrable, the Ninth Circuit wrongly gives courts the power to decide arbitrability disputes—power the delegation clause gives an arbitrator.

As Judge Thapar explained in *Blanton*, that outcome "doesn't make much sense" and renders the delegation clause "superfluous" when an arbitrability dispute involves a nonsignatory. 962 F.3d at 847 (requiring arbitration of dispute over whether nonsignatory can compel signatory to arbitration); *see also Swiger v. Rosette*, 989 F.3d 501, 507 (6th Cir. 2021) (reaffirming *Blanton* and reasoning that whether a nonsignatory can compel a signatory to

arbitration is a question of arbitrability that a delegation clause sends to arbitration).

The Arbitration Act requires courts to enforce delegation clauses just as it requires courts to enforce agreements to arbitrate the merits of a claim. *See, e.g.*, *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 70 (2010); *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943-44 (1995).

B. The Decision Below Deepens A Widely Recognized Circuit Split.

The petition correctly explains that the decision below conflicts with the decisions of most circuit courts that have considered the question presented. *See* Pet. 13-25.

On the one hand, the First, Second, Third, Sixth, and Tenth Circuits agree that whether a nonsignatory can enforce a delegation clause is an issue "[t]he arbitrator should decide." *Apollo*, 886 F.2d at 473-74; *see* Pet. 15-18. These circuits correctly recognize that the question is *not* whether the arbitration agreement covers claims against a nonsignatory; the question is "*who should decide*" whether the agreement covers the claims. *Blanton*, 962 F.3d at 852. A delegation clause makes clear that the decider must be an arbitrator.

On the other hand, the Fourth, Fifth, Eighth, and Ninth Circuits hold that "when an objection is properly raised that the party seeking to enforce an arbitration agreement is not itself a party to that agreement, *the district court* must determine . . . whether that party is entitled to enforce the

arbitration agreement." *Rogers*, 76 F.4th at 286; *see also* Pet. 19-22. These circuits conclude that "[i]t is up to us—not an arbitrator—to decide whether [a nonsignatory] can enforce [an] arbitration agreement" against a signatory. *Newman v. Plains All Am. Pipeline, L.P.*, 23 F.4th 393, 398-99 (5th Cir. 2022) ("*Newman I*").

After *Newman I*, an equally divided Fifth Circuit declined to take the case en banc, with eight judges voting for rehearing and eight judges voting against it. *Newman v. Plains All Am. Pipeline, L.P.*, 44 F.4th 251, 251 (5th Cir. 2022) ("*Newman II*"). Dissenting from the denial of rehearing en banc, Judge Edith Jones explained that *Newman I* put the Fifth Circuit "out-of-step" and in "conflict" with other circuits. *Id.* at 251, 254 (Jones, J., dissenting). She cited *Henry Schein* and other precedents from this Court to explain that *Newman I* had wrongly framed the threshold question as "whether a valid agreement exists *between these specific parties*," when a delegation clause means the first question for the court is "'*who should decide* whether the parties have to arbitrate.'" *Id.* at 253-54 (quoting *Blanton*, 962 F.3d at 852).

Although the Seventh Circuit has not squarely answered the question presented, its district courts have. Four years ago, the prevailing view in those courts was that "the question of whether a purported nonsignatory can enforce an arbitration agreement concerns a question of arbitrability and, thus, must be decided by the arbitrator." *Grabowski v. PlatePass, L.L.C.*, 2021 WL 1962379, at *4 (N.D. Ill. May 17,

2021). More recently, though, some district courts have reached the opposite conclusion based on *CCC Intelligent Solutions Inc. v. Tractable Inc.*, 36 F.4th 721 (7th Cir. 2022). *See Kim v. Jump Trading, LLC*, 2025 WL 1359136, at *5 (N.D. Ill. May 9, 2025) (collecting cases). Yet even after *CCC*, other district courts in the Seventh Circuit have continued to hold that arbitrators must resolve all threshold arbitrability disputes. *Id.* at *6 n.7 (collecting cases).

State courts are divided too. The Alabama Supreme Court agrees with the First, Second, Third, Sixth, and Tenth Circuits. It has concluded that when an arbitration agreement incorporates the Rules of the American Arbitration Association, which in turn sends arbitrability disputes to arbitration, "[t]he arbitrator, not the court, must decide" whether the agreement covers claims against a nonsignatory. *Anderton v. Practice-Monroeville, P.C.*, 164 So. 3d 1094, 1102 (Ala. 2014); *Carroll v. Castellanos*, 281 So. 3d 365, 371 (Ala. 2019) (same). *But see Jim Burke Automotive, Inc. v. McGrue*, 826 So. 2d 122, 131-32 (Ala. 2002) (embracing opposite view). But the supreme courts of Nevada and Arkansas have concluded that the issue "must be decided by the courts in the first instance." *RUAG Ammotec GmbH* v. *Archon Firearms, Inc.*, 538 P.3d 428, 433 (Nev. 2023); *see also Bigge Crane & Rigging Co.* v. *Entergy Arkansas, Inc.*, 457 S.W.3d 265, 270-71 (Ark. 2015).

The Court last touched on these issues in *Henry Schein*, and the answer to the question presented under that case seems clear. *See supra* Part II(A). But as the decision below demonstrates, lower courts

have hesitated or refused to follow the teachings of *Henry Schein* when an arbitrability dispute involves a nonsignatory.

The Court should grant review and confirm that there is no "nonsignatory exception" to *Henry Schein*'s rule that courts cannot resolve a threshold arbitrability dispute when an arbitration agreement has a delegation clause sending all such disputes to arbitration.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Dated: July 14, 2025

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