No. 26-228

IN THE

Supreme Court of the United States

FCA US LLC,

Petitioner,

v.

JEFFREY OLSON, individually and on behalf of all others similarly situated,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner FCA US LLC asks this Court to decide whether an arbitrator or a court resolves the arbitrability of claims brought by a non-signatory to an arbitration agreement containing a delegation clause. Properly framed, the question is:

Whether a non-party to a contract may compel performance of a term of that contract—including a delegation clause purporting to assign threshold arbitrability questions to an arbitrator—to which the non-party is a stranger.

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INTRODUCTION

This is the fourth time in a little over two years that the Court has been asked to grant certiorari on the question whether a non-signatory to a contract may invoke a delegation clause against a signatory. Each attempt claimed the same Circuit split that is currently invoked. The Court has declined certiorari every time. Nothing has changed in the interim that would warrant a different result now.

First, *Tug Hill Operating, LLC v. Rogers*, 144 S. Ct. 818 (2024), presented the identical question—whether a non-signatory to a contract could invoke a delegation clause to compel an arbitrator to decide arbitrability of a dispute. The Fourth Circuit held that a litigant who was not a party to an arbitration agreement may compel arbitration under it only if state contract law independently entitles it to do so. *Id.* at 287–88. This Court denied certiorari on February 20, 2024. *Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279, 287–88 (4th Cir. 2023). 144 S. Ct. 818 (2024).

Second, *HomeServices of America, Inc. v. Burnett*, 144 S. Ct. 1347 (2024), presented it again. The Eighth Circuit held that a franchisor was neither a party nor a third-party beneficiary of a listing agreement it had not signed and therefore could not invoke that agreement's delegation clause. *Burnett v. Nat'l Ass'n of Realtors*, 75 F.4th 975, 982–84 (8th Cir. 2023). The Court denied certiorari on April 15, 2024. 144 S. Ct. 1347 (2024).

Third, *Jump Trading, LLC v. Patterson*, 146 S. Ct. 116 (2025), presented it yet again, on materially indistinguishable facts: a non-signatory sought to compel arbitration of a delegation clause in a contract it never signed, with an entity to which it bore no assignment, successor, or agency relationship. The Court denied certiorari on October 6, 2025. 146 S. Ct. 116 (2025).

Jump Trading is noteworthy not only for the identical question on certiorari, but because Petitioner here participated in that case as well. FCA appeared as amicus curiae in support of the *Jump Trading* petitioner, filing a brief urging this Court to grant review of the very question it now asks the Court to take up in its own case and making the same arguments it makes here. *See* Brief for FCA US LLC as Amicus Curiae Supporting Petitioner, *Jump Trading, LLC v. Patterson*, 146 S. Ct. 116 (2025). Further, FCA was represented in that effort by the same counsel that represented it below in this case, and who remains counsel of record for FCA in this proceeding. Nothing about that procedural pivot from amicus to petitioner is a reason to grant what the Court has already refused three times.

As set forth below, the reason to deny the Petition remains the same as on prior occasions. Contrary to the assertion of a Circuit split, no court of appeals has held that a non-party to an arbitration agreement may force an adversary to arbitrate because of an arbitration clause in a contract unrelated to the dispute *sub judice.* Under the theory being advanced, and as advocated by Petitioner below, an individual injured by a hit-and-run driver could be forced to arbitration to determine whether that individual could sue in court based on the fact that his or her cell phone contract had an unrelated arbitration clause. As the Court recently unanimously held, "[a]rbitration is a matter of contract and consent, and we have long held that disputes are subject to arbitration if, and only if, the parties actually agreed to arbitrate those disputes." *Coinbase, Inc. v. Suski*, 602 U.S. 143, 145 (2024). At bottom, the Petition asks the Court to pronounce a principle that if anyone has an arbitration delegation clause in any contract (and who does not?), that person can be forced to arbitration by any other party before filing suit for unrelated claims. Whereas *Coinbase* reiterated that the arbitration would be compelled "if, and only if, the parties actually agreed," *id.*, the Petition would have the law turn not on the agreement of the parties to the present dispute but on whether one of the parties had previously agreed to arbitration with someone else. No court has taken this absurd position, and the Petition's claimed conflict vanishes once the focus is properly on whether there was a contract to arbitrate *among these parties.*

STATEMENT OF THE CASE

1. The Lease and the Parties.

Respondent Jeffrey Olson leased a Jeep Grand Cherokee manufactured by Petitioner FCA US LLC from AutoNation Chrysler Dodge Jeep Ram Roseville ("the dealership"), a dealership owned and operated by AutoNation. Pet. App. 2a–3a. The lease was negotiated and signed by Olson and the dealership; FCA is not a signatory to it and is not identified anywhere in the lease as a counterparty to any of the obligations of any contracting party. Pet. App. 2a, 4a. The lease defines "you" and "your" as Olson, and "we," "our," and "us" as the dealership "and its successors and assigns"—a defined class of counterparties. Pet App. 4a. FCA does not fall within these designations and does not claim that it does. Pet. App. 4a; *see* Resp. App. 3a ("FCA has never argued that we are a party to the contract.") As the Ninth Circuit found below, the agreement's delegation clause, by its terms, reaches only disputes "*between Olson and the dealership*," and "[n]othing in the text of the arbitration agreement hints that" it extends to a stranger like FCA. Pet. App. 8a.

2. Olson's Suit and FCA's Motion to Compel Arbitration.

This putative class action was filed in 2018 by Shawn Alger in the United States District Court for the Eastern District of California against FCA. Pet. App. 2a. As amended, the operative complaint asserts warranty and consumer-protection claims under California law—the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*; the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*; the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1791.1, 1792, 1794 *et seq.*; and breach of FCA's own manufacturer's vehicle warranty—on behalf of a class of owners and lessees of certain FCA vehicles. The claims are all based on allegations that the spring-loaded headrests deploy unexpectedly due to a materials defect. Pet. App. 2a–3a. The district court certified the class, and Olson was later substituted as the named class representative. Pet. App. 3a. None of the class's claims are based on or arise from the lease. The lease is only an ownership arrangement between the dealership and the consumer. Instead, the class's claims rest on defects in the design of the vehicle, not in the financing arrangement for title. All the legal claims arise from California statutes and from FCA's manufacturer's warranty, which Olson and other class members received independent of their leases with the dealership. *See* Pet. App. 3a.

FCA answered the operative complaint and, as its Ninth Affirmative Defense, pleaded that it lacked contractual privity with Olson and the putative class:

NINTH AFFIRMATIVE DEFENSE

> 9. Defendant did not sell or lease any of the subject vehicles directly to Plaintiff or the putative class. Thus, to the extent applicable under state law, the claims of Plaintiff and the putative class are barred by lack of privity.

Resp. App. 6a–7a. Notwithstanding that pleaded position, on May 31, 2025, FCA moved to compel arbitration of Olson's claims. FCA offered four theories, all rejected below: (1) that the lease's delegation clause required an arbitrator, not the district court, to decide whether FCA could enforce the arbitration agreement; (2) that the plain language of the lease's arbitration agreement independently covered Olson's claims against FCA; and (3) that FCA could compel arbitration under California's doctrine of equitable estoppel. Pet. App. 4a; Pet. 12a–13a. FCA also argued below that it could enforce the lease as a third-party beneficiary. Pet. 13a n. 3. The district court rejected the third-party beneficiary argument, and FCA did not renew it on appeal. *Id.*

3. The Relevant District Court Ruling.

The current Petition challenges the district court denial of the motion to refer the matter to arbitration. *See* Pet. App. 2a, 18a, 27a, 37a. Under the controlling Ninth Circuit law of *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122 (9th Cir. 2013), *cert. denied*, 571 U.S. 818 (2013), the district court found no evidence that the lease delegated to an arbitrator the question whether a non-signatory like FCA may compel Olson to arbitrate. *See* Pet. App. 12a–13a, 32a–33a, 37a–38a. FCA appealed. Pet. App. 4a.

4. The Ninth Circuit's Decision.

The Ninth Circuit affirmed, in an opinion by Judge Friedland joined by Judge Schroeder and District Judge Schreier (D.S.D., sitting by designation). *See generally* Pet. App. 1a–17a. The panel also applied *Kramer* as controlling Circuit law and rejected Petitioner's argument that *Kramer* had been overruled or called into question by *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019). As will be developed below, in *Henry Schein*, the Court held that an agreement *between parties* to arbitrate disputes between them requires arbitrability to be determined by an arbitrator and not a court, even when a court could quickly determine that the demand for arbitration is "wholly groundless." *Id*. at 68; *see* Pet. App. 6a–12a. According to the panel, in *Henry Schein*, the Court was never asked to decide "whether a delegation clause requires delegating the arbitrability question to an arbitrator when there is *not* a valid arbitration agreement between the party moving to compel arbitration and the party it is seeking to compel to arbitrate." Pet. App. 10a–11a. Consequently, the panel held that the lease's delegation clause reaches only disputes "*between Olson and the dealership*," and that "[n]othing in the text of the arbitration agreement hints that" third parties can enforce it. Pet. App. 8a.

Further, the panel held that FCA's reading of *Henry Schein* "would lead to absurd results," because it "would mean that delegation clauses could be enforced even by third parties who have no connection whatsoever to the underlying arbitration agreement"—for example, allowing FCA to "locate an arbitration agreement with a delegation clause that Olson entered with his cell phone provider, use that agreement to move to compel arbitration of the present automobile dispute, and thereby force a court to send the case to an arbitrator to let the arbitrator decide whether the cell phone arbitration agreement covered the automobile dispute." Pet. App. 11a. "That cannot be right," the panel explained, because it "would force plaintiffs to arbitrate the arbitrability of their claims against a theoretically limitless universe of defendants with whom they have never agreed to arbitrate." Pet. App. 11a.

The panel separately and independently rejected FCA's two alternative arguments for compelling arbitration even without the delegation clause: that the lease's plain language covered Olson's claims against FCA, and that California's equitable-estoppel doctrine permitted FCA, though a non-signatory, to compel arbitration. Pet. App. 12a–16a. On the latter point, the panel applied *Ford Motor Warranty Cases*, 17 Cal. 5th 1122 (2025), the California Supreme Court's then-recent decision rejecting an indistinguishable equitable-estoppel argument by another automobile manufacturer, and held that Olson's headrest-defect claims—which arise from California statutes and FCA's own manufacturer's warranty, not from any provision of the lease—are not "intimately founded in and intertwined with" the lease. *See* Pet. App. 14a–16a (quoting *Ford Motor Warranty Cases*, 17 Cal. 5th at 1126). Neither of those independent holdings is implicated by the question FCA presents to this Court, and neither is a basis on which FCA seeks review.

With regard to the Question Presented in this Petition, the Ninth Circuit's own footnote canvassing FCA's cited authorities anticipated—and rejected—the same circuit-by-circuit argument FCA now raises, explaining that FCA's cases either involved non-signatories who were assignees or successors in interest of a signatory, or did not address third-party enforcement of delegation clauses at all. Pet. App. 12a n.2.[1] *See infra* Part II.

At oral argument, FCA's counsel confirmed the extraordinary sweep of the position Petitioner advances here. FCA agreed when Judge Friedland posed a hypothetical from the bench, that a defendant sued over a car crash could invoke the plaintiff's delegation clause with his cell-phone provider to force the car-crash dispute into arbitration. Resp. Pet. 2a. FCA readily accepted that a contractually unrelated arbitration agreement with anyone else would suffice to deny access to courts until such time as an arbitrator had ruled on arbitrability. Resp. Pet. 2a–3a ("[The Court]: So, you're saying anyone who has any arbitration agreement with anyone can be brought to arbitration because of their delegation clause, even if it's totally unrelated? [Counsel for FCA]: I would say yes, under *Henry Schein*."). FCA petitioned for panel rehearing and rehearing en banc; the panel granted rehearing solely to amend two passages of the opinion not material here, and both the panel and the full court denied further rehearing or rehearing en banc on May 21, 2026. *See* Pet. 1, 8.

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[1] The Ninth Circuit addressed *Apollo Comput., Inc. v. Berg*, 886 F.2d 469, 470 (1st Cir. 1989); *Contec Corp. v. Remote Sol., Co. Ltd., 398 F.3d 205, 207 (2d Cir. 2005); Eckert / Wordell Architects, Inc. v. FJM Props. of Willmar, LLC*, 756 F.3d 1098, 1099 (8th Cir. 2014); *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 845 n.1 (6th Cir. 2020); *Swiger v. Rosette*, 989 F.3d 501, 506 (6th Cir. 2021); and *Becker v. Delek US Energy, Inc.*, 39 F.4th 351, 355–56 (6th Cir. 2022).

5. The Petition.

Petitioner frames the question as whether a court or an arbitrator should decide the arbitrability of claims brought against a non-signatory, and asserts that the courts of appeals are divided 5-4-1 on that question. Pet. i, 2, 22. FCA relies principally on *Henry Schein*, quoting it for the proposition that "if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." Pet. at 28 (emphasis removed) (quoting 586 U.S. at 69).

Respondent does not dispute the proposition that a valid arbitration agreement encompasses the determination of which claims are arbitrable. Where a valid delegation clause exists between the parties who made it, *Henry Schein* requires a court to respect it. *See infra* Part II. Nor does Respondent dispute that FCA manufactured the vehicle Olson leased, that the lease contains a delegation clause, or that this Court's decisions in *Henry Schein*; *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995); and *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024), govern the analysis. What Respondent disputes—and what every court to consider the question has decided against FCA—is whether that rule extends a delegation clause to an entity that never signed it, never assented to it, and even pled that it has no contractual relationship with the Respondent at all.

ARGUMENT

REASONS FOR DENYING THE PETITION

I. ARBITRABILITY IS A MATTER OF CONTRACT AND NO CIRCUIT COURT HAS HELD THAT NON-CONTRACTING PARTIES HAVE THE RIGHT TO COMPEL ARBITRATION AGAINST OTHERS.

Arbitration is, at its core, "simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). The Federal Arbitration Act ("FAA" or "Act") is premised on the contractual obligations of the parties to an agreement to arbitrate. Section 3 of the FAA directs courts to enforce written arbitration agreements "in accordance with the terms of the agreement," 9 U.S.C. § 3, and the Court has explained that the Act's purpose is to ensure that the arbitration the parties actually promised one another is delivered—not to manufacture an arbitration obligation between parties who promised each other nothing. *See Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989) ("[T]he federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate."); *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (An agreement to arbitrate "is a matter of contract."). The Act enforces the bargain the parties struck and its aim is to place "arbitration agreements on an equal footing with other contracts." *Id.* It supplies no independent command to arbitrate and, accordingly, no basis to conscript a party into arbitrating with someone with whom it struck no bargain at all. FCA cannot possibly claim that it has no contractual privity with Olson and the putative class, and yet claim a right to arbitrate based on contract.

FCA's petition treats *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019), as somehow undermining this longstanding understanding of arbitration and the FAA. But even the Petition's own quotation of *Henry Schein* shows that the bedrock principles of arbitration remain intact. The Petition quotes: "***if a valid agreement exists***, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." Pet. at 28 (*quoting* 586 U.S. at 69) (emphasis added, Petitioner's emphasis removed). The parties get what they bargain for, and if that includes an arbitration provision, that too is an enforceable matter of contract. Indeed, that is the heart of the statutory scheme under the FAA.

Petitioner, however, would recast *Henry Schein* as a case not about contract enforceability but as a rule of universal delegation such that, if a person signs any contract with an arbitration clause containing a delegation provision, any entity anywhere may invoke it to force unrelated disputes into arbitration in the first instance. That reading cannot be squared with the opinion's own text—or with the law of contracts that the opinion repeatedly invokes as its premise.

The unanimous opinion in *Henry Schein* turned centrally on the fact that the parties to the dispute had signed an arbitration agreement and one sought to rush to court on the grounds that the specific invocation of the arbitration clause was "wholly groundless." 586 U.S. at 68. The Court reaffirmed the primacy of the contractual bargain: "[A] court may not 'rule on the potential merits of the underlying' claim that is assigned by contract to an arbitrator, 'even if it appears to the court to be frivolous.'" *Id.* (quoting *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649–50 (1986)).

In other words, *Henry Schein* is an opinion about what parties to a contract may do with their own bargain. It refers to "parties" or "parties'" no fewer than twenty-one times in the eight pages of the Opinion of the Court—not as incidental phrasing, but as the load-bearing premise of the holding. The Court's central instruction was that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract." *Id.* at 65, 71. Every operative sentence of the opinion assumes a delegation clause agreed to by parties, being invoked by one of those parties. *Id.* at 65 (presenting "the threshold arbitrability question" as "whether [the parties'] arbitration agreement applies to the particular dispute," not whether there was a contract to arbitrate in the first place). The opinion never once suggests that a delegation clause becomes available to any third party who finds it convenient to invoke.

That is not an accident of drafting; it reflects the foundational premise of contract law itself. As the *Restatement (Second) of Contracts* explains, "the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange." *Restatement (Second) of Contracts* § 17(1) (Am. L. Inst. 1981); *see also id.* § 1 (a contract is a promise, or set of promises, the breach of which the law provides a remedy). A delegation clause is itself a contract—"an additional, antecedent agreement." *Rent-A-Center*, 561 U.S. at 70. Like any contract, it requires two or more parties who bargained for an exchange. A stranger to the underlying agreement was never asked for, and never gave, the assent that *Henry Schein* requires courts to respect. There is no "parties' decision," 586 U.S. at 71, to which a court can defer when the entity invoking the clause was never one of the parties who made it.

FCA's own pleadings in this very case confirm the point. In its Answer to the Fourth Amended Complaint, FCA affirmatively pleaded that it lacked contractual privity with Olson:

> *Defendant did not sell or lease any of the subject vehicles directly to Plaintiff or the putative class. Thus, to the extent applicable under state law, the claims of Plaintiff and the putative class are barred by lack of privity.*

Resp. App 6a–7a. FCA cannot have it both ways. It cannot tell the district court that it stands too far outside Olson's lease to bear contractual liability under it, while telling this Court that it stands close enough inside that same lease to compel Olson into an arbitrator's forum on the strength of a delegation clause he negotiated with someone else. Both propositions turn on the same fact—whether FCA was a party to the lease—and FCA has already answered that question in the negative.

FCA's counsel removed any doubt about the sweep of this position at oral argument below, when Judge Friedland pressed him on exactly the scenario of a stranger conscripting a plaintiff into arbitration under a contract with an unrelated third party:

> **The Court:** *"But if you pull that out, what is the limiting principle? I mean, so if you sue me for a car crash, and I look at your life and figure out that you have an arbitration agreement with your cell phone provider that*

> *has a delegation clause, can I say, 'I want to invoke that delegation clause and take this to arbitration,' and now we're going to litigate our car crash in arbitration until someone decides whether that's under your cell phone provider?"*
>
> **Counsel for FCA:** *"The answer's yes. And I would point the Court to Henry Schein."*
>
> **The Court:** *"But that makes no sense, does it? So you're saying anyone who has any arbitration agreement with anyone can be brought to arbitration because of their delegation clause, even if it's totally unrelated?"*
>
> **Counsel for FCA:** *"I would say yes, under Henry Schein, which again did away with the wholly groundless exception . . . ."*

Resp. App 2a.

FCA did not shrink from that concession—it embraced it, twice, as the necessary and intended consequence of the rule it asks this Court to adopt. By FCA's own telling, *Henry Schein* means that any two strangers who have each signed unrelated arbitration agreements with unrelated counterparties can drag one another into arbitration over a car crash, a slip-and-fall, or any other dispute that has nothing to do with either contract, simply because one of them thought to invoke the other's delegation clause. That is not a hypothetical extreme of some *reductio ad absurdum* but the actual claim of Petitioner below.

The panel recognized exactly this problem and its description of FCA's position as leading to "absurd results" was not rhetorical overstatement. *See* Pet.

App. 11a. The court understood that FCA's reading of the law "would mean that delegation clauses could be enforced even by third parties who have no connection whatsoever to the underlying arbitration agreement"—for example, allowing FCA to "locate an arbitration agreement with a delegation clause that Olson entered with his cell phone provider, use that agreement to move to compel arbitration of the present automobile dispute, and thereby force a court to send the case to an arbitrator to let the arbitrator decide whether the cell phone arbitration agreement covered the automobile dispute." Pet. App. 11a. "That cannot be right," the panel explained: FCA's theory "would force plaintiffs to arbitrate the arbitrability of their claims against a theoretically limitless universe of defendants with whom they have never agreed to arbitrate." *Id.* Such a position cannot be squared with the requirement from the Court, from the Restatement, and from basic contract law that a contract binds and benefits only those who bargained for it.

II. THERE IS NO CIRCUIT CONFLICT

FCA's petition claims a 5-4-1 split among the Circuits, an amazing result given the breadth of the delegation argument being advanced. Read case-by-case, with the single question this brief poses—was the non-signatory a stranger to the contract, or effectively standing in a party's shoes?—the chronicle of cases instead shows consistent outcomes, all in conformity with *Henry Schein*.

A. The cases FCA places on the "arbitrator decides" side of the ledger all involve non-signatories who had stepped into a signatory's contractual position—not strangers to the bargain.

In the **First Circuit**, *Apollo Computer, Inc. v. Berg*, 886 F.2d 469 (1st Cir. 1989), compelled arbitration only because the signatory had assigned its contractual rights to the non-signatory; thus, by way of assignment, "*the parties* [had] contracted to submit issues of arbitrability to the arbitrator." *Id.* at 472 (emphasis added). The First Circuit has since confirmed that *Berg* stands only for the proposition that a non-signatory may compel arbitration against a signatory via a contract's delegation clause if that non-signatory is an assignee. *Morales-Posada v. Cultural Care, Inc.*, 141 F.4th 301, 310 (1st Cir. 2025). Indeed, the First Circuit went out of its way to disclaim the very rule of universal enforceability FCA needs: it "did not hold in *Berg*, however, that a party to a lawsuit may force its opponent to arbitrate threshold issues regarding the arbitrability of their dispute so long as that party's opponent is a signatory to some arbitration agreement containing a delegation provision." *Id.* Such a ruling would lead to absurd results, as the Ninth Circuit noted in the opinion below.

The **Second Circuit's** *Contec Corp. v. Remote Solution, Co.*, 398 F.3d 205 (2d Cir. 2005), similarly turned on a "sufficient relationship" between the non-signatory and the original signatory to trigger "the rights created under the agreement." At issue was the continued performance of a party under the same contract despite a change in corporate form. *Id.* at 209. The Second Circuit expressly disclaimed any rule that a signatory "must arbitrate with any non-signatory" merely because it agreed to arbitrate arbitrability with someone, but found "clear and unmistakable evidence of the parties' intent to arbitrate issues of arbitrability" under the circumstances. *Id.* at 209–10.

The **Third Circuit's** *Zirpoli v. Midland Funding, LLC*, 48 F.4th 136 (3d Cir. 2022), rests on the same ground: the signatory had expressly agreed to arbitrate with the counterparty's "past, present or future . . . assignees," and the non-signatory was such an assignee. *Id.* at 142–43.

In turn the **Eighth Circuit's** *Eckert/Wordell Architects, Inc. v. FJM Properties of Willmar, LLC*, 756 F.3d 1098 (8th Cir. 2014)—the decision on which FCA most heavily relies—is a two-page opinion addressing a claimant who had continued arbitration proceedings for nearly three years under a changed corporate name. *Id.* at 1099. In *Eckert/Wordell*, the court never reached, let alone resolved, whether a true stranger to a contract could invoke its delegation clause. The Eighth Circuit's own later decision in *Burnett v. Nat'l Ass'n of Realtors*, 75 F.4th 975 (8th Cir. 2023), distinguished *Eckert/Wordell* on precisely that ground, holding that "narrow, party-specific language" does not "clearly and unmistakably delegate to an arbitrator threshold issues of arbitrability between nonparties." 75 F.4th at 983, *cert. denied*, 144 S. Ct. 1347 (2024).

Not one of these four decisions holds that a stranger—an entity with no assignment, no succession, no agency, and no corporate affiliation with a signatory—may invoke a delegation clause. Every one involves a non-signatory that had, by operation of law or course of dealing, effectively become a party. FCA is not such an entity here: it has pleaded that it has no contractual privity with Olson at all. *See* Resp. Pet. 6a–7a (FCA's

Ninth Affirmative Defense disclaiming privity between itself and Olson).

B. The ***Sixth Circuit*** *has not held that strangers to a contract may invoke delegation clauses.*

In *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842 (6th Cir. 2020), the panel expressly reserved "the antecedent question" of "whether Domino's (as a non-signatory) has any right to enforce" the delegation provision at all, because the plaintiff had not raised it. *Id.* at 845 n.1. In *Becker v. Delek US Energy, Inc.*, 39 F.4th 351 (6th Cir. 2022), and *Swiger v. Rosette*, 989 F.3d 501 (6th Cir. 2021), the courts likewise compelled arbitration only because the signatory failed to specifically challenge the delegation clause below—a forfeiture rule, *not* a merits holding that non-signatory strangers may invoke delegation clauses as of right. *See Becker*, 39 F.4th at 355 (agreeing "[a] challenge to arbitration agreement formation is always in the jurisdiction of the courts," but finding plaintiff's challenge to the delegation clause was "not specific enough to enforce judicial review") (citing *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010)); *Swiger*, 989 F.3d at 505–07 (plaintiff's "failure to specifically challenge the delegation clause" led the court to consider the question as one of arbitration enforceability rather than contract formation). None of these decisions holds what FCA asserts as the source of the Circuit conflict.

C. The ***Tenth Circuit's*** *rule is settled—and it is not the rule claimed by Petitioner.*

FCA leans heavily on an unpublished, non-precedential order, *Casa Arena Blanca LLC v. Rainwater by Est. of Green*, No. 21-2037, 2022 WL 839800 (10th Cir.

Mar. 22, 2022), which by its own terms binds no one "except under the doctrines of law of the case, res judicata, and collateral estoppel." *Id.* at *1. There is binding Tenth Circuit law on the ability of non-parties to invoke delegation clauses. That authority is *Fedor v. United Healthcare, Inc.*, 976 F.3d 1100 (10th Cir. 2020), which holds that "the issue of whether an arbitration agreement was formed between the parties must always be decided by a court, regardless of whether the alleged agreement contained a delegation clause." *Id.* at 1105. *Fedor*—not the unpublished order FCA prefers—controls, and it places the Tenth Circuit squarely with the courts that ask whether the non-signatory was ever a party to the bargain.

D. The ruling below is correct as a matter of contract law and consistent with Henry Schein.

Upon examination the claimed Circuit conflict disappears. The reason is that courts consistently distinguish the application of an arbitration agreement between parties and the question whether the parties had entered into any agreement at all. Thus, in the **Fifth Circuit**, *Newman v. Plains All American Pipeline, L.P.*, 23 F.4th 393 (5th Cir. 2022), *reh'g en banc denied,* 44 F.4th 251 (5th Cir. 2022), held that whether a non-signatory client could compel a signatory's employee to arbitrate was a "first-step, formation question" for the court, not the arbitrator. Similarly, and most recently, the **Seventh Circuit** reached the same conclusion on strikingly similar facts to those FCA's own amicus brief had previously urged this Court to review. *See* Brief for FCA US LLC as Amicus Curiae Supporting Petitioner, *Jump Trading, LLC, v. Patterson*, No. 24-1266, 2025 WL 1997812 (U.S. July 14, 2025), *cert. denied*, 146 S. Ct. 116 (2025).

In *Kim v. Jump Trading, LLC*, No. 25-1964, 2026 WL 2348464 (7th Cir. Aug. 13, 2026)—decided less than three weeks ago—the court held that courts, not arbitrators, must decide whether a securities-fraud dispute belongs in arbitration where the parties never signed an arbitration agreement with one another. *Id.* at *3. The opinion rejects the same claims of a non-signatory attempting to compel arbitration that the Court declined to review in *Jump Trading, LLC v. Patterson*, No. 24-1266, 2025 WL 1997812, *cert. denied*, 146 S. Ct. 116 (2025). If anything has changed since FCA's amicus brief was filed, the case law has moved even further away from the rule FCA asks the Court to adopt, not toward it.

E. The ***Ninth Circuit's*** *decision below is not an outlier.*

The panel held that Olson's lease delegated arbitrability only as to disputes "*between Olson and the dealership*," and that "[n]othing in the text of the arbitration agreement hints that" the delegation extended to a stranger like FCA. Pet. App. 8a. The panel carefully canvassed and distinguished FCA's authorities from the assignment, succession, and forfeiture grounds set out above, in a footnote explaining how its opinion was in conformity with the cases FCA now cites to the Court. Pet. App. 12a n.2. That is not a rogue decision widening a Circuit split. It follows the Seventh Circuit to a tee, asking whether the non-signatory was ever a party, and answering no when it plainly was not.

In short, no federal court of appeals has held that a true stranger to a contract may invoke that contract's delegation clause. The disagreement FCA's petition describes is not any divergence on basic contract principles. It is at most a fact-based set of tests concerning how close a relationship must be before a non-signatory is treated as if it were a party—assignment, succession, agency, or substitute corporate form all might qualify under some circumstances. But that is not the question presented in this case. The Petition concerns a case that has nothing to do with when an assignee or successor in interest assumes a contracting party's rights and obligations for purposes of invoking contractual duties or privileges. FCA's own pleadings place it outside the scope of contract law altogether. The non-signatory claim brought by FCA does not warrant the Court's review for a fourth time, and this case—where FCA has pleaded lack of privity in its own Answer, and where FCA's own counsel has admitted the rule it seeks would upend the basic principles of contract law—is a particularly poor vehicle in which to take it up.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 4, 2026

APPENDIX

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APPENDIX A

[1] IN THE COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 24-6527

OLSON,

Plaintiff,

v.

FCA US, LLC,

Defendant.

ORAL ARGUMENT

DATE: 11/21/2025
TIME:

BEFORE: Judge Michelle Taryn Friedland
Judge Mary Murphy Schroeder

[2] A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

Mark Chalos, Esquire

ON BEHALF OF DEFENDANT:

Brandon Boxer, Esquire

* * *

[6] Friedland put it in Caremark, the delegation clauses are essentially a mini-arbitration agreement. Or as Holly Gallagher (ph) case, another Ninth Circuit case said, delegation clauses are essentially severable mini-agreements. And so we have to look at the enforceability or the language of the delegation clause to determine –

JUDGE FRIEDLAND: But if you pull that out, what is the limiting principle? I mean, so if you sue me for a car crash, and I look at your life and figure out that you have an arbitration agreement with your cell phone provider that has a delegation clause, can I say, "I want to invoke that delegation clause and take this arbitration," and now we're going to litigate our car crash in arbitration until someone decides whether that's under your cell phone provider?

MR. BOXER: The answer is yes. And I would point the Court to Henry Schein.

JUDGE FRIEDLAND: But that makes no sense, does it? So you're saying anyone who has any arbitration agreement with anyone can be brought to arbitration because of their delegation clause, even if it's totally unrelated?

MR. BOXER: I would say yes, under Henry Schein, which again, did away with the wholly [7] groundless exception, which was essentially what you're saying. If it's wholly groundless, how can it possibly be enforced? And the Supreme Court said, no, under Section 2 of the FAA, it's not our ground to carve out exceptions to the enforceability.

And I would also direct the Court to sort of the bottom third of the Henry Schein opinion, which dealt exactly with that policy concern, where the party that was seeking to continue the wholly groundless exception said, look, this is going to lead to a bunch of frivolous motions to compel arbitration. They're going to be all over the place. And the Supreme Court said, well, A, that's overstated. There's no evidence of that happening. And if you look at other Courts that had rejected the wholly groundless exception, there was no evidence of those sort of frivolous, all out of control motions to compel being filed.

And if the arbitrators have tools at their dispensal, and again, Henry Schein addressed that. If it is truly frivolous, then they can impose sanctions. And Courts, of course, can do the same thing.

JUDGE FRIEDLAND: But if arbitration – if the reason we compel arbitration is because of the voluntary contract that people form to go to [8] arbitration. How is there any plausible idea that anyone has formed a contract in that kind of scenario?

MR. BOXER: Well, there is a contract and I think that's – that's where I would go back to the Arthur Anderson line of cases and the GE power where it says third parties can enforce. We have a contract here. We know there's a contract. FCA has never argued that we are a party to the contract.

We're a signatory to the contract, but we know that non-signatories can enforce arbitration agreements.

And FCA is a non-signatory seeking to enforce the arbitration agreement that plaintiff entered into with the dealership. And so there are state law doctrines that allow this sort of thing to happen for non-signatories to enforce. Supreme Court has reminded us many times, and that's all that's happening here.

So the question – if you – if you look at the language in Henry Schein –

JUDGE SCHROEDER: And what is the state law doctrine that you think allows you to do this here?

JUDGE FRIEDLAND: Yeah.

MR. BOXER: So in our briefs, we argued equitable estoppel, which I think is much more

* * *

[30] CERTIFICATE OF TRANSCRIBER

I, JESSICA BARRON, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action. September 1, 2026

/s/ Jessica Barron
JESSICA BARRON

APPENDIX B

UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF CALIFORNIA

Case No. 2:18-cv-00360-MCE-EFB

JEFFREY OLSON as an individual and
on behalf of all others similarly situated,
Plaintiff,
vs.

FCA US LLC f/k/a CHRYSLER GROUP LLC,
a Delaware Corporation, and
DOES 1 through 100, inclusive ,
Defendants.

Assigned to
Hon. Daniel J. Calabretta

Courtroom: Courtroom 10, 13th floor

Complaint Filed: February 16, 2018
Trial Date: May 5, 2025

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FCA US LLC F/K/A CHRYSLER GROUP LLC'S ANSWER TO FOURTH AMENDED COMPLAINT

* * *

Commercial Code, as adopted and codified by the states, or equivalent section of the applicable state's warranty laws. Accordingly, the breach of warranty claims of Plaintiff and the putative class are barred.

EIGHTH AFFIRMATIVE DEFENSE

8. The claims of Plaintiff and the putative class are barred by laches because they inexcusably delayed pursuit of their claims and such delay has resulted in prejudice to Defendant. More specifically, Plaintiff and the putative class members failed to file suit within a reasonable time after they had, or should have had, knowledge of a basis for their claims. Moreover, information relating to the alleged defect has been in the public domain for years. Such information was disseminated in a variety of ways, including, but not limited to, the purported NHTSA complaints alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

9. Defendant did not sell or lease any of the subject vehicles directly to Plaintiff or the putative class. Thus,

to the extent applicable under state law, the claims of Plaintiff and the putative class are barred by lack of privity.

TENTH AFFIRMATIVE DEFENSE

10. The Court lacks subject matter jurisdiction because Plaintiff's vehicle lease agreement, and absent class members' vehicle lease and/or purchase agreements contain a binding arbitration agreement.

ELEVENTH AFFIRMATIVE DEFENSE

11. The AHRs in the subject vehicles may have been damaged as a result of the negligence, fault, carelessness, misuse, or abuse of other persons or entities for whom Defendant is not responsible. Such negligence, fault, or carelessness was the sole, intervening, superseding, or contributing cause of the alleged damages of Plaintiff and the putative class. Although the particular cause of damage must be determined on an individual basis with respect to Plaintiff and putative class member, examples include, but are not limited to, damage caused by persons or entities who struck, or caused

* * *

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2024, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/ Ian K. Edwards