

No. 25-83

IN THE
Supreme Court of the United States

ADRIAN JULES,
Petitioner,

v.

ANDRE BALAZS PROPERTIES, ANDRE TOMES BALAZS,
BALAZS INVESTORS, LLC, HOTELS A.B., LLC, CHA-
TEAU HOLDINGS, LTD., THOMAS A. FARINELLA,
Respondents.

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

**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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INTRODUCTION

This case asks whether a federal court that stays a federal suit pending arbitration retains jurisdiction over a later Section 9 or 10 application where jurisdiction would otherwise be lacking. Respondents acknowledge that the circuits are divided on that question and that the “split may warrant this Court’s review at some point.” BIO 1. But respondents nonetheless urge this Court to deny review on the theory that if the Court ignores the five published appellate decisions deciding the question presented prior to *Badgerow v. Walters*, 596 U.S. 1 (2022), then the circuit split would be a mere 2-1, and so the Court should let the split persist a little while longer.

That is not a persuasive argument against certiorari. Even if the split were 2-1, certiorari would be warranted in light of the practical importance of the question presented and the inevitable confusion and forum-shopping that the split will cause. But the split is 7-1, not 2-1. The pre-*Badgerow* cases count in the split. Those cases begin from the premise that a Section 9 or 10 application requires an independent jurisdictional basis—a premise this Court subsequently confirmed in *Badgerow*—and hold that a pre-existing federal lawsuit is a way of *satisfying* that jurisdictional requirement. As the Second Circuit held in this very case, those decisions remain binding circuit precedent. Thus, eight courts of appeals have resolved the question presented, not three. That is more than sufficient percolation to warrant Supreme Court review.

Respondents also float three purported “vehicle problems”: (1) petitioner made alternative arguments

below, as he was permitted and indeed required to do under the Federal Rules; (2) petitioner initially sued only entities that were non-parties to any arbitration agreements, as part of his good-faith effort to adhere to the contracts he signed; and (3) petitioner has filed other lawsuits that respondents concede are irrelevant. Respondents do not claim that any of these issues would have the slightest impact on this Court's ability to decide the question presented, but instead contend that they somehow demonstrate that petitioner is a bad actor. Respondents are wrong. Petitioner has scrupulously followed the Federal Rules and his arbitration agreement and has engaged in no malfeasance whatsoever.

This case squarely tees up a circuit split that the Court will inevitably have to resolve. Leaving the split intact would condemn litigants and courts to time-wasting litigation and forum-shopping. Rather than needlessly prolonging the confusion, the Court should grant review now.

ARGUMENT

I. EIGHT CIRCUITS HAVE RESOLVED THE QUESTION PRESENTED.

As respondents repeatedly acknowledge, the circuits are divided on the question presented. *See* BIO 1, 2, 10, 14, 16, 18. Even if one ignores everything that happened prior to *Badgerow*, it is undisputed that there is a 2-1 split. In *Kinsella v. Baker Hughes Oilfields Operations, LLC*, 66 F.4th 1099, 1102-03 (7th Cir. 2023), the Seventh Circuit followed pre-existing circuit precedent adopting the jurisdictional-anchor theory and held that *Badgerow* did not disturb that precedent. Petitioner agrees with

respondents (BIO 12) that the Seventh Circuit’s reasoning is not especially persuasive, but there is no doubt that the Seventh Circuit established binding circuit precedent on the question presented. *See* 66 F.4th at 1102-03. Then, in *SmartSky Networks, LLC v. DAG Wireless, Ltd.*, 93 F.4th 175, 184 n.8 (4th Cir. 2024), the Fourth Circuit rejected the jurisdictional-anchor theory, expressly “declin[ing] to follow” *Kinsella*’s holding (as well as that of the district court in this case). Finally, in the decision below, the Second Circuit deemed itself bound by circuit precedent to side with the Seventh Circuit and reject *SmartSky*. Thus, even focusing solely on post-*Badgerow* cases, there is a 2-1 split. This Court routinely grants certiorari to resolve 2-1 and even 1-1 splits. *See, e.g., M&K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, 145 S. Ct. 2841 (2025) (No. 23-1209) (1-1 split); *Galette v. New Jersey Transit Corp.*, 145 S. Ct. 2870 (2025) (No. 24-1021) (2-1 split); *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 145 S. Ct. 2842 (2025) (No. 24-345) (2-1 split). The Court should take the same course here.

But contrary to respondents’ suggestion, pre-*Badgerow* cases cannot be ignored. *Badgerow* holds that there must be an independent jurisdictional basis for a Section 9 or 10 application. Pre-*Badgerow* cases hold that a pre-existing federal suit is one way of *satisfying* the requirement for an independent jurisdictional basis. *Badgerow* did not cause those cases to vanish.

This case proves the point. As the petition explained, prior to *Badgerow*, the Second Circuit had adopted the jurisdictional-anchor theory in a published decision, holding that the presence of a pre-existing federal suit is

in and of itself a sufficient basis for federal jurisdiction over Section 9 and 10 applications. *See Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 705 (2d Cir. 1985). In the decision below, the Second Circuit held that *Badgerow*—which had nothing to do with the jurisdictional-anchor theory—did not disturb that binding precedent. Pet. App. 7a. Indeed, the court issued an unpublished decision precisely *because* deciding this case required nothing more than the rote application of binding circuit precedent adopting the jurisdictional-anchor theory. *See id.* It makes no sense for respondents to suggest that “pre-*Badgerow* cases are irrelevant,” BIO 10-11, when respondents prevailed below on the ground that the Second Circuit’s pre-*Badgerow* precedent was *dispositive*.

The same analysis applies to other circuits’ jurisdictional-anchor decisions. For instance, in *Dodson International Parts, Inc. v. Williams International Co. LLC*, 12 F.4th 1212 (10th Cir. 2021), the Tenth Circuit went out of its way to observe that this Court had already granted certiorari in *Badgerow*, but nonetheless held that the jurisdictional-anchor theory established federal jurisdiction regardless of how *Badgerow* came out. *Id.* at 1227-28 & n.6 (noting that *Badgerow* involved a “*free-standing* motion to vacate or confirm an arbitration award,” whereas “[b]ecause the district court in this case was properly vested with federal-question jurisdiction when the action was initially filed, and because it merely stayed the action during the pendency of arbitration proceedings, it retained subject-matter jurisdiction to confirm the award” (emphasis added)). So *Dodson* obviously counts as part of the split: it explicitly stated

that the jurisdictional-anchor theory did not depend on *Badgerow*.

Similarly, in *Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240 (3d Cir. 2013), the Third Circuit held that Section 9 and 10 applications required an independent jurisdictional basis—which this Court later confirmed in *Badgerow*—but nonetheless held that a federal court could exercise jurisdiction based on a pre-existing jurisdictional anchor. *Id.* at 246 & n.5, 248-49. Nothing about *Badgerow* could possibly have affected *Freeman*’s vitality: the premise of *Freeman* was that an independent jurisdictional basis was needed, and *Badgerow* later confirmed that *Freeman*’s premise was correct. It is no surprise that post-*Badgerow*, the Third Circuit made clear that it agreed with the Seventh Circuit’s *Kinsella* case. *See George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 238 & n.16 (3d Cir. 2024). Respondents’ assertion that *George*’s reasoning is “thin” (BIO 12) misses the point: *George* merely reaffirms that the Third Circuit had *already* adopted the jurisdictional-anchor theory.

The situation is the same in the Fifth Circuit. Exactly like the Second Circuit here, the Fifth Circuit has followed the jurisdictional-anchor theory for decades. *See T & R Enters., Inc. v. Cont’l Grain Co.*, 613 F.2d 1272 (5th Cir. 1980). And exactly like the Second Circuit here, it continues to view the jurisdictional-anchor theory as binding precedent post-*Badgerow*. *See Rodgers v. United Servs. Auto. Ass’n*, No. 21-50606, 2022 WL 2610234, at *2 (5th Cir. July 8, 2022).¹ And while the

¹ Contrary to respondents’ assertions, *Wheatfall v. HEB Grocery*

Eighth and Eleventh Circuits have not recently revisited their pre-*Badgerow* precedents adopting the jurisdictional-anchor theory, see *PTA-FLA, Inc. v. ZTE USA, Inc.*, 844 F.3d 1299 (11th Cir. 2016); *Smart v. Sunshine Potato Flakes, L.L.C.*, 307 F.3d 684, 685-86 (8th Cir. 2002), nothing in the reasoning of those decisions suggests that *Badgerow* would affect them.

In sum, because the validity of the jurisdictional-anchor theory is a question predating and not answered by *Badgerow*, the circuit split properly includes all courts that have weighed in on that theory—regardless of whether they did so before or after *Badgerow*. There are therefore eight, not three, courts of appeals in the circuit split.

For that reason, too, additional percolation would be pointless. Lower courts that have already adopted the jurisdictional-anchor theory will simply do what the Second Circuit did here—hold that binding precedent requires applying the jurisdictional-anchor theory.

There is no possible way the circuit split will go away on its own. The Fourth Circuit’s unanimous *SmartSky* opinion carefully analyzed the jurisdictional-anchor theory and persuasively explained why it is wrong. There is no reason the Fourth Circuit would flip on this issue. Meanwhile, it is not realistic that every other appellate court will overturn its precedent adopting the

Co., L.P., No. 24-20257, 2025 WL 1703637 (5th Cir. June 18, 2025), did not “observ[e] that the question presented [here] was still undecided in [the Fifth] Circuit.” BIO 14. It merely “declin[e]d to address the ‘jurisdictional anchor’ theory” while noting the circuit split. *Wheatfall*, 2025 WL 1703637, at *2 n.1.

jurisdictional-anchor theory. The split will persist until this Court weighs in.

II. NO VEHICLE PROBLEMS EXIST.

This case is a flawless vehicle. What respondents characterize as “vehicle problems” are not actual vehicle problems: they do not even arguably pose a barrier to this Court deciding the question presented. Instead, respondents’ arguments are gripes about petitioner’s purportedly improper litigation conduct. In addition to being irrelevant to the certiorari analysis, respondents’ potshots are misguided on their own terms.

First, respondents claim petitioner took “inconsistent positions” in the district court by opposing respondents’ motion to confirm on jurisdictional grounds while also filing a motion to vacate. *See* BIO 16-17. There were no “inconsistent positions.” Instead, like virtually every litigant, petitioner made alternative arguments. As the district court recognized, *see* Pet. App. 15a, petitioner argued that the court lacked jurisdiction over *all* Section 9 and 10 applications, *see* D. Ct. Dkt. 106, at 16 (arguing that district courts possess jurisdiction over “post-arbitration motions to confirm *or vacate*” only when a basis for jurisdiction “is presented by the petition to confirm *or vacate* ... itself” (emphases added, other emphasis omitted)); *see* Ct. App. Dkt. 153, at 16-18 (similar). Having made that argument, petitioner argued in the alternative that, if the court determined it did have jurisdiction, the award should be vacated. This was perfectly appropriate: The Federal Rules explicitly authorize litigants to make arguments in the alternative. *See* Fed. R. Civ. P. 8(d)(2)-(3). Indeed, petitioner *had* to make alternative arguments so

that, if the court exercised jurisdiction, he could challenge the award on the merits. Petitioner’s decision to file a protective cross-petition to vacate thus reflected not manipulative “flip-flopping,” BIO 16, but merely prudent litigating.

Second, respondents offer the baffling critique that petitioner tried too hard to comply with his arbitration agreement. Because petitioner signed an arbitration agreement with Chateau Marmont, he did not sue Chateau Marmont in federal court and instead sued other defendants. That banal litigation decision reflects neither “unique factual circumstances” nor a “procedural irregularity,” BIO 17 (quoting Pet. App. 8a), but instead shows that petitioner adheres to contracts he signs. Ultimately, petitioner arbitrated with Chateau Marmont, and Chateau Marmont (as well as the originally named defendants) used petitioner’s federal-court action as a jurisdictional anchor to seek confirmation of the award. Nothing about this procedural history suggests that there is any vehicle problem: indeed, it reflects a particularly aggressive use of the jurisdictional-anchor theory by respondents and hence tees up the question presented in unusually stark terms. Respondents note that the phrases “unique factual circumstances” and “procedural irregularity” appear in the Second Circuit’s decision, but the Second Circuit was not referring to anything *petitioner* did. *See* Pet. App. 8a. Instead, the court was referring to *Chateau Marmont’s* puzzling failure to file a motion to intervene before seeking to confirm the award. *See id.* The Second Circuit ultimately held that no motion to intervene was required, and petitioner does not challenge that holding; instead,

petitioner solely challenges the Second Circuit’s antecedent decision that there was federal jurisdiction, which is pristinely teed up for Supreme Court review.

Third, respondents devote substantial space to an issue they delicately characterize as “not technically relevant”—petitioner’s alleged “vexatious conduct.” BIO 17-18; *see* BIO 5-6, 9-10. Petitioner agrees this issue is irrelevant but strongly disagrees that he acted vexatiously. Petitioner maintains that he was denied a fair arbitration because the arbitrator decided to proceed with the merits hearing despite petitioner’s repeated requests to adjourn the hearing due to a medical emergency. *See, e.g.*, Ct. App. Dkt. 153, at 21-35.

III. THE DECISION BELOW IS WRONG.

Respondents offer no textual, doctrinal, or historical support for the decision below. Instead, respondents’ defense of the decision below is limited to their claim that enforcing statutory limits on jurisdiction would be “inefficient.” BIO 19. The same argument failed in *Badgerow*: “It is not for this Court to employ untethered notions of what might be good public policy to expand our jurisdiction. However the pros and cons shake out, Congress has made its call.” 596 U.S. at 16-17 (internal quotation marks omitted). In any event, respondents’ inefficiency concerns are overstated. As respondents acknowledge, an application under Section 9 or 10 presents only a “narrow” question, BIO 19, about “the enforceability of an arbitral award,” *Badgerow*, 596 U.S. at 9. In that posture, the parties’ underlying dispute is “not before the court,” *id.* at 5, so a court’s familiarity with the facts of that underlying dispute will not assist it in resolving the question before it.

Further, it is respondents' position that will create inefficiency in the form of forum-shopping, wasteful litigation, and races to the courthouse. As the petition explained in detail, the jurisdictional-anchor theory creates an incentive to forum-shop for courts that apply that theory and then file useless federal-court lawsuits to ensure a federal forum after the arbitration concludes. Pet. 21-23. Useless litigation is always bad, but it is especially pathological in the context of the FAA, which is designed to avoid precisely that outcome. Respondents suggest these concerns are "entirely hypothetical," BIO 1; *see* BIO 18, but otherwise offer no substantive argument as to why litigants will not act on these pernicious incentives.

Respondents also claim that "post-arbitration jurisdiction (properly understood) is discretionary," so "any court concerned about gamesmanship can always decline to exercise jurisdiction." BIO 19 (emphasis omitted). However, respondents cite no authority for this proposition, and it is wrong: when jurisdiction exists, federal courts have a "virtually unflagging obligation" to exercise it. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). If the jurisdictional-anchor theory is correct and a court has jurisdiction over a Section 9 or 10 application by virtue of the claims asserted in an earlier, pre-arbitration suit, the court could not simply decline to exercise that jurisdiction because it suspects strategic behavior.

In short, respondents offer no textual defense of the Second Circuit's decision, and their policy arguments wither under scrutiny. The decision below is wrong, and this Court should grant review to correct it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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