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, CHATEAU HOLDINGS, LTD., THOMAS A. FARINELLA,
Respondents.

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

REPLY BRIEF OF PETITIONER

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INTRODUCTION

In *Badgerow v. Walters*, 596 U.S. 1 (2022), this Court held that federal courts lack jurisdiction over applications under Sections 9 and 10 of the FAA unless an independent jurisdictional basis appears on the face of the application. In this case, the Court should hold that *Badgerow*'s rule applies to all Section 9 and 10 applications, regardless of whether a prior lawsuit is on file.

Nothing in the FAA suggests that a prior lawsuit makes any jurisdictional difference. *Badgerow*'s reasoning applies just as strongly to cases where a prior lawsuit was filed. Moreover, Section 8 of the FAA includes language explicitly providing that in maritime cases, a prior lawsuit can serve as a jurisdictional anchor that allows the court to exercise jurisdiction over post-arbitration applications. No comparable language appears in Sections 9 and 10. The Court should give effect to Congress's drafting choice.

Respondents argue that the Court should begin its analysis by assessing whether supplemental jurisdiction exists under 28 U.S.C. § 1367 and then assess whether the FAA precludes that jurisdiction. That is the wrong approach. The Court should instead decide this case based on the FAA's text, just as it did in *Badgerow*.

Even if Section 1367 were relevant, it would not provide for jurisdiction. Section 1367 allows federal courts to exercise jurisdiction over non-federal claims that share a common nucleus of facts with federal claims. There is little, if any, factual relationship between petitioner's federal employment claims and the parties' Section 9 and 10 applications. Indeed, when petitioner filed

his federal lawsuit, the arbitration at issue had not even occurred.

The Court has already all but resolved this issue. In *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994), this Court held that federal claims and claims alleging breach of an agreement to settle those federal claims were insufficiently related to warrant the exercise of ancillary jurisdiction. In *Badgerow*, this Court expressly analogized Section 9 and 10 applications to *Kokkonen*'s breach-of-settlement-agreement claims. Putting those two holdings together, federal claims are insufficiently related to Section 9 and 10 applications to give rise to ancillary jurisdiction. Section 1367 therefore does not confer jurisdiction.

The judgment should be reversed.

ARGUMENT

I. THE FAA'S TEXT, STRUCTURE, AND PURPOSE FORECLOSE THE JURISDICTIONAL-ANCHOR THEORY.

A. The Court Should Decide This Case Based On The FAA's Text.

Respondents contend (at 16-21, 36-37) that the Court should resolve this case by first assessing whether there is jurisdiction over the Section 9 and 10 applications under 28 U.S.C. § 1367, and then deciding whether the FAA precludes that jurisdiction. That is the wrong approach. The Court's analysis should begin and end with the FAA's text.

The FAA is a reticulated statute that has different jurisdictional rules across different provisions. Section 4

provides for look-through jurisdiction for motions to compel. *See Badgerow*, 596 U.S. at 4-5. Section 8 enacts the jurisdictional-anchor doctrine in maritime cases. *See* Pet. Br. 26-27. Section 9 identifies the criteria under which "the court shall have jurisdiction" over a party to an arbitration. 9 U.S.C. § 9. Given the FAA's close attention to jurisdiction, the Court should resolve the jurisdictional issue here by analyzing the FAA.

The Court took that approach in *Badgerow*. The ultimate question there was whether Title 28 conferred jurisdiction over the Section 9 and 10 applications at issue. But the Court answered that jurisdictional question by conducting a close read of the FAA's text and structure. The Court should follow the same approach here.

Respondents claim that the Court should begin its analysis by assessing whether the district court had supplemental jurisdiction under 28 U.S.C. § 1367. But that approach is anachronistic. Congress enacted Section 1367 in 1990—sixty-five years after the FAA. *Compare* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 310, 104 Stat. 5089, 5113, *with* United States Arbitration Act, ch. 213, 43 Stat. 883 (1925).

At the time of the FAA's enactment, in assessing federal jurisdiction over non-federal claims, courts applied the doctrine of ancillary jurisdiction, a judge-made doctrine of uncertain scope. *See Kokkonen*, 511 U.S. at 378-79 ("The doctrine of ancillary jurisdiction can hardly be criticized for being overly rigid or precise[.]"). "Federal courts are courts of limited jurisdiction" and "possess only that power authorized by Constitution and statute." *Id.* at 377. Federal courts in 1925, therefore, would not have analyzed jurisdiction over Section 9 and 10

applications by first deciding whether the amorphous, non-statutory ancillary-jurisdiction doctrine authorized jurisdiction and then deciding whether the FAA precluded that jurisdiction. Instead, they would have looked to the federal statute on the books—the FAA—and conducted the same type of textual analysis the Court conducted in *Badgerow*. *See* Pet. Br. 41-43 (explaining that the FAA displaces the gap-filling ancillary-jurisdiction doctrine).

Section 1367's later enactment did not alter the appropriate interpretive methodology. As respondents appear to concede, Section 1367 did not *expand* jurisdiction under the FAA, but instead merely "codified much of the common-law doctrine of ancillary jurisdiction." Resp. Br. 25 n.9 (quoting *Peacock v. Thomas*, 516 U.S. 349, 354 n.5 (1996)); *see Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 27 (2025) (explaining that Section 1367 "generally codif[ied]" the common-law "supplemental-jurisdiction rule" that "jurisdiction over a federal-law claim brings with it supplemental jurisdiction over a state-law claim arising from the same facts"). It follows that if, under the best reading of the FAA, the ancillary-jurisdiction doctrine does not apply to Section 9 and 10 applications, Section 1367's enactment could not change that conclusion.

To be clear, as petitioner explains below, Section 1367, even taken for all it is worth, does not authorize the ancillary-jurisdiction doctrine. *See* pp. 16-23, *infra*. But the Court need not go there: its analysis should begin and end with the FAA.

Finally, even if respondents were correct that the question is whether the FAA precludes jurisdiction

otherwise available under Section 1367, the answer would be yes. As explained below, the FAA is fundamentally incompatible with the jurisdictional-anchor doctrine.

B. The FAA's Text And Structure Foreclose The Jurisdictional-Anchor Theory.

The FAA's text and structure provide overwhelming evidence against the jurisdictional-anchor doctrine.

1. Begin with Sections 9 and 10. These provisions draw no distinction between applications affiliated with pre-existing suits and freestanding applications. *See* Pet. Br. 20-21. Respondents do not contend otherwise.

Sections 9 and 10 are not merely silent on the jurisdictional-anchor theory—they are incompatible with it. Section 9 states: "Notice of [a Section 9] application *shall* be served upon the adverse party, and *thereupon* the court shall have jurisdiction of such party as though he had appeared generally in the proceeding." 9 U.S.C. § 9 (emphases added). The word "thereupon" establishes that the court obtains jurisdiction over the Section 9 application only *after* notice is served. And the phrase "as though he had appeared generally" presupposes that the adverse party has *not* already appeared, which makes sense only if Congress saw the application as a new action requiring its own jurisdictional basis, not as a motion in a pending case. *See* Pet. Br. 21-23; n.3, *infra*.

Respondents do not meaningfully engage with these textual arguments. They claim instead (at 38) that this Court "emphatically rejected the identical theory" in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193 (2000). According to respondents,

because *Cortez Byrd* held that Section 9 and 10's venue provisions were permissive rather than mandatory, their service-of-process provisions must be permissive, too. Resp. Br. 38-39.

That argument fails. *Cortez Byrd* held that Section 9 and 10's venue provisions are permissive because they use the word "may." 529 U.S. at 197-200. That word was central to the Court's analysis: the Court explained that "may" is sometimes permissive and sometimes mandatory, and relied on statutory history to conclude that Congress meant "may" in its permissive sense. *Id.* Here, by contrast, petitioner relies on the service-of-process provisions, which use the word "shall." Unlike the word "may," "the word 'shall' creates an obligation impervious to judicial discretion." *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024) (citation omitted).

Section 9's admonition that notice of the application "shall" occur—and that the court acquires jurisdiction only *after* that occurs—is irreconcilable with the jurisdictional-anchor theory.[1]

2. Turn next to Sections 3 and 4. Respondents do not suggest that these sections offer any inkling of the jurisdictional-anchor doctrine; instead, they suggest that the absence of such language does not matter. *See* Resp. Br. 23. But these are the very provisions that purportedly *create* the jurisdictional anchor. Further, in Section 4, Congress included *different* jurisdictional

[1] Respondents err in protesting (at 39) that petitioner's reading would require parties to pointlessly re-serve one another even where the parties are already before the court. Parties are always free to waive formal service. *See* Fed. R. Civ. P. 4(d).

language that established look-through jurisdiction for motions to compel arbitration. If Congress had intended Section 3 and 4 orders to provide a hook for jurisdiction over post-arbitration applications, it would have said so in Sections 3 and 4.

3. And then there is Section 8, which includes clear jurisdictional-anchor language that Sections 9 and 10 lack: upon compelling arbitration of a maritime dispute, the court "shall retain jurisdiction to enter its decree upon the award." 9 U.S.C. § 8. Congress's choice to authorize a jurisdictional anchor in Section 8 strongly suggests that its choice not to include comparable language in Sections 9 or 10 (or 3 or 4) was intentional. *See* Pet. Br. 26-28. Indeed, *Badgerow* rested on precisely the same type of inference. *See* 596 U.S. at 11.

Respondents seek (at 21-22) to explain away Section 8 by arguing that it *mandates* courts to retain jurisdiction, while courts have *discretion* to exercise ancillary jurisdiction over Section 9 and 10 applications (which, according to respondents, they should "overwhelmingly" exercise).[2] This response cannot carry the day.

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[2] Respondents do not justify their claim that courts would "overwhelmingly" exercise jurisdiction under a discretionary approach. Respondents suggest that courts should weigh Section 1367(c)'s discretionary factors, but those factors weigh *against* jurisdiction over Section 9 and 10 applications. The questions at issue in any Section 9 or 10 application will "substantially predominate[]" over any federal claims, 28 U.S.C. § 1367(c)(2), since the court will not have resolved the federal claims at all: they are resolved by the arbitrator. And the Federal Rules direct courts to dismiss claims that have been resolved in arbitration, *see* Fed. R. Civ. P. 8(c)(1); pp. 15-16,

Nothing in Sections 9 or 10, or anywhere else in the FAA, suggests that jurisdiction is ever discretionary. While Sections 9 and 10 use permissive language with respect to venue—"may"—no comparable language appears with respect to jurisdiction. *See* pp. 5-6, *supra*.

Nor does the FAA contain any hint on what discretionary criteria courts might use in deciding whether to exercise jurisdiction. And respondents do not identify any courts in the 101 years since the FAA's enactment that have articulated any such criteria or even noticed that this inquiry might be discretionary.

Further, respondents' account of Section 8's jurisdictional-anchor language is implausible. According to respondents, by including jurisdictional-anchor language in Section 8 and excluding it in Sections 9 and 10, Congress wanted courts to infer that courts should *always* apply the jurisdictional-anchor doctrine under Section 8 and *almost always* do so under Sections 9 and 10. Under respondents' theory, Section 8's jurisdictional-anchor language is relevant only in the vanishingly small class of cases in which district courts would have, for unknown reasons, declined discretionary jurisdiction over post-arbitration applications, even though they had already frozen the vessel at issue in the arbitration.

The far more natural explanation is that Congress conferred jurisdiction over post-arbitration applications under Section 8 to ensure that courts could award the

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infra—meaning the court will have "dismissed all claims over which it has original jurisdiction," 28 U.S.C. § 1367(c)(3). Regardless, a federal court in 1925—without Section 1367's guidance—would have had no idea how to make this discretionary judgment.

ship to the prevailing party, and declined to confer jurisdiction over post-arbitration applications under Sections 9 and 10 because there was no comparable need for federal-court involvement in post-arbitration proceedings. Pet. Br. 28-29. The Court should respect that sensible policy choice.[3]

C. *Badgerow*'s Rule Applies Here.

Badgerow's reasoning is incompatible with the jurisdictional-anchor approach. Respondents' effort to distinguish *Badgerow* rests on their observation (at 33-34) that it involved "a *new* federal case … , not a *preexisting* federal action." That point was not lost on petitioner. *See, e.g.*, Pet. Br. i, 1. Petitioner's argument is not that *Badgerow*'s facts are identical, but rather that *Badgerow*'s logic extends inexorably to applications associated with pre-existing suits.

Respondents completely ignore petitioner's argument based on *Badgerow*. Pet. Br. 29-31. To recap: *Badgerow* holds that because Section 4 includes look-through language that Sections 9 and 10 lack, courts should exercise look-through jurisdiction under Section 4 but not under Sections 9 and 10. *See* 596 U.S. at 10-11 ("We have no warrant to redline the FAA,

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[3] Respondents' passing reference to Section 6, *see* Resp. Br. 19 n.5 (citing 9 U.S.C. § 6), does not help them. *Badgerow* considered and rejected the argument that Section 6 has jurisdictional significance, instead explaining that it simply "ensures that FAA applications 'get streamlined treatment' … as compared to what a party would receive if she brought a normal contract suit." 596 U.S. at 15 (citation omitted). That the FAA requires Section 9 and 10 applications to be *processed* like motions does not mean they *are* motions in the underlying federal suit rather than separate "contract suit[s]." *Id.*

importing Section 4's consequential language into provisions containing nothing like it.").

But if respondents' position is correct, this textual distinction has practical significance *only when there is no Section 4 order*. According to respondents, in free-standing Section 9 and 10 cases, Congress intended for courts to hunt through the FAA's various provisions and determine that the textual difference between Sections 9 and 10 and Section 4 is dispositive. But in cases where a federal court *does* compel arbitration under Section 4—indeed, where the Section 4 order is the most recent entry on the docket and at the top of the court's mind—respondents would have courts *disregard* the textual distinction between Section 4 and Sections 9 and 10 and exercise look-through jurisdiction over the Section 9 and 10 applications via the jurisdictional-anchor doctrine. Or perhaps courts should "overwhelmingly" but not always do so based upon discretionary criteria found nowhere in the FAA. Resp. Br. 22. We repeat what we said before: this Court should not attribute to Congress the intent to so thoroughly baffle federal courts. Pet. Br. 31.

Badgerow's analysis of statutory purpose applies here, too. Because Congress's "'preeminent' purpose" in enacting the FAA "was to overcome some judges' reluctance to enforce arbitration agreements," it made sense to "expan[d] ... federal jurisdiction ... for petitions to compel [under Section 4] alone"—but not for Sections 9 and 10, about which there was no "similar congressional worry." *Badgerow*, 596 U.S. at 18 (citation omitted). That rationale does not depend on whether a federal suit was previously filed: there is no greater federal interest

in a confirm-or-vacate dispute just because it happens to follow a stayed federal case. And Congress may well have wished to protect *federal courts* from burdensome post-arbitration filings over which there is no particular federal interest—a concern that applies equally here as in *Badgerow*.

D. This Court's Prior Decisions Do Not Support The Jurisdictional-Anchor Theory.

The Second Circuit concluded that two of this Court's precedents—*Marine Transit Corp. v. Dreyfus*, 284 U.S. 263 (1932), and *Cortez Byrd*—indicate that the Court has already endorsed the jurisdictional-anchor doctrine. Neither case does.

Respondents do not defend the Second Circuit's reliance on *Marine Transit*. Wisely so: that case simply applied Section 8's express jurisdictional-anchor language. 284 U.S. at 276 (relying on "the authority expressly conferred by section 8"). It does not suggest that a jurisdictional anchor exists in *non*-maritime cases.

Respondents instead lean heavily upon the following sentence in *Cortez Byrd*: "We have … previously held that the court with the power to stay the action under § 3 has the further power to confirm any ensuing arbitration award." 529 U.S. at 202; *see* Resp. Br. 4, 8, 19, 31. But *Cortez Byrd's* sole citation for that proposition is to *Marine Transit*. *Id.* (citing *Marine Transit*, 284 U.S. at 275-76). If *Marine Transit* does not support respondents' position, then *Cortez Byrd*'s observation about what "we have previously held" in *Marine Transit* does not either. That is especially clear because in *Cortez Byrd* there *was no* prior Section 3 or 4 order and there

was diversity jurisdiction over the Section 9 application, *see* 529 U.S. at 195-96, 198, meaning that the jurisdictional-anchor question was doubly not presented.[4]

Moreover, respondents ignore that the very sentence they cite came in the context of explaining that there was no reason "Congress would have wanted to allow venue liberally where motions to confirm, vacate, or modify were brought as subsequent stages of actions antedating the arbitration, but would have wanted a different rule when arbitration was not preceded by a suit between the parties." *Id.* at 202. The same reasoning requires rejecting the asymmetrical jurisdictional rule respondents here propose.

Vaden v. Discover Bank, 556 U.S. 49 (2009), points the same way. *See* Pet. Br. 35-36, 40. There, the Court rejected a proposed regime under which Section 4 relief would be available only when a federal-question suit was already pending, explaining that this approach "'creates a totally artificial distinction' based on whether a dispute is subject to pending federal litigation." 556 U.S. at 65. Respondents ignore this argument, too.

To sum up: *Cortez Byrd* holds that pre-existing suits are irrelevant to venue under Sections 9 and 10, and *Vaden* holds that pre-existing suits are irrelevant to jurisdiction under Section 4. A holding that pre-existing

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[4] Contrary to *amicus* Chamber of Commerce's argument (at 14-16), *Cortez Byrd*'s short discussion of non-treaty international arbitration does not assist respondents. *Cortez Byrd* expressed concern that disputes over which federal courts had jurisdiction might be defeated for lack of venue. *See* 529 U.S. at 203. This case concerns whether jurisdiction exists at all.

suits are likewise irrelevant to jurisdiction under Sections 9 and 10 follows naturally.

E. The Jurisdictional-Anchor Theory Creates Perverse Incentives.

As Justice Breyer recognized in his *Badgerow* dissent, the jurisdictional-anchor approach creates a perverse incentive to file useless federal anchor suits: "[T]o turn jurisdiction over [Section 9 and 10 applications] on the presence or absence of a federal lawsuit or Section 4 motion is to turn jurisdiction on a 'totally artificial distinction'—particularly when the very purpose of arbitration is to avoid litigation." 596 U.S. at 26 (Breyer, J., dissenting) (citation omitted); Pet. Br. 33-36.

Respondents protest (at 23) that "there is no evidence this is a real-world problem." But the question here is whether the statute should be construed to *create* such incentives. Further, *SmartSky Networks, LLC v. DAG Wireless, LTD.*, in which the Fourth Circuit rejected the jurisdictional-anchor doctrine, may be such a case: the plaintiff there filed its arbitration demand four days after suing in federal court, then later returned to court and invoked the jurisdictional-anchor doctrine. 93 F.4th 175, 177-79 (4th Cir. 2024).

Respondents' primary response to these practical concerns is that petitioner's approach will create practical concerns, too. According to respondents, the "biggest flaw" in petitioner's position is the risk of "bifurcat[ing] pre- and post-arbitration challenges," possibly resulting in "parallel" appeals. Resp. Br. 30.

Respondents' concerns are overstated. Although parallel appeals could in principle occur, the appeals

would address different issues: one would address the federal court's pre-arbitration proceedings, and the other would address the fairness of the arbitration itself. Parallel appeals are not uncommon in our system of parallel federal and state courts. And concerns about the cases "mooting" each other, Resp. Br. 30-31, are answered by the fact that the state court adjudicating the Section 9 and 10 applications has inherent authority to stay proceedings pending the federal appeal. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket" and may be exercised "to abide the proceedings in another [court]."). Respondents' concerns (at 30) about cases "ping-pong[ing] back and forth" between state and federal court will not materialize either. If a state court vacates an arbitration award, the usual remedy is a new arbitration—not a return to federal court for "litigation [to] begin[] again." *Contra id.* at 31.

Regardless, even if respondents' practical concerns had force, they could not carry the day. Federal courts cannot "expand" their own jurisdiction based on "untethered notions of what might be good public policy." *Badgerow*, 596 U.S. at 16 (citation omitted).[5]

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[5] Contrary to *amicus* Chamber of Commerce's argument (at 8-13), the New York Arbitration Act is irrelevant. That Act had no confirm-or-vacate provisions analogous to Sections 9 and 10. And *Berkovitz v. Arbib & Houlberg, Inc.*, 130 N.E. 288 (N.Y. 1921), cited by *amicus*, did not involve a confirm-or-vacate proceeding but instead a request to appoint an arbitrator. *Id.* at 289. Further, state courts of general jurisdiction would not have confronted the federal

II. NEITHER SECTION 1367 NOR THE COURT'S INITIAL JURISDICTION SUPPORTS JURISDICTION HERE.

Even accepting respondents' framing that the Court should look beyond the FAA's text, respondents' arguments fail. Respondents urge that courts have jurisdiction over follow-on Section 9 and 10 applications either under the court's initial grant of jurisdiction or under 28 U.S.C. § 1367. They are wrong on both counts.

A. The Court's Original Jurisdiction Does Not Extend To Section 9 And 10 Applications.

Respondents suggest (at 20) that "extra" jurisdiction under Section 1367 "might not even be *necessary*": Because "FAA motions … work to resolve the *original* claims," respondents say, they are "captured by the original jurisdictional grant." That is wrong.

An arbitration award does work to resolve the original claim—but it does so in a different manner from what respondents suggest. Under Federal Rule of Civil Procedure 8(c)(1), "arbitration and award" is an "affirmative defense." Thus, a federal court with jurisdiction over a claim has the concomitant authority to dismiss that claim on the ground that it was resolved via an arbitration award. *See, e.g.*, *Hill v. Ricoh Ams. Corp.*, 603 F.3d 766,

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jurisdictional issue here.

Likewise, JAMS Rule 25, cited by *amicus* (at 16-18), is irrelevant. That Rule states that the parties agree that "judgment upon the Award may be entered in any court having jurisdiction thereof." That rule is silent on federal jurisdiction, and in any event, JAMS's rules cannot create federal jurisdiction.

771 (10th Cir. 2010) (defense applies where "the claim has already been resolved by an award in arbitration"); 5 *Wright & Miller's Federal Practice & Procedure* § 1270 (4th ed. 2025) (similar). Here, the district court would have been authorized to dismiss petitioner's claims on the ground that they were resolved in arbitration. No "extra" jurisdiction is needed to do *that*; the dismissal is simply the resolution of the federal claim.

Respondents' Section 9 application, however, does not seek dismissal of petitioner's claims. Instead, respondents seek confirmation of the arbitration award, which is a different type of relief. An order confirming the arbitration award would cause the award to "have the same force and effect" as a federal judgment, 9 U.S.C. § 13, and allow respondents to enlist the court's authority to enforce the $11,416.50 sanctions award against petitioner—which the mere dismissal of petitioner's claim would not.

Badgerow's core insight is that because the arbitration agreement is a contract, a judgment confirming the arbitration award would be a judgment *in a contract suit*, not merely a judgment on the original federal claim. Like in any other "contract suit," *Badgerow*, 596 U.S. at 14-15, a federal court must have jurisdiction to issue such a judgment. A court with federal-question jurisdiction over an employment-discrimination suit does not, by virtue of that jurisdiction, also have jurisdiction over what is in substance a state-law judgment on the "contractual resolution of the parties' dispute." *Id.* at 9.

B. Section 1367 Does Not Confer Jurisdiction.

Section 1367 does not authorize the jurisdictional-

anchor approach.

Section 1367 directs courts to assess whether claims over which they lack original jurisdiction are "so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a).

Respondents urge the Court to *first* consider the abstract question of whether Section 9 and 10 applications are "related to" the underlying suit within the meaning of Section 1367, and *then* consider whether the FAA's text precludes jurisdiction. Resp. Br. 36. But even assuming Section 1367 were relevant, that would be the wrong approach. Rather than analyzing Section 1367 and the FAA sequentially, the Court should harmonize them. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510-11 (2018) (courts aim for "harmony over conflict in statutory interpretation"). To do so, the Court should decide whether the "related to" standard is satisfied *by looking to the FAA's text*. In other words, in deciding whether a case that has been stayed under Section 3 is "related to" Section 9 and 10 applications, the Court should seek guidance from the text of Sections 3, 9, and 10, rather than conduct a metaphysical analysis of whether the "related to" standard is satisfied and then analyze the FAA's text at the back end. And if the Court follows this approach, petitioner prevails—because, as explained in Part I, *supra*, the FAA is incompatible with the jurisdictional-anchor theory.

But even setting that argument aside, Section 9 and 10 applications are not "related to" the underlying suit within the meaning of Section 1367. Respondents contend that this test is satisfied because a Section 9 or 10

application, at the highest level of generality, has a nexus to the underlying federal claims. Resp. Br. 16-19, 18 n.4. But respondents ignore that this Court has held that, to establish jurisdiction under Section 1367, respondents must show not merely some abstract relationship between the federal and non-federal claims, but rather that the non-federal claims are "so closely related" to the federal claims that they can be said to "'derive[] from' the same 'nucleus of operative fact.'" *Royal Canin*, 604 U.S. at 27 (citation omitted).

Petitioner's initial federal complaint provides a good example of Section 1367 at work. Petitioner brought both federal employment claims challenging his firing and California-law claims challenging the same firing. *See* Pet. App. 11a. The district court undoubtedly had supplemental jurisdiction over those state-law claims: There is a factual overlap between petitioner's claims that his firing violated federal law and his claims that the very same firing violated state law.

But as to the Section 9 and 10 applications, Section 1367 is not satisfied. Petitioner's federal claims asserted that he was wrongfully terminated in 2020. *See* D. Ct. Dkt. 1, ¶¶2, 5. The Section 9 and 10 applications, by contrast, ask whether the arbitrator engaged in misconduct during arbitration proceedings conducted between August 2021 and January 2023. *See* D. Ct. Dkt. 96-1 at 2. There is no factual nexus between the federal claims and the Section 9 and 10 applications: the facts underlying the Section 9 and 10 applications did not even exist at the time petitioner brought his federal employment claims because the arbitration had not yet occurred. Nor, for that matter, is there a legal nexus:

whether the arbitration award satisfied the FAA has nothing to do with whether petitioner's firing was legal.

Indeed, *Kokkonen* and *Badgerow*, taken together, all but resolve this issue in petitioner's favor. In *Kokkonen*, the plaintiff filed suit, and when the parties settled, the district court dismissed the case. 511 U.S. at 376-77. Later, a party filed a Rule 60(b)(6) motion to reopen the case so that the court could enforce the settlement agreement. *See id.* at 376-78. The question before the Court was whether the district court could exercise ancillary jurisdiction over the settlement dispute.

The Court explained that "ancillary jurisdiction" may be exercised for two purposes: "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent," and "(2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Id.* at 379-80. Section 1367's grant of supplemental jurisdiction codifies that first strand of the ancillary-jurisdiction doctrine. *See Peacock*, 516 U.S. at 354 n.5; Resp. Br. 25 n.9; *see also Kokkonen*, 511 U.S. at 380 (citing Section 1367 in "*cf.*" cite).

As to that first strand, *Kokkonen* decisively rejected the notion that there was sufficient factual interdependence to warrant the exercise of ancillary jurisdiction: "[T]he facts underlying respondent's dismissed claim for breach of agency agreement and those underlying its claim for breach of settlement agreement have nothing to do with each other; it would neither be necessary nor even particularly efficient that they be adjudicated together." 511 U.S. at 380.

Badgerow explicitly analogized Section 9 and 10 applications to *Kokkonen*'s settlement disputes. The Court explained that although the parties' dispute may have "originated in the arbitration of a federal-law dispute," "the underlying dispute is not now at issue." *Badgerow*, 596 U.S. at 18. Rather, the application concerns "contractual rights," "generally governed by state law." *Id.* The Court then held that "adjudication of such state-law contractual rights—as this Court has held in addressing a non-arbitration settlement of federal claims—typically belongs in state courts." *Id.* (citing *Kokkonen*, 511 U.S. at 381-82).

That reasoning is dispositive here. If federal claims and contract-based settlement disputes are insufficiently interconnected to warrant adjudication together (as *Kokkonen* holds), and Section 9 and 10 applications are analogous to contract-based settlement disputes (as *Badgerow* holds), it follows ineluctably that federal claims and Section 9 and 10 applications are insufficiently interconnected to warrant adjudication together. In other words, because—in *Badgerow*'s words—"the underlying dispute is not now at issue," 596 U.S. at 18, there is no jurisdiction under Section 1367.

Respondents attempt (at 27-28) to distinguish *Kokkonen* on the ground that the suit there was "a subsequent lawsuit" brought after the original suit was dismissed, while here the original suit was merely stayed. Respondents misunderstand *Kokkonen*. The party seeking to enforce the settlement did *not* file a new federal suit; it filed a Rule 60(b)(6) motion seeking to reopen the original suit. 511 U.S. at 377-78. That is why, according to the Court, the applicable doctrine was

"ancillary jurisdiction," which "recognizes federal courts' jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Id.* at 378. That is an exact description of the jurisdictional-anchor doctrine upon which respondents here rely.

The distinction between a dismissal and a stay may be relevant to *Kokkonen*'s second strand of ancillary jurisdiction, which confers the court with authority to "effectuate its decrees." *Id.* at 379-80. The scope of the court's authority to vindicate a stay order may differ from the scope of the court's authority to vindicate a dismissal order. But respondents do not rely on that second strand of the ancillary-jurisdiction doctrine (and rightfully so, *see* Pet. Br. 46-50). As to the first strand—which asks whether the originally-filed federal claims are sufficiently factually interdependent with the follow-up dispute—the dismissal-versus-stay distinction is irrelevant and *Kokkonen*'s analysis is on point.

Respondents also repeatedly reference *Kokkonen*'s discussion of "retaining jurisdiction." Resp. Br. 26, 27, 28, 34 n.12. Here is what *Kokkonen* actually said:

> The situation would be quite different if the parties' obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal—either by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement) or by incorporating the terms of the settlement agreement in the order.

511 U.S. at 381. Here, the stay order includes no

"obligation to comply with the terms of" the arbitration award, *id.*, and it is doubtful the court would have had authority to issue such an order in any event.

Peacock confirms that Section 1367 does not apply to the Section 9 and 10 applications. The plaintiff there obtained an ERISA judgment and then brought a subsequent suit to pierce the judgment debtor's corporate veil. *See* 516 U.S. at 351-52. The Court rejected ancillary jurisdiction for two independent reasons.

First, the *Peacock* Court held that the ancillary-jurisdiction doctrine did not apply because the plaintiff had filed a "subsequent lawsuit," rather than "ancillary claims … in the same proceeding as the claims conferring federal jurisdiction." 516 U.S. at 355. Respondents tout this language (at 27), but it merely goes to show that *Kokkonen* is directly on point. After all, *Kokkonen did* apply the ancillary-jurisdiction doctrine, and hence asked the same question as the one presented here—whether the pre-existing lawsuit has a sufficiently close factual nucleus to the follow-up claims to justify the exercise of jurisdiction. *Kokkonen*'s holding that the factual nucleus was insufficient is dispositive.

Second, the *Peacock* Court held in the alternative: "[T]here is insufficient factual dependence between the claims raised in [the] first and second suits to justify the extension of ancillary jurisdiction." 516 U.S. at 355. In the Court's view, the initial allegations in the ERISA suit had "little or no factual or logical interdependence" with the follow-up allegations that assets were shielded from the ERISA judgment. *Id.* at 355-56. Respondents ignore this alternative holding, but it applies here: as in *Peacock*, there is an insufficient factual nexus between

an initial suit and a follow-up suit related to the resolution of the original suit to warrant the exercise of supplemental jurisdiction.

III. RESPONDENTS' OTHER ARGUMENTS LACK MERIT

Respondents raise two additional arguments warranting response.

1. Respondents ask (at 33): "If there is no jurisdiction to decide post-arbitration motions" in pending cases, "*when exactly does that jurisdiction lapse*?" The answer is straightforward. After arbitration "has been had," 9 U.S.C. § 3, the stay expires. At that point, if the court determines that all claims have been resolved in arbitration, it should grant a motion to dismiss based on the affirmative defense of arbitration and award. *See* Fed. R. Civ. P. 8(c); pp. 15-16, *supra*.[6] The court could opt to delay ruling on that motion until a state court adjudicates any confirm-or-vacate proceedings, but it need not do so; indeed, most arbitration awards are never subject to such proceedings.

2. Respondents also ask (at 32): "[I]f petitioner believes each FAA motion must *independently* establish jurisdiction, what does petitioner do with Sections 5 and 7?" Petitioner believes the best answer is that those provisions, too, require an independent jurisdictional basis. *Spizzirri* itself recognized that these "mechanisms … to assist parties in arbitration" are available only to

[6] Arbitration and award is a waivable non-jurisdictional defense, not a jurisdictional bar. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194-95, 195 n.4 (2012) (noting distinction between affirmative defense and jurisdictional bar).

"courts with proper jurisdiction." 601 U.S. at 478.

Petitioner acknowledges, however, that there is a colorable contrary argument premised on *Kokkonen*'s second strand, which respondents do not invoke here. The purpose of a Section 3 stay or Section 4 order is to ensure that the arbitration occurs. A Section 5 order appointing an arbitrator or a Section 7 subpoena compelling a witness to testify might be said to "vindicate [the court's] authority" under Sections 3 and 4. *Kokkonen*, 511 U.S. at 380. But as petitioner's opening brief explained (and respondents do not dispute), that argument does not apply to Section 9 and 10 applications, which arise only *after* the arbitration has concluded and any Section 3 or 4 order has been vindicated. *See* Pet. Br. 46-50. Because this is a close question, the Court should reserve judgment on it, as it did in *Badgerow*. *See* 596 U.S. at 15-16, 16 n.6.

CONCLUSION

The judgment of the Second Circuit should be reversed.

Respectfully submitted,

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