

No. 25A797

Supreme Court, U.S.

FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2025

JAMES DE LOS SANTOS,

Applicant,

v.

MATTRESS BY APPOINTMENT, LLC,

Respondent.

ON APPLICATION FOR A STAY OF ARBITRATION PROCEEDINGS

AND FOR A STAY OF THE MANDATE OF THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(No. 25-50614)

EMERGENCY APPLICATION FOR A STAY

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SUPREME COURT, U.S.

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December 26, 2025

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TABLE OF CITED AUTHORITIES

CASES

First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995)

Neuman, 23 F.4th at 398

Nken v. Holder, 556 U.S. 418, 426 (2009)

Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 71 (2010)

STATUTES

9 U.S.C. § 4

9 U.S.C. § 10

28 U.S.C. § 1254(1)

28 U.S.C. § 1651(a)

28 U.S.C. § 2101(f)

RULES

Federal Rule of Appellate Procedure 41(b)

Supreme Court Rule 13.5

Supreme Court Rule 23.3

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Applicant James De Los Santos respectfully applies for:

1. A stay of ongoing arbitration proceedings before the American Arbitration Association (AAA Case No. 01-25-0002-5774) pending the filing and disposition of a petition for a writ of certiorari;
2. A stay of the mandate of the United States Court of Appeals for the Fifth Circuit in No. 25-50614 pending the filing and disposition of a petition for a writ of certiorari; and
3. If necessary, an extension of time to file a petition for a writ of certiorari pursuant to Supreme Court Rule 13.5.

This Application is submitted to this Court because the relief sought is not available from any other court. The Fifth Circuit has denied Applicant's petition for mandamus and rehearing. The district court has compelled arbitration without determining arbitrability. The arbitrator has refused to pause proceedings pending this Application. Only this Court can prevent the irreparable loss of Applicant's statutory right to a pre-arbitration judicial determination of arbitrability.

JURISDICTION

This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1254(1). This Court has authority under 28 U.S.C. § 2101(f), the All Writs Act, 28 U.S.C. § 1651(a), and

its inherent supervisory power to stay lower-court proceedings to preserve this Court's jurisdiction pending review.

On December 22, 2025, the Fifth Circuit denied Applicant's petition for a writ of mandamus and denied rehearing and rehearing en banc in a single unpublished order. The mandate is scheduled to issue on December 29, 2025 under Federal Rule of Appellate Procedure 41(b).

Absent a stay, arbitration proceedings will resume immediately, and Applicant's right to judicial review of threshold arbitrability will be irretrievably lost before this Court can consider a petition for certiorari.

STATEMENT OF THE CASE

A. PROCEDURAL BACKGROUND

Applicant commenced this action in Texas state court challenging the enforceability of a dealer agreement on grounds including fraud in the inducement, non-signatory enforcement, prohibitive arbitration costs, and lack of mutual assent. Respondent removed the case to federal court.

The United States District Court for the Western District of Texas compelled arbitration and stayed the case. In doing so, the court did **not** make any express findings as to: whether a valid arbitration agreement was formed; whether Applicant consented to arbitration; whether any delegation clause was enforceable; or whether gateway questions of arbitrability were reserved for the court or the arbitrator.

The Fifth Circuit declined to intervene by mandamus and denied rehearing without opinion.

B. ABSENCE OF A JUDICIAL ARBITRABILITY DETERMINATION

No court—state, federal, or appellate—has ruled on the threshold question of **who decides arbitrability** in this case.

The district court compelled arbitration without first determining whether the parties clearly and unmistakably agreed to delegate arbitrability to an arbitrator, as required by *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995). The Fifth Circuit did not address that omission.

As a result, arbitration will proceed without any court ever having determined whether Applicant agreed to arbitrate at all.

RECORD EVIDENCE OF THE FIRST OPTIONS VIOLATION

The documents submitted in the Appendix reveal an unbroken chain of judicial error: every tribunal below assumed the existence of a valid arbitration agreement and the enforceability of a delegation clause—without ever deciding whether Applicant agreed to arbitrate at all. This failure is a textbook violation of *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995), which requires courts to determine gateway arbitrability before compelling arbitration, unless the parties "clearly and unmistakably" delegated that question.

1. The Magistrate Judge Assumed a Valid Agreement Without Deciding Arbitrability.

In his Report and Recommendation, the magistrate concluded:

"The undersigned finds that a valid arbitration agreement exists between the parties." (App. Tab 3, p.13).

He reached this conclusion without analyzing whether the parties agreed to arbitrate or whether they clearly and unmistakably delegated that question. Instead, he treated Applicant's challenge to the formation of the agreement as a challenge to the "whole agreement," erroneously applying *Rent-A-Center* and ignoring *Neuman v. Plains All American Pipeline, L.P.*, 23 F.4th 393, 398 (5th Cir. 2022), which holds that "parties cannot delegate disputes over the very existence of an arbitration agreement."

2. The District Court Rubber-Stamped the Recommendation Without Independent Analysis.

The district court's entire analysis consisted of:

"The Court GRANTS Defendant's Motion to Compel ... This case is STAYED pending arbitration." (App. Tab 2, p.6).

The court adopted the magistrate's report without performing the required *First Options* inquiry. It never decided whether Applicant agreed to arbitrate or delegated arbitrability.

3. The Fifth Circuit Denied Review Without Correcting the Error.

The Fifth Circuit denied mandamus and rehearing in a one-sentence order:

"The motion for reconsideration is DENIED." (App. Tab 1, p.2).

No opinion was issued. No court of appeals ever reviewed whether the lower courts abdicated their gatekeeping role under *First Options*.

4. The Arbitrator Is Now Deciding Formation—A Non-Delegable Judicial Function.

Empowered by the courts' failure to decide arbitrability, the arbitrator has claimed authority over the very issue *First Options* reserves for courts:

"As all of the issues raised relative to the formation ... fall within the scope of Section 14, Respondents' R-7 challenges are denied." (App. Tab 7, p.31).

This is precisely the harm *First Options* seeks to prevent: an arbitrator deciding whether a party ever agreed to arbitrate.

5. The Arbitration Is Moving Forward Imminently, Making the Harm Irreversible.

The AAA has scheduled a preliminary hearing for January 5, 2026 (App. Tab 8, p.33). When Applicant requested a pause pending this filing, the arbitrator responded:

"Until then, this proceeding will move forward..." (App. Tab 9, p.42).

Thus, the lower courts' error is not just legal—it is active and imminent. Once the January 5 hearing occurs, Applicant's right to a pre-arbitration judicial determination will be extinguished permanently.

6. The Contract's Delegation Clause Purports to Delegate Formation—Which Is Not Delegable.

The dealer agreement states:

"The arbitrator will have exclusive authority to resolve all disputes relating to the ... formation of this Agreement." (App. Tab 4, §14.8).

But under *Neuman*, formation is a non-delegable gateway issue. By enforcing this clause without first deciding its validity as to formation, the lower courts violated the FAA's command that arbitration is a matter of consent, not coercion.

SUMMARY OF THE VIOLATION:

Not one court below answered the two questions *First Options* requires: (1) Did the parties agree to arbitrate? (2) Did they clearly and unmistakably agree to delegate that question to an arbitrator?

This omission is not a minor error—it is a fundamental failure of the judicial gatekeeping role under the FAA. The arbitrator is now filling that void, and the hearing is days away. Only this Court can restore the judicial determination that Congress and this Court's precedent guarantee.

REASONS FOR GRANTING A STAY

This Application satisfies each of the four conditions for granting an emergency stay. Nken v. Holder, 556 U.S. 418, 426 (2009); see also Supreme Court Rule 23.3. Applicant must show: (1) a reasonable probability that certiorari will be granted; (2) a fair prospect that the Court will reverse the decision below; (3) that irreparable harm will result from the denial of a stay; and (4) that the balance of equities favors a stay. As demonstrated below, all four conditions are met here.

I. APPLICANT WILL SUFFER IRREPARABLE HARM ABSENT A STAY

This Court has recognized that the loss of a statutory right before review constitutes irreparable harm. Applicant faces the permanent loss of the right to a pre-arbitration judicial determination of arbitrability—a right guaranteed by *First Options* and the Federal Arbitration Act. This harm is now imminent and certain. First, the Fifth Circuit's mandate will issue on December 29, 2025, making the order to compel arbitration enforceable. Second, the arbitrator has already acted on that authority, issuing an order on December 24 claiming the

power to decide the non-delegable issue of contract formation (App. Tab 7) and scheduling a preliminary hearing for January 5, 2026 (App. Tab 8). Third, and conclusively, when Applicant requested a temporary pause from the arbitrator in light of this impending Supreme Court filing, the arbitrator responded on December 24 that the proceeding 'will move forward in accordance with Order No. 3' absent a court-issued stay (App. Tab 10). This confirms that no judicial protection remains in the lower tribunals and that only this Court's intervention can prevent the irreparable loss.

Post-award review under the FAA is narrow and deferential. It is not an adequate substitute for a judicial gateway determination made before arbitration begins. If arbitration proceeds on January 5, this Court will be unable to restore the status quo even if certiorari is later granted.

This is the precise scenario *Rent-A-Center* and *First Options* sought to prevent: the permanent forfeiture of a judicial gatekeeping determination through the mere act of proceeding with arbitration.

II. A STAY PRESERVES THIS COURT'S JURISDICTION

The imminent issuance of the Fifth Circuit's mandate will render the district court's arbitration order immediately enforceable. Arbitration proceedings will advance before this Court has any opportunity to consider whether the lower courts erred by compelling arbitration without deciding arbitrability.

A stay is necessary to preserve this Court's ability to provide meaningful review.

III. APPLICANT IS LIKELY TO SUCCEED ON THE MERITS

The lower courts committed a clear legal error by compelling arbitration without performing the threshold inquiry *First Options* requires. No court determined

whether the parties "clearly and unmistakably" agreed to delegate arbitrability—the Magistrate assumed a valid agreement existed (App. Tab 3), the District Court adopted that assumption without analysis (App. Tab 2), and the Fifth Circuit denied review without opinion. This is not a close case; it is the precise violation *First Options* forbids.

IV. LOWER COURTS VIOLATED NON-DELEGABLE FORMATION PRINCIPLE

The lower courts' order compelling arbitration rests on a clear and fundamental misapplication of this Court's precedent in *First Options*. The contract's delegation clause (Tab 4, §14.8) purports to give the arbitrator authority over disputes relating to the 'formation' of the agreement. Applicant has consistently challenged the very existence of any agreement, asserting a lack of mutual assent and meeting of the minds (Tab 3, p.5). Applicant has consistently challenged the very existence of any agreement to arbitrate, alleging fraud in the inducement and lack of mutual assent. That challenge is non-frivolous and grounded in Respondent's documented history of deceptive business practices, including those memorialized in Washington Department of Financial Institutions Consent Order No. S-17-2143-19-CO01 (2019) and related federal litigation, *Retail Services Inc. v. Conley et al.*, Nos. 2:13-cv-00994 and 2:15-cv-02769. These circumstances underscore why Applicant's formation challenge presents a gateway issue that *First Options* reserves exclusively for judicial determination. The Fifth Circuit has explicitly held that 'parties cannot delegate disputes over the very existence of an arbitration agreement.' *Neuman*, 23 F.4th at 398. By refusing to adjudicate this non-delegable formation challenge and

instead compelling arbitration, the district court abdicated its judicial gatekeeping role under the FAA, committing a clear error that this Court should correct.

V. POST-AWARD REVIEW CANNOT CORRECT FIRST OPTIONS VIOLATION

The lower courts' refusal to stay arbitration rests on the mistaken assumption that Applicant can obtain meaningful review **after** arbitration concludes. But this ignores the nature of the right at stake.

First Options guarantees a **judicial determination of arbitrability before arbitration begins**, unless the parties "clearly and unmistakably" delegated that question. 514 U.S. at 943–44. Here, no court performed that threshold inquiry. Once the arbitrator decides gateway issues, post-award review under 9 U.S.C. § 10—which is limited to narrow grounds like fraud or an arbitrator's "exceeding powers"—**cannot restore** the pre-arbitration judicial determination that *First Options* requires. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010) (challenges to a delegation clause "must be considered before arbitration proceeds").

If arbitration proceeds on January 5, the opportunity for a court to decide whether Applicant agreed to delegate arbitrability vanishes permanently. That loss is irreparable. Respondent's only asserted prejudice is delay. The equities overwhelmingly favor preserving the status quo so that this Court may review whether the lower courts abdicated their *First Options* duty.

VI. THE BALANCE OF EQUITIES FAVORS A STAY

A stay merely maintains the status quo. Respondent identifies no concrete harm beyond delay, while Applicant faces the permanent loss of a statutory gateway right that cannot be remedied after arbitration begins. Where one party risks only temporary inconvenience and the other risks irreversible deprivation of judicial review, the balance of equities overwhelmingly favors preserving the status quo until this Court can exercise its supervisory role.

VII. THE PUBLIC INTEREST SUPPORTS A STAY

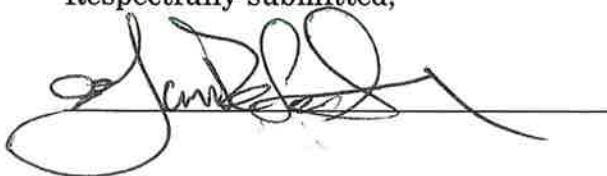
The public interest is served by ensuring that arbitration is compelled only when parties have actually agreed to arbitrate and by ensuring that courts perform their statutory gatekeeping role under the FAA.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court:

1. Stay the arbitration proceedings in AAA Case No. 01-25-0002-5774 pending the filing and disposition of a petition for a writ of certiorari;
2. Stay the mandate of the United States Court of Appeals for the Fifth Circuit in No. 25-50614 pending the filing and disposition of a petition for a writ of certiorari; and
3. If necessary, grant an extension of time to file a petition for a writ of certiorari pursuant to Supreme Court Rule 13.5.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe", is written over a horizontal line.

/s/ James De Los Santos

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December 26, 2025

**Additional material
from this filing is
available in the
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