

No. 26-228

IN THE
Supreme Court of the United States

FCA US LLC,

Petitioner,

v.

JEFFREY OLSON,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

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INTRODUCTION

Respondent does not dispute that the petition raises a pure legal question that frequently arises in many contexts. The question arises so frequently, in fact, that respondent identifies four petitions “in a little over two years” asking this Court to answer it. BIO 1. Litigants keep knocking on this Court’s door because there is an acknowledged and entrenched circuit split that will not resolve itself. Until the Court opens the door and answers the question, the petitions will keep coming, as litigants will keep preserving their positions in preparation for the day this Court grants review and unifies the law.

Trying to downplay the circuit split, respondent points to purported factual differences among the cases involved in the split. *See* BIO 16-19. But in doing so, he highlights that nonsignatory arbitrability disputes regularly arise in many factual and legal contexts—from a cryptocurrency dispute involving claims under the Commodity Exchange Act, to an antitrust dispute involving real-estate brokerage commissions, to an employment dispute involving claims for unpaid overtime. *See* BIO 1-2, 20; *see also* Pet. 22-23. The widespread impact of the question presented, combined with the broadly acknowledged circuit split, confirms that review is warranted.

I. The Circuit Split Is Real, Acknowledged, And Not Going Anywhere.

Respondent ignores the statements of courts and commentators recognizing the circuit split. *See, e.g.*, Pet. 9, 14-16. He insists that all circuit courts agree with the Fourth, Fifth, Seventh, Eighth, and Ninth Circuits and reach “consistent outcomes.” BIO 15; *see*

also id. at 9. According to him, “no court of appeals has held that a non-party to an arbitration agreement may force an adversary to arbitrate” when an arbitration agreement has a delegation clause. *Id.* at 2; *see also id.* at 3.

Respondent is wrong, and his arguments rest on sleight-of-hand. He says decisions on the “arbitrator decides” side of the split “all involve non-signatories who had stepped into a signatory’s contractual position.” BIO 16 (emphasis omitted). That is not true. Although the nonsignatories in some cases *argued* they could enforce the contract because they had stepped into the shoes of a signatory, none of the decisions resolved the merits of that argument. Rather than determine whether the assignment was valid or whether the nonsignatory had some other basis to enforce the agreement, the court sent the parties to arbitrate the issue. That is precisely the result FCA seeks here.

Second Circuit. Respondent argues that *Contec Corp. v. Remote Sol. Co.*, 398 F.3d 205 (2d Cir. 2005), required arbitration because “the original signatory” seeking to enforce the contract had changed its corporate form, so the case was really about “the continued performance of a party under the same contract.” BIO 16. Not so. The *Contec* parties *disputed* whether the nonsignatory was a successor-in-interest with rights under the contract. The Second Circuit did not resolve that dispute.

The party resisting arbitration in *Contec*, Remote Solutions, “argued that it could not be compelled to participate in arbitration” because the party seeking to compel arbitration “was a non-signatory to the

arbitration agreement.” *Contec Corp.*, 398 F.3d at 207. Remote Solutions stressed that “the contractual language is effective only between the contracting parties,” but the nonsignatory seeking to enforce the agreement was not a contracting party. *Id.* at 209. Plus, the contract “included both a prohibition on the assignment of rights under the Agreement and an exclusion of third party rights.” *Id.*

The Second Circuit did not resolve those arguments, explaining that “whether a non-signatory can compel a signatory to arbitrate” is a “question of arbitrability [that] is itself subject to arbitration.” *Contec Corp.*, 398 F.3d at 209. The nonsignatory’s “purported right to enforce the . . . Agreement is a matter of the Agreement’s continued existence, validity and scope, and is therefore subject to arbitration under the terms of the [delegation] clause.” *Id.* at 211.

Third Circuit. Respondent similarly misreads *Zirpoli v. Midland Funding, LLC*, 48 F.4th 136 (3d Cir. 2022). He claims the Third Circuit required arbitration because “the non-signatory was . . . an assignee” of the arbitration agreement. BIO 17. But again, the signatory *disputed* the assignment’s validity, and the court did not resolve that dispute; it sent the parties to arbitration. *See Zirpoli*, 48 F.4th at 138, 145. In fact, the Third Circuit held that the district court “erred in finding that it had authority to adjudicate” the assignment’s validity. *Id.* at 140. “[I]f we were to answer that question at this point of the analysis, we risk pushing up against Supreme Court precedent.” *Id.* at 142.

Confirming that respondent misreads *Zirpoli*, the opinion rejected the approach of a partial dissent that would have adopted the rule respondent advocates here—that courts must decide whether a nonsignatory can enforce an arbitration agreement before sending the parties to arbitration. *See Zirpoli*, 48 F.4th at 143. “If we were to apply the Dissent’s reasoning and decide whether the assignment was valid . . . , we would also be reaching the merits of . . . [whether] the assignment is valid.” *Id.* And “prematurely answering this question” would make “asking the ‘who decides’ question pointless.” *Id.*

In short, *Zirpoli* did not rest on the conclusion that the nonsignatory *was* an “assignee.” BIO 17. It rested on the conclusion that *whether* the nonsignatory was an assignee with rights to enforce the arbitration agreement was an arbitrability dispute “that an arbitrator shall resolve.” *Zirpoli*, 48 F.4th at 145.

Sixth Circuit. Respondent ignores language in Sixth Circuit cases holding that a delegation clause requires arbitrators to resolve nonsignatory arbitrability disputes. *See* Pet. 11-12, 34-35. He ignores that Judge Jones and other judges have recognized the conflict between the Sixth Circuit and the circuit courts on the “court decides” side of the split. *See id.* at 15-16. He ignores that the Fourth Circuit openly disagreed with a Sixth Circuit case on the “arbitrator decides” side of the split. *See id.* at 14. And he ignores a pile of district court cases from within the Sixth Circuit holding that binding precedent requires compelling arbitration when a delegation clause exists and a signatory resists arbitrating with a nonsignatory. *See id.* at 35-36 n.6. In fact, respondent does not cite any district court

case from the Sixth Circuit—or any other circuit on this side of the split—construing the circuit precedents the same way he does.

Even more far afield, and citing nothing for support, respondent claims that “every court to consider the question has decided [it] against FCA.” BIO 9. Respondent ignores that the petition cited *Kappes v. FCA US LLC*, 2024 WL 4339980 (E.D. Mich. Sept. 27, 2024), which decided the question in FCA’s favor. *See* Pet. 36 n.6. Other decisions from district courts in the Sixth Circuit come out the same way. *See, e.g., Fisher v. FCA US LLC*, 769 F. Supp. 3d 587, 603 (E.D. Mich. 2025) (“[B]ecause the Delegation Clauses delegate questions of arbitrability to the arbitrator, the Sixth Circuit’s decision in *Swiger* compels the conclusion that it is for the arbitrator, not the Court, to decide whether FCA, as a non-party to the vehicle sales contracts, may enforce the Arbitration Provisions.”); *Bernardoni v. FCA US LLC*, 2024 WL 3103316, at *4 (E.D. Mich. June 20, 2024) (citing Sixth Circuit cases and requiring arbitration of dispute over whether FCA could compel consumer to arbitration because “the delegation clause . . . compels the Court to defer all questions about arbitrability to the arbitral forum”).

Next, respondent asserts that the Sixth Circuit cases compel arbitration “only because the signatory failed to specifically challenge the delegation clause below—a forfeiture rule.” BIO 18. Maybe, but the same is true here. Respondent does not challenge the delegation clause; its validity is undisputed. So even under respondent’s reading, the Sixth Circuit’s cases require sending the parties to arbitration—a result in conflict with the Ninth Circuit’s decision here.

FCA agrees that courts can resolve challenges to the *validity* of a delegation clause. *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 72 (2010). But respondent makes no such challenge. The question, then, is when a delegation clause’s validity has *not* been challenged—as here and in the Sixth Circuit cases—who decides whether claims against a nonsignatory are arbitrable? The Sixth Circuit sends that question to arbitration. *See, e.g., Becker v. Delek US Energy, Inc.*, 39 F.4th 351, 356 (6th Cir. 2022); *Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 852 (6th Cir. 2020); *Swiger v. Rosette*, 989 F.3d 501, 506-07 (6th Cir. 2021).

Tenth Circuit. Respondent does not dispute that *Casa Arena Blanca LLC v. Rainwater*, 2022 WL 839800 (10th Cir. Mar. 22, 2022), held that once a court identifies “an enforceable delegation clause,” nonsignatory-enforcement questions must be “sent . . . to arbitration.” *Id.* at *5; *see* Pet. 12-13. He dismisses the opinion as “unpublished,” BIO 18, but offers no reason why the Tenth Circuit would reach a different holding in future cases. He cites a case decided two years earlier, *Fedor v. United Healthcare, Inc.*, 976 F.3d 1100 (10th Cir. 2020), but that case involved a dispute between *signatories* about whether a contract was formed. *Fedor* is irrelevant here, where no one disputes that a valid arbitration agreement was formed, and the question is who decides whether that agreement covers claims against a nonsignatory.

First Circuit. Respondent also misconstrues *Apollo Computer, Inc. v. Berg*, 886 F.2d 469 (1st Cir. 1989). He asserts that *Apollo* “compelled arbitration only because the signatory had assigned its

contractual rights to the non-signatory.” BIO 16. But once again, the court did “not reach” the assignment’s validity. *Apollo*, 886 F.2d at 472. The parties *disputed* that issue, and the First Circuit compelled arbitration “without expressing any opinion on the merits” of it. *Id.* at 474. The only wrinkle the First Circuit added was requiring a “prima facie” showing that the assignment had occurred, but once the nonsignatory made that showing, an “arbitrator should decide” the assignment’s validity. *Id.* at 473.

II. Respondent’s *Henry Schein* Arguments Confirm Why The Ninth Circuit Got It Wrong.

1. Respondent makes the sweeping claim that “no circuit court has held that non-contracting parties have the right to compel arbitration against others.” BIO 10 (emphasis omitted).

Of course that’s wrong. Circuit courts allow noncontracting parties to enforce arbitration agreements all the time. *See* Pet. 20-22. As this Court has repeatedly explained, “arbitration agreements may be enforced by nonsignatories.” *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 437 (2020); *see also Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (“[T]raditional principles of state law allow a contract to be enforced by . . . nonparties to the contract.” (quotation marks omitted)).

Whether respondent and FCA are in “contractual privity” is not the focus. BIO 5. Nor is the focus “whether there was a contract to arbitration *among these parties*.” *Id.* at 3. If that were the focus, nonsignatories and noncontracting parties could

never enforce an arbitration agreement, making *GE Energy* and *Arthur Andersen* dead letter.

When a valid delegation clause exists, the threshold question is not whether a nonsignatory can enforce the arbitration agreement but whether “*who should decide* whether the parties have to arbitrate.” *Newman v. Plains All Am. Pipeline, L.P.*, 44 F.4th 251, 254 (5th Cir. 2022) (Jones, J., dissenting from denial of reh’g en banc) (quoting *Blanton*, 962 F.3d at 852). Whether a nonsignatory can enforce an arbitration agreement—via one of the traditional principles of state law or otherwise—“presents a question of arbitrability that the signatory’s arbitration agreement delegated to an arbitrator.” *Id.* at 253 (quoting *Swiger*, 989 F.3d at 507).

2. Respondent next claims that “*Henry Schein* turned centrally on the fact that the parties to the dispute had signed an arbitration agreement.” BIO 11. He insists that “*Henry Schein* is an opinion about what parties to a contract may do with their own bargain.” *Id.* at 12.

None of that is true. *Henry Schein* did not involve contracting parties; it involved *nonsignatories* seeking to compel a signatory to arbitration. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 66 (2019); *see also Archer & White Sales, Inc. v. Henry Schein, Inc.*, 878 F.3d 488, 491 (5th Cir. 2017), *vacated by* 586 U.S. 63. Even the Ninth Circuit below recognized as much. *See* Pet. App. 10a n.1 (noting that “neither” party seeking to compel arbitration in *Henry Schein* “was an original signatory to the contract containing the arbitration agreement at issue in the case”).

Thus, *Henry Schein*'s "load-bearing premise" was *not* that the parties had signed an arbitration agreement. BIO 12. They hadn't. Nor was the holding limited to when there is "an agreement *between parties* to arbitrate disputes between them." *Id.* at 6. The parties had no such agreement.

Insofar as *Henry Schein* "assume[d] a delegation clause agreed to by parties, being invoked by one of those parties," BIO 12, the assumption undermines respondent's argument. *Henry Schein* did not need to differentiate between whether a signatory or a nonsignatory was invoking the agreement because it made no difference. The result would be the same either way: Because of the delegation clause, "a court possesses no power to decide" whether the arbitration agreement covers a claim, *Henry Schein*, 586 U.S. at 68, regardless of whether the claim is against a signatory or a nonsignatory, *see* Pet. 28-29.

III. Respondent Has No Answer To Why Concerns About "Absurd Results" Are Baseless.

Respondent repeatedly echoes the Ninth Circuit's concern that "absurd results" would follow if arbitrators could decide nonsignatory arbitrability disputes. BIO 3, 14-15 (quotation marks omitted).

This concern merely repackages the "wholly groundless" exception that *Henry Schein* rejected. *See Blanton*, 962 F.3d at 851 (noting *Henry Schein* "rejected a nearly identical argument" about the potential for "frivolous motions to compel arbitration." (quoting 586 U.S. at 71)); *see also* Pet. 33. Regardless of how a court might view the merits of a nonsignatory's arguments for compelling a signatory to arbitration, a delegation clause means

courts have “no power” to resolve those arguments, even if deemed absurd or wholly groundless. *Henry Schein*, 586 U.S. at 68.

Respondent suggests that courts always retain the power to decide nonsignatory arbitrability disputes. *See* BIO 14-15. If that were true, “the delegation clause . . . is rendered meaningless.” *Bossé v. N.Y. Life Ins. Co.*, 992 F.3d 20, 30 (1st Cir. 2021). Under such a rule, claims against a nonsignatory are arbitrable only if a court says they are arbitrable. “Not only does this reasoning contravene the . . . holding in *Henry Schein*,” but it is “precisely the type of ‘short-circuiting of the process’ which concerned the Supreme Court.” *Id.* at 30-31 & n.13 (quoting *Henry Schein*, 586 U.S. at 65); *see also* Pet. 30.

In any event, respondent ignores FCA’s discussion of why concerns about “absurd results” are baseless. *See* Pet. 31-33. This Court rejected the same type of policy argument in *Henry Schein*, *see* 586 U.S. at 71, and rejected a similar argument again in *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 744-45 (2023).

Nor does respondent identify evidence of “absurd results” occurring in the Second, Third, Sixth, or Tenth Circuits—the four circuits that require arbitration of nonsignatory arbitrability disputes. If respondent’s parade of horrors were real, there would be some evidence of it by now.

IV. This Case Is An Ideal Vehicle To Resolve The Question Presented.

This case presents a clean vehicle because the threshold factual and legal issues that often complicate arbitration disputes are absent. The

parties agree that a valid arbitration agreement exists, and they agree that the agreement contains a valid delegation clause. *See* BIO 9. The sole question is who decides whether the agreement covers claims a signatory brings against a nonsignatory.

Respondent’s vehicle objections lack merit. For instance, he says this is the “fourth time” a petition has presented the question. BIO 21. Prior denials of certiorari, however, “import[] no expression of opinion upon the merits of the case.” *United States v. Carver*, 260 U.S. 482, 490 (1923). The Court denies thousands of petitions each Term for any number of reasons—vehicle-specific concerns, incomplete records, the desire to let an issue percolate, and more. That other petitions have raised the question underscores its important and recurring nature, not a defect in this case as a vehicle. And with the Seventh Circuit’s recent opinion in *Kim v. Jump Trading, LLC*, -- F.4th --, 2026 WL 2348464 (7th Cir. Aug. 13, 2026), the issue has percolated plenty.

Finally, respondent contends that “FCA’s own counsel has admitted the rule it seeks would upend the basic principles of contract law.” BIO 21. He cites nothing for support because there is nothing to cite. FCA has always maintained that an “arbitrator decides” rule is consistent with—and required by—principles of contract law and *Henry Schein*, *GE Power*, and *Arthur Andersen*. FCA’s counsel even cited those three cases on the same page of the oral argument transcript that respondent selectively quotes. *See* Resp. App. 3a.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Dated: September 18, 2026 Respectfully submitted,

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