No. 25-83

# In the Supreme Court of the United States

ADRIAN JULES, *Petitioner,*

*v.*

ANDRE BALAZS PROPERTIES, ET AL.,
*Respondents.*

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

## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI


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## QUESTION PRESENTED

Under the Federal Arbitration Act, when federal jurisdiction properly exists at the outset and a federal case is stayed pending arbitration, does a federal court retain jurisdiction to decide post-arbitration motions without identifying a new, independent basis for exercising jurisdiction in that same pending federal case.

## RULE 29.6 STATEMENT

Respondent Balazs Investors LLC does not have a parent corporation, nor is there any publicly held corporation that owns 10% or more of Balazs Investors LLC. Respondent HotelsAB, LLC's parent company is Respondent Balazs Investors LLC. There is no publicly held corporation that owns 10% or more of HotelsAB, LLC. Respondent Andre Balazs Properties is not a separate legal entity, but a d/b/a for Respondent HotelsAB, LLC. Respondent Chateau Holdings, Ltd. does not have a parent company, nor is there any publicly held corporation that owns 10% or more of Chateau Holdings, Ltd.

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## INTRODUCTION

Petitioner asks this Court to grant review of the Second Circuit's unpublished decision to resolve what is currently a weak, shallow, and unreasoned circuit split. That split may warrant this Court's review at some point. It does not warrant it now—not without further development in the courts below and, in any event, not in this case, which presents factually unique circumstances that make it a poor vehicle for review. Nor, notwithstanding Petitioner's claims otherwise, will the skies fall absent immediate review. Petitioner's assertions that this marginal split now will somehow result in rampant forum-shopping and litigation inefficiencies are entirely hypothetical and not grounded in real-world practicalities. Those fears

bear little connection to what parties in a similar situation might want, let alone what they are likely to (or can) do. This Court should deny the petition.

As an initial matter, the split is exceptionally shallow. Petitioner's entire theory rests on the fanciful notion that *Badgerow v. Walters*, 596 U.S. 1 (2022), somehow revised the entire universe of federal jurisdiction for post-arbitration claims—even those in *pending actions*. Yet if *Badgerow* itself compels this result, Petitioner's reliance on cases *pre-dating* that decision makes little sense. Put simply: If *Badgerow* is outcome-determinative in this distinct context—and it most certainly is not—any circuit weighing in before *Badgerow* is irrelevant.

Nor does the limited post-*Badgerow* authority give rise to a split warranting review. Notwithstanding Petitioner's claims of a deep conflict, he manages to identify only a single case—the Fourth Circuit's decision in *SmartSky Networks, LLC v. DAG Wireless, LTD.*, 93 F.4th 175 (4th Cir. 2024)—adopting his position. And while the Fourth Circuit has plainly misread *Badgerow*, few courts have had an opportunity to hold otherwise. Not a single decision has squarely grappled with the Fourth Circuit's analysis, and the rest have barely scratched the surface. Indeed, this is the sum total of Petitioner's authority: a two-paragraph decision from the Seventh Circuit (with a single *sentence* addressing Petitioner's theory); a single footnote in a Third Circuit case where the issue was not factually presented; two unpublished Fifth Circuit decisions that disagree with each other (and ultimately declare the issue unresolved in that Circuit); and the unpublished decision below—which does not even bind future panels in the Second Circuit.

There is every reason to let the issue percolate—at least until some other circuit directly confronts the Fourth Circuit's position and reaches the opposite conclusion. There is especially no reason for this Court to be just the second appellate court in the country to grapple explicitly with the Fourth Circuit's rationale (such as it is).

Nor is this case a good vehicle to resolve the issue. The decision below is unpublished, simply followed pre-*Badgerow* case law, involved "procedural irregularit[ies]," and was expressly limited to its "unique factual circumstances." Pet. App. 8a. It thus did not resolve *anything* for the Second Circuit (which could adopt the opposite position tomorrow), and it would require this Court to waste time with complexities not present in the typical case. Those idiosyncrasies render this case particularly unsuitable for resolving this developing legal question.

## STATEMENT

### A. Petitioner Initiated This Lawsuit—and Expressly Chose to Invoke the District Court's Jurisdiction—in an Attempt to Avoid Arbitration

Petitioner was employed as a security guard at the Chateau Marmont—a hotel in West Hollywood, California—until March, 2020, when he was laid off (along with hundreds of other hotel employees) because of COVID-19's severe impact on the hospitality industry. *See* C.A. App. A6, A7. Over half a year later, Petitioner filed a charge of discrimination against the Chateau Marmont (whose legal name is Chateau Holdings,

Ltd.) with the Equal Employment Opportunity Commission, which issued him a right-to-sue letter a week later. *Id.* at A7. As counsel for the Chateau Marmont repeatedly reminded Petitioner's counsel, Petitioner and the Chateau Marmont had an enforceable agreement to arbitrate all such employment-related claims. *See* Pet. App. 12a.

Nevertheless, Petitioner filed the underlying lawsuit in the United States District Court for the Southern District of New York, naming as defendants four of the respondents here—Andre Balazs (a partial owner of the Chateau Marmont) and Andre Balazs Properties, Balazs Investors, LLC, and HotelsAB, LLC (other entities in which Mr. Balazs has an ownership interest) (collectively the "Balazs Respondents"). Petitioner targeted these defendants despite (i) none of the Balazs Respondents serving as Petitioner's employer at any point in time; (ii) the lawsuit alleging only causes of action arising from Petitioner's employment with the Chateau Marmont (which he did *not* sue); and (iii) Petitioner failing to include any of the Balazs Respondents in his charge of discrimination. Petitioner's strategy was obvious: He wanted to avoid his binding arbitration agreement with the Chateau Marmont. To do so, he invoked federal jurisdiction in the same court he now contends lacks jurisdiction to decide post-arbitration proceedings.

Petitioner's federal complaint invoked jurisdiction under both 28 U.S.C. §§ 1331 and 1332. *See* Pet. App. 15a; C.A. App. A7. All the parties agree that the District Court had jurisdiction over this action when the suit was initiated.

In March 2021, the Balazs Respondents filed a motion to compel arbitration and/or stay the action, on the basis that Petitioner's arbitration agreement covered all pending claims arising from his employment with the Chateau Marmont. *See* Pet. App. 12a. In response, the District Court issued an order staying the action pending arbitration. *Id.* It retained jurisdiction over the stayed matter and required the parties to submit periodic status reports. C.A. Supp. App. SA-19.

### B. Petitioner Initiates Arbitration, Engages in Extensive Arbitration Misconduct, and Finally Loses in Arbitration

In August 2021, Petitioner initiated arbitration with JAMS by filing a demand for arbitration against "Andre Balazs et al d/b/a Chateau Marmont"—without specifying which parties were actually named. C.A. App. A193. During preliminary arbitral proceedings, Petitioner agreed to voluntarily dismiss the Balazs Respondents and substitute in the Chateau Marmont as the sole respondent in the arbitration. *Id.*

Throughout the subsequent proceedings, Petitioner engaged in persistent misconduct: He attempted to withdraw from the arbitration on baseless grounds; he tried to reinvent his claims at the tail end of fact discovery by seeking to add new parties and new claims while rewriting his underlying factual allegations; and he refused to appear for deposition, despite being ordered to do so multiple times. *See id.* at A193-A200. The arbitrator underscored the egregiousness of Petitioner's behavior: "[T]he extent of vexatious conduct by [Petitioner] and his counsel in this case is beyond unusual—it exceeds that found in any

of the hundreds of other cases to which I have been appointed as an arbitrator." *Id.* at A184.

And the games continued. Days before the long-scheduled arbitration hearing on the merits, Petitioner requested a postponement due to a purported medical emergency—which he was never able to substantiate, despite multiple opportunities to do so. *See* id. at A198-A200. At the merits hearing, Petitioner's then counsel rested without offering any opening statement, calling any witnesses, or presenting any evidence. *See id.* The arbitrator stated his belief that by doing so, Petitioner was merely trying to "manufacture a ground for vacating any Award." *Id.* at A181.

Ultimately, the arbitrator issued a final award in favor of the Chateau Marmont on all causes of action. Pet. App. 14a. The final award sanctioned Petitioner and his attorney a total of $34,443 based on their arbitration misconduct. *Id.*

### C. After the Arbitration, Petitioner and Respondents Filed Motions to Confirm and Vacate the Arbitration Award in the District Court, Which Retained Jurisdiction and Confirmed the Award

While the arbitration was pending, the parties regularly filed status reports with the District Court regarding the arbitration. *See* D. Ct. Docs. 33-35, 37-39, 41, 53, 58, 60, 66. None of those reports suggested federal jurisdiction had lapsed. During that same period, Petitioner repeatedly returned to District Court to seek various forms of relief, including to lift the litigation stay and obtain (vague) injunctive relief. Pet. App. 13a. When the District Court denied those

requests, Petitioner sought reconsideration, which the Court also denied. *Id.* These proceedings occurred less than three months before the arbitration Award issued. At no point during those proceedings did Petitioner contend that the Court's jurisdiction had lapsed.

Once the arbitration was final, the Balazs Respondents moved to confirm the Final Award, and the District Court permitted the Chateau Marmont to join that motion as the actual respondent from the underlying arbitration. *See id.* at 11a.

Petitioner opposed that motion to confirm on the merits and—for the first time—on jurisdictional grounds, asserting that the District Court did not have jurisdiction to decide the motion to confirm. *See id.* at 15a. But despite claiming the court lacked jurisdiction to decide Respondents' motion to confirm, Petitioner cross-moved at the same time to vacate the Final Award. *See id.* at 16a, 17a. Petitioner offered no explanation why the District Court would lack jurisdiction over some post-arbitration FAA motions but retain jurisdiction over others. Petitioner did not file a motion to vacate the Final Award in any other court.

The District Court ultimately confirmed the Final Award. *Id.* at 28a. It first concluded it had retained subject matter jurisdiction over the cross-motions to confirm and vacate the Final Award, because it had jurisdiction when it "stayed the action pending arbitration." *See id.* at 15a, 16a (citing *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 202 (2002). It then found that Petitioner failed to present

any basis to vacate the Final Award, which rendered confirmation mandatory. *See id.* at 16a-28a.

### D. The Second Circuit Affirms in an Unpublished Order

Petitioner subsequently appealed the District Court's order to the Second Circuit, which affirmed in an unpublished Summary Order. Pet. App. 1a-10a.

The Second Circuit panel first concluded that the District Court had jurisdiction to decide Respondents' post-arbitration motion to confirm under *Cortez Byrd* and existing circuit precedent: "a 'court with the power to stay the action under § 3 [of the FAA] has the further power to confirm any ensuing arbitration award.'" Pet. App. 6a (quoting *Cortez Byrd*, 529 U.S. at 202); *id.* at 7a ("'[A] court which orders arbitration retains jurisdiction to determine any subsequent application involving the same agreement to arbitrate, including a motion to confirm the arbitration award.'" (quoting *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 705 (2d Cir. 1985)).

The panel then confronted and rejected Petitioner's argument that *Badgerow* somehow undercut that existing authority. Pet. App. 6a-7a. As the panel explained, *Badgerow* "involved an action commenced . . . for the sole purpose of vacating an arbitral award." *Id.* at 6a. That was "unlike the present action, which started as a federal question suit *before* it was stayed pending arbitration." *Id.* (emphasis added). The panel found that distinct setting rendered *Badgerow* irrelevant. *Id.* at 7a. And "[b]ecause *Badgerow* considered neither the reasoning in [prior circuit authority] nor other Supreme Court decisions articulating similar

principles," the panel declared itself bound by those existing decisions. *Id.* It accordingly held "the district court retained jurisdiction following its stay pending arbitration to confirm the resulting award." *Id.*

Turning to the merits, the panel held there was no reason to disturb the District Court's confirmation order. *See id.* at 7a-9a. It observed that this case presented numerous "procedural irregularit[ies]"—all of which were attributable to Petitioner's attempts to avoid arbitration by initially filing his employment claims against non-employers. *Id.* at 8a. To that end, it observed certain respondents had "move[d] to confirm the [arbitration] award" despite "not [being] parties to the arbitration agreement," while another (the Chateau Marmont) "so move[d] when it was not a party to the lawsuit." *Id.* at 7a-8a. Despite those potential flaws, it concluded that Respondents had the right to seek relief under the FAA, but it "hasten[ed] to note" its conclusion was expressly limited to the "unique factual circumstances of this case." *Id.* at 8a.

### E. Petitioner Continued to Abuse the Judicial and Arbitral Process During the Proceedings Below

Petitioner's abuse of the judicial process did not end with his arbitration misconduct. Before the arbitrator issued a Final Award, Petitioner initiated proceedings in California state court to enjoin the arbitration. *See Adrian Jules v. JAMS*, Los Angeles Superior Court Case No. 22STCP04507. After the Final Award issued, Petitioner then asked the state court to enjoin any federal proceedings confirming the award. Superior Ct. Doc., Ex Parte Application for Temporary Restraining Order dated March 6, 2023. The state

court ultimately dismissed Petitioner's action with prejudice, confirming it had no authority to enjoin a federal court from adjudicating a pending case. Superior Ct. Doc., Order Sustaining Demurrer dated June 20, 2023.

And still Petitioner continued. After the District Court confirmed the award and while the Second Circuit appeal remained pending, Petitioner filed yet another federal action against Respondent Balazs in the Central District of California, asserting the same allegations and claims the arbitrator had previously declared lacked any "good faith basis." *See Jules v. Balazs*, No. 23-cv-9478, Doc. 1; *see also* C.A. App. A170. The California district court subsequently dismissed the case, declaring the claims barred by res judicata.

## ARGUMENT

### A. The Petition Presents A Weak, Shallow, and Poorly Reasoned Circuit Split Where the Need For Further Percolation Is Obvious

1. According to Petitioner, there is a "clear and acknowledged split" over "the power of federal courts" to decide post-arbitration motions under the FAA. Pet. 13. Yet despite Petitioner's best efforts to cobble together a deep and mature conflict, he is ultimately left with a single circuit on his side: the Fourth Circuit in *SmartSky Networks, LLC v. DAG Wireless, LTD.*, 93 F.4th 175 (4th Cir. 2024). And as Petitioner himself admits, *SmartSky*'s holding was compelled by the Fourth Circuit's (mistaken) understanding of *Badgerow*.

In the Fourth Circuit's view, "*Badgerow* 'plainly h[eld] that *all* Section 9 and 10 applications must have an independent jurisdictional basis." Pet. 20 (quoting 93 F.4th at 184). It found any contrary position an attempt to "'escape from *Badgerow*'s holding.'" *Id.* (quoting 93 F.4th at 187). And its conclusion was self-consciously driven by "'the clear mandates of *Badgerow*.'" *Id.* at 21 (quoting 93 F.4th at 184 n.8).

Perhaps without realizing it, Petitioner has thus explained away a substantial portion of his own alleged split. At its irreducible core, both Petitioner and *SmartSky* divide the universe into pre- and post-*Badgerow* authority. *See, e.g.*, Pet. 3 (Petitioner himself labeling cases "pre-*Badgerow*" and "post-*Badgerow*"). But if this question is all about what *Badgerow* commands, then any pre-*Badgerow* cases are irrelevant. Cases that came before *Badgerow* obviously had no occasion to ask what *Badgerow* means because the decision did not yet exist. Even if Petitioner were somehow right that *Badgerow* was game-changing, it changed it *after* those particular games were played. And it accordingly makes no difference what any circuit thought before *Badgerow* was decided.

This immediately blunts Petitioner's claim of a genuine split with the Eighth, Tenth, and Eleventh Circuits, all of which weighed in *before Badgerow*. *See* Pet. 15-18 (citing *Dodson Int'l Parts, Inc. v. Williams Int'l Co. LLC*, 12 F.4th 1212 (10th Cir. 2021); *PTA-FLA, Inc. v. ZTE USA, Inc.*, 844 F.3d 1299 (11th Cir. 2016); and *Smart v. Sunshine Potato Flakes, L.L.C.*, 307 F.3d 684 (8th Cir. 2002)).

In sum: the pre-*Badgerow* universe is irrelevant to a question supposedly driven by *Badgerow* itself. As a result, right off the bat, Petitioner badly overstates the strength and depth of any putative split.

2. When turning to the *relevant* universe—the few post-*Badgerow* decisions—Petitioner's alleged conflict is both remarkably shallow and weak. Indeed, not a single circuit (aside from the Fourth) has meaningfully weighed in on the question presented.

a. The Seventh Circuit addressed the issue in passing in *Kinsella v. Baker Hughes Oilfield Operations, LLC,* 66 F.4th 1099 (7th Cir. 2023). In two brief paragraphs, it explained the procedural posture of the case and the Circuit's pre-existing case law, but when it came to deciding the jurisdictional issue, rejected *Badgerow*'s applicability in a single sentence: "*Badgerow* does not change these conclusions." 66 F.4th at 1103. And because *Kinsella* was decided before *SmartSky*, the Seventh Circuit had no opportunity to address the Fourth Circuit's contrary reasoning.

b. The Third Circuit's decision in *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 238 n.18 (3d Cir. 2024), is equally thin and even less relevant. In that case, the Third Circuit did not meaningfully consider the question presented here, finding instead that the plaintiff lacked standing from the outset of her suit—and the district court thus could not properly exercise jurisdiction over that suit, the motion to compel arbitration, or the motion to vacate. 114 F.4th at 238. Thus, the Third Circuit had no occasion to decide whether a valid assertion of jurisdiction at the outset, followed by a stay pending arbitration, permitted the

court to decide post-arbitration motions while that underlying suit was still pending. *Id.* Instead, in one footnote, it concluded that "[o]f course, if a district court has an independent jurisdictional basis, such as 28 U.S.C. § 1331, to hear a suit, that court's jurisdiction 'continues over' both a motion to compel and a subsequent motion to vacate." *Id.* at 238 n.16 (citing *Kinsella*, 66 F.4th at 1103). But in another footnote, it concluded that "to allow federal jurisdiction over a motion to vacate whenever the underlying dispute involves federal claims … would be to embrace the exact look-through approach *Badgerow* rejected." *Id.* at 238 n.18. Absent from either footnote is any explanation or analysis of the Third Circuit's reasoning. And while it post-dated *SmartSky*, it did not address the Fourth Circuit's decision, let alone grapple with its rationale.

c. All that remains then is Petitioner's reliance on two unpublished decisions from the Fifth Circuit. Because neither of them resolves whether or how *Badgerow* applies in this case, they also do nothing for Petitioner's argument that this Court should weigh in here and now.

In *Rodgers v. United Servs. Auto. Ass'n*, No. 21-50606, 2022 WL 2610234 at *2 (5th Cir. July 8, 2022), the Fifth Circuit did not cite *Badgerow* at all, relying instead on other pre-*Badgerow* decisions published by the Fifth Circuit, to support its finding that it had jurisdiction to review the arbitration award.

Even more fleeting, the Fifth Circuit declined to address the issue in *Wheatfall v. HEB Grocery Co., L.P.*, No. 24-20257, 2025 WL 1703637, at *2 (5th Cir. June 18, 2025). In that case, the original federal suit had been administratively closed when the parties

agreed to proceed through arbitration. *Id.* After the arbitrator dismissed the plaintiff's claims as time-barred, she filed suit in state court seeking to vacate the arbitral award and the defendant removed the case to federal court and successfully moved to dismiss for improper service of process. The Fifth Circuit held that the district court lacked subject matter jurisdiction. *Id.* at *1. But because the plaintiff had filed a new action in state court rather than reinstating the original action in federal court, the Fifth Circuit "decline[d] to address the 'jurisdictional anchor' theory of continuing jurisdiction." *Id.* at *2, n.1. Petitioner's reliance on these two unpublished Fifth Circuit decisions, with the *Wheatfall* Court itself observing that the question presented was still undecided in that Circuit, should be a non-factor in any circuit split analysis.

d. Lastly, the Second Circuit's decision below primarily focused on pre-*Badgerow* authority and only minimally engaged with Petitioner's current argument. While it acknowledged *Kinsella* and *SmartSky,* it concluded it was bound by its prior authority and thus never grappled meaningfully with the merits of the question Petitioner asks this Court to resolve. Ultimately, it disposed of the question in an unpublished disposition that does not even bind the Circuit that issued it and that the panel noted presented "unique factual circumstances." *Id.* at 8a.

3. Given that (i) this Court only recently decided *Badgerow*; (ii) excluding the Fourth Circuit, no court of appeals has meaningfully weighed in on the question presented; and (iii) no other appellate court has addressed the Fourth Circuit's decision in *SmartSky*, allowing the question presented to further percolate might eventually resolve the split without requiring

this Court's intervention, or at the very least shape the issue appropriately for review by this Court. Either way, there is no reason for this Court now to be the second appellate court to grapple explicitly with the Fourth Circuit's rationale. At a minimum, it counsels in favor of first allowing *some* circuits the opportunity to consider *Badgerow* and *SmartSky*.

Indeed, other circuits will likely have the opportunity to weigh in sooner rather than later. For example, while the Ninth Circuit applied *Badgerow* to conclude that a court lacked jurisdiction over a motion to confirm where the court had previously *dismissed* the underlying lawsuit, it expressly acknowledged that "this case [does not] present the question whether 'a district court that previously stayed a case [can] retain or extend its subject matter jurisdiction over subsequent Sections 9 and 10 applications.'" *Tesla Motors, Inc. v. Balan*, 134 F.4th 558, 562 n. 1 (9th Cir. 2025) (citing *SmartSky Networks, LLC v. DAG Wireless, LTD.*, 93 F.4th 175, 184–86 (4th Cir. 2024)). That open question is thus likely to be answered in the near term by other circuits. *See, e.g., Teleport Mobility, Inc. v. Sywula*, No. 21-CV-00874-SI, 2025 WL 860498, at *5–6 (N.D. Cal. Mar. 18, 2025) ("The Ninth Circuit has not considered the extension of *Badgerow* under these circumstances and district courts within this circuit are similarly split [. . .] Absent definitive guidance from the Ninth Circuit or the Supreme Court, the Court declines to extend *Badgerow*'s holding to the circumstances here."); *see also McConnell & Malek Enterprises, v. Proof Mark, Inc.*, No. 23-CV-00010-LJC, 2025 WL 2430610, at *3–4 (N.D. Cal. Aug. 22, 2025) (applying the jurisdictional anchor doctrine and highlighting that "the 'Ninth Circuit ha[s] not considered

the extension of *Badgerow* under these circumstances'").

While Petitioner contends that further percolation would not be beneficial, Petitioner fails to identify any other appellate courts that have meaningfully addressed this Court's *Badgerow* decision or the Fourth Circuit's decision in *SmartSky*. Indeed, the Fourth Circuit might even correct its own position after allowing the question to further percolate in other courts of appeals—especially if those other courts continue to reject its bottom-line conclusion out of hand. Simply put, there is no immediate need for this Court to intervene now. The petition should be denied for that reason alone.

### B. This Case Is A Poor Vehicle For Deciding The Question Presented

Even if the circuit split were already crystallized and actually developed (it is neither), this Court would still be better off waiting for a suitable vehicle to resolve it.

First, Petitioner has taken inconsistent positions regarding the question presented—flip-flopping (where it suits his interests) on the District Court's power to decide post-arbitration motions. In the proceedings below, Petitioner contested the court's jurisdiction to resolve Respondents' motion to confirm while simultaneously invoking the same court's jurisdiction to resolve his own motion to vacate. He offered no explanation for that internally contradictory position. And no viable explanation is apparent—aside from Petitioner's continued abuse of the judicial process. Parties are not usually permitted to levy

jurisdictional attacks only as to the motions they oppose while arguing that the same court should decide the motions they favor. That suspect conduct presents a subpar foundation for this Court to decide the question presented.

Second, as the panel below recognized, this case presents "unique factual circumstances" and "procedural irregularit[ies]" given Petitioner's transparent maneuvers to avoid arbitration at all costs. Pet. App. 8a. Specifically, Petitioner deliberately omitted the Chateau Marmont (his employer of record at all relevant times) as a named defendant in his *employment* claims, solely to circumvent his binding arbitration agreement. This left a bizarre mismatch in both the litigation and the arbitration: the Chateau Marmont was not a named party in federal court, and the Balazs Respondents were not named parties to the arbitration. The District Court nevertheless permitted the Chateau Marmont (a non-party) to join the Balazs Respondents in their motion to confirm—while the Balazs Respondents were seeking to confirm an arbitration award as non-parties to the arbitration agreement. This unusual posture—a direct product of Petitioner's own doing—presents unnecessary complications that might distort the question presented.

Finally, while not technically relevant to the jurisdictional question, this case is unpalatable given Petitioner's well-documented abuse of the judicial and arbitral process. There is no need to reward Petitioner's misconduct or delay the inevitable: Petitioner will lose on the merits of a motion to confirm in any court, just as he lost below in the same tribunal where he elected to initiate his own action.

As the arbitrator found, Petitioner and his counsel attempted to "manufacture" a basis for vacating the arbitral award. C.A. App. A181. Their "vexatious conduct" was worse both in quantity and quality than the hundreds of other proceedings the arbitrator had overseen. *Id.* at A181, A184. Petitioner has now wasted judicial resources on both coasts—including California state *and* federal court—all in an attempt to subvert his own New York proceedings. Allowing him to seek out yet another venue to relitigate the same meritless questions is not a sound reason to grant review.

### C. Petitioner's Policy Arguments In Support of Immediate Review Are Speculative And Divorced from Reality

Petitioner contends that the circuit split, if left unresolved, will result in a flood of forum-shopping and inefficient and unnecessary litigation. *See* Pet. 21-23. Specifically, according to Petitioner, absent immediate review, parties who want to invoke a "jurisdictional anchor" theory will have an incentive to forum-shop and file useless federal-court lawsuits or Section 4 petitions before arbitration simply to preserve their ability to invoke a federal forum at some unspecified point after. *Id.* at 22. Completely absent from Petitioner's hypotheticals are any real-world examples of parties deliberately filing pre-arbitration "anchor" suits.

There is a reason Petitioner's hypotheticals lack any such examples: his concerns are *entirely hypothetical*. Back in reality, there is no epidemic of parties filing pre-arbitration "anchor" suits in order to secure a federal forum post-arbitration.

On the contrary, parties are instead focused on choosing the venue that will *compel arbitration* or *litigate their actual claims*; those decisions matter in the real-world—certainly more than the (eventual) location for later seeking "narrow" post-arbitration relief. And even that puts aside the overwhelming swath of disputes where parties are bound to file in specific jurisdictions per forum-selection clauses or general venue rules. It is the unusual situation where parties have the option to file wherever they want. That is not how venue typically works—which further explains why Petitioner's forum-shopping concerns are unfounded.

In any event, because post-arbitration jurisdiction (properly understood) is discretionary, any court concerned about gamesmanship can always *decline* to exercise jurisdiction over post-arbitration motions. And in rare cases where a party is clearly abusing the system, courts retain the option of refusing to reward the party for that misconduct.

But in the ordinary course, district courts can (and should) decide these motions—and there is nothing inefficient or unseemly about it. Indeed, it would be inefficient to require parties to ignore a pending case in favor of initiating a new action in a new forum. There is no reason to multiply proceedings when a single (pending) one will do, and a district court familiar with the facts and underlying issues will often be better positioned to resolve post-arbitration motions than a court that is not. For example, in this case, Petitioner moved to vacate the arbitration award on the same state-law procedural grounds the court had already considered earlier in the case. That court was thus ideally situated to decide if the argument

constituted grounds for vacatur. By contrast, a state court would have to reinvent the wheel to decide the same question. That may be less of an issue where *no* pending action is available to jump in (as with *Badgerow*); but there is little reason to burden another court when a live action in a stayed case is standing ready to bring finality to a pending dispute.

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## CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

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