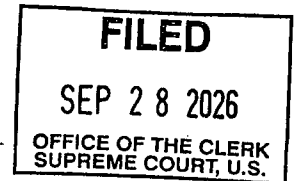


ORIGINAL

No. 26 432



IN THE
Supreme Court of the United States

HOUSSAM EDDINE HAMRIT,
Petitioner,

v.

CITIGROUP GLOBAL MARKETS, INC.; CITI
PERSONAL WEALTH MANAGEMENT; AND
CITIGROUP INC.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court of appeals abuses its discretion and departs from the accepted course of judicial proceedings when it *sua sponte* and summarily dismisses an appeal from a final Rule 41(b) judgment as frivolous—without notice, before merits briefing, and while ruling on a motion that sought dismissal of only a different, interlocutory portion of the appeal.

**PARTIES TO THE PROCEEDING,
CORPORATE DISCLOSURE STATEMENT,
AND RELATED PROCEEDINGS**

Parties to the Proceeding

Petitioner Houssam Eddine Hamrit was the plaintiff in the district court and the appellant in the court of appeals. He is an individual and has no stock ticker symbol. [ECF 155 at 1; 2d Cir. Dkt. 32 at 1.]

Respondents Citigroup Global Markets, Inc., Citi Personal Wealth Management, and Citigroup Inc. were the defendants in the district court and the appellees in the court of appeals. [ECF 121 at 1; 2d Cir. Dkt. 38 at 1.] Citigroup Inc. is publicly traded on the New York Stock Exchange under the ticker symbol C. According to Respondents' Rule 7.1 statements in the district court, Citigroup Global Markets, Inc. is an indirect wholly owned subsidiary of Citigroup Inc., and Citi Personal Wealth Management is not a separate legal entity but a business of Citigroup Inc.; neither has a separate ticker symbol. [ECF 24 at 1; ECF 25 at 1; ECF 26 at 1.]

Corporate Disclosure Statement

Petitioner is an individual. Supreme Court Rule 29.6 therefore does not require a corporate disclosure statement from him.

Related Proceedings

The following proceedings arise from the same district-court action and are directly related to this case within the meaning of Supreme Court Rule 14.1(b)(iii):

1. *Hamrit v. Citigroup Global Markets, Inc.*, No. 1:22-cv-10443-JPC (S.D.N.Y.). Opinion and Order dismissing the action with prejudice entered December 8, 2025; judgment entered December 9, 2025. [ECF 154 at 8; ECF 156 at 1.]
2. *Hamrit v. Citigroup Global Markets, Inc.*, No. 24-3217 (2d Cir.). Appeal dismissed April 10, 2025, for lack of a final order. [ECF 121 at 3–4 n.4; 2d Cir. Dkt. 25.1 at 6–7 n.2.]
3. *Hamrit v. Citigroup Global Markets, Inc.*, No. 25-1142 (2d Cir.). Appeal dismissed June 25, 2025, because the order compelling arbitration and staying the action was nonfinal. [2d Cir. No. 25-1142, Dkt. 39 at 1–2.]
4. *Hamrit v. Citigroup Global Markets, Inc.*, No. 25-3091 (2d Cir.). Order dismissing the appeal entered July 9, 2026; motion for panel reconsideration or reconsideration *en banc* denied August 14, 2026; mandate issued August 21, 2026. [2d Cir. Dkts. 32 at 1, 38 at 1, 40 at 1.]

There are no other proceedings in state or federal trial or appellate courts directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Houssam Eddine Hamrit respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's order of July 9, 2026, is unreported and is reproduced at Pet. App. 1a–2a. The order of August 14, 2026, denying panel reconsideration and reconsideration *en banc* is unreported and is reproduced at Pet. App. 3a. The district court's Opinion and Order of December 8, 2025, dismissing the action with prejudice under Federal Rule of Civil Procedure 41(b), is unreported and is reproduced at Pet. App. 4a–13a. The judgment entered December 9, 2025, is reproduced at Pet. App. 14a. Petitioner's notice of appeal is reproduced at Pet. App. 15a–16a. Excerpts of the Declaration of Bruce S. Goodman in support of Respondents' motion to partially dismiss the appeal, 2d Cir. Dkt. 25.1 (Mar. 16, 2026), are reproduced at Pet. App. 17a–20a. The Second Circuit's summary order in *Costello v. Paramount Global, Inc.*, No. 25-794-cv (2d Cir. May 18, 2026), is reproduced at Pet. App. 21a–27a.

JURISDICTION

The Second Circuit entered the order sought to be reviewed on July 9, 2026. [Pet. App. 1a–2a.] On July 23, 2026, Petitioner timely moved for panel reconsideration or, in the alternative, reconsideration *en banc* under Second Circuit Local Rule 40.2—which

provides that when the court “determines an appeal by issuing an order for which a FRAP 36 judgment is not entered, a party adversely affected may file a motion for panel reconsideration and a motion for reconsideration *en banc* that complies with FRAP 40 and LR 40.1”—and Federal Rule of Appellate Procedure 40; the motion included the statement that Rule 40(b)(2) requires of a petition for rehearing *en banc*, invoking subparagraphs (A) and (D). [2d Cir. Dkt. 33 at 1–2.] The Second Circuit denied that motion on August 14, 2026, stating that “[t]he panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.” [Pet. App. 3a.] The mandate issued on August 21, 2026, seven days after that denial. [2d Cir. Dkt. 40 at 1]; see Fed. R. App. P. 41(b). The motion was a timely petition for rehearing for purposes of Supreme Court Rule 13.3; the time to seek certiorari therefore runs from August 14, 2026, and expires on November 12, 2026. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1332. [ECF 1 at 2–3; ECF 56 at 6.] This Court has jurisdiction under 28 U.S.C. § 1254(1). Citations in the form “ECF” are to the district-court docket in No. 1:22-cv-10443; citations in the form “2d Cir. Dkt.” are to the docket in No. 25-3091 and to the page numbers stamped by the court of appeals’ electronic filing system.

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: “No person

shall be ... deprived of life, liberty, or property, without due process of law."

Federal Rule of Civil Procedure 41(b) provides, in relevant part:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3, provides, in relevant part, that when an issue is referable to arbitration under a written agreement, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement."

Section 16(b) of the Federal Arbitration Act, 9 U.S.C. § 16(b), provides, in relevant part:

Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order— (1) granting a stay of any action under section 3 of this title; (2) directing arbitration to proceed under section 4 of this title; (3) compelling arbitration under section 206 of this title; or (4) refusing to enjoin an arbitration that is subject to this title.

Section 1291 of Title 28 provides, in relevant part, that the courts of appeals “shall have jurisdiction of appeals from all final decisions of the district courts of the United States,” except where direct review may be had in this Court.

STATEMENT OF THE CASE

A. The compel-and-stay order and the deferred-review posture

Petitioner, proceeding *pro se*, commenced this action in the Southern District of New York on December 9, 2022. His complaint asserted that Respondents wrongfully debited \$432,225 from his personal checking and savings accounts to settle the purchase of stock that he never ordered, and booked the debit to a Citigroup brokerage account that had been opened in his name without his knowledge or consent. Importantly, Petitioner’s complaint stated: “I never signed any account opening forms or other documents with respect to this brokerage account.” [ECF 1 at 6, 11; ECF 121 at 1.] Respondents moved to compel arbitration under a client agreement they contended governed the account, and Petitioner opposed on the ground that he had never agreed to arbitrate. [ECF 20; ECF 35; ECF 121 at 1.] After a bench trial limited to contract formation, the district court found on April 22, 2025, that Petitioner had entered into a valid arbitration agreement; it granted the motion, stayed the action, and ordered “the parties” to commence arbitration before FINRA within sixty days. [ECF 121 at 1–3, 32.] Petitioner still maintains that he never agreed to arbitrate [ECF 149 at 1], but this petition does not ask the Court to revisit

that finding or any antecedent discovery or evidentiary ruling.

Section 16(b) of the Federal Arbitration Act withholds an immediate appeal as of right from an order compelling arbitration and staying the action. 9 U.S.C. § 16(b). Petitioner nevertheless appealed; the Second Circuit dismissed the appeal because the order was nonfinal. [2d Cir. No. 25-1142, Dkt. 39 at 1-2; ECF 154 at 2.] An earlier appeal from an expert-exclusion ruling had likewise been dismissed for want of a final order. [ECF 121 at 3-4 n.4.] The district court had certified each of those interlocutory notices of appeal as “frivolous and legally ineffective to divest” it of jurisdiction, so that the case proceeded in the district court while the appeals were pending. [ECF 114 at 4; ECF 124 at 2.] Neither appeal reached the merits of any ruling, and neither concerned the Rule 41(b) judgment now at issue. No court of appeals has reviewed the formation finding.

B. The Rule 41(b) proceedings

Petitioner did not commence arbitration. On the June 23, 2025 deadline, he filed a status letter reporting his written inquiries to Respondents’ counsel and to FINRA and asking the court for instruction should “any additional action on my part” be required. [ECF 139 at 1-2.] The district court extended the deadline to June 27. [ECF 142 at 2-3.] On June 27 Petitioner reported FINRA’s advice that it would accept only its standard Submission Agreement, which he believed he could not sign without prejudicing his position that no agreement to arbitrate existed. [ECF 145 at 1-2 & Ex. A at 4.] The district court rejected that concern as an excuse for noncompliance, advised that review of its rulings

could follow arbitration, and cautioned that a dismissal for failure to prosecute “may prejudice his ability to obtain the very appellate review he seeks.” [ECF 150 at 2 n.1; ECF 154 at 5–6.] Whether that concern excused his failure to commence arbitration is not presented here.

In the June 30, 2025 joint letter, Petitioner stated that he had not commenced arbitration and had “no present intention to do so,” explaining that his position “has been and remains that I never entered into any agreement to arbitrate,” that “[t]his is not an act of defiance but a matter of legal impossibility,” and that he had “no objective to delay, obstruct or frustrate proceedings.” [ECF 149 at 1; ECF 154 at 3.] He asked the court to decline to dismiss with prejudice and, in the alternative, to enter an appealable final judgment. [ECF 145 at 2; ECF 147 at 1; ECF 149 at 1; ECF 154 at 3.] Respondents’ portion of the same letter urged dismissal with prejudice—which, they noted, “would permit plaintiff to achieve his desired result of pursuing an appeal”—and asked that it be made contingent on an award of sanctions and attorneys’ fees, relief the district court did not grant. [ECF 149 at 1–2.] The district court instead ordered him to show cause why the action should not be dismissed with prejudice under Rule 41(b). [ECF 150 at 1–3.] His response applied the Second Circuit’s five-factor framework and proposed dismissal without prejudice or a final judgment compelling arbitration as lesser dispositions. [ECF 151 at 4–10; *see id.* at 9–10.]

On December 8, 2025, the district court dismissed the action with prejudice. [Pet. App. 4a–13a.] It found the first two factors—duration and notice—to weigh “heavily” toward dismissal, measuring delay from the April 22 order and the June

deadline, and found that Petitioner had received a full hearing on the contract-formation question and could obtain review of the arbitration ruling after arbitration. [ECF 154 at 4–6.] It rejected the proposed lesser dispositions, reasoning that dismissal without prejudice “would be futile because, should Plaintiff refile his claim in federal court, the parties likely would find themselves right back to where they currently are.” [ECF 154 at 6.] And it presumed prejudice from the delay, identifying Respondents’ letters and the need to “dedicate resources to monitoring this litigation.” [ECF 154 at 7–8.] Judgment was entered on December 9, 2025. [Pet. App. 14a.]

C. The appeal, the partial motion, and the two dispositions

Petitioner’s notice of appeal expressly appealed “from the Opinion and Order entered on December 8, 2025 (ECF No. 154), which dismissed this action with prejudice under Federal Rule of Civil Procedure 41(b),” and then separately identified earlier orders that Petitioner contended had merged into the judgment. [Pet. App. 15a–16a; ECF 155 at 1.] Petitioner paid the appellate filing fee. [2d Cir. Dkt. 16 at 1.] The court of appeals set March 9, 2026, as the deadline for Petitioner’s opening brief and appendix and, on Petitioner’s motion, extended that deadline to April 7, 2026. [2d Cir. Dkts. 19 at 1–2, 21 at 1, 23 at 1.] On March 5, Petitioner also moved for an administrative order making certain admitted trial exhibits available in native form and asked that the briefing schedule be held in abeyance pending that motion. [2d Cir. Dkt. 22 at 1, 4.] The April 7 date passed without a brief; the abeyance request

remained pending and undecided, no further extension was sought, and the court entered no default dismissal.

On March 16, 2026, Respondents moved to dismiss the appeal in part. The motion sought an order dismissing the appeal “from (i) the interlocutory Findings of Fact and Conclusions of Law dated April 22, 2025,” and three other interlocutory orders, on the ground that those orders did not merge into the Rule 41(b) judgment. [2d Cir. Dkt. 25.1 ¶¶ 2–4 (at 2–3); Pet. App. 17a–19a.] Its conclusion asked the court to “dismiss Plaintiff’s appeal insofar as it improperly seeks review of the Non-Appealable Interlocutory Orders.” [2d Cir. Dkt. 25.1 ¶ 32 (at 10–11); Pet. App. 19a–20a.] And it described the Rule 41(b) dismissal as “the only order properly before this Court for review.” [2d Cir. Dkt. 25.1 ¶ 11 (at 5); Pet. App. 19a.] Its stated concern was scope: that Petitioner sought to use the Rule 41(b) dismissal “as a pretext to obtain appellate review” of the interlocutory orders. [Id. ¶ 4 (at 3).] The motion did not argue that the challenge to the Rule 41(b) judgment was frivolous, and it did not ask that the appeal be dismissed in its entirety. Respondents thus asked the court to narrow the appeal to the Rule 41(b) judgment, and told the court that the judgment was properly before it for review.

Petitioner opposed the motion. His opposition contested nonmerger and separately argued that “[e]ven under Appellees’ questionable premise that the Rule 41(b) dismissal order is the only order properly before this Court, that premise still requires appellate review of whether dismissal with prejudice was a proper exercise of discretion,” and that Respondents “cannot simultaneously insist that the dismissal order is the only order before this Court and

then treat that dismissal as insulated from meaningful appellate scrutiny.” [2d Cir. Dkt. 29 at 6–7; *see id.* at 12–14.] The Clerk had noticed Petitioner’s first opposition as defective for exceeding the 5,200-word limit for motion responses and directed a compliant refiling that would be deemed timely; the refiled opposition ran 2,971 words, with a 1,633-word supporting declaration. [2d Cir. Dkts. 28 at 1–2, 29 at 25.]

No order to show cause issued, and no merits brief was filed by either side. On July 9, 2026, a three-judge panel entered a one-page order. [Pet. App. 1a–2a.] The order recited that “Appellees move to dismiss in part for lack of appellate jurisdiction.” [Ibid.] It then made two dispositions, neither using the word “frivolous.” First, it granted the motion and dismissed the appeal “in part as to Appellant’s challenge to orders entered before the dismissal for failure to prosecute,” citing *Marquez v. Silver*, 96 F.4th 579, 582–83 (2d Cir. 2024), and *Martens v. Thomann*, 273 F.3d 159, 183 (2d Cir. 2001). [Ibid.] Second, it ordered “that the balance of the appeal is DISMISSED because it lacks an arguable basis either in law or in fact,” citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), and *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995). [Ibid.] It denied Petitioner’s pending motions, including the request to hold briefing in abeyance, “as moot.” [Ibid.] The order contains no other reasoning. The only motion before the court had sought to remove the interlocutory orders from the appeal and had described the Rule 41(b) judgment as the one order properly before the court; the Second Circuit’s dismissal removed that judgment from review as well.

D. Reconsideration

Petitioner timely moved for panel reconsideration or, in the alternative, reconsideration *en banc*. [2d Cir. Dkt. 33.] The motion argued that nonmerger did not resolve the separately preserved challenge to the Rule 41(b) judgment; that the five-factor challenge was at least arguable; that Respondents' motion had sought only partial dismissal and had treated the Rule 41(b) judgment as properly before the court; and that "[t]he independent Rule 41(b) issue was dismissed before permitting the litigants to submit briefs on the merits of dismissal and in response to a motion directed to the earlier interlocutory orders." [2d Cir. Dkt. 33 at 6–14.] The motion also invoked Federal Rule of Appellate Procedure 40(b)(2)(A) and (D). It stated that reconsideration *en banc* was warranted "to maintain uniformity with Martens, Marquez, and Pillay"—the three Second Circuit decisions and the July 9 order itself cited—because that order "cannot be reasonably reconciled" with them, and "to address a question of exceptional importance": whether an expressly appealed Rule 41(b) dismissal with prejudice "may be summarily terminated before allowing a merits briefing" once the court has resolved only the separate nonmerger question. [2d Cir. Dkt. 33 at 2, 15.] On August 14, 2026, the court denied the motion in a form order stating that the motion "is denied." [Pet. App. 3a.]

REASONS FOR GRANTING THE PETITION

Respondents asked the court of appeals to dismiss part of Petitioner's appeal, and they told the court that the remainder—the appeal from the Rule

41(b) judgment—was “the only order properly before this Court for review.” The panel granted the motion. It then dismissed the remainder as well—holding that it “lacks an arguable basis either in law or in fact,” the standard for frivolousness, which this petition uses as shorthand—in the same order, on the same motion papers, without notice, and before any merits brief had been filed. No party had asked for that relief. The motion’s own terms disclaimed it.

This petition accepts the nonmerger ruling and does not seek to reopen the order compelling arbitration. That order nonetheless shows what is at stake. It resolved against Petitioner the threshold question that the Federal Arbitration Act commits to the courts—whether he ever agreed to arbitrate—and no court of appeals has reviewed it. So long as the Rule 41(b) judgment stands, none will. The appeal the panel terminated was the challenge to that judgment. *See* Part III.A, *infra*. The petition challenges only the second disposition, and principally its process. The court of appeals granted dispositive relief that the movants had not sought, on its own initiative, without affording the appellant an opportunity to be heard on the question it decided. That is the departure from the accepted course of judicial proceedings that this Court corrected—summarily—in *Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam), and *Margolin v. National Association of Immigration Judges*, 608 U.S. 339 (2026) (per curiam), and the departure from ordinary notice practice that it addressed in *Day v. McDonough*, 547 U.S. 198, 210 (2006), and *Wood v. Milyard*, 566 U.S. 463, 473–474 (2012). The question is not confined to one litigant. If a motion to dismiss part of an appeal may be answered with an unannounced dismissal of the whole, every partial

motion becomes a potential terminus, and the principles this Court enforced in those cases have no purchase at the motions stage. Because the departure appears on the face of a one-page order and a partial motion, the case is suited to summary disposition. Sup. Ct. R. 10(a).

I. THE PANEL GRANTED RELIEF NO PARTY REQUESTED, *SUA SPONTE*, WITHOUT NOTICE, AT THE MOTIONS STAGE, AGAINST THE MOVANTS' OWN FRAMING OF WHAT REMAINED FOR REVIEW.

A. The party-presentation principle governs the relief a court grants, not only the theories it entertains.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). Courts "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Ibid.* They "do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties." *Id.* at 244 (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (R. Arnold, J., concurring in denial of reh'g *en banc*)). *Greenlaw* applied the principle to relief, not merely to theories: absent a cross-appeal, a court of appeals could not, on its own initiative, increase a sentence that the government had not asked it to increase.

The principle “is supple, not ironclad,” and “[t]here are no doubt circumstances in which a modest initiating role for a court is appropriate.” *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020). But a court that reshapes the controversy so that it decides a different case from the one the parties presented “depart[s] so drastically from the principle of party presentation as to constitute an abuse of discretion.” *Id.* at 375. This Court has twice recently enforced that limit by summary reversal. In *Clark*, the Fourth Circuit “transgressed the party-presentation principle by granting relief on a claim that the Court in *Sweeney* never asserted and that the State never had the chance to address.” 607 U.S. at 9. In *Margolin*, the Fourth Circuit “*sua sponte* addressed a much broader” question than the one the parties had litigated, “without giving either side a chance to address its theory.” 608 U.S. at 343. “Federal courts are not ‘roving commissions,’ licensed to ‘sally forth each day looking for wrongs to right.’” *Ibid.*

The order below is the mirror image of *Clark* and *Margolin*. There, a court of appeals granted an appellant relief on a ground he had not asserted. Here, a court of appeals granted appellees relief they had not sought—relief their own motion had, by its terms, excluded. If anything, the departure is more pronounced: in *Clark* and *Margolin* the courts of appeals reached for a ground no party had raised; here the panel granted the one form of relief the movants had defined their motion not to seek. Respondents moved to dismiss “in part.” [Pet. App. 1a.] They identified the orders they wanted excluded from review, asked the court to dismiss the appeal “insofar as” it sought review of those orders, and told the court that the Rule 41(b) dismissal was “the only order

properly before this Court for review.” [2d Cir. Dkt. 25.1 ¶¶ 2, 11, 32; Pet. App. 17a–20a.] On Respondents’ own presentation, the appeal from that judgment would proceed. The panel granted the motion and then decided a question the movants had carved out of it, terminating the appeal in full.

Respondents’ statement concerned reviewability, not merit. It was not a concession that the Rule 41(b) challenge would succeed, and it did not bind the court. But it defined the controversy that the parties placed before the panel: whether the interlocutory orders merged. The frivolousness of the surviving appeal was not part of that controversy; no party had raised it, and Petitioner had no occasion to address it. Dismissing the whole appeal on a motion to dismiss part of it was not a “modest initiating role.” It was the grant of the most consequential relief available in an appeal—its termination—at the court’s own initiative and against the movants’ framing.

B. When a court acts on its own initiative to dispose of a case, the accepted course is notice and an opportunity to respond.

This Court has repeatedly described what the ordinary course requires when a court considers a dispositive ground the parties have not raised. “[B]efore acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions.” *Day*, 547 U.S. at 210. Courts of appeals, like district courts, have “the authority—though not the obligation—to raise a forfeited timeliness defense on their own initiative,” but they “should reserve that authority for use in exceptional cases,” and a court of appeals abuses its discretion

when it overrides a party's deliberate litigation choice about the scope of the dispute. *Wood*, 566 U.S. at 473–474. And a judgment entered “at a single stroke” against a party who “was never afforded a proper opportunity to respond” cannot stand; an appeal after judgment “did not provide an adequate opportunity to defend.” *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 464–466 (2000). Petitioner cites *Nelson* for what it says about the accepted course: the opportunity to respond precedes the judgment, and process available only afterward is not the same thing.

Those decisions rest on a principle older than any of them. “A fundamental requirement of due process is ‘the opportunity to be heard,’ and “[i]t is an opportunity which must be granted at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). *Nelson* applied the same requirement when a federal court entered judgment against a party who “was never afforded a proper opportunity to respond.” 529 U.S. at 465. Petitioner does not ask the Court to hold that the Fifth Amendment of its own force governs the dismissal of a civil appeal, and that question need not be reached. Instead, he invokes the constitutional baseline for what it says about the accepted course. When *Day* and *Wood* require that a court “accord the parties fair notice and an opportunity to present their positions” before acting on its own initiative, they describe the

same minimum that due process secures in every proceeding "accorded finality." A dispositive *sua sponte* order entered with neither departs from that course by any measure.

The courts of appeals' own local rules confirm that notice is the accepted course, though they are not uniform on whether a court may dismiss an appeal as frivolous on its own motion and without notice. The Third Circuit's procedures provide that "[b]efore taking summary action, the court will afford the parties an opportunity to submit argument in support of or in opposition to such disposition if briefs on the merits have not already been filed," and permit summary action "only by unanimous vote of the panel." 3d Cir. I.O.P. 10.6. The Tenth Circuit's rule permits summary disposition on the court's own motion "after giving notice to the parties." 10th Cir. R. 27.3(B). The First Circuit acts "on such notice as the court may order." 1st Cir. R. 27.0(c). The Ninth Circuit draws the line where this petition draws it: a jurisdictional defect may be addressed "without notice or further proceedings," but a determination that the questions presented are "so insubstantial as not to justify further proceedings" may be acted upon only "upon motion of a party, or after affording the parties an opportunity to show cause." 9th Cir. R. 3-6(a), (b). Other circuits have codified the opposite: the Eighth Circuit "on its own motion may summarily dispose of any appeal without notice," 8th Cir. R. 47A(a), and the Fourth Circuit "may also *sua sponte* summarily dispose of any appeal at any time," 4th Cir. R. 27(f)(2).

The Second Circuit has no rule on the subject.¹ Where the circuits' rules diverge and one court's rules are silent, the baseline is supplied by this Court's decisions and by the Appellate Rules themselves. Those Rules require "notice from the court and reasonable opportunity to respond" before the lesser consequence of a frivolous appeal—an award of costs and damages—may be imposed. Fed. R. App. P. 38. It would be anomalous if notice were required before shifting the costs of a frivolous appeal but not before terminating the appeal as frivolous. The order to show cause is the ordinary instrument by which a court of appeals that doubts the merits of an appeal puts the appellant on notice and invites a response. No such notice was issued here.

What happened instead was the opposite of notice. The briefing deadline had been extended to April 7, 2026, and Petitioner's request to hold briefing in abeyance was pending. [2d Cir. Dkts. 22 at 4, 23 at 1.] The extended deadline had passed without a brief; the court's rules address that lapse through dismissal for default, 2d Cir. Local R. 31.2(d), which the court did not invoke, and the July 9 order does not mention it. The only motion before the panel sought partial dismissal on nonmerger grounds. The first indication that the appeal from the Rule 41(b) judgment was at stake was the order dismissing it—an order that simultaneously denied the abeyance request "as moot." [Pet. App. 1a–2a.] Petitioner does not claim an entitlement to plenary briefing, oral argument, or a

¹ The Second Circuit's rules provide for dismissal when an appellant fails to file a brief, 2d Cir. Local R. 31.2(d), but contain no provision governing dismissal of an appeal as frivolous on the court's own motion or requiring notice before one; the practice is therefore governed by this Court's decisions.

written opinion in every case. He claims only what *Day* and *Wood* describe: that a court acting on its own initiative to end a case must give the affected party fair notice and a chance to be heard first. That is also what due process guarantees.

Three responses may be anticipated, and none cures the departure. The first is that Petitioner's opposition to the partial motion addressed the Rule 41(b) factors, so he was heard. He was heard on the motion as framed. His opposition argued that nonmerger left the Rule 41(b) challenge intact and that the dismissal "still requires appellate review," and it summarized the record bearing on that review. [2d Cir. Dkt. 29 at 6-7, 12-14.] A party opposing a motion to dismiss part of an appeal has no reason to brief the merits of the part not moved against, and a motion response capped at 5,200 words, Fed. R. App. P. 27(d)(2)(A), is not the vehicle for doing so. [2d Cir. Dkt. 28 at 1-2.] Petitioner said as much on reconsideration—the opposition answered the factors "to preserve the independence of this issue," "but not as my brief on the merits." [2d Cir. Dkt. 33 at 14.] Opposing a partial motion is not notice that the whole appeal is at stake. *See Clark*, 607 U.S. at 9 (relief on a ground the opposing party "never had the chance to address"); *Margolin*, 608 U.S. at 343.

The second is that reconsideration supplied the missing opportunity. It did not. The motion for reconsideration raised the process objection squarely and asked the full court to reconcile the order with the decisions it cited; the court denied the motion in a form order that "considered the request" and stated that "the motion is denied." [2d Cir. Dkt. 33 at 2, 15; Pet. App. 3a.] A post-judgment motion that a court may deny without engagement is not the opportunity

to be heard that the ordinary course provides before the judgment. Cf. *Nelson*, 529 U.S. at 466 (appeal after judgment “did not provide an adequate opportunity to defend”). And an appellant who must move for reconsideration to learn why his appeal was frivolous has not been given notice of that question; he has only been given the answer.

The third is that the outcome was inevitable: Petitioner had told the district court that he had “no present intention” to commence arbitration, so notice and briefing would have produced the same affirmance. [ECF 149 at 1.] This Court has already rejected that reasoning in this setting. “Judicial predictions about the outcome of hypothesized litigation cannot substitute for the actual opportunity to defend.” *Nelson*, 529 U.S. at 471. In *Wood*, the district court had denied the habeas claims on the merits before the court of appeals disposed of the appeal on a ground it raised itself; this Court reversed the *sua sponte* disposition without asking whether the result would change, 566 U.S. at 467–468, 474, and on remand it did. *Wood v. Milyard*, 721 F.3d 1190, 1197 (10th Cir. 2013) (directing conditional grant of the writ). Nor does a likely affirmance make an appeal frivolous. *Infra*, Part II.A. The Second Circuit has vacated a Rule 41(b) dismissal in a comparable posture, *Martens*, 273 F.3d at 179–184, and its contemporaneous practice in *Costello* was to brief, argue, and decide such an appeal, not to dismiss it. Whether the sanction here was proportionate—dismissal with prejudice rather than without, over a documented rights-preservation objection—is a question the district court took nearly five months to decide, and on which reasonable judges could differ. *Infra*, Part II.B. That is all arguability requires. And

if affirmance is as certain as the objection assumes, the cost of the accepted course is an order to show cause and a response. A notice requirement that yields whenever a court is confident of the result would bind only when the court is in doubt—which is to say, never in the cases where it dismisses as frivolous. The opportunity to respond precedes the judgment because it is what tests the court's confidence; that is what *Day* and *Nelson* mean by the accepted course.

C. *Pillay*'s inherent authority is not in question; its exercise here departed from the course *Pillay* itself contemplates.

The Second Circuit has “inherent authority, wholly aside from any statutory warrant, to dismiss an appeal” that “presents no arguably meritorious issue for our consideration,” and it recognizes “the need to exercise this authority with care and discrimination to ensure that nonfrivolous claims are fully considered.” *Pillay*, 45 F.3d at 16–17. *Pillay* exercised that authority on the court's own motion, and this petition does not ask the Court to disturb it. But *Pillay* examined the petitioner's actual arguments before concluding that he “can advance no plausible argument that the BIA abused its broad discretion.” *Id.* at 17. And the Second Circuit has since described summary affirmance as “a rare exception to the completion of the appeal process,” available only if an appeal is “truly frivolous”—one that “lacks an arguable basis either in law or in fact”—and not merely because “the correct resolution of an appeal seems obvious.” *United States v. Davis*, 598 F.3d 10, 13–14 (2d Cir. 2010). The question, then, is not whether the Second Circuit had the power to dismiss

a frivolous appeal on its own motion—it clearly does—but whether the manner of its exercise here was “within the permissible range of the court’s discretion.” *Link v. Wabash Railroad Co.*, 370 U.S. 626, 632 (1962); see *Sineneng-Smith*, 590 U.S. at 375. *Clark* and *Margolin* stand on the same footing: no one doubted the Fourth Circuit’s power to decide the appeals before it, but it was summarily reversed for how it did so.

The order below states the standard and the result. It does not identify the challenge it found inarguable, does not mention Rule 41(b), the five-factor framework, or abuse-of-discretion review, and does not explain why an appeal that the movants treated as properly reviewable presented no arguable issue. [Pet. App. 1a–2a.] Petitioner does not contend that the panel failed to read his submissions. The point is narrower. A dispositive *sua sponte* ruling entered without notice, at the motions stage, against the movants’ own framing, is precisely the setting in which “care and discrimination” calls for the ordinary process—an order to show cause, or at least a ruling that engages the argument it terminates.

D. The departure is of the kind this Court corrects summarily.

Clark and *Margolin* were both summary reversals. Neither required factual development; each turned on the face of the court of appeals’ opinion and the parties’ submissions. Here, the July 9 order recites that Respondents moved “to dismiss in part.” [Pet. App. 1a.] Respondents’ motion confirms the limit and acknowledges that the Rule 41(b) judgment was properly before the court. [2d Cir. Dkt. 25.1 ¶¶ 4, 11, 32; Pet. App. 19a–20a.] The docket shows no order to

show cause and no merits brief. The order terminated the appeal anyway. A court of appeals that grants unrequested dispositive relief, without notice, before briefing, "has so far departed from the accepted and usual course of judicial proceedings" as to warrant the exercise of this Court's supervisory power. Sup. Ct. R. 10(a). To the extent the order reflects a view that a court may end an appeal on a ground that no party raised and which no party had a chance to address, it also conflicts with *Clark, Margolin, Day, and Wood*. Sup. Ct. R. 10(c). The concern is not confined to this case. A court of appeals that may answer a motion to dismiss part of an appeal with an unannounced dismissal of the whole has converted the partial motion into a device for terminating appeals without a hearing—and, in a circuit whose rules are silent, has left appellants with less process than the Appellate Rules guarantee before an award of costs. Fed. R. App. P. 38.

II. THE TERMINATED CHALLENGE WAS AT LEAST ARGUABLE, SO THE PROCESS FAILURE WAS CONSEQUENTIAL.

A. Losing is not the same as lacking an arguable basis.

A claim is frivolous "where it lacks an arguable basis either in law or in fact." *Neitzke*, 490 U.S. at 325. That standard is not satisfied by a showing that the claim will probably fail: "[w]hen a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not." *Id.* at 328. *Coppedge v. United*

States drew the same line for appeals. "It is not the burden of the petitioner to show that his appeal has merit, in the sense that he is bound, or even likely, to prevail ultimately"; he "is to be heard, as is any appellant in a criminal case, if he makes a rational argument on the law or facts." 369 U.S. 438, 447–448 (1962). *Neitzke* arose under former 28 U.S.C. § 1915(d) and *Coppedge* from a criminal in forma pauperis appeal; neither establishes a civil right to any particular form of appellate disposition, and Petitioner—who paid the filing fee in both courts [ECF 5 at 1; 2d Cir. Dkt. 16 at 1]—relies on them only for the threshold they define, the one the panel invoked.

Deferential review does not lower that threshold. *Cooter & Gell v. Hartmarx Corp.* recognized that because district courts have "broad discretion" to impose Rule 11 sanctions, appeals from them "may frequently be frivolous," yet held that Rule 38, not an automatic rule, governs fees on appeal, because routinely shifting fees would mean that "valid challenges to district court decisions would be discouraged." 496 U.S. 384, 407–408 (1990). *Link* identifies the appellate question for a dismissal for failure to prosecute: not whether the court had the power, but "whether it was within the permissible range of the court's discretion." 370 U.S. at 632. And *Davis* refused to summarily affirm a sentence challenged as unreasonable—review that is itself deferential—because an appeal whose "correct resolution ... seems obvious" is not for that reason frivolous. 598 F.3d at 13–14.

B. The preserved challenge to the Rule 41(b) judgment had rational support.

The district court itself supplied the framework: dismissal with prejudice is a “harsh remedy” for “extreme situations,” governed by five factors that “significantly cabin” discretion, applied with “special leniency” to *pro se* litigants. [ECF 154 at 3–4.] Petitioner acknowledges the substantial support for dismissal. He did not commence arbitration after repeated orders and warnings and stated that he had no present intention to do so. [ECF 149 at 1; ECF 150 at 1–3; ECF 154 at 4–5.] He did not dispute the district court’s authority to enforce its order. His appeal contested proportionality—whether, on the whole record, the most severe sanction was within the permissible range—and that contest had rational support on at least four points.

First, the specific lesser disposition Petitioner proposed was dismissal without prejudice. [ECF 151 at 9–10.] The district court rejected it as “futile because, should Plaintiff refile his claim in federal court, the parties likely would find themselves right back to where they currently are.” [ECF 154 at 6.] Dismissal without prejudice would have ended the action; the disputed question was whether the prospect of renewed litigation justified the additional step of extinguishing the claim forever. Whether that additional severity was proportionate is a conventional abuse-of-discretion question, not an inarguable one.

Second, prejudice was presumed. The district court identified Respondents’ letters and the resources required to monitor a stayed case; it did not identify lost evidence or an unavailable witness, and it concluded that the other factors would support

dismissal even absent prejudice. [ECF 154 at 7–8.] Under the Second Circuit’s own decisions, presumed prejudice turns on whether delay was lengthy and inexcusable, and the need to show actual prejudice grows as delay becomes more moderate or excusable. *United States ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 256 (2d Cir. 2004) (cited at ECF 154 at 7). Whether the identified costs of a stayed case justified the harshest sanction was arguable.

Third, duration was measured from the April 22 order and the June deadline, although Petitioner’s show-cause response was filed on July 11, 2025, and the matter remained under submission until December 8. [ECF 151 at 10; ECF 154 at 2, 5.] Whether the entire intervening period counted as the litigant’s delay in a stayed case with no further filing required was at least debatable.

Fourth, the record showed documented engagement rather than disappearance: written inquiries to counsel and to FINRA on or before the original deadline, a request for clarification, a report of FINRA’s position, a timely show-cause response proposing alternatives, and a status inquiry while that response was pending. [ECF 139 at 1–2; ECF 143 at 1; ECF 145 at 1–2; ECF 151 at 1–10; ECF 153 at 1.] Those filings do not establish compliance; arbitration was not commenced. They bear on the fourth and fifth factors—the balance between docket management and a fair chance to be heard, and the efficacy of lesser sanctions—no one of which is dispositive. See *Martens*, 273 F.3d at 180.

The Second Circuit’s own treatment of this posture confirms that such a challenge is conventionally reviewable. In *Shannon v. General Electric Co.*, the court held that interlocutory orders

do not merge into a Rule 41(b) judgment and then reviewed that judgment under the five factors and affirmed. 186 F.3d 186, 192–196 (2d Cir. 1999). In *Martens*, the court reviewed a Rule 41(b) dismissal, vacated it as an abuse of discretion, and declined to reach arbitrability because that question “simply has no bearing on our review” of the dismissal. 273 F.3d at 179–184. In *Marquez*, the court applied nonmerger where the appellant “does not challenge the sanction dismissal in this appeal,” and explained that a successful challenge to the dismissal could restore the district-court proceedings. 96 F.4th at 582–583. The Third Circuit followed the same sequence in a case on nearly identical facts—an order compelling arbitration, a refusal to arbitrate, and a Rule 41(b) dismissal—holding that the arbitration order did not merge but separately reviewing the dismissal for abuse of discretion and affirming. *R & C Oilfield Servs. LLC v. American Wind Transp. Grp. LLC*, 45 F.4th 655, 660–664 (3d Cir. 2022). And in *Pierno v. Fidelity Brokerage Services, LLC*, the Second Circuit reviewed and affirmed the dismissal with prejudice of a *pro se* plaintiff’s case for refusing to commence arbitration as ordered, observing that he “could have secured his ‘day in court’ if he had initiated arbitration proceedings.” No. 20-3711-cv, 2021 WL 5986763, at *3 (2d Cir. Dec. 16, 2021) (summary order) (quoted at ECF 150 at 2 n.1; ECF 154 at 6). Affirmance in those cases is the point: the challenge was reviewed, whichever way it came out. None was dismissed as frivolous.

The same court’s contemporaneous treatment of a case in the same posture is the sharpest comparison. In *Costello v. Paramount Global, Inc.*, No. 25-794-cv (2d Cir. May 18, 2026) (summary order),

reproduced at Pet. App. 21a–27a, a *pro se*, fee-paid appellant challenged a Rule 41(b) dismissal with prejudice entered, after an order compelling arbitration and repeated warnings, for failure to commence the arbitration. The appeal was briefed by both sides and argued. [2d Cir. No. 25-794, Dkts. 23, 32, 41, 74.] The panel held that under *Marquez* the order compelling arbitration did not merge, so that it “lack[ed] jurisdiction to review” that order, and that “[o]ur review is limited to the district court’s dismissal for failure to prosecute.” It recited that a Rule 41(b) dismissal “remains a harsh remedy to be utilized only in extreme situations,” that *pro se* litigants should receive “special leniency regarding procedural matters,” and that “[n]o single factor is generally dispositive.” The court then carefully reviewed each of the five factors before affirming. [Pet. App. 21a–27a.] Rehearing was denied on July 1, 2026, eight days before the order below. [2d Cir. No. 25-794, Dkts. 76, 84.] Two appeals presenting the same question reached the same court within weeks of each other. One received the accepted course—briefs, argument, and a reasoned application of the five factors—and was affirmed. The other was terminated at the motions stage, without notice, in a one-page order, as lacking an arguable basis in law or fact. *Costello* is nonprecedential, and Petitioner does not contend that it conflicts with the order below. *Costello*’s significance is that the court’s own contemporaneous practice treated nonmerger and review of the sanction as distinct inquiries, and treated the second as one to be conducted.

Petitioner’s challenge might fail under the same review. That is the difference *Neitzke* and *Coppedge* draw: a challenge that fails after review has

been heard; a challenge dismissed as frivolous has not. Nor would correcting the process be an empty exercise. The Court may ask whether a remand would only postpone an affirmance. But the entitlement *Neitzke* and *Coppedge* describe is to a hearing on a rational argument, not to a favorable result, and its value does not depend on the odds; a hearing that arrives only after judgment “did not provide an adequate opportunity to defend.” *Nelson*, 529 U.S. at 466. A court of appeals that concludes, after notice and a response, that a Rule 41(b) dismissal should be affirmed may say so in a summary order. What the accepted course does not permit is omitting the notice and the response because the court anticipates the answer. Because the terminated challenge had rational support, the process failure described in Part I was consequential, not harmless.

III. THE QUESTION RECURS IN THE FAA’S DEFERRED-REVIEW SETTING, AND THIS CASE IS A NARROW VEHICLE.

A. Section 16(b) makes the later final judgment the first occasion for review.

Congress authorized immediate appeals from orders denying arbitration while withholding them from orders compelling it. *Smith v. Spizzirri*, 601 U.S. 472, 477–478 (2024); 9 U.S.C. § 16(b). When a stay is requested, the district court must stay rather than dismiss, keeping the case on its docket and preserving a “return ticket” to court. *Spizzirri*, 601 U.S. at 477. A court with jurisdiction over the stayed claims retains authority to superintend the arbitration to its end, including through confirmation or vacatur. *Jules v. Andre Balazs Properties*, 608 U.S. 200, 209–213

(2026). *Spizzirri* reserved dismissal on grounds unrelated to arbitrability. 601 U.S. at 476 n.2. The FAA therefore supplies context, not an objection to the Rule 41(b) dismissal here.

That structure produces a recurring pattern. A party who declines to arbitrate after a compel-and-stay order does not obtain review of the arbitration ruling; the first final judgment is a court-imposed sanction, and the only question left for appeal is whether that sanction was within the permissible range of discretion. *R & C Oilfield*, 45 F.4th at 660–664; *Martens*, 273 F.3d at 179–184; *Pierno*, 2021 WL 5986763, at *3. The pattern extends beyond arbitration to any case in which a Rule 41(b) judgment follows interlocutory rulings excluded from review by nonmerger. *See Shannon*, 186 F.3d at 192–196; *R & C Oilfield*, 45 F.4th at 661–662 & n.4 (collecting nonmerger decisions of the First, Fifth, Sixth, Ninth, and Tenth Circuits).² In every such case the surviving appeal is the sanction appeal. Whether a court of appeals may end that appeal on its own initiative, without notice, when the appellee has moved only against the excluded rulings, is a question that will arise again, and the answer should be the one this Court's decisions already give.

The pattern bears hardest where, as here, the compelled party denies that any agreement to arbitrate was formed. The Act commits that question to the courts, 9 U.S.C. § 4; *Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287,

² Those decisions show that nonmerger is nationally administered. Petitioner does not contend that they, or any published decision, conflict on the process question presented here, which arises under this Court's party-presentation and notice decisions rather than under a circuit split.

296 (2010), because “the first question in any arbitration dispute must be: What have these parties agreed to?” *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148 (2024). Petitioner has denied since his first filing that he signed any account-opening document; after a three-day bench trial, the district court found that he had “entered into an arbitration agreement” by completing an online application. [ECF 1 at 11; ECF 121 at 1–4.] Section 16(b) deferred review of that finding, and the finding did not merge into the Rule 41(b) judgment. [2d Cir. No. 25-1142, Dkt. 39 at 1–2; Pet. App. 1a.] Petitioner did not take the post-arbitration route to review that the district court identified, and the dismissal with prejudice closed it. [ECF 150 at 2 n.1; ECF 154 at 5–6.] So long as that judgment stands, no court of appeals will review the finding. The decision the panel cited for nonmerger describes the way back: if a sanction dismissal is successfully challenged “either before the district court or on appeal,” and “the litigation continues in the district court,” the plaintiff “will be able to seek review of the interlocutory orders as part of an appeal from an eventual final judgment on the merits.” *Marquez*, 96 F.4th at 582–583. Petitioner’s appeal from the Rule 41(b) judgment—the only appeal in this case from a final decision—was that challenge. The panel ended it without notice, on a ground no party raised.

The FINRA sequence supplies only context. FINRA Rule 12302(a) requires a signed Submission Agreement and a statement of claim to initiate arbitration. FINRA advised that it would accept only its standard form, and Petitioner’s filings stated his belief that signing it could prejudice his formation objection; the district court rejected that concern and

identified a post-arbitration route to review. [ECF 145 at 1–2 & Ex. A at 4; ECF 151 at 1–4 & Ex. A at 12; ECF 150 at 2 n.1; ECF 154 at 5–6.] Whether the concern excused noncompliance is not presented. The sequence matters only because it shows a documented rights-preservation concern rather than unexplained abandonment—a consideration bearing on the Rule 41(b) factors, not a claim of compliance.

B. The petition presents the process question cleanly and seeks limited relief.

The vehicle is narrow in every respect that matters. Petitioner accepts the nonmerger ruling and does not seek review of the arbitration order, the formation findings, or any discovery or evidentiary ruling. He presents no new constitutional theory. He does not dispute the Second Circuit’s inherent authority to dismiss frivolous appeals, nor does he claim a right to plenary briefing in every case. The question presented here turns on the face of a one-page order in response to a motion that by its terms sought partial dismissal, and a docket showing no notice and no opportunity for merits brief.

Nor does the manufactured-finality concern reflected in *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017), stand in the way. Petitioner’s formal noncompliance and his request for an appealable disposition give that concern force as to the arbitration ruling, which is why Petitioner accepts nonmerger. [ECF 145 at 2; ECF 149 at 1.] But unlike the voluntary-dismissal device in *Baker*, Petitioner appealed a court-imposed sanction entered over his objection, and he seeks review of that sanction alone. [Pet. App. 15a–16a.] *R & C Oilfield* treated a refusal to arbitrate as fully consistent with nonmerger and

with merits review of the resulting sanction. 45 F.4th at 660–664. So did *Martens* and *Pierno*.

The relief sought is correspondingly limited. Vacating the portion of the July 9 order that dismissed “the balance of the appeal” as frivolous would leave the nonmerger ruling and the arbitration order undisturbed. On remand, the court of appeals would remain free to affirm through any procedure otherwise authorized by law—after notice, on a motion by Respondents, or after briefing. The remedy corrects the process; it does not predetermine the outcome, reverse the district court, or restore the underlying claims.

CONCLUSION

The petition for a writ of certiorari should be granted. Because the departure appears on the face of a one-page order and a motion that by its terms sought only partial dismissal, and because this Court corrected the same departure summarily in *Clark v. Sweeney*, 607 U.S. 7 (2025), and *Margolin v. National Association of Immigration Judges*, 608 U.S. 339 (2026), the Court should summarily vacate the portion of the Second Circuit’s July 9, 2026 order dismissing “the balance of the appeal” and remand for further proceedings on the appeal from the Rule 41(b) judgment. In the alternative, the Court should grant plenary review of the question presented, or grant the petition, vacate the judgment, and remand for further consideration in light of *Clark* and *Margolin*. Nothing in that relief would disturb the nonmerger ruling,

reopen the arbitration order, or preclude affirmance through an otherwise lawful procedure.

Respectfully submitted,

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