Supreme Court, U.S.
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No. __-____

IN THE

Supreme Court of the United States

SAADIA SHAPIRO,

Petitioner,

v.

MARK BARRON, MSV SYNERGY, LLC,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether judicial estoppel may be used to convert a pre-arbitration assertion that a category of claims is arbitrable into a permanent submission of a fraud claim that was never pleaded for decision in the arbitration itself, particularly in light of this Court's intervening decision in *Keathley v. Buddy Ayers Construction, Inc.* and the limits on arbitral authority imposed by 9 U.S.C. § 10(a)(4).

II. Whether an arbitration is fundamentally fair under 9 U.S.C. § 10(a)(3) where fraud was expressly disavowed during the arbitration, was introduced only in a supplemental post-hearing submission, and the arbitrator closed the proceeding the next day, leaving no meaningful opportunity to defend—yet the reviewing court treated the absence of a pre-award request to reopen as waiver.

III. Whether the extraordinary deference afforded arbitral awards permits confirmation where the award materially omits dispositive contract language, substitutes a contractual standard the parties did not adopt, disregards express force-majeure provisions, and uses those altered contractual premises to impose personal fraud liability.

LIST OF PARTIES

The parties to the proceeding below were: Mark Barron and MSV Synergy, LLC (plaintiffs/appellees), and Saadia Shapiro, Shapiro & Associates Attorneys at Law, PLLC, and Paz Global Ventures, LLC (defendants/appellants). Other defendants named below but not parties to this petition included Harlem Sunshine, LLC, Harlem Residential, LLC, East 125th Development, LLC, Vadim Leybel, Cast Capital Lending Corp., Peter Zvedeniuk, Ari Friedman, and Boris Leybel. The caption in the court of appeals identified "MARK BARRON, MSV SYNERGY, LLC, Plaintiffs-Appellees" and "SAADIA SHAPIRO, SHAPIRO & ASSOCIATES ATTORNEYS AT LAW, PLLC, PAZ GLOBAL VENTURES, LLC, Defendant-Appellants," with additional defendants listed.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual and not a nongovernmental corporation. Accordingly, no corporate disclosure statement is required under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

MSV Synergy, LLC v. Shapiro, U.S. District Court - Southern District of New York, No. 1:21-cv-07578-ER, judgment entered December 11, 2024.

MSV Synergy, LLC v. Shapiro, U.S. Court of Appeals - Second Circuit, (25-77-cv) judgment entered January 30, 2026; rehearing denied March 24, 2026.

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OPINIONS BELOW

The U.S. Court of Appeals for the Second Circuit entered its judgment on January 30, 2026, affirming the district court's confirmation of the arbitration award. The court of appeals denied panel rehearing on March 24, 2026. The district court confirmed the arbitration award on December 11, 2024.

JURISDICTION

Plaintiffs invoked subject-matter jurisdiction of the U.S. District Court - Southern District of N.Y. under 28 U.S.C. § 1331. Petitioner disputed jurisdiction which was not resolved and instead, on 9/7/22, compelled arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 4, and stayed the action pending arbitration.

The district court's opinion and order confirming the arbitration award and denying vacatur, dated December 2, 2024, and the judgment entered December 11, 2024, is reproduced at App. 40a & App. 78a.

The U.S. Court of Appeals - Second Circuit affirmed the judgment of the district court by Summary Order dated January 30, 2026, in *MSV Synergy, LLC v. Shapiro*, No. 25-77. The Summary Order is unpublished and nonprecedential and is reproduced at App. 1a.

The court of appeals denied panel rehearing and rehearing en banc on March 24, 2026. The order is reproduced at App. 12a.

An extension of time to file a petition for a writ of certiorari was granted on 7/13/26, extending the time to 8/21/26.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V: "No person shall . . . be deprived of life, liberty, or property, without due process of law." The Petition filed in the court of appeals seeking rehearing en banc as well as the briefs submitted in the District Court and Second Circuit , invoked the Fifth Amendment Due Process Clause in challenging the arbitrator's procedure and the courts' confirmation of the award in violation of the Federal Arbitration Act's requirement of due process and a fair hearing.

U.S. Const. amend. XIV, § 1: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." The petition filed requesting a hearing en banc likewise invoked the Fourteenth Amendment Due Process Clause . Federal Arbitration Act, 9 U.S.C. § 10(a)(3): "In any of the following cases the United States court . . . may make an order vacating the award . . . where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced." The petition and appellate

briefs relied on § 10(a)(3) as the statutory basis for vacatur due to fundamental unfairness and misconduct.

Federal Arbitration Act, 9 U.S.C. § 10(a)(4), authorizes vacatur "where the arbitrators exceeded their powers."

STATEMENT OF THE CASE

This case arises from a pandemic-era personal protective equipment transaction where Petitioner acted as an intermediary introducing a U.S. purchaser, the plaintiffs in this action, to a sourcing broker for factories in Asia, and served as escrow/paymaster under written agreements to purchase nitrile examination gloves through the broker in Asia. The arbitration award confirmed by the district court imposed personal liability on the Petitioner, who had no gain of any kind from the transaction, based on a supposed "fraud" first raised in a supplemental post-hearing submission the day before the arbitrator closed the record, and on a demonstrably inaccurate reading of the parties' contracts that deleted dispositive language authorizing disbursement to "brokers." The arbitrator also disregarded multiple force majeure provisions and unrebutted documentary and testimonial evidence establishing that all funds were wired to the factory broker and then immediately to the factories for the contracted gloves; that delivery windows of 6-9 months were commercially reasonable in the early pandemic; and that the factories themselves were later adjudicated to have committed the fraud.

The basis for federal jurisdiction is set forth in the Jurisdiction section, *supra.*

The arbitration posture and participants.

The arbitration commenced in September 2021, and the arbitration demand did not include any fraud claim. In opening statements, plaintiffs' counsel expressly confirmed on the record that "we don't have a fraud claim," twice disavowing fraud and framing the case as "a simple breach of contract". The award acknowledged that claimants had not brought a claim against Petitioner for breach of the Sales and Purchase Agreement (SPA), that the only claim pleaded against Petitioner was for breach of a Guarantee Agreement, and that claimants did not apply at the close of the hearing to amend the pleadings to conform to the evidence.

The governing contracts.

Three documents controlled: a Sales and Purchase Agreement ("SPA") (A26), an Escrow & Paymaster Agreement (A36), and a Guarantee Agreement (A48). Under the SPA, the buyer was to wire $2 million to Petitioner's escrow account as escrow agent and paymaster, and "*disbursement of all funds to the seller and to any brokers if applicable as well as the payment of any fees and commissions shall be according to the escrow agreement*" (emphasis added). The arbitrator quoted this clause in the award as "*disbursement of all funds to the seller shall be according to the escrow agreement,*" **inserting ellipses and omitting "and**

to any brokers," which omission was central to finding "fraud" based on wiring to the broker. The Escrow Agreement further authorized Petitioner, as escrow/paymaster, to appoint an agent to carry out duties (App. 31a-paragraph(J)) and disburse to a "nominated bank account," permitting operational flexibility in moving funds to the intended manufacturing sources .

The transaction structure and roles.

Petitioner's role was limited to introducing the sourcing broker in Australia/Asia, Peter Zvedeniuk and his company Glover Court Pty. Ltd.("Glover"), and the U.S. importer/facilitator, Vadim Leybel of Cast Group LLC("Cast"), to the purchaser MSV/Mark Barron, with a contemplated commission of $0.10 per box, totaling approximately $20,000, which was never earned or paid. Customary practice in China required buyers to transact only through a factory agent or broker; factories would not deal directly with private buyers, making Glover the appropriate conduit for factory payments.

The movement of funds.

All buyer funds deposited into escrow for the glove purchase were promptly wired from Petitioner's IOLTA account to the broker (Glover) for payment to the factories, consistent with the SPA's authorization to disburse to "any brokers" and with the Escrow Agreement authorizations; no funds were diverted to Petitioner; not a single penny is unaccounted for. Wire transfer records from JPMorgan Chase documented

the chain of payments from escrow to Glover and then to the factories (summary of wires-App. 36a). A recording produced by plaintiffs reflected plaintiffs' knowledge that funds would go to the broker Glover to pay the factories. (App. 38a).

Pandemic conditions and delivery.

The SPA included multiple force majeure/epidemic provisions; SPA 1(viii), 2(iii), and 10 (App. 26a), as did the Escrow Agreement (App. 34a), which specifically *included pandemics and epidemics* and excused non-performance or delays. Expert opinion and other record evidence showed that in the COVID-19 emergency six-to-nine-month delivery windows for gloves were commercially reasonable and consistent with industry experience (App. 151a, App. 158a, App. 165a). The arbitrator dismissed or ignored all four force majeure provisions, and discounted the evidence of pandemic-era logistics without *any* countervailing testimony from plaintiffs.

The fraud that actually occurred.

Subsequent Chinese and Thai proceedings resulted in judgments establishing that the factories had committed fraud against Petitioner, Paz, and numerous others; those decisions and the denial of an appeal were provided to the arbitrator and to the district court (A527 & A678 – Appeal Appendix). The arbitrator admitted not reading those judgments before issuing the award, and the district court's deference foreclosed any corrective review.

Proceedings in The Courts; Blind Deference.

The district court confirmed the award, effectively "rubberstamping" the arbitrator's conclusions without addressing the misquotation of the decisive SPA clause, the absence of any opportunity to contest the fraud claim, or the dismissal of the four force majeure clauses; the court applied deference and declined to inquire into these core defects. The court of appeals also deferred, concluding that appellants did not contest plaintiffs' assertion that they failed to seek an opportunity to respond to the supplemental fraud claim prior to the award, and holding that because defendants did not present legal arguments on fraud to the arbitrator before the award, they could not establish manifest disregard. Petitioner had, in fact, protested repeatedly in briefing that fraud and personal liability were not pleaded or litigated and that *the arbitrator closed the record the day after plaintiffs first raised fraud* in a supplemental filing, foreclosing any possibility of a response. Those positions were briefed by petitioner in the court of appeals.

The Cascading Deference Problem.

This case presents a domino effect: the arbitrator issued an award after closing the record one day after fraud was first raised; the district court, invoking FAA deference, declined to examine the substance, the due process violation, or the arbitrator's misquotation and evidentiary omissions; the court of appeals then deferred to the district court's deference; and the denial of rehearing perpetuated those errors, leaving

Petitioner without any forum to meet a fraud charge or to correct fundamental arbitral unfairness.

REASONS FOR GRANTING THE PETITION

This petition raises an important and recurring question about the limits of deference under the Federal Arbitration Act when an award is infected by denial of due process and serious arbitral misconduct. The arbitrator not only closed the proceeding the day after a fraud claim first appeared—foreclosing any response—but also materially misquoted the central contract clause which directly resulted in an adjudication of fraud. The arbitrator further ignored four separate force majeure provisions squarely covering pandemic disruptions. The district court and court of appeals refused to engage with these core defects, citing narrow review. That cascading deference cannot be reconciled with the FAA's safety-valve for "misconduct . . . or . . . any other misbehavior by which the rights of any party have been prejudiced," (9 U.S.C. § 10(a)(3)), nor with due process.

SECTION I: THE ARBITRATOR'S AUTHORITY

JUDICIAL ESTOPPEL

A. Question Presented

Whether an arbitrator exceeds her authority under 9 U.S.C. § 10(a)(4) and CPLR § 7511(b)(1)(iii) by adjudicating liability for fraud against Saadia Shapiro where fraud was pleaded only in a stayed, amended court complaint, was not asserted in the arbitration

demand or statement of claim, and was referenced at the hearing only as background to other claims rather than as a standalone claim submitted for decision.

B. The Arbitration Demand—Not a Stayed Court Complaint—Defines the Issues Submitted

Once a district court compels arbitration and stays the action under FAA § 3, the court complaint is placed in procedural suspension; it does not migrate into the arbitral forum to expand the arbitrator's jurisdiction. The operative pleading in arbitration is the arbitration demand or statement of claim.

The Second Circuit in *Katz v. Cellco P'ship*, 794 F.3d. 341 (2d. Cir. 2015), held that § 3 requires a stay, rather than dismissal. But the stay does not make the court complaint controlling in arbitration. Parties return to court post-award under §§ 9–11, while arbitral scope is governed by the parties' agreement and submission.

Federal and N.Y. law likewise provide that an arbitrator's authority depends upon the parties' intention and the matters actually submitted. N.Y.s highest court has emphasized that "an arbitrator's authority extends only to those issues that are actually presented by the parties," and even broadly arbitrable matters cannot be decided if "materially different or legally distinct" from what was submitted. The arbitration demand supplies "the guidepost for the issues that were before the arbitrator." *Joan Hansen & Co. v. Everlast World's Boxing Headquarters Corp.*, 13 N.Y.3d. 168, 173, 918 N.E.2d. 482, 485 (2009); *Denson*

v. Donald Trump for President, Inc., 180 A.D.3d. 446, 448–49, 116 N.Y.S.3d, 267, 269–70 (1st Dep't 2020). An award reaching unsubmitted issues is subject to modification or vacatur under CPLR § 7511(b)(1)(iii).

The "generally submitted" rule cannot rescue a claim found only in a court complaint. Issues must enter the arbitration through the demand, pre-hearing submissions, amendments, or the hearing itself; allegations confined to a stayed court pleading are not thereby "submitted."

C. Application to this Record: Fraud was Not Submitted in Arbitration

The federal action was stayed and Claimants filed an arbitration demand/statement of claim defining the arbitral submission. As to Shapiro, the award itself acknowledges that *"[t]he only claim brought against Shapiro was for breach of the Guarantee Agreement."* (Award; App. 120a – "B"). Claimants did not claim a breach of the SPA and no standalone fraud claim was pleaded or added by amendment. Claimants' counsel specifically disavowed any fraud claim on the first day of the hearing. (Transcript App. 187a, last paragraph & App. 188a, third paragraph).

Nevertheless, the award imposed personal liability by invoking officer-liability-for-tort principles and treating Shapiro's conduct as "fraud." References to fraud as background or support for submitted claims could not transform an unpleaded tort into an issue actually presented for adjudication. *Denson*,180 A.D.3d-

448–49; *Slocum v. Madariaga*, 123 A.D.3d 1046, 1047, 999 N.Y.S.2d 483, 485 (2d Dep't 2014).

D. The Court of Appeals Applied the Wrong Legal Standard

The court of appeals stated that it reviews a district court's confirmation or vacatur decision "de novo for questions of law." It nevertheless erred in applying that law.

Under § 10(a)(4), the relevant inquiry is whether the arbitrator possessed power, based upon the arbitration agreement and the parties' submissions, to reach the issue—not whether she decided a properly submitted issue correctly. N.Y. law similarly requires vacatur where an arbitrator exceeds her power by deciding issues not submitted.

A reviewing court therefore cannot supply arbitral authority by importing allegations from a stayed court complaint. *Wall St. Assocs., L.P. v. Becker Paribas Inc.*, 27 F.3d 845 (2d Cir.1994), permits a court to infer a colorable ground from what "the arbitrator actually considered"; it does not authorize reliance upon a theory the parties never litigated in arbitration and the respondent had no opportunity to contest. Because fraud against Shapiro was never submitted as a claim for decision, the arbitrator lacked power to adjudicate fraud. The contrary conclusion conflicts with § 10(a)(4), CPLR § 7511(b)(1)(iii), and the settled submission-control rule.

The error is outcome-determinative. Permitting a stayed complaint to supply arbitral jurisdiction would eviscerate the rule that arbitral authority derives from the parties' actual submissions.

E. The Court Of Appeals Misread Pre-Arbitration Briefing; Submission Was Controlled By The Arbitration Demand

The Court of Appeals reasoned that Petitioner had previously argued, in motion-to-compel briefing, that the arbitration clause governed Plaintiffs' complaint claims "including fraud," and therefore was judicially estopped from arguing that fraud was not submitted in arbitration. (Doc. 54 at Supp. App'x 97–98; Doc. 75 at Supp. App'x 12).

That conflates two distinct questions. In moving to compel, Petitioner argued that the complaint's claims fell within a broad arbitration clause. He stated that "the Plaintiff has expressly agreed to arbitrate the claims they now impermissibly assert in the Complaint," and that "the arbitration provision in the SPA is applicable to the Escrow Agreement and thus the Plaintiff must arbitrate any dispute related to the SPA and the Escrow Agreement." (Supp. App'x 9).

The reply stated: "Therefore, the arbitration clause governs and Plaintiffs' claims including fraud and their claims should be presented to arbitration." Supp. App'x 121. Read in context, that was a gateway scope/enforceability contention: no pleaded cause of action, including fraud, was exempt from arbitration. It was not a representation that fraud had already

been pleaded, joined, or actually submitted in an arbitration that had not yet occurred.

Once arbitration commenced, the arbitration demand or valid amendments defined the issues for arbitration. The Court of Appeals therefore converted gateway advocacy concerning **arbitrability** into a binding enlargement of the later **arbitral submission**. Its conclusion that Petitioner was "judicially estopped" mistakes a forum-selection position for a submission stipulation.

The panel's reliance upon AAA Rule 49(a) does not eliminate that distinction. Agreeing that complaint claims are arbitrable is entirely consistent with maintaining that only claims actually pleaded and noticed in arbitration may be adjudicated. The former concerns gateway arbitrability; the latter concerns submission, notice, and the opportunity to be heard.

The record confirms consistency. Before arbitration, Petitioner sought dismissal or a stay "pending arbitration." Supp. App'x 97–99. On confirmation and vacatur, he argued that the arbitrator exceeded her powers by adjudicating a fraud theory not actually submitted in the operative arbitration demand. Treating the statement that fraud "should be presented to arbitration" as though it automatically embedded fraud in a later arbitration demand collapses these distinct inquiries. **The submission in arbitration—not gateway briefing—governs what the arbitrator may decide**.

F. The Panel's Mechanical Application of Judicial Estoppel Cannot be Reconciled with this Court's Most Recent Direction in *Keathley*

In a very recent decision (June 11, 2026) this Court unanimously emphasized that judicial estoppel is an equitable doctrine protecting the integrity of the judicial process against deliberate changes of position and that its application must remain flexible and sensitive to the totality of circumstances. *Keathley v. Buddy Ayers Construction, Inc.*, *Keathley v. Buddy Ayers Construction, Inc.*, 608 U.S. ___, slip op. at 6–9 (2026) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001)). Because equity "eschews mechanical rules," judicial estoppel requires case-specific examination. *Id.* at 8–9.

Keathley directly reinforces the defect here. The panel treated selected sentences from pre-arbitration motion practice as dispositive rather than asking whether Petitioner adopted a clearly inconsistent position, deliberately manipulated the judicial process, or obtained an unfair advantage by later insisting that the arbitrator decide only claims actually submitted.

The positions are not clearly inconsistent. Before arbitration, Petitioner argued that the arbitration clause was broad enough to require Plaintiffs to present their court claims—including fraud—to arbitration. After arbitration commenced, he maintained that the arbitrator could adjudicate only claims Plaintiffs *actually submitted* through their demand. The first concerns

whether fraud **could be arbitrated**; the second concerns whether fraud **was submitted for adjudication**.

Indeed, the panel itself stressed that Plaintiffs' arbitration demand "did not exist" when Petitioner made the earlier statements. Supp.App'x 97–98,121. That timing supports rather than undermines Petitioner: his earlier gateway argument could not possibly have represented what Plaintiffs would later plead—or omit—from an arbitration demand that had not yet been filed.

Nor did Petitioner obtain a judicial ruling that a fraud claim had actually been submitted. The order compelling arbitration established that the dispute fell within a broad arbitration clause; it did not adjudicate the contents of a future demand or eliminate the requirement that an arbitrator remain within the issues actually submitted.

Section 10(a)(4) makes a distinction between **arbitrability and actual submission**. Even where an arbitration agreement is broad to make a claim arbitrable, that does not authorize the arbitrator to decide the claim unless the parties actually submitted it for decision. The Second Circuit recognizes this distinction, explaining that an arbitrator exceeds the limits of authority by "considering issues beyond those the parties have submitted for her consideration." *Jock v. Sterling Jewelers Inc.*, 646 F.3d. 113, 122 (2d Cir. 2011). Thus, Petitioner's pre-arbitration position that fraud was within the scope of the arbitration clause—and therefore could be submitted to arbitration—is

entirely consistent with his present position that Claimants never actually submitted fraud for adjudication.

Judicial estoppel protects judicial integrity; it is not a device for retroactively amending an arbitration demand or manufacturing consent to adjudication of an unsubmitted claim. This Court repeatedly describes arbitration as a matter of consent and cautions against inferring consent to arbitrate a particular issue without an adequate contractual basis. *Lamps Plus, Inc. v. Varela*, 587 U.S.176, 184–86 (2019); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 945 (1995). Where the operative arbitration pleading did not assert fraud, Claimants never amended it to add fraud, and the award itself acknowledged that the only claim against Shapiro was breach of the Guarantee Agreement; judicial estoppel cannot supply the missing submission without collapsing § 10(a)(4)'s statutory boundary.

This issue warrants review beyond correction of an isolated error. The decision below permits judicial estoppel arising from pre-arbitration gateway briefing to enlarge the issues actually submitted to an arbitrator, allowing an equitable doctrine directed to litigation conduct to supply arbitral authority absent from the arbitration record. That creates serious tension between two principles established by this Court: judicial estoppel must be applied flexibly and equitably under *Keathley*, while arbitral authority remains grounded in consent and the matters the parties submit.

The question is particularly suitable for review because it is legal and record-based. No testimony need be reweighed. The Court need only compare the pre-arbitration statements relied upon by the panel with the later arbitration demand, the absence of any amendment adding fraud, and the award's own description of the claim against Shapiro.

Accordingly, Section I of the Court of Appeals decision presents a threshold question concerning the source of arbitral power: whether judicial estoppel may convert a pre-arbitration assertion that a claim is arbitrable into permanent submission of a claim never pleaded for decision in the arbitration itself. In light of *Keathley* and this Court's repeated insistence that arbitration derives from consent, the Court should grant certiorari, vacate the judgment, or otherwise require reconsideration of the panel's estoppel-based expansion of the arbitral submission.

SECTION II. FUNDAMENTAL FAIRNESS OF THE PROCEEDINGS

THE COURT OF APPEALS' WAIVER RULING PERMITS AN ARBITRAL FINDING OF FRAUD TO BE GIVEN BINDING JUDICIAL EFFECT EVEN THOUGH PETITIONER WAS NEVER AFFORDED A MEANINGFUL OPPORTUNITY TO DEFEND AGAINST THAT ACCUSATION

Section 10(a)(3) of the Federal Arbitration Act authorizes vacatur where an arbitrator is guilty of misconduct . . . . or engages in "any other misbehavior by

which the rights of any party have been prejudiced." 9 U.S.C.§10(a)(3). Although arbitrators possess substantial discretion in conducting proceedings, that discretion has a fundamental limit: each party must receive an adequate opportunity to present evidence and argument on the matters the arbitrator ultimately decides.

The Second Circuit articulated that rule in *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997): an arbitrator "must give each of the parties to the dispute an adequate opportunity to present its evidence and argument," and § 10(a)(3) review includes determining whether "the procedure was fundamentally unfair." *Id.* The court likewise requires a meaningful opportunity to present material evidence. *Iran Aircraft Industries v. Avco Corp.*, 980 F.2d 141, 145–46 (2d Cir. 1992).

The Court of Appeals assumed *arguendo* in section II of its decision that neither the amended federal complaint nor the evidence presented at the arbitration sufficiently placed Petitioner on notice that he was required to defend against fraud. Nevertheless it rejected Petitioner's § 10(a)(3) claim because Petitioner did not request, before issuance of the Award, permission to submit additional evidence or respond to Claimants' Supplemental Post-Hearing Brief.

That mistaken reasoning presents the question warranting this Court's review: **whether the absence of a meaningful opportunity to defend can itself be converted into a waiver of the right to such an opportunity.**

It cannot.

Waiver presupposes an opportunity capable of being waived. Here, the chronology demonstrates the opposite.

A. Fraud Was Expressly Disavowed During the Arbitration and Was Introduced Only After the Evidentiary Hearing Had Ended

This was not an arbitration in which Petitioner knew fraud was being litigated and failed to defend.

Fraud was not included in the arbitration demand. The submitted claims were breach of the Purchase Agreement against Paz and breach of the Guaranty against Shapiro, and the parties proceeded on that understanding throughout the hearing. (App. 189a - Arbitration Demand).

Indeed, Claimants' own counsel expressly told the arbitrator at the outset:

> "Now, I don't believe, because we don't have a fraud claim, that your Honor needs to determine that." (Transcript App. 187a, last paragraph).

In addition, Claimants' counsel characterized the proceeding as "a simple breach of contract" action concerning the SPA and Guaranty. (Transcript-App. 188a, third Paragraph). Petitioner's counsel then responded that "he doesn't have a fraud claim here, and there are only two claims in this case." (Transcript-Page 11, Line

6-12; A145–Appeal Appendix). The Arbitrator ultimately acknowledged that the only claim against Shapiro was breach of the Guaranty and that Claimants had not moved to amend the pleadings to conform to the evidence. (App. 120a at"B").

The evidentiary portion of the arbitration closed on March 8, 2024. On April 29, the Arbitrator circulated post-hearing questions seeking clarification of the parties' positions. Those questions did not identify fraud as an issue to be adjudicated. Petitioner's subsequent May 13 response therefore continued to proceed upon the understanding that the arbitration involved the claims that had actually been submitted and tried (App. 180a).

Petitioner's May 13 submission explained that no claim imposing additional personal liability upon Shapiro appeared in Claimants' Initial Disclosure, Pre-Hearing Memorandum, witness statements, April 9 Post-Hearing Brief, or hearing testimony (App. 139a–140a-Par. 1). Also the parties agreed to a "*one shot briefing*," **with no replies (App. 140a)** Petitioner specifically wrote that it sought to avoid being "blindsided" by a new claim without an opportunity to respond (App. 140a–last paragraph.

That concern proved prescient.

Claimants' Supplemental Post-Hearing-Brief, dated May 10, submitted May 13, injected fraud into the proceeding after the evidentiary hearing had already concluded.

The following day—May 14—the Arbitrator declared the arbitration closed (App. 137a).

Thus, after years in which Claimants expressly disavowed fraud, the theory entered only after the evidentiary record had closed, and the arbitration itself closed the next day. The sequence was:

March 8, 2024: evidentiary hearing closed.

April 29, 2024: Arbitrator's post-hearing questions that did not identify fraud as an issue.

May 13, 2024: Claimants first submitted their fraud theory.

May 14, 2024: Arbitrator declared the arbitration closed.

June 4, 2024: Award issued containing findings of fraud.

June 6, 2024: Petitioner immediately sought corrective relief from the Arbitrator; protesting that fraud had never been tried and that he had been deprived of notice and an opportunity to defend.

That sequence is not waiver. It is the absence of a meaningful opportunity to be heard.

B. The Opportunity Guaranteed by § 10(a)(3) Must Be Meaningful

The Court of Appeals substituted a theoretical opportunity to object for the meaningful opportunity to defend required by § 10(a)(3).

The requirement that a litigant receive an opportunity to be heard is among the most elementary principles of procedural fairness. The "fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). That opportunity must be provided "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); also *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Not every procedural limitation constitutes an independent violation of the Fifth Amendment. The narrower point is that the "fundamental fairness" Congress protects through § 10(a)(3) cannot reasonably be understood to permit an arbitrator to adjudicate a material accusation after the accused party has been denied a meaningful opportunity to meet it.

Tempo Shain reflects that principle. There, the court vacated an award where arbitrators excluded testimony material to rebutting fraudulent-inducement allegations. 120 F.3d. 20–21. The question was whether the party had an adequate opportunity to present evidence material to the issue decided.

The same principle applies with greater force here. Petitioner was not merely prevented from presenting one additional piece of cumulative evidence concerning an existing claim. He was denied an opportunity to present the defense appropriate to an accusation that Claimants had expressly represented was not part of the arbitration.

C. Fraud Required Materially Different Defenses From the Contract Claims Actually Tried

Petitioner defended the claims actually submitted: breach of the SPA against Paz and breach of the Guaranty against Shapiro. Those contract claims did not require a defense of his state of mind against intentional fraud.

Petitioner's letter protested to the Arbitrator immediately on 6/6/24 after issuance of the Award. Preparation for the hearing had focused *"entirely on the two 'contract' issues"—whether Paz or Shapiro had breached contractual obligations—"irrespective of scienter or intent," and counsel therefore "gave no thought to defending any allegation of fraud."*

Had fraud been presented as a claim, Petitioner could have marshaled evidence directed to intent, knowledge, and absence of fraudulent purpose, including Claimants' knowledge that funds would be transmitted through the factories' sourcing agent, tracing of the funds to the factories, and evidence of fraud perpetrated by the factories themselves. His appellate

submission did identify evidence he would have offered had he known fraud was being adjudicated.

Whether that evidence ultimately would have persuaded the Arbitrator is beside the point. Section 10(a)(3) protects the **opportunity to present it**.

A tribunal cannot determine first that a party committed fraud and then answer the denial of an opportunity to defend by speculating that the defense might not have changed the result. Fundamental fairness requires the opportunity to defend **before** the adjudication is made.

D. The Court of Appeals Mistook the Absence of an Opportunity to Be Heard for Waiver of That Opportunity

The Court of Appeals did not find that Petitioner received adequate notice that fraud would be adjudicated; it expressly assumed *arguendo* that the amended complaint and arbitration evidence did **not** sufficiently place him on notice.

The court nevertheless concluded that Petitioner could not complain of the absence of an adequate opportunity because he did not request an opportunity to respond to Claimants' Supplemental Post-Hearing Brief before the Award issued.

The sequence required by fundamental fairness is:

> **notice → meaningful opportunity to respond → fa**ilure to use that opportunity → **possible waiver.**

The Court of Appeals, in a mistake of law, permits:

> **insufficient notice → immediate closure → failure to request reopening → waiver.**

Under that rule, the very circumstances establishing the §10(a)(3) violation—the absence of sufficient notice and a meaningful opportunity to respond—become the basis for extinguishing the right.

Nothing in the FAA supports that result.

Nor is it consistent with waiver, which rests upon knowing relinquishment of a known right, not failure to anticipate adjudication of an issue the opponent expressly represented was not a claim. Petitioner could not knowingly relinquish a defense to an adjudication he had no reasonable basis to anticipate.

E. The Waiver Authorities Involve Available Opportunities Deliberately Left Unused; Not What Happened Here

The distinction is illustrated by *York Research Corp. v. Landgarten*, 927 F.2d 119 (2d Cir.1991). *York* rejected a party who remained silent during arbitration but complained after receiving an unfavorable award

about circumstances "of which he had knowledge from the first." *Id.* at 122.

Petitioner's circumstances are the opposite. Claimants said "we don't have a fraud claim," and the hearing proceeded accordingly. The Arbitrator's later questions did not announce fraud as an issue, and Claimants introduced the theory only in their final supplemental submission before closure the next day.

Matter of Arbitration Between Carina International Shipping Corp. & Adam Maritime Corp., 961 F. Supp. 559(S.D.N.Y.1997), is equally distinguishable—and illustrates why the decision below improperly expanded waiver.

In *Carina*, then-District Judge Sotomayor found waiver because an express procedure permitted reopening before the award. The party knew it wanted discovery and additional proceedings but made a "conscious tactical choice" not to seek reopening, relying instead on its contractual argument. *Id.*-567. The court emphasized its "full opportunity to invoke its rights." and declined to do so.

Here, there was no comparable "conscious tactical choice." Petitioner did not decide that he preferred one defense to presenting evidence against fraud. He had prepared and tried the arbitration on the express understanding that fraud was **not a claim**. Fraud was then injected into the final post-hearing submission under a procedure in which *the parties had specifically agreed to a one-shot briefing without replies, and the Arbitrator formally closed the proceeding the next day*.

Carina therefore demonstrates the distinction. Waiver there followed a **full opportunity** and a deliberate decision not to use it. Here the issue is whether there was a meaningful opportunity in the first place.

Adult Use Holdings Inc. v. FaZe Clan Inc., 631 F.Supp.3d, 174 (S.D.N.Y. 2022), illustrates the same distinction. There, parties confronted with a new contractual argument remained "flat-footed for far too long," making no attempt during the ensuing weeks to respond or request an opportunity to do so.

Here, by contrast, the new matter was not simply an additional contractual argument concerning an existing claim. It was fraud—an accusation requiring a defense directed to intent and scienter—and the arbitration was formally closed the day after that accusation was first presented.

The distinction is fundamental:

> **Waiver cases involve a meaningful procedural opportunity deliberately left unused. This case involves the absence of a meaningful opportunity before the proceeding was closed.**

F. Petitioner's Immediate and Repeated Objections Confirm That There Was No Conscious Tactical Waiver

Petitioner's conduct was the opposite of silence.

The Award dated 6/3/24 was issued 6/4/24, and 48 hours later, June 6, Petitioner's counsel wrote to the Arbitrator specifically challenging the fraud findings(App. 81a). Counsel wrote that fraud was never pleaded or tried(App. 82a); that defense had prepared the case as a contract dispute rather than one involving scienter or fraudulent intent(App. 83a); and that imposing such findings without notice or an opportunity to defend "**strikes at the very heart of due process.**" (App. 83a).

The letter did more than protest. It requested corrective relief from the Arbitrator and modification of the Award to remove the fraud findings (App. 84a). Counsel cited AAA Commercial Rule 52 and CPLR 7511(c)(2) as authority for a modification. *The letter also expressly stated that nothing therein should be understood as waiving Petitioner's right to challenge confirmation of the Award.* (App. 82a–Footnote # 1).

Petitioner maintained the same objection in opposing confirmation and seeking vacatur, arguing that the "*most fundamental requirements of due process are notice and an opportunity to be heard,*" and that the Arbitrator denied both. He again argued that he had no opportunity to prepare a fraud defense or present responsive evidence.

On appeal, Petitioner made the same arguments; that fraud first appeared in Claimants' May 13 submission, that the arbitration closed less than twenty-four hours later, and that he had no opportunity to defend the claim. He repeated the objection in appellate reply briefs, a letter to the district court judge (A931–Appeal Appendix), and the rehearing petition.

Those post-award objections do not themselves substitute for a meaningful pre-award opportunity to defend but are directly relevant to waiver: **Petitioner never knowingly acquiesced an adjudication of fraud.** Once the Award first revealed that the Arbitrator had transformed Claimants' last-minute accusation into an adjudicated finding of fraud, Petitioner sought relief from the Arbitrator within 48 hours and thereafter consistently maintained the same objection.

That conduct bears no resemblance to the "conscious tactical choice" found in *Carina*.

G. The Three-Week Interval Before the Award Was Not a "Meaningful Opportunity"

Claimants' May 13 submission introduced a fraud claim for the first time, the arbitration was formally closed on May 14, the award was issued on June 4. The relevant question is not whether Petitioner theoretically could have transmitted an unsolicited request to reopen a closed proceeding, it is whether he had meaningful notice that the Arbitrator intended to adjudicate fraud and a meaningful opportunity to present a defense before she did so.

The record supplied no such notice. Claimants had disavowed fraud; the hearing concluded without trying it; the April 29 questions did not identify it; Petitioner's May 13 submissions proceeded on the understanding no such claim existed; and the Arbitrator closed the proceeding the next day.

H. The Question Warrants This Court's Review Because the Decision Below Separates "Fundamental Fairness" From the Fundamental Requirement of a Meaningful Opportunity to Be Heard

The FAA favors enforcement of arbitration agreements **according to the parties' agreement**, not adjudications reached without the minimum procedural protections Congress preserved in § 10(a)(3).

The substantial deference afforded arbitral proceedings makes the protection of § 10(a)(3) more—not less—important. Because judicial review of arbitral procedure is exceptionally limited, the statutory requirement of fundamental fairness must retain a meaningful boundary: at a minimum, an arbitrator cannot adjudicate a serious and previously unasserted accusation of fraud without first affording the accused party notice and a meaningful opportunity to defend.

This Court's cases supply that content. Notice must be reasonably calculated to afford an opportunity to present objections. *Mullane*, 339 U.S. 314. And the opportunity to be heard must be afforded "at a

meaningful time and in a meaningful manner." *Armstrong*, 380 U.S. 552.

The Court of Appeals' ruling cannot be reconciled with those principles. It permits a tribunal to adjudicate fraud after assuming that the accused party lacked sufficient notice that the issue needed to be defended, so long as that party failed to request an opportunity to respond before learning that the tribunal actually intended to adjudicate the accusation.

The Court of Appeals thus converted the absence of notice and a meaningful opportunity to defend—the very procedural deprivation Petitioner challenged under § 10(a)(3)—into a waiver of that challenge, effectively requiring Petitioner to anticipate that the Arbitrator would adjudicate fraud even though fraud had never been pleaded as a claim; Claimants had expressly disavowed such a claim, and the proceeding was closed the day after Claimants first introduced fraud in their final supplemental submission.

Section 10(a)(3) does not require a party to divine what an arbitrator might decide. It requires a fundamentally fair proceeding where a party receives an adequate opportunity to present evidence and argument concerning the matters being decided.

The question appropriate for certiorari is whether **a meaningful opportunity to be heard must precede an adjudication, or whether the absence of such an opportunity may be treated as waiver because the accused party failed to request that**

the tribunal reopen a proceeding he had no reason to know would adjudicate that claim.

SECTION III. A MANIFEST DISREGARD OF THE LAW

THE COURTS BELOW EXTENDED ARBITRAL DEFERENCE BEYOND ITS LAWFUL LIMITS BY CONFIRMING AN AWARD THAT REWROTE THE PARTIES' CONTRACT, DISREGARDED EXPRESS RISK-ALLOCATION PROVISIONS, AND THEN USED THE REWRITTEN CONTRACT TO IMPOSE PERSONAL FRAUD LIABILITY

The decision below presents a question beyond disagreement with an arbitrator's view of evidence or construction of an ambiguous provision: the question for the Supreme Court to review is whether the extraordinary deference of the FAA afforded arbitration, permits confirmation where an award materially changes the parties' contractual words, omits dispositive language, disregards express provisions governing the contingency in dispute, and uses those altered premises to impose personal liability. Deference does not mean abdication. An award must remain grounded in the agreement the parties made, and a reviewing court must determine whether there is at least a "barely colorable justification" for the result.

Moreover, the Second Circuit reviews a district court's decision confirming or vacating an arbitration award **de novo as to questions of law**, while

reviewing findings of fact for clear error. *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust*, 729 F.3d 99, 103 (2d Cir. 2013). The errors presented here are not merely disagreements with arbitral factfinding. They include legal errors in determining whether an award objectively untethered from material contractual language nevertheless satisfies the FAA's limits on arbitral authority and the governing standard of judicial review.

Here, the Court of Appeals held that the Arbitrator "*meaningfully engaged with the relevant contract provisions and carefully considered their applicability*," and therefore found a "barely colorable justification" for the award. That conclusion cannot be reconciled with the contract and award. The award excised "**and to any brokers if applicable**" from the provision governing disbursement of escrow funds; substituted "strict **adherence**" for the contract's actual phrase "strict **reconciliation**"; and failed to give effect to **four force-majeure provisions**, including provisions expressly addressing pandemic or epidemic conditions. These were not peripheral discrepancies. They supplied premises for breach, fiduciary misconduct, and ultimately personal fraud liability.

A court may defer to an arbitrator's interpretation of a contract but it cannot confirm an award when the purported "interpretation" depends upon words the parties did not write and omission of words they did. Otherwise, the judicial review required by the FAA becomes effectively nonexistent and reverses

arbitration's fundamental premise—that the arbitrator derives authority from the parties' agreement.

The Supreme Court enforced that boundary in *Stolt-Nielsen S.A. v. Animal Feeds International Corp.*, 559U.S.662(2010), reversing the Second Circuit and vacating an award under FAA § 10(a)(4) because the arbitrators exceeded authority conferred by the parties' agreement. An arbitrator may not move beyond interpretation and impose a contractual obligation the parties never adopted. *Id.* at 671–72, 676–77. Petitioner does not ask this Court to select the better interpretation of contractual language. The award's ruling was created by deleting language the parties wrote and substituting language they did not. *Stolt-Nielsen* demonstrates that deference is not a license to enforce an award once the arbitrator crosses from interpreting the agreement to altering the source of her authority.

A. The Most Consequential Error Was Not an Interpretation of SPA §7(A)(i), but the Deletion of Its Express Authorization for Disbursement to "brokers".

SPA § 7(A)(i) governed the $2 million deposited into Shapiro's escrow account which is the entire basis of the fraud claim. It provides: "Disbursement of all funds to the seller *and to any brokers if applicable* as well as the payment of any fees and commissions shall be according to the escrow agreement." (emphasis added). The words "***and to any brokers if applicable***" are

not incidental. They expressly contemplate disbursement to a broker—which was also consistent with the manner in which private purchasers obtained products through Asian factories, particularly during the pandemic.

The award did not confront that language or explain why it didn't apply. Instead, it quoted the provision in materially altered form: "*disbursement of all [the escrowed] funds to the seller shall be according to the escrow agreement.*" The omitted language expressly authorized payment to a recipient other than the Seller. Yet the award relied upon the fact that money was sent to "someone other than the seller" to characterize the recipient as improper and impose liability.[1]

The consequence was direct. Two transfers from Shapiro's IOLTA account to the broker, Glover Court Pty Ltd., totaled $1,975,000. The award emphasized that Glover "was not the Seller identified in the SPA" and concluded that Shapiro "breached his fiduciary duty as a trustee of an escrow account when he sent money to someone other than the seller." (see Footnote # 1 below). But the SPA expressly contemplated disbursement "to any brokers if applicable." The award converted contractually contemplated conduct into

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[1] The Arbitrator's premise is absurd: the Seller is defined by the Arbitrator and the contract as Paz, a company owned by Shapiro. The award suggests that Shapiro acted improperly by not wiring the funds to himself (his own sole-member company) —a commercially unnecessary and silly step that would simply have required Shapiro, through Paz, to re-wire the funds to the broker for the factory.

wrongdoing only after omitting the language permitting precisely that payment route.

That altered premise was material, dispositive, and central to the fraud determination. The award also reasoned that Shapiro's position concerning Paz as a broker supported fraud. Yet the SPA expressly referred to brokers and contemplated disbursement to them. The fraud finding therefore rested not on a disputed contractual interpretation but upon the arbitrators' deletion and abbreviated version of § 7(A)(i) ("judicial indiscretion").

This distinction is central. The Second Circuit stated that manifest disregard requires "something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law," and that an award ordinarily must be enforced if there is a "barely colorable justification for the outcome reached." There is no "colorable justification" for an award that consciously deletes words in the contract. **An arbitrator cannot create that justification by deleting contractual language that defeats the premise of the award**. If omission of dispositive words followed by liability based upon their absence qualifies as ordinary "interpretation," the requirement that an award derive from the parties' agreement imposes no meaningful boundary.

Second Circuit precedent confirms that deference has an enforceable limit. In *Halligan v. Piper Jaffray, Inc.*, 148 F.3d 197, 204 (2d Cir.1998), the court reversed confirmation upon finding manifest disregard. *Porzig v. Dresdner, Kleinwort, Benson, North America*

LLC, 497 F.3d, 133, 138–40149–50 (2d Cir. 2007), held significant portions of an award issued in manifest disregard of law and another portion beyond statutory authority. *Fahnestock & Co. v. Waltman*, 935 F.2d 512, 516, 51(2d Cir.1991), affirmed vacatur of an award exceeding lawful authority by granting punitive damages forbidden by N.Y. These cases establish a critical proposition: arbitral deference has a boundary, and the Second Circuit itself has enforced it.

B. The Award Separately Replaced "Strict Reconciliation" with "Strict Adherence," and the Substitution Materially Altered the Standard Used to Judge Performance.

The rewriting of § 7(A)(i) was not isolated. On page 2 of the award, the Arbitrator purported to quote SPA § 2(i) as requiring performance "*in strict **adherence***" to the agreement. The SPA actually provides that the parties agree to the transaction "*in strict **reconciliation*** with the parameters, terms and conditions of this SPA." "Adherence" appears nowhere in the SPA, while "reconciliation" is used four times.

The substitution of "adherence" instead of "reconciliation" became the repeated lens through which the Arbitrator judged alleged delivery breaches, including timing and the 25-mile delivery-radius requirement. Rather than determine whether conduct could be reconciled with the SPA as written and its provisions addressing extraordinary pandemic conditions, the award imposed a "strict adherence" standard that does

not appear in the agreement. The District Court then echoed that altered standard, blindly adopted by the Court of Appeals which wrote that the Arbitrator "*meaningfully engaged with the relevant contract provisions*" . . . . when she plainly did not . . . . *in* concluding that "neither shipment 'strictly *adhered*' to the terms of the SPA."

The words used to justify the result are not the words the parties agreed upon. Deference presupposes that the arbitrator is construing the contract. Substituting a different operative phrase and using it to impose a stricter performance standard is materially different from selecting among plausible meanings of the agreed language.

C. Four Express Force-Majeure Provisions, Including Pandemic and Epidemic Language, Were Denied Operative Effect.

The parties did not leave pandemic-related disruption to implication. Four contractual provisions addressed force majeure: SPA § 1 (viii), defining Force Majeure to **include pandemics**; SPA § 2 (iii), permitting alteration where required by law or force-majeure circumstances; SPA § 10, excusing delay or failure to perform due to circumstances outside reasonable control; and Escrow Agreement § 26, excusing the Escrow Agent's performance for circumstances beyond control, **expressly including epidemic**.

The award acknowledged shipping problems but concluded that a six-month delay was "not reasonable"

and that Claimants need not accept the June or July shipments, without giving operative effect to those express pandemic and epidemic provisions.

Petitioner does not ask the Court to reweigh expert or documentary evidence presented concerning pandemic-era manufacturing and delivery. The legal problem is that the parties expressly allocated pandemic and epidemic risk in four provisions, while the award judged performance through the extra-contractual language "strict adherence" and effectively treated the agreed risk-allocation provisions as surplusage. The Court of Appeals incorrectly characterized this as "meaningful" engagement with the contract.

There must be a judicially enforceable difference between interpreting a force-majeure clause and failing to give operative effect to multiple express provisions governing the precise contingency at issue. Otherwise, contractual provisions may be rendered meaningless merely by not applying them, insulated by the label "deference."

D. The Court of Appeals' Conclusion That the Arbitrator "Meaningfully Engaged" with the Contract Cannot Be Reconciled with the Record It Was Reviewing.

Comparison of the award to the actual contract demonstrates otherwise.

Three objective defects are apparent: the award omitted the broker-disbursement language from

§7(A)(i) and then condemned payment to someone other than the Seller; replaced "strict reconciliation" with "strict adherence" and used that altered formulation to judge performance; and failed to give operative effect to four force-majeure provisions addressing pandemic or epidemic disruption.

Even highly deferential review requires a barely colorable justification **derived from the written agreement the parties made**. The standard is not self-executing. Where an award's premise exists because material words were removed, its justification derives from a rewritten agreement, not the actual agreement. Where express risk-allocation provisions receive no operative effect, deference cannot substitute for the missing contractual analysis.

This presents the "*something beyond and different from a mere error*" recognized by the Court of Appeals itself. The Arbitrator did not merely select an allegedly incorrect meaning for "and to any brokers if applicable"; **the award omitted those words**. She did not merely adopt an unduly strict meaning of "strict reconciliation"; **the award replaced that phrase with "strict adherence**." Those are objective textual changes ascertainable from the documents themselves without reweighing testimony or credibility.

The Court of Appeals therefore committed an error of law by treating objectively demonstrable alteration of the contract as protected contractual interpretation and then invoking deference without identifying a colorable justification grounded in the contract actually executed. A rationale dependent upon omitted

operative words and substituted contractual language cannot become contract-based merely because it appears in an arbitral award. *Stolt-Nielsen*, 559 U.S., 671–72, 676–77; *Porzig*, 497 F.3d 138–40.

E. The Court of Appeals' Separate Reliance on Petitioner's Supposed Failure to Present Fraud Arguments Before the Award, Compounds the Manifest-Disregard Problem Because the Proceeding Was Closed Before a Meaningful Response Was Possible.

The Court of Appeals also rejected manifest disregard as to fraud because Petitioner "did not present [his] legal arguments on fraud to the arbitrator prior to the issuance of the award" and therefore could not establish the subjective component of manifest disregard. That reasoning cannot be separated from the chronology addressed in Section II.

The Arbitrator posed post-hearing questions April 29, 2024. The parties responded May 13 in which Claimants injected their fraud claim for the first time. On May 14—the next day—the Arbitrator declared the hearing closed and expressly advised she would accept no further communications (App. 93a). The Award, dated June 3, issued June 4; Petitioner protested June 6 (App. 91a).

The Court of Appeals thus treated the absence of a pre-award fraud brief as Petitioner's failure when the arbitral procedure made such a submission impossible.

The proceeding closed immediately after fraud was raised and further communications were prohibited. The court used the consequence of the procedural deprivation as a reason to deny review of the substantive error.

That error is particularly significant because the fraud finding was intertwined with the altered contract language. The premise that Shapiro sent funds to an improper recipient depended upon treating payment to someone other than the Seller as wrongful even though omitted § 7(A)(i) language expressly contemplated payments "to any brokers if applicable." The late fraud theory, immediate closure, and incomplete quotation reinforce one another: Petitioner was denied a meaningful opportunity to address a newly asserted theory before it became personal fraud liability.

This chronology is not repeated merely to duplicate Section II. It matters independently because the Court of Appeals used the absence of a pre-award response as a legal basis to reject "manifest disregard". A party cannot reasonably be required to establish that the arbitrator knowingly disregarded a legal objection when the arbitrator's own closure order prevented its presentation after the issue first arose.

F. Certiorari Is Warranted to Define the Point at Which Arbitral Deference Becomes Judicial Abdication.

The FAA policy favoring arbitration agreements and awards and arbitrator's authority is founded on consent. The principle requiring judicial restraint

therefore also requires fidelity to the agreement from which arbitral authority originates.

The decision below pushes deference beyond that boundary. It permits confirmation where the award omitted outcome-determinative broker language, substituted a performance standard absent from the SPA, disregarded four force-majeure provisions addressing pandemic or epidemic conditions, and imposed personal fraud liability through a theory raised as the proceeding closed. The Court of Appeals did not explain how these objective defects could be reconciled with the contract; it invoked "meaningful engagement" and a "barely colorable justification."

If that is sufficient, the standard has no limiting principle. Any rewriting can be called "interpretation," and any failure to apply a provision insulated by deference. The FAA does not authorize courts to correct ordinary legal or factual errors, but neither does it require confirmation of an award whose decisive reasoning depends upon changing the contract the arbitrator was empowered to enforce.

The governing authorities recognize that boundary. The Second Circuit has enforced it where manifest disregard or excess of authority was established. *Halligan*, 148 F.3d 204; *Porzig*, 497 F.3d 138–40, 149–50; *Fahnestock*, 935 F.2d 516, 519. This Court enforced the contractual boundary under § 10(a)(4) where arbitrators imposed a result not grounded in the parties' agreement. *Stolt-Nielsen*, 559 U.S. 671–72, 676–77. Petitioner's claim fits that boundary because it rests upon objective textual comparison.

This case is an appropriate vehicle because no retrial, credibility determination, or reweighing of evidence is required. The comparison is textual: what the parties wrote; what the Arbitrator quoted; what she omitted or substituted; and how those changes became predicates for liability.

Review is warranted to make clear that arbitral deference has a statutory stopping point. It cannot require confirmation of an award no longer grounded in the parties' actual agreement and produced through a procedure denying a meaningful opportunity to answer a newly introduced fraud theory. The District Court's deference, followed by the Court of Appeals' deference to confirmation, converted judicial restraint into insulation from meaningful review. The Court should grant certiorari and reaffirm that the FAA protects arbitration as the parties agreed to it—not arbitration untethered from their contract and from the fundamental fairness required before personal fraud liability may be imposed.

CONCLUSION

The courts below misconceived deference and created a blueprint for insulating unfair awards. Deference is not blindness. The district court's "rubberstamp" confirmation and the panel's reliance on a supposed lack of pre-award objection—despite the arbitrator's day-after closure—create a procedural cul-de-sac in which arbitrators can insert new theories post-hearing, delete contract terms, disclaim core evidence, and then rely on judicial deference to avoid

correction. That result undermines both arbitration's integrity and public confidence.

The petition should be granted. The Court should summarily reverse or, at minimum, grant plenary review to hold that: (1) closing arbitral proceedings the day after a new claim first appears in a supplemental submission, thereby denying any opportunity to respond, violates due process and warrants vacatur under § 10(a)(3); (2) materially misquoting and deleting dispositive contract language to manufacture liability exceeds arbitral authority and constitutes misconduct; and (3) disregarding enumerated force majeure provisions and material, unrebutted evidence yields a fundamentally unfair award. The judgment of the court of appeals should be vacated and the case remanded to conduct proceedings consistent with these principles or with instructions to vacate the award, or for further proceedings consistent with this Court's opinion.

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Respectfully submitted,

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