No. 24-1266

IN THE

Supreme Court of the United States

JUMP TRADING, LLC,

Petitioner,

v.

NICK PATTERSON, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Other Authorities

I. INTRODUCTION

Twice in the past two years, this Court has denied petitions for certiorari raising this very issue, contending that the Court's 2019 decision in *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019) requires that, whenever parties to a contract agree to an arbitration clause containing a delegation clause, a nonparty can necessarily invoke the parties' delegation clause and send the arbitrability question to an arbitrator.

Schein does not require that, and the circuit split that Jump claims must be resolved is no circuit split at all. Moreover, in order to compel arbitration in this case, Jump would need the Court to abandon decades of its own settled law and break with the binding case law of every circuit and establish a rule that, as the district court recognized below, would lead to absurd results at odds with basic contract law. This petition for certiorari should be denied.

II. STATEMENT OF THE CASE

A. Plaintiffs' Claims

UST is a type of cryptocurrency called a stablecoin designed to be worth exactly $1—"pegged" to the dollar.[1] (R.217-18, ¶62). The danger of a de-pegging is inherent to stablecoins. To avoid that danger, promoters and issuers often back stablecoins with cash reserves. Not so Terraform. Instead, Terraform claimed to investors that its algorithm would automatically re-peg UST to

1. "R._" refers to the record in the appellate proceeding below before the Ninth Circuit, Dkt. No. 14.3.

the dollar if ever it departed from its $1 value, releasing UST to investors if it went too high to depress the price, and burning UST to raise the price if it ever fell below $1. *Id.* Thus, by design, UST's stability depends on the algorithm's functioning, purportedly requiring neither cash reserves nor deliberate human intervention to preserve the peg. *Id.*; (R.250, ¶188).

In May 2021, UST de-pegged from the dollar, falling to $0.90. Terraform's algorithm failed to successfully re-peg UST to the dollar. To prevent the entire Terra Ecosystem's collapse, in exchange for compensation ultimately worth over $1.28 billion from Terraform, Defendant Jump engaged in a scheme or artifice to defraud UST investors, surreptitiously agreeing to purchase tens of millions of UST by burning or removing the tokens from the market and boosting its price back to $1. (R.250-51, ¶¶191-93). Following the re-peg, Terraform and Defendants both publicly touted the algorithm's success, claiming that it, and not human intervention, had re-pegged UST. (R.251-52, ¶¶196-99; R.263-65, ¶250). Plaintiffs and other investors poured billions of dollars of good money after bad into UST and the Terra Ecosystem. (R.253, ¶¶202-03).

In May 2022, once again, UST de-pegged from the dollar. As before, the algorithm failed to re-peg. But with no intervention from Jump, UST and the other Terra Tokens crashed, losing virtually all their value. (R.242, ¶¶158-60).

1. The Agreement

While Plaintiffs' claims all relate to their purchase of UST and other Terra Tokens, the arbitration clause at

issue here does not. Rather, the arbitration clause that Jump cites appears in the Anchor Protocol (or "Anchor") Terms of Service.

Anchor was one of many applications on the Terra blockchain that holders of Terra Tokens could access. Terraform claimed that Anchor was "a decentralized protocol on the Terra blockchain that allowed suppliers and borrowers of certain digital assets to participate in autonomous interest rate markets." (R.188). UST holders could deposit their UST into Anchor. In turn, others could borrow that UST, paying interest that Terraform touted would provide a steady and reliable return on deposited UST. (R.220-21, ¶¶70-71). Nothing required UST or other Terra Token purchasers to deposit their tokens in Anchor. *See id.* Nor was UST for sale within Anchor. *See id.* That is, *all* UST purchases occurred outside of Anchor.

To deposit UST into Anchor, Plaintiffs clicked their acceptance to the Anchor Terms of Service ("TOS"), a contract of adhesion between them and Terraform, and only Terraform, governing the "Interface[,] . . . a web application which merely provides a non-exclusive, partial user interface to [Anchor]." (R.188).

The arbitration clause provides, in full:

> We will use our best efforts to resolve any potential disputes through informal, good faith negotiations. If a potential dispute arises, you must contact us by sending an email to legal@anchorprotocol.com so that we can attempt to resolve it without resorting to formal dispute resolution. *If we aren't able to reach an*

> *informal resolution within sixty days of your email, then you and we both agree to resolve the potential dispute according to the process set forth below.*
>
> Any claim or controversy arising out of or relating to the Interface, this Agreement, including any question regarding this Agreement's existence, validity or termination, or any other acts or omissions for which you may contend that we are liable, including (but not limited to) any claim or controversy as to arbitrability ("Dispute"), shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules").

(R.194).

Jump is not a signatory to the TOS. The TOS refers to Terraform, and only Terraform, as "we," "our," or "us" and users who, like Plaintiffs, accessed the Interface as "You." *Id.* The TOS distinguishes "we," Terraform, from any affiliates of Terraform. For example, in limiting damages to which the Interface might subject Terraform (*e.g.*, no punitive damages), the TOS includes employees, contractors, agents, and affiliates, among others. (R.194).[2] Thus, by its express terms the TOS does not extend to Jump in any way whatsoever. (R.188-96).

2. Jump was not and has never claimed to be a contractor, agent, affiliate or subsidiary of Terraform, or that the TOS intends it to be a third-party beneficiary of its terms.

Plaintiffs do not allege wrongdoing in connection with the TOS or related to Anchor in any way. *See, e.g.*, (R.213, ¶56; R.215-16, ¶60). Instead, Plaintiffs allege that, in violation of SEC Rule 10b-5(a) and (c), Jump knowingly or recklessly participated in a fraudulent scheme to re-peg UST to the dollar in the wake of the algorithm's failure. (R.108-109, ¶¶296-304); *see also* (R.269-71, ¶¶266-74). Jump's alleged actions had nothing whatsoever to do with whether all, some, or no investors deposited their UST in Anchor. That is, Plaintiffs would have the *exact same* claims against Jump regardless of whether they deposited their Terra Tokens into Anchor and executed the TOS.

The TOS titles the clause at issue "Dispute Resolution," (R.194-95), requiring that before employing formal processes, Interface users must seek informal resolution of potential disputes with Terraform. On its face and read in its entirety, the Dispute Resolution clause limits its applicability to the user and Terraform. It states, "if" "you" (user) and "we" (Terraform) cannot resolve a dispute informally "then," the TOS continues, "*you and we* both agree to resolve the potential dispute according to the process below."[3] *Id.* The TOS only mentions arbitration after this first paragraph explaining the types of disputes *the parties*—you and we—agreed to arbitrate. *Id.*

The Dispute Resolution clause's second paragraph contains the process the first paragraph mentions. It requires that the user and Terraform arbitrate "[a]ny claim or controversy arising out of or relating to the Interface, this Agreement, including any question regarding this Agreement's existence, validity or termination, or any

3. Emphases are added, unless indicated otherwise.

other acts or omissions for which *you* may contend that *we* are liable." *Id.* Among these arbitrable claims, the second paragraph includes "any claim or controversy as to arbitrability," a so-called delegation clause. *Id.*

B. The Decisions Below

The district court found that the language of the full dispute resolution clause here was "legally indistinguishable" from that of the arbitration clause in *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122 (9th Cir. 2013), a case where the Ninth Circuit denied a motion to compel arbitration.

The district court rejected the argument that this Court's *Schein*, 586 U.S. at 63 overruled *Kramer*, finding that *Schein* prohibited courts only from interposing an extratextual exception to delegation clauses when the argument for arbitrability was "wholly groundless." (App. 25a-27a). The district court explained that, while *Schein's* core reasoning is that courts must honor the intention of contracting parties on the question of arbitrability, "Jump's interpretation of *[Schein]* would lead to consequences that would almost certainly fall well outside the understandings or expectations of *the parties* who agree to such provisions, producing an outcome contrary to basic principles of contract law." (App. 27a). Because, among other things, the language of the arbitration clause in this case limited its scope to disputes between Terraform and the user, the district court held that there was no "clear and unmistakable evidence" that the TOS "includes an agreement to arbitrate the question of whether a third-party nonsignatory to the agreement like Jump is entitled to enforce the agreement." (App. 23a-24a).

The Ninth Circuit panel affirmed the district court in a brief, unpublished memorandum after finding the case suitable for decision without oral argument. (App. 1a-4a). Like the district court, the Ninth Circuit rejected Jump's argument that *Schein* overruled *Kramer*, writing: "But *Henry Schein* did not involve nonsignatories, and did nothing to mandate delegation when the contract does not require it by 'clear and unmistakable' evidence.'" (App. 2a-3a) (citing *Schein*, 586 U.S. at 69 (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995))). Defendant then sought en banc review by the Ninth Circuit, but that too was denied. (App. 52a).

III. REASONS FOR DENYING THE CERTIORARI PETITION

A. Petitions for Certiorari on this Same Issue Have Recently and Repeatedly Been Denied

1. *Tug Hill* (Fourth Circuit)

Most recently, in *Tug Hill*, the Court rejected a certiorari petition making effectively the same argument as here. *See Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279 (4th Cir. 2023), *cert. denied*, 2024 WL 674823 (U.S. Feb. 20, 2024). In a Fair Labor Standards Act case against a gas company for whom plaintiff worked as an independent contractor, plaintiff had contractually agreed to arbitrate all claims relevant to his agreement with the parent company. *Id.* at 282-84. The gas company that employed him, however, was not a party to that agreement. *Id.* at 282.

The parent moved to intervene, and the gas company moved to dismiss the action and compel arbitration based

on the agreement between the plaintiff and parent. *Id.* at 284. The district court granted both motions—allowing parent to intervene and compelling arbitration. *Id.* at 284-85. The district court held that the gas company's non-signatory status was irrelevant because the contract's delegation clause assigned all questions regarding arbitrability to an arbitrator. *Id.* at 425. It alternatively concluded that the gas company was permitted to enforce the contract as a third-party beneficiary. *Id.* at 427.

Reversing, the Fourth Circuit concluded that the district court erroneously granted the motion to compel without first evaluating whether the gas company was entitled to enforce the agreement. *Id.* at 288. In doing so, the court recognized that because "arbitration obligations are grounded in contract law," they are "as enforceable as other contracts, but not more so." *Id.* at 286 (citations omitted). As such, a litigant who was not party to an arbitration agreement may only compel arbitration pursuant to the agreement and the Federal Arbitration Act "if the relevant state contract law allows him to enforce the agreement." *Id.* at 287 (citation and emphasis omitted). Thus, "as a precondition to granting [the gas company] the right to enforce any portion of an arbitration clause to which it was not a party," the district court was required to determine whether the relevant state contract law allowed the gas company to enforce the underlying agreement. *Id.* at 288.

On December 15, 2023, Tug Hill Operating, LLC petitioned this Court for certiorari putting forth the arguments that Petitioner does here, including that review was necessary to resolve a split among circuits on the question of, where an agreement delegates to the

arbitrator the power to decide gateway questions about the interpretation of the agreement, may a court nonetheless interpret the agreement to decide for itself whether the agreement applies to non-signatories. On February 20, 2024, the Court denied Tug Hill's petition. No change in law in any circuit has occurred since the Court rejected Tug Hill's certiorari petition. Thus, the Court's rejecting certiorari in *Tug Hill* counsels rejection in this case.

2. *HomeServices* (Eighth Circuit)

Similarly, in 2024, the Court rejected a certiorari petition in *Burnett v. Nat'l Ass'n of Realtors*, 75 F.4th 975 (8th Cir. 2023), *cert. denied sub nom. HomeServices of Am., Inc. v. Burnett*, 144 S. Ct. 1347 (2024). In *Burnett*, a group of home sellers brought a putative class action against a national real estate broker franchisor, alleging that the franchisor's rules placed anticompetitive restraints on the market. *Id.* Importantly, neither the named plaintiffs nor any purported class member had any contract or direct relationship with the franchisor relevant to the claims asserted. The listing agreements and the included arbitration provisions did not name the franchisor as a party or a third-party beneficiary, and the term "parties" was defined as either of the brokers named therein and the sellers who signed the agreements. *Id.* Accordingly, the Eighth Circuit found that the franchisor was neither a "party" nor a "third-party beneficiary" to the home sellers' listing agreements with non-party brokers and therefore could not invoke the arbitration provision contained in the agreements. *Id.* at 982-84.

Burnett relied on this Court's precedents that courts should not conclude that parties intended to delegate

arbitrability questions without clear and unmistakable evidence. Notably, *Burnett* distinguished and rejected the application of the Eighth Circuit case that Petitioner cites here: *Eckert/Wordell Architects, Inc. v. FJM Props. of Willmar, LLC*, 756 F.3d 1098 (8th Cir. 2014), because *Burnett* (like this case) did not involve a delegation provision broadly encompassing any dispute related to the contract, "regardless of whether the dispute was between the parties to the contract." *Burnett*, 75 F.4th at 983, n.5.

On April 15, 2024, this Court rejected the unopposed petition for certiorari in *Burnett*. The petitioner in *Burnett* asserted very similar arguments as in *Tug Hill* and Jump here, including that review was necessary to resolve a split among circuits. Again, no change in law in any circuit has occurred since the Court rejected the petition in *Burnett*. Thus, the Court's rejecting certiorari in *Burnett* and *Tug Hill*—both several years after this Court decided *Schein*—counsels rejection in this case as well.

B. There Is No Split Among Circuits on the Law Regarding Enforcement of Arbitration Agreement Delegation Clauses By Non-Signatories

As described *infra*, the Ninth Circuit's decision is entirely consistent with the well-settled precedent of this Court and of the other circuit courts regarding non-signatories attempting to enforce delegation clauses in arbitration agreements. Among other things, Petitioner argues that this Court must resolve a circuit split, an argument that this Court has twice declined in cases of non-signatories attempting to enforce delegation

clauses. The circuit split Petitioner conjures is no split at all. The law is consistent. Rather, the unique facts and circumstances of each case drove the results in the cases Petitioner cites.

Petitioner urges two conflicting views: an arbitrator must decide the arbitrability of claims where there is a delegation clause *or* courts must always determine arbitrability regardless. However, a review of Petitioners' cases and others reveals that there is only one common consideration on the delegation issue: whether the parties *did* or *did not* agree to delegate the determination of arbitrability in their dispute.

This Court's precedent is well-settled. "A court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that* dispute." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010) (citation modified, emphasis in original). The question whether parties have agreed to submit to arbitration a particular dispute is typically an issue for *judicial* interpretation by the same logic that disputes over contract formation are generally decisions for the courts. *Id.* at 296 (quotations and citations omitted). It is likewise true that the question whether parties formed an agreement to delegate gateway questions to arbitration, such as arbitrability, is one for the court. *First Options*, 514 U.S. at 944 (quotations and citations omitted). The key finding is that the evidence of such an agreement to delegate must be *clear and unmistakable. Id.*

In affirming the district court's order denying Jump's motion to compel arbitration, the court of appeals closely followed the Court's precedent:

> The agreement at issue here *does not clearly and unmistakably* delegate the arbitrability question to an arbitrator. Instead, the arbitration agreement delegates to an arbitrator the resolution of "[a]ny claim or controversy arising out of the Interface, this Agreement . . . or any other acts or omissions for which you may contend that we are liable, including (but not limited to) any claim or controversy as to arbitrability." The arbitration agreement defines "you" as the "user of the interface" and "we" as "Terraform Labs PTE, Ltd." There is no mention of any third party or nonsignatory in the arbitration agreement. So a court retains authority to decide the arbitrability question as to Plaintiffs' claims against Jump, a third party. The district court did not err by deciding the question.

(App. 3a) (internal citation omitted, alterations in original). This finding is both a correct application to the facts of the case and legally correct under *Granite Rock* and *First Options*.

Dissatisfied with this outcome below, Petitioner conjures a split where none exists. (Pet. 13-25). While the cases Petitioner cites reach different conclusions, varying results do not a circuit split make. Rather, variations in facts drove the courts' rulings. All circuits recognize and apply the framework this Court established. Courts enforce the intent of the parties based on examination of the facts at issue, including among other things, the language of the contracts, the non-signatory's relationship, and the specific nature of the dispute for which the non-

signatory seeks to compel arbitration. The decisions of the several circuits Petitioner cites are instead in accord.

1. First Circuit

Petitioner misstates the holding of *Apollo Comput., Inc. v. Berg*, 886 F.2d 469 (1st Cir. 1989), stating, the "First Circuit has long held that courts cannot resolve disputes over whether a nonsignatory can compel arbitration where a delegation clause requires arbitration of 'issues of arbitrability.'" (Pet. 18). Not so. The First Circuit found for a non-signatory because the counter-signatory, itself, had assigned its rights to the non-signatory. The legal force of that assignment of rights enabled the non-signatory legally to stand in the place of the signatory. The First Circuit established no blanket rule on non-signatories enforcing delegation clauses whatsoever.

Preliminarily, the First Circuit decided *Berg* prior to *Granite Rock* and other precedent dictating that formation questions are for the court. Nevertheless, because of the facts—assignment of contract rights from signatory to non-signatory—*Schein* applies: by force of law, the non-signatory became the signatory. No such assignment exists in this case. In *Berg*, the court ruled that a delegation clause governed (*i.e.*, it found the parties had agreed to delegate threshold matters to arbitration) because (a) the non-signatory defendants claimed the contractual arbitration right was validly assigned to them and (b) the delegation clause itself explicitly required only a "prima facie [showing of the] existence of such an agreement [to arbitrate]." 886 F.2d at 473.

As the First Circuit recently confirmed, *Berg* stands only for the proposition that where a signatory assigns its

contract right, including the right to compel arbitration, to a non-signatory, the non-signatory may compel arbitration pursuant to the contract's terms. *Morales-Posada v. Cultural Care, Inc.*, 2025 WL 1703513, at *5-*6 (1st Cir. June 18, 2025). Indeed, the First Circuit expressed that it "*did not hold* in *Berg*, however, that a party to a lawsuit may force its opponent to arbitrate threshold issues regarding the arbitrability of their dispute so long as that party's opponent is a signatory to some arbitration agreement containing a delegation provision." *Id.* at *6. A rule of universality is absurd. As such, *Berg* is inapplicable, supporting no circuit split as Petitioner advances.

2. Second Circuit

Contec Corp. v. Remote Sol., Co., 398 F.3d 205, 210 (2d Cir. 2005), Pet. 18, is "virtually indistinguishable" from *Berg*. In essence, notwithstanding a change to one signatory's corporate form, the dispute in *Contec* "arose because the parties apparently continued to conduct themselves as subject to the 1999 Agreement regardless of change in corporate form." 398 F.3d at 209. The Second Circuit compelled arbitration of arbitrability based on the supposed non-signatory's intent to delegate. Like the First Circuit in *Berg*, the Second Circuit expressly rejected a rule of universality, finding "that just because a signatory has agreed to arbitrate issues of arbitrability with another party does not mean that it must arbitrate with any non-signatory." *Id.* at 209. Rather, "to decide whether arbitration of arbitrability is appropriate, a court must first determine whether the parties have a sufficient relationship to each other and to the rights created under the agreement." *Id.* (citing *First Options*, 514 U.S. at 944-45). Thus, the circuit court found arbitration appropriate

only after it decided "a sufficient relationship exist[ed] between the parties" to permit the non-signatory to compel arbitration of the gateway issues. *Id.* at 209-11. *Contec* is inapplicable here, supporting no circuit split.

3. Third Circuit

Zirpoli v. Midland Funding, LLC, 48 F.4th 136 (3d Cir. 2022) is substantially similar to *Berg* with the same outcome. The party seeking to avoid arbitration of arbitrability did not dispute that he signed an agreement in which he agreed to arbitrate claims not only with his counterparty but also with that counterparty's "past, present or future respective . . . assignees." *Zirpoli*, 48 F.4th 136 at 142-43 (citation omitted, alteration in original). Like the First and Second Circuits, finding that a signatory had assigned its interests to a non-signatory and the contract required arbitration of arbitrability, the Third Circuit compelled arbitration of threshold issues. *Id.* Aligning with *Berg* and *Contec*, *Zirpoli* evinces circuit conformity—not a circuit split.

4. Fourth Circuit

The Fourth Circuit decided *Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279 (4th Cir. 2023), *cert. denied*, 2024 WL 674823 (U.S. Feb. 20, 2024) on the same principles. In *Tug Hill*, the Fourth Circuit reversed a district court, concluding that the district court erroneously granted a motion to compel without first evaluating whether the non-signatory was entitled to enforce the agreement. 76 F.4th at 288. Rejecting a rule of universality, like the First, Second, and Third Circuits, the court expressed that because "arbitration obligations are grounded in contract

law," they are "as enforceable as other contracts, but not more so." *Id.* at 286 (citations omitted). As such, a litigant who was not party to an arbitration agreement may only compel arbitration pursuant to the agreement and the Federal Arbitration Act "if the relevant state contract law allows him to enforce the agreement." *Id.* at 287 (citation and emphasis omitted). *Tug Hill* creates no circuit split.

5. Fifth Circuit

Like the First through Fourth Circuits, in *Newman v. Plains All Am. Pipeline, L.P.*, 23 F.4th 393 (5th Cir. 2022), the Fifth Circuit held that whether a non-signatory was entitled to compel arbitration was a question for the court, and not an arbitrator, as it was a "first-step, formation question" even in the presence of a delegation clause. *Id.* at 399-408 ("Where, as here, the parties dispute whether an enforceable arbitration agreement exists between them, it takes a court to decide. . . . [a]pplying Texas contract law and equitable doctrines to this case compels one conclusion . . .").

The Fifth Circuit contrasted its decision in *Newman* with *Brittania-U Nig., Ltd. v. Chevron USA, Inc.*, 866 F.3d 709 (5th Cir. 2017), where it ruled that a non-signatory could enforce a delegation clause based on its agency relationship with the signatories. *Newman*, 23 F.4th at 400. Distinguishing *Brittania-U*, finding no similar agreement with the non-signatory nor any agency relationship, the *Newman* court held that the gateway question was for the court, affirming the district court's refusal to compel arbitration. *Id. Newman* illustrates the fact-bound analyses engaged by the courts in these cases. Indeed, the Fifth Circuit noted in *Newman* that

Brittania-U relied on the Second Circuit's opinion in *Contec*, which Petitioner claims resides on the other side of the Fifth Circuit in the purported split. (Pet. 18). Nothing in *Newman* splits the Fifth Circuit from the first four.

6. Sixth Circuit

Petitioner cites three Sixth Circuit cases, none of which turned on the application of law. Rather, in each, the signatory seeking to avoid delegation failed, as a threshold matter, to challenge the delegation clause at issue. In *Swiger v. Rosette*, 989 F.3d 501 (6th Cir. 2021), the court compelled arbitration of arbitrability because "[o]nly a specific challenge to a delegation clause brings arbitrability issues back within the court's province." *Id.* at 505. In *Swiger*, in dictum, the Sixth Circuit agreed with the first five, observing that a delegation clause requires "clear and unmistakable" evidence that the parties agreed to have an arbitrator decide arbitrability. *Id.* But a party's "failure to specifically challenge the delegation clause prevents [the court] from reaching the issues addressed in those cases, where the plaintiffs challenged their delegation clauses." *Id.* at 507 (noting that "several circuits have found similar arbitration agreements unenforceable").

Likewise, in *Becker v. Delek US Energy, Inc.*, 39 F.4th 351 (6th Cir. 2022), the Sixth Circuit concluded that the failure to challenge a delegation clause specifically was dispositive and required a finding that the delegation provision was valid and thus, that the issue of enforceability of the arbitration agreement was for an arbitrator to decide. *Id.* at 356.

Similarly, in *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842 (6th Cir. 2020), seeking to avoid arbitration, the plaintiff did not challenge the existence of the arbitration agreement or whether Domino's had any right to enforce the delegation clause. *Id.* at 845. Domino's moved to compel arbitration based on the arbitration provision in the agreement between the plaintiff and a franchise. The plaintiff opposed the motion on the basis that Domino's was not a party to the agreement. Affirming the district court's compelling arbitration, the Sixth Circuit found that the question whether the arbitration agreement covered the plaintiff's claims against Domino's, a non-signatory, was one going to "arbitrability." The arbitration clause in question, it further found, adopted the American Arbitration Association's Rules ("AAA Rules"). As such, the parties "clearly and unmistakably [agreed to] arbitrate arbitrability." *Id.* at 845 (citation modified); *see id.* at 846 (holding that "the incorporation of the AAA Rules (or similarly worded arbitral rules) provides clear and unmistakable evidence that the parties agreed to arbitrate arbitrability") (citation modified).

In affirming the district court, the Sixth Circuit expressly reserved the antecedent question whether Domino's, as a non-signatory, had a right to enforce the delegation provision, noting that the parties raised only whether the contract compelled arbitrability. They did not raise—and the Court did not rule on—the "antecedent question here—namely, whether Domino's has any right to enforce the specific provision of the agreement in which [the plaintiff] purportedly agreed to arbitrate 'arbitrability' . . . Because that is a distinct question that is not before us, we express no views on it." *Id.* at 845, n.1 (citation modified).

In short, no case in the Sixth Circuit creates a split between it and the first five circuits.

7. Eighth Circuit

Conjuring conflict where none exists, Petitioner asserts that an "apparent intra-circuit split" exists in the Eighth Circuit. Pet. 22. Not so. In *Eckert/Wordell Architects*, 756 F.3d at 1098, the Eighth Circuit affirmed the district court's ruling, rejecting a signatory's attempt to stop ongoing pre-trial arbitration proceedings (commenced almost three years prior) based on a late assertion that the claimant in arbitration was a different corporate party than the party who signed the arbitration clause. In two paragraphs, the Eighth Circuit ruled that under the AAA rules, the parties had agreed to delegate this dispute over arbitrability to the arbitrator. *Id.* at 1100. The substance of the court's entire opinion consists of two paragraphs, failing to reach the question of a non-signatory's compelling a signatory to arbitrate arbitrability.

Subsequent decisions from the Eighth Circuit are clear that circuit law requires a judicial determination of whether a non-signatory is entitled to compel arbitration even when a delegation clause is alleged to govern. *Burnett*, 75 F.4th at 983 ("As the district court concluded, [distinguishing Eckert,] this narrow, party-specific language . . . does not clearly and unmistakably delegate to an arbitrator threshold issues of arbitrability between nonparties) (citation modified, ellipses in original). The Eight Circuit's precedents create no circuit split.

8. Ninth Circuit

In *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128 (9th Cir. 2013), Pet. 21, the court found that "the parties to this litigation did not agree to arbitrate arbitrability" because under the language of the contract, "Plaintiffs only agreed to arbitrate arbitrability—or any other dispute—with the [contract signatories]." The *Kramer* court observed:

> Here, the arbitration agreements do not contain clear and unmistakable evidence that Plaintiffs and Toyota agreed to arbitrate arbitrability. While Plaintiffs may have agreed to arbitrate arbitrability in a dispute with the Dealerships, the terms of the arbitration clauses are expressly limited to Plaintiffs and the Dealerships. . . . Given the absence of clear and unmistakable evidence that Plaintiffs agreed to arbitrate arbitrability with nonsignatories, the district court had the authority to decide whether the instant dispute is arbitrable.

Id. at 1127. *Kramer* is on all fours with the First, Second, Third, Fourth, Fifth, Sixth and Eighth Circuits. As such, no circuit split exists.

9. Tenth Circuit

Petitioner's citation to *Casa Arena Blanca LLC v. Rainwater*, 2022 WL 839800 (10th Cir. Mar. 22, 2022) misleads. Petitioner fails to inform that, in the words of the Tenth Circuit, *Casa Arena* "is not binding precedent, except under the doctrines of law of the case, res judicata,

and collateral estoppel." *Id.* at *1; *see* Pet. 6, 17. Instead, *Fedor v. United Healthcare, Inc.*, 976 F.3d 1100, 1105 (10th Cir. 2020) controls in the Tenth Circuit, mandating that "[t]he issue of whether an arbitration agreement was formed between the parties must always be decided by a court, regardless of whether the alleged agreement contained a delegation clause." *See id.* at 1105 (citing *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 69 n.1 (2010); *Granite Rock*, 561 U.S. at 297). Thus, the rule in the Tenth Circuit is substantially similar to the other circuits.

In *Fedor*, the plaintiff claimed that she had neither read nor accepted the arbitration agreement in question. 976 F.3d at 1106-1107. Vacating the district court's order compelling arbitration, the Tenth Circuit ruled that whether a party is a signatory to a contract is an issue of contract formation that courts must decide. *Id.* at 1107. "Denying her relief because of her failure to specifically challenge the delegation clause," the Tenth Circuit concluded, "would thus contradict the Supreme Court's repeated statement that courts may order arbitration only when satisfied that the parties agreed to arbitrate." *Id.* (citing *Granite Rock*, 561 U.S. at 297) (citation modified). Accordingly, the Tenth Circuit recognizes that contract formation is for the courts. It follows that where a non-signatory seeks to compel arbitration, the court must determine *ex ante* the formation issue—whether some contract principle entitles the non-signatory to compel arbitration.

C. The Decision Below was Correct

1. The Petition Mischaracterizes the Reasoning of *Schein*

Courts entertaining Jump's argument here—that *Schein* requires that when parties to a contract agree to arbitrate arbitrability among themselves, the question whether a nonparty may compel arbitration is necessarily for the arbitrator—have rejected it repeatedly. Indeed, Jump's argument is inconsistent with *Schein* itself.

In *Schein*, this Court confronted the "wholly groundless" exception to an arbitrator's resolving arbitrability among parties to a contract with a delegation clause. *Schein*, 586 U.S. at 65. In other words, even though the parties had agreed to arbitrate arbitrability, the lower court took it upon itself to determinate arbitrability because, looking to the substance of the dispute, the argument that the dispute was arbitrable was, in the court's view, "wholly groundless." *See id.* The Court found that courts cannot "short-circuit the process" in this way because "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract." *Id. Schein's* core reasoning is that contract is sacrosanct: the words of the contract control resolution of the dispute—even with respect to arbitration and arbitrability.

Schein thus builds on the long line of Supreme Court cases establishing that "[u]nder the [Federal Arbitration] Act, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms."

Id. (citing *Rent-A-Center*, 561 U.S. at 67). This Court continued, "an agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." *Id.* at 68 (citing *Rent-A-Center*, 561 U.S. at 70) (citation modified).

Schein is clear that courts must enforce delegation clauses only according to their terms, just like any other clause. But *Schein* also explicitly endorses cases ruling that courts only delegate threshold questions of arbitrability to the arbitrator when the parties have agreed to do so by clear and unmistakable evidence. *See id.* at 69 ("This Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence") (citing *First Options*, 514 U.S. at 944 and *Rent-A-Center*, 561 U.S. at 69, n.1)). For absence of doubt, this Court repeated that principle, stating, "[u]nder our cases, courts 'should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.'" *Id.* (citing *First Options*, 514 U.S. at 944).[4] *Schein* does not overrule *First Options* and *Kramer* because all three cases stand squarely for the proposition that the words of the contract control.

As this Court explained, the wholly groundless exception wrongly invited district courts to stray from the language of the parties' agreement. "When the

4. This Court's opinion in *First Options* underpins the Ninth Circuit's opinion in *Kramer*, 705 F.3d at 1127-28.

parties' contract delegates the arbitrability question to an arbitrator," this Court wrote, "the courts must respect *the parties' decision* as embodied in the contract." *Schein*, 586 U.S. at 70-71. In other words, when a court invokes the wholly groundless exception to look to the substance of the dispute in a case where the parties have agreed to arbitrate the arbitrability of the dispute, the court errs by failing to enforce the parties' agreement according to its terms. *See Schein*, 586 U.S. at 70.

Nor is there merit in Jump's contention that the Supreme Court's recent decision in *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024) supports its argument in any way whatsoever. *See* Pet. 4, 26. In *Coinbase*, this Court unanimously rejected Coinbase's attempt to invoke the arbitration provision and delegation clause found in its initial user agreement when Coinbase later had a dispute with users in connection with a promotional sweepstakes covered by a different contract. *Coinbase*, 602 U.S. at 145-49. In rejecting Coinbase's attempt to use a delegation clause to drag a dispute within an arbitration clause that the parties did not agree should be so delegated, this Court explained that "[t]o hold otherwise would be to impermissibly 'elevate [a delegation provision] over other forms of contract.'" *Id.* at 152 (citing *Rent-A-Center*). Even after *Schein*, the Supreme Court had no trouble rejecting the sort of strained reading that elevates delegation clauses beyond the confines of the parties' actual agreement—which is what Jump urges the Court to do under the guise of *Schein*.

a) *Kramer* is Consistent with *Schein*: Both Follow from the Fundamental Premise that Arbitration is a Creature of Contract

Preceding *Schein*, *Kramer* expresses the same basic principle in a different context. Fundamentally, the words of the contract control. That is so where a non-signatory to a contract attempts to invoke its arbitration clause. In *Kramer*, Toyota attempted to invoke an arbitration provision in purchase agreements between Toyota purchasers and dealerships that sold the cars. *Kramer*, 705 F.3d at 1123-25. Because the arbitration provision contained a delegation clause, non-signatory Toyota argued that the court should not decide the threshold question of arbitrability. Instead, Toyota insisted, an arbitrator must decide the threshold issue of arbitrability, even whether a non-signatory can compel a signatory to arbitrate. *Id.* at 1127.

The Ninth Circuit rejected the argument. Even though the delegation clause was broad, stating that the arbitration provision "applies to any claim or dispute about whether a claim or dispute should be determined by arbitration," *id.* at 1125, Toyota's argument failed because it ignored the words of the contract, which contemplated disputes between the parties.

Rejecting Toyota's motion to compel arbitration, the Ninth Circuit re-affirmed that "generally, the contractual right to compel arbitration may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration. Accordingly," the Court continued, "the strong public policy in favor of

arbitration does not extend to those who are not parties to an arbitration agreement." *Id.* at 1126 (citation modified). Moreover, following this Court, the Ninth Circuit ruled on the precise issue of when an agreement to arbitrate arbitrability reaches non-signatories:

> Where the dispute at issue concerns contract formation, the dispute is generally for courts to decide. As explained in First Options of Chicago, Inc. v. Kaplan, courts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so. In this manner the law treats silence or ambiguity about the question "who (primarily) should decide arbitrability" differently from the way it treats silence or ambiguity about the question "whether a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement"—for in respect to this latter question the law reverses the presumption.

Id. at 1127 (citation modified, emphasis in original).

Under this Court's *First Options* decision, then, the relevant question for the Ninth Circuit in *Kramer* was whether the arbitration agreements contained "clear and unmistakable evidence that Plaintiffs and Toyota agreed to arbitrate arbitrability." *Kramer*, 705 F.3d at 1127. The answer was no, because the language of the arbitration clauses was about disputes between the plaintiffs and the dealerships they contracted with and not about disputes with non-signatories like Toyota. *Id.* ("While Plaintiffs may have agreed to arbitrate arbitrability in a dispute

with the Dealerships, the terms of the arbitration clauses are expressly limited to Plaintiffs and the Dealerships").

As *First Options* and *Kramer* both hold, courts must decide the arbitrability question as to non-signatories by reference to the contractual language. This is because "'[t]he question who has the primary power to decide arbitrability' turns upon what the parties agreed about *that* matter.'" *Kramer*, 705 F.3d at 1128 (citing *First Options*, 514 U.S. at 943 (emphasis in original)).

Thus, *Kramer* ruled, Toyota's invoking the arbitration clause as written was unavailing because it included that "either you or we may choose to have any dispute between you and us decided by arbitration." *Id.* at 1127. As a means of foisting arbitration upon a party that did not agree to it, neither Toyota nor the court could rewrite the agreement, either by adding words to it or by excising the delegation clause from the surrounding arbitration provision agreeing to arbitrate disputes between "you" and "us." *Kramer's* analysis—looking to the words of the contract to determine the parties' actual agreement as to the arbitrability of claims against nonparties—is not just mandated by this Court's precedents like *First Options* and *Rent-A-Center*. Because it enforces the agreement of the parties according to its terms, it is what *Schein* requires as well.

b) *Schein* Forbids a Court From Disregarding the TOS's Plain Language

Jump's argument that the decision below violates the Court's *Schein* mandate is wrong. *See* Pet. 25-30. In

no way whatsoever did Plaintiffs Tobias and Patterson agree to arbitrate any dispute whatsoever with Jump. No agreement between Plaintiffs and Jump exists. Under the guise of urging this Court to follow *Schein*, Jump demands that the Court rewrite the language of the TOS where the Ninth Circuit refused. *Schein* forbids exactly that.

First, in the context of a TOS containing a dispute resolution procedure that covers disputes between "you" and "we," there is simply no basis in the contract to delegate the arbitrability of Plaintiffs' dispute with Jump to an arbitrator. While *Schein* directed courts to hew closely to the language of the contract when determining arbitrability, Jump now urges this Court to ignore it altogether. After all, the dispute resolution procedure begins by stating that it is a way to resolve disputes between "you" and "us," and instructs the user to start the process by sending an email to legal@anchorprotocol.com. (App. 23a).

Not surprisingly, Jump does not argue that the TOS required Plaintiffs to email Jump in accordance with the dispute resolution procedure, because, by its plain terms, the procedure—including its arbitration and delegation provisions—does not apply to Jump. That conclusion resolved the issue of arbitrability and arbitration under *Schein* and every other of this Court's arbitration cases.

Second, because Plaintiffs' dispute with Jump is not one between "you" and "we," the TOS's plain terms are inapplicable to Jump. As such, Jump must be advocating for a rule of universality whereby any non-signatory can invoke a delegation clause with respect to any claim against it by someone—anyone—who executed an arbitration clause in any contract.

That would be an absurd rule, conflicting with the language of any arbitration clause—the TOS included—sacrosanct under *Schein*. The district court recognized this fatal flaw in Jump's argument:

> Under Jump's proposed rule, once an individual entered into an arbitration agreement assigning questions of arbitrability to the arbitrator, anyone anywhere in the world could insist upon arbitrating a dispute with that individual and the courts would be required to grant a motion to compel no matter how disconnected that dispute might be from the arbitration agreement. If TFL and its landlord had a dispute over his TFL's rent payments, for example, TFL's landlord could invoke the arbitration agreement between TFL and Mr. Tobias and insist that the arbitrability of the rent dispute had to be determined by the arbitrator. This would be so even though TFL certainly could not possibly have intended, in drafting the terms of service for users of the Anchor Protocol, to send any dispute with its landlord to an arbitrator.

(App. 27a).

Jump does not mention this absurd rule of universality, but its overly simplistic reading of *Schein* requires it. Neither the FAA nor *Schein*, however, stands for any such proposition. This Court should reject such an expansive extension to contract law doctrine.

Third, the only way to avoid the absurd rule of universality on which Jump tacitly insists—where any

non-signatory may invoke any delegation clause against a signatory—is to require some sort of substantive connection between the claim of the signatory against the non-signatory and the terms of the contract requiring arbitration and delegation. But that tweak to the absurd rule of universality would directly violate *Schein*, forcing trial courts to evaluate the substance of the underlying claim to determine whether the claim relates sufficiently to the contract to delegate the determination of arbitrability to an arbitrator—"wholly groundless".[5]

Jump has no answer for any of this, suggesting simplistically that because the Ninth Circuit's approach begins with contract formation, it impermissibly reaches a second-order dispute before a third-order dispute and must therefore be nothing more than the "wholly groundless exception under a different guise, contrary to this Court's ruling in [*Schein*]." Pet. 28-30. That is wrong; the authorities on which Jump relies point inexorably away from its conclusion. As Jump writes: "This Court has repeatedly affirmed that *all* three orders of dispute are governed by regular contract principles," Pet. 26 (citing *Rent-A-Center*, 561 U.S. at 63, 70) (emphasis in original), meaning that: "'Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about *that* matter." *Id.* (citing *First Options*, 514 U.S. at 943).

5. Jump has not made an equitable estoppel argument in its petition for certiorari and has waived it. *See* Rule 14.1(a). In any event, Jump's decision not to pursue estoppel here is not surprising as Plaintiffs are not trying to enforce any of the TOS's terms against Jump, rendering that doctrine inapplicable.

Contrary to Jump's insinuations, then, courts do not engage in some impermissible inquiry by looking to what the parties agreed to concerning the so-called third-order dispute over who should decide arbitrability. Rather, this is what courts must do under the basic contract law principles that Jump cites and whose applicability *Schein* mandates. And in the context of a nonparty attempting to invoke a delegation clause and compel arbitration, asking whether there is clear and unmistakable evidence that the parties intended the arbitrability decision to be made by an arbitrator rather than a court is not "circular" or "inverted," as Jump struggles to claim (Pet. 28-30); it is exactly what *Schein* requires. *See Schein*, 586 U.S. at 69 (parties may delegate threshold arbitrability questions to arbitrator when they do so by clear and unmistakable evidence). That is what the lower courts did here. (App. 3a.)

2. The Lower Courts' Application of the Law to the Facts was Correct

Not only did the court recognize the controlling law, but it applied the law correctly. As the district court below observed and the Ninth Circuit affirmed, "[t]he arbitration clause contains no express reference to disputes with third parties like Jump, let alone to issues of arbitrability that might arise in connection with such disputes" and in fact "[t]o the contrary, the clause provides that '*you and we* both agree to resolve [any] potential dispute according to the [arbitration] process." (App. 24a) (emphasis and alterations in original). The court therefore concluded, correctly, that "[u]nder binding Ninth Circuit precedent, this language is insufficient to demonstrate the parties' intent to assign the question of whether a third party may enforce the parties' arbitration agreement to the arbitrator." *Id.*

In its Petition for Certiorari, like in its briefing to the Ninth Circuit, Jump continues to excerpt the TOS and omit its first paragraph. *Compare* Pet. 10 with App. 23a (reproducing entire agreement). The language that Jump omits is critical because it locates the disputes that the parties have agreed to arbitrate within a dispute resolution process that is explicitly between the parties to the contract: users and TFL. This is strong evidence that users did not intend to arbitrate disputes with third parties, let alone arbitrate the arbitrability of them. *See* App. 23a-25a. In light of the TOS's language limiting the dispute resolution procedure to disputes between users and TFL, the court's holding below was correct, and also consistent with many cases that have denied nonparties' motions to compel arbitration when the language at issue did not show that the parties clearly and unmistakably intended to delegate the arbitrability determination, even after *Schein*. *See, e.g*, *Donovan v. Coinbase Glob., Inc.*, 649 F. Supp. 3d 946, 955 (N.D. Cal. 2023) ("The bolded language indicates the arbitration obligation is binding between All Plaintiffs and **Coinbase**. The agreement does not state that the obligations and rights thereunder extend to a nonsignatory.") (bold in original); *Young v. Solana Labs, Inc.*, 2024 WL 4023087, at *4 (N.D. Cal. Sept. 3, 2024) ("Although [plaintiff] may have agreed to arbitrate arbitrability with [cryptocurrency platform], Defendants have not provided clear and unmistakable evidence that [plaintiff] agreed to arbitrate arbitrability with *them* as nonsignatories.") (emphasis in original). The court's decision below is correct after *Schein*, just as it was before.

D. Jump Loses Under the Law of Every Circuit

Jump suggests this action is a "perfect vehicle" for this Court to take up to clarify the approach courts should take when facing non-signatories' attempts to compel arbitration. Pet. 35-37. It is not. Unless the Court decides to deviate from the law of every circuit and establish a rule of universality in which any non-party can invoke a delegation clause and compel arbitration, Jump loses under a straightforward reading of the law.

This has consequences for Jump's advocacy. Jump urges the Court to take up this case because of an alleged circuit split. While Jump's claim is incorrect, even if the Court takes up the case, due to the extreme and cut-and-dried facts of this case, Jump loses under any rule any circuit has ever adopted.

1. The Language of the Agreement

Signatories to the TOS would not believe they were agreeing to have an arbitrator decide arbitrability of disputes with nonsignatories because the text apparently forecloses it. The dispute resolution clause's last sentence—"if we aren't able to reach an information resolution . . . then you and we both agree to . . . [employ] the process set forth below" (R.194)—on its face appears to limit arbitration to disputes with Terraform itself. The second paragraph never mentions non-signatories. Instead, Jump seeks to impute consent from references to "all disputes." Jump does not explain why signatories would even have considered non-signatories given the first paragraph's narrow scope.

Thus, under Jump's reading, whatever they actually intend, signatories can only avoid having an arbitrator decide arbitrability of disputes with third parties by explicitly stating as much. If the signatories never intended to commit themselves to arbitrate disputes with non-signatories, they might never mention such disputes. Even if they took specific steps to express an intent not to arbitrate such claims, such as limiting the scope of the arbitration clause to disputes between signatories, they would still be forced to arbitrate arbitrability. Jump can only win by overruling the signatories' intent.

2. The Relationship Between the Signatory and Non-Signatory

Next, the relationship between Terraform Labs and Jump is so limited that signatories would not think that, by executing the Anchor TOS, they had agreed to arbitrate with Jump. Cases wrestling with third-party attempts to compel arbitration involve third parties with close relationships with signatories, such as agents, affiliates, successors, and third-party beneficiaries and the like. For instance, in the *Contec Corp.* case that Jump cites, Contec L.P. became Contec Corporation and, despite the changes in legal form, the parties continued to follow the contract containing the arbitration clause. *Contec Corp. v. Remote Sol., Co.*, 398 F.3d 205, 208-09 (2d Cir. 2005). With such relationships, it is at least possible that the parties intended to arbitrate their claims, and reasonable that they would have considered the claims' arbitrability.

Jump never explains why a user agreeing to use Anchor's website would understand it might be agreeing to arbitrate claims against Jump. Jump was not Terraform's

successor. Jump was not operating the Anchor website. There was no reason for users to suspect Jump had anything to do with their agreement to use Anchor, and no reason to disclaim arbitrability of claims against Jump.

3. The Disconnect Between the Anchor TOS and Plaintiffs' Securities Claims

Plaintiffs' claims—that Jump surreptitiously acted to re-peg UST in May 2021 and thereby deceived the marketplace into believing that the algorithm worked as intended—have nothing to do with the Anchor TOS that contained the arbitration clause that Jump now seeks to invoke. Plaintiffs' claims have nothing to do with Anchor at all: all the Terra Tokens, whether they had been deposited into Anchor or some other application in the Terra Ecosystem, became worthless when it was revealed that UST's algorithm did not work as advertised and that the Terraform Ecosystem was a fraud.[6]

In sum, for Jump to win its case, this Court must hold that merely by signing a contract containing a delegation clause, a signatory agrees to have an arbitrator decide arbitrability in all disputes against third parties, even

6. Jump mischaracterizes Plaintiffs' Complaint when it argues that "Tobias's allegations in the TAC still place the Anchor Protocol, and the arbitration agreement contained therein, at the center of the alleged fraud." *See* Pet. 11-12. While Plaintiffs did allege that the "'20% yield [on Anchor Protocol] was a marketing ploy to increase investment in the Terra ecosystem,'" *see id.*, that marketing ploy is not related to Jump's surreptitious re-peg of UST to $1 in May of 2021, which deceived the market as to the functioning of the stablecoin's algorithm. Jump's fraud is unrelated to the Anchor Protocol and its TOS.

where the claims are as far apart as a website's user agreement and federal securities laws claims. This Court must also hold that the signatory agrees to have an arbitrator decide arbitrability of disputes against any third party, including those with no apparent agency relationship with the signatory. And this Court must hold that signatories may still be bound to have an arbitrator decide arbitrability unless they specifically disclaim having arbitrators decide arbitrability of third party disputes, even if (as here) the text of the arbitration clause apparently limits that clause to disputes with the other signatory. Otherwise, Jump loses.

No circuit, even in Jump's telling, has gone as far as Jump needs this Court to go to win. Having cited a circuit split to convince this Court to take up the case, Jump would then have to argue that the Court should reject all the circuits' positions and adopt a position so extreme that no circuit has ever adopted it.

IV. CONCLUSION

For the foregoing reasons, Jump's petition for a writ of certiorari should be denied.

Respectfully submitted,

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