26-5083

No. _______

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

LARRY GILBERG,

Petitioner,

v.

POWER ARCHITECTS CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the

Court of Appeal of the State of California,

Sixth Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2010, Mark Kesel filed Chapter 11 and signed under penalty of perjury a Schedule B that disclosed only a $5,235 brokerage account and omitted his 34.62% interest in Power Architects Corporation ("PA"). The case was dismissed — not discharged — and the PA shares were never scheduled, abandoned, or administered. A private arbitration panel, whose authority arose solely from a 1998 shareholder agreement that nowhere mentions the Bankruptcy Code, nonetheless adjudicated the federal status of those shares: it found that "although Kesel did not list his PA shares in his Chapter 11 case, those shares were part of the bankruptcy estate" under 11 U.S.C. § 541, held they "reverted back in ownership to Kesel" on dismissal under 11 U.S.C. § 349(b)(3), declined to find forfeiture under § 554(d), and declared Kesel a "legitimate shareholder" entitled to own, vote, and collect dividends. California compelled that arbitration, confirmed the award as a money judgment of approximately $5.3 million and reduced Petitioner's Power Architects ownership, and applied a standard of review it held could not reach the panel's "mixed question of fact and law."

The questions presented are:

1. Whether the Supremacy Clause permits a State to confirm and enforce, as a money judgment, a private arbitration award that adjudicated the ownership, voting rights, and dividend entitlement of property the award itself found had entered a federal bankruptcy estate, where 11 U.S.C. §§ 554(d) and 1334(e)(1) commit the status and disposition of such property to the federal courts, and no court exercising that jurisdiction has ever decided the estate-property question.

2. Whether property that a Chapter 11 debtor never scheduled, that was never abandoned, and that was never administered revests in the debtor on dismissal under 11 U.S.C. § 349(b)(3), or remains property of the estate under 11 U.S.C. § 554(d).

3. Whether a State may structure its arbitration-confirmation system so that a private tribunal's adjudication of exclusively federal questions is at once insulated from constitutional

review as private action and from judicial review as a confirmed award, leaving the affected party no forum in which to challenge the tribunal's lack of jurisdiction.

PARTIES TO THE PROCEEDING

Petitioner Larry Gilberg was plaintiff and appellant below.

Respondent Power Architects Corporation was defendant and respondent below.

Alexander Mednik and Mark Kesel were respondents in the underlying arbitration and are real parties in interest. Alexander Kolchinsky was a co-appellant in the related appeal, No. H052610.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a natural person. No corporate disclosure under Rule 29.6 is required of Petitioner.

RELATED PROCEEDINGS

The proceedings directly related to this case (Rule 14.1(b)(iii)) are: *Gilberg v. Power Architects Corp.*, No. H052611 (Cal. Ct. App., 6th App. Dist.), judgment entered Feb. 17, 2026; *Kolchinsky v. Power Architects Corp.*, No. H052610 (Cal. Ct. App., 6th App. Dist.) (companion), judgment entered Feb. 17, 2026; *Gilberg v. Power Architects Corp.*, No. S295751 (Cal.), review denied Apr. 1, 2026; *Gilberg v. Power Architects Corp.*, No. 20CV368701 (Super. Ct. Santa Clara Cnty.), judgment confirming the arbitration award entered July 22, 2024; *In re Kesel*, No. 10-41653 (Bankr. N.D. Cal.); *United States v. All Discount Laboratory Supply & Kesel*, No. CR-00-40242 CW (N.D. Cal.); and *Power Architects Corp. v. Gilberg*, No. 2024-020109-CA-01 (Fla. Cir. Ct., Miami-Dade Cnty.).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

INDEX TO THE APPENDIX

The appendix is assembled in the order Rule 14.1(i) requires — the decision under review first, then the companion and earlier decisions, the rehearing and review orders, the verbatim constitutional and statutory text, and last only those record excerpts essential to show the federal question was raised and decided. It is deliberately lean: the appendix proves jurisdiction, preservation, and what the panel decided — not the underlying facts, which are not reviewable here.

Appendix A — Opinion of the Court of Appeal of California, Sixth Appellate District, No. H052611 (*Gilberg v. Power Architects Corp.*), filed Feb. 17, 2026 (unpublished) — the judgment under review. [Rule 14.1(i)(i).] Pet. App. A.

Appendix B — Opinion of the Court of Appeal of California, Sixth Appellate District, No. H052610 (*Kolchinsky v. Power Architects Corp.*), filed Feb. 17, 2026 (companion case), including Section F ("Kesel's Shareholder Status") — the "AAA did not decide" admission. [Rule 14.1(i)(ii).] Pet. App. B.

Appendix C — Order of the Court of Appeal denying rehearing, No. H052611, dated Mar. 9, 2026. [Rule 14.1(i)(iii).] Pet. App. C.

Appendix D — Order of the Supreme Court of California denying review, No. S295751, dated April 1, 2026 — the order from which the 90-day period runs. [Rule 14.1(i)(ii).] Pet. App. D.

Appendix E — Order of the Superior Court of Santa Clara County confirming the arbitration award and denying vacatur, No. 20CV368701 (Hon. Amber E. Rosen), entered July 22, 2024. [Rule 14.1(i)(ii).] Pet. App. E.

Appendix F — Constitutional and statutory provisions involved, set out verbatim: U.S. Const. art. VI, cl. 2, and amend. XIV, § 1; 11 U.S.C. §§ 349(b)(3), 541, 542, 554(d); 28 U.S.C. §§ 1257, 1334(e)(1); 21 U.S.C. § 853(a), (c), (p); 18 U.S.C. §§ 152, 1956, 3284. [Rule 14.1(i)(v).] Pet. App. F.

Appendix G — Essential record excerpts [Rule 14.1(i)(vi)] — limited to the following:

G-1 Excerpts of the AAA Award: pp. 1, 40—46, 75—76, 87, 94, 116 — the cover page and the panel's signature page, together with the § 541 estate-inclusion finding, the § 349(b)(3) revesting holding, the "declines to find a forfeiture under § 554(d)" ruling, the criminal-forfeiture ruling that "[o]n its face, the Final Order does not include any PA shares," and the repeated "legitimate shareholder" declarations — proving the panel made the federal determinations. Pet. App. G-1.

G-2 Kesel's Chapter 11 Schedule B, signed under penalty of perjury Jan. 16, 2010, *In re Kesel*, No. 10-41653 (Bankr. N.D. Cal.) — the omission of the 34.62% PA interest. Pet. App. G-2.

G-3 Order dismissing the Chapter 11 case, dated Dec. 19, 2011 — dismissal, not discharge. Pet. App. G-3.

G-4 Final Order of Forfeiture, *United States v. All Discount Laboratory Supply and Mark Kesel*, No. CR-00-40242 CW (N.D. Cal.) — the provision retaining jurisdiction "for the purpose of enforcing this Order." Pet. App. G-4.

G-5 Excerpts of Petitioner's Petition for Review (No. S295751), limited to the pages showing the federal questions were presented to the Supreme Court of California: (a) the cover/caption page [p. 1]; (b) Issues Presented for Review [pp. 8—14]; (c) Argument I (award void under *Kalb v. Feuerstein*), II (Supremacy Clause), III (*Steel Co.*), IV (28 U.S.C. § 1334(e)(1) exclusive jurisdiction cannot be conferred by an arbitration clause), and V (the panel's rewriting of the Wilken § 853(p) orders as a jurisdictional defect) [pp. 20—34]; and (d) the signature page [p. 57]. Offered to satisfy § 1257 preservation. Pet. App. G-5.

G-6 (Optional) Excerpt of the Court of Appeal oral-argument transcript, Jan. 6, 2026 — the exchange on whether Kesel may vote shares he illegally holds. Pet. App. G-6.

G-7 Plea Agreement of Mark Alexander Kesel, *United States v. All Discount Laboratory Supply and Mark Kesel*, No. CR-00-40242 CW (N.D. Cal.) (Hon. Claudia Wilken), signed Dec. 8, 2003 — admitting that "[b]etween 1998 and 2000 (inclusive)" ADLS's gross sales were forfeitable proceeds under 21 U.S.C. § 853 — establishing the criminal-period overlap with Kesel's PA investment. Pet. App. G-7.

G-8 Preliminary Order of Forfeiture as to Mark Alexander Kesel, *United States v. Kesel*, No. CR-00-40242 CW (N.D. Cal.) (Hon. Claudia Wilken) — the § 853(p) substitute-asset provision reaching property "transferred or sold to, or deposited with, a third party," and the Fed. R. Crim. P. 32.2(c)(2) provision under which the Preliminary Order became the Final Order. Pet. App. G-8.

G-9 Excerpts of Petitioner's Motion to Determine Jurisdiction (No. H052611): (a) the cover/caption page, the Notice of Constitutional Jurisdictional Challenge, and Section I, Summary of Argument [pp. 1—13]; (b) Reason #2, federal exclusive jurisdiction over bankruptcy-estate property under 11 U.S.C. §§ 541, 554(d) and 28 U.S.C. § 1334(e)(1) [pp.

34—47]; (c) the Supremacy Clause portion of Reason #3, Section A [p. 48]; and (d) the signature page [p. 105]. Offered to satisfy § 1257 preservation. Pet. App. G-9.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Larry Gilberg respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeal of the State of California, Sixth Appellate District.

OPINIONS BELOW

The opinion of the Court of Appeal (No. H052611, related to No. H052610) was filed February 17, 2026, and is unpublished. It is reproduced at Pet. App. A. Rehearing was denied March 9, 2026 (Pet. App. C). The order of the Superior Court of Santa Clara County confirming the arbitration award was entered July 22, 2024 (Hon. Amber E. Rosen) (Pet. App. E).

JURISDICTION

The California Supreme Court — the state court of last resort — denied review on April 1, 2026 in No. S295751. (Pet. App. D.) This petition is filed within 90 days of that order, as required by 28 U.S.C. § 1257(a) and this Court's Rule 13.1, and is therefore timely. This Court has jurisdiction under 28 U.S.C. § 1257(a). The federal questions presented were raised in and necessarily passed upon by the courts below, including in Petitioner's Motion to Determine Jurisdiction and Petition for Review and in Section F of the Court of Appeal's companion opinion (Pet. App. B).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2 (Supremacy Clause), and U.S. Const. amend. XIV, § 1 (Due Process), are reproduced at Pet. App. F.

The following statutes are reproduced at Pet. App. F: 11 U.S.C. §§ 541, 349(b)(3), 554(d), and 542; 28 U.S.C. §§ 1334(e)(1) and 1257; 21 U.S.C. § 853; and 18 U.S.C. §§ 152, 1956, and 3284.

STATEMENT OF THE CASE

A. The Shareholder Agreement and the Arbitration California Compelled.

Petitioner built Power Architects Corporation over more than two decades. The parties' rights are governed by an August 21, 1998 Shareholders' Agreement. Its arbitration clause reaches only disputes "as to [the parties'] rights under any provisions of this agreement," and the Agreement is to be "interpreted in accordance with California Law." The Agreement contains no reference to the Bankruptcy Code, to bankruptcy-estate property, or to any federal forfeiture or criminal statute, and no provision authorizing arbitrators to determine the ownership, administration, abandonment, revesting, or forfeiture of property of a federal bankruptcy estate. (Pet. App. A; G-1.)

On January 12, 2021, the Superior Court (Hon. Maureen A. Folan) compelled Petitioner into arbitration under that clause. (Pet. App. A, p. 8.) The arbitration thus proceeded only because state judicial power required it.

B. Kesel's Concealment of the PA Shares in His Federal Bankruptcy.

On January 16, 2010, Mark Kesel commenced Chapter 11, No. 10-41653 (Bankr. N.D. Cal.), and signed under penalty of perjury a Schedule B that listed, in its stock section, only "Stock account — Ameritrade $5,235.00." His 34.62% interest in PA — later valued in the millions — appeared nowhere. The case was dismissed on December 19, 2011, on the debtor's own motion, and closed on December 23, 2011. No trustee was appointed; Schedule B was never amended; and the docket reflects no abandonment under § 554. The PA shares were thus never scheduled, never abandoned, and never administered. (Pet. App. G-2; G-3.)

C. Kesel's Federal Criminal Plea Covering the Period of His PA Investment.

On December 8, 2003, Kesel personally signed, under penalty of perjury, the plea agreement in *United States v. All Discount Laboratory Supply and Mark Kesel*, No. CR-00-40242 CW (N.D. Cal.) (Hon. Claudia Wilken). The plea admitted that, "[b]etween 1998 and 2000 (inclusive)," ADLS — through Kesel as managing partner — sold chemicals to customers it "knew or had reasonable cause to believe" would use them to manufacture controlled substances. That window covers the August—September 1998 period in which Kesel made his

PA investment and the February 2000 ADLS-to-PA transfer. Judge Wilken's forfeiture orders vested title to forfeitable property in the United States and provided that "the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order." (Pet. App. G-7; G-4.)

D. ADLS Criminal Proceeds Flowed Directly Into PA Shares, and § 853(c) Vested Title in the United States on Commission of the Act.

ADLS pleaded guilty to conspiracy to launder monetary instruments under 18 U.S.C. § 1956(h), and its gross sales were adjudged forfeitable criminal proceeds under 21 U.S.C. § 853. During the admitted 1998—2000 criminal period, ADLS funds passed directly into PA shares. A February 28, 2000 promissory note obligated PA to ADLS for $25,000, expressly "secured by 4,167 shares of stock" of PA, with an additional 4,167 shares to issue if the note went unpaid by June 30, 2000; that same day, ADLS wired $25,000 from its account into PA's Citibank account. The Award itself confirms the ADLS origin of the converted shares. (Pet. App. G-7; G-1, p. 40.)

Under 21 U.S.C. § 853(c), "all right, title, and interest" in property derived from criminal proceeds "vests in the United States upon the commission of the act giving rise to forfeiture" — the relation-back doctrine. Judge Wilken's forfeiture orders vested forfeitable property in the United States and "retain[ed] jurisdiction — for the purpose of enforcing th[e] Order," and the Preliminary Order's substitute-asset clause under § 853(p) reaches property "transferred or sold to, or deposited with, a third party." Whether the PA shares funded by ADLS proceeds are forfeitable property whose title vested in the United States is, accordingly, a federal question reserved to Judge Wilken's retained jurisdiction and the United States Attorney — not one a contractual arbitrator could resolve. (Pet. App. G-8; G-4.)

The stakes of that reserved question have only grown. By PA's own 2022 appraisal — valuing the company at $12,896,000 — Kesel's criminal-period PA capital — the $100,000 OSM investment of August 1998 and the $25,000 ADLS-to-PA wire of February 2000 — had appreciated more than 35-fold, to approximately $4.46 million (34.62% of that appraised fair market value), and had generated approximately $1 million in documented dividends between 2010 and 2022, with distributions continuing. Under 21 U.S.C. § 853(a)(1), criminal proceeds and property derived from them — including principal, appreciation, and income — are subject to forfeiture. Whether the PA shares and their fruits are such proceeds is, once more, a determination reserved to Judge Wilken's retained jurisdiction and the United States Attorney.

E. The Award's Federal Determinations.

The panel did not resolve the Kesel-share question by interpreting the Agreement. It applied federal law. It found, on Ninth Circuit authority, that, "[a]lthough Kesel did not list his PA shares in his Chapter 11 case, those shares were part of the bankruptcy estate" — citing *Samson v. W. Capital Partners, LLC (In re Blixseth)*, 684 F.3d 865, 871 (9th Cir. 2012), that § 541 is not "limited — to property scheduled by a debtor." It then held that those shares "reverted back in ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3)," reasoning that § 349(b)(3) "makes no distinction" between scheduled and unscheduled assets and that "Congress intended that a dismissal would undo the bankruptcy case," citing *Crawford v. Franklin Credit Management*, 758 F.3d 473 (2d Cir. 2014). It "declined to find a forfeiture under § 554(d)." It separately reached the federal criminal forfeiture question, observing that "[o]n its face, the Final Order does not include any PA shares," and declining to treat the shares as forfeited under 21 U.S.C. § 853. And it repeatedly declared Kesel a "legitimate shareholder" entitled to own, vote, and collect dividends on the shares. Nowhere did the Award confine these conclusions to "the Agreement only" or reserve the estate-property or forfeitability questions to the federal courts. (Pet. App. G-1.)

The Panel made the determination in its own words, expressly addressing — and rejecting — the legal significance of the nondisclosure:

> Kesel's omission of his PA shares from his Chapter 11 Schedule B does not change the result. Bankruptcy Code Section 541 defines "property of the estate" as "all of a debtor's legal or equitable interests in property, wherever located, as of the commencement of the case." 11 U.S.C. § 541(a). . . . Therefore, although Kesel did not list his PA shares in his Chapter 11 case, those shares were part of

> the bankruptcy estate and reverted back in ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3) of the Bankruptcy Code.

That is federal bankruptcy law applied to the facts of Kesel's case — a § 541 estate-inclusion ruling on unscheduled property and a § 349(b)(3) revesting holding — not interpretation of any provision of the 1998 Agreement. (Pet. App. G-1, p. 44.)

F. Confirmation, Affirmance, and the Unresolved Contradiction.

On July 22, 2024, the Superior Court confirmed the Award. Addressing the challenge to Kesel's shareholder status, the court ruled:

> Gilberg failed to carry his burden to establish forfeiture by Kesel of his PA shares either pursuant to the bankruptcy or in connection with his criminal case. Ex. H, pp. 42–46. Because the issue of Kesel's alleged bankruptcy fraud was fully considered by the Panel, but denied, . . . the decision does not contravene public policy.

(Pet. App. E, p. 7.) The confirming court did not independently reach the § 349(b)(3)-versus-§ 554(d) mechanism; that revesting holding was the panel's own. (Pet. App. G-1, p. 44.) The confirming court instead deferred to the panel's treatment of the bankruptcy-and-forfeiture questions as "fully considered — but denied," and confirmed the Award on that basis. (Pet. App. E, p. 7.) It thus treated those federal questions as considered and decided on their merits — the precise determinations the Court of Appeal later held the panel "did not decide." (Pet. App. B, § F.)

The resulting money judgment is approximately $5.3 million, and the Award reduced Petitioner's Power Architects ownership. The claims that produced that Award were brought by Power Architects, and the damages ran to Power Architects — not to Kesel or Mednik individually — prosecuted on the authority of shareholders that included Kesel, voting the very shares whose federal estate status remains unresolved. The opinion under review recited that the August Agreement provided that "major decisions should be decided by majority vote." (Pet. App. A, p. 3.) Kesel's participation as a voting shareholder was thus not incidental to the corporate actions behind the Award; those actions were taken on the strength of the very shares he omitted from his sworn schedules. The decision to prosecute claims against a fellow shareholder — the very claims that yielded the Award — was itself a major corporate action, undertaken on the authority of shareholders voting those shares. Whether those shares revested in Kesel under § 349(b)(3) or remain property of the bankruptcy estate under § 554(d) is therefore not academic: it determines whether the corporate authority behind the Award, and the Award's redistribution of ownership in Power Architects' favor, rested on property of a federal bankruptcy estate — the precise question § 1334(e)(1) commits to the federal courts.

The Court of Appeal affirmed. The companion opinion's Section F (Pet. App. B) located the panel's authority in the Agreement, yet described what the panel did in terms that cannot be reconciled:

> AAA's analysis of the impact of the federal proceedings on Kesel's status as a shareholder was within the scope of its power as the arbiter of his rights under the August Agreement. AAA did not decide in the first instance whether Kesel's shares should be forfeited to the federal government, whether Kesel's shares should be included in a bankruptcy estate, or whether Kesel could or should be prosecuted for the fraud that Kolchinsky alleges. But AAA was assessing whether Kesel's shares had in fact been forfeited, not whether Kesel had committed uncharged federal offenses or whether federal prosecutors should have taken Kesel's shares from him. Kolchinsky's remaining arguments boil down to his assertion that AAA reached the wrong result—it should have concluded that Kesel had forfeited his shares in the federal criminal proceedings or the bankruptcy. This is a quintessential determination of a mixed question of fact and law, which we may not review for error. (See Moncharsh, supra, 3 Cal.4th at p. 11.)

Those two holdings cannot stand together. A tribunal cannot at once "not decide" whether shares belong to a bankruptcy estate and decide that question so conclusively — as a "mixed question of fact and law" — that no court may review the answer. The confirming court found the panel decided the federal questions; the affirming court said it did not. Either way, a federal estate-property determination was made, and then placed beyond review, by a body with no power to make it — a contradiction neither court resolved, and which no federal court has ever resolved.

The precise contradiction may be stated in a single line. The courts below permitted a private panel to make the § 541, § 349(b)(3), and § 554(d) determination that fixes whether the shares are property of the estate, then declared that determination an unreviewable "mixed question of fact and law" — leaving Kesel with state-confirmed title to property whose federal estate status was never decided by any court possessing jurisdiction to decide it.

The Panel's ruling was federal on its face. Presented with the argument that Kesel "ceased to be a voting PA Shareholder under 11 U.S.C. § 554(d)," the Panel weighed *Kunica*, *Kilpatrick*, and *Crawford* and held that it "declines to find a forfeiture under § 554(d)," while "deem[ing] it unnecessary to resolve the issue of Kesel's intent." (Pet. App. G-1, pp. 43 n.26, 45.) That is a determination of federal bankruptcy law — drawn from the Bankruptcy Code and federal precedent, not from any term of the August Agreement — and, the intent question having been expressly left open, one of law rather than a "mixed question of fact." The confirming court treated it as decided (Pet. App. E, p. 2); the Court of Appeal said the Panel "did not decide" it.

The court below could not have it both ways. Estate inclusion under § 541 was automatic and self-inflicted: by voluntarily filing his own Chapter 11 petition, Kesel made the shares estate property at commencement by force of the statute — no court or adversary imposed it — and the Panel's Award acknowledged exactly that, finding that, per 11 U.S.C. § 541(a), "although Kesel did not list his PA shares in his Chapter 11 case, those shares were part of the bankruptcy estate." (Pet. App. G-1, p. 44.) To say the Panel "did not decide" that question, the court below first had to read that very finding and judge what it was — an act of review. Having reviewed it, the court then declined to review it for error, invoking the rule that judicial review of an arbitrator's award is "narrow and deferential." But that deference is reserved for an arbitrator's "scope of [its] contractual authority to fashion remedies" (Pet. App. A, p. 11) — questions arising under the August Agreement. By the court's own cited standard, an arbitrator may decide only "whether the parties' dispute falls within the scope of that agreement." (Pet. App. A, p. 8, quoting *Ahern v. Asset Mgmt. Consultants, Inc.*, 74 Cal.App.5th 675, 687 (2022).) The § 554(d)-versus-§ 349(b)(3) question — which federal provision governs property a debtor concealed from a bankruptcy estate — appears nowhere in the August Agreement. It arises under the Bankruptcy Code, and 28 U.S.C. § 1334(e)(1) commits it to the federal courts. The court below thus applied a contract-deference standard, by its own definition limited to disputes within the Agreement, to insulate from review a federal question the Agreement never reached and the Panel had no power to decide.

G. Ongoing, Irreversible Enforcement Against a Non-Party.

Respondent has obtained a final judgment of garnishment in Florida, *Power Architects Corp. v. Gilberg*, No. 2024-020109-CA-01 (Fla. Cir. Ct., Miami-Dade Cnty.), and the turnover of funds held jointly with Anna Gilberg, who was never a party to the arbitration and has since been impleaded. The judgment enforced rests in part on Kesel's shares the Award itself found had entered the bankruptcy estate under § 541. Funds collected before this Court acts are, as a practical matter, unrecoverable.

REASONS FOR GRANTING THE PETITION

This case presents a recurring structural question of federal law that no court has resolved and that the decision below leaves no forum to resolve. Through a private arbitration its own courts compelled, California gave a state-enforced money judgment to a debtor's claim of clean title to property that the deciding tribunal found had entered a federal bankruptcy estate — property whose status and disposition Congress committed exclusively to the federal courts. The decision implicates the Supremacy Clause, the operation of 11 U.S.C. §§ 554(d) and 349(b)(3), the exclusive jurisdiction conferred by 28 U.S.C. § 1334(e)(1), and a federal criminal forfeiture order, entered pursuant to 21 U.S.C. § 853 by the district court (Wilken, J.), that the issuing court expressly kept open under its retained jurisdiction. (Pet. App. G-4; G-8.) The defect is structural: by design, no tribunal in the chain reaches the federal violation, so the misallocation of authority stands unless this Court corrects it. And it is replicable — left undisturbed, the decision marks a path by which concealed, federally encumbered estate property is converted into clean, state-enforced title. Certiorari is warranted to restore to the federal courts the authority the Supremacy Clause and § 1334(e)(1) commit to them.

The conflict is not only structural but systemic, and its importance extends well beyond these parties. Congress made the concealment of estate assets a federal crime and provided that property a debtor never schedules remains within the estate's reach; the federal scheme is designed so that concealment yields no benefit. The adjudication below inverts that design. Applying only a private contract, it declared concealed shares lawfully held and fully vested — with every past and future dividend and voting right they carry — and a State enforced that result as a money judgment. If a private tribunal may decide the federal status of concealed estate property, and a State may enforce the result beyond the reach of any federal court, then the federal rules governing concealment can be displaced at will: any debtor may route the question to private arbitration and obtain a state-enforced judgment that no federal court ever reviewed. The question whether the Supremacy Clause tolerates that result is one of substantial and recurring public importance. What the decision rewards is not the creation of any value but the transfer of federally-protected property beyond the estate's reach — precisely the result § 554(d) and the concealment statutes were enacted to prevent.

I. The Decision Below Permits a State to Lend Its Enforcement Power to a Private Adjudication of Exclusively Federal Property Questions, in Conflict With the Supremacy Clause.

Congress placed the property of a bankruptcy estate, and the consequences of its concealment, in the federal courts. Property of the estate is defined by 11 U.S.C. § 541. Property not scheduled, abandoned, or administered "remains property of the estate" under 11 U.S.C. § 554(d). And 28 U.S.C. § 1334(e)(1) vests the district courts with exclusive jurisdiction over "all of the property" of the estate. That control is not incidental to the bankruptcy power; it defines it. Bankruptcy jurisdiction is "principally *in rem*," *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 369 (2006), and a "[c]ritical featur[e] of every bankruptcy proceeding" is "the exercise of exclusive jurisdiction over all of the debtor's property," *id.* at 363. Determining whether concealed shares belong to that estate is an exercise of precisely that control — a question the federal forum holds over the *res*, not one a contractual arbitrator may resolve. Acts taken with respect to estate property by a tribunal lacking that jurisdiction are not merely erroneous; they are void. *Kalb v.*

Feuerstein, 308 U.S. 433 (1940). A tribunal that "pronounce[s] upon" a matter "when it has no jurisdiction to do so" acts ultra vires. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101—02 (1998).

The panel's authority arose solely from a private contract. Arbitration "is a matter of consent, not coercion," and "a party may not be compelled" to arbitrate — nor may a non-party's interests be bound — absent agreement. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010). Neither the bankruptcy estate, nor a trustee, nor the United States ever agreed to arbitrate the status of Kesel's concealed shares. Yet the panel determined that those shares entered the estate under § 541, revested under § 349(b)(3), and were not forfeited under § 554(d) — federal determinations the Agreement nowhere authorized and that no consenting party could have submitted.

The opinion below confirms the point from its own premises. The Court of Appeal located the panel's authority entirely in the Agreement's clause reaching disputes "as to their rights under any provisions of this agreement." That Agreement is silent on every federal provision that governs the concealed shares — §§ 349(b)(3), 541, and 554(d), and the forfeiture statute. A dispute over which federal statute governs estate property is therefore not a dispute "under any provision of this agreement"; it lies outside the submission. That is why the court below acknowledged the panel "did not decide — whether Kesel's shares should be included in a bankruptcy estate." The federal questions were thus neither submitted by consent nor submittable as a matter of jurisdiction — yet the Award resolved them, and the State enforced the resolution. And because § 1334(e)(1) makes that jurisdiction exclusive, these questions could not have been submitted to a private arbitrator even had the Agreement purported to reach them.

The panel's overreach was not confined to estate-property status. It also pronounced on federal criminal forfeiture, observing that the Final Order did not on its face list the PA shares and declining to treat them as forfeited — even though 21 U.S.C. § 853(c) vests title to proceeds in the United States "upon the commission of the act," ADLS's admitted criminal funds traced directly into the shares, and Judge Wilken expressly retained jurisdiction to enforce the forfeiture orders.

The panel did more than decline a forfeiture theory: it construed the reach of Judge Wilken's order itself, finding that the Final Order "did not address assets that had not been disclosed or might be discovered after the fact" (Pet. App. G-1, p. 42), and that it "requires Kesel to forfeit $1,150,000 and his interest in certain glassware and lab apparatus identified in an Attachment A but does not state anything about shares of Power Architects or any company" (Pet. App. G-1, p. 41). Yet that order forfeited property "pursuant to Title 21, United States Code, 853" without limitation to any subsection, and the Preliminary Order — which became final under Federal Rule of Criminal Procedure 32.2(c)(2) — expressly reaches, under § 853(p), property "transferred or sold to, or deposited with, a third party." Construing the scope of a federal forfeiture order, and deciding whether its substitute-asset clause reaches property the defendant is alleged to have concealed, is the office of the issuing court under the jurisdiction it retained — not of a contractual arbitrator.

The panel reached still further, into a scienter question a federal court had already resolved. Kesel personally pleaded guilty as a required component of a package plea agreement (Pet. App. G-7, p. 8), accepted by Judge Wilken, admitting that, "[b]etween 1998 and 2000 (inclusive)," ADLS, through its management and employees, sold chemicals to customers it "knew or had reasonable cause to believe would use them to manufacture controlled substances." (Pet. App. G-7, p. 4.) The panel nonetheless found the opposite, declaring: "Respondents have failed to produce evidence that Kesel knew in July 1998 that he was engaging in the illegal sale of controlled substances when he invested in PA . . . The element of known concealment therefore was not proven." (Pet. App. G-1, pp. 75–76.) That a contractual arbitrator, on a civil record, pronounced "not proven" a federal scienter element the defendant had already admitted under oath — and that a federal court had accepted in entering judgment and a § 853 forfeiture order — is the precise overreach at issue. Whether ADLS proceeds for that period are forfeitable, and the federal scienter that question turns on, is committed to the court that accepted the plea and retained jurisdiction — not to a contractual arbitrator with no power to revisit a federal conviction.

Whether those shares are forfeitable property of the United States is a question Congress committed to the federal court and the United States Attorney, not to a contractual arbitrator. The Award thus resolved two exclusively federal questions — the estate-property question and the forfeitability question — that no consenting party submitted and that no non-federal tribunal had power to decide.

The decision below then gave those determinations binding, coercive effect. California compelled the arbitration, confirmed the Award as a judgment, and applied a standard of review it held could not reach the panel's federal reasoning. The State thereby lent its enforcement power to an adjudication that the Supremacy Clause forbids any non-federal tribunal to make. This is not a claim that the arbitrators became state actors, and it does not depend on extending *Shelley v. Kraemer*, 334 U.S. 1 (1948). The holding sought is narrower and rests on preemption: a State may not give enforceable effect to a determination of estate-property status that federal law placed beyond the deciding tribunal's power.

The result is a jurisdictional gap with no exit. The arbitrators claim immunity as private actors. The State claims it "only" confirmed a private award. And the litigant is told the merits are an unreviewable "mixed question of fact and law." Asked directly at oral argument whether "Kesel [can] legally vote shares he illegally holds," the court below replied that it was "not convinced that that's a question for this court," citing "the statutory limits on what a court can review of an arbitration proceeding." (Pet. App. G-6, p. 8.) The federal question was thus squarely posed and deliberately left unanswered.

When Petitioner pressed the point — that "the state statute cannot override federal exclusion of jurisdiction . . . under the Supremacy Clause" — the court's response confirmed the misapprehension at the heart of the decision below: it reasoned that the Supremacy Clause was not offended because Kesel "could nonetheless be held into federal court for prosecution of . . . bankruptcy fraud." (Pet. App. G-6, p. 8.) But the availability of a separate criminal prosecution does not cure the civil defect. The question § 1334(e)(1) commits to the federal courts is whether the concealed shares are property of the estate — a civil determination of status, not a matter of whether Kesel may be criminally charged. The court below answered a question Petitioner did not ask and left unanswered the one he did.

If that structure stands, any debtor wishing to launder concealed estate property — or property subject to an open federal forfeiture order — into clean, state-enforced title need only route the question through a private arbitrator — the one forum that faces neither the exclusive-jurisdiction bar nor meaningful review — and then invoke the resulting state judgment as a shield. The Fourteenth Amendment and the Supremacy Clause tolerate final, unreviewed arbitration of disputes the parties agreed to submit; they do not tolerate a structure in which a private tribunal resolves a question the parties could not submit and that Congress committed to the federal courts, while the State enforces the result and every actor — arbitrator, State, and reviewing court — disclaims answerability for the federal violation.

II. Whether § 349(b)(3) or § 554(d) Governs Concealed, Unscheduled Assets Is an Important, Unresolved Federal Question.

The panel resolved this question by holding that Kesel's unscheduled shares revested in him on dismissal under § 349(b)(3), relying on *Crawford v. Franklin Credit Management Corp.*, 758 F.3d 473 (2d Cir. 2014), which read § 349 to "make[] no distinction" between scheduled and unscheduled assets and stated that § 554 "has no applicability after a dismissal." *Crawford* is the leading decision on the point, but it does not foreclose the question. Section 554(d) provides in terms that property "not abandoned — and — not administered in the case remains property of the estate," and *Crawford* itself confined to closed cases the Second Circuit's separate rule that "undisclosed assets automatically remain property of the estate after the case is closed," *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008). Revesting under § 349(b)(3) presupposes property the estate actually held and could return; but the predicate for that return — disclosure to the bankruptcy court — never occurred, and no federal court exercising § 1334(e)(1) jurisdiction has ever decided whether these concealed shares left the estate. Whether § 349(b)(3)'s revesting on dismissal reaches property a debtor concealed and never scheduled — or whether § 554(d) keeps such property in the estate — is a substantial and unresolved question of federal bankruptcy law.

No federal court has sanctioned what happened here: a debtor omits an asset from his sworn Schedule B, never discloses it, and dismisses his case without discharge — and a state court then confirms his clean title to that very asset, with its voting rights and accumulated dividends, as a money judgment. Revesting doctrine assumes property that passed through the estate openly and could be returned; it has never been extended to property the debtor concealed and the bankruptcy court still has never seen. Whether it may be so extended is the open federal question this petition presents.

That the question is contested is the point. The status and disposition of estate property are committed to the federal courts by 28 U.S.C. § 1334(e)(1), and a disputed question of estate revesting is the paradigm of what belongs there rather than in a private contract arbitration. By resolving it at all — whether for revesting or against — the panel exercised a jurisdiction it did not possess, and the courts below then enforced the result.

The stakes are not abstract. If § 554(d) governs, each post-petition distribution on the concealed shares is a fresh receipt of estate property recoverable by a trustee through turnover under 11 U.S.C. § 542 upon reopening — here, distributions approximating $1 million between 2010 and 2022, and continuing. The choice is not retrospective only: under § 554(d) each future dividend is likewise estate property the trustee recovers, while the § 349(b)(3) revesting reading does the opposite — letting the distributions, and the concealment behind them, continue indefinitely, and handing the concealing debtor, on dismissal, clean title to the very property he omitted from his sworn schedules together with its accumulated fruits. Which provision controls thus determines whether concealment is undone or rewarded — a question this Court has not resolved.

III. The Federal Interest Cannot Be Vindicated After the Fact, So the Conflict Is Real and the Harm Irreversible.

The court below suggested there is no Supremacy Clause problem because Kesel "could nonetheless be held into federal court" later, and dismissal of the bankruptcy stands regardless. That reasoning assumes the federal interest survives intact for later vindication. It does not. The state judgment is, right now, converting the concealed estate property and its fruits — the votes Kesel cast on those shares to authorize the corporate suit that produced the judgment, the prevailing claim being Power Architects' own, pursued on authority traced to the concealed estate shares; the dividends already drawn; and the reduction of Petitioner's Power Architects ownership — into an irreversible recovery against Petitioner and a non-party spouse. By the time any later federal proceeding occurs, the property and its value will be gone, and a judgment built on them will have executed.

The federal interest here is not, in any event, a hypothetical future prosecution. It is already embodied in a final federal judgment. Judge Wilken's 2004 forfeiture orders vested title to forfeitable property in the United States and expressly "retain[ed] jurisdiction — for the purpose of enforcing th[e] Order." That order remains open and enforceable by its own terms, and § 853(c) fixes the United States' title as of the commission of the act. The Award's declaration of clean title in Kesel — and California's enforcement of it — does not coexist with a dormant federal interest awaiting some later case; it stands in conflict with a live federal order over which the district court retains jurisdiction. The conflict is therefore present, not contingent.

That the conflict is live, not spent, is underscored by federal law's own treatment of the concealment. Under 18 U.S.C. § 3284, "[t]he concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge." Kesel's case was dismissed, not discharged; by the statute's terms the concealment remains ongoing and no limitations period has begun. The court below was alerted to § 3284 at oral argument, yet affirmed an award under which Kesel continues to vote the concealed shares and collect dividends on them. A State may not lend its enforcement power to perpetuate distributions on property that federal law simultaneously keeps in the estate under § 554(d) and treats as the subject of an ongoing concealment; that conflict with the Supremacy Clause does not abate with time — it renews with every future distribution the state judgment protects.

That is the conflict obstacle preemption addresses: state law that "stands as an obstacle to the accomplishment" of Congress's purposes must yield. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); accord *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000). A state judgment enforcing a private adjudication of an exclusively federal question is such an obstacle, and the State's pro-arbitration policy cannot save it. As the court below framed the competing view, Petitioner's objection sounded in "policy" against a "state policy favoring arbitration." But the defect is not that the result is unfair; it is that no tribunal in the chain possessed jurisdiction to decide the federal property question, and no state policy can expand a tribunal's subject-matter jurisdiction or override the Supremacy Clause. "No man may take advantage of his own wrong," *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. 231, 232 (1959); a State may not, in the name of arbitral finality, enforce a private adjudication that hands a concealing debtor the benefit federal law was enacted to deny him.

IV. This Case Is an Ideal Vehicle.

The federal questions were pressed below and addressed in Section F of the companion opinion (Pet. App. B), satisfying § 1257. That presentation is confirmed from the opposite side by the disposition of Petitioner's jurisdiction motion: the court below declined to reach the federal estate-property and exclusive-jurisdiction questions as a jurisdictional matter, characterizing the motion as an "unauthorized supplemental brief" on the merits of whether the panel exceeded its powers, even as Section F held those merits to be a "mixed question of fact and law" it "may not review for error." (Pet. App. A, § B (Gilberg's Jurisdictional Motion); Pet.

App. B, § F.) Petitioner pressed the jurisdiction-first rule directly in his Motion to Determine Jurisdiction, arguing that under *Steel Co.*, 523 U.S. at 94–95, jurisdiction must be addressed before the merits, is "inflexible and without exception," and must be examined sua sponte, and that federal exclusive jurisdiction over bankruptcy-estate property under 28 U.S.C. § 1334(e)(1) is "quintessentially jurisdictional." (Pet. App. G-9.) The court below recited that very command — that "reviewing courts must be satisfied of their own jurisdiction before proceeding to the merits," citing *Steel Co.* and *Kabran v. Sharp Memorial Hospital*, 2 Cal.5th 330, 339 (2017) (Pet. App. A, pp. 6–7) — yet declined to apply it, reasoning that Petitioner "challenge[d] neither the trial court's jurisdiction — nor our jurisdiction," but only the panel's. (Id.) That distinction is itself the error. A state court that confirms and enforces an award exercises *its own* power, and *Steel Co.* forbids a court to lend that power to a tribunal's adjudication of a question the tribunal had no authority to decide — however the challenge is captioned. The panel's want of power over a § 1334(e)(1) question is therefore a limit on the court's own power to enforce; treating the panel's jurisdiction as beyond reach while enforcing its determination as final is the bootstrapping *Steel Co.* prohibits. Petitioner does not ask this Court to review that state-procedure classification; its significance is structural — the federal question was both presented and passed upon, satisfying § 1257, yet left reachable neither as a jurisdictional question nor as reviewable merits, the very gap this petition presents. The record is documentary and undisputed on the dispositive points: the Award's own finding that the shares entered the estate; Schedule B's omission of the shares; the dismissal without discharge; and the absence of any abandonment. The confirming court found the panel decided the federal questions, while the affirming court said it did not — a square contradiction that makes plain a binding federal determination was made by a body with no power to make it. And enforcement is proceeding now, on a fixed schedule, against a non-party, supplying both concreteness and urgency. The questions presented are cleanly framed for decision.

Petitioner has standing to raise this structural defect. He does not seek criminal penalties or ask this Court to adjudicate any party's culpability; he invokes the federal allocation of authority only to show that the California courts lacked power to validate what Congress committed exclusively to the federal courts. An individual harmed by a violation of the structural limits on governmental power may invoke those limits. *Bond v. United States*, 564 U.S. 211, 222 (2011) (recognizing that "the structural principles secured by the separation of powers protect the individual as well"); *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 487–91 (2010) (structural separation-of-powers protections serve to safeguard individual liberty, not merely to allocate power among the branches); see *INS v. Chadha*, 462 U.S. 919 (1983) (separation-of-powers limit vindicated at the instance of an individual). The civil estate-property questions under §§ 554(d), 349(b)(3), and 1334(e)(1) are for the federal courts on reopening, and any forfeiture question for the district court that retained jurisdiction; Petitioner asks this Court only to reverse or vacate the state judgment that enforced a determination no tribunal had power to make.

CONCLUSION

The decision below permits a State to enforce, as a money judgment, a private arbitral adjudication of the estate-property and forfeitability status of property that 28 U.S.C. § 1334(e)(1) commits to the exclusive jurisdiction of the federal courts — a question that, as the court below acknowledged in Section F of the companion opinion (Pet. App. B), no court possessing that jurisdiction has decided. The shares entered a federal bankruptcy estate under § 541 and, never scheduled, abandoned, or administered, remain estate property under § 554(d); whether they are also forfeitable proceeds is reserved to the district court that retained jurisdiction. The conflict with the Supremacy Clause is direct, and the question is recurring and important.

The petition for a writ of certiorari should be granted, and the judgment of the California Court of Appeal reversed or vacated.

Respectfully submitted,

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