

No. _____

**In the
Supreme Court of the United States**

JUMP TRADING, LLC, ET AL.,
Petitioners,

V.

TAEWOO KIM, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

JONATHAN D. COGAN
STEVEN W. PERLSTEIN
IGOR MARGULYAN
KOBRE & KIM LLP
800 Third Avenue
New York, NY 10022
(212) 488-1206

PETER TROMBLY
BAPU KOTAPATI
LATHAM & WATKINS LLP
1271 Avenue of the
Americas
New York, NY 10020
(212) 906-1200

ROMAN MARTINEZ
Counsel of Record
MELISSA ARBUS SHERRY
URIEL HINBERG
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

*Counsel for Petitioners Jump Trading, LLC
and Jump Crypto Holdings LLC
(Additional counsel listed on inside cover)*

AITAN D. GOELMAN
R. MILES CLARK
CHRISTOPHER R. MACCOLL
BEN JERNIGAN
ZUCKERMAN SPAEDER LLP
2100 L Street, NW
Suite 400
Washington, DC 20037
(202) 778-1800

*Counsel for Petitioner
Kanav Kariya*

PAUL M. KRIEGER
JONATHAN F. BOLZ
REBECCA S. TINIO
BEN PEROTIN
KKL LLP
350 Fifth Avenue
Suite 7710
New York, NY 10118
(212) 390-9550

*Counsel for Petitioner
William DiSomma*

QUESTIONS PRESENTED

Traditional contract law principles allow someone who has not signed a contract to enforce it against a signatory party in certain situations. These nonsignatory-enforcement principles—including the equitable-estoppel doctrine—apply to arbitration agreements. But federal and state courts are in open and acknowledged conflict over how to adjudicate nonsignatories’ requests to compel arbitration under the Federal Arbitration Act (FAA). There is a 7-6 split on whether a court or arbitrator decides the threshold nonsignatory-enforcement issue when the arbitration agreement delegates “arbitrability” questions to arbitrators, and a 4-2 split on whether federal or state law governs equitable estoppel in agreements subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention” or “Convention”).

In its decision below, the Seventh Circuit rejected arbitration and deepened the circuit splits on both issues. Its decision is at odds with the FAA, the New York Convention, and contract principles allowing nonsignatory enforcement.

The questions presented are:

1. Whether an arbitrator or a court must decide whether a nonsignatory may compel arbitration under an agreement that delegates “arbitrability” questions to an arbitrator.
2. Whether a uniform federal common law of equitable estoppel allows a nonsignatory defendant to enforce an arbitration agreement subject to the New York Convention when the signatory plaintiff alleges that the nonsignatory defendant engaged in concerted misconduct with a signatory.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners Jump Trading, LLC, Jump Crypto Holdings LLC, William DiSomma, and Kanav Kariya were defendants-appellants in the United States Court of Appeals for the Seventh Circuit.

Respondents Taewoo Kim, Kashyap Patel, Kerry Woolley, and Ken Worsham were plaintiffs-appellees in the United States Court of Appeals for the Seventh Circuit.

RULE 29.6 STATEMENT

Petitioner Jump Trading, LLC states that it is wholly owned by Jump Trading Holdings, LLC. No publicly held company owns 10% or more of its stock.

Petitioner Jump Crypto Holdings LLC states that it is owned by DYSO TC, LLC and PXG, LLC. No publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

Taewoo Kim, et al. v. Jump Trading, LLC, et al., No. 25-1964, U.S. Court of Appeals for the Seventh Circuit. Opinion affirming denial of motion to compel arbitration entered August 13, 2026.

Taewoo Kim, et al. v. Jump Trading, LLC, et al., No. 23-CV-2921, U.S. District Court for the Northern District of Illinois, Eastern Division. Order denying motion to compel arbitration entered May 9, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's opinion (App.1a-14a) is reported at 186 F.4th 909. The district court's unpublished opinion (App.15a-35a) is found at 2025 WL 1359136.

JURISDICTION

The Seventh Circuit entered its judgment on August 13, 2026 (App.1a-14a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are set forth in the appendix. App.36a-37a.

INTRODUCTION

Contract law sometimes allows individuals who have not signed an arbitration agreement to enforce it against a signatory party. This petition implicates two fundamental, recurring questions in such nonsignatory-enforcement cases. The first is who decides—an arbitrator or a court—whether a nonsignatory can compel a signatory to arbitrate “arbitrability”—*i.e.*, whether the dispute is arbitrable. The second is what law—uniform federal common law or state law—governs whether the signatory plaintiff is equitably estopped from avoiding arbitration under an agreement governed by the New York Convention. On each question, the Seventh Circuit deepened an acknowledged circuit split and contradicted this Court’s precedent. Certiorari is warranted to resolve these frequently arising issues.

In this case, respondents allege that petitioners—two corporate entities associated with a trading firm and certain executives (collectively, “Jump”)—“secretly schemed” with Terraform Labs PTE, Ltd. (“TFL”), a Singaporean crypto asset developer, to manipulate the market for UST (one of TFL’s crypto assets) in violation of the Commodity Exchange Act. But respondents did not sue TFL, because they had a contract with TFL requiring them to arbitrate both (1) the merits of “any claim or controversy” involving TFL’s misconduct, and (2) “any claim or controversy as to arbitrability [under the contract].” CA7.App.154 (§ 18).

This contract entitles Jump to compel arbitration of respondents’ claims: The claims directly accuse TFL of misconduct, and the equitable-estoppel doctrine allows Jump to enforce the contract—even

though it is a nonsignatory—because respondents allege that Jump “secretly schemed” with TFL to commit that misconduct. App.18a. The contract also delegates to the arbitrator the power to resolve Jump’s equitable-estoppel argument because “whether the arbitration contract b[inds] parties who did not sign the agreement” raises a question of “arbitrability.” *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002).

The Seventh Circuit nonetheless refused to enforce the arbitration agreement. In doing so, it entrenched circuit splits on two core issues of arbitration law that warrant this Court’s review.

First, the Seventh Circuit joined the short side of what is now a 7-6 split by holding that a court, not an arbitrator, must resolve Jump’s argument that equitable estoppel allows it to enforce the agreement as a nonsignatory. The Seventh Circuit reached this conclusion even though the arbitration agreement expressly delegated, without exception, all “arbitrability” questions to an arbitrator. The conflict on this issue has deeply divided both federal courts of appeals and state supreme courts, as Judge Jones, Judge Niemeyer, and others have recognized.

Second, the Seventh Circuit made two flawed determinations as to the substantive law governing the equitable-estoppel inquiry. The court held that state law—not uniform federal common law—governs equitable estoppel in cases where the arbitration agreement falls under the Convention. As the court acknowledged, that ruling deepens a square 4-2 split among the federal courts of appeals. App.10a-11a. And the Seventh Circuit also held, in the alternative, that the federal common law of equitable estoppel would not allow nonsignatories to compel arbitration

based merely on allegations that the nonsignatory engaged in concerted misconduct with signatories. App.12a-13a. This ruling creates yet another split—this time with at least seven federal circuits holding that federal common law recognizes that equitable estoppel applies in cases like this one.

The Seventh Circuit erred across the board on these issues. On the who-decides-arbitrability question, the court refused to enforce respondents’ contractual promise to have the arbitrator resolve any “arbitrability” disputes—even though, under this Court’s decision in *Howsam*, nonsignatory enforcement presents a classic question of “arbitrability.” 537 U.S. at 84. On the choice-of-law question, the Seventh Circuit overlooked the compelling need for a uniform national standard to govern enforcement of international arbitration agreements subject to the Convention. And on the equitable-estoppel standard, the Seventh Circuit created a roadmap for signatories to escape their contractual promises to resolve disputes by arbitration.

The issues presented here are extraordinarily important and arise with great frequency in federal and state courts across the country.¹ Confusion over how to handle nonsignatory requests for arbitration is wasting judicial and party resources, leading to inconsistent results, and undermining essential contract rights protected by the FAA. This case offers

¹ Each question presented here is already the subject of a pending petition. See Pet. for Cert. at *i*, *FCA US, LLC v. Olson*, 176 F.4th 612 (9th Cir. 2026) (U.S. No. 26-228) (first question); Pet. for Cert. at *i*, *Indian Harbor Ins. Co. v. Town of Vinton*, 161 F.4th 282 (5th Cir. 2025) (U.S. No. 25-1383) (second question).

an ideal vehicle in which the Court could potentially resolve all of the key disputes at once. The petition should be granted.

STATEMENT OF THE CASE

A. The FAA, The New York Convention, And Nonsignatory Enforcement

Congress enacted the FAA in 1925 to “revers[e] centuries of judicial hostility to arbitration agreements” and “place arbitration agreements ‘upon the same footing as other contracts.’” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974).

The FAA allows nonsignatories to enforce arbitration agreements in certain instances. Chapter 1 of the FAA—which directly governs domestic arbitration agreements—incorporates “background principles of state contract law regarding the scope of agreements (including the question of who is bound by them).” *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630 (2009); *see* 9 U.S.C. § 2. As a result, an arbitration agreement governed by Chapter 1 may be enforced “by or against” a nonsignatory if enforcement would be permitted “under state contract law.” *Arthur Andersen*, 556 U.S. at 631.

Equitable estoppel is a well-established doctrine of contract law “allow[ing] a nonsignatory to a written agreement containing an arbitration clause to compel arbitration.” 21 *Williston on Contracts* § 57:19 (4th ed. 2026, online); *Arthur Andersen*, 556 U.S. at 631 (recognizing “estoppel” as “traditional” basis for nonsignatory enforcement). Formulations of the test for equitable estoppel vary across jurisdictions. But courts have routinely held that equitable estoppel applies where the signatory plaintiff (1) “must rely on

the terms of the agreement in asserting its claims against the nonsignatory” or (2) “raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of [non-defendant] signatories.” 21 *Williston on Contracts, supra*, § 57:19; *see also, e.g., MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999), *abrogated on other grounds by Arthur Andersen*, 556 U.S. 624.

One question that often arises when a nonsignatory claims the right to enforce an arbitration agreement—under equitable estoppel or other doctrines—is whether a court or an arbitrator decides the issue. The Court has recognized that “gateway dispute[s] about whether the parties are bound by a given arbitration clause”—including “whether the arbitration contract b[inds] parties who did not sign the agreement”—present a “question of arbitrability.” *Howsam*, 537 U.S. at 84.

This Court has established straightforward rules that govern who decides arbitrability. If the contract “clearly and unmistakably” delegates “arbitrability questions to the arbitrator,” then the arbitrator must decide it. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019). Otherwise, the court must decide the threshold arbitrability issue. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943 (1995).

Congress added Chapter 2 of the FAA in 1970 to implement the United States’ obligations under the New York Convention, a “multilateral treaty that addresses international arbitration.” *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 438 (2020). The Convention’s “goal” was “to encourage the recognition

and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed.” *Scherk*, 417 U.S. at 520 n.15.

Chapter 2 governs certain international arbitration agreements. 9 U.S.C. §§ 201-208. It applies to any “arbitration agreement ... arising out of a legal relationship, whether contractual or not, which is considered as commercial,” unless that relationship is “entirely between citizens of the United States” and does not have some “reasonable relation[ship] with one or more foreign states.” *Id.* § 202. Chapter 2 sets forth rules for federal jurisdiction over covered arbitration disputes, including with respect to compelling arbitration and enforcing arbitral awards. *Id.* §§ 203, 206-207.

As relevant here, Chapter 2 provides that “Chapter 1 applies to actions and proceedings brought under this chapter to the extent that [Chapter 1] is not in conflict with this chapter or the Convention.” *Id.* § 208. In *GE Energy*, this Court held that the Convention and Chapter 2 permit “enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines.” 590 U.S. at 445. In so holding, the Court declined to address “which body of law governs that [equitable-estoppel] determination.” *Id.*

B. Factual Background

This case centers on respondents’ claim that Jump violated the Commodity Exchange Act by conspiring with TFL to manipulate the crypto-asset market.

TFL is a Singaporean cryptocurrency technology company founded by Do Kwon. App.1a, 17a-18a. TFL developed the Terra blockchain. App.1a-2a. In 2019,

TFL created UST, a crypto asset whose value was “pegged” to the U.S. dollar. App.2a, 17a-18a. People use such “stablecoins” because they combine the predictable value of traditional currencies with the quick, reliable, and accessible transferability of crypto assets. Some stablecoins’ values rely on a reserve of traditional currency. App.2a. But TFL designed UST to maintain its \$1 peg through an algorithm that provided arbitrage incentives to “restore [UST’s] price to \$1.” *Id.*

From November 2019 onward, Petitioner Jump Crypto Holdings LLC (“Jump Crypto”) was allegedly an “early” financial backer of TFL. App.18a. Jump Crypto invests in cryptocurrency and blockchain technology. CA7.App.90 (¶ 17); *see id.* at 91 (¶ 26). Its affiliate, Petitioner Jump Trading, LLC (“Jump Trading”), earns profits by investing its own funds in traditional financial instruments. *Id.* at 89-90 (¶¶ 16-17).²

In March 2021, TFL launched the Anchor Protocol, a software program on the Terra blockchain that allowed users to deposit UST and receive interest payments on their deposits. App.19a n.3; CA7.App.50-51 (¶ 45). The Anchor Protocol proved popular with UST holders. By May 2022, nearly three-quarters of all UST in circulation was deposited there. App.19a & n.3.

Respondents Taewoo Kim, Kashyap Patel, Kerry Woolley, and Ken Worsham each purchased UST and

² Both Jump Trading and Jump Crypto are part of Jump Trading Group, which Petitioner William DiSomma co-founded. App.19a; CA7.App.90 (¶ 19). Petitioner Kanav Kariya is alleged to have held various roles at Jump Trading and Jump Crypto from September 2020 to June 2024. App.19a; CA7.App.90 (¶ 18).

deposited UST on the Anchor Protocol between August 2021 and May 2022. CA7.App.123-26 (¶¶ 120-30). To use Anchor, respondents, like all users, connected a digital wallet and agreed to TFL’s Terms of Service. *Id.* at 145-46. The Terms of Service required arbitration of “any claim or controversy arising out of or relating to” the application—“including any claim or controversy as to arbitrability.” *Id.* at 154 (§ 18). The Terms of Service also incorporate the Rules of the Singapore International Arbitration Centre (SIAC), *see id.*, which require an arbitrator to decide issues of arbitral “jurisdiction” and “scope of the arbitration agreement,” SIAC Rules, Rule 31.1 (7th ed. 2025), <https://siac.org.sg/siac-rules-2025>.

In 2021 and 2022, UST twice materially deviated from its \$1 peg. In May 2021, UST’s price dropped below \$1 but eventually stabilized. App.2a-3a; App.18a-19a. Respondents allege that during this “[de]peg,” petitioners and TFL “secretly schemed” to “prop up UST to its \$1 peg” through “coordinated trades.” App.18a-19a. One year later, UST’s price again dropped below \$1, but this time did not recover. App.3a. UST collapsed, taking down “the Anchor Protocol, and the entire Terra blockchain.” CA7.App.62 (¶ 75); *id.* at 119-20 (¶¶ 107-09). Respondents allegedly suffered losses in that collapse.

C. Procedural Background

1. In May 2023, Respondent Kim sued in the Northern District of Illinois asserting that Jump Trading and Kariya “schemed with Do Kwon ... and his company [TFL]” to “manipulate the market price for UST” and “to conceal their manipulation, for their own benefit” in violation of the Commodity Exchange

Act and the common law of unjust enrichment. CA7.App.39-40, 67-78 (¶¶ 1, 3, 94-138). Kim’s allegations focused on the May 2021 drop in UST’s price, claiming that petitioners “prop[ped] up UST to its \$1 peg” through “coordinated trades” at TFL’s and Kwon’s behest and “aided and abetted TFL’s and Kwon’s concealment.” *Id.* at 40-41 (¶¶ 4, 7). In alleging this supposed scheme, Kim repeatedly referred to the Anchor Protocol. *See, e.g., id.* at 39-40, 50-51, 55 (¶¶ 2, 45, 57). But he did not name either TFL or Kwon as a defendant, notwithstanding their central role in his allegations.

2. In July 2024, Jump Trading and Kariya moved as nonsignatories to compel arbitration of Kim’s claims under the Anchor Protocol’s Terms of Service. D.Ct.Dkt.55. Rather than oppose the motion, Kim amended his complaint. The Amended Complaint added three new plaintiffs (Patel, Woolley, and Worsham) and two new defendants (Jump Crypto and DiSomma). The Amended Complaint removed almost every mention of the Anchor Protocol, but still made clear that virtually all of each respondent’s alleged losses consisted of UST deposited on the Anchor Protocol. CA7.App.126 (¶¶ 128-30).

3. Petitioners again moved to compel arbitration. First, they argued that because the arbitration agreement broadly delegates questions of “arbitrability” to an arbitrator, the question of whether they could compel arbitration under equitable-estoppel principles was for an arbitrator to decide. D.Ct.Dkt.82 at 9-20.

Second, and in the alternative, petitioners argued that if the court addressed equitable estoppel, it should compel arbitration. Petitioners explained that federal common law supplied the equitable-estoppel

rule because the Terms of Service—a contract between respondents and a Singaporean company, TFL—constitute an international arbitration agreement subject to the Convention, which must be interpreted under a uniform national rule. *Id.* at 21-22. And the federal common law rule of equitable estoppel requires arbitration when, as here, plaintiffs allege that a nonsignatory engaged in interdependent and concerted misconduct with a signatory. *Id.* at 22-24.

4. The district court denied the motion to compel arbitration. App.15a-35a.

The district court first held that a court must decide nonsignatory enforcement. App.21a-28a. The court acknowledged that the Terms of Service “contain[]” an agreement “to delegate questions of arbitrability to an arbitrator.” App.22a. And the court recognized a circuit split: “Some circuits” have held that whether nonsignatories may enforce such delegation clauses “is a question of enforceability for the arbitrator,” while “[o]ther[s]” view the issue “as a question of contract formation for courts.” App.23a-24a & n.5. The district court adopted the latter view. App.28a.

The district court next addressed whether respondents were equitably estopped from avoiding arbitration. As a threshold matter, the court held that state law, not federal common law, governs whether nonsignatory defendants may compel arbitration of signatory plaintiffs’ claims based on equitable estoppel. App.28a-32a. The district court held that petitioners were not entitled to compel arbitration under Illinois law. App.34a.

5. The Seventh Circuit affirmed.

On the who-decides-arbitrability question, the Seventh Circuit recognized that respondents “may have agreed to arbitrate the question whether third parties can enforce [their] substantive arbitration agreement with” TFL. App.6a-7a. But it nonetheless concluded that petitioners could not enforce that agreement because they were not “third-party beneficiar[ies].” App.6a. The Seventh Circuit held that “a court must decide which third parties can enforce the agreement to arbitrate ‘claim[s] or controvers[ies] as to arbitrability.’” App.6a-7a. If petitioners could compel arbitration of nonsignatory-enforcement issues, the court reasoned, then “anyone could benefit from a stranger’s agreement to arbitrate without ever being a party to it.” *Id.*

The Seventh Circuit then turned to the substance of whether petitioners were “entitled to arbitrate” with respondents under equitable estoppel. App.5a. The court acknowledged that the Convention “would govern a dispute between [respondents] and [TFL]” because TFL is not a United States citizen and the arbitration agreement thus “aris[es] out of a legal relationship’ between a citizen of the United States and a foreign one.” App.8a-9a. The Seventh Circuit nevertheless held that state law—not federal common law—governed questions of equitable estoppel “with respect to contracts governed by Chapter 2.” App.9a. The Seventh Circuit saw no need for “national uniformity” in the enforcement of arbitration agreements subject to the Convention. App.11a-12a. Relying on *Arthur Andersen*, the court reasoned that because “state doctrines of equitable estoppel” apply to domestic arbitration agreements under Chapter 1,

“state law controls disputes about estoppel under Chapter 2 as well.” App.9a-12a.

In so holding, the Seventh Circuit acknowledged that it was wading into a circuit split on the choice-of-law issue. Specifically, it noted that it was departing from “four circuits” that “have held that federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2,” and declared that instead it would adopt the Fifth Circuit’s “contrary” position. App.10a-11a.

The Seventh Circuit added that, even if it were to define the “content” of federal common law, it would reject the Eleventh Circuit’s rule that “allow[s] third parties to arbitrate claims that allege joint misconduct by [nonsignatories] and [a] signatory to an arbitration agreement.” App.12a-13a (rejecting *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999)). The court did not see this as an “ordinary” “principle[] of contract law,” and believed it would allow “unknown” “third parties” to “enforce [signatories] arbitration agreements.” App.12a-14a.

REASONS FOR GRANTING THE WRIT

This case readily meets this Court’s certiorari criteria. Sup. Ct. R. 10(a). The Seventh Circuit adopted the minority position on acknowledged splits of authority impacting (1) who decides whether a nonsignatory can compel arbitration when “arbitrability” has been delegated to the arbitrator and (2) what rules of substantive law govern a nonsignatory’s assertion of equitable estoppel under agreements falling under the New York Convention. On each issue, the Seventh Circuit joined the wrong side of the split, and its ultimate refusal to compel arbitration undermines the FAA, the Convention,

traditional contract principles, and the clear intent of respondents' agreement with TFL. These issues are important and frequently arise in federal and state courts. This case is an ideal vehicle in which to resolve them. The Court should grant review.

I. THIS COURT SHOULD RESOLVE THE WHO-DECIDES-ARBITRABILITY QUESTION

The Seventh Circuit held that a court, not an arbitrator, must decide whether a nonsignatory may enforce a provision of an arbitration agreement that delegates all questions of “arbitrability” to an arbitrator. That holding deepens a now 7-6 conflict among federal appellate and state supreme courts. The Court should vindicate its settled rule that nonsignatory enforcement is a threshold question of arbitrability and that parties can require arbitrators—rather than courts—to resolve such questions.

A. Courts Are Split 7-6 On The Who-Decides-Arbitrability Question

The conflict on the first question presented is deep and acknowledged. The First, Second, Third, Sixth, Eighth, and Tenth Circuits—along with the Alabama Supreme Court—hold that when an arbitration agreement delegates questions of “arbitrability” to an arbitrator, an arbitrator must decide questions of nonsignatory enforcement. Meanwhile, the Seventh, Fourth, Fifth, and Ninth Circuits—and the Nevada and Texas Supreme Courts—hold that a court usually must decide nonsignatory enforcement, even when an agreement requires an arbitrator to resolve “arbitrability.”

**1. Seven Courts Require Arbitrators To
Decide Nonsignatory Enforcement
Under Agreements To Arbitrate
“Arbitrability”**

a. The Sixth, Eighth, Tenth, and Third Circuits squarely hold that when a contract delegates arbitrability questions to an arbitrator, an arbitrator must decide whether a nonsignatory may enforce the arbitration agreement and its delegation provision.

Sixth Circuit. The Sixth Circuit has consistently held that when an arbitration agreement delegates arbitrability disputes to the arbitrator, nonsignatory-enforcement questions are for the arbitrator. *Becker v. Delek US Energy, Inc.* illustrates the rule. 39 F.4th 351 (6th Cir. 2022). There, a nonsignatory energy company moved to compel arbitration of wage-and-hour claims brought by an electrical inspector under the inspector’s contract with a staffing agency. *Id.* at 353-54. That contract incorporated the American Arbitration Association’s rules (“AAA Rules”), *Becker v. Delek US Energy, Inc.*, 493 F. Supp. 3d 644, 654 (M.D. Tenn. 2020), which “empower an arbitrator to decide questions of ‘arbitrability’” by delegating issues of “scope” and “jurisdiction” to the arbitrator, *Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 845 (6th Cir. 2020) (Thapar, J.), *cert. denied*, 592 U.S. 1235 (2021). The inspector did not dispute that he formed a contract with the staffing company, but challenged the “existence” of an agreement to arbitrate arbitrability with the nonsignatory company and contended that was a question for a court. *Becker*, 39 F.4th at 356.

The Sixth Circuit disagreed. The court explained that “[w]hether a non-signatory can enforce [an]

arbitration agreement is a question of the *enforceability* of the arbitration clause, as to that defendant.” *Id.* (quoting *Swiger v. Rosette*, 989 F.3d 501, 507 (6th Cir. 2021)). Because the dispute about who “can enforce [an] arbitration agreement” was a “question of arbitrability,” the energy company’s “equitable estoppel” argument was for an arbitrator to resolve. *Id.* at 355-56.

Eighth Circuit. Eighth Circuit precedent is in accord. In *Eckert/Wordell Architects, Inc. v. FJM Properties of Willmar, LLC*, an architectural firm objected to arbitrating with a nonsignatory under an agreement containing a delegation provision. 756 F.3d 1098, 1099 (8th Cir. 2014). The Eighth Circuit held that “[w]hether a particular arbitration provision may be used to compel arbitration between a signatory and a nonsignatory is a threshold question of arbitrability.” *Id.* at 1100. Because the contract “commit[ed] questions of arbitrability to an arbitrator” by incorporating the AAA Rules, the court required an arbitrator to address equitable estoppel. *Id.*³

Tenth Circuit. The Tenth Circuit has the same rule. In *Casa Arena Blanca LLC v. Rainwater*, a decedent’s estate sued a nursing home, which had signed a contract with the decedent’s daughter that gave the arbitrator “authority to determine

³ The Eighth Circuit later contradicted *Eckert/Wordell* in *Burnett v. National Association of Realtors*, 75 F.4th 975, 982-83 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 1347 (2024), by holding that “the [c]ourt—not an arbitrator—must address whether [a nonsignatory] can enforce the [a]rbitration [a]greement[.]” But the Eighth Circuit’s “earliest opinion”—*Eckert/Wordell*—controls. *Mader v. United States*, 654 F.3d 794, 800 (8th Cir. 2011) (en banc).

jurisdiction and arbitrability issues.” No. 21-2037, 2022 WL 839800, at *1-2 (10th Cir. Mar. 22, 2022) (Eid, J.) (agreement incorporated JAMS Rules). Because the agreement’s delegation of arbitrability issues was “enforceable,” the court explained that “an arbitrator, not the court,” must decide whether the estate was bound “under the third-party beneficiary and equitable estoppel doctrines.” *Id.* at *3-5.

Third Circuit. The Third Circuit has recognized that a signatory’s agreement to arbitrate arbitrability requires an arbitrator to address nonsignatory-enforcement disputes. In *Zirpoli v. Midland Funding, LLC*, a lender assigned a debtor’s loan agreement to a debt collector. 48 F.4th 136, 138-39 (3d Cir. 2022). The Third Circuit held that the debtor’s challenge to the assignment’s validity was a question for the arbitrator. *Id.* at 142-43. The court acknowledged that the “assignment” might “later be invalidated,” but declined to “prematurely answer[] th[e] question” of whether the debt collector could compel arbitration, which would “make[] asking the ‘who decides’ question pointless.” *Id.* at 143.

Alabama Supreme Court. “Like the Eighth Circuit,” the Alabama Supreme Court holds that an “arbitrator, not the court, must decide th[e] threshold issue” of whether a nonsignatory may enforce an arbitration agreement when “arbitrability” questions are “delegated to the arbitrator.” *Anderton v. Practice-Monroeville, P.C.*, 164 So. 3d 1094, 1101-02 (Ala. 2014) (agreement incorporated AAA Rules).

b. In addition to these courts, the First and Second Circuits hold that *colorable* claims of nonsignatory enforcement must be resolved by an arbitrator.

First Circuit. The First Circuit holds that an arbitrator must address nonsignatory enforcement when the nonsignatory demonstrates a “*prima facie*” right to compel arbitration. *Apollo Comput., Inc. v. Berg*, 886 F.2d 469, 473 (1st Cir. 1989); *see also Morales-Posada v. Cultural Care, Inc.*, 141 F.4th 301, 310-11 (1st Cir. 2025) (reaffirming *Apollo*). In *Apollo*, a computer manufacturer and a distributor agreed that an arbitrator would make “any decision as to [its] jurisdiction.” 886 F.2d at 470, 472-73 (agreement incorporated International Chamber of Commerce Rules (“ICC Rules”)). When the distributor’s assignee sought to compel arbitration, the First Circuit concluded that the assignment provided a “*prima facie*” basis for nonsignatory enforcement. *Id.* at 473-74. Once it made that threshold determination, the First Circuit held that it could “not reach” the “merits” of the manufacturer’s arguments against nonsignatory enforcement. *Id.*

Second Circuit. The Second Circuit “explicitly adopt[ed]” the First Circuit’s approach in *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 211 (2d Cir. 2005). There, Contec sought to compel arbitration based on an agreement between an entity that Contec absorbed in a merger and Remote Solution. *Id.* at 207. Because this agreement “empower[ed] an arbitrator to decide issues of arbitrability,” Remote Solution could not avoid “arbitrat[ing] the question of arbitrability with” nonsignatories. *Id.* at 208, 211. But before enforcing that agreement, the court evaluated whether the signatory and nonsignatory had a “sufficient relationship to each other and to the rights created under the agreement.” *Id.* at 209. This “sufficient relationship” inquiry considers factors relevant to

equitable estoppel. *Id.* But the court acknowledged that, “in the end, an arbitrator” may still “determine that the dispute itself is not arbitrable because” the nonsignatory “cannot claim rights under” the agreement. *Id.*

c. In these six circuits, as well as in Alabama, petitioners’ motion to compel arbitration would have been granted. As both courts below recognized, the Anchor Protocol’s Terms of Service contain an agreement to arbitrate “any claim or controversy as to arbitrability” and incorporate the SIAC Rules. App.21a-22a (quoting CA7.App.154 (§ 18)); *see* App.6a-7a. This unambiguous agreement to arbitrate “arbitrability” by itself would have required respondents to arbitrate equitable estoppel with petitioners in the Third, Sixth, Eighth, and Tenth Circuits, and in Alabama.

Petitioners also satisfy the First and Second Circuits’ tests. Each test asks a court to decide whether the nonsignatory’s arbitration argument is plausible, without definitively resolving it. *See Apollo*, 886 F.2d at 473-74; *Contec*, 398 F.3d at 209. Petitioners’ equitable-estoppel argument easily clears this preliminary hurdle. Respondents contend that petitioners “secretly schemed” with signatory TFL to manipulate the price of UST, the asset each respondent deposited on the Anchor Protocol pursuant to its Terms of Service. CA7.App.85-87, 103, 118, 133, 135-39 (¶¶ 1, 4, 74, 103, 156, 163, 170, 175-77). Such allegations of substantially interdependent and concerted misconduct by a signatory to an arbitration contract and a nonsignatory provide ample reason to compel arbitration. *See* 21 *Williston on Contracts*, *supra*, § 57:19; *infra* at 34-35.

2. Six Courts Require Courts To Decide Nonsignatory Enforcement Despite Agreements To Arbitrate “Arbitrability”

By contrast, the Seventh Circuit and five other courts have adopted a variety of other rules under which the arbitrability issue in this case must be resolved by a court.

a. As its decision below shows, the Seventh Circuit does not send nonsignatory-enforcement questions to an arbitrator unless a delegation clause expressly refers to arbitrating arbitrability *with a nonsignatory*. The Seventh Circuit expressly stated that when a signatory agrees to arbitrate “any” disputes about “arbitrability,” “a court must decide which third parties can enforce th[at] agreement.” App.6a-7a.

Here, the Seventh Circuit acknowledged that respondents “may have agreed to arbitrate the question whether third parties can enforce [a] substantive arbitration agreement with” TFL. App.6a. Yet the Seventh Circuit held this language insufficient to require the signatory respondents to arbitrate their “arbitrability” dispute with petitioners. App.6a-7a.

b. The Fifth and Fourth Circuits and the Supreme Court of Nevada never permit arbitrators to address nonsignatory enforcement, but instead treat it as a “[contract-]formation question that is determined by the courts.” *Newman v. Plains All Am. Pipeline, L.P.*, 23 F.4th 393, 399-400 (5th Cir. 2022).

Fifth Circuit. In *Newman*, a nonsignatory attempted to invoke an arbitration clause in a signatory’s employment agreement, which

incorporated the AAA Rules’ delegation of arbitrability questions. *Id.* at 397. The Fifth Circuit held that a court must decide nonsignatory enforcement because “deciding enforceability between the parties and an arbitration agreement’s existence are two sides of the same coin.” *Id.* at 398. Judge Jones dissented from the denial of en banc review, noting that the panel’s ruling diverged from “at least five other circuits” in holding that nonsignatory-enforcement questions are for courts alone to decide. *Newman v. Plains All Am. Pipeline, L.P.*, 44 F.4th 251, 251-53 (5th Cir. 2022) (Jones, J., dissenting from denial of en banc rehearing).

Fourth Circuit. The Fourth Circuit applies the same rule. In *Rogers v. Tug Hill Operating, LLC*, a nonsignatory sought to compel arbitration pursuant to an agreement between the plaintiff, a skilled employee, and a non-party staffing company. 76 F.4th 279, 282-83 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 818 (2024). Although the arbitration agreement incorporated the AAA Rules, the court held that “*the district court*” had to decide nonsignatory enforcement “*as a precondition* to granting [nonsignatory] the right to enforce any portion of an arbitration clause to which it was not a party.” *Id.* at 283, 288-89. Like Judge Jones, Judge Niemeyer acknowledged the circuit split, expressly contrasting the Fourth Circuit’s decision in *Rogers* and the Fifth Circuit’s decision in *Newman* with the Sixth Circuit’s decision in *Becker*. *See id.* at 288-89.

Nevada Supreme Court. The Nevada Supreme Court follows the Fifth Circuit’s lead in holding that “an arbitration agreement’s enforceability as to a nonsignatory” is an “issue ... of contract formation that must be decided by the courts in the first

instance.” *RUAG Ammotec GmbH v. Archon Firearms, Inc.*, 538 P.3d 428, 433-34 (Nev. 2023) (citing *Newman*, 23 F.4th at 398) (agreement incorporated ICC Rules delegating “jurisdiction” to arbitrator). Here too, Justice Lee’s majority opinion recognized the “split” among appellate courts on whether nonsignatory-enforcement questions are “delegable to an arbitrator.” *Id.* at 433 (contrasting *Blanton* and *Eckert/Wordell* with *Newman*).

c. Taking a different tack, the Ninth Circuit and Texas Supreme Court interpret generic contractual references to disputes “between” signatory parties as a sign that arbitrability disputes involving a nonsignatory are *not* delegated to the arbitrator.

Ninth Circuit. In *Kramer v. Toyota Motor Corp.*, a car purchaser’s arbitration agreement with a dealership applied to “any dispute between you and [us],” as well as “any claim or dispute about whether a claim or dispute should be determined by arbitration.” 705 F.3d 1122, 1124-25 (9th Cir.) (capitalization altered), *cert. denied*, 571 U.S. 818 (2013). Based on the first reference to disputes “between” signatories, *Kramer* concluded the purchaser did not “agree[] to arbitrate arbitrability with nonsignatories,” thereby requiring a court to address nonsignatory enforcement. *Id.* at 1127-28; *see also Olson v. FCA US, LLC*, 176 F.4th 612, 618 (9th Cir. 2026) (reaffirming *Kramer* where signatory agreed to arbitrate “disputes *between*” signatories), *petition for cert. filed*, No. 26-228 (U.S. Aug. 19, 2026); *Patterson v. Jump Trading, LLC*, Nos. 24-670, 24-2489, 2025 WL 215519, at *1 (9th Cir. Jan. 16, 2025), *cert. denied*, 146 S. Ct. 116 (2025).

Texas Supreme Court. Like the Ninth Circuit, the Texas Supreme Court asks whether an agreement to

“arbitrate arbitrability” applies “only with respect to” signatories or extends to “disputes” with “unspecified third parties.” *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 632-33 (Tex. 2018) (holding that agreement “incorporate[d] the AAA rules as to disputes between” signatories only).

d. Petitioners’ request to have the arbitrator resolve the arbitrability question would have been denied in any of these courts, just as it was denied in the Seventh Circuit. The conflict over who-decides-arbitrability is as real and entrenched as they come. Only this Court can resolve it.

B. The Decision Below Is Wrong

Certiorari is also warranted because the decision below was incorrect. The Seventh Circuit held that a court—not an arbitrator—must decide whether a nonsignatory can invoke equitable estoppel to enforce an agreement to arbitrate, even when, as here, the signatory has agreed to arbitrate any dispute over “arbitrability.” App.7a. That ruling cannot be reconciled with this Court’s delegation and arbitrability cases, disregards the arbitration agreement’s text, and resorts to unsupported policy concerns this Court has rejected.

1. When an arbitration agreement contains a provision delegating threshold “arbitrability” questions to the arbitrator, a “court possesses no power to decide the arbitrability issue,” and must send the dispute to the arbitrator to resolve. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). Such a provision reflects each party’s binding commitment to have the arbitrator decide whether arbitration is proper.

The term “arbitrability” encompasses all gateway matters relating to whether a particular dispute can be arbitrated. That includes whether an arbitration agreement is “enforceable” or whether a dispute is within the agreement’s “scope.” *Arbitrability*, *Black’s Law Dictionary* (12th ed. 2024).

An agreement to arbitrate “arbitrability” thus necessarily submits to arbitration whether a nonsignatory can compel arbitration under equitable estoppel or other nonsignatory-enforcement doctrines. Indeed, a dispute over nonsignatory enforcement raises a textbook “arbitrability” question. This Court has expressly characterized “whether [an] arbitration contract b[inds] parties who did not sign the agreement” as a question of “arbitrability.” *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002); *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630 & n.5 (2009) (“[T]he question of who is bound by” an agreement is one of “scope.”).

Here, respondents agreed to arbitrate nonsignatory-enforcement issues. Their contract with TFL expressly provided that an arbitrator—not the courts—would have exclusive authority to determine “any claim or controversy as to arbitrability” under the contract. CA7.App.154 (§ 18); *see also id.* at 154-55 (§ 18) (incorporating SIAC Rules).

Petitioners contend they have a right under the Terms of Service to arbitrate the merits of respondents’ claims as nonsignatories pursuant to the equitable-estoppel doctrine. That contention presents a classic dispute over “arbitrability” that respondents agreed to send to an arbitrator.

2. The Seventh Circuit acknowledged that respondents' contract with TFL included an "agreement ... to arbitrate arbitrability." App.7a. But it nonetheless declined to enforce that language, holding that (1) "a court must decide" whether a nonsignatory has "rights under" an agreement to arbitrate arbitrability, and so (2) a court must therefore address petitioners' equitable-estoppel argument. App.6a-7a.

The Seventh Circuit is right that a court must decide whether an arbitration agreement says that it delegates "arbitrability" questions to an arbitrator. *Henry Schein*, 586 U.S. at 69. But when the delegation provision expressly requires arbitration of "any" dispute over "arbitrability," the signatory has agreed to arbitration of all arbitrability issues, including nonsignatory-enforcement disputes. The contract itself thus requires the signatory to arbitrate enforcement with the nonsignatory.

The Seventh Circuit seemed to believe that a nonsignatory would need to make a separate showing of its right to enforce the arbitration agreement "as a third-party beneficiary." App.6a. That is wrong—no further inquiry into the nonsignatory's rights is required. An agreement to arbitrate "any" "arbitrability" dispute—and thus "any" nonsignatory-enforcement dispute—necessarily gives nonsignatories rights to enforce that promise. Otherwise, respondents would be able to escape the contractual bargain they struck.⁴

⁴ For the same reasons, the third-party beneficiary test is satisfied in these circumstances in any event. *See, e.g., Beverly v. Macy*, 702 F.2d 931, 940 (11th Cir. 1983) ("[T]he key inquiry

The Seventh Circuit based its rule partly on a policy concern that requiring arbitration of nonsignatory-enforcement disputes would allow “anyone” to “benefit from a stranger’s agreement to arbitrate”—even those who ultimately lack arbitration rights at all. App.6a-7a. But that is exactly what an agreement to arbitrate “any” arbitrability dispute entails. If signatories want to avoid arbitration of nonsignatory “arbitrability” disputes, they can carve such disputes out of their agreements.

The Seventh Circuit expressed concern about frivolous arbitration requests (without offering empirical support). *Id.* But agreements to arbitrate arbitrability must be honored “even if [a] court thinks that the [arbitrability] argument ... is wholly groundless.” *Henry Schein*, 586 U.S. at 68. And there is no reason to think the majority rule will incentivize such requests in the real world. After all, “[a]rbitrators can efficiently dispose of frivolous” arbitrability claims and may “impos[e] fee-shifting and cost-shifting sanctions” in response to such claims. *Id.* at 71.

The Seventh Circuit’s departure from basic rules of contract interpretation—and this Court’s precedent—should not stand.

II. THIS COURT SHOULD RESOLVE THE CHOICE-OF-LAW QUESTION

The second question presented is what law governs the equitable-estoppel inquiry when a nonsignatory seeks to enforce an international

is whether the claimant was intended to be benefited by the contract provision in question.”).

arbitration agreement subject to the New York Convention and Chapter 2 of the FAA. The Seventh Circuit held that state law applies—not uniform federal common law—and rejected petitioners’ equitable-estoppel argument by applying Illinois law’s restrictive approach to that doctrine. In the alternative, the court held that even under a uniform federal rule, nonsignatory enforcement would not be available based on claims of concerted misconduct between nonsignatories and signatories. Both aspects of this flawed choice-of-law analysis implicate circuit splits and warrant this Court’s review.

A. The Circuits Are Squarely Divided Over Whether Federal Or State Law Applies

As the Seventh Circuit acknowledged, the circuits openly disagree about whether federal or state law applies to the equitable-estoppel inquiry in Convention cases. App.10a-11a.

1. Four circuits—the First, Second, Fourth, and Ninth—hold that uniform federal common law governs the equitable-estoppel inquiry in cases where the arbitration agreement falls under the Convention. *InterGen N.V. v. Grina*, 344 F.3d 134, 143 (1st Cir. 2003); *Smith/Enron Cogeneration L.P. v. Smith Cogeneration Int’l, Inc.*, 198 F.3d 88, 96 (2d Cir. 1999), *cert. denied*, 531 U.S. 815 (2000), *abrogated on other grounds by Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287 (2010); *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000); *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021); *see* App.10a-11a (citing these cases).

As each of these courts has recognized, the Convention requires the application of uniform

federal standards. *Smith/Enron*, 198 F.3d at 96. Indeed, the Convention and its implementing legislation, Chapter 2, plainly express this need for uniformity. *See id.*; *InterGen*, 344 F.3d at 143; *Setty*, 3 F.4th at 1168. Applying state law instead of federal law “would introduce a degree of parochialism and uncertainty into international arbitration that would subvert the [Convention’s] goal of simplifying and unifying international arbitration law.” *Smith/Enron*, 198 F.3d at 96. To vindicate this clear federal interest in “national uniformity,” *InterGen*, 344 F.3d at 143, these courts hold that “federal common law” applies to equitable estoppel and other “threshold issues of arbitrability in New York Convention cases.” *Setty*, 3 F.4th at 1168 & n.1.

2. By contrast, the Fifth and Seventh Circuits apply state law—not federal common law—to the equitable-estoppel inquiry. App.10a-11a.

The Fifth Circuit created the conflict in *Town of Vinton v. Indian Harbor Insurance Co.*, 161 F.4th 282 (5th Cir. 2025), *petition for cert. filed*, No. 25-1383 (U.S. June 11, 2026). There, the court held that “[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel” in cases under the Convention. *Id.* at 287-88.

In this case, the Seventh Circuit “agree[d]” with the Fifth Circuit that state law governs the equitable-estoppel analysis. App.11a. In doing so, the court expressly acknowledged that it was deepening the conflict with four sister circuits holding that “federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2.” App.10a-11a.

3. The conflict on the choice-of-law question is absolutely clear. Only this Court can resolve the disagreement.

**B. The Seventh Circuit’s Alternative Holding
On The Uniform Federal Common Law’s
Content Splits From Seven Other Circuits**

In selecting the law applicable to petitioners’ equitable-estoppel argument, the Seventh Circuit alternatively held that even if it applied “federal common law under Chapter 2,” the “content” of its federal common law rule would not allow nonsignatories accused of “joint misconduct” with a signatory to compel arbitration based on equitable estoppel. App.12a. In so holding, the Seventh Circuit expressly disagreed with the test applied by seven other circuits, which permits nonsignatories to compel arbitration in precisely these circumstances. App.12a-13a. This additional conflict between the decision below and other circuits’ caselaw underscores the need for review.

1. Seven circuits agree that, under federal common law, allegations of interdependent and concerted misconduct by a signatory and a nonsignatory allow a nonsignatory defendant to compel arbitration by invoking federal common law equitable estoppel. This consensus stems from the Eleventh Circuit’s decision in *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999). There, the court explained that “application of equitable estoppel is warranted ... when the signatory [to the contract containing the arbitration clause] raises allegations of ... substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.”

MS Dealer, 177 F.3d at 947. To hold otherwise would allow plaintiffs to “thwart the arbitration provisions in [their] contract[s].” *Chemaly v. Lampert*, 174 F.4th 843, 856-60 (11th Cir. 2026).

Six other circuits have applied *MS Dealer*’s concerted-misconduct test for equitable estoppel.⁵ In a case under Chapter 2 of the FAA, the Fourth Circuit applied *MS Dealer* to compel arbitration where a signatory plaintiff “essentially allege[d] the *same* claims ... and employ[ed] the *same* allegations as the bases for liability” against signatories and nonsignatories alike. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 373-75 (4th Cir. 2012). As the Fifth Circuit has explained, this federal common law test guards against “blatant[] attempt[s] to bypass ... arbitration clause[s]” by omitting “signatory non-defendant[s]” from cases “charg[ing] interdependent and concerted misconduct with a non-signatory defendant.” *Grigson v. Creative Artists Agency L.L.C.*, 210 F.3d 524, 528, 530 (5th Cir.), *cert. denied*, 531 U.S. 1013 (2000). The Eighth Circuit has also held that courts may “correctly rel[y] upon” *MS Dealer*’s “theory of concerted misconduct.” *PRM Energy Sys., Inc. v. Primenergy, L.L.C.*, 592 F.3d 830, 835 (8th Cir. 2010). So has the Tenth Circuit. *Kelly v. K12 Inc.*, 854 F. App’x 963, 965 (10th Cir. 2021) (equitably estopping plaintiff who brought claims “based on the exact same operative facts” against signatory and nonsignatory).

⁵ The Second, Fifth, Eighth, Tenth, and Eleventh Circuits embraced *MS Dealer*’s view of federal common law in domestic arbitration cases subject to Chapter 1, before *Arthur Andersen* clarified that state law applies in that context.

The Second and Ninth Circuits have embraced essentially the same test. In *Denney v. BDO Seidman, L.L.P.*, the Second Circuit noted that the plaintiff alleged that “defendants acted in concert to defraud plaintiff” and remanded for further consideration. 412 F.3d 58, 70-71 (2d Cir. 2005). And in *Setty*, the Ninth Circuit analyzed whether a signatory’s “claims” against a nonsignatory were “clearly intertwined with” “any allegations of misconduct by ... a[nother] signatory.” 3 F.4th at 1169 (upholding denial of motion to compel arbitration).

2. In this case, the Seventh Circuit acknowledged the concerted-misconduct rule applied by the Eleventh Circuit and other courts. App.12a-13a (citing *MS Dealer*, 177 F.3d at 947). But the Seventh Circuit expressly rejected that approach. *Id.*

In the Seventh Circuit’s view, *MS Dealer*’s rule does not reflect an “‘ordinary’ or ‘general’ principle[] of contract law.” *Id.* The court instead suggested that it “make[s] sense” to apply equitable estoppel only when a signatory “assert[s] a contractual right” against a nonsignatory or “make[s]” a nonsignatory “think it was bound to the” contract.” App.13a. According to the Seventh Circuit, the *MS Dealer* rule would “depriv[e]” respondents “of the benefit of [their] bargain with” TFL and could “disturb existing commercial relations” by creating uncertainty about “which third parties, possibly unknown to them, could enforce their arbitration agreements.” App.12a-13a.

The Seventh Circuit’s alternative holding regarding the “content” of the federal common law of equitable estoppel creates yet another clear split implicating arbitrability.

C. The Decision Below Is Wrong On Both Aspects Of The Choice-Of-Law Issue

The Seventh Circuit erred as to both (1) its choice of state law over federal common law, and (2) its alternative rejection of *MS Dealer*'s concerted-misconduct test as a uniform federal common law rule of equitable estoppel. The first holding is at odds with the Convention's prescription of uniformity, and the second undermines contractual commitments to arbitrate.

1. This Court has recognized the need to adopt federal common law when (1) an issue implicates "uniquely federal interests" and (2) "a 'significant conflict' exists between an identifiable 'federal policy or interest and the [operation] of state law.'" *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507 (1988). Both requirements are satisfied as to nonsignatory enforcement of arbitration agreements subject to the Convention.

First, the Convention is an "international treaty with international obligations," and its whole purpose is to "standardize the enforcement of international arbitration agreements." *Outokumpu Stainless USA, LLC v. Covertteam SAS*, No. 17-10944, 2022 WL 2643936, at *6 (11th Cir. July 8, 2022) (Tjoflat, J., specially concurring). Such standardization necessarily requires applying uniform rules across the country. Indeed, the Convention's text makes clear that, for "federal or non-unitary" countries such as the United States, the treaty obligations "shall ... be the same" as for unitary countries. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* art. XI (June 10, 1958), 21 U.S.T. 2517, 2521. That means the United States may not "decline

enforcement of [arbitration] agreements on the basis of parochial views.” *Scherk*, 417 U.S. at 520 n.15.⁶

Second, applying state law would “significant[ly] conflict” with that “uniquely federal interest[]” in applying a uniform equitable-estoppel rule. *Boyle*, 487 U.S. at 507. State-by-state variation “would create an unmanageable tangle of arbitration law in the United States, lead to forum shopping, and frustrate the uniform standards the Convention and Chapter 2 of the FAA were enacted to create.” *Outokumpu*, 2022 WL 2643936, at *6 (Tjoflat, J., specially concurring).

The Seventh Circuit expressed its view that this Court in *Arthur Andersen* resolved the choice-of-law question in favor of state law. App.9a-12a. That cannot be right, given the Court’s later statement in *GE Energy* that it was leaving open the issue of which body of law governs equitable estoppel in Chapter 2 cases. 590 U.S. at 445. Although *Arthur Andersen* held that state law equitable-estoppel doctrines govern domestic contracts under Chapter 1 of the FAA, 556 U.S. at 630-31, that rule does not carry over into Chapter 2 if it “conflict[s]” with “the Convention as ratified by the United States.” 9 U.S.C. § 208. The conflict here is glaring: Applying disparate state-law rules on equitable estoppel directly undermines the Convention’s goal of national uniformity and

⁶ The United States ratified the Convention even though, as its critics noted, the treaty would “override the arbitration laws of a substantial number of [U.S.] [s]tates.” *Report of the United States Delegation to the United Nations Conference on International Commercial Arbitration* (Aug. 15, 1958), reprinted in 19 Am. Rev. Int’l Arb. 91, 95 (2008).

standardization, including in countries with federal systems. *See supra* at 32-33.

This case well illustrates the unpredictability of the Seventh Circuit’s state-law approach. In Illinois, equitable estoppel requires reasonable and detrimental reliance by the plaintiff on the defendant’s “acts or representations.” App.34a; App.14a. But “most” other states do not “requir[e] that the party invoking the doctrine prove detrimental reliance.” *Griggs v. Evans*, 43 A.3d 1081, 1092 n.5 (Md. Ct. Spec. App. 2012). So whether nonsignatories are entitled to arbitrate or “must litigate,” App.14a, will vary wildly depending on which forum the plaintiff selects. That is precisely the sort of “uncertainty” and inconsistency that the Convention aimed to eliminate. *Clearfield Tr. Co. v. United States*, 318 U.S. 363, 367 (1943); *see United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 729-30 (1979). Uniform federal law must govern the inquiry.

2. The Seventh Circuit further erred when, in the alternative, it rejected the consensus federal common law rule that nonsignatories may compel arbitration when they are accused of concerted misconduct with signatories. App.12a-13a (rejecting *MS Dealer*).

The concerted-misconduct rule vindicates the signatory’s contractual interest in not having its own conduct scrutinized in litigation. When the signatory’s and nonsignatory’s conduct is alleged to be interdependent—as with a joint scheme—a court will almost inevitably adjudicate the legality of the signatory’s conduct when it resolves the claim against the nonsignatory. And even if the signatory is not named as a defendant, it may still be dragged into the proceeding through “discovery, indemnification, or contribution,” becoming “in essence, ... a party with

resulting loss, inter alia, of time and money.” *Grigson*, 210 F.3d at 528.

This case is a prime example: Respondents did not sue TFL, but their allegations of a coordinated scheme make petitioners’ alleged acts “inherently inseparable” from TFL’s conduct, putting TFL under a microscope and eroding the protections for which TFL bargained. *MS Dealer*, 177 F.3d at 948. Indeed, respondents contend that petitioners “secretly schemed” with TFL, “colluded” with TFL to “manipulate” the price of UST, and “aided and abetted” TFL’s alleged manipulation. CA7.App.86-88, 103, 107-08, 137 (¶¶ 4, 6-7, 9, 74, 83, 170). Allowing respondents to litigate their assertions of TFL’s misconduct in court would be “contrary to equity,” *Am. Bankers Ins. Grp., Inc. v. Long*, 453 F.3d 623, 627 (4th Cir. 2006)—and the concerted-misconduct rule rightly prevents it.

The Seventh Circuit asserted that a concerted-misconduct test would “depriv[e] [respondents] of the benefit of [their] bargain,” insofar as “third parties [may] seek benefits from a contract for which neither party negotiated.” App.12a-13a. That is wrong. A concerted-misconduct test would ensure that signatory plaintiffs (and the signatory counterparty) get exactly what they bargained for: Arbitration of all disputes “arising out of or relating to ... other acts or omissions for which [respondents] may contend that [TFL is] liable.” App.21a. Here, respondents should not be permitted to evade their commitment to arbitrate with TFL by suing an alleged nonsignatory co-conspirator for aiding and abetting TFL.

The Seventh Circuit also suggested that this test would “disturb existing commercial relations” and cause parties to “wonder[]” who “could enforce their

arbitration agreements.” App.13a. But there will be no mystery in cases alleging concerted misconduct, where a nonsignatory derives its arbitration rights from the signatory’s own allegations directly asserting wrongdoing by the other signatory.

The Seventh Circuit’s misguided rejection of the concerted-misconduct rule—embraced by seven other circuits—warrants this Court’s review.

III. BOTH QUESTIONS PRESENTED ARE IMPORTANT, AND THIS CASE IS AN IDEAL VEHICLE

1. The questions presented here raise exceptionally important issues of federal law that frequently arise across the country. The Court’s resolution of these questions will make the difference in whether nonsignatories can defend against claims in arbitral fora that offer greater “efficiency, less expense,” and “less intrusive discovery” than costly litigation. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023).

The who-decides-arbitrability question has great practical significance because modern arbitration agreements often require arbitrators to resolve threshold “arbitrability” disputes. See John F. Coyle & Christopher R. Drahozal, *An Empirical Study of Dispute Resolution Clauses in International Supply Contracts*, 52 Vand. J. Transnat’l L. 323, 354-55 (2019). Agreements to arbitrate arbitrability regularly appear in contracts governing consumer transactions, international commerce, employment relationships, and numerous other contexts. See *supra* at 15-18, 20-23.

Threshold disputes over arbitrating arbitrability with nonsignatories present a “common fact pattern.”

David Horton, *Accidental Arbitration*, 102 Wash. U. L. Rev. 1381, 1390 (2025). But due to the circuit split, geographic happenstance determines whether these delegation clauses are enforced or ignored. Clear guidance from this Court would help courts and litigants across the country conserve resources and more faithfully implement contractual agreements.

The choice-of-law questions are equally important. The 4-2 circuit split presents a stark choice between a uniform federal common law standard and wide state-by-state variation. See *Reeves v. Enter. Prods. Partners*, 17 F.4th 1008, 1012-13 (10th Cir. 2021) (collecting cases); Michael A. Rosenhouse, *Application of Equitable Estoppel to Compel Arbitration by or Against Nonsignatory—State Cases*, 22 A.L.R.6th 387 (2026 update, Westlaw). That choice has significant implications for whether Congress’s adoption of the Convention “unif[ies] the standards by which agreements to arbitrate are observed” as a practical matter. *Scherk*, 417 U.S. at 520 n.15. And enforcing arbitration agreements is essential in Convention-governed cases because “predictability” in the resolution of cross-border disputes is of paramount importance to the “international commercial system.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629-31 (1985).

2. This case is an ideal vehicle to address these issues. There is no dispute that respondents accepted the Terms of Service, CA7.App.145-46, which unambiguously delegate “arbitrability” questions to the arbitrators, *id.* at 154 (§ 18). Both issues were squarely presented and decided by both courts below. And because the Seventh Circuit stayed its mandate, no ongoing proceedings will interfere with this Court’s review. CA7.ECF.70.

This petition is an especially good vehicle because it will potentially let the Court resolve not only whether arbitrators may resolve threshold arbitrability, but also (if necessary) the source and content of the substantive legal rules governing equitable estoppel. These issues are related and—in circuits refusing to compel arbitration of arbitrability disputes—often arise hand in hand. If certiorari is granted, the Court will be able to consider all aspects of the problem at once.

3. As noted, each question presented in this petition is also raised by a pending petition. *Supra* at 4 n.1. This petition is an exceptional vehicle for review, insofar as it alone squarely presents both related questions. The Court should grant review in this case regardless of what it does in *Indian Harbor* and *Olson*. One way or the other, the important issues raised by these cases should be resolved this Term.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

AITAN D. GOELMAN
R. MILES CLARK
CHRISTOPHER R. MACCOLL
BEN JERNIGAN
ZUCKERMAN SPAEDER LLP
2100 L Street, NW
Suite 400
Washington, DC 20037
(202) 778-1800

*Counsel for Petitioner
Kanav Kariya*

PAUL M. KRIEGER
JONATHAN F. BOLZ
REBECCA S. TINIO
BEN PEROTIN
KKL LLP
350 Fifth Avenue
Suite 7710
New York, NY 10118
(212) 390-9550

*Counsel for Petitioner
William DiSomma*

ROMAN MARTINEZ
Counsel of Record
MELISSA ARBUS SHERRY
URIEL HINBERG
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

PETER TROMBLY
BAPU KOTAPATI
LATHAM & WATKINS LLP
1271 Avenue of the
Americas
New York, NY 10020
(212) 906-1200

JONATHAN D. COGAN
STEVEN W. PERLSTEIN
IGOR MARGULYAN
KOBRE & KIM LLP
800 Third Avenue
New York, NY 10022
(212) 488-1206

*Counsel for Petitioners
Jump Trading, LLC and
Jump Crypto Holdings LLC*

October 8, 2026

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[186 F.4th 909]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-1964

TAEWOO KIM, *et al.*,

Plaintiffs-Appellees,

v.

JUMP TRADING, LLC, and JUMP CRYPTO HOLDINGS
LLC,

Defendants-Appellants.

Appeal from the United States District Court for
the Northern District of Illinois, Eastern Division.
No. 23 CV 2921 — **Georgia N. Alexakis**, *Judge*.

ARGUED FEBRUARY 10, 2026 — DECIDED AUGUST 13,
2026

Before EASTERBROOK, SCUDDER, and KIRSCH,
Circuit Judges.

EASTERBROOK, *Circuit Judge*. TerraUSD (Terra) and LUNA were cryptocurrencies on the Terra blockchain, which was managed by Terraform Labs, a Singaporean company. Unlike a bank, which maintains centralized records of depositors' balances, a blockchain employs a decentralized network of users to verify each transaction. LUNA was a traditional cryptocurrency, much like Bitcoin, whose value fluctuated based on supply and demand. Terra,

by contrast, was supposed to be a stablecoin, whose value was linked to some other asset—for Terra, the U.S. dollar. Each Terra coin was supposed to be worth \$1.

Most stablecoins rely on a reserve of another asset to maintain their value. Each coin is a claim to \$1 in the reserves, so the stablecoin should be worth \$1. (That is, it should be redeemable for \$1 in assets, such as deposits at a bank.) Terra, however, used an arbitrage mechanism to maintain its value. An algorithm allowed holders to convert each Terra coin into a dollar's worth of LUNA and vice versa. (Rather than facilitate the exchange of Terra for LUNA, the algorithm worked by destroying a Terra coin and minting LUNA to replace it or by destroying LUNA and minting a Terra.) Then, if the market price of Terra declined below \$1, arbitrageurs could buy it, convert the Terra into a dollar of LUNA, and sell the LUNA, profiting from the spread. So long as this spread was greater than the cost of trading, investors would buy Terra and convert it to LUNA or convert Terra they already owned. In principle, this would restore Terra's price to \$1.

Terraform's arbitrage mechanism twice failed to keep its value at \$1. Both times, Terra's price declined, and while investors holding Terra could convert it to LUNA, for various reasons this became undesirable. Terraform was able to solve the first decline, in 2021, by persuading Jump Trading to buy millions of Terra coins in exchange for options to buy LUNA cheaply. Jump's purchase restored the price of Terra to \$1. But instead of proclaiming Jump's role, Terraform pretended that the arbitrage mechanism had restored Terra's price. According to the complaint, it was then that investors—unaware of

Jump’s role during the first crisis—bought Terra, trusting the arbitrage mechanism. When it failed again, in 2022, Terra’s price collapsed. This time Jump didn’t intervene. Terraform halted all trading and filed for bankruptcy. About \$40 billion in nominal value vanished.

Taewoo Kim owned Terra coins when their value plummeted in 2022. Kim and a proposed class of investors in Terra sued Jump under the Commodities Exchange Act and its associated regulations, as well as under the common law of unjust enrichment. Kim alleges that Jump conspired with Terraform to manipulate the price of Terra, and, in so doing, fooled him into thinking that Terraform’s arbitrage mechanism alone could maintain its equivalence with the U.S. dollar. Kim couldn’t have sued Terraform because it enjoys rights under an arbitration agreement that Kim signed when he joined the “Anchor Protocol”—a program that allowed holders of Terra to trade their coins and lend them to other users. The agreement provides that

[a]ny claim or controversy arising out of or relating to the Interface, this Agreement, including any question regarding this Agreement’s existence, validity or termination, or any other acts or omissions for which you may contend that we are liable, including (but not limited to) any claim or controversy as to arbitrability (“Dispute”), shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”).

Jump argues that Kim can't sue it either because it, too, benefits from the agreement. It moved in the district court to compel arbitration. Whether it did so under 9 U.S.C. §4 or §206 is unclear; the motion mentions neither. Jump says that 9 U.S.C. §202 governs the arbitration agreement between Kim and Terraform, so we will assume that §206 applies. When the district court denied Jump's request, see 2025 WL 1359136, 2025 U.S. Dist. LEXIS 88898 (N.D. Ill. May 9, 2025), it appealed under 9 U.S.C. §16(a).

Jump acknowledges that it is not a party to the agreement between Kim and Terraform. Instead, it says that the doctrine of equitable estoppel requires Kim to arbitrate, since Kim is suing Jump for conduct in which Terraform was a co-conspirator. In Jump's view, a lawsuit against it would deny Terraform the benefit of the arbitration agreement because Jump may sue Terraform for contribution. And that would force Terraform to litigate, rather than arbitrate, questions about its misconduct. Yet Terraform and its successor in bankruptcy have neither intervened nor filed an amicus brief to support Jump—understandably so. The bar date for claims in the bankruptcy has passed, and Terraform's remaining assets are held in a liquidating trust from which Jump cannot benefit. That makes a suit by Jump against Terraform unlikely.

Jump nonetheless contends that an arbitrator, rather than a court, should decide the issue of equitable estoppel. It reads the portion of the agreement requiring arbitration of "any claim or controversy as to arbitrability" to mean that whenever there is a dispute whether a third party can enforce the agreement, that dispute must be arbitrated. And it points to language from the

Supreme Court’s decision in *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79 (2002), and our own in *Janiga v. Questar Capital Corp.*, 615 F.3d 735 (7th Cir. 2010), that it thinks compels this conclusion. Together, these arguments present two questions: first, who decides—the court or an arbitrator—the merits of Jump’s equitable estoppel argument? And second, if a court decides, is Jump entitled to arbitrate against Kim?

Arbitration is contractual; a court can compel it only if the parties have agreed to arbitrate. *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 648–49 (1986). Parties can agree to arbitrate disputes about arbitrability, which ask whether a substantive dispute should be arbitrated or litigated. Kim and Terraform agreed to do that in the terms of service. For example, they would need to arbitrate a dispute about whether Kim’s claims (the source of the substantive legal dispute) “aris[e] out of or relat[e] to” the terms—and, if they did, Kim would need to arbitrate them. Jump says that an arbitrator also must decide whether equitable estoppel requires Kim to arbitrate his substantive legal claims against it. That’s because, in its view, Jump’s equitable theory presents a “claim or controversy as to arbitrability”. See *Howsam*, 537 U.S. at 84; *Janiga*, 615 F.3d at 743.

But before deciding whether equitable estoppel is a question of arbitrability, we must decide whether Kim and Jump have agreed to arbitrate *any* questions. Arbitration is “strictly a matter of consent,” *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024) (citation omitted), “a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration.” *Ibid.* (quoting *First Options*

of *Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995)). “Consequently, the first question in any arbitration dispute must be: What have *these parties* agreed to?” *Ibid.* (emphasis added). Kim and Jump haven’t agreed to arbitrate. Kim and Terraform have, so Jump’s best hope of arbitrating the issue of equitable estoppel would be as a third-party beneficiary of their agreement. See *Morales-Posada v. Cultural Care, Inc.*, 141 F.4th 301, 309–10 (1st Cir. 2025). Yet it does not contend that it satisfies the requirements of this doctrine.

Who decides whether Jump has rights under that agreement? It must be a court. As the Supreme Court explained in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71 (2010), courts decide not only whether parties have agreed to delegate questions of arbitrability to an arbitrator, but also whether and by whom an agreement delegating these questions can be enforced. In *Rent-A-Center* one of the parties argued that an agreement to arbitrate substantive disputes was void. The Justices held that an arbitrator would need to decide whether that was true, since the parties had agreed to arbitrate questions of arbitrability. But it would have fallen to a court, not an arbitrator, to decide whether the agreement to arbitrate questions of arbitrability was enforceable if the parties had challenged it (rather than the agreement to arbitrate substantive disputes).

Just so here. Kim may have agreed to arbitrate the question whether third parties can enforce his substantive arbitration agreement with Terraform. But a court must decide which third parties can enforce the agreement to arbitrate “claim[s] or controvers[ies] as to arbitrability”. Otherwise,

anyone could benefit from a stranger’s agreement to arbitrate these questions without ever being a party to it—a result that the ordinary law of contracts does not allow. And the Federal Arbitration Act does not “elevate [agreements to arbitrate questions of arbitrability] over other forms of contract.” *Rent-A-Center*, 561 U.S. at 71.

This means that judges, not an arbitrator, must decide whether the agreement between Kim and Terraform to arbitrate arbitrability gives rights to Jump. Jump says that language requiring Kim to arbitrate claims based on Terraform’s misconduct—or based on “acts or omissions for which you [Kim] may contend that we [Terraform] are liable”—gives rights to co-conspirators in that misconduct, but the text compels the opposite conclusion: that Kim agreed to arbitrate with Terraform only. See *In re Automotive Parts Antitrust Litigation*, 951 F.3d 377, 385 (6th Cir. 2020) (broad scope of disputes covered by bilateral arbitration agreement did not justify applying agreement to arbitrate arbitrability to third parties); *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1127–28 (9th Cir. 2013). Consider also the default rule in state law that “C can[not] claim rights under a contract that has only A and B as parties.” *CCC Intelligent Solutions Inc. v. Tractable Inc.*, 36 F.4th 721, 724 (7th Cir. 2022); *Morales-Posada*, 141 F.4th at 309-10. We don’t see anything in the text that alters this default. So if Jump and Kim lack an agreement to arbitrate arbitrability, and if Jump doesn’t have rights to enforce Terraform’s agreement with Kim, then a court must resolve its argument about equitable estoppel.

Having decided that the district judge was right to analyze Jump’s equitable estoppel argument, rather

than leave it to the arbitrator, we now review her decision on the merits. The district judge applied Illinois's version of equitable estoppel, finding, correctly in our view, that Illinois courts foreclose estoppel unless the third party has reasonably relied on the contract providing for arbitration. *Ervin v. Nokia, Inc.*, 349 Ill. App. 3d 508, 514-16 (2004); see also *Sunco International Inc. v. Jiangsu Sunco Boiler Co., Ltd.*, No. 25-2251 (7th Cir. 2026) (issued contemporaneously). No one suggests that happened here.

But was the district judge correct to apply Illinois law? Jump argues that Chapter 2 of the Federal Arbitration Act, 9 U.S.C. §§201-08—which implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)—provides the applicable law of equitable estoppel. Chapter 2 is silent about whether third parties can enforce arbitration agreements. Still, Jump argues that Chapter 2 authorizes federal courts to develop their own law of equitable estoppel. This stands in contrast to Chapter 1, which uses the rules of equitable estoppel from state law. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31 (2009).

Like the district judge, we doubt that Chapter 2 governs this dispute. It would govern a dispute between Kim and Terraform about the enforceability of their agreement to arbitrate, for Terraform is not a citizen of the United States (although Jump is). See 9 U.S.C. §202. But for the same reasons we hesitated to adopt Jump's expansive reading of the word "arbitrability", we hesitate now to say that Chapter 2 determines Jump's rights as a third party. Under Jump's view, any defendant, simply by asserting

rights to enforce an arbitration agreement “arising out of a legal relationship” between a citizen of the United States and a foreign one, would be entitled to have the law of Chapter 2 decide his rights to enforce the agreement as a third party, no matter how remote the litigant is from the contract providing for arbitration. Jump’s reading would allow an entity to benefit from an arbitration agreement’s status under Chapter 2 before deciding whether it is subject to that agreement at all. That, as the district judge aptly put it, would put the cart before the horse.

We also have serious doubts about Jump’s suggestion that *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432 (2020), permits federal courts to develop a common law of equitable estoppel with respect to contracts governed by Chapter 2. There the Justices held that nothing in the statute prevents federal courts from applying “domestic” doctrines of equitable estoppel to cases involving these contracts. In the United States, the prevailing “domestic” doctrines of equitable estoppel are found in state law. *Arthur Andersen* tells us that Chapter 1 of the Federal Arbitration Act *incorporates* state doctrines of equitable estoppel, obviating the need for federal rules. 556 U.S. at 630–31. If *GE Energy* teaches that Chapter 2 mandates the application of domestic doctrines of equitable estoppel, and state law provides those doctrines—including with respect to arbitration agreements—then there shouldn’t be any need to create federal doctrines of equitable estoppel. See also *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 596 U.S. 107, 116–17 (2022).

Let us put this a different way. Federal courts create doctrines of federal law when necessary to

solve disputes arising under federal statutes. For example, the Employee Retirement Income Security Act (ERISA) requires plans' sponsors to keep the promises they make to workers in welfare-benefit plans. This rule can be enforced only by applying doctrines of contract law—which, being absent from ERISA, federal courts must adopt. Even then, however, the federal doctrines are absorbed from state law rather than being created out of whole cloth. See, e.g., *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427 (2015). See also *CNH Industrial N.V. v. Reese*, 583 U.S. 133, 135–36 (2018) (applying “ordinary principles of contract law” to interpret collective-bargaining agreements governed by federal labor law). Chapter 2 of the Federal Arbitration Act, which does not say one word about estoppel, does not need completion through federal common law.

What Chapter 2 does say is that Chapter 1 governs with respect to all subjects not covered in Chapter 2 or the New York Convention. 9 U.S.C. §208. Estoppel is one of those subjects omitted from Chapter 2—but, per *Arthur Andersen*, is covered in Chapter 1 through the incorporation of state law. It follows that state law controls disputes about estoppel under Chapter 2 as well.

We recognize that four circuits have held that federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2. *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166 (9th Cir. 2021); *InterGen N.V. v. Grina*, 344 F.3d 134, 143–44 (1st Cir. 2003); *Smith/Enron Cogeneration Limited Partnership, Inc. v. Smith Cogeneration International, Inc.*, 198 F.3d 88, 96 (2d Cir. 1999); *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417 n.4 (4th Cir.

2000). A fifth holds, to the contrary, that state law applies. *Vinton v. Indian Harbor Insurance Co.*, 161 F.4th 282, 287–88 (5th Cir. 2025), petition for certiorari pending, No. 25–1383.

We agree with *Vinton* and add that, even if we were to create a federal rule of equitable estoppel, we would get the federal rule from state law. As the Supreme Court held in *United States v. Kimbell Foods, Inc.*, the law of the forum state supplies the federal rule unless there is a need for uniformity or applying state law would frustrate federal interests. 440 U.S. 715, 728–29 (1979); see also *United States v. Crown Equipment Corp.*, 86 F.3d 700, 706–07 (7th Cir. 1996) (defining rule of federal common law for measuring damages to federal property by reference to forum state’s law); *West v. Louisville Gas & Electric Co.*, 951 F.3d 827, 832 (7th Cir. 2020) (interpreting federal statute affecting easements by looking to forum state’s law of property); 19 Wright, Miller & Cooper, *Federal Practice and Procedure* § 4518 (3d ed. 2026) (“The Supreme Court has put increasing emphasis on the notion that when determining the content of federal common law, forum state law should be adopted as federal law absent some good reason to displace it”).

Arthur Andersen requires us to enforce arbitration agreements under Chapter 1 of the Federal Arbitration Act like any other contract: according to rules of state law. It does not prescribe uniformity. Why should we treat agreements under Chapter 2 differently? Chapter 2 covers agreements between U.S. and foreign citizens, but that shouldn’t make a difference. International arbitration agreements may contain choice-of-law clauses, which should be honored, but arguments from outside the text of an

agreement (as Jump’s is) presumptively rest on the law of the forum state. *Schoeps v. Sompo Holdings, Inc.*, 160 F.4th 815, 824 (7th Cir. 2025). Statutes or treaties may require national uniformity, but Jump does not point to any. See *Setty*, 3 F.4th at 1169–76 (Bea, J., dissenting) (citing *GE Energy*).

Suppose that we were to create a uniform federal rule of equitable estoppel. We would still need to determine whether it applies over rules of other countries that have signed the New York Convention. Yet Jump does not discuss the law of Singapore, Terraform’s home nation, though it would have as great a claim as does common law in the United States. Nor does Jump ask us to look to the law of the European Union, Canada, Mexico, Japan, or other trading partners in forming a body of common law.

If there were such a thing as a federal common law under Chapter 2, we would need to define its content. When we have needed to create uniform rules in the past—as in cases interpreting plans under ERISA—we have developed them from “ordinary” or “general” principles of contract law. *M&G Polymers*, 574 U.S. at 435; *Bock v. Computer Associates International, Inc.*, 257 F.3d 700, 704–05 (7th Cir. 2001). Jump’s proposed rule would allow third parties to arbitrate claims that allege joint misconduct by it and the signatory to an arbitration agreement. See *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999). This rule does not seem “ordinary” to us. It would allow third parties to seek benefits from a contract for which neither party negotiated, depriving Kim of the benefit of his bargain with Terraform. See 1 Lord, *Williston on Contracts* § 1:1 (4th ed. 2026) (“The goal of contract law is to hold parties to their agreements so that they receive the

benefits of their bargains.”) It may make sense to apply equitable estoppel when a party to a contract does something to make a third party think he is bound to it—for example, if Kim sued Jump for breaching the terms of service. See *GE Energy*, 590 U.S. at 437 (quoting 21 Lord, *Williston on Contracts* §57:19 at 200 (4th ed. 2017)). But Kim isn’t asserting a contractual right against Jump and, as far as we can tell, never did anything to make Jump think it was bound to the terms. Adopting Jump’s rule might also disturb existing commercial relations; parties to bilateral arbitration agreements would be left wondering which third parties, possibly unknown to them, could enforce their arbitration agreements against a possible lawsuit. See *Kimbell Foods*, 440 U.S. at 728–29.

Jump relies on *Underwriters at Lloyd’s v. Argonaut Insurance Co.*, 500 F.3d 571 (7th Cir. 2007), which used a rule drawn from federal law over one from California law when deciding whether a demand to arbitrate was timely. That decision does not concern estoppel—and it precedes *Arthur Andersen*, which told us to get rules of estoppel from state law. The panel relied on a supposed need for national uniformity that the Supreme Court rejected two years later. Because it predated *Arthur Andersen*, the panel in *Argonaut* also did not consider the effect of 9 U.S.C. §208, which refers back to Chapter 1 to handle unprovided-for cases. Whatever force *Argonaut* may have if limited to timing questions, it cannot be extended to justify the creation of federal common law about estoppel.

There isn’t any federal interest that compels us to create federal common law. Some courts have justified their invention of equitable estoppel

doctrines as necessary to implement a federal interest in encouraging arbitration. See, e.g., *MS Dealer Service*, 177 F.3d at 947. But *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417–19 (2022), tells us the opposite: that there isn’t a federal interest in promoting arbitration. The goal of the federal statute is enforcement of contracts, nothing more.

This leads us back to Illinois’s doctrine of equitable estoppel, which requires reasonable reliance by the party invoking the arbitration agreement. Because Jump doesn’t contend that it relied on representations by Kim, it cannot use equitable estoppel to enforce the arbitration agreement against him. So Jump must litigate.

AFFIRMED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS
EASTERN DIVISION**

TAEWOO KIM, KASHYAP
PATEL, KERRY WOOLLEY,
and KEN WORSHAM,
*individually and on
behalf of all others
similarly situated,*

Plaintiffs,

v.

JUMP TRADING, LLC,
JUMP CRYPTO
HOLDINGS, LLC (f/k/a
1HOLD1 LLC), KANAV
KARIYA, and WILLIAM
DiSOMMA,

Defendants.

Case No. 23 CV 2921

Hon. Georgia N.
Alexakis

MEMORANDUM OPINION AND ORDER

Plaintiffs Taewoo Kim, Kashyap Patel, Kerry Woolley, and Ken Worsham bring this suit individually and on behalf of a putative class against Jump Trading, LLC, its cryptocurrency arm Jump Crypto Holdings, LLC, and two of Jump Crypto's executives. They allege that defendants violated state and federal law by scheming with Terraform Labs Pte. Ltd. ("TFL") to manipulate the price of a stablecoin called TerraUSD ("UST"). Defendants now move to compel arbitration pursuant to an agreement

plaintiffs signed with TFL. For the reasons set forth below, the Court denies defendants' motion.

LEGAL STANDARD

The Federal Arbitration Act ("FAA") governs the enforceability, validity, and interpretation of commercial contracts involving interstate commerce. *See* 9 U.S.C. § 1 *et seq.*; *see also Jain v. de Mere*, 51 F.3d 686, 688 (7th Cir. 1995). Under the FAA, arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA reflects a "liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (internal citations omitted).

Because arbitration is a matter of contract, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (quoting *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960)). Before ordering arbitration, it is a court's role to determine whether a valid contract exists. *See Janiga v. Questar Capital Corp.*, 615 F.3d 735, 742 (7th Cir. 2010). At the same time, "parties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019) (citing *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010)). When parties agree to arbitrate arbitrability, a court may not disregard this

“additional, antecedent agreement,” even when the argument for arbitration appears “wholly groundless.” *Id.* at 68–72.

To determine whether parties have agreed to arbitrate questions of arbitrability, there must be “clear and unmistakable evidence that they did so.” *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (cleaned up) (quoting *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 649 (1986)). The party seeking to compel arbitration bears the burden of showing arbitration is the appropriate venue. *See A.D. v. Credit One Bank, NA*, 885 F.3d 1054, 1063 (7th Cir. 2018).

FACTUAL BACKGROUND¹

In 2018, Do Kwon and his company TFL began creating the Terra blockchain. [60] ¶ 43. The next year, TFL began to sell UST and its related digital asset, LUNA. *Id.* ¶¶ 2, 43, 47. LUNA was the native token of the Terra blockchain. *Id.* ¶ 43. UST, by contrast, was designed as a “stablecoin,” a type of digital asset intended to be more stable than other cryptocurrencies by pegging its value to another asset. *Id.* ¶¶ 2, 38, 45. UST was continuously pegged to the U.S. dollar, which, according to plaintiffs, was meant “to appeal to the public as a safe crypto asset to serve as a store of value and medium of exchange.” *Id.* ¶ 2; *see also id.* ¶ 44. However, instead of being backed by actual dollars, TFL maintained UST’s price by minting and burning UST in parallel with LUNA.

¹ Resolving this motion does not require a thorough recounting of the underlying facts, but to provide some context for the parties’ dispute, the Court sets out key allegations from plaintiffs’ amended complaint. The Court accepts those allegations as true only for purposes of this motion.

Id. ¶ 45; *see also id.* ¶ 38 (describing “one of two ways” that “a stablecoin’s peg can be maintained”).

Jump Crypto was one of TFL’s early partners. *Id.* ¶¶ 3, 48. From November 2019 to September 2020, it entered into a series of agreements with TFL to borrow tens of millions of LUNA tokens and provide “market-making” services to TFL in exchange for the opportunity to buy discounted LUNA tokens. *Id.* ¶¶ 3, 50–57. In May 2021, TFL’s algorithm pegging UST to \$1 failed, and UST’s market price fell. *Id.* ¶¶ 4, 73.

In response, plaintiffs contend TFL and Kwon “secretly schemed with Defendants to manipulate and pump the market price for UST by making secret, coordinated trades to prop up UST to its \$1 peg.” *Id.* ¶ 4. As part of this scheme, plaintiffs further contend, Jump² bought more than 62 million UST tokens in May 2021, which “artificially inflate[d]” UST’s price to \$1 and “caus[ed] a corresponding rise in the price of UST.” *Id.* To reward Jump for this alleged manipulation of the UST market, “Kwon agreed to modify TFL’s prior agreements with Jump and instead unconditionally sell 65 million LUNA tokens to Jump at a greater than 99% discount from their then-current market price.” *Id.* ¶ 5, *see also id.* ¶¶ 77–79, 105. Plaintiffs say Jump later sold these LUNA tokens for a \$1.28 billion profit. *Id.* ¶¶ 5, 84, 106.

According to plaintiffs, defendants “actively concealed and aided and abetted TFL’s and Kwon’s concealment of Jump’s May 2021 intervention to

² As plaintiffs do in their amended complaint, the Court uses “Jump” here to refer collectively to defendants Jump Trading, LLC, and Jump Crypto. [60] at 1.

maintain the artificial \$1 peg for UST.” *Id.* ¶ 7; *see also id.* ¶¶ 111–14. By May 2022, the price of UST collapsed entirely, causing an alleged loss of nearly \$19 billion in UST holdings, including a loss of more than \$2 million in UST for the four named plaintiffs. *Id.* ¶¶ 7–8, 109. Plaintiffs maintain that, as a whole, the class sustained “billions of dollars in actual damages under applicable law.” *Id.* ¶¶ 8, 128.

In May 2023, Kim brought a putative class action complaint against Jump Trading and Kanav Kariya, the president of Jump Crypto, alleging violations of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 1 *et seq.*, Commodity Futures Trading Commission (“CFTC”) regulations, 17 C.F.R. § 180, and common law unjust enrichment. *See generally* [1]. In August 2024, plaintiffs brought an amended class action complaint adding Patel, Woolley, and Worsham as plaintiffs and Jump Crypto and William DiSomma—co-founder and co-owner of Jump Trading—as defendants. *See generally* [60]; *see also id.* ¶ 19.

The next month, defendants moved to compel arbitration under an agreement to arbitrate between plaintiffs and TFL. [82]. The operative agreement to which defendants point appears in the terms of service for the “Anchor Protocol,” which is a feature of the Terraform blockchain. *See generally* [83-1] at Ex. A.³ Although defendants were not a party to the

³ The Anchor Protocol is a “‘savings protocol’ created by TFL that permitted users to lend their UST to borrowers at an interest rate through a self-described ‘money market’ established by TFL.” [60] ¶ 130; *see also id.* ¶ 29. Plaintiffs’ original complaint stated that of the nearly 19 billion UST tokens in circulation, 14 billion were deposited in the Anchor Protocol. [1] ¶ 72. The original complaint also specified that Kim, the only named plaintiff at that time, completed various

Anchor Protocol’s terms of service, they nonetheless contend that equitable estoppel principles require plaintiffs to submit this dispute to arbitration.

DISCUSSION

Defendants’ motion to compel presents three issues: (1) whether the Court or the arbitrator should determine if plaintiffs’ claims are arbitrable given defendants’ status as non-signatories to the Anchor Protocol’s terms of service; (2) assuming that predicate determination is one for the Court, whether it should apply equitable estoppel principles from state law or federal common law to determine whether non-signatory defendants can compel arbitration against plaintiffs; and (3) again assuming

transactions via the Anchor Protocol. *Id.* ¶¶ 83–84. Based on their amended complaint, plaintiffs disclaim any effort to recover losses “relat[ing] to the failure of the Anchor Protocol,” although Plaintiffs still assert that their claims remain based “on the devaluation of their UST,” including “UST over which the Plaintiffs retained title but that they had loaned to the Anchor Protocol.” [84] at 4; *see also* [60] ¶¶ 129–31. To support their motion to compel—and, more specifically, to establish that plaintiffs are bound by the Anchor Protocol’s terms of service—defendants rely on a declaration from Arrash Chris Amani, TFL’s former Chief Operating Officer and Chief Financial Officer. *See generally* [83-1]. In his declaration, Amani describes how prospective Anchor Protocol users were required to accept its terms of service, including its “mandatory agreement to arbitrate all disputes with TFL.” *Id.* ¶ 5. Plaintiffs argue that Amani’s declaration constitutes inadmissible evidence and that, as a result, defendants cannot establish that plaintiffs are bound by the Anchor Protocol’s terms of service. [84] at 5–7. Because it denies defendants’ motion on other grounds, the Court does not address the parties’ dispute over the admissibility of Amani’s declaration. Plaintiffs otherwise do not contend that the delegation-clause language that appears in the Anchor Protocol’s terms of service, *see infra*, is inaccurate.

that the Court should decide the predicate question, whether defendants actually may compel arbitration under equitable estoppel principles. The Court considers each issue in turn.

A. Courts Decide Whether Non-Signatories Can Compel Arbitration.

The parties first dispute whether the Court or an arbitrator should decide if defendants, as non-signatories to the Anchor Protocol’s terms of service, can compel arbitration pursuant to plaintiffs’ agreement with TFL. Defendants argue that the arbitrator should decide the question because the “Anchor [terms of service] include a broad arbitration clause as well as a clear and unmistakable delegation clause.” [82] at 1–2. Plaintiffs maintain that this question is one for the Court.

Neither party disputes that the Anchor Protocol’s terms of service delegate arbitrability questions to the arbitrator. The relevant provision reads:

Any claim or controversy arising out of or relating to the Interface, this Agreement, including any question regarding this Agreement’s existence, validity or termination, or any other acts or omissions for which you may contend that we^[4] are liable, including (but not limited to) any claim or controversy as to arbitrability (“Dispute”), shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”)[.]

⁴ The terms of service define “we” as “Terraform Labs PTE, Ltd.” [83-1] at 6.

You understand that you are required to resolve all Disputes by binding arbitration. The arbitration shall be held on a confidential basis before one or three arbitrators, who shall be selected pursuant to SIAC Rules. The seat of the arbitration shall be determined by the arbitrator(s); the arbitral proceedings shall be conducted in English. The applicable law shall be Singapore law.

[83-1] at 12. Because this provision clearly delegates “any claim or controversy as to arbitrability” to an arbitrator, the Court agrees with defendants that this provision contains the sort of clear and unmistakable intent ordinarily required to delegate questions of arbitrability to an arbitrator. *See First Options*, 514 U.S. at 944; *see also Henry Schein*, 586 U.S. at 68 (parties may agree to delegate arbitrability questions to arbitrator). If plaintiffs were suing TFL, this provision would go a long way toward resolving a motion to compel arbitration. But plaintiffs are not suing TFL, and Jump and the other defendants in this matter were not parties to the contract between plaintiffs and TFL.

As another court in this district already has observed, that defendants are non-signatories attempting to enforce the arbitration agreement “presents a logical conundrum.” *O’Connor v. Ford Motor Co.*, No. 19-CV-5045, 2023 WL 130522, at *5 (N.D. Ill. Jan. 9, 2023) (cleaned up). Before compelling arbitration, it is the province of a court to determine “whether a contract exists at all.” *Id.* (quoting *Swiger v. Rosette*, 989 F.3d 501, 507 (6th Cir. 2021)). If “the nonsignatories are not parties to the contract, then the Plaintiff has no agreement with them,” and even the broadest of delegation clauses

does not apply. *Id.* (quoting *Swiger*, 989 F.3d at 507). At the same time, whether an arbitration agreement can be used to compel arbitration by a non-signatory defendant “is a question of the enforceability of the arbitration clause, as to that defendant.” *Id.* (quoting *Swiger*, 989 F.3d at 507). And, because the Anchor Protocol’s terms of service clearly delegate “*any* claim or controversy as to arbitrability,” this seems at first glance like a question for the arbitrator. [83-1] at 12 (emphasis added).

Both things cannot be true. “Given this logical conundrum, it is not surprising that there is some inconsistency in the federal case law concerning who—the court or the arbitrator—decides a challenge to a non-signatory’s standing to demand arbitration.” *O’Connor*, 2023 WL 130522, at *5. Some circuits have held that whether a third party can compel arbitration under a plaintiff’s arbitration agreement with another party is a question of enforceability for the arbitrator (assuming, of course, that there is a clear and unmistakable intent to delegate questions of arbitrability). *See, e.g., Apollo Computer, Inc. v. Berg*, 886 F.2d 469, 473 (1st Cir. 1989).⁵ Other

⁵ *See also Contec Corp. v. Remote Sol., Co.*, 398 F.3d 205, 211 (2d Cir. 2005) (third-party’s right to enforce arbitration agreement “is a matter of the Agreement’s continued existence, validity and scope, and is therefore subject to arbitration under the terms of the arbitration clause”); *Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 852 (6th Cir. 2020) (“[T]he arbitrator should decide for itself whether [non-signatory] can enforce the arbitration agreement.”); *Eckert/Wordell Archs., Inc. v. FJM Props. of Willmar, LLC*, 756 F.3d 1098, 1100 (8th Cir. 2014) (“Whether a particular arbitration provision may be used to compel arbitration between a signatory and a nonsignatory is a threshold question of arbitrability.”); *Casa Arena Blanca LLC v. Rainwater by Est. of Green*, No. 21-2037, 2022 WL 839800, at

circuits, meanwhile, view a non-signatory’s ability to enforce an arbitration agreement as a question of contract formation for courts. *See, e.g., Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279, 288 (4th Cir. 2023).⁶

The Seventh Circuit’s opinion in *CCC Intelligent Solutions Inc. v. Tractable Inc.*, 36 F.4th 721, 723 (7th Cir. 2022), provides a way out of this conundrum. There, one of Tractable’s employees entered into a contract with CCC Intelligent Solutions (“CCC”) to access CCC’s software and incorporate some of its algorithms into Tractable’s product. *Id.* at 722–23. To conceal his association with Tractable, however, the employee entered into the contract using a false name—“JA Appraisal”—and provided false contact information. *Id.* at 722. When CCC sued Tractable, Tractable moved to compel arbitration pursuant to the contract between JA Appraisal and CCC. *See CCC Info. Servs. Inc. v. Tractable Inc.*, No. 18 C 7246, 2019 WL 2011092, at *1 (N.D. Ill. May 7, 2019). The district court held that the “dispute—whether plaintiff agreed to arbitrate with *Tractable*—[was] a

*5 (10th Cir. Mar. 22, 2022) (“[T]he question of whether the Agreement should be enforced against Ms. Rainwater as a third-party beneficiary of that contract is one that should be decided by an arbitrator.”).

⁶ *See also Newman v. Plains All Am. Pipeline, L.P.*, 23 F.4th 393, 398 (5th Cir. 2022) (“When a court decides whether an arbitration agreement exists, it necessarily decides its enforceability between parties. Therefore, deciding an arbitration agreement’s enforceability between parties remains a question for courts.”); *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1127 (9th Cir. 2013) (“Given the absence of clear and unmistakable evidence that Plaintiffs agreed to arbitrate arbitrability with nonsignatories, the district court had the authority to decide whether the instant dispute is arbitrable.”).

dispute that can't logically be resolved by the arbitrators" because "the delegation clause cannot be enforced against plaintiff unless plaintiff agreed to arbitrate disputes with Tractable." *Id.* at *2 (cleaned up) (emphasis added). It further reasoned: "[T]he issue is not the effect of a contractual provision to which the parties agreed. . . . The issue is whether an agreement between plaintiff and Tractable exists at all," and thus it was an issue "for the court to decide." *Id.* The district court in *CCC* went on to conclude that Tractable was not a party to the arbitration agreement and that it could not enforce the agreement under any theory of agency or equitable estoppel. *Id.* at *3–*4.

The Seventh Circuit affirmed. Although its analysis focused on the latter dispute (whether Tractable could enforce the agreement), the appeals court described the district court as having "appl[ied] the rule that a judge must decide whether the parties have agreed to arbitrate." *CCC*, 36 F.4th at 723 (citing *AT&T Techs.*, 475 U.S. at 643). It then affirmed the district court's subsequent conclusion that Tractable was not a party to (or beneficiary of) the contract between CCC and JA Appraisal. *Id.* at 724 ("The potential exception for third-party beneficiaries does not apply, which leaves the dominant rule. Tractable is not a party to this contract, so it cannot demand arbitration."). Even though the Seventh Circuit never explicitly addressed who should decide whether Tractable could enforce the contract, its answer was implicit in its approving description of the district court's approach to resolving Tractable's motion to compel.

Defendants contend that *CCC* is inapposite because "the appellant . . . argued that it could compel

arbitration, not as a nonsignatory, but as the real party to the contract.” [91] at 6. To be sure, the Seventh Circuit did focus its analysis on whether Tractable was a party to a contract signed by the non-existent “JA Appraisal.” *CCC*, 36 F.4th at 723–24. But after it determined Tractable was not, in effect, a signatory, the appeals court also remarked that “[t]he potential exception for third-party beneficiaries [did] not apply” to enable Tractable to enforce the contract against CCC. *Id.* at 724. This statement went beyond whether Tractable itself was a party to the contract; the court addressed whether Tractable could rely on an equitable doctrine to bind plaintiffs nonetheless. As a result, defendants’ efforts to cast *CCC* in exceedingly narrow terms—as one focused purely on “contract formation rather than enforcement”—are less than convincing. [91] at 6. In any event, the underlying district court opinion unambiguously held that a court should decide whether Tractable as a non-signatory could compel arbitration under principles of agency and equitable estoppel. *See CCC*, 2019 WL 2011092, at *3–*4. And again, on appeal, the Seventh Circuit did not take any issue with the district court’s approach. *See CCC*, 36 F.4th at 724.

Since the appeals court decision in *CCC*, district courts throughout the Seventh Circuit have relied on that decision to hold that whether a non-signatory can compel a party to arbitrate is not a question for an arbitrator. *See O’Connor*, 2023 WL 130522, at *6 (applying *CCC* to conclude that “the issue of whether Defendant has any right as a non-signatory to compel arbitration with Plaintiffs goes to contract formation and must be decided by the Court”); *Moomaw v. GeoSnapShot PTY LTD*, No. 3:23-CV-1321-DWD, 2025 WL 870319, at *3 (S.D. Ill. Mar. 20, 2024)

(finding that “whether GeoSnap, a non-signatory to the liability agreements, can compel arbitration is a question of contract formation, which must be decided by the Court”); *see also Al-Nahhas v. Rosebud Lending LZO*, No. 22-CV-750, 2023 WL 5509320, at *8 (N.D. Ill. Aug. 25, 2023), *aff’d sub nom. Al-Nahhas v. 777 Partners LLC*, 129 F.4th 418 (7th Cir. 2025); *Angelilli v. Activision Blizzard, Inc.*, No. 23-CV-16566, 2025 WL 524276, at *2 (N.D. Ill. Feb. 18, 2025); *Kashkeesh v. Microsoft Corp.*, 679 F. Supp. 3d 731, 735 n.3 (N.D. Ill. 2023); *Giron v. Subaru of America, Inc.*, 2022 WL 17130869 (N.D. Ill. Nov. 21, 2022).⁷

This Court likewise takes its cue from *CCC* and holds that whether defendants as non-signatories to the Anchor Protocol’s terms of service can compel arbitration with plaintiffs is a question for it to decide. As the Fifth Circuit persuasively reasoned in *Newman*, “deciding enforceability between the parties

⁷ As defendants accurately point out, other district courts in this Circuit have concluded differently. *See Matricciani v. Am. Homeowner Pres., Inc.*, 718 F. Supp. 3d 825, 839 (N.D. Ill. 2024); *Coons v. Yum! Brands, Inc.*, 672 F. Supp. 3d 626, 635 (S.D. Ill. 2023); *Reidt v. Advanced Mktg. & Processing, Inc.*, 2023 WL 8469772, at *2–*3 (W.D. Wis. Dec. 7, 2023). However, these decisions did not cite *CCC* nor consider how *CCC* bears on the issue of who decides whether a non-signatory to an agreement can compel a party to arbitrate. This Court’s decision in *Woodard v. SmartMatch Ins. Agency, LLC*, No. 23 CV 5246, 2024 WL 4252803 (N.D. Ill. Sept. 20, 2024), is also not instructive, notwithstanding plaintiffs’ efforts to find support in it. The Court did not cite *CCC* there, but *Woodard* involved a factual dispute over whether a plaintiff ever actually agreed to arbitrate—not whether a non-signatory could compel arbitration based on equitable principles like estoppel. *See id.* at *2. *CCC* was therefore not relevant to that dispute.

and an arbitration agreement’s existence are two sides of the same coin” because “[w]hen a court decides whether an arbitration agreement exists, it necessarily decides its enforceability between parties.” 23 F.4th at 398; *see also O’Connor*, 2023 WL 130522, at *6 (“The question of whether [a non-signatory] can enforce the arbitration provision in a contract to which it is not a party is not different from the question of whether an agreement to arbitrate exists between the plaintiff and [a non-signatory].”) (quoting *Giron*, 2022 WL 17130869, at *4). Moreover, an “arbitrator cannot resolve any issues until the court has ascertained that there is an actual agreement” between the parties. *K.F.C. v. Snap Inc.*, 29 F.4th 835, 837 (7th Cir. 2022). Here, because there is no binding agreement between plaintiffs and defendants, “the breadth of a delegation is irrelevant.” *Id.*; *see also Azuz v. Accucom Corp.*, No. 21-CV-1182, 2023 WL 2525486, at *6 (N.D. Ill. Mar. 15, 2023) (“The arbitrator can’t decide *anything* unless the parties have agreed to arbitrate *something*. There is no chicken-and-the-egg problem when it comes to arbitration: an agreement to arbitrate must come before the question of arbitrability.”).

For these reasons, the Court will decide whether defendants, as non-signatories, can compel plaintiffs to arbitrate. It turns to that question next.

B. State-Law Equitable Estoppel Principles Apply.

The parties dispute whether the Court should apply federal or state common law principles in deciding whether non-signatory defendants can compel plaintiffs to arbitrate. Defendants say the Court should look to federal common law principles, *see* [82] at 21, while plaintiffs contend that state law

principles apply under binding Supreme Court and Seventh Circuit precedent, *see* [84] at 13.

Plaintiffs have the better argument. The Seventh Circuit has said repeatedly that, in the arbitration context, courts “must apply traditional state promissory estoppel principles to decide whether a non-party should be bound by the terms of another’s contract.” *Warciak v. Subway Restaurants, Inc.*, 880 F.3d 870, 872 (7th Cir. 2018) (citing *Scheurer v. Fromm Fam. Foods LLC*, 863 F.3d 748, 752 (7th Cir. 2017)); *see also Sosa v. Onfido, Inc.*, 8 F.4th 631, 637 (7th Cir. 2021) (reciting the “fundamental principle” that a “nonparty’s right to enforce an arbitration agreement is governed by state law”); *Credit One Bank*, 885 F.3d at 1063 n.14 (“[T]he question whether a party is equitably estopped from denying the application of an arbitration clause is a question of state contract law.”). The Seventh Circuit has never limited this broad rule to arbitration provisions between domestic parties only.

Citing *Certain Underwriters at Lloyd’s London v. Argonaut Ins. Co.*, 500 F.3d 571 (7th Cir. 2007), defendants maintain that the outcome should be different for agreements that fall under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the Convention”). [91] at 10–11. *Certain Underwriters* involved an arbitration agreement that, both parties agreed, fell under the auspices of the Convention and that contained no choice-of-law provision. 500 F.3d at 577. In those circumstances, the appeals court had to decide whether a state-specific exception should apply to extend an otherwise “clear contractual deadline[]” for appointing an arbitrator. *Id.* at 581; *see also id.* at 573–74. *Certain Underwriters* concluded it should

not, holding that “the substantial federal interests in uniform interpretation of agreements under the Convention” justified applying a uniform federal rule of decision. *Id.* at 581; *see also id.* at 579 (“We conclude that the Convention and its implementing federal legislation express a clear federal interest in uniform rules by which agreements to arbitrate will be enforced.”).

Certain Underwriters does not change the outcome here. Unlike the situation in *Certain Underwriters*, the parties here do not agree that their dispute is arbitrable, let alone that any agreement to arbitrate is governed by the Convention. Defendants contend the agreement falls under the Convention because TFL is not a United States citizen. [82] at 21 & n.15. Yet TFL is not a party here—*this* dispute is among domestic parties, *see* [60] at ¶¶ 12–19, so it is not at all clear that the Convention would apply. Compared to *Certain Underwriters*, this dispute, as it stands, is domestic in nature. *Cf. Certain Underwriters*, 500 F.3d at 581, n.9 (rejecting defendant’s suggestion that the court “treat a case falling within the Convention as we would treat any domestic case under the FAA”). Moreover, it would put the cart before the horse to apply federal common law based on a contract that plaintiffs say they never intended to enter with defendants. Whereas *Certain Underwriters* addressed which law should apply to interpret the substantive terms of an agreement where everyone agreed the dispute was arbitrable, 500 F.3d at 577, here the Court is dealing with the threshold inquiry of whether defendants can compel plaintiffs to arbitrate under the agreement in the first place. *See Outokumpu Stainless USA, LLC v. Covertteam SAS*, No. 17-10944, 2022 WL 2643936, at *5–*6 (11th Cir.

July 8, 2022) (Tjoflat, J., concurring) (distinguishing between the substantive arbitration issues for which a choice-of-law provision applies and “the threshold inquiry of arbitrability”).

Even if there were a uniquely federal interest at play here, federal common law would only apply where “a significant conflict exists between an identifiable federal policy or interest and the operation of state law, or the application of state law would frustrate specific objectives of federal legislation.” *Certain Underwriters*, 500 F.3d at 579 (cleaned up) (quoting *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507 (1988)); *see also id.* (stating that a uniquely federal interest “merely establishes a necessary, not a sufficient, condition for the displacement of state law”) (quoting *Boyle*, 487 U.S. at 507). This condition was met in *Certain Underwriters* because applying state law to extend arbitration deadlines on state and federal holidays “would frustrate one of the primary objectives of the United States in becoming a signatory to the Convention: securing uniform standards by which agreements to arbitrate international disputes are governed.” *Id.* at 580. In Illinois, for example, the deadline would extend on Casimir Pulaski Day, whereas in Hawaii the deadline would extend on Prince Jonah Kuhio Kalanianaʻole Day and King Kamehameha I Day. *See id.* at 580 n.8. Here, by contrast, defendants have not identified any similar conflict among state equitable-estoppel principles that would promote non-uniform results when applying state law.

At bottom, without a clearer instruction from the Seventh Circuit to do so, the Court will not depart from the “fundamental principle” that a “nonparty’s

right to enforce an arbitration agreement is governed by state law.” *Sosa*, 8 F.4th at 637; *but see Patterson*, 710 F. Supp. 3d at 709; *Outokumpu*, 2022 WL 2643936, at *5–*6 (Tjoflat, J., concurring). In the Court’s estimation, *Certain Underwriters* includes no such directive.

That leads to the next question—which state’s law applies? Plaintiffs argue that Illinois law applies based on the most-significant-relationship test. [84] at 17. Defendants suggest that Singaporean law governs based on the choice-of-law provision in the Anchor Protocol’s terms of service. [91] at 11–12 n.10. Defendants do not offer any other explanation why the Court should rely on Singaporean law, and the Court sees a host of reasons why it shouldn’t. First, the language in the terms of service indicates that Singaporean law applies to the arbitral proceedings, but here the parties are still resolving a preliminary dispute over arbitrability. *See* [83-1] at 12 (saying that “[t]he applicable law shall be Singapore law” in the course of describing the arbitral proceedings); *see also Outokumpu*, 2022 WL 2643936, at *5–*6 (declining to apply substantive choice-of-law provision to threshold arbitrability question). And, to the extent the Anchor Protocol’s terms of service identify Singaporean law as the governing law across the board, that provision only applies to “any Dispute between you and *us*”—meaning plaintiffs and TFL. *Id.* at 13; *see supra* at n.5; *c.f. Credit One Bank*, 885 F.3d at 1063 n.14 (declining to apply agreement’s choice-of-law provision because “choice-of-law clauses in contracts do not apply to non-parties”); *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 933 (7th Cir. 1996) (same).

Lastly, even if it were proper to apply Singaporean law, it is defendants' burden—as the party seeking to compel arbitration—to establish that there is an outcome-determinative difference between Illinois and Singaporean law. See *Bridgeview Health Care Ctr., Ltd. v. State Farm Fire & Cas. Co.*, 10 N.E.3d 902, 905 (2014) (“The party seeking the choice-of-law determination bears the burden of demonstrating a conflict.”); see also *id.* (“A choice-of-law determination is required only when a difference in law will make a difference in the outcome.”) (cleaned up). Defendants have not done so here, so the Court will apply Illinois law.⁸ See *Sosa*, 8 F.4th at 634 (district court “properly applied Illinois law” because defendant “never suggested any difference between Illinois and Washington law”).

C. Defendants Cannot Compel Arbitration.

The default rule in Illinois is that a “nonsignatory typically has no right to invoke an arbitration provision contained in that contract.” *Sosa*, 8 F.4th at 639. “But there are recognized exceptions to that general rule.” *Id.* For example, a non-signatory might invoke an arbitration provision under a third-party beneficiary, agency, or equitable estoppel theory. *Id.*

Defendants do not attempt to show that *any* state's equitable estoppel principles would enable it to

⁸ In a footnote of their reply brief, defendants “request the opportunity to brief whether Singaporean law would permit them to compel arbitration as non-signatories.” [91] at 11–12 n.10. But the proper time to brief this issue was in defendants' motion to compel arbitration (and their subsequently filed reply). The opportunity to explain why Singaporean law would compel a different outcome has passed.

compel arbitration as a non-signatory, let alone Illinois'. Instead, they argue that federal common law principles warrant compelling plaintiffs to arbitrate. [82] at 23–24. Their failure to analyze the issue under state law is fatal to their motion to compel because “[t]he party claiming [equitable] estoppel has the burden of proving it by clear and convincing evidence.” *Sosa*, 8 F.4th at 641.

Regardless, plaintiffs have demonstrated why defendants cannot rely on Illinois law. To bring a claim for equitable estoppel, a party “must have relied upon the acts or representations of the other and have had no knowledge or convenient means of knowing the facts, and such reliance must have been reasonable.” *Id.* (quoting *Ervin v. Nokia, Inc.*, 349 Ill. App. 3d 508, 514 (2004)). Here, like in *Sosa*, defendants have not identified any representation that plaintiffs made to defendants to induce them to rely on the agreement’s arbitration provision. *Id.*

Because defendants have not established their right to compel arbitration as non-signatories, this dispute belongs in federal court.

CONCLUSION

For the reasons discussed, defendants’ motion to compel [82] is denied. By 5/23/25, the parties are directed to enter a joint status report with anticipated next steps in the case, including, if applicable, a proposed briefing schedule on any potential motion to dismiss. [76]. The Court sets a status hearing in this matter on 5/28/25 at 9:30 a.m.

35a

/s/Georgia N. Alexakis

Georgia N. Alexakis

United States District Judge

Date: 5/9/25

9 U.S.C. § 202**§ 202. Agreement or award falling under the Convention**

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

9 U.S.C. § 208

§ 208. Application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States. This chapter applies to the extent that this chapter is not in conflict with chapter 4.