No. _____

In the
Supreme Court of the United States

YINTAO YU,

Petitioner,

v.

SHUYI (SELENE) GAO, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

KIRK C. JENKINS
Counsel of Record
LAW OFFICES OF
KIRK C. JENKINS
191 BRIDGEPORT DRIVE
HALF MOON BAY, CA 94019
(312) 607-6409
kirkchristopherjenkins@gmail.com

Attorney for Petitioner

QUESTION PRESENTED

Is a civil appeal moot if the district court's decision may have collateral consequences in a separate legal proceeding?

PARTIES TO THE PROCEEDING

Yintao Yu is the petitioner. He was the plaintiff and counterdefendant in the district court. He was the appellant in the Ninth Circuit.

ByteDance Inc. and Shuyi (Selene) Gao are the respondents. They were the defendants in the district court, and ByteDance was also the counterclaimant. ByteDance and Gao were the appellees in the Ninth Circuit.

RELATED PROCEEDINGS

Yu v. Gao, et al., No. 25-297, United States Court of Appeals for the Ninth Circuit. Opinion entered April 30, 2026.

Yu v. ByteDance Inc., et al., No. 23-cv-04910-SI, United States District Court (N.D. Cal.). Order entered December 12, 2024.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING ii
RELATED PROCEEDINGS ii
TABLE OF AUTHORITIES v
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL PROVISION INVOLVED 2
INTRODUCTION 2
STATEMENT OF THE CASE 4
REASONS FOR GRANTING THE PETITION 8
I. The Circuit Courts Are Split Regarding Whether Collateral Consequences Avoid Mootness in Civil Cases 10
A. In six circuits, an appeal is not moot if the district court's decision may have collateral consequences in a separate legal proceeding; but these circuits disagree about the level of certainty required. 10
B. In three circuits, an appeal is moot if the district court's decision may have collateral consequences in a separate legal proceeding. 14
II. The Ninth Circuit's Decision Is Wrong. 15

TABLE OF CONTENTS
(continued)

Page

III. This Petition Is an Ideal Vehicle for Resolving the Circuit Split. 17

CONCLUSION 18

APPENDIX

APPENDIX A: Memorandum Disposition of the U.S. Court of Appeals for the Ninth Circuit (Apr. 30, 2026) 1a

APPENDIX B: Order of the District Court for the Northern District of California (Dec. 12, 2024) 4a

APPENDIX C: Order of the U.S. Court of Appeals for the Ninth Circuit (May 29, 2026) 22a

APPENDIX D: Arbitrator's Ruling on Motion to Dismiss the First Amended Demand (May 1, 2026) 23a

APPENDIX E: Arbitrator's Ruling on Motion to Dismiss Counterclaim (May 1, 2026) 34a

TABLE OF AUTHORITIES

Page

CASES

Acceleration Bay LLC v. 2K Sports, Inc.,
15 F.4th 1069 (Fed. Cir. 2021) 14, 15

Alwan v. Ashcroft,
388 F.3d 507 (5th Cir. 2004) 9

B & B Chem. Co. v. EPA,
806 F.2d 987 (11th Cir. 1986) 9, 12

Cal. Coastal Comm'n v. Granite Rock Co.,
480 U.S. 572 (1987) 9

Chafin v. Chafin,
568 U.S. 165 (2013) 2, 3

Charles v. Daley,
749 F.2d 452 (7th Cir. 1984) 12, 13

Citizens for Responsible Gov't State Pol. Action Comm. v. Davidson,
236 F.3d 1174 (10th Cir. 2000) 14

City of Colton v. Am. Promotional Events, Inc.-W.,
614 F.3d 998 (9th Cir. 2010) 12

ConnectU LLC v. Zuckerberg,
522 F.3d 82 (1st Cir. 2008) 10, 11, 13

Dekelaita v. United States,
108 F.4th 960 (7th Cir. 2024) 9

Donovan v. Fall River Foundry Co.,
712 F.2d 1103 (7th Cir. 1983) 12

FCC v. Fox Television Stations, Inc.,
567 U.S. 239 (2012) 8

Hain Celestial Grp., Inc. v. Palmquist,
607 U.S. 421 (2026) 15

Hartman v. Yost,
146 F.4th 463 (6th Cir. 2025) 9

Hyosung TNS Inc. v. Int'l Trade Comm'n,
926 F.3d 1353 (Fed. Cir. 2019) 15

In re Burrell,
415 F.3d 994 (9th Cir. 2005) 13

In re Fin. Oversight & Mgmt. Bd. for P.R.,
16 F.4th 954 (1st Cir. 2021) 11

In re Ruiz,
83 F.4th 68 (1st Cir. 2023) 11

Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara,
335 F.3d 357 (5th Cir. 2003) 11, 13

Koppers Indus., Inc. v. EPA,
902 F.2d 756 (9th Cir. 1990) 9

Mayorga v. Att'y Gen.,
757 F.3d 126 (3d Cir. 2014) 9

Nat'l Iranian Oil Co. v. Mapco Int'l, Inc.,
983 F.2d 485 (3d Cir. 1992) 11, 13

Nebraska v. Cent. Interstate Low-Level Radioactive Waste Compact Comm'n,
187 F.3d 982 (8th Cir. 1999) 14

Powell v. McCormack,
395 U.S. 486 (1969) 9

Royal Brush Mfg., Inc. v. United States,
75 F.4th 1250 (Fed. Cir. 2023) 15

Spencer v. Kemna,
523 U.S. 1 (1998) 2, 3, 8, 9, 17

St. Pierre v. United States,
319 U.S. 41 (1943) 8

United States v. Juvenile Male,
564 U.S. 932 (2011) 17

United Steel Paper & Forestry Rubber Mfg. Allied Indus. & Serv. Workers Int'l Union AFL-CIO-CLC v. Gov't of the Virgin Islands,
842 F.3d 201 (3d Cir. 2016) 11

CONSTITUTIONAL PROVISIONS

U.S. Const. art. III, § 2, cl. 1 ..... 2, 17

STATUTES

9 U.S.C. § 16 1

9 U.S.C. § 203 ..... 1, 4

9 U.S.C. § 205 ..... 1, 4

28 U.S.C. § 1254 1

28 U.S.C. § 1291 1

28 U.S.C. § 1331 1

PETITION FOR A WRIT OF CERTIORARI

Yintao Yu respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-3a) is not published in the *Federal Reporter* but is available at 2026 WL 1180470. The order of the district court (Pet. App. 4a-21a) is reported at 759 F. Supp. 3d 992.

JURISDICTION

The parties dispute whether the district court had jurisdiction under 28 U.S.C. § 1331 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §§ 203 and 205. They also dispute whether the Ninth Circuit had jurisdiction under 28 U.S.C. § 1291 and 9 U.S.C. § 16(a)(3). The Ninth Circuit did not reach these jurisdictional issues because it determined that the appeal was moot.

The judgment of the court of appeals was entered on April 30, 2026. A petition for rehearing was denied on May 29, 2026. Pet. App. 22a. On September 2, 2026, Justice Kagan extended the time to file a petition for a writ of certiorari to October 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Article III, section 2, clause 1 of the U.S. Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

INTRODUCTION

The question presented in this petition concerns the case-or-controversy requirement of Article III of the Constitution—specifically, application of the "collateral consequences" doctrine as a basis to avoid mootness in civil appeals.

Under the case-or-controversy requirement, parties must have a "personal stake in the outcome" of a lawsuit at each stage of litigation, in the trial and appellate courts. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citation omitted). An appeal remains live, and is not moot, if "the parties have a concrete interest, however small, in the outcome of the litigation." *Chafin v.*

Chafin, 568 U.S. 165, 172 (2013) (citation omitted). An appeal is rendered moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Id.* (citation omitted).

Even when a court cannot grant any relief that affects the pending appeal, the appeal is not moot when "collateral consequences" flow from the issues on appeal. *Spencer*, 523 U.S. at 7-8. This Court has most commonly applied this collateral-consequences doctrine to criminal convictions, concluding that an appeal is not moot even if the defendant has been released from custody while the appeal is pending. *See id.* at 7-12.

In the civil (non-habeas) context, the circuit courts are split on whether an appeal is moot if no effectual relief can be granted in the case but the district court's decision may have collateral consequences in another legal proceeding. And the circuit courts that apply the collateral-consequences doctrine are split on the level of certainty of the collateral consequences required to avoid mootness. Without this Court's direction, the lower courts will continue to reach inconsistent results on this fundamental jurisdictional issue.

This petition is an ideal vehicle for review because it presents the question in a purely legal form with no factual disputes.

STATEMENT OF THE CASE

Petitioner Yintao Yu is the former U.S. head of engineering for ByteDance, which owns the popular social media platform TikTok. After Yu blew the whistle on several data security violations and other legal problems, ByteDance fired him.

Yu filed this declaratory relief action in state court against ByteDance and ByteDance's head of Human Resources, Shuyi (Selene) Gao (collectively, "ByteDance"). Pet. App. 5a. Yu sought a determination that he had not signed an Employee Confidentiality Inventions and Assignment Agreement ("Agreement") containing an arbitration provision that ByteDance claimed he had signed and thus could not be compelled to arbitrate his claims against ByteDance pending in another state-court action. Pet. App. 5a-6a.[1]

ByteDance removed the declaratory relief action, alleging jurisdiction under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. 9 U.S.C. §§ 203, 205; Pet. App. 6a. ByteDance moved to compel arbitration pursuant to the Agreement and three other agreements, and filed a counterclaim seeking a declaration that Yu signed

---

[1] The docket for the state court action, *Yintao Yu v. ByteDance, Inc.*, No. CGC23606246 (Cal. Super. Ct.), may be found at https://tinyurl.com/mws3984d (last visited Oct. 21, 2026). That action alleges employment-related claims against ByteDance. ByteDance removed the action to federal court and then moved to compel arbitration. Yu moved to remand the action to state court, and the district court dismissed the federal claim and remanded the action. Pet. App. 5a. Before filing that action, Yu had filed a pro se action that was dismissed for lack of prosecution. Pet. App. 5a.

the four agreements. Pet. App. 6a. The district court denied ByteDance's motion to compel arbitration, concluding that there were factual questions as to whether Yu signed any of the agreements. Pet. App. 6a-7a.

Later, ByteDance moved for terminating sanctions based on Yu's alleged litigation misconduct. Pet. App. 11a, 16a. ByteDance sought an order dismissing Yu's declaratory relief action, entering default judgment on ByteDance's counterclaims, declaring that Yu executed the four agreements, and compelling Yu to arbitration. Pet. App. 16a. The parties reached an agreement to proceed in arbitration, but the district court proceeded with an evidentiary hearing on the motion for terminating sanctions. Pet. App. 11a-14a. The district court then filed an order granting ByteDance's motion for terminating sanctions and granting default judgment on the counterclaims. Pet. App. 2a, 21a. The district court "declare[d] that Yu executed the four disputed agreements at issue," compelled Yu to arbitration under the Agreement, and stayed the action pending arbitration. Pet. App. 21a.

Yu appealed. He argued that the district court lacked subject matter jurisdiction under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and that the sanctions order must be vacated and the action remanded to state court. Pet. C.A. Br. 1-2, 19-39. Yu also argued that the district court's order was likely interlocutory and thus not appealable, but explained he'd taken the appeal in an abundance of caution to avoid potential forfeiture. *Id.* at 39-42; *see* 1/17/25 C.A. Order (directing parties to address appellate jurisdiction). ByteDance argued that there was subject matter jurisdiction and

appellate jurisdiction, and ByteDance did not raise any mootness concerns. Resp. C.A. Br. 13-44.

After briefing, the Ninth Circuit directed counsel to be prepared at oral argument "to discuss whether this appeal is moot because [petitioner] agreed to arbitrate his state-law claims and initiated arbitration." 4/9/26 C.A. Order.

At oral argument, Yu's counsel argued that the appeal was not moot because there are "collateral legal consequences extending from the court's order" because (1) ByteDance was attempting to use the sanctions order to make "arguments of issue preclusion" in the arbitration proceeding, and (2) "ByteDance is currently pursuing a malicious prosecution counterclaim against Mr. Yu," "arguing that the district court's order reflects a favorable" termination on the merits.[2]

In a memorandum disposition, the Ninth Circuit concluded that the appeal was moot because Yu had submitted his claims to arbitration and participated in arbitration. Pet. App. 2a. The court rejected Yu's argument about the potential collateral consequences of the district court's order. Pet. App. 2a-3a. The court dismissed the appeal, and declined to vacate the district court's sanctions order on the ground that Yu "cause[d] [the] appeal's mootness." Pet. App. 3a.

One day after the Ninth Circuit's decision, the arbitrator issued two rulings that expressly relied on the district court's sanctions order. Pet. App. 23a-33a,

---

[2] C.A. Oral Argument at 2:26-2:40, 4:59-5:04, 6:45-6:50, https://tinyurl.com/32pu9x6n; *see also id.* at 13:43-14:12, 40:48-41:30.

34a-43a. First, the arbitrator concluded that the order precluded Yu's breach of contract claim. Pet. App. 29a-31a. The arbitrator reasoned that (1) Yu's breach of contract claim was based on a supplemental agreement, which Yu contended did not require arbitration of his employment claims, and (2) by compelling arbitration, the district court implicitly found the supplemental agreement did not exist. Pet. App. 29a-31a & n.2.

Second, the arbitrator relied on the district court's sanctions order to deny Yu's motion to dismiss ByteDance's counterclaim for malicious prosecution. Pet. App. 41a-43a. The arbitrator determined that the order terminated Yu's declaratory relief action "on the merits." Pet. App. 41a-43a. The arbitrator reasoned that Yu's action sought a determination that he did not sign the Agreement and thus should not be compelled to arbitration, but the district court determined that Yu had in fact executed the Agreement. Pet. App. 42a-43a.

Yu filed a petition for panel rehearing in the Ninth Circuit arguing the appeal was not moot under the collateral-consequences doctrine, pointing to the clear collateral consequences of the district court's sanctions order in the arbitration proceeding. C.A. Doc. 70. He also sought judicial notice of the claims pending in arbitration and the arbitrator's rulings. C.A. Doc. 71. The Ninth Circuit granted the motion for judicial notice but denied rehearing. Pet. App. 22a.

REASONS FOR GRANTING THE PETITION

For nearly a century, this Court has applied the collateral-consequences doctrine as a basis to avoid mootness in the criminal context. *Spencer*, 523 U.S. at 8 (explaining that *St. Pierre v. United States*, 319 U.S. 41 (1943) (per curiam), was "one of the first cases to recognize collateral consequences of conviction as a basis for avoiding mootness").

Spencer explained that, in the early criminal cases, the Court concluded that an appeal was not moot if there were "concrete disadvantages or disabilities that had in fact occurred, that were imminently threatened, or that were imposed as a matter of law." 523 U.S. at 8. Over time, the Court dispensed with "this fastidious approach to collateral consequences" in the context of criminal convictions, and now presumes that a wrongful criminal conviction has collateral consequences. *Id.* at 9-12.

This presumption has not been extended beyond challenges to criminal convictions, however, so concrete consequences must be shown to avoid mootness. 523 U.S. at 14 (holding that the presumption of collateral consequences does not apply to parole revocation).

This Court has applied the collateral-consequences doctrine in a few civil, non-habeas cases, although without using the phrase "collateral consequences." *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 255 (2012) (concluding that appeal challenging FCC's indecency regulations was not moot even though the FCC had not imposed a sanction for indecent broadcasts and had stated it would not consider the indecent broadcasts in any context, in part

because the FCC "has the statutory authority to use its finding to increase any future penalties"); *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 577-78 (1987) (concluding that appeal was not moot despite expiration of mining company's plan of operation because the Coastal Commission may require reclamation efforts to prevent pollution of the mining that had occurred).[3]

The circuit courts are split on whether the collateral-consequences doctrine applies to a civil appeal if no effectual relief can be granted in the case but the district court's decision may have collateral consequences in a separate legal proceeding.[4] Also, even when the circuit courts apply the doctrine, they are split on the level of certainty of the collateral consequences required to avoid mootness.

The Ninth Circuit's decision below concluded that the appeal was moot despite ByteDance's arguments

---

[3] Two circuit courts have cited *Powell v. McCormack*, 395 U.S. 486 (1969), as a collateral-consequences case. *See Koppers Indus., Inc. v. EPA*, 902 F.2d 756, 758 (9th Cir. 1990); *B & B Chem. Co. v. EPA*, 806 F.2d 987, 990 (11th Cir. 1986). But *Powell* did not apply the doctrine; the appeal was not moot because there was a "remaining live issue[ ]." 395 U.S. at 497; *id.* at 496 ("Powell's claim for back salary remains viable[.]").

[4] In these cases, the courts generally do not cite *Spencer* or this Court's other collateral-consequences cases. They do cite *Spencer* in addressing the collateral-consequences doctrine in two other civil contexts: habeas (because *Spencer* is a habeas case) and immigration. *E.g.*, *Hartman v. Yost*, 146 F.4th 463, 472 (6th Cir. 2025) (habeas), *cert. denied*, 146 S. Ct. 2571 (2026); *Dekelaita v. United States*, 108 F.4th 960, 968 (7th Cir. 2024) (same); *Mayorga v. Att'y Gen.*, 757 F.3d 126, 131 (3d Cir. 2014) (immigration); *Alwan v. Ashcroft*, 388 F.3d 507, 511 (5th Cir. 2004) (same).

in arbitration that relied on the district court's sanctions order. Even after the arbitrator issued substantive rulings against Yu based on the sanctions order, the Ninth Circuit declined to reconsider its decision and denied rehearing. Several circuits would agree with the Ninth Circuit that the appeal was moot despite the collateral consequences in the arbitration. But other circuits would reach the opposite conclusion.

I. The Circuit Courts Are Split Regarding Whether Collateral Consequences Avoid Mootness in Civil Cases.

Six circuits hold that even if no effectual relief may be granted in an appeal, the appeal is not moot if the district court's decision may have collateral consequences in a separate legal proceeding. Three circuits disagree, holding that such appeals are moot. Even in the six circuits that generally agree a case is not moot if there are collateral consequences, they disagree about the level of certainty required to avoid mootness.

A. In six circuits, an appeal is not moot if the district court's decision may have collateral consequences in a separate legal proceeding; but these circuits disagree about the level of certainty required.

The First, Third, Fifth, Seventh, Ninth, and Eleventh Circuits have held that an appeal is not moot if the district court's decision may have collateral consequences in a separate legal proceeding, even if no effectual relief may be granted in the pending case. *ConnectU LLC v. Zuckerberg*, 522 F.3d 82, 87-89 (1st

Cir. 2008) (holding that appeal was not moot after the appellant's successor-in-interest filed a new action asserting the same claims against the same defendants, because the dismissal of the first action "has a concrete (and potentially devastating) impact on the second action. . . . [A] reversal of the dismissal order would mitigate the force of any limitations defenses relied on by the defendants in [the second action]")[5]; *Nat'l Iranian Oil Co. v. Mapco Int'l, Inc.*, 983 F.2d 485, 490 (3d Cir. 1992) (concluding that appeal was not moot because, among other reasons, "[t]he district court's holding that the [longer] statute of limitations does not apply would have a collateral estoppel effect in [other] actions and could result in their dismissal"); *United Steel Paper & Forestry Rubber Mfg. Allied Indus. & Serv. Workers Int'l Union AFL-CIO-CLC v. Gov't of the Virgin Islands*, 842 F.3d 201, 209-10 (3d Cir. 2016) ("a decision here is necessary to provide a preclusive effect in the binding arbitration" pending between the parties); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 366 (5th Cir. 2003) (holding appeal was not moot in part because plaintiff "is still potentially subject to both the fines and the penalties imposed by the Indonesian court, and therefore maintains an interest in affirming the indemnification aspects of the

---

[5] In a case that postdates *ConnectU*, the First Circuit noted that the collateral-consequences doctrine "has been applied traditionally in criminal cases" and concluded that the exception did not apply "[e]ven if we assume that the exception may apply outside of the criminal conviction context." *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 16 F.4th 954, 962-63 (1st Cir. 2021). As the First Circuit noted in a subsequent case, however, *ConnectU* had already concluded that the doctrine applies in the civil context. *In re Ruiz*, 83 F.4th 68, 75 (1st Cir. 2023) (per curiam).

district court's preliminary injunction order"); *Charles v. Daley*, 749 F.2d 452, 457 (7th Cir. 1984) (holding appeal challenging constitutionality of statute was not moot even though the statute had been amended, because there was a possibility that the plaintiffs could be prosecuted for violating the pre-amendment statute); *City of Colton v. Am. Promotional Events, Inc.-W.*, 614 F.3d 998, 1005-06 (9th Cir. 2010) (concluding that appeal was not moot despite a new action seeking the same relief because the plaintiff "faces a potential statute of limitations bar with respect to its claims against certain defendants, an argument these defendants have pressed in the later-filed action. A reversal by this court could put [plaintiff] on better footing with regard to limitations defenses" in the new action); *B & B Chem. Co. v. EPA*, 806 F.2d 987, 990-91 (11th Cir. 1986) (referring to an "exception to the mootness doctrine . . . where the trial court's order will have possible collateral legal consequences," but concluding that the potential collateral consequences were too speculative).

While these circuits agree that the collateral-consequences doctrine serves as a basis to avoid mootness, they are divided about how certain the collateral consequences must be. For example, the Eleventh Circuit concluded that an appeal challenging an administrative warrant was moot because the warrant had been executed and the possibility of future citations arising from the search was too speculative to invoke the doctrine. *B & B Chem.*, 806 F.2d at 990-91. The Eleventh Circuit expressly disagreed with the Seventh Circuit, which had concluded that an appeal was not moot despite an executed warrant because of the possibility of future citations. *Donovan*

v. Fall River Foundry Co., 712 F.2d 1103, 1111 (7th Cir. 1983).

Other circuit courts also require different levels of certainty—even in a single opinion. *ConnectU*, 522 F.3d at 88-89 (1st Cir.) (stating that an appeal is not moot if the district court's decision "may have" collateral consequences, but also that "[c]ollateral consequences may be found in the prospect that a judgment *will* affect future litigation or administrative action" (emphasis added) (citation omitted)); *Nat'l Iranian Oil*, 983 F.2d at 490 (3d Cir.) (stating that an appeal is not moot if the district court's order "will have possible" collateral consequences; concluding that the appeal was not moot because the order "may have" collateral consequences; and stating that the order "would have" a preclusive effect on other actions); *Karaha Bodas*, 335 F.3d at 366 (5th Cir.) (concluding that the appeal was not moot in part because of the "potential[ ]" exposure to fines and penalties); *Charles*, 749 F.2d at 457 (7th Cir.) (concluding that the "possibility" of prosecution was sufficient to keep the appeal alive).

In the decision below, the Ninth Circuit refused to apply the collateral-consequences doctrine, citing circuit precedent holding that the doctrine "requires a showing that 'there is a substantial controversy . . . of *sufficient immediacy and reality*.'" Pet. App. 2a-3a (quoting *In re Burrell*, 415 F.3d 994, 999 (9th Cir. 2005) (alterations in original)). The court thus did not apply the doctrine in this case even though there was a separate proceeding where the potential collateral consequences of the district court's order had already been briefed by the parties.

Thus, even the circuit courts that generally agree about the collateral-consequences doctrine still reach different results given the various standards employed. Had this case taken place in one of the circuits that apply a less stringent test, the case would not have been found moot.

B. In three circuits, an appeal is moot if the district court's decision may have collateral consequences in a separate legal proceeding.

The Eighth, Tenth, and Federal Circuits have held that an appeal is moot if no effectual relief may be granted in the case, even if the district court's decision may have collateral consequences in a separate legal proceeding. *Nebraska v. Cent. Interstate Low-Level Radioactive Waste Compact Comm'n*, 187 F.3d 982, 987 (8th Cir. 1999) ("Both parties argued on appeal that the decision is not moot because of collateral consequences in a separate lawsuit. However, this does not fall within any exception to the mootness doctrine that we can presently perceive."); *Citizens for Responsible Gov't State Pol. Action Comm. v. Davidson*, 236 F.3d 1174, 1184 (10th Cir. 2000) (agreeing with the Eighth Circuit that "collateral consequences in a separate lawsuit" is not a mootness exception); *Acceleration Bay LLC v. 2K Sports, Inc.*, 15 F.4th 1069, 1077 (Fed. Cir. 2021) (rejecting collateral-circumstances argument, and noting that "[a]t least two of our sister circuits have observed that 'collateral consequences in a separate lawsuit . . . does not fall

within any exception to the mootness doctrine'" (alteration in original) (citation omitted)).[6]

These decisions from the Eighth, Tenth, and Federal Circuits reject collateral consequences as a basis to avoid mootness in civil cases. They directly conflict with decisions from the First, Third, Fifth, Seventh, Ninth, and Eleventh Circuits.

II. The Ninth Circuit's Decision Is Wrong.

No effectual relief can be granted in this case because, regardless of whether the district court's sanctions order is vacated, the case will proceed in arbitration. But the Ninth Circuit's decision that the appeal was moot is incorrect because the sanctions order had collateral consequences in the arbitration. If the Ninth Circuit had agreed with Yu that the district court lacked subject matter jurisdiction over this lawsuit, it would have vacated the district court's sanctions order, *see Hain Celestial Grp., Inc. v. Palmquist*, 607 U.S. 421, 430 (2026), which would have a concrete impact on the parties' claims in arbitration.

---

[6] A few years before *Acceleration Bay*, the Federal Circuit stated "a case may remain alive based on '[c]ollateral consequences[, which] may be found in the prospect that a judgment will affect future litigation,'" but concluded the appeal was moot because the decision below could "not have claim or issue preclusive effect even if affirmed by our court." *Hyosung TNS Inc. v. Int'l Trade Comm'n*, 926 F.3d 1353, 1358 (Fed. Cir. 2019) (alterations in original) (citation omitted). *Acceleration Bay* does not mention *Hyosung*. And after *Acceleration Bay*, the Federal Circuit cited *Hyosung* and determined that a case was not moot because of potential liability for penalties. *Royal Brush Mfg., Inc. v. United States*, 75 F.4th 1250, 1256 (Fed. Cir. 2023).

Prior to the Ninth Circuit decision, ByteDance had argued in arbitration that the district court's sanctions order (1) barred Yu's breach of contract claim, and (2) established an element of ByteDance's malicious prosecution claim.[7] At that point, there was a reasonable possibility that the sanctions order would have collateral consequences—not only was there a separate proceeding with an overlapping subject matter, but ByteDance had actually argued that the sanctions order should have collateral consequences in that proceeding. If the Ninth Circuit had vacated the sanctions order, this would have foreclosed ByteDance's arguments.

ByteDance cannot argue that the collateral consequences were unclear or illusory, since they were the ones arguing for those consequences. And indeed, any possible claim of uncertainty was eliminated the day after the Ninth Circuit's decision, when the arbitrator agreed with ByteDance's arguments and ruled against Yu based on the district court's sanctions order. At that point, the appeal was certainly not moot; the collateral consequences were clear and concrete. But the Ninth Circuit declined to reconsider its decision and denied rehearing.

The Ninth Circuit's decision cannot be squared with this Court's precedent on the collateral-consequences doctrine. As discussed above, in the early criminal cases applying the doctrine, this Court determined that an appeal was not moot if there were "concrete disadvantages or disabilities that had in fact occurred, that were imminently threatened, or that

---

[7] C.A. Oral Argument, *supra*, at 2:26-2:40, 4:59-5:04, 6:45-6:50; *see also id.* at 13:43-14:12, 40:48-41:30.

were imposed as a matter of law." *Spencer*, 523 U.S. at 8. While this standard has been relaxed for challenges to criminal convictions, it still applies to challenges to parole revocation after a sentence has been served. *Id.* at 12, 14. And this standard should apply equally to all civil cases, because it is rooted in the case-or-controversy requirement of Article III—not criminal law. *See id.* at 7-8 (citing civil cases regarding Article III's case-or-controversy requirement).

Under this standard, the appeal in this case was not moot. When ByteDance raised its arguments in arbitration, "concrete disadvantages" of the sanctions order were "imminently threatened." *Spencer*, 523 U.S. at 8. And, when the arbitrator ruled against Yu, the "concrete disadvantages" had "in fact occurred." *Id.*

This is far from a case where the district court's order might only be useful "in a hypothetical lawsuit." *United States v. Juvenile Male*, 564 U.S. 932, 937 (2011) (per curiam). There was an actual arbitration proceeding in parallel where the district court's order was deemed relevant and applied in a way to harm Yu's position. Both before and after the Ninth Circuit's decision, there were collateral consequences that kept the appeal alive.

III. This Petition Is an Ideal Vehicle for Resolving the Circuit Split.

This petition is an ideal vehicle for resolving the circuit split. The mootness issue is presented in a purely legal form. ByteDance argued in the arbitration proceeding that the district court's sanctions order should be applied to the detriment of Yu, and the arbitrator agreed and imposed negative consequences on Yu based on that sanctions order.

There are no procedural concerns. The Ninth Circuit's determination that Yu waived his right to challenge the arbitration is irrelevant because it was the basis for the court's conclusion that the case is moot, Pet. App. 2a, and the case is not moot under the collateral-consequences doctrine. And because the case is not moot, the Ninth Circuit's decision declining to vacate the district court's order on the ground that Yu "cause[d] [the] appeal's mootness" is also irrelevant. Pet. App. 3a.

The petition presents the opportunity not only to address the collateral-consequences doctrine in the civil, non-habeas context but also to clarify the standard both when collateral consequences are imminently threatened and when they have occurred. This petition thus presents an ideal vehicle to provide guidance on collateral consequences as a basis to avoid mootness in the civil context.

CONCLUSION

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

Respectfully submitted,

KIRK C. JENKINS
Counsel of Record
LAW OFFICES OF
KIRK C. JENKINS
191 BRIDGEPORT DRIVE
HALF MOON BAY, CA 94019
(312) 607-6409
kirkchristopherjenkins@gmail.com

Attorneys for Petitioner

October 2026