NO. 25-_____

In the Supreme Court of the United States

FLINTCO, LLC,

Petitioner,

v.

CHOCTAW NATION OF OKLAHOMA,

Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Civil Appeals, Third Division

PETITION FOR A WRIT OF CERTIORARI

James E. Weger
Counsel of Record
JONES, GOTCHER & BOGAN, P.C.
15 E. 5th St., Ste. 3800
Tulsa, OK 74103
(918) 581-8200
jweger@jgbok.com

December 19, 2025 *Counsel for Petitioner*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTION PRESENTED

The Federal Arbitration Act (FAA) reflects "a liberal federal policy favoring arbitration agreements." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).

In the case below, the signatories to a contract agreed to arbitrate any claim "arising out of" the contract, and suit was subsequently brought relating to the performance of that contract.

The Question Presented is:

Whether placing the "tort" label on a claim excludes that claim from the scope of the dispute resolution clause in the parties' contract.

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- Petitioner is Flintco, LLC ("Flintco").

Respondent and Plaintiff-Appellee below

- Choctaw Nation of Oklahoma ("Nation") — a federally recognized Indian tribe with its headquarters located in Durant, Oklahoma. In this instance, the Nation waived its sovereign immunity pursuant to the contract between the parties.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Flintco hereby states that it is a wholly owned subsidiary of AIH, LLC, which is a wholly owned subsidiary of Alberici Corporation. No publicly held corporation owns 10% or more of the stock of any of these entities.

LIST OF PROCEEDINGS

Supreme Court of the State of Oklahoma

No. 122,098 (comp w/122,281)

Choctaw Nation of Oklahoma v. Flintco, LLC, and Worth Group Architects, P.C., Specified Technologies, Inc., ABC Entities I-X and John Does I-X

Order Denying Certiorari: September 22, 2025

Oklahoma Court of Civil Appeals, Division III

Case No.122,098 (Comp w/122,281)

Choctaw Nation of Oklahoma, *Plaintiff/Appellee* v. Flintco, LLC, *Defendant/Appellant*, and Worth Group Architects, P.C., Specified Technologies, Inc., ABC Entities I-X and John Does I-X, *Defendants*

Opinion: March 26, 2025

Oklahoma District Court, Bryan County

No. CJ-23-230

Choctaw Nation of Oklahoma, *Plaintiff* v. Flintco, LLC, Et Al., *Defendants*

Judgment: March 15, 2024

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

OTHER DOCUMENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

STATUTES

PETITION FOR A WRIT OF CERTIORARI

Flintco respectfully petitions for a writ of certiorari to review the judgment of the Court of Civil Appeals of Oklahoma in this case.

INTRODUCTION

The Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), has long required courts to enforce parties' arbitration agreements. 9 U.S.C. § 2.

The question in this case is whether one party can avoid the application of a broad arbitration clause by recasting its cause of action from breach of contract to fraud in the performance.

This Court should grant review.

OPINIONS BELOW

This Petition concerns the Order of the Court of Civil Appeals of Oklahoma, affirming the denial of a motion to compel arbitration filed by Flintco as to the claim of fraud in the performance of the contract asserted by the Nation.

The opinion of the Court of Civil Appeals of Oklahoma in *Choctaw Nation of Oklahoma v. Flintco, LLC, et al.*, No. 122,098 (App.2a-9a) affirmed the decision of the District Court in and for Bryan County,

in No. CJ-23-230 (App.10a-11a), finding that the Plaintiff alleged fraud and that the issue of fraud was not contemplated by the language of the arbitration clause.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The opinion of the Court of Appeals of Oklahoma was entered on March 26, 2025. (App.2a-9a). The Supreme Court of Oklahoma denied the petition for certiorari filed by Flintco on September 22, 2025. (App.1a). No petition for rehearing was filed with the Oklahoma Supreme Court. This Petition is timely. Sup. Ct. R. 13.

STATUTORY PROVISIONS INVOLVED

9 U.S.C. § 2 (of the FAA), in pertinent part:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

STATEMENT OF THE CASE

A. Legal Background

Section 2 of the FAA provides that arbitration agreements, "be valid, irrevocable, and enforceable," unless one of certain limited exceptions applies. 9 U.S.C. § 2.

This provision reflects "a liberal federal policy favoring arbitration agreements." *CompuCredit*, 565 U.S. at 98 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). It "requires federal courts to place arbitration agreements upon the same footing as other contracts." *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 437 (2020) (citations omitted) (quotations omitted).

Congress enacted the FAA as "a response to judicial hostility to arbitration." *CompuCredit*, 565 U.S. at 97. As this Court explained, "the judicial hostility towards arbitration that prompted the FAA had manifested itself in a great variety of devices and formulas declaring arbitration against public policy." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 342 (2011) (quotations omitted). And this Court has warned that "we must be alert to new devices and formulas that would achieve much the same result today." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 509 (2018).

The state of Oklahoma has disregarded this Court's precedents on the FAA before. *See, e.g.*, *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 20, 133 S. Ct. 500, 503, 184 L. Ed. 2d 328 (2012).

As explained below, certiorari is warranted here to reinforce the obligation of state courts to enforce the FAA and faithfully apply the precedents of this Court.

B. Statement of Facts and Procedural History

In 2005, the Nation and Flintco entered into a Construction Management Agreement (the "Contract"). The Contract, contains a dispute resolution clause, which provides, *inter alia*,

> Any Claim[1] arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to Mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. . . . Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, *et seq*.

(App.14a).

In 2008, the Nation executed a Council Bill, modifying the dispute resolution clause as follows,

> In order to compel arbitration or to allow for enforcement of any arbitrator's award, the Owner agrees to a partial waiver of sovereign immunity for the sole purpose of submitting disputes arising under this Agreement to the jurisdiction of an arbitrator or arbitration

---

[1] Despite being capitalized, the term "Claim" is not defined in the dispute resolution clause or the parties' contract.

> panel, giving full legal effect to any order, judgment or award resulting from an arbitration proceeding, and allowing for the enforcement of an arbitration order, judgment or award.
>
> Any Claim arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. . . . Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, *et seq*.

(App.18a-19a).

Procedural Background

On October 31, 2023, the Nation filed a lawsuit against Flintco, alleging, *inter alia*, fraud relating to certain construction projects performed pursuant to the Contract. The Nation claims that Flintco committed fraud by purposefully and intentionally failing to construct the projects as required by applicable code requirements and the Contract, failed to disclose to and intentionally concealed from the Nation that the projects did not comply with the Contract, and made false representations to the Nation that the completed projects met all Contract requirements. (App.3a).

On January 5, 2024, Flintco filed a Motion to Compel Arbitration, noting that the dispute resolution

clause in the Contract was "broad," and that the fraud claim related to and arose from Flintco's performance under the Contract.

On February 5, 2024, the Nation filed a Response and Objection to Defendant's Motion to Compel Arbitration, arguing that it did not consent to arbitrate its fraud claim and that the arbitration clause at issue is too narrow in scope to compel arbitration of its fraud claim.

On March 15, 2024, the district court denied Flintco's motion to compel arbitration, finding and ordering as follows,

> Defendant Flintco, LLC's Motion to Compel Arbitration should be, and hereby is, DENIED. Mores [sic] specifically, the Court finds that the Plaintiff has alleged fraud, and the Court further finds that the issue of an allegation of fraud was not contemplated by the language of the Arbitration Clause.

(App.11a).

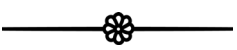
On March 26, 2025, the Court of Civil Appeals of Oklahoma filed an unpublished decision, affirming the district court's denial of the motion to compel arbitration filed by Flintco as to the fraud claim against it by the Nation, reasoning as follows,

> [T]he Clause is valid, but the Clause does not "clearly and plainly" require the parties to arbitrate Nation's fraud claims. The term "Claim" is not defined nor does the Clause have language to clearly include "any and all extracontractual disputes" and "any and all claims for fraud or misrepresentation." Had

> the parties intended to arbitrate claims of fraud or other extracontractual conduct, the Clause could have plainly stated that such claims are included.

(App.9a).

On September 22, 2025, the Supreme Court of Oklahoma declined to accept the petition for certiorari review filed by Flintco. (App.1a).



REASONS FOR GRANTING THE PETITION

The proper interpretation and application of the FAA presents important federal questions which merit scrutiny by this Court. Here, the Court of Civil Appeals of Oklahoma narrowly interpreted the dispute resolution clause at issue and found that fraud in the performance of a contract does not arise out of the contract, notwithstanding the clear, federal directive to interpret the dispute resolution clause broadly.

As this Court explained in *Nitro-Lift Technologies, L.L.C. v. Howard*, "State courts rather than federal courts are most frequently called upon to apply the Federal Arbitration Act, including the Act's national policy favoring arbitration. It is a matter of great importance, therefore, that state supreme courts adhere to a correct interpretation of the legislation." 568 U.S. 17, 17–18 (2010) (per curiam) (citation omitted).

This Court's review is warranted because the approach that the Court of Civil Appeals of Oklahoma took in this case, in utter defiance of this Court's FAA jurisprudence, will undercut the clear federal directive

to favor arbitration agreements should it be followed by other courts. Should this Court decline to accept certiorari, the Court of Civil Appeals of Oklahoma will have permitted a new device and formula to undercut the efficacy of the liberal federal policy favoring arbitration.

I. The Court of Civil Appeals of Oklahoma has Decided an Important Question of Federal Law in a Way That Conflicts with the Decisions of Several United States Court of Appeals

In the Opinion, the Court of Civil Appeals of Oklahoma correctly noted the dispositive issue:

> [W]hether Nation's claims against Flintco for fraudulent concealment and misrepresentations relating to Flintco's performance of its contractual obligations are within the scope of the Clause under the Federal Arbitration Act . . . and the Oklahoma Uniform Arbitration Act[.]

(App.7a). Yet, the Court of Civil Appeals of Oklahoma determined that such claims did not fall within the scope of the parties' dispute resolution clause, concluding that it did not "'clearly and plainly' require the parties to arbitrate the Nation's fraud claims." In so doing, the Court of Civil Appeals of Oklahoma inverted the policy applicable to the enforcement of arbitration agreements and ignored that the dispute resolution clause was entitled to broad interpretation.

The parties' dispute resolution clause applies to "any Claim arising under this Agreement." When construing the clause "arising under" in the context of an arbitration clause, the Circuit Courts of Appeals

overwhelmingly agree that such language is entitled to a broad interpretation. *See, e.g.*, *Sanchez*, 762 F.3d at 1146–47 (10th Cir. 2014); *Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367, 381-83 (1st Cir. 2011); *Battaglia v. McKendry*, 233 F.3d 720, 727 (3d Cir. 2000); *Gregory v. Electro–Mech. Corp.*, 83 F.3d 382, 383–86 (11th Cir. 1996); *Cincinnati Gas & Elec. Co. v. Benjamin F. Shaw Co.*, 706 F.2d 155, 160 (6th Cir. 1983); *Sweet Dreams Unlimited, Inc. v. Dial–A–Mattress Int'l, Ltd.*, 1 F.3d 639, 642 (7th Cir. 1993); *Mar–Len of Louisiana, Inc. v. Parsons–Gilbane*, 773 F.2d 633, 634, 636 (5th Cir. 1985). *Cf. JPaulJones, L.P. v. Zurich Ins. Co., (China) Ltd.*, 21-35365, 2022 WL 1135424, at *1 (9th Cir. Apr. 18, 2022) ("arising from" indicates the clause's narrow scope and excludes peripheral claims.") (not reported).

The Court of Civil Appeals of Oklahoma permitted the Nation to avoid the application of the arbitration clause by simply re-casting its claim for breach of contract into a claim for fraud.

But placing the "tort" label on a claim does not exclude that claim from the scope of the dispute resolution clause. *See P & P Indus., Inc. v. Sutter Corp.*, 179 F.3d 861, 871 (10th Cir. 1999); *Gregory v. Electro-Mech. Corp.*, 83 F.3d 382, 384, 386 (11th Cir. 1996); *Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress Int'l, Ltd.*, 1 F.3d 639, 643 (7th Cir. 1993); *Acevedo Maldonado v. PPG Indus., Inc.*, 514 F.2d 614, 616 (1st Cir. 1975).

In this case, the factual underpinnings of the fraud claim reveal that it is premised entirely upon allegations that should, in fact, sound in breach of the Contract. In its Petition, the Nation alleges,

> ¶ 12 These causes of action arises [sic] from several construction and/or renovation projects in which Flintco was hired by the Nation as the Construction Manager[.].
>
> * * *
>
> ¶ 30. The Defendants purposefully failed to construct and/or renovate the Projects in a way that would comply with the Construction Management Agreement and all design code and requirements, and the Nation discovered in November 2021 that various shortcuts were taken during construction and/or renovation of these Projects.
>
> * * *
>
> ¶ 43. Defendants committed fraud by purposefully and intentionally failing to construct and/or renovate the Projects in accordance with the design and code requirements of the Projects, as well as the Construction Management Agreement.

(App.27a, 28a, 29a). According to extant Circuit Court law, which is legion, the dispute resolution clause is "broad," and the Nation's fraud claim, which constantly references the parties' rights and obligations under the Contract, should have been compelled to arbitration.

Yet, the Court of Civil Appeals analyzed the Clause as if it was entitled to a narrow, not broad, interpretation. When an arbitration provision is narrow, federal courts have found that an arbitration provision has narrow application when "the parties clearly manifested an intent to narrowly limit arbitration to specific disputes[.]" *Cummings v. FedEx Ground Package*

Sys., Inc., 404 F.3d 1258, 1262 (10th Cir. 2005). In other words, the Court of Civil Appeals undermined the federal policy to interpret the dispute resolution clause broadly and, instead, treated the dispute resolution clause as it was entitled to a narrow interpretation. This is one of the "new devices and formulas" that this Court warned about in *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 509 (2018).

In this case, the dispute resolution clause does not narrow or limit its application to specifically enumerated matters (*e.g.*, interpretation or performance of the Contract). Instead, it applies to any "Claim" arising under the parties' contract. Moreover, even the Nation readily concedes that its fraud claim "arises under" the parties' contract. Thus, the dispute resolution clause is not entitled to a "narrow" interpretation, but rather a broad one.

For this reason, the Nation's "fraud" claim falls within the scope of the dispute resolution clause, and this matter should have been compelled to arbitration. *See Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367, 378 (1st Cir. 2011) ("This latter claim (*i.e.*, fraud in the performance of the MSA) easily falls within the scope of the Arbitration Clause's 'arising under' language and does not warrant further discussion. Accordingly, we find that said claim is encompassed under the Arbitration Clause.").

Indeed, even this Court's precedent establishes that the dispute resolution clause should have been interpreted in a broad manner. In *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, this Court determined that a claim for rescission based on fraudulent inducement fell within the scope of the parties' arbitration agreement. 388 U.S. 395 (1967). In that case, plaintiff

executed a contract with defendant, which contained an arbitration clause that provided, in pertinent part, "Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration." *Id*. at 398. This Court noted that the language in the arbitration clause "is easily broad enough to encompass [plaintiff's] claim that both execution and acceleration of the consulting agreement itself were procured by fraud." *Id*. at 406.

Under *Prima Paint Corp*., and its progeny, the tort claim asserted by the Nation "easily falls within the scope" of the dispute resolution clause. But even if the dispute resolution clause is narrow, as indicated by the Court of Civil Appeals in its reliance on its statement that the dispute resolution clause did not "clearly and plainly' require the parties to arbitrate the Nation's fraud claims," the Nation's fraud claim clearly is not collateral to the Contract. As explained in *Cummings v. FedEx Ground Package Sys., Inc.*, an issue is "collateral" if it is not "reasonably factually related to a dispute" that is subject to an arbitration agreement. 404 F.3d 1258, 1262 (10th Cir. 2005).

In this case, the Nation's fraud claim is not "collateral" to the Contract; instead, it is "reasonably factually related to a dispute" arising from the Contract. Indeed, even the Nation admits as much, stating in its Petition, "These causes of action arises [sic] from several construction and/or renovation projects in which Flintco was hired by the Nation as the Construction Manager[.]" (App.22a).

Under federal law, the Court of Civil Appeals of Oklahoma was duty bound to resolve this alleged ambiguity in favor of arbitration. Instead, it inverted the applicable standard, ignored the clear mandate of

this Court and federal law, and refused to compel arbitration of the fraud claim even though it recognized that the fraud claim "relat[ed] to Flintco's performance of its contractual obligations."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James E. Weger
Counsel of Record
JONES, GOTCHER & BOGAN, P.C.
15 E. 5th St., Ste. 3800
Tulsa, OK 74103
(918) 581-8200
jweger@jgbok.com

Counsel for Petitioner

December 19, 2025