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IN THE SUPREME COURT OF THE UNITED STATES

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DENISE A. BADGEROW, )

Petitioner, )

v. ) No. 20-1143

GREG WALTERS, ET AL., )

Respondents. )

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Washington, D.C.

Tuesday, November 2, 2021

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:29 a.m.

APPEARANCES:

DANIEL L. GEYSER, ESQUIRE, Dallas, Texas; on behalf of the Petitioner.

LISA S. BLATT, ESQUIRE, Washington, D.C.; on behalf of the Respondents.

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1 P R O C E E D I N G S

2 (11:29 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument next in Case 20-1143, Badgerow versus  
5 Walters.

6 Mr. Geysler.

7 ORAL ARGUMENT OF DANIEL L. GEYSER

8 ON BEHALF OF THE PETITIONER

9 MR. GEYSER: Thank you, Mr. Chief  
10 Justice, and may it please the Court:

11 The question presented is whether  
12 Vaden's look-through approach applies to  
13 applications to enforce or vacate an arbitration  
14 award under Sections 9 and 10 of the Federal  
15 Arbitration Act. The answer is controlled by  
16 the FAA's plain text, and the competing  
17 statutory arguments are not close.

18 The look-through approach is no  
19 ordinary jurisdictional doctrine. It is an  
20 express textual departure from the well-pleaded  
21 complaint rule. This textual exception is found  
22 solely in Section 4. It applies exclusively to  
23 petitions under that single section. Congress  
24 did not repeat this unique language anywhere  
25 else in the Act. In fact, there's not a single

1 textual hint in any other section that a  
2 look-through analysis is allowed or appropriate.

3 Yet, according to Respondents, the  
4 look-through approach somehow applies to every  
5 section of the FAA instead of the single section  
6 where it actually appears.

7 Respondents' theory fails on every  
8 conceivable level. For over a century now, the  
9 well-pleaded complaint rule has governed the  
10 exercise of jurisdiction in federal courts.  
11 That's the rule that applies unless Congress  
12 says otherwise. And Congress said otherwise in  
13 Section 4 alone. Congress did not isolate the  
14 look-through clause in Section 4 because it  
15 wanted it applied in other sections where it was  
16 excluded.

17 Nor did Congress endorse Respondents'  
18 notion of an upside-down default rule, where  
19 courts ignore the face of a well-pleaded filing  
20 and instead look to a nonexistent, phantom  
21 pleading that never appears in any court.

22 Respondents' theory would require  
23 overturning bedrock jurisdictional doctrine and  
24 abandoning this Court's fidelity to the  
25 statutory text. There is simply no basis for

1 saying the look-through approach applies in  
2 Sections 9 and 10 without judicially rewriting  
3 the statute or rendering Section 4's express  
4 look-through clause wholly superfluous.

5 I welcome the Court's questions.

6 JUSTICE THOMAS: Counsel, we have said  
7 or suggested from time to time that the FAA  
8 doesn't provide federal question jurisdiction.  
9 So how do you square that with the notion that  
10 Section 4, Section 8, provides such  
11 jurisdiction?

12 MR. GEYSER: Well, I think the best  
13 reading of this Court's cases is it was  
14 referring generally to the idea that when an  
15 action arises under federal law, then the  
16 federal law itself provides jurisdiction. The  
17 Court wasn't parsing the individual sections of  
18 the Act and saying whether there's a specific  
19 independent grant of jurisdiction.

20 But, ultimately, I don't think it  
21 matters because there are only two ways to read  
22 Section 4. We read Section 4 as providing  
23 jurisdiction. But the alternative is to read  
24 Section 4 as providing an instruction to courts  
25 on how to exercise jurisdiction under sections

1 like 1331 and 1332, and that instruction says  
2 you can look through to the underlying dispute.

3 Now that's a departure from the  
4 well-pleaded complaint rule that traditionally  
5 governs every other filing in the Act, and that  
6 exception, that express instruction to depart  
7 from that traditional rule, is found only in  
8 Section 4.

9 So even if jurisdiction is ultimately  
10 deemed to vest under 1331, per Section 4's  
11 instruction, which is basically what this Court  
12 said in Vaden, you come out to the same -- it  
13 comes out to the same outcome whether you adopt  
14 that approach or you say Section 4 itself is an  
15 independent grant of jurisdiction.

16 JUSTICE THOMAS: Well, isn't that an  
17 odd statute, that you just have one provision in  
18 a long statute that grants jurisdiction in sort  
19 of a -- a -- a roundabout way?

20 MR. GEYSER: Well, I think that the --  
21 the Federal Arbitration Act is deemed slightly  
22 anomalous, but I think what's absolutely clear  
23 from the FAA is that the only basis for  
24 departing from the well-pleaded complaint rule  
25 is, in fact, in Section 4.

1           If Congress wanted that rule to apply  
2 to every section of the Act, it could have put  
3 it in a free-standing provision that applied  
4 globally, just like it did with Section 6 in  
5 saying that applications or petitions under the  
6 Act are treated as motions, or as it did in the  
7 international arbitration context under  
8 Section 203.

9           Nothing stopped Congress from saying,  
10 for every pleading under the Federal Arbitration  
11 Act, you should look through to the underlying  
12 hypothetical nonexistent dispute and decide  
13 whether that would give rise to federal  
14 jurisdiction.

15           That's exactly opposite the way the  
16 courts have functioned in determining federal  
17 jurisdiction on the face of the pleading for  
18 over a century.

19           JUSTICE THOMAS: Thank you.

20           JUSTICE KAGAN: And, Mr. Geyser, when  
21 -- when you say the well-pleaded complaint rule  
22 and that's the alternative, what does the  
23 well-pleaded complaint rule indicate in this  
24 case? I mean, you say the well-pleaded  
25 complaint rule tells you this is the enforcement



1 of a state law contract claim, so we're in state  
2 court. But I might say, well, if we look to the  
3 well-pleaded complaint, the well-pleaded  
4 complaint says something about Section 9 and  
5 this arises under federal law.

6 MR. GEYSER: Sure, Your Honor. Well,  
7 I -- I think that what's before the Court, and  
8 just to be very clear, is not the underlying  
9 dispute; it is clearly the attempt to enforce  
10 the arbitration contract.

11 Now, when you're enforcing the  
12 arbitration contract, it's true you're looking  
13 to elements of federal law, but that's exactly  
14 what this Court has said now for approaching  
15 four decades. It's not --

16 JUSTICE KAGAN: Well, I guess what I'm  
17 saying is that the attempt to enforce the  
18 contract is -- is -- is through Section 9. And  
19 so why doesn't Section 9 on the well-pleaded  
20 complaint rule put you in federal court?

21 MR. GEYSER: It -- it typically would,  
22 Your Honor, except for the fact that for nearly  
23 four decades this Court said it doesn't. This  
24 Court said that the Federal Arbitration Act is  
25 an anomaly and that it normally -- unlike the

1 normal situation, where that would give  
2 arising-under jurisdiction, the Federal  
3 Arbitration Act departs from that tradition.  
4 And I think it does so --

5 JUSTICE KAGAN: Yeah, but -- so it's a  
6 little bit of an odd argument that you're  
7 making, right, because you're saying, well, it's  
8 got to be the well-pleaded complaint rule, but  
9 then you're also saying the well-pleaded  
10 complaint rule, by virtue of one of our  
11 holdings, actually does not function in the way  
12 the well-pleaded complaint rule normally does.

13 MR. GEYSER: Well, I -- I think two  
14 responses, Your Honor.

15 First, one thing that's very clear is  
16 that we can, I think, all agree that there's no  
17 license under the text of the statute or the  
18 well-pleaded complaint rule to look through to  
19 the underlying dispute. You do look at what's  
20 actually before the Court.

21 So then the question is, should the  
22 Court overturn nearly four decades of this  
23 Court's precedent saying that even though the  
24 party is enforcing an element of the Federal  
25 Arbitration Act to enforce an arbitration

1 contract, that that's not enough to get into  
2 federal court? And I would suggest that there  
3 the -- the Respondents have not asked this Court  
4 to reconsider that line of authority.

5 I think it would be striking to  
6 reverse it. And just imagine the practical  
7 consequences of doing so. The -- if, in fact,  
8 it's enough to get into federal court to simply  
9 invoke an element of the Federal Arbitration  
10 Act, then every single contract governed by the  
11 FAA is eligible for federal jurisdiction.

12 Even the most mundane state law  
13 disputes between non-diverse parties, every  
14 single one of those would come to federal court.

15 JUSTICE KAVANAUGH: That's -- that's  
16 not their argument, though.

17 MR. GEYSER: Well, that -- that isn't  
18 their argument, but their argument I think --

19 JUSTICE KAVANAUGH: Their argument, I  
20 think, is that the look-through applies to at  
21 least some proceedings under the Act, that we've  
22 repeatedly said that the Act doesn't affect  
23 jurisdiction, however, and, therefore, you put  
24 those two things together, that look-through  
25 must apply to all the FAA proceedings.

1           And anomalous as it is, the -- there  
2           are -- Julius Cohen and the ABA interpreted this  
3           Act back in the 1920s as doing this anomalous  
4           look-through, and correct me if I'm wrong, but  
5           I've read -- read those.

6           MR. GEYSER: Well, I -- I -- I -- I  
7           disagree that that's what Julius Cohen was  
8           saying. Now, granted, that -- that isn't even  
9           legislative history. It's actually a  
10          post-enactment article, so it's --

11          JUSTICE KAVANAUGH: No, but it's  
12          getting at what was the understanding of how the  
13          Act operated by people who were expert in the  
14          field at the time, because otherwise this seems  
15          pretty anomalous, but when you realize, well,  
16          the experts at the time thought this is how it  
17          works, it defeats the idea of how anomalous it  
18          is that it's look-through all the way through.

19          And I just don't how -- know how you  
20          get around our repeated statements that the Act  
21          does not confer jurisdiction or affect  
22          jurisdiction, as Justice Thomas said, because,  
23          if you -- if you take that as a given, then  
24          Section 4 can't -- can't do that either.

25          MR. GEYSER: Well, a -- a couple

1 points there, Your Honor.

2 First, I -- I don't think that Julius  
3 Cohen even was saying that the look-through  
4 approach applies to everything. He's saying you  
5 can apply the look-through approach to enforce  
6 arbitration agreements, which, in fact, is a  
7 reference to Section 4.

8 So I don't read the legislative -- the  
9 -- the non-legislative history, the  
10 post-enactment commentary by a single person as  
11 actually saying that the look-through approach  
12 atextually applies to every single provision of  
13 the Act, even though Congress was very  
14 deliberate in putting it only in Section 4.

15 And saying not only that, it wasn't  
16 even a free-standing sentence in Section 4. The  
17 look-through approach is intertwined directly  
18 with a motion to compel arbitration. And this  
19 Court in Vaden understood that to instruct  
20 courts to depart from the well-pleaded complaint  
21 rule for Section 4 alone and to decide whether  
22 then jurisdiction would vest under Section 1331  
23 or 1332.

24 So, again, even if you disagree with  
25 our reading that Section 4, in fact, is an

1 independent grant of jurisdiction, I think at  
2 the very least it's instructing courts how to --

3 JUSTICE KAVANAUGH: Isn't that the  
4 end -- sorry to interrupt -- but isn't that the  
5 end of your case if we disagree with that?

6 MR. GEYSER: Oh, not -- not at all,  
7 Your Honor.

8 JUSTICE KAVANAUGH: Okay.

9 MR. GEYSER: Not at all because --

10 JUSTICE KAVANAUGH: Keep going then.

11 MR. GEYSER: -- because the -- the  
12 alternative is then jurisdiction -- we know from  
13 this Court's case law that jurisdiction has to  
14 independently arise from somewhere. That  
15 somewhere is Section 1331 and 1332 typically,  
16 unless it's an admiralty case, which are --  
17 which are pretty easy under the Act.

18 But, under 1331 and 1332, as Vaden  
19 also confirmed, the well-pleaded complaint rule  
20 applies. So, if you look to the face of the  
21 filing, it is not an attempt to adjudicate the  
22 underlying dispute.

23 The only reason that you depart from  
24 that -- and this is why Vaden said the text of  
25 Section 4 drives our conclusion -- is because

1 Section 4 itself instructs courts to depart from  
2 the well-pleaded complaint for purposes of  
3 compelling arbitration. It does not say that in  
4 Section 9. It doesn't say that in Section 10.

5 Congress was well aware how to tell  
6 courts to retain jurisdiction on the back end if  
7 they want. That's, in fact, exactly what they  
8 did in Section 8. When they're dealing with  
9 maritime cases, they said you can exercise  
10 jurisdiction to compel arbitration and you can  
11 retain jurisdiction on the back end.

12 That's a very odd command if Congress  
13 was assuming that the look-through approach  
14 simply applies across the board.

15 JUSTICE KAGAN: So, on your theory,  
16 when would Section 9 and 10 give federal courts  
17 jurisdiction? Is it only in diversity cases?

18 MR. GEYSER: It's predominantly in  
19 diversity cases. And I think, again, the --

20 JUSTICE KAGAN: And isn't that a  
21 little bit backwards, that it ends up that you  
22 put the diversity cases in the federal court  
23 system and you take all the cases that involve  
24 federal questions and say, oh, the federal  
25 courts don't have anything to do with those

1 cases?

2 MR. GEYSER: Not at all, Your Honor,  
3 because think about, first, going back to 1925,  
4 we are predominantly dealing with commercial  
5 contracts. If you want to talk about what  
6 Julius Cohen was thinking, he was thinking  
7 diversity cases and maritime cases. It wasn't  
8 even clear that federal statutory cases were  
9 subject to the FAA for decades.

10 So I -- I think, if you -- the  
11 drafters weren't thinking of federal questions.  
12 But, also, look at the nature of the action  
13 under Section 9 and Section 10. It's not an  
14 attempt to readjudicate the underlying federal  
15 suit. In fact, that would stand the Federal  
16 Arbitration Act on its head. That would make  
17 arbitration a prelude to the real event in court  
18 where you'll readjudicate all these federal  
19 questions.

20 Section 9 is a ministerial function of  
21 confirming the award. You don't even need to  
22 know generally what the underlying dispute was  
23 about, whether it's a federal question or  
24 otherwise.

25 Section 10, as the Court said in Hall



1 Street, was designed to check egregious  
2 departures from the arbitration contract.

3 JUSTICE KAVANAUGH: And you would send  
4 those to state court?

5 MR. GEYSER: I -- I -- I would, just  
6 as --

7 JUSTICE KAVANAUGH: And is it clear --  
8 I think it's not clear -- that state courts  
9 would apply Section 10?

10 MR. GEYSER: I think some state courts  
11 apply Section 10 nominally. Others don't.

12 JUSTICE KAVANAUGH: So we're going to  
13 have a whole collateral thing of do the state  
14 courts have to apply Section 10 or what other  
15 standards do they apply?

16 MR. GEYSER: And -- and this Court in  
17 Hall Street said that's perfectly fine. In  
18 fact, in Hall Street and -- and in Vaden itself,  
19 it reminded litigants that state courts, in  
20 fact, play a prominent role in enforcing the  
21 Act, and in large part, the Act is left to  
22 enforcement in the state courts.

23 And Hall Street confirmed that most  
24 state courts apply standards that either are  
25 Section 10, they either apply the FAA directly,

1 or they apply a state law standard that -- that  
2 is a functional equivalent to it.

3 JUSTICE BREYER: Can you just explain  
4 some -- I'm just missing this. I had trouble  
5 with it. Why would they have jurisdiction in  
6 diversity cases but not have jurisdiction in  
7 federal question cases?

8 MR. GEYSER: The -- I -- I think the  
9 idea, Your Honor, is that if you have  
10 non-diverse parties that are trying to vacate an  
11 award above the threshold amount, they can get  
12 into federal court. And we agree with that.  
13 That's the well-pleaded complaint rule.

14 But, in a federal question case, the  
15 -- the pleading before the Court under Section 9  
16 and Section 10 is not the underlying case. It's  
17 the attempt to enforce the arbitration contract.  
18 It's saying, I want the arbitration contract  
19 enforced, not I want to adjudicate the federal  
20 question --

21 JUSTICE BREYER: Oh, I see. Okay.

22 MR. GEYSER: -- in the underlying  
23 case.

24 JUSTICE BREYER: Okay. Then the odd  
25 thing is that -- that I -- we have Vaden. And

1 so, in the federal question area at least, sure,  
2 you can come in, the parties are having an  
3 argument, the argument's about a federal  
4 question, it is a -- I mean, the argument, they  
5 say, would be good arbitration. It's an  
6 antitrust problem or it's an employment problem.  
7 And -- and Vaden says, yeah, go ahead, they  
8 won't go, go get an injunction.

9           Now, to me, it doesn't seem to make  
10 very much sense to say: Okay, go there, get an  
11 injunction. Hey, but when it comes time to  
12 enforce it, you can't go there. When it comes  
13 time to issue a subpoena, you can't go there.  
14 When it comes -- and, you know, that just -- why  
15 you separate 4 from the rest of it, I can't get  
16 it.

17           Now I understand there's a little bit  
18 of different language. There is. But you also  
19 could use the words such agreement as being the  
20 key to this, and they're talking about such  
21 agreement, and such agreement means the  
22 agreement we're talking about, which is the  
23 Section 4 agreement which could get there, and  
24 if that's the one we're talking about, you can  
25 do these other things too. Okay.

1           Maybe I didn't say it exactly right,  
2           but you get the point.

3           MR. GEYSER: I -- I -- I get the point  
4           and you said it very well.

5           The -- first, I'd say that there is  
6           radically different language between Section 4  
7           and the other sections, so --

8           JUSTICE BREYER: It says save this  
9           agreement.

10          MR. GEYSER: It's not -- but the --  
11          but I think there are other reasons not to do  
12          that.

13          First, the Congress clearly framed  
14          these different provisions as standalone  
15          provisions. There's no requirement that a party  
16          invoke Section 4 on the front end. They can  
17          only invoke Section 9 or 10 on the back end.  
18          That's what happened in this case.

19          The provisions are framed as  
20          standalone petitions or applications. Most of  
21          them have their own service requirements. They  
22          have their -- their own statute of limitations,  
23          their own venue rules, their own even  
24          jurisdictional requirements in Section 4 and  
25          Section 8.

1                   This is not Congress thinking that you  
2 start at the beginning with Section 4 and a  
3 court, a single court, supervises it all the way  
4 through. In fact, you can have different  
5 federal courts enforcing different provisions of  
6 this Act.

7                   So this is clearly not a continuum.  
8 This isn't Congress thinking we need  
9 jurisdiction from the start to --

10                   JUSTICE BREYER: All right. But, if  
11 that's the main argument, what we're doing here  
12 normally is we are having, let's call him an  
13 arbitration rat. There is the guy who loves  
14 arbitration and then there is the rat who hates  
15 it, although he agreed to it, okay?

16                   Now he will express his ratitude in  
17 many different ways. First, he will not want to  
18 go in in the first place. Then, if you make him  
19 go in in the first place, he's not going to want  
20 the other guy to get any witnesses. And then,  
21 if you go and get that, he's not going to want  
22 anybody to enforce this thing which he lost in  
23 the third place.

24                   So, of course, these don't all just  
25 always follow. It depends on which of these

1 provisions the guy can use and invoke in order  
2 to stop what he agreed to, which is the  
3 arbitration.

4 MR. GEYSER: A few answers, Your  
5 Honor.

6 First, when a federal court compels  
7 arbitration or stays a case on the front end, it  
8 has discretion where it sees the arbitration  
9 rat, the person who is going to fight tooth and  
10 nail, to retain jurisdiction over the case, and  
11 it can exercise the other authority under the  
12 Act as an ancillary matter, which is exactly how  
13 it normally works in the settlement context.  
14 You can have a federal claim, and it can -- it  
15 can be settled, and a court can retain  
16 jurisdiction over the case to supervise the  
17 settlement or put the settlement in the decree.

18 And you can have situations then where  
19 the same settlement dispute will either be  
20 subject to federal jurisdiction or not, entirely  
21 based on whether the court exercises discretion  
22 to do that, and there's nothing wrong with that.

23 This Court said in Vaden that federal  
24 jurisdiction often turns on how litigation  
25 unfolds. And you can have different situations.

1 And where Congress wanted a single court to  
2 retain jurisdiction, whether it's because of an  
3 arbitration rat or not, it said it expressly.

4 Look at Section 8. Section 8 says  
5 that the court has jurisdiction to compel  
6 arbitration in the maritime context and it  
7 retains jurisdiction to enforce the award.

8 Congress did not repeat that language  
9 in Section 9 or in Section 10.

10 CHIEF JUSTICE ROBERTS: So you could  
11 call them an arbitration rat or a judicial lion,  
12 I suppose.

13 (Laughter.)

14 CHIEF JUSTICE ROBERTS: But, I mean,  
15 isn't the -- isn't the problem here -- and I  
16 think your -- your friend will have the exact  
17 flip side of the problem -- the somewhat unusual  
18 situation where this is a federal statute that  
19 we have said does not give rise to federal  
20 jurisdiction?

21 I mean, that's why it seems to me that  
22 it's so difficult to parse exactly where you're  
23 going to be in federal court and when you're  
24 going to be in state court.

25 MR. GEYSER: I -- I do think that that

1 is an element of what's going on. But given  
2 that as a premise, the question then is: Can  
3 you graft the look-through clause, which  
4 absolutely clearly applies in Section 4 and only  
5 Section 4, onto these other sections?

6 Now I think the reason you haven't  
7 heard my friend say that the Court should  
8 reconsider that line of authority is because  
9 she's perfectly aware of what would happen if  
10 you were.

11 Just to give an example, for the  
12 12-month period that ended in March of 2020,  
13 there were 332,000 civil filings in U.S.  
14 district courts nationwide. So far this year,  
15 in the AAA alone, they've adjudicated 380,000  
16 arbitrations.

17 And if you're to say that simply  
18 invoking any provision of the Act is enough,  
19 then what you have is anyone with a state law  
20 claim and non-diverse parties, now these 380,000  
21 cases are all eligible --

22 JUSTICE KAVANAUGH: That's not --

23 MR. GEYSER: -- for federal  
24 jurisdiction.

25 JUSTICE KAVANAUGH: -- that's not



1 their -- that's an amicus argument. That's not  
2 their argument.

3 MR. GEYSER: It isn't their argument,  
4 but their argument is now what they're --

5 JUSTICE KAVANAUGH: And so I guess the  
6 -- of what relevance are those statistics,  
7 unless we're thinking of adopting the amicus  
8 position, which --

9 MR. GEYSER: Well -- well -- well, I  
10 certainly hope you're not.

11 JUSTICE KAVANAUGH: Yeah.

12 MR. GEYSER: I was just trying to  
13 respond to the -- to the Chief Justice's  
14 question. But I do think, though, what you look  
15 at my friend trying to do then is thinking,  
16 well, we know it's not acceptable to say that  
17 everything comes in, so now we need to  
18 artificially limit it to a subset of cases.

19 But that's the problem. This is an  
20 artificial limit. It's very clear that the  
21 Section 4 language simply does not apply in  
22 those other sections. And if the Court is to  
23 say that the look --

24 JUSTICE KAVANAUGH: But wouldn't  
25 you -- to pick up on Justice Breyer's questions,

1 doesn't it make sense to have a -- a uniform  
2 rule if you're not going to have, oh, the Act  
3 itself confers jurisdiction, a uniform way to  
4 think about jurisdiction? And the uniform way  
5 that I understood it's always been thought about  
6 was you look through to the underlying  
7 controversy, it's pretty simple, and you do that  
8 kind of all the way through.

9           Not that that's easy in every case,  
10 but at least that's the rule, and you don't get  
11 into these state court questions about does  
12 Section 10 apply in state courts, which I think  
13 is very tricky. Anyway.

14           MR. GEYSER: Well, first, Your Honor,  
15 you're -- you're going to get the question  
16 whether Section 10 applies under any reading  
17 because you have the state law case with the  
18 non-diverse parties. So you -- that -- that's  
19 -- that's inevitable, that this case is not  
20 the -- for better or worse, the last Federal  
21 Arbitration Act case the Court is going to see.

22           But -- but I also think, though,  
23 again, looking at it, it is not a uniform  
24 approach. This is an express textual departure.  
25 And I know Your Honor said the usual way is to

1 look through. No, that's the opposite. The  
2 usual way is you look at the face of the  
3 pleading. And what parties are seeking to bring  
4 before the court, whether under Section 4 or  
5 Section 9 or Section 10, is not the underlying  
6 dispute. They're trying to adjudicate a  
7 specific performance right to the arbitration  
8 contract.

9 JUSTICE KAVANAUGH: One other textual  
10 point. They emphasize that Section 4 should be  
11 read as a venue provision. Can you address  
12 that?

13 MR. GEYSER: Sure. I -- I think the  
14 easiest way to address that, Your Honor, is that  
15 it's -- it's directly at odds with Vaden. In  
16 Vaden, all nine members of the Court looked at  
17 Section 4. It was framed as a jurisdictional  
18 provision by all nine members of the Court. The  
19 word "venue" doesn't appear in either the  
20 majority opinion or the dissenting opinion.

21 I think it's inconceivable that all  
22 nine members of the Court simply overlooked that  
23 they were unwittingly construing a venue  
24 provision. And I think the reason they didn't  
25 overlook anything is because Section 4 is

1 phrased in jurisdictional terms. It doesn't  
2 look anything like a normal venue provision.

3 My friend says that there are actually  
4 two venue provisions in Section 4 and they  
5 contradict each other. The only case law  
6 support they have that Section 4 has anything to  
7 do with venue is a Seventh Circuit case that  
8 wasn't focused on the look-through clause; it  
9 was focused on a different sentence, four  
10 sentences after it, that is completely unrelated  
11 to the look-through provision and, in fact, said  
12 the look-through provision does not provide  
13 venue.

14 So it is -- it is truly -- it's a --  
15 it's a very inventive theory, and my friend, who  
16 is a very able lawyer, came up with it because  
17 they realized that if they don't give the  
18 look-through clause some meaning in Section 4  
19 and if the default is, as they say, that you  
20 always look through, then that clause becomes  
21 entirely superfluous. It serves no --

22 JUSTICE BREYER: The same -- I still  
23 have the same -- were you finished?

24 MR. GEYSER: Yes, yes.

25 JUSTICE BREYER: I still have the same

1 basic problem, if you want to add something to  
2 it. Arbitration goes on all over the world.  
3 Okay? There are arbitrators. They decide the  
4 case. And here is a fairly simple rule finally.  
5 We need to go to a judge to get them into  
6 arbitration, and we're going to need a judge to  
7 enforce it. All right? So now we know which  
8 judges. It's the federal judges who will be  
9 primarily concerned with enforcing those  
10 disputes that are related to federal law.

11 And that might be a lot of them. Now  
12 there will be state judges involved in this too,  
13 but they're going to be involved primarily in  
14 state law, which they know. All right? And  
15 we're supposed to know the federal.

16 And there the -- we seem to come  
17 closer to this more unifying simple system if --  
18 simpler -- if you're wrong, unfortunately for  
19 you. And -- and -- and that's the notion that  
20 I'm asking you so you can disabuse me of it.

21 MR. GEYSER: All right. Well, let --  
22 let me try.

23 First, for international arbitration,  
24 there actually is jurisdiction because Congress  
25 said so in Section 203. For anything under the

1 Convention, there's jurisdiction throughout the  
2 Act.

3 Now Congress didn't say that for  
4 domestic arbitration. So, you know, again,  
5 Congress can decide that a single jurisdictional  
6 test, the Section 4 test, in fact, should be  
7 written into every other section, but that's  
8 Congress's decision to make. It's not this  
9 Court's.

10 And -- and I'd also say too that the  
11 -- the test that we're advocating is the same  
12 well-pleaded complaint test that's applied for  
13 over a century in all kinds of disputes,  
14 including settlements. And look at the  
15 settlement of a federal claim.

16 No one thinks there's any problem with  
17 saying a federal claim is filed in federal  
18 court, it's settled and dismissed, and then a  
19 dispute about the settlement goes to state  
20 court. And, here, there's no federal expertise  
21 in reviewing these arbitration awards. Think  
22 about appointing an arbitrator that's simply  
23 reading a contractual provision and deciding  
24 what it says about which arbitrator to appoint.  
25 It's seeking specific performance of an

1 arbitration procedure. State courts see that  
2 all the time. They're very good at that.

3 And the -- the narrow provisions under  
4 Section 10 for reviewing an arbitration award,  
5 this is not readjudicating the federal question.  
6 They shouldn't be doing that. That's treating  
7 arbitration -- court review, again, as a do-over  
8 of the arbitration, which would frustrate the  
9 entire point of sending these cases to  
10 arbitration in the first place.

11 This is a very narrow check to make  
12 sure there weren't things like fraud or bribery  
13 that distorted the arbitration process. That's  
14 something that state courts, again, they do all  
15 the time. They do it with the absolute flood of  
16 cases that involve state law issues and  
17 non-diverse parties. And there's no need to  
18 clog the federal courts' judicial bandwidth with  
19 deciding what are effectively ministerial  
20 actions or fairly mundane actions that do not  
21 involve readjudicating the federal suit.

22 The well-pleaded complaint rule  
23 governs just fine, and the -- it is fairly  
24 simple. And the alternative will give rise to  
25 complicated questions, including what do you do

1 with the state law questions that have a federal  
2 ingredient?

3           The Grable inquiry is very  
4 challenging, and that will come up all the time  
5 in these cases and will make federal courts  
6 decide whether they have jurisdiction under a  
7 Grable analysis just to decide whether they're  
8 going to apply these very narrow provisions  
9 under Section 10 for confirming the award, as  
10 opposed to simply looking at the award on its  
11 face and saying the parties are bringing an  
12 attempt to confirm a state law arbitration  
13 contract before a federal court.

14           If there's diversity, then maybe it  
15 makes sense to have the federal court there to  
16 protect against local bias. But, if there's not  
17 diversity, there's no reason to say just because  
18 the underlying dispute involved a federal  
19 question, which isn't relevant at the  
20 confirmation stage, that we should nonetheless  
21 have federal courts spending their time looking  
22 at those awards.

23           JUSTICE BREYER: Thank you.

24           MR. GEYSER: If the Court has no  
25 further questions.



1 CHIEF JUSTICE ROBERTS: Justice

2 Thomas?

3 Justice Breyer?

4 Justice Alito, anything? Okay? Good?

5 Justice Gorsuch?

6 JUSTICE GORSUCH: No further

7 questions. Thank you.

8 CHIEF JUSTICE ROBERTS: Justice

9 Barrett?

10 Okay. Thank you, counsel.

11 MR. GEYSER: Thank you.

12 CHIEF JUSTICE ROBERTS: Ms. Blatt.

13 ORAL ARGUMENT OF LISA S. BLATT

14 ON BEHALF OF THE RESPONDENTS

15 MS. BLATT: Thank you, Mr. Chief

16 Justice, and may it please the Court:

17 If federal courts would have

18 jurisdiction over the parties' underlying

19 dispute, federal courts can hear motions to

20 confirm or vacate arbitral awards resolving that

21 dispute.

22 First, the FAA's text treats requests

23 to confirm or vacate arbitral awards as motions.

24 Motions are not free-standing lawsuits that need

25 an independent jurisdictional basis. Rather,

1 motions seek relief within a larger controversy  
2 between the parties. Courts thus assess their  
3 jurisdiction by looking to that underlying  
4 controversy.

5 Here, the FAA is structured  
6 sequentially to facilitate all stages of  
7 arbitration to resolve the same underlying  
8 controversy. Because FAA motions are adjuncts  
9 to that broader controversy, federal courts can  
10 hear FAA motions when they have jurisdiction  
11 over that controversy.

12 Second, Petitioner's approach would  
13 decapitate the FAA. The Act pervasively refers  
14 to federal courts. But, in Petitioner's world,  
15 federal courts can't hear most Section 9 and 10  
16 motions. They don't on their face raise federal  
17 questions. And most of the motions wouldn't  
18 satisfy diversity jurisdiction either, like  
19 ubiquitous zero dollar awards that reject the  
20 plaintiff's claim. And uncontested motions to  
21 confirm would fail adversarialness under Article  
22 III.

23 Petitioner says state courts are  
24 equally good. But, unlike the FAA's standards  
25 for confirmation and vacatur, state courts often

1       revisit the merits under their own state  
2       arbitration acts.

3                 Congress presumably did not want  
4       federal courts to enforce arbitration agreements  
5       at the front end, only to see state courts to  
6       force do-overs at the back end.

7                 And, third, it's implausible the FAA  
8       imposes one jurisdictional test for motions  
9       under Section 4 and a different jurisdictional  
10      test for motions under Sections 5, 7, 9, 10, and  
11      11.

12                And it would encourage needless  
13      gamesmanship for jurisdiction under these latter  
14      provisions to turn on the happenstance whether  
15      there was an earlier Section 4 order.

16                I welcome your questions.

17                JUSTICE THOMAS: Ms. Blatt, would you  
18      comment on Petitioner's assessment of your  
19      Section 4 venue argument?

20                MS. BLATT: Sure. I didn't make it  
21      up. This Court called it a venue provision in  
22      Cortez Byrd, but here's why we think it's a  
23      venue provision. We've got three very solid  
24      arguments.

25                First, it reads like a venue

1 provision. It's framed in classic venue terms  
2 saying where a petition may be filed. If you  
3 look at the title of that provision, it says  
4 Petition in a Court Having Jurisdiction. So  
5 it's not conferring jurisdiction, Justice  
6 Thomas. It's talking about jurisdiction that's  
7 already there.

8           And, second -- and this is important  
9 historically -- there was -- this was an  
10 expansion, a liberal expansion of venue because,  
11 at the time, venue only was limited to places  
12 where the defendant resided. And in the  
13 arbitration context, Congress wanted it broader  
14 because you wouldn't know necessarily where the  
15 arbitration would begin.

16           Now, in the later provisions, the rest  
17 of the venue provisions under the Act, it -- you  
18 wouldn't need that same broad conferring of  
19 venue because you -- you know where the  
20 arbitration occurs.

21           And the third reason is just it looks  
22 awfully like structurally the "save for" venue  
23 provision under Section 204, which Congress  
24 labels a venue provision.

25           And then, if we -- if we needed a

1 fourth reason, Congress often refers to a  
2 jurisdictional test in -- in venue provisions.  
3 And we offer the example of the generic venue  
4 provision in 1391, which extends -- it kind of  
5 has this catch-all extending venue to where a  
6 court has personal jurisdiction. So it's not  
7 completely uncommon. And we also cite two  
8 habeas examples.

9 But this Court did call it a venue  
10 provision in Cortez Byrd. It said it was a very  
11 permissible venue provision.

12 JUSTICE KAGAN: I mean, Vaden  
13 obviously calls it a jurisdictional provision  
14 about 20 times without using the word "Vaden."  
15 I mean, I stopped counting when I got to 20.

16 MS. BLATT: Right. But the important  
17 thing is that the opinion twice says Section 4  
18 is not creating jurisdiction, which --

19 JUSTICE KAGAN: Yeah, but, I mean,  
20 that's even -- you know, maybe it's a venue  
21 provision. I mean, it's possible, I suppose.  
22 That seems to me to create a problem for you  
23 rather than to get rid of it.

24 I mean, your problem is that you have  
25 no textual hook, no textual basis for a

1 look-through rule outside of Section 4. I mean,  
2 you have to say that somehow there's a kind of  
3 implicit look-through provision in all the rest  
4 of the statute so that Section 4 can then become  
5 just a venue provision.

6 But -- but -- but you need some kind  
7 of jurisdictional hook, don't you? I mean,  
8 Congress didn't just expect everybody to  
9 understand that this was look-through  
10 jurisdiction. Look-through jurisdiction is very  
11 odd. It's very unusual.

12 You would think, if Congress wanted to  
13 impose a look-through jurisdictional provision  
14 throughout the statute, we would have a  
15 look-through jurisdictional provision throughout  
16 the statute.

17 MS. BLATT: Sure. And that's why so  
18 much of our argument hinges on the fact that the  
19 statute is plastered with the words "motion" and  
20 "application." When you get a motion for  
21 divided argument, you don't go around applying  
22 the well-pleaded complaint rule to your motion  
23 by the SG's office. You know that there's an  
24 underlying jurisdictional basis in the  
25 controversy before you.

1           This entire Act refers to the parties'  
2           controversy, and then it uses the word "motion"  
3           in provision after provision, "application." In  
4           Sections 9, 10, 12, and 13, it talks about a  
5           motion and application. It says -- Section 6  
6           says --

7           JUSTICE KAGAN: But your -- your  
8           argument then is just by using the words  
9           "motion" and "application" Congress thought that  
10          by using the words "motion" and "application" it  
11          would be clear to everybody that jurisdiction  
12          was by the look-through method.

13          MS. BLATT: And that's a fair point,  
14          and I do think that's why what Justice Kavanaugh  
15          said when it was passed, that was the  
16          understanding that this would be a look-through.

17          It reads like a procedural -- a  
18          federal, you know, arbitration procedural act.  
19          The Federal Rules of Procedure didn't exist.  
20          The whole statute is telling you, you know, how  
21          do you get your arbitrator picked, where do you  
22          go for discovery disputes, how do you get a -- a  
23          judgment at the end of the day.

24          And the judgment at the end of the day  
25          is supposed to, under Section 13, be treated as

1 if the case were tried in federal court. So  
2 this is a whole fiction and a sui generis  
3 situation where, instead of being in a federal  
4 court, the -- the Act on its face only talks  
5 about federal courts. It's not being  
6 adjudicated, this federal controversy. It's  
7 being adjudicated before an arbitrator, but it  
8 ends up in a judgment.

9 And the other just strong textual hook  
10 besides the words -- and motions are text, it's  
11 -- it's a word, and -- and controversy, is the  
12 word "federal." They have no good example for  
13 when you can get into federal court. It's  
14 basically a nullified act.

15 You weren't pressing him on his  
16 jurisdiction -- diversity of jurisdiction, but  
17 if you have a zero dollar award, which just  
18 means the defendant wins, you can't get into  
19 federal court unless he has to cheat by saying,  
20 well, you can look at the underlying controversy  
21 in that case because we all know the plaintiff  
22 was asking for more money and in a future case  
23 he might be getting more money.

24 And so he's got no other way and -- or  
25 to get to adversarialness. If you have an



1 uncontested motion to confirm, the only  
2 adversarialness is the underlying controversy.

3 CHIEF JUSTICE ROBERTS: Well, if it's  
4 -- but, if the plaintiff is seeking \$20 million  
5 and the defendant wins, so that the award is  
6 zero dollars, you don't say that zero dollars is  
7 the amount in -- in dispute. You say that  
8 whether he's going to win or lose, it's \$20  
9 million.

10 MS. BLATT: In his view under this  
11 well-pleaded complaint, the face of the motion  
12 says nothing other than please confirm. And the  
13 court under Section 9 has no choice but to  
14 confirm. It doesn't look at anything else,  
15 especially if there's no contrary motion to --  
16 to vacate.

17 So there's nothing on the face of the  
18 motion that mentions how much the plaintiff  
19 wanted. It just says -- like this case just  
20 says on the awards face, all claims are  
21 rejected, defendant wins. There's --

22 CHIEF JUSTICE ROBERTS: So --

23 MS. BLATT: -- there's nothing about  
24 the amount.

25 CHIEF JUSTICE ROBERTS: -- to -- to

1 sort of go to the 30,000 feet perspective, the  
2 consequence of your position is to federalize a  
3 lot more of FAA actions, procedures, than it  
4 seems would make sense if you buy the idea that  
5 this is a statute that doesn't give generally  
6 federal jurisdiction.

7           And what's wrong with his analogy to  
8 settlements? I mean, you have a federal  
9 dispute. It's a federal case. You're in  
10 federal court. And you say, well, let's settle  
11 this. You reach a settlement. It's a contract.  
12 If there's a violation of that settlement, you  
13 don't go back to federal court. It's a state  
14 contract matter. You go to state court.

15           Why isn't that just like what he's  
16 talking about here?

17           MS. BLATT: Well, it's absolutely  
18 correct that Kokkonen -- and I hope I'm  
19 pronouncing that correctly -- says if parties  
20 settle and there's litigation over that  
21 settlement, but the court has already dismissed  
22 the case, collateral litigation over that  
23 settlement has to go to state court.

24           And the reasoning behind that is  
25 because there's been a case-ending dismissal by

1 the federal court, and at that point, the  
2 federal court loses jurisdiction.

3 Here, the only -- there, the analogy  
4 would not be the arbitral award. It would be  
5 the court order under Section 9 and 10 and 13  
6 confirming the case and dismissing it. So, if  
7 -- if that's the right analogy, we still have a  
8 live controversy at the time there's a motion to  
9 confirm the award.

10 And they really don't want to bring  
11 that settlement analogy anyway because, in that  
12 sense, everything leading up and to the award  
13 would be part and parcel of a live federal  
14 controversy.

15 But, in terms of your first question  
16 about are we federalizing cases, I mean, this is  
17 the majority rule, although there's -- there's  
18 circuits that have gone the other way, and the  
19 only cases that we're talking about are going to  
20 federal court are federal question jurisdiction  
21 and diversity jurisdiction, with the option of  
22 being no cases going to federal court, and you  
23 have Congress passing a very odd Act.

24 Now if I could just get into this bit  
25 about this being jurisdictional. So he's got

1 two arguments. And I agree, Justice Kagan, I  
2 mean, Vaden, it -- it -- I just don't think the  
3 Court had before it -- even though it was  
4 mentioned at oral argument and mentioned in the  
5 briefing, the Court didn't have this situation  
6 about what -- what we're going to do about the  
7 rest of the Act. Is there going to be a  
8 look-through? And so -- but the Court did twice  
9 say Section 4 is -- is not jurisdictional.

10 But the problem the other side has is  
11 they really don't want to live with the text  
12 because, if Section 4 is jurisdictional, they  
13 lose this case, and that's because no one could  
14 read that "save for" clause as an isolated grant  
15 of jurisdiction. It would only be  
16 jurisdictional because it's a carveout written  
17 in words of limitation.

18 In other words, if Section 4 has  
19 jurisdiction, it's only because it's taking away  
20 jurisdiction that would be conferred by the  
21 first section of that Act.

22 And this is a little bit of what the  
23 -- the Chamber of Commerce was arguing in their  
24 brief, but that is to say the first question  
25 just says go file in any court without regard --

1 any motion in federal court, but then it takes  
2 away and says but only if you have jurisdiction.  
3 So, in that sense, you've got a limiting clause.

4 Well, the only logical inference then  
5 is, if that limiting clause is omitted from the  
6 rest of the sections, the rest of the Act is  
7 broader.

8 JUSTICE KAGAN: But I took that to not  
9 be your position.

10 MS. BLATT: It's not our position.  
11 That is the consequence. If he wants to live by  
12 the text, he needs to die by the text. And he  
13 doesn't want to do that.

14 Our position is that you have the  
15 common-sense approach of what Congress was  
16 trying to -- to actually accomplish with this --  
17 with this Act. And you have plenty of textual  
18 hooks because you've got the word "motion," and  
19 it's an adjunct, and courts every day understand  
20 that motions aren't -- you know, motions don't  
21 need a free standing.

22 We gave Federal Rule 20 -- 27, but I  
23 know another very familiar example to you will  
24 be the search warrant. When courts go to  
25 federal court for a search warrant, they -- that

1 is because a court underlying has jurisdiction  
2 over offenses against the United States. So  
3 it's an adjunct to a broader controversy, and  
4 that's just the way motions function, is that  
5 they aren't free-standing lawsuits.

6 The Federal Rules are very specific  
7 between motions and complaints. Complaints  
8 invoke a court's jurisdiction. They are a cause  
9 of action. A motion is just an adjunct, and it  
10 --

11 CHIEF JUSTICE ROBERTS: Well, but it  
12 doesn't -- it -- it doesn't say the application  
13 is a motion. It says it'll be heard as a  
14 motion.

15 MS. BLATT: Correct. Correct.

16 CHIEF JUSTICE ROBERTS: Well, but, I  
17 mean, that's -- you seem to be saying that --  
18 treating them as -- calling them motions. I --  
19 I think they are still a separate animal, as  
20 opposed to the -- the motion itself.

21 MS. BLATT: When you look at the Act,  
22 sort of, you know, unitary, harmonious,  
23 interlocking, it is the -- they are motions  
24 bringing that are all adjuncts to a controversy.  
25 I mean, this is the Federal Arbitration Act, so

1 they were obviously thinking about cases that  
2 could otherwise be litigated in federal court.

3 Whether that's just diversity or a  
4 federal question, these are federal question --  
5 federal controversies, and these are treated as  
6 applications or requests to facilitate the  
7 arbitration from cradle to grave.

8 CHIEF JUSTICE ROBERTS: Well, your --  
9 but it is the Federal Arbitration Act, but it's  
10 an odd creature in that, unlike most other  
11 federal statutes, it doesn't by itself give rise  
12 to jurisdiction. And it seems to me that one  
13 reason that -- why that is, is because they  
14 recognize that people arbitrate all sorts of  
15 disputes, and they didn't want all the 380,000  
16 whatever cases being brought in federal court,  
17 just like you don't want the settlement  
18 agreements, the enforcement of that, being  
19 brought in federal court just because it arose  
20 out of a federal case.

21 MS. BLATT: Agreed. But there's no  
22 question, under the other side's view, everybody  
23 and anybody can go to Section -- under Section 4  
24 as long as there's a federal controversy and  
25 sort of get the hook of the federal court

1 jurisdiction. And even if it's frivolous, the  
2 court could deny the motion because the parties  
3 are already arbitrating but retain jurisdiction.

4 So I don't see how we're bringing any  
5 more cases. The only cases that can be brought  
6 under 5, 7, 9, and 11 under our view are the  
7 same cases where the federal court has authority  
8 under Section 4 to compel arbitration in the  
9 first place.

10 And that just was the contemporaneous  
11 understanding of the Act when it was passed.  
12 Also, we think, that's what the Court understood  
13 in Marine Transit, which was -- I don't know, it  
14 was a few years after the passage of the Act.  
15 The Court seemed to suggest, look, if a court  
16 has power to order the arbitration, it should --  
17 it's kind of -- it's too -- it's too silly to  
18 even talk about, they have authority to enter  
19 the award at the end of the day.

20 And it is an odd -- as you said, it's  
21 an odd Act, but it's even odder if you -- if you  
22 reverse. Then I don't know what this is. It's  
23 just a -- it's a dead Act, I guess. I don't --  
24 I don't know what Congress was doing if even  
25 diversity jurisdiction, you're going to have to



1 look at the underlying controversy.

2 JUSTICE SOTOMAYOR: Counsel, what do  
3 we do with Section 8?

4 MS. BLATT: The admiralty provision?

5 JUSTICE SOTOMAYOR: The admiralty  
6 provision that has the safe -- the saving  
7 language. It's superfluous under -- that's the  
8 one thing that gives me pause with your  
9 argument. It's logical, what you're saying,  
10 that we treat this like a motion, and in a  
11 motion, you look at the underlying controversy.  
12 That -- that's very logical.

13 But why put it in --

14 MS. BLATT: So --

15 JUSTICE SOTOMAYOR: -- Section 8 and  
16 not in 9 or 10?

17 MS. BLATT: Yes. So Section 8, again,  
18 I think the "save for" clause is not in the rest  
19 of the sections because the venue is much  
20 narrower. But the -- under Section 8, I think  
21 it is a peculiarity of admiralty jurisdiction.  
22 So it says that you can proceed by libel and  
23 seizure -- seizure of the vessel. And libel is  
24 a complaint.

25 And so, if you did not have the "and

1 then the court shall have jurisdiction and  
2 retain jurisdiction," if that language was just  
3 excised, the provision would read as follows:  
4 You can go file a libel complaint in admiralty  
5 and seize your ship, period.

6 And then I think it would be sort of  
7 -- raise a lot of questions about, well, what  
8 does that mean now? I filed a complaint in  
9 federal court. What do I do about arbitration?

10 And so that language, I think it's  
11 even less superfluous than the "save for"  
12 language. It's making clear that you have every  
13 right to proceed throughout the arbitral process  
14 and invoke the FAA, and at the same time, you  
15 can actually go to court and file your -- your  
16 federal complaint.

17 And you wouldn't do that in a civil  
18 case. Obviously, if you've agreed to arbitrate,  
19 you're not filing a complaint in federal court.  
20 You're going just straight to arbitration.

21 JUSTICE SOTOMAYOR: Thank you.

22 MS. BLATT: And I -- the only other  
23 thing I wanted to say is on the -- I -- I think  
24 the other side is trying to say, well, maybe  
25 it's not a jurisdictional grant; it's just an

1 instruction on how to use your jurisdiction.

2 And I think that --

3 CHIEF JUSTICE ROBERTS: I'm sorry,  
4 before -- what's "it"?

5 MS. BLATT: It? Oh, sorry. I've lost  
6 my train of thought. The Petitioner says there  
7 are two ways for him to win. One is that  
8 Section 4 is a free-standing jurisdictional  
9 grant, contrary to what this Court has said in  
10 three separate Supreme Court cases.

11 So he then has a fall-back argument  
12 saying it's not a jurisdictional grant; it's  
13 just an -- Section 4, the "save for" clause, is  
14 just an instruction: Hey, federal courts, I'm  
15 not giving you jurisdiction. I'm just telling  
16 you here's how you might look at seeing if you  
17 have jurisdiction.

18 And I think that's just a fancy way of  
19 saying it's a jurisdictional provision because,  
20 without that language, the court -- in other  
21 words, if the court didn't look through, it  
22 wouldn't have jurisdiction. So I'm just saying  
23 I think it's word games.

24 JUSTICE KAGAN: Ms. Blatt, I mean,  
25 this might just be repeating my last question,

1 but there's a set of arguments one can make on  
2 both sides about what would make for a sensible  
3 Act, so if we were writing the Act from scratch,  
4 how we would write it to do the things we want  
5 it to do and not do the things we don't want it  
6 to do.

7           But I -- I -- I just want to put those  
8 arguments aside and say that we're trying to  
9 make sense out of the actual language that  
10 Congress offered, and then it seems as though  
11 there are two different positions. And one  
12 position is we just sort of -- by some -- by the  
13 word "motion" and then by something, we just  
14 sort of, like, get that Congress meant for there  
15 to be look-through jurisdiction.

16           And the other, which is Mr. Geysler's,  
17 is, you know what, we have look-through  
18 provision where Congress says there's  
19 look-through provision, whatever you want to  
20 call it, jurisdiction, venue, anything else in  
21 between. There are particular places where  
22 Congress makes clear look-through -- the  
23 look-through method is the right one, and where  
24 those things don't exist, it's not the right one  
25 because we can't just sort of make up

1 look-through jurisdiction out of nothing.

2 MS. BLATT: Yeah, and I -- I think  
3 that it's fair to say what do I do if you -- if  
4 the other side tries to make a compelling  
5 textual argument? And I think you've got to ask  
6 yourself, A, how compelling is it? And, B, are  
7 there other texts in the statute that are  
8 telling me he's -- he's crazy?

9 And I think you have that here because  
10 you just look at the Act and you get to look at  
11 things like structure, context, purpose, and  
12 other textual cues throughout the Act, including  
13 the title of Section 4 itself and the fact that  
14 it's written in classic venue-framing terms, and  
15 your precedents, which all say Section 4 is not  
16 jurisdictional, starting in Southland and then  
17 in Moses Cone.

18 So I -- I just think it -- it -- it --  
19 it -- it over-assumes that there is a compelling  
20 textual argument in the first place when it's  
21 not because, as a logical matter, his textual  
22 argument takes him a place that no party wants  
23 to go, which is that everything ends in federal  
24 court.

25 I'm not saying it's an easy case for

1 you. I'm saying our case is better than his  
2 case.

3 JUSTICE KAGAN: I mean, it -- it --  
4 you said the -- the idea that our precedent  
5 precludes his case, you know, seems -- it seems  
6 like the -- the Moses Cone kind of precedent --

7 MS. BLATT: Yes.

8 JUSTICE KAGAN: -- which is that the  
9 FAA doesn't do anything with respect to  
10 jurisdiction, is equally a problem for you.

11 MS. BLATT: I -- I --

12 JUSTICE KAGAN: Both of you are doing  
13 something with respect to federal jurisdiction.  
14 You're doing it by way of a default rule. He's  
15 doing it by way of a selective  
16 Section 4/Section 8 rule.

17 MS. BLATT: Yeah, that -- that's a  
18 fair point. So if we just look at this Act and  
19 I think why it got in footnotes in your  
20 precedent is because the Court looked at this  
21 very quickly and said, wait a minute, this is  
22 not a jurisdictional act. And Section -- they  
23 cited Section 4 as the example.

24 And I think this -- what gets into the  
25 professor's amicus brief that this was based on

1 the New York Arbitration Act, and if you just  
2 passed the New York Arbitration Act, this whole  
3 Act would read like one big giant jurisdictional  
4 grant.

5 And, again, I hate to do what this  
6 Court did, but this Court said, hey, wait a  
7 minute, you see that Section 4 and it says, you  
8 know, the court already has jurisdiction or must  
9 have it, that's reflective of this can't be a  
10 jurisdictional grant.

11 So, yeah, I'm -- I'm using your  
12 precedent, but I think your precedent very  
13 quickly looked at the Act and said it made a  
14 choice that this can't be what Congress intended  
15 and it is what the drafter said he was doing.

16 And I don't -- I mean, sure, it's  
17 legislative history, but it is the 1925  
18 contemporaneous understanding by the ABA too.  
19 And it's not -- doesn't mention Section 4. It  
20 says how we're going to enforce arbitration  
21 agreements is going to be through, you know,  
22 this look-through approach.

23 And just in terms of textually, if you  
24 just start with Section 2, which you said is the  
25 cornerstone, I mean, that's what to me answered

1 the case for me, is that Congress thought we're  
2 going to have a whole substitute for a federal  
3 controversy not to be litigated in federal  
4 court. We're going to take it out of the -- you  
5 know, not in front of a jury. But it left the  
6 federal court in at every stage to get -- to  
7 help to facilitate it, and so that's why there's  
8 not, you know, a free-standing jurisdictional  
9 grant in -- in -- in the case.

10 That's the best I've got.

11 CHIEF JUSTICE ROBERTS: Okay. Justice  
12 Thomas?

13 JUSTICE THOMAS: No, nothing, Chief.

14 CHIEF JUSTICE ROBERTS: All right.

15 Justice Breyer?

16 Justice Gorsuch?

17 JUSTICE GORSUCH: All set here. Thank  
18 you, Chief.

19 CHIEF JUSTICE ROBERTS: Okay. Justice  
20 Barrett?

21 Okay. Thank you, counsel.

22 MS. BLATT: Thank you.

23 CHIEF JUSTICE ROBERTS: Rebuttal,  
24 Mr. Geyser?

25



1 REBUTTAL ARGUMENT OF DANIEL L. GEYSER  
2 ON BEHALF OF THE PETITIONER

3 MR. GEYSER: Thank you, Your Honor. A  
4 few quick points.

5 First, starting with the venue  
6 argument, my friend said that Cortez Byrd called  
7 Section 4 a venue provision. That's simply  
8 false. Cortez Byrd mentioned Section 4 when  
9 they were comparing the terms "may" and "shall."  
10 And they were looking for examples in the  
11 Federal Arbitration Act that used the permissive  
12 term "may" versus the -- the mandatory term  
13 "shall."

14 It specifically did not refer to  
15 Section 4 when it was listing other venue  
16 provisions in the Act, and my friend has still  
17 not cited a single case. If the Court says that  
18 the look-through clause is now a venue  
19 provision, it will literally be the first court  
20 in the nation that has said that. I think that  
21 would be fairly striking.

22 My friend said that our reading will  
23 decapitate the Federal Arbitration Act. I think  
24 that's odd because our reading is, in fact, the  
25 reading that was the overwhelming majority view

1 in the country for a quarter of a century. The  
2 only courts that have started questioning  
3 whether our reading is correct is in light of  
4 this Court's opinion in Vaden and only because  
5 they said, not because of any textual reason --  
6 they admitted their approach is profoundly  
7 atextual -- they said, as a policy matter, it  
8 seems to make sense that if the look-through  
9 approach applies at the start, it should  
10 probably apply at the finish.

11 That is not the way that this Court  
12 construes statutes, and it's a -- it's a  
13 senseless reading of the statute itself. Again,  
14 Congress did not frame this as a continuum.  
15 These are independent, free-standing filings.

16 My friend says that these are simply  
17 motions. Now the Chief Justice is exactly  
18 correct. Section 6 does not say that these  
19 applications and petitions are motions. It said  
20 they shall be handled like motions. And as the  
21 Court said in Hall Street, that's simply to  
22 streamline the proceeding. And Hall Street said  
23 in the next -- the next words it used, I think,  
24 underscores our point. It said it streamlines  
25 the proceeding so that the party doesn't have to

1 file a separate contract action. It's making  
2 clear that it's just an independent way to get  
3 an -- a specific performance request to enforce  
4 an arbitration contract before the court.

5 And to the extent that my friend says  
6 that this is -- a motion is an adjunct to this  
7 missing underlying case, my friend's exactly  
8 right that, typically, when you have a  
9 jurisdictional anchor, you have an actual  
10 federal case in an actual federal court. The  
11 court doesn't say, do I have jurisdiction over  
12 every subsequent motion.

13 But you need the initial federal case.  
14 I'm not aware of any precedent that this  
15 Court's -- in this Court's jurisprudence that  
16 says you can pretend there's a case in court.  
17 That's not the way it works with ancillary  
18 jurisdiction, as the Court made clear in Peacock  
19 versus Thomas.

20 It's not the way it works with  
21 settlements. A settlement is certainly adjunct  
22 to the underlying federal case. But, if a party  
23 settles a federal claim and then shows up in the  
24 court to -- with a dispute about the settlement,  
25 they certainly can't say, well, this is a motion

1 that's adjunct to our missing federal case,  
2 please assert jurisdiction.

3 Kokkonen squarely rejects that  
4 position. I think this Court would have to  
5 overturn Kokkonen to accept my friend's version  
6 of it.

7 Marine Transit does not support my  
8 friend. It was expressly premised on Section 8.  
9 The Court couldn't have been clearer in multiple  
10 points in the opinion of saying that the  
11 district court entered jurisdiction in  
12 confirming the award under the authority granted  
13 in Section 8, which shows again that Section 8  
14 is not superfluous. In fact, it has a very  
15 clear meaning. And when Congress intended to  
16 have courts retain jurisdiction, they said so.  
17 They did that in Section 8. They did not put  
18 the look-through approach in any other section  
19 of the Act.

20 And I do think that if we do adopt --  
21 if the Court does adopt my friend's approach,  
22 you are certainly departing from the majority  
23 view and you're expanding federal jurisdiction  
24 to decide a bunch of cases that -- where there  
25 is no advantage to having a federal court spend

1 its expertise and bandwidth looking at cases  
2 that the state courts have faithfully handled  
3 and enforced for a quarter of a century.

4 I think the most striking thing here  
5 is not only has the sky not fallen, my -- my  
6 friend and her very able amici could not  
7 identify a single systemic study or empirical  
8 analysis suggesting that -- that this has  
9 presented a single problem for any arbitration  
10 -- arbitration agreements by leaving the -- the  
11 enforcement of the Act in large part to state  
12 court, which is what this Court has said for  
13 multiple occasions is what Congress intended.

14 CHIEF JUSTICE ROBERTS: Thank you,  
15 counsel. The case is submitted.

16 (Whereupon, at 12:21 p.m., the case  
17 was submitted.)

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