

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

DENISE A. BADGEROW,)
)
 Petitioner,)
)
 v.) No. 20-1143
)
 GREG WALTERS, ET AL.,)
)
 Respondents.)

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DENISE A. BADGEROW,)

Petitioner,)

v.) No. 20-1143

GREG WALTERS, ET AL.,)

Respondents.)

- - - - -

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 the well-pleaded
20 filing and instead look to a nonexistent,
21 phantom pleading that never appears in any
22 court.

23 Respondents' theory would require
24 overturning bedrock jurisdictional doctrine and
25 abandoning this Court's fidelity to the

1 statutory text. There is simply no basis for
2 saying the look-through approach applies in
3 Sections 9 and 10 without judicially rewriting
4 the statute or rendering Section 4's express
5 look-through clause wholly superfluous.

6 I welcome the Court's questions.

7 JUSTICE THOMAS: Counsel, we have said
8 or suggested from time to time that the FAA
9 doesn't provide federal question jurisdiction.
10 So how do you square that with the notion that
11 Section 4, Section 8, provide such 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 the 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, 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 in the Act
6 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 that
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 in 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 to 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 -- it defeats the idea of how
18 anomalous it is that it's look-through all the
19 way through.

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

1 MR. GEYSER: Well, a -- a couple
2 points there, Your Honor.

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

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

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

25 So, again, even if you disagree with

1 our reading that Section 4, in fact, is an
2 independent grant of jurisdiction, I think at
3 the very least it's instructing courts how to --

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

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

9 JUSTICE KAVANAUGH: Okay.

10 MR. GEYSER: Not at all because --

11 JUSTICE KAVANAUGH: Keep going then.

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

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

24 The only reason that you depart from
25 that -- and this is why Vaden said the text of

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

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

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

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

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

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

1 courts don't have anything to do with those
2 cases?

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

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

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

1 Section 10, as the Court said in Hall
2 Street, was designed to check egregious
3 departures from the arbitration contract.

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

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

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

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

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

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

24 And Hall Street confirmed that most
25 state courts apply standards that either are

1 Section 10, they either apply the FAA directly,
2 or they apply a state law standard that -- that
3 is a functional equivalent to it.

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

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

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

22 JUSTICE BREYER: Oh, I see. Okay.

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

25 JUSTICE BREYER: Okay. Then the odd

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

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

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

1 do these other things too. Okay.

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

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

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

9 JUSTICE BREYER: It says save this
10 agreement.

11 MR. GEYSER: It's -- it's not -- but
12 the -- but I think there are other reasons --

13 JUSTICE BREYER: Save this --

14 MR. GEYSER: -- not to do that.

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

21 The provisions are framed as
22 standalone petitions or applications. Most of
23 them have their own service requirements. They
24 have their -- their own statute of limitations,
25 their own venue rules, their own even

1 jurisdictional requirements in Section 4 and
2 Section 8.

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

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

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

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

1 So, of course, these don't all just
2 always follow. It depends on which of these
3 provisions the guy can use and invoke in order
4 to stop what he agreed to, which is the
5 arbitration.

6 MR. GEYSER: A few answers, Your
7 Honor.

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

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

25 This Court said in Vaden that federal

1 jurisdiction often turns on how litigation
2 unfolds. And you can have different situations.
3 And where Congress wanted a single court to
4 retain jurisdiction, whether it's because of an
5 arbitration rat or not, it said it expressly.

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

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

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

15 (Laughter.)

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

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

1 going to be in state court.

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

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

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

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

24 JUSTICE KAVANAUGH: This -- that's --

25 MR. GEYSER: -- for federal

1 jurisdiction.

2 JUSTICE KAVANAUGH: -- that's not
3 their -- that's an amicus argument. That's not
4 their argument.

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

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

11 MR. GEYSER: Well -- well -- well, I
12 certainly hope you're not.

13 JUSTICE KAVANAUGH: Yeah.

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

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

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

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

16 MR. GEYSER: Well, first, Your Honor,
17 you're -- you're going to get the question
18 whether Section 10 applies under any reading --

19 JUSTICE KAVANAUGH: Yeah.

20 MR. GEYSER: -- because you have the
21 state law case with the non-diverse parties. So
22 you -- that -- that's -- that's inevitable, that
23 this case is not the -- for better or worse, the
24 last Federal Arbitration Act case the Court is
25 going to see.

1 But -- but I also think, though,
2 again, looking at it, it is not a uniform
3 approach. This is an express textual departure.
4 And I know Your Honor said the usual way is to
5 look through. No, that's the opposite. The
6 usual way is you look at the face of the
7 pleading. And what parties are seeking to bring
8 before the court, whether under Section 4 or
9 Section 9 or Section 10, is not the underlying
10 dispute. They're trying to adjudicate a
11 specific performance right to the arbitration
12 contract.

13 JUSTICE KAVANAUGH: One other textual
14 point. They emphasize that Section 4 should be
15 read as a venue provision. Can you address
16 that?

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

25 I think it's inconceivable that all

1 nine members of the Court simply overlooked that
2 they were unwittingly construing a venue
3 provision. And I think the reason they didn't
4 overlook anything is because Section 4 is
5 phrased in jurisdictional terms. It is --
6 doesn't look anything like a normal venue
7 provision.

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

19 So it is -- it is truly -- it's a --
20 it's a very inventive theory, and my friend, who
21 is a very able lawyer, came up with it because
22 they realized that if they don't give the
23 look-through clause some meaning in Section 4
24 and if the default is, as they say, that you
25 always look through, then that clause becomes

1 entirely superfluous. It serves no --

2 JUSTICE BREYER: The same -- I still
3 have the same -- were you finished?

4 MR. GEYSER: Yes, yes.

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

16 And that might be a lot of them. Now
17 there will be state judges involved in this too,
18 but they're going to be involved primarily in
19 state law, which they know. All right? And
20 we're supposed to know the federal.

21 And there the -- we seem to come
22 closer to this more unifying simple system if --
23 simpler -- if you're wrong, unfortunately for
24 you. And -- and -- and that's the notion that
25 I'm asking you so you can disabuse me of it.

1 MR. GEYSER: All right. Well, let --
2 let me try.

3 First, for international arbitration,
4 there actually is jurisdiction because Congress
5 said so in Section 203. For anything under the
6 Convention, there's jurisdiction throughout the
7 Act.

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

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

21 No one thinks there's any problem with
22 saying a federal claim is filed in federal
23 court, it's settled and dismissed, and then a
24 dispute about the settlement goes to state
25 court. And, here, there's no federal expertise

1 in reviewing these arbitration awards. Think
2 about appointing an arbitrator that's simply
3 reading a contractual provision and deciding
4 what it says about which arbitrator to appoint.
5 It's seeking specific performance of an
6 arbitration procedure. State courts see that
7 all the time. They're very good at that.

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

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

1 involve readjudicating the federal suit.

2 The well-pleaded complaint rule
3 governs just fine, and the -- it is fairly
4 simple. And the alternative will give rise to
5 complicated questions, including what do you do
6 with the state law questions that have a federal
7 ingredient?

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

19 If there's diversity, then maybe it
20 makes sense to have the federal court there to
21 protect against local bias. But, if there's not
22 diversity, there's no reason to say just because
23 the underlying dispute involved a federal
24 question, which isn't relevant at the
25 confirmation stage, that we should nonetheless

1 have federal courts spending their time looking
2 at those awards.

3 JUSTICE BREYER: Thank you.

4 MR. GEYSER: If the Court has no
5 further questions.

6 CHIEF JUSTICE ROBERTS: Justice
7 Thomas?

8 Justice Breyer?

9 Justice Alito, anything? Okay? Good?

10 Justice Gorsuch?

11 JUSTICE GORSUCH: No further
12 questions. Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Barrett?

15 Okay. Thank you, counsel.

16 MR. GEYSER: Thank you.

17 CHIEF JUSTICE ROBERTS: Ms. Blatt.

18 ORAL ARGUMENT OF LISA S. BLATT

19 ON BEHALF OF THE RESPONDENTS

20 MS. BLATT: Thank you, Mr. Chief
21 Justice, and may it please the Court:

22 If federal courts would have
23 jurisdiction over the parties' underlying
24 dispute, federal courts can hear motions to
25 confirm or vacate arbitral awards resolving that

1 dispute.

2 First, the FAA's text treats requests
3 to confirm or vacate arbitral awards as motions.
4 Motions are not free-standing lawsuits that need
5 an independent jurisdictional basis. Rather,
6 motions seek relief within a larger controversy
7 between the parties. Courts thus assess their
8 jurisdiction by looking to that underlying
9 controversy.

10 Here, the FAA is structured
11 sequentially to facilitate all stages of
12 arbitration to resolve the same underlying
13 controversy. Because FAA motions are adjuncts
14 to that broader controversy, federal courts can
15 hear FAA motions when they have jurisdiction
16 over that controversy.

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

1 confirm would fail adversarialness under Article
2 III.

3 Petitioner says state courts are
4 equally good. But, unlike the FAA's standards
5 for confirmation and vacatur, state courts often
6 revisit the merits under their own state
7 arbitration acts.

8 Congress presumably did not want
9 federal courts to enforce arbitration agreements
10 at the front end, only to see state courts to
11 force do-overs at the back end.

12 And, third, it's implausible the FAA
13 imposes one jurisdictional test for motions
14 under Section 4 and a different jurisdictional
15 test for motions under Sections 5, 7, 9, 10, and
16 11.

17 And it would encourage needless
18 gamesmanship for jurisdiction under these latter
19 provisions to turn on the happenstance whether
20 there was an earlier Section 4 order.

21 I welcome your questions.

22 JUSTICE THOMAS: Ms. Blatt, would you
23 comment on Petitioner's assessment of your
24 Section 4 venue argument?

25 MS. BLATT: Sure. I didn't make it

1 up. This Court called it a venue provision in
2 Cortez Byrd, but here's why we think it's a
3 venue provision. We've got three very solid
4 arguments.

5 First, it reads like a venue
6 provision. It's framed in classic venue terms
7 saying where a petition may be filed. If you
8 look at the title of that provision, it says
9 petition in a court having jurisdiction. So
10 it's not conferring jurisdiction, Justice
11 Thomas. It's talking about jurisdiction that's
12 already there.

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

21 Now, in the later provisions, the rest
22 of the venue provisions under the Act, it -- you
23 wouldn't need that same broad conferring of
24 venue because you -- you know where the
25 arbitration occurs.

1 And the third reason is just it looks
2 awfully like structurally the "save for" venue
3 provision under Section 204, which Congress
4 labels a venue provision.

5 And then, if we -- if we needed a
6 fourth reason, Congress often refers to
7 jurisdictional tests in -- in venue provisions.
8 And we offer the example of the generic venue
9 provision in 1391, which extends -- it kind of
10 has this catch-all extending venue to where a
11 court has personal jurisdiction. So it's not
12 completely uncommon. And we also cite two
13 habeas examples.

14 But this Court did call it a venue
15 provision in Cortez Byrd. It said it was a very
16 permissible venue provision.

17 JUSTICE KAGAN: I mean, Vaden
18 obviously calls it a jurisdictional provision
19 about 20 times without using the word "Vaden."
20 I mean, I stopped counting when I got to 20.

21 MS. BLATT: Right. But the important
22 thing is that the opinion twice says Section 4
23 is not creating jurisdiction, which --

24 JUSTICE KAGAN: Yeah, but, I mean,
25 that's even -- you -- maybe it's a venue

1 provision. I mean, it's possible, I suppose. I
2 -- I -- that seems to me to create a problem for
3 you rather than to get rid of it.

4 I mean, your problem is that you have
5 no textual hook, no textual basis for a
6 look-through rule outside of Section 4. I mean,
7 you have to say that somehow there's a kind of
8 implicit look-through provision in all the rest
9 of the statute so that Section 4 can then become
10 just a venue provision.

11 But -- but -- but you need some kind
12 of jurisdictional hook, don't you? I mean,
13 Congress didn't just expect everybody to
14 understand that this was look-through
15 jurisdiction. Look-through jurisdiction is very
16 odd. It's very unusual.

17 You would think, if Congress wanted to
18 impose a look-through jurisdictional provision
19 throughout the statute, we would have a
20 look-through jurisdictional provision throughout
21 the statute.

22 MS. BLATT: Sure. And that's why so
23 much of our argument hinges on the fact that the
24 statute is plastered with the words "motion" and
25 "application." When you get a motion for

1 divided argument, you don't go around applying
2 the well-pleaded complaint rule to your motion
3 by the SG's office. You know that there's an
4 underlying jurisdictional basis in the
5 controversy before you.

6 This entire Act refers to the parties'
7 controversy, and then it uses the word "motion"
8 in provision after provision, "application." In
9 Sections 9, 10, 12, and 13, it talks about a
10 motion and application. Says -- Section 6 says
11 --

12 JUSTICE KAGAN: But your -- your
13 argument then is just by using the words
14 "motion" and "application" Congress thought that
15 by using the words "motion" and "application" it
16 would be clear to everybody that jurisdiction
17 was by the look-through method.

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

22 It reads like a procedural -- a
23 federal, you know, arbitration procedural act.
24 The Federal Rules of Procedure didn't exist.
25 The whole statute is telling you, you know, how

1 do you get your arbitrator picked, where do you
2 go for discovery disputes, how do you get a -- a
3 judgment at the end of the day.

4 And the judgment at the end of the day
5 is supposed to, under Section 13, be treated as
6 if the case were tried in federal court. So
7 this is a whole fiction and a sui generis
8 situation where, instead of being in a federal
9 court, the -- the Act on its face only talks
10 about federal courts. It's not being
11 adjudicated, this federal controversy. It's
12 being adjudicated before an arbitrator, but it
13 ends up in a judgment.

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

20 You weren't pressing him on his
21 jurisdiction -- diversity of jurisdiction, but
22 if you have a zero dollar award, which just
23 means the defendant wins, you can't get into
24 federal court unless he has to cheat by saying,
25 well, you can look at the underlying controversy

1 in that case because we all know the plaintiff
2 was asking for more money and in a future case
3 he might be getting more money.

4 And so he's got no other way and -- or
5 to get to adversarialness. If you have an
6 uncontested motion to confirm, the only
7 adversarialness is the underlying controversy.

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

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

22 So there's nothing on the face of the
23 motion that mentions how much the plaintiff
24 wanted. It just says -- like this case just
25 says on the awards face, all claims are

1 rejected, defendant wins. There's --

2 CHIEF JUSTICE ROBERTS: So --

3 MS. BLATT: -- there's nothing about
4 the amount.

5 CHIEF JUSTICE ROBERTS: -- to -- to
6 sort of go to the 30,000 feet perspective, the
7 consequence of your position is to federalize a
8 lot more of FAA actions, procedures, than it
9 seems would make sense if you buy the idea that
10 this is a statute that doesn't give generally
11 federal jurisdiction.

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

20 Why isn't that just like what he's
21 talking about here?

22 MS. BLATT: Well, it's absolutely
23 correct that Kokkonen -- and I hope I'm
24 pronouncing that correctly -- says if parties
25 settle and there's litigation over that

1 settlement, but the court has already dismissed
2 the case, collateral litigation over that
3 settlement has to go to state court.

4 And the reasoning behind that is
5 because there's been a case-ending dismissal by
6 the federal court, and at that point, the
7 federal court loses jurisdiction.

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

15 And they really don't want to bring
16 that settlement analogy anyway because, in that
17 sense, everything leading up and to the award
18 would be part and parcel of a live federal
19 controversy.

20 But, in terms of your first question
21 about are we federalizing cases, I mean, this is
22 the majority rule, although there's -- there's
23 circuits that have gone the other way, and the
24 only cases that we're talking about are going to
25 federal court are federal question jurisdiction

1 and diversity jurisdiction, with the option of
2 being no cases going to federal court, and you
3 have Congress passing a very odd Act.

4 Now if I could just get into this bit
5 about this being jurisdictional. So he's got
6 two arguments. And I agree, Justice Kagan, I
7 mean, Vaden, it -- it -- I just don't think the
8 Court had before it -- even though it was
9 mentioned at oral argument and mentioned in the
10 briefing, the Court didn't have this situation
11 about what -- what we're going to do about the
12 rest of the Act. Is there going to be a
13 look-through? And so -- but the Court did twice
14 say Section 4 is -- is not jurisdictional.

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

23 In other words, if Section 4 has
24 jurisdiction, it's only because it's taking away
25 jurisdiction that would be conferred by the

1 first section of that Act.

2 And this is a little bit of what the
3 -- the Chamber of Commerce was arguing in their
4 brief, but that is to say the first question
5 just says go file in any court without regard --
6 any motion in federal court, but then it takes
7 away and says but only if you have jurisdiction.
8 So, in that sense, you've got a limiting clause.

9 Well, the only logical inference then
10 is, if that limiting clause is omitted from the
11 rest of the sections, the rest of the Act is
12 broader.

13 JUSTICE KAGAN: But I took that to not
14 be your position.

15 MS. BLATT: It's not our position.
16 That is the consequence. If he wants to live by
17 the text, he needs to die by the text. And he
18 doesn't want to do that.

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

1 need a free standing.

2 We gave Federal Rule 20 -- 27, but I
3 know another very familiar example to you will
4 be the search warrant. When courts go to
5 federal court for a search warrant, they -- that
6 is because a court underlying has jurisdiction
7 over offenses against the United States. So
8 it's an adjunct to a broader controversy, and
9 that's just the way motions function, is that
10 they aren't free-standing lawsuits.

11 The Federal Rules are very specific
12 between motions and complaints. Complaints
13 invoke a court's jurisdiction. They are a cause
14 of action. A motion is just an adjunct, and it
15 --

16 CHIEF JUSTICE ROBERTS: Well, but it
17 doesn't -- it -- it doesn't say the application
18 is a motion. It says it'll be heard as a
19 motion.

20 MS. BLATT: Correct. Correct.

21 CHIEF JUSTICE ROBERTS: Well, but, I
22 mean, that's -- you seem to be saying that --
23 treating them as -- calling them motions. I --
24 I think they are still a separate animal, as
25 opposed to the -- the motion itself.

1 MS. BLATT: When you look at the Act,
2 sort of, you know, unitary, harmonious,
3 interlocking, it is the -- they are motions
4 bringing that are all adjuncts to a controversy.
5 I mean, this is the Federal Arbitration Act, so
6 they were obviously thinking about cases that
7 could otherwise be litigated in federal court.

8 Whether that's just diversity or a
9 federal question, these are federal question --
10 federal controversies, and these are treated as
11 applications or requests to facilitate the
12 arbitration from cradle to grave.

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

1 MS. BLATT: Agreed. But there's no
2 question, under the other side's view, everybody
3 and anybody can go to Section -- under Section 4
4 as long as there's a federal controversy and
5 sort of get the hook of the federal court
6 jurisdiction. And even if it's frivolous, the
7 court could deny the motion because the parties
8 are already arbitrating but retain jurisdiction.

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

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

25 And it is an odd -- as you said, it's

1 an odd Act, but it's even odder if you -- if you
2 reverse. Then I don't know what this is. It's
3 just a -- it's a dead Act, I guess. I don't --
4 I don't know what Congress was doing if even
5 diversity jurisdiction, you're going to have to
6 look at the underlying controversy.

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

9 MS. BLATT: The admiralty provision?

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

18 But why put it in --

19 MS. BLATT: So I --

20 JUSTICE SOTOMAYOR: -- Section 8 and
21 not in 9 or 10?

22 MS. BLATT: Yeah. So Section 8,
23 again, I think the "save for" clause is not in
24 the rest of the sections because the venue is
25 much narrower. But the -- under Section 8, I

1 think it is a peculiarity of admiralty
2 jurisdiction. So it says that you can proceed
3 by libel and seizure -- seizure of the vessel.
4 And libel is a complaint.

5 And so, if you did not have the "and
6 then the court shall have jurisdiction and
7 retain jurisdiction," if that language was just
8 excised, the provision would read as follows:
9 "You can go file a libel complaint in admiralty
10 and seize your ship," period.

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

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

22 And you wouldn't do that in a civil
23 case. Obviously, if you've agreed to arbitrate,
24 you're not filing a -- a -- a complaint in
25 federal court. You're going just straight to

1 arbitration.

2 JUSTICE SOTOMAYOR: Thank you.

3 MS. BLATT: And I -- the only other
4 thing I wanted to say is on the -- I -- I think
5 the other side is trying to say, well, maybe
6 it's not a jurisdictional grant; it's just an
7 instruction on how to use your jurisdiction.
8 And I think that --

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

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

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

24 And I think that's just a fancy way of
25 saying it's a jurisdictional provision because,

1 without that language, the court -- in other
2 words, if the court didn't look through, it
3 wouldn't have jurisdiction. So I'm just saying
4 I think it's word games.

5 JUSTICE KAGAN: Ms. Blatt, I mean,
6 this might just be repeating my last question,
7 but there's a set of arguments one can make on
8 both sides about what would make for a sensible
9 Act, so if we were writing the Act from scratch,
10 how we would write it to do the things we want
11 it to do and not do the things we don't want it
12 to do.

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

22 And the other, which is Mr. Geysers',
23 is, you know what, we have look-through
24 provision where Congress says there's
25 look-through provision, whatever you want to

1 call it, jurisdiction, venue, anything else in
2 between. There are particular places where
3 Congress makes clear look-through -- the
4 look-through method is the right one, and where
5 those things don't exist, it's not the right one
6 because we can't just sort of make up
7 look-through jurisdiction out of nothing.

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

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

24 So I -- I just think it -- it -- it --
25 it -- it over-assumes that there is a compelling

1 textual argument in the first place when it's
2 not because, as a logical matter, his textual
3 argument takes him a place that no party wants
4 to go, which is that everything ends in federal
5 court.

6 I'm not saying it's an easy case for
7 you. I'm saying our case is better than his
8 case.

9 JUSTICE KAGAN: I mean, it -- it --
10 you said the -- the idea that our precedent
11 precludes his case, you know, seems -- it seems
12 like the -- the Moses Cone kind of precedent --

13 MS. BLATT: Yeah.

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

17 MS. BLATT: I -- I --

18 JUSTICE KAGAN: Both of you are doing
19 something with respect to federal jurisdiction.
20 You're doing it by way of a default rule. He's
21 doing it by way of a selective
22 Section 4/Section 8 rule.

23 MS. BLATT: Yeah, that -- that's a
24 fair point. So if we just look at this Act and
25 I think why it got in footnotes in your

1 precedent is because the Court looked at this
2 very quickly and said, wait a minute, this is
3 not a jurisdictional act. And Section -- they
4 cited Section 4 as the example.

5 And I think this -- what gets into the
6 professor's amicus brief that this was based on
7 the New York Arbitration Act, and if you just
8 passed the New York Arbitration Act, this whole
9 Act would read like one big giant jurisdictional
10 grant.

11 And, again, I hate to do what this
12 Court did, but this Court said, hey, wait a
13 minute, you see that Section 4 and it says, you
14 know, the court already has jurisdiction or must
15 have it, that's reflective of this can't be a
16 jurisdictional grant.

17 So, yeah, I'm -- I'm using your
18 precedent, but I think your precedent very
19 quickly looked at the Act and said it made a
20 choice that this can't be what Congress intended
21 and it is what the drafter said he was doing.

22 And I don't -- I mean, sure, it's
23 legislative history, but it is the 1925
24 contemporaneous understanding by the ABA too.
25 And it's not -- doesn't mention Section 4. It

1 says how we're going to enforce arbitration
2 agreements is going to be through, you know,
3 this look-through approach.

4 And just in terms of textually, if you
5 just start with Section 2, which you said is the
6 cornerstone, I mean, that's what to me answered
7 the case for me, is that Congress thought we're
8 going to have a whole substitute for a federal
9 controversy not to be litigated in federal
10 court. We're going to take it out of the -- you
11 know, not in front of a jury. But it left the
12 federal court in at every stage to get -- to
13 help to facilitate it, and so that's why there's
14 not, you know, a free-standing jurisdictional
15 grant in -- in -- in the case.

16 That's the best I've got.

17 CHIEF JUSTICE ROBERTS: Okay. Justice
18 Thomas?

19 JUSTICE THOMAS: No, nothing, Chief.

20 CHIEF JUSTICE ROBERTS: All right.
21 Justice Breyer?

22 Justice Gorsuch?

23 JUSTICE GORSUCH: All set here. Thank
24 you, Chief.

25 CHIEF JUSTICE ROBERTS: Okay. Justice

1 Barrett?

2 Okay. Thank you, counsel.

3 MS. BLATT: Thank you.

4 CHIEF JUSTICE ROBERTS: Rebuttal,
5 Mr. Geysler?

6

7 REBUTTAL ARGUMENT OF DANIEL L. GEYSER

8 ON BEHALF OF THE PETITIONER

9 MR. GEYSER: Thank you, Your Honor. A
10 few quick points.

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

20 It specifically did not refer to
21 Section 4 when it was listing other venue
22 provisions in the Act, and my friend has still
23 not cited a single case. If the Court says that
24 the look-through clause is now a venue
25 provision, it will literally be the first court

1 in the nation that has said that. I think that
2 would be fairly striking.

3 My friend said that our reading will
4 decapitate the Federal Arbitration Act. I think
5 that's odd because our reading is, in fact, the
6 reading that was the overwhelming majority view
7 in the country for a quarter of a century. The
8 only courts that have started questioning
9 whether our reading is correct is in light of
10 this Court's opinion in Vaden and only because
11 they said, not because of any textual reason --
12 they admitted their approach is profoundly
13 atextual -- they said, as a policy matter, it
14 seems to make sense that if the look-through
15 approach applies at the start, it should
16 probably apply at the finish.

17 That is not the way that this Court
18 construes statutes, and it's a -- it's a
19 senseless reading of the statute itself. Again,
20 Congress did not frame this as a continuum.
21 These are independent, free-standing filings.

22 My friend says that these are simply
23 motions. Now the Chief Justice is exactly
24 correct. Section 6 does not say that these
25 applications and petitions are motions. It said

1 they shall be handled like motions. And as the
2 Court said in Hall Street, that's simply to
3 streamline the proceeding. And Hall Street said
4 in the next -- the -- the next words it used, I
5 think, underscores our point. It said it
6 streamlines the proceeding so that the party
7 doesn't have to file a separate contract action.
8 It's making clear that it's just an independent
9 way to get a specific performance request to
10 enforce an arbitration contract before the
11 court.

12 And to the extent that my friend says
13 that this is -- a motion is an adjunct to this
14 missing underlying case, my friend's exactly
15 right that, typically, when you have a
16 jurisdictional anchor, you have an actual
17 federal case in an actual federal court. The
18 court doesn't say, do I have jurisdiction over
19 every subsequent motion.

20 But you need the initial federal case.
21 I'm not aware of any precedent that this
22 Court's -- in this Court's jurisprudence that
23 says you can pretend there's a case in court.
24 That's not the way it works with ancillary
25 jurisdiction, as the Court made clear in Peacock

1 versus Thomas.

2 It's not the way it works with
3 settlements. A settlement is certainly adjunct
4 to the underlying federal case. But, if a party
5 settles a federal claim and then shows up in the
6 court to -- with a dispute about the settlement,
7 they certainly can't say, well, this is a motion
8 that's adjunct to our missing federal case,
9 please assert jurisdiction.

10 Kokkonen squarely rejects that
11 position. I think this Court would have to
12 overturn Kokkonen to accept my friend's version
13 of it.

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

1 of the Act.

2 And I do think that if we do adopt --
3 if the Court does adopt my friend's approach,
4 you are certainly departing from the majority
5 view and you're expanding federal jurisdiction
6 to decide a bunch of cases that -- where there
7 is no advantage to having a federal court spend
8 its expertise and bandwidth looking at cases
9 that the state courts have faithfully handled
10 and enforced for a quarter of a century.

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

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel. The case is submitted.

23 (Whereupon, at 12:21 p.m., the case
24 was submitted.)

25

Official

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