

No. _____

26-5724

ORIGINAL

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**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

IN THE SUPREME COURT OF THE UNITED STATES

SUE COSTELLO,

Petitioner,

v.

PARAMOUNT GLOBAL, INC.

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Sue Costello

Petitioner Pro Se

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QUESTIONS PRESENTED

Question 1: Whether the Federal Arbitration Act requires a court to decide the threshold question of contract formation before compelling arbitration. 9 U.S.C. §§ 2, 4.

Question 2: Whether Rule 41(b) permits dismissal with prejudice for failure to arbitrate when the plaintiff asked the designated forum what policy applied if the arbitrator discovered crimes, and the forum said the court must handle it and would not engage.

Question 3: Whether a court may refuse coverage under the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, 9 U.S.C. § 402, and whether a court of appeals may then summarily affirm the dismissal, without reasoned explanation, after acknowledging on the record that the result sits in tension with that Act.

LIST OF PARTIES

The Petitioner is Sue Costello, an individual proceeding pro se.

The Respondent is Paramount Global, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Sue Costello is an individual and not a corporation, and therefore no corporate disclosure statement is required.

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The judgment of the United States District Court for the Southern District of New York dismissing the action with prejudice is reproduced at App. B.

The magistrate judge's report and recommendation is reproduced at App. C.

The order of the United States Court of Appeals for the Second Circuit denying rehearing en banc is reproduced at App. D.

JURISDICTION

The summary order of the United States Court of Appeals for the Second Circuit affirming the dismissal of Petitioner's action was entered on May 18, 2026. A timely petition for panel rehearing and rehearing en banc was denied by the Second Circuit on July 1, 2026.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is timely filed under Supreme Court Rules 13.1 and 13.3 because it is submitted within 90 days of the denial of rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 402(a) of Title 9 of the United States Code (Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act) provides:

"Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual assault dispute or a sexual harassment dispute... no pre-dispute arbitration agreement or pre-dispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute."

Section 2 of Title 9 of the United States Code provides: "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4."

Section 4 of Title 9 of the United States Code provides: "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court... for an order directing that such arbitration proceed in the manner provided for in such agreement."

STATEMENT OF THE CASE

A. Factual Background

Petitioner's claim is fraud in the inducement of a 2018 CBS television development agreement, theft of her pitch, and breach of a contract containing a clear buy-back clause. She did not sue Les Moonves for sexual assault. She sued because CBS used a development deal to take her intellectual property and then treated her as if she were a #MeToo claimant to bury the contract and the theft. That framing—as sexual harassment—is ongoing today. In 2017, Petitioner met with Leslie Moonves about a series. Moonves flew her to Los Angeles to pitch the idea, and the executives physically took the idea that was written on paper from her. In June 2018, she negotiated a development deal with CBS's then-General Counsel, Jonathan Anshell. The contract states that, to get paid per the WGA, the script must be sent to the Head of Comedy Development at CBS Studios. It also contains a buy-back clause that allowed her to buy the script back immediately if the Studio passed, with all copyright reverting to Petitioner. This protected the script and the idea that they had already taken. CBS paid the signing installment and never opened the contractual delivery path that would trigger the contract steps to the Head of Comedy and the buy-back clause. The only executives who would deal with her were Anshell and Tom Sherman—not the Head of Comedy Development named in the instrument. These men rushed the contract while a Ronan Farrow investigation into Moonves was about to become public, then refused to let her perform once the article appeared. When she asked to proceed under the contract, Anshell screamed, "What do you want? We have deals with other women." Petitioner said she wanted to send her script to the Head of Comedy Development. Anshell accused her of making allegations and sent their internal investigation, which she had

not sought. She refused that investigation and demanded performance. After Debevoise & Plimpton, which conducted CBS's internal inquiry, caused her to be identified in the press as a sex victim and blocked her from following the terms of her contract, Petitioner filed a Los Angeles police report concerning her idea that was never returned. App. I. The New York Attorney General's Office used an April 5, 2022, interview—three hours with Shamiso Maswoswe, head of Investor Protection—to press the same sexual narrative even though that office already had its own subpoenaed emails proving the contract fraud and the LAPD report proving the pitch was taken and not returned. After three hours of trying to get Petitioner to call herself a #MeToo victim, and after she refused, Maswoswe told her money in the hand is worth more than money later. The Attorney General later issued Assurance of Discontinuance No. 22-071 naming the same corporate circle used to pay off sex victims to hide the theft. That public instrument omitted the intellectual-property theft. She invokes the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, 9 U.S.C. § 402, because of that post-enactment course of conduct—not because she pleaded a sexual-assault claim against Moonves.

B. Procedural History

Petitioner filed this action pro se in the Southern District of New York in February 2023. The complaint alleged fraudulent inducement and invoked the EFAA. She identified internal CBS emails the Attorney General had subpoenaed and later sought to place those emails before the court. On May 31, 2023, District Judge Lorna G. Schofield held a remote conference. App. E. After Petitioner described Anschell's "What do you want? We have deals with other women" call and was about to mention the Judge's former law firm and the New York Attorney General framing, the Judge interrupted:

“Did you make allegations against—”

“None. None.”

“Did you say anything about, ‘Oh, those things have happened to me’ or ‘I’ve seen what’s happened to other women’?”

“Never. Never. Nothing. Nothing. Nothing.”

“What do you—so he was just out of nowhere saying, ‘Now that you’ve made allegations’?”

“Yes, out of nowhere.” App. E at 6. The court then held that the EFAA “doesn’t have a retroactive effect” and “only applies to claims that accrued on or after March 3, 2022,” and that “the events that occurred here happened before March 3, 2022.” App. E at 10. When Petitioner said fraud voided the contract, the court directed her to put that argument in her opposition to a motion limited to compelling arbitration. App. E at 11–12. In the same conference, defense counsel Yehudah Buchweitz told the court Petitioner had a contract, had been paid 15 percent on signing, and had never submitted the script. Asked whether the contract was terminated, he said: “I think there’s a question of whether it’s still open; but I told her last year ... if she submits the script, we’ll consider it. And she still didn’t.” App. E at 9. The court did not decide whether a formed, presently enforceable agreement existed. It set a briefing schedule on arbitration only. The district court later compelled arbitration and stayed the case. Petitioner asked the magistrate for an in-person conference. The certified May 31 transcript records “Rona Barrett” where Petitioner named journalist Ronan Farrow, and “WDA” where she named the Writers Guild of America (WGA). App. E at 5–7. On June 5, 2024, she put that dispute on the record before Magistrate Judge Valerie Figueredo. App. F at 12–13. At that June 5 hearing she again raised the EFAA, fraud, the May 31 interrogation, alleged bias from Judge Schofield’s prior association with the firm that handled CBS’s internal investigation, and the accuracy of the May 31

transcript. App. F at 5–14. The magistrate said she could not undo the compel order. App. F at 8–11. When Petitioner said a grant of compelled arbitration was not appealable, the magistrate asked counsel. Buchweitz answered: “Under the FAA the denial of a motion to compel arbitration is appealable, but the grant of a motion to compel arbitration is not.” App. F at 18:15–17.

Petitioner contacted JAMS in June 2024 and asked what protocol applied if an arbitrator encountered criminal conduct. JAMS did not answer the question. On August 5, 2024, Petitioner emailed the court’s pro se filing address a response to ECF 64, with screenshots of that June 11 JAMS correspondence attached. That submission was docketed as ECF 66 on August 28, 2024. After the R&R, she raised the same refusal again in ECF 72 and in objections docketed as ECF 77, 78, 80, 81, and 82. The R&R and the district court stated that JAMS correspondence was not included in the letters on the docket. App. C at 3 n.2; ECF 88. Petitioner never obtained an arbitration. The district court did not decide formation, appoint a substitute forum, or reopen the case. It dismissed with prejudice under Rule 41(b) for not arbitrating. The Second Circuit affirmed in a summary order issued two days after oral argument. App. A. Petitioner, still pro se, received no questions. The panel did state that requiring an EFAA claimant to complete arbitration before appealing “might create some real policy tensions ... because you’re essentially requiring them to do exactly the thing that statute is designed to not require them to do.” App. G at 06:29–06:47. Counsel for Paramount, Crystal Weeks, told the panel the challenge to the compel order “would be at the end of the road after the arbitration.” App. G at 07:38–07:52. The summary order did not decide contract formation, did not apply 9 U.S.C. § 402 or *Olivieri v. Stifel, Nicolaus & Co.*, 112 F.4th 74 (2d Cir. 2024), and did not explain how a Rule 41(b) dismissal can rest on a private forum’s refusal to sit.

REASONS FOR GRANTING THE PETITION

This Court reviews a case in which a lower court has “so far departed from the accepted and usual course of judicial proceedings” as to call for an exercise of supervisory power. S. Ct. R. 10(a).

Three departures are presented here: the courts ordered arbitration without deciding that a contract had been formed; they converted a designated forum’s refusal to engage into a with-prejudice dismissal; and the court of appeals then affirmed, without explanation, an order its own bench had just described as in tension with the EFAA.

I. Both courts compelled arbitration without deciding formation.

A court may not send a case to arbitration until it is “satisfied that an agreement was made.” 9 U.S.C. §§ 2, 4; *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 299 (2010).

When a plaintiff elects a court under the EFAA, “the court shall determine whether this chapter applies,” including validity and enforceability. 9 U.S.C. § 402(a)–(b). That determination never happened.

On May 31, 2023, counsel said there was “a question of whether it’s still open” and that if Petitioner submitted a script CBS would “consider it.” App. E at 9.

An offer still being “considered” is not a finding that a binding agreement exists.

The district court moved on to a briefing schedule.

It later compelled arbitration anyway.

The Second Circuit did not fill the gap.

It treated the compel order as background to a Rule 41(b) dismissal and never explained how an unformed or still-open deal satisfies §§ 2 and 4.

That is not a fact bound contract dispute. It is a refusal to perform the one judicial act the FAA and the EFAA both assign to the court.

The court of appeals then used the later 41(b) dismissal to treat the compel order as unreviewable.

That sequence cannot be squared with *Smith v. Spizzirri*, 601 U.S. 472 (2024).

Spizzirri holds that when a district court sends a case to arbitration it stays, rather than dismisses, so the court retains a supervisory role.

A district court should not be able to skip formation, compel arbitration, and then, after the named forum refuses to sit, dismiss with prejudice and thereby wall the skipped issue off from review.

II. Rule 41(b) cannot be built on a forum's refusal to engage.

The 41(b) dismissal treats an unanswered threshold question as a failure to prosecute.

Petitioner asked JAMS what the policy was if the arbitrator discovered that crimes were involved.

JAMS would not engage and directed her back to court. App. H.

That is unavailability of the forum, not abandonment of the case.

A court cannot compel an impossible act.

Once the designated forum closed the door at the threshold, the lawful choices were a stay under 9 U.S.C. § 3, appointment of a substitute under § 5, or a return to the docket.

Dismissal with prejudice was not among them. *Spizzirri*, 601 U.S. at 475–78.

The order below is internally impossible.

It extinguishes the case with prejudice and, in the same breath, says Petitioner may still arbitrate.

A with-prejudice dismissal is a judgment on the claims. It is not a parking ticket with an arbitration coupon attached.

The dismissal also rewards the alleged prevention.

Petitioner's theory is that Respondents blocked the contractual delivery path, framed the dispute as a sexual-misconduct matter, and thereby made a private commercial arbitration administratively impossible.

A party may not take the benefit of a failure it caused.

Two record statements make the bind concrete.

Before the magistrate, Buchweitz said a grant of a motion to compel is not immediately appealable. App. F at 18:15–17.

Before the Second Circuit, Weeks said Petitioner could challenge the compel order “at the end of the road after the arbitration.” App. G at 07:38–07:52.

Those positions can both be useful to Respondents only if an arbitration occurs.

JAMS had already refused to engage.

The “end of the road” was closed. The unappealable front end was the only end. That is the arbitral black hole Question 2 describes.

A pro se litigant who puts the forum's refusal to engage in front of the court is not a plaintiff who abandoned her case.

Petitioner submitted the JAMS correspondence to the court. The R&R then said it was not on the docket. App. C at 3 n.2. If the court wanted the emails stamped as exhibits, the remedy was an order to file them. The remedy was not dismissal with prejudice.

III. The EFAA was sidestepped by freezing the claim in a pre-2022 box after an on-record interrogation the pro se denied.

Question 3 is not a request that this Court retry a sexual-assault case.

There was no such claim.

The EFAA question is whether a court may declare § 402 inapplicable solely because the original deal was signed before March 3, 2022, after using the hearing to recast the suit as a sexual-allegation case the plaintiff repeatedly disclaimed, and after refusing to treat later institutional conduct as part of the accrual analysis.

On the first conference the district court asked, three times, whether Petitioner had made sexual allegations. She said no. App. E at 6.

The court then ruled the EFAA non-retroactive because “the events that occurred here happened before March 3, 2022,” and told her to argue fraud instead. App. E at 10–12.

April 5, 2022—the Attorney General interview she places at the center of the continuing course—is after the statute’s effective date.

The Second Circuit’s own Olivieri decision recognizes that EFAA coverage can turn on a continuing violation, not only on the date of the first act. 112 F.4th at 84–92.

Neither court applied that framework.

The certified transcript’s rendering of “Rona Barrett” and “WDA” is not the petition’s lead issue.

It matters only as record integrity: the same conference that fixed the pre-2022 timeline is the conference Petitioner says does not match what was spoken.

She raised that on June 5. App. F at 12–13.

The court of appeals affirmed on that record without addressing the objection.

Section 402(b) assigns EFAA applicability to the court. A court that answers the statute by interrogating a pro se plaintiff into a sexual narrative she rejects, dating the entire case by the original deal, and then sending her to arbitration, has not made the determination Congress required.

IV. The unexplained 48-hour affirmance warrants supervisory review.

After hearing a pro se appellant in an EFAA case, asking her no questions, and stating on the record that forcing her through arbitration first “might create some real policy tensions” with the statute designed to prevent that result, App. G at 06:29–06:47, the Second Circuit issued a summary order two days later. App. A.

The order does not decide formation.

It does not apply § 402. It does not reconcile Buchweitz’s “unappealable grant” with Weeks’s “end of the road.” App. G at 07:38–07:52.

It does not explain how Rule 41(b) can punish a plaintiff for a forum’s refusal to engage.

Summary disposition is for settled law applied to clean facts.

This record is neither.

A court of appeals that flags the statutory tension and then affirms without reasoning leaves 9 U.S.C. § 402, Granite Rock, and Spizzirri unapplied in the circuit that just produced Olivieri.

That is a Rule 10(a) departure.

It is also why the Questions Presented should be taken together: the formation error, the 41(b) black hole, and the unexplained affirmance are one sequence, not three lawsuits.

CONCLUSION

CBS took Petitioner's pitch and then committed fraud on the development deal. Every office that was supposed to protect her not only failed to help but actively aided in the frame and the theft of her property. Her union, the WGA, did not defend the contract; instead, it pressed her to break the chain of title and send her script to the "small circle." The LAPD took a report and did nothing.

The New York Attorney General's Office was already investigating CBS and possessed the "small circle" fraud emails and the police report. It spent three hours pressing her to turn an IP case into a sex story, then issued an Assurance of Discontinuance that named the same small circle of men and the same LAPD that protected them, leaving her out entirely.

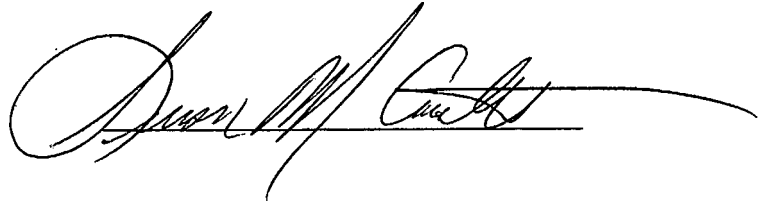
She went to court on the fraud and the continuing acts. The district court put sexual words in her mouth, refused to test whether a contract had been formed, refused to treat the Attorney General interview and the internal investigation as continuing acts, and used the EFAA against her.

JAMS stated a court had to handle the matter and would not engage. The district court ignored that evidence and dismissed her with prejudice for failure to arbitrate. The financial aspect of fighting a corporation by oneself is the heaviest burden, and the district judge weaponized her IFP status to block her rights. She paid with money she did not have to appeal, and the Second Circuit shut the door citing a lack of jurisdiction.

The contract is still open. They still have her property. The frame still stands. The continuing acts are occurring right now. Because she is pro se, this sequence of protecting corporate interests over an individual citizen's rights was allowed to stand. This Court is the last forum that can restore the process the statutes required.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sue Costello", written over a horizontal line.

Sue Costello

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Dated: September 25th, 2026