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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Jump Trading's petition raises a pure legal question: When an arbitration agreement delegates threshold arbitrability questions to the arbitrator, who decides if a nonsignatory can compel a signatory to arbitrate a dispute between them? There is an acknowledged and entrenched circuit conflict on that question. The Ninth Circuit's approach is wrong, for the reasons Judge Thapar, Judge Jones, and the amici have emphasized. And the issue is indisputably important and recurs with great frequency.

Respondents' case against review does not withstand scrutiny. They disclaim the widely acknowledged circuit split, conflate the who-decides question with the merits of the nonsignatory-enforcement issue, and raise a series of baseless vehicle arguments. This petition offers a clear shot to resolve widespread lower-court disagreement on a major question of federal arbitration law. Certiorari should be granted.

ARGUMENT

A. The Split Is Real And Acknowledged

The circuits are deeply divided over the question presented, as judges and commentators readily acknowledge. Pet.13-25. Respondents' claim of "no circuit split" (Opp.1) is not credible.

1. The First, Second, Third, Sixth, Eighth, and Tenth Circuits have held that when an arbitration agreement contains a valid delegation clause, the arbitrator must typically decide questions of nonsignatory enforcement. Pet.15-18, 22-24. The Fourth and Fifth Circuits hold that courts must resolve nonsignatory-enforcement questions. Pet.19-22. And the Ninth Circuit reaches the same result

unless the delegation clause expressly covers nonsignatories (which is rare). Pet.21-22. State supreme courts are similarly divided. *Compare Anderton v. Practice-Monroeville, P.C.*, 164 So. 3d 1094, 1101-02 (Ala. 2014) (adopting first view), *with RUAG Ammotec GmbH v. Archon Firearms, Inc.* 538 P.3d 428, 433 (Nev. 2023) (adopting second view).

a. The Sixth Circuit has consistently held that when an arbitration agreement contains a valid delegation clause, nonsignatory-enforcement questions are for the arbitrator. *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 848-52 (6th Cir. 2020) (Thapar, J.); *Swiger v. Rosette*, 989 F.3d 501, 507-08 (6th Cir. 2021); *Becker v. Delek US Energy, Inc.*, 39 F.4th 351, 355-56 (6th Cir. 2022).

Respondents distinguish the Sixth Circuit cases because, they say, the plaintiffs there did not specifically "challenge the delegation clause at issue." Opp.17-19. Sure, but the same is true here. The Sixth Circuit (like other circuits) requires courts to resolve challenges to the validity of the delegation clause. But it makes clear that nonsignatory-enforcement disputes concern "enforceability," not validity. *Becker*, 39 F.4th at 355-56. So when—as in this case—the delegation clause's *validity* has not been challenged, the Sixth Circuit sends nonsignatory-enforcement issues to arbitration. That directly conflicts with the approach of several other circuits.

b. The Eighth and Tenth Circuits have similarly held that nonsignatory-enforcement questions are for the arbitrator.

In *Eckert/Wordell Architects, Inc. v. FJM Properties of Willmar, LLC*, the Eighth Circuit held that nonsignatory enforcement "is a threshold

question of arbitrability" that an arbitrator must decide when there is "clear and unmistakable evidence" that the contract "commit[s] questions of arbitrability to an arbitrator." 756 F.3d 1098, 1100 (8th Cir. 2014); *see also Newman v. Plains All American Pipeline, L.P.*, 44 F.4th 251, 254 (5th Cir. 2022) (Jones, J., dissenting from denial of en banc rehearing) (discussing *Eckert*).

As the petition recognized (Pet.23-24), and as respondents note (Opp.19), *Burnett v. National Association of Realtors*, 75 F.4th 975 (8th Cir. 2023), contradicts *Eckert*. But "when faced with conflicting panel opinions, the earliest opinion must be followed." *Mader v. United States*, 654 F.3d 794, 800 (8th Cir. 2011) (en banc). So *Eckert*—not *Burnett*—governs future cases in the Eighth Circuit.

As for the Tenth Circuit, respondents do not dispute that *Casa Arena Blanca LLC v. Rainwater* holds that once a court identifies "an enforceable delegation clause," nonsignatory-enforcement questions must be "sent … to arbitration." No. 21-2037, 2022 WL 839800, at *5 (10th Cir. Mar. 22, 2022). They dismiss the decision as unpublished, but offer no reason why the Tenth Circuit would deviate from that holding in future cases. And while respondents invoke (Opp.21) *Fedor v. United Healthcare, Inc.*, 976 F.3d 1100, 1106-07 (10th Cir. 2020), that case involved a dispute between *signatories* over contract *formation*. *Fedor* is fully consistent with *Casa Arena Blanca* and irrelevant to the question presented.

c. Respondents are also wrong about the First, Second, and Third Circuits. All three recognize that (at least) colorable nonsignatory-enforcement disputes are for the arbitrator. Pet.17-18.

Respondents note that the nonsignatories there invoked the doctrine of assignment, instead of (as here) equitable estoppel. Opp.13-15. But assignment and equitable estoppel are both "background principles of state contract law" that permit enforcement "by … nonparties." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630-31 (2009). The First, Second, and Third Circuits require the arbitrator to resolve disputes over the legal validity of a nonsignatory's invocation of the assignment doctrine. Pet.17-18. Respondents provide no reason why those courts would treat a disputed equitable-estoppel claim differently.

Respondents also assert that the First and Second Circuits have rejected a "rule of universality" allowing a nonsignatory to compel arbitration *simply* by establishing its adversary is a party to any arbitration agreement containing a valid delegation clause. Opp.14-15. That's true: Unlike the Third, Sixth, Eighth, and Tenth Circuits, the First Circuit first requires a threshold "prima facie showing" supporting nonsignatory enforcement, *Morales-Posada v. Cultural Care, Inc.*, 141 F.4th 301, 310 (1st Cir. 2025), and the Second Circuit requires a threshold "sufficient relationship" between the parties supporting enforcement, *Contec Corp. v. Remote Sol., Co.*, 398 F.3d 205, 209 (2d Cir. 2005).

But crucially—and unlike the Fourth and Fifth Circuits—the First and Second Circuits both recognize that when the threshold showing is made, the *arbitrator* must resolve the ultimate dispute over nonsignatory enforcement, not the court. *Morales-Posada*, 141 F.4th at 310-11 (citing *Apollo Comput., Inc. v. Berg*, 886 F.2d 469, 473 (1st Cir. 1989)); *Contec*,

398 F.3d at 210; Pet.19-21. That distinction only further deepens the conflict.

2. Respondents insist the "varying results" can be explained by "unique facts and circumstances." Opp.11-12. On the contrary, courts have reached different results on identical facts.

For example, the district court in *Kim v. BMW of North America, LLC*, applying Ninth Circuit precedent, held that nonsignatory enforcement of an arbitration clause in an automobile purchase agreement is "not a question for the arbitrator" despite language delegating the "'arbitrability of the claim or dispute'" to the arbitrator. 408 F. Supp. 3d 1155, 1157-60 (C.D. Cal. 2019). But the district court in *Bossart v. General Motors LLC*, applying Sixth Circuit precedent to identical language, reached the opposite conclusion. No. 20-CV-11057, 2022 WL 3573855, at *3-4 (E.D. Mich. Aug. 19, 2022). Similar examples further disprove respondents' "different facts" theory. *See* FCA Amicus Br.8-11 (collecting cases).

3. The circuit split has been widely acknowledged by judges and commentators, something else respondents cannot explain away.

Judge Jones (joined by Judges Smith and Duncan) has emphasized that the Fifth Circuit diverges from "at least five other circuits" in holding that nonsignatory-enforcement questions are for courts alone to decide. *Newman*, 44 F.4th at 252-53 (dissenting from denial of en banc rehearing). Judge Jones made clear, moreover, that these "conflicting precedents" involved disparate rulings on "identical" facts. *Id.* at 254-55. Similarly, Judge Niemeyer has noted that the Fourth Circuit's approach tracks the

Fifth Circuit's but splits from the Sixth Circuit's. *Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279, 288-89 (4th Cir. 2023) (citing *Becker*, 39 F.4th at 355-56).

District courts, state supreme courts, and commentators have likewise acknowledged the "inconsistency in the federal case law" and the "muddled" state of the law. *O'Connor v. Ford Motor Co.*, No. 19-cv-5045, 2023 WL 130522, at *5-6 (N.D. Ill. Jan. 9, 2023); *see also RUAG*, 538 P.3d at 433; Meshel Amicus Br.10-21; FCA Amicus Br.18-21.

The circuit split is undeniable and widely recognized. Only this Court can resolve it.

B. The Decision Below Is Wrong

The question presented is not whether Jump can compel respondents to arbitrate their claims under the doctrine of equitable estoppel. Opp.34-36. It is *who should decide* whether respondents must arbitrate their claims. Pet.i. The answer is straightforward: the arbitrator. The Ninth Circuit erred in holding otherwise.

1. When an arbitration agreement contains a provision delegating threshold "arbitrability" questions to the arbitrator, a "court possesses no power to decide the arbitrability issue," and must send the dispute to the arbitrator to resolve. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). Such arbitrability questions include disputes regarding the agreement's scope and enforceability. Crucially, this Court has expressly characterized "whether [an] arbitration contract b[inds] parties who did not sign the agreement" as a question of "'arbitrability.'" *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (citation omitted); *see also Arthur Andersen*, 556 U.S. at 632

(discussing nonsignatory "equitable estoppel" claims as "ground[s] for enforcing contracts").

So when (as here) a delegation clause commits threshold "arbitrability" questions to the arbitrator, any dispute over whether a nonsignatory may enforce the agreement is for the arbitrator to resolve.

2. Respondents first say disputes over nonsignatory enforcement cannot be delegated to the arbitrator because they concern contract formation, an issue for the court. Opp.21, 28. That's wrong.

All agree that when a party contests whether an arbitration agreement exists in the first place, the court must resolve the formation issue before ordering arbitration. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299-300 (2010). But nonsignatory-enforcement disputes ask whether a signatory who *accepted* an arbitration agreement may have that agreement "*enforced*" against them by someone who is not a party to that contract. *Arthur Andersen*, 556 U.S. at 631 (emphasis added). Nonsignatories regularly assert such rights under "traditional principles" of contract law such as equitable estoppel, assumption, alter ego, third-party beneficiary, and other theories. *Id.* at 631-32 (quoting 21 Williston on Contracts § 57:19 (4th ed. 2001)).

In such cases, formation of the underlying contract is not at issue: Because the signatory has agreed to be bound by the relevant contract, there is no question "whether [an] agreement *exists*." *Zirpoli v. Midland Funding, LLC*, 48 F.4th 136, 144 (3d Cir. 2022); *see also Becker*, 39 F.4th at 356. The nonsignatory-enforcement doctrines implicate "the scope of [an] agreement[]" and the rights it bestows, not its existence. *Arthur Andersen*, 556 U.S. at 631-32. That

the agreement will continue to exist regardless of whether the nonsignatory has rights to enforce it confirms the dispute is not about contract formation.

3. Respondents next argue that the question of who decides arbitrability turns on "contractual language." Opp.27. That's correct—but under *Henry Schein*, the relevant language is the agreement's *delegation clause*. And when an arbitration agreement contains a valid delegation clause that unequivocally sends threshold arbitrability questions to an arbitrator—as all agree is true here—a court must honor the parties' agreement and enforce that clause as written. *Henry Schein*, 586 U.S. at 68.

The Ninth Circuit disregarded these principles, holding that an arbitration agreement's delegation clause does not delegate nonsignatory-enforcement questions unless the agreement contains an explicit "mention of any third party or nonsignatory." Pet.App.3a. But most arbitration agreements do not expressly identify whether and when nonsignatories can enforce them. Indeed, the most typical grounds for nonsignatory enforcement rest on "'traditional principles'" of contract law (like "equitable estoppel") that operate in the "background" and need not be expressly incorporated in an agreement's text. *Arthur Andersen*, 556 U.S. at 630-32 (citation omitted); *see Howsam*, 537 U.S. at 84. When parties expressly delegate "arbitrability" issues to the arbitrator, that delegation encompasses disputes over nonsignatory enforcement that implicate those background doctrines. Respondents offer no plausible defense of the Ninth Circuit's clear-statement requirement.

4. Finally, respondents argue Jump's approach must be rejected because it leads to "absurd" results. Opp.29. Specifically, respondents warn that "any"

nonsignatory defendant could "invoke a delegation clause" in "any" arbitration agreement accepted by a signatory plaintiff, "'no matter how disconnected'" the parties' dispute might be from that agreement. Opp.28-29 (citation omitted).

In *Blanton*, Judge Thapar correctly dismissed the same "policy concern." 962 F.3d at 851. As he noted, *Henry Schein* itself "rejected a nearly identical argument" about the potential for "'frivolous motions to compel arbitration.'" *Id.* (quoting 586 U.S. at 71). "Arbitrators," this Court explained, "can efficiently dispose of frivolous" arbitrability claims and may in certain circumstances "impos[e] fee-shifting and cost-shifting sanctions" in response to such claims. *Henry Schein*, 586 U.S. at 71.

As in *Henry Schein*, respondents here identify no "problem" of frivolous arbitration bids by nonsignatory defendants against signatory plaintiffs. *Id.* They fail to muster even a *single example* of a frivolous motion in any of the circuits adopting Jump's favored approach.

Even if respondents' policy argument had force, it would not mean nonsignatory enforcement should be treated as a formation question that only courts may decide. At most, it would support the First and Second Circuits' respective requirements that before a court sends a nonsignatory-enforcement dispute to arbitration, the nonsignatory must make a "prima facie showing" supporting enforcement or establish a "sufficient relationship" between the parties. *Supra* at 3-5. At a minimum, respondents' allegations that Jump colluded with and controlled signatory TFL satisfy these threshold requirements. *Infra* at 11-12.

5. Respondents ultimately fail to confront the absurdity of their own position, which allows plaintiffs to circumvent binding arbitration agreements by omitting signatory defendants and suing only alleged nonsignatory colluders. This case is a prime example: Respondents sued both Jump and TFL, but voluntarily dismissed their claims against TFL just five days before oral argument on the motions to compel arbitration. Pet.11-12. The Court should not abide a regime under which a plaintiff may so easily evade its contractual obligations to arbitrate.

C. This Case Is An Ideal Vehicle To Resolve This Important Question

1. Respondents do not contest the importance of the question presented. Nor could they. As judges and commentators have observed, disparate approaches to nonsignatory enforcement make geographic happenstance the decisive factor on whether a delegation clause is given effect or treated as a "second-class contract[]." *Newman*, 44 F.4th at 254 (Jones, J., dissenting from denial of en banc rehearing); *see* Pet.14; Meshel Amicus Br.22-27; FCA Amicus Br.5-15. This issue arises in hundreds of cases each year, Meshel Amicus Br.22, "span[ning] many types of industries and claims," FCA Amicus Br.7. The stark differences in outcomes across forums and the sheer number of cases underscore the need for this Court's intervention.

2. Respondents imply this case is a poor vehicle because answering the who-decides question will (supposedly) not help Jump. According to respondents, Jump's equitable-estoppel argument will eventually fail on the merits because (1) the agreement "appears to limit arbitration to disputes

with" signatories, (2) Jump's relationship with TFL is "limited," and (3) respondents' "claims" are "unrelated" to the agreement. Opp.33-36 & n.6.

Most critically, these case-specific assertions about equitable estoppel are irrelevant to the pure legal question presented—which is *who decides* the merits of the arbitrability dispute. None would interfere with the Court's resolution of *that* issue.

In any event, respondents are wrong to dismiss Jump's equitable-estoppel arguments. That doctrine applies when a signatory to an arbitration agreement alleges "substantially interdependent and concerted misconduct" by a nonsignatory and a signatory. 21 Williston on Contracts § 57:19 (4th ed. 2025, update). Here, respondents alleged that Jump "colluded with TFL[]," 2-ER-76; *see* 2-ER-103, 108, and that Jump "operated and managed" TFL as an "officer and/or director," Jump CA9.Br.10-12, 45-48 (citation modified). Remarkably, respondents now flatly contradict their own allegations, telling this Court that Jump's relationship with TFL was "limited." Opp.34-35; *see id.* at 4 & n.2.

Respondents' claims also easily fall within the Anchor TOS's broad arbitration clause because they "aris[e] out of or relat[e] to the Interface," the "Agreement," or "any other acts or omissions for which [respondents] may contend that [TFL is] liable." Pet.App.11a-12a. As just one example, the Anchor TOS govern the "Rate on the Interface." 2-ER-191–92, 194. That rate is essential to respondents' theories that UST is a security and that defendants committed fraud. *See SEC v. Terraform Labs Pte. Ltd.*, 708 F. Supp. 3d 450, 471-73 (S.D.N.Y. 2023); 2-ER-36–37 & n.1, 78–79, 82. And respondents' claims plainly encompass "acts … for

which [they] may contend [TFL is] liable," Pet.App.11a-12a, because respondents *did* contend TFL was liable for them, 2-ER-198, 262–71. Respondents' own arguments undermine the Ninth Circuit's equitable-estoppel analysis. Pet.App.3a-4a. So while it is beside the point for present purposes, Jump should win on equitable estoppel once this case is properly sent to arbitration.*

3. Respondents also highlight the Court's denial of two petitions presenting similar questions. Opp.7-10. But as Jump explained (Pet.35-37), those cases had other complications—which respondents ignore.

In *HomeServices*, the district court's holding that defendants waived their arbitration rights provided an alternative ground for decision that could have prevented the Court from reaching the question presented. *Burnett*, 75 F.4th at 980; Pet.36. And by the time HomeServices petitioned for this Court's review, it had already lost a jury trial. Pet.37.

Tug Hill also arose in a convoluted procedural posture. The petitioners asked this Court for a stay, which required an assessment of the usual stay factors—including irreparable harm. In opposing, the respondents argued that the petitioners delayed in seeking a stay and that further delay would be especially problematic for their Fair Labor Standards Act claims. Response to Stay Application 31-36, *Tug Hill Operating, LLC v. Rogers*, No. 23A567 (U.S. Jan. 3, 2024). By denying the stay, the Court undermined the case for certiorari; with trial set for August 2024,

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* Jump has not "waived" equitable estoppel. Opp.30 n.5. The petition did not seek review of the Ninth Circuit's ultimate equitable-estoppel holding because an arbitrator—not a court—should address that underlying merits question.

district-court proceedings would end before this Court could decide the merits. *See id.* at 10-11.

This case has none of the complications that plagued *HomeServices* and *Tug Hill*. There are no independent grounds for decision; the Ninth Circuit stayed its mandate; and the sole question is whether to grant review. Certiorari is warranted.

CONCLUSION

Jump's petition should be granted.

Respectfully submitted,

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