No.

In the Supreme Court of the United States

WENDY SMITH, ET AL., PETITIONERS

v.

KEITH SPIZZIRRI, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a clear and intractable conflict regarding an important statutory question under the Federal Arbitration Act (FAA), 9 U.S.C. 1-16.

The FAA establishes procedures for enforcing arbitration agreements in federal court. Under Section 3 of the Act, when a court finds a dispute subject to arbitration, the court "shall on application of one of the parties *stay the trial of the action* until [the] arbitration" has concluded. 9 U.S.C. 3 (emphasis added). While six circuits read Section 3's plain text as mandating a stay, four other circuits have carved out an atextual "exception" to Section 3's stay requirement—granting district courts discretion to *dismiss* (not stay) if the entire dispute is subject to arbitration. In the proceedings below, the Ninth Circuit declared itself bound by circuit precedent to affirm the district court's "discretion to dismiss," despite "the plain text of the FAA appear[ing] to mandate a stay."

The panel candidly acknowledged the 6-4 circuit conflict, and a two-judge concurrence emphasized "the courts of appeals are divided," asserted the Ninth Circuit's position is wrong, and urged "the Supreme Court to take up this question"—an issue this Court has twice confronted but reserved in the past.

The question presented is:

Whether Section 3 of the FAA requires district courts to stay a lawsuit pending arbitration, or whether district courts have discretion to dismiss when all claims are subject to arbitration.

PARTIES TO THE PROCEEDING BELOW

Petitioners are Wendy Smith; Michelle Martinez; and Kenneth Turner, the appellants below and plaintiffs in the district court.

Respondents are Keith Spizzirri; Miriam Spizzirri; Ken Maring; Jane Doe Maring, an unknown party; Cynthia Moore; John Doe Moore, an unknown party; Pat Doe and Jane Doe I, unknown parties; John De La Cruz; Jane Doe De La Cruz, an unknown party; IntelliQuick Delivery, Inc.; Majik Leasing, LLC; and Majik Enterprises I, Inc., the appellees below and defendants in the district court.[*]

RELATED PROCEEDINGS

United States District Court (D. Ariz.):

William F. Forrest, et al. v. *Keith Spizzirri, et al.*, No. 21-cv-1688-GMS (June 17, 2022)

United States Court of Appeals (9th Cir.):

William F. Forrest, et al. v. *Keith Spizzirri, et al.*, No. 22-16051 (Mar. 16, 2023)

[*] William F. Forrest and Jodi Miller also appear as plaintiffs-appellants in the official caption in the court of appeals; their claims have since been resolved, and those parties are no longer participating in these proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Wendy Smith, Michelle Martinez, and Kenneth Turner respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-8a) is reported at 62 F.4th 1201. The order and opinion of the district court (App., *infra*, 9a-11a) is unreported but available at 2022 WL 2191931.

JURISDICTION

The judgment of the court of appeals was entered on March 16, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 3 of the Federal Arbitration Act, 9 U.S.C. 3, provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

INTRODUCTION

This case presents a square and indisputable conflict over a significant question under the Federal Arbitration Act: whether courts have discretion to dismiss a suit when all claims are subject to arbitration, despite the FAA's strict mandate, "without exception, that whenever suit is brought on an arbitrable claim, the [c]ourt 'shall' upon application stay the litigation until arbitration has been concluded." *Lloyd* v. *HOVENSA, LLC*, 369 F.3d 263, 269 (3d Cir. 2004) (quoting 9 U.S.C. 3). In the proceedings below, a Ninth Circuit panel was compelled by "binding precedent" to reaffirm a "judicially-created exception" to Section 3 (*Green* v. *SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769-770 (8th Cir. 2011))—one atextually authorizing the right to dismiss "notwithstanding the [FAA's] language" (App., *infra*, 2a, 5a). In so holding, the panel readily admitted it was joining the First, Fifth, and Eighth Circuits in "permit[ting] district courts to dismiss," while expressly rejecting the contrary decisions of the Second, Third, Sixth,

Seventh, Tenth, and Eleventh Circuits, which all "require a stay upon application of a party." *Id.* at 5a n.4.

This case easily satisfies the traditional criteria for granting review. The conflict is obvious, acknowledged, and entrenched. It has produced an intractable 6-4 circuit conflict, including dividing panels on multiple courts. This Court has twice reserved this question in the past, and the situation continues to spiral out of control. See *Lamps Plus, Inc.* v. *Varela*, 139 S. Ct. 1407, 1414 n.1 (2019). One circuit (the Fourth) has recognized a direct conflict in its own case law, and still refuses to resolve the disagreement—while admitting the remaining circuits are otherwise hopelessly divided. The issue arises constantly in courts nationwide (arising potentially any time a case is subject to arbitration), and judges are now crying out for this Court's guidance (App., *infra*, 8a (Graber, J., concurring)).

This issue was squarely resolved at each stage and was dispositive below; it is a pure question of law, and there are no conceivable obstacles to resolving it here. Further percolation is pointless: the arguments have been fully ventilated on each side, and there is no realistic prospect that either faction will back down. The resulting disuniformity frustrates the fair and proper administration of a nationwide scheme governing hundreds of cases each year, and the conflict will not dissipate on its own.

Because this case presents an ideal vehicle for resolving this important question of federal law, the petition should be granted.

STATEMENT

1. Petitioners are "current and former delivery drivers" for respondents, and sued respondents in Arizona state court for multiple violations of federal and state employment laws. App., *infra*, 3a. After removing the case to

federal court, respondents moved to compel arbitration and dismiss, alleging that all of petitioners' claims were "subject to mandatory arbitration." *Ibid.* While petitioners conceded that the claims were indeed arbitrable, they argued that "the FAA required the district court to *stay* the action pending arbitration rather than to *dismiss* the action." *Ibid.*; see also *id.* at 9a ("Plaintiffs agree that the present case must be resolved in arbitration, but urge that the Court stay, rather than dismiss, their case.").

2. Notwithstanding petitioners' affirmative stay request, the district court compelled arbitration and dismissed the case. App., *infra*, 9a-11a.

As relevant here, the district court analyzed "whether th[e] action should be dismissed or stayed while the parties resolve their dispute before the arbitrator." App., *infra*, 10a. The court maintained that petitioners "rightly point out" that "the text of 9 U.S.C. § 3 suggests that the action should be stayed." *Ibid.* But the court ultimately found the text non-controlling: "the Ninth Circuit has instructed that 'notwithstanding the language of § 3, a district court may either stay the action or dismiss it outright when, as here, the court determines that all of the claims raised in the action are subject to arbitration.'" *Ibid.* (quoting *Johnmohammadi* v. *Bloomingdale's, Inc.*, 755 F.3d 1072, 1074 (9th Cir. 2014), and favorably citing *Sparling* v. *Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988)). The court thus concluded it "retain[ed] discretion to dismiss the action if all claims raised are subject to arbitration," and it found that condition satisfied. *Ibid.*

The district court then confronted petitioners' case-specific arguments for "nevertheless" staying the case, and found those arguments without merit. App., *infra*, 10a-11a. Having determined that "all claims [were] sub-

ject to arbitration," the court therefore granted the motion to compel arbitration and "exercise[d] its discretion to dismiss this action." *Id.* at 11a.[1]

3. The Ninth Circuit affirmed. App., *infra*, 1a-7a.

a. The court framed "[t]he sole question before us" as "whether the [FAA] requires a district court to stay a lawsuit pending arbitration, or whether a district court has discretion to dismiss when all claims are subject to arbitration." App., *infra*, 2a. It acknowledged that this question has created a 6-4 circuit split, with the Ninth Circuit falling outside "the majority view." *Id.* at 5a n.4 (detailing circuit conflict). But it still felt constrained to affirm: "Although the plain text of the FAA appears to mandate a stay pending arbitration upon application of a party, binding precedent establishes that district courts may dismiss suits when, as here, all claims are subject to arbitration." *Id.* at 2a.

Again as relevant here, the panel initially examined Section 3's text, observing that "[o]n its face, Congress's use of 'shall' appears to require courts to stay litigation that is subject to mandatory arbitration, at least where all issues are subject to arbitration." App., *infra*, 4a. The panel further noted that "the term 'shall'" in "its ordinary meaning" is "a mandatory instruction," and "[n]othing about the context here suggests that Congress meant 'may' when it wrote 'shall.'" *Id.* at 4a-5a n.3.

But the panel declared the text secondary under established circuit precedent: "this court has long carved out an exception if all claims are subject to arbitration." App., *infra*, 5a. Like the district court, the panel explained

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[1] Petitioners are not renewing any of those case-specific arguments in this Court. Their sole contention is that the lower courts misread Section 3 as permitting district courts to dismiss notwithstanding a party's specific request for a stay pending arbitration.

this "exception" permitted courts to "'stay the action or dismiss it outright'" when the entire dispute is subject to arbitration, "'[n]otwithstanding the language of [Section 3].'" *Ibid.* (quoting *Johnmohammadi*, 755 F.3d at 1074). And because "all claims" in petitioners' suit "were subject to arbitration," the panel upheld the district court's "discretion to dismiss." *Ibid.*

The panel next addressed petitioners' "four primary arguments to sidestep this binding precedent." App., *infra*, 5a. It first brushed aside petitioners' objection that the Ninth Circuit's errant line of cases "began in a case in which no party appears to have requested a stay." *Ibid.* While assuredly true, the panel noted, the Ninth Circuit has "since" "extended" the same rule to "cases in which a stay is requested." *Id.* at 5a-6a (citing *Johnmohammadi*, *supra*, and *Sparling*, *supra*).

Second, the panel rejected petitioners' contention that "the FAA's plain text should dictate the outcome despite our precedent to the contrary." App., *infra*, 6a. The panel explained it was nevertheless bound by circuit precedent absent intervening higher authority, and "[t]here is no such intervening higher authority here." *Ibid.*

Third, the panel disagreed that this Court's decision in *Badgerow* v. *Walters*, 142 S. Ct. 1310 (2022), "abrogate[d]" circuit law, "thereby permitting [the panel] to come to a different result." App., *infra*, 6a. The panel reasoned that *Badgerow* addressed questions of *jurisdiction* under the FAA, but did "not discuss section three or the district court's discretion to stay or dismiss an action pending arbitration." *Id.* at 6a-7a. It thus had nothing to do with this case.

Finally, the panel discarded petitioners' contention that, "even if the district court had discretion to dismiss their suit, the court abused its discretion." App., *infra*, 7a.

Under the panel's view, "the district court did not misstate the law, misconstrue the facts, or otherwise act arbitrability." *Ibid.* The panel accordingly affirmed.[2]

b. Judge Graber, joined by Judge Desai, concurred. App., *infra*, 8a. While admitting she was bound by circuit authority, she "encourage[d] the Supreme Court to take up this question, which it has sidestepped previously, and on which the courts of appeals are divided." *Ibid.* (citations omitted). "In the meantime," however, she "urge[d] our court to take this case en banc so that we can follow what I view as the Congressional requirement embodied in the Federal Arbitration Act." *Ibid.*

REASONS FOR GRANTING THE PETITION

A. There Is A Clear And Intractable Conflict Over A Significant Question Under The Federal Arbitration Act

The Ninth Circuit's decision further cements a widespread conflict over a core statutory question under the FAA: whether courts have discretion to dismiss if an entire dispute is subject to arbitration, notwithstanding Section 3's language mandating a "stay." Six circuits hold that a stay is mandatory once a court compels arbitration, whereas four circuits (including two divided panels) squarely hold the opposite, adopting a "judicially-created exception" to Section 3. *Green* v. *SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769-770 (8th Cir. 2011); App., *infra*, 5a n.4 (outlining 6-4 circuit conflict). The conflict has been openly acknowledged for decades in courts nationwide, and it is now fully entrenched: there is no chance it will somehow disappear on its own. *E.g.*, *Anderson* v. *Charter*

[2] Petitioners again are abandoning any challenge to this case-specific aspect of the Ninth Circuit's decision. This petition maintains that the district court had *no* discretion, not that it abused discretion it never had under a proper construction of Section 3.

Commc'ns, Inc., 860 F. App'x 374, 379 (6th Cir. 2021) ("the question has split the circuits"); *Aggarao* v. *MOL Ship Mgmt. Co.*, 675 F.3d 355, 376 n.18 (4th Cir. 2012) ("[o]ur sister circuits are divided"); *Lloyd* v. *HOVENSA, LLC*, 369 F.3d 263, 268-269 (3d Cir. 2004) (circuits "have reached different resolutions").

This issue arises constantly in countless disputes, burdening litigants and courts nearly every time a case is subject to arbitration. Yet as it now stands, the FAA's core operation varies dramatically based on the happenstance of where a dispute arises. The stark division over such a fundamental question is untenable. This Court has twice confronted the question without answering it,[3] and the problem is only getting worse. Indeed, even judges are now urging this Court to grant review and eliminate the deep confusion. App., *infra*, 8a (Graber, J., concurring).

A definitive answer is long overdue. The circuit conflict is undeniable and entrenched, and it should be resolved by this Court.

1. a. The decision below directly conflicts with settled law in the Second Circuit. In *Katz* v. *Cellco Partnership*, 794 F.3d 341 (2d Cir. 2015), the district court "compelled arbitration of all claims," but "denied [defendant's] request to stay proceedings" and instead "dismiss[ed] the case." 794 F.3d at 343-344. On appeal, the Second Circuit, unlike the Ninth Circuit, vacated the dismissal and ordered a stay: "we hold that the Federal Arbitration Act * * * requires a stay of proceedings when all claims are referred to arbitration and a stay [is] requested." *Id.* at 343.

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[3] See *Lamps Plus, Inc.* v. *Varela*, 139 S. Ct. 1407, 1414 n.1 (2019); *Green Tree Fin. Corp.-Ala.* v. *Randolph*, 531 U.S. 79, 87 n.2 (2000).

The Second Circuit recognized that "[t]he question * * * remains unsettled" given this Court's past reservation of the issue, and has "about evenly divided" the "Courts of Appeals." 794 F.3d at 344-345 (contrasting the position of "[s]everal circuits" directing that "a stay must be entered" with "other[]" circuits finding "discretion to dismiss the action"). After surveying the competing positions, the Second Circuit "join[ed] those Circuits that consider a stay of proceedings necessary." *Id.* at 345.

As the court explained, "[t]he FAA's text, structure, and underlying policy command this result." 794 F.3d at 345. First, "[t]he plain language specifies that the court 'shall' stay proceedings pending arbitration," and "[i]t is axiomatic that the mandatory term 'shall' typically 'creates an obligation impervious to judicial discretion.'" *Ibid.* (quoting 9 U.S.C. 3 and *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998)). The court concluded that nothing in the FAA "abrogate[s] this directive or render[s] it discretionary." *Ibid.*

Next, the court declared that "[a] mandatory stay comports with the FAA's statutory scheme and pro-arbitration policy." 794 F.3d at 346. As the panel explained, "the FAA explicitly denies the right to an immediate appeal from an interlocutory order that compels arbitration or stays proceedings." *Ibid.* (citing 9 U.S.C. 16(b)(1)-(2)). Yet if judges have discretion to dismiss, a case that "should have been stayed" becomes final (and thus immediately appealable), "confer[ring] appellate rights expressly proscribed by Congress." *Ibid.* A "mandatory stay," by contrast, moves parties "'into arbitration as quickly and easily as possible,'" limiting "judicial interference until there is a final award." *Ibid.*

The Second Circuit finally brushed aside the opposing circuits' views. It "recognize[d] that efficient docket man-

agement is often the basis for dismissing a wholly arbitrable matter," but it found that concern "not reason enough." 794 F.3d at 346. "While district courts" retain "inherent authority to manage their dockets," "that authority cannot trump a statutory mandate, like Section 3 of the FAA, that clearly removes such discretion." *Ibid.* The court thus "conclude[d] that the text, structure, and underlying policy of the FAA mandate a stay of proceedings." *Id.* at 347. That holding is directly contrary to settled law in the Ninth Circuit. Compare, *e.g.*, App., *infra*, 5a ("'notwithstanding the language of [section three],' the district court had discretion to dismiss Plaintiffs' suit"), with, *e.g.*, *Bissonnette* v. *LePage Bakeries Park St., LLC*, 49 F.4th 655, 664 (2d Cir. 2022) (Jacobs, J., concurring) (flagging that "the Circuits are divided on this question," but acknowledging *Katz*'s holding that "a stay is mandatory").

b. The decision below also conflicts with established law in the Third Circuit. In *Lloyd* v. *HOVENSA, LLC*, 369 F.3d 263 (3d Cir. 2004), defendants sought to compel arbitration and "stay the proceedings pending arbitration." 369 F.3d at 267. The district court compelled arbitration but "dismissed" rather than granting a stay, "because it found all of [plaintiff's] claims to be arbitrable." *Id.* at 266-267. On appeal, the Third Circuit explicitly recognized the circuit conflict, rejected the Ninth Circuit's position, and reversed the refusal to grant a stay: "we hold that the District Court was obligated under 9 U.S.C. § 3 to grant the stay once it decided to order arbitration." 369 F.3d at 269.

The Third Circuit initially acknowledged that "Courts of Appeals have reached different resolutions" whether "District Court[s] ha[ve] discretion to deny a motion for a stay pending arbitration and dismiss" where "all claims [are] arbitrable." 369 F.3d at 268-269 (outlining existing

circuit split, including the Ninth Circuit's contrary approach). But the Third Circuit ultimately "side[d] with those courts that take the Congressional text at face value." *Id.* at 269.

As the Third Circuit explained, "the plain language of § 3 affords a district court no discretion to dismiss a case where one of the parties applies for a stay pending arbitration." 369 F.3d at 268-269. While some circuits permit dismissal when "all issues before the court are arbitrable" (*id.* at 269), the Third Circuit held precisely the opposite: "the statute clearly states, without exception, that whenever suit is brought on an arbitrable claim, the Court 'shall' upon application stay the litigation until arbitration has been concluded." *Ibid.*

The Third Circuit further explained how its position "produces results that effectively promote and facilitate arbitration." 369 F.3d at 270. As the panel noted, district courts have "a significant role to play under the FAA" even where a court "orders the arbitration of all claims." *Ibid.* For example, the panel observed, the FAA authorizes courts to resolve "disputes regarding the appointment of an arbitrator," "to compel the attendance of witnesses," or to seek post-arbitration "a judgment on the award or an order vacating or modifying the award." *Ibid.* (citing 9 U.S.C. 5, 7, 9-11). By "enter[ing] a stay," the Third Circuit explained, lower courts "retain[] jurisdiction" and "proceedings under §§ 5, 7, 9, 10, or 11 may be expedited," whereas "[i]f the plaintiff's case has been dismissed", "the parties will have to file a new action each time the Court's assistance is required." *Ibid.*

Finally, the Third Circuit identified an "even more important reason" to "hold that Congress meant exactly what it said": if the action is dismissed, parties have the right to take an immediate appeal (including to challenge

the order compelling arbitration), despite Congress "expressly den[ying]" immediate appeals from orders "granting a stay under § 3 or compelling arbitration under § 4." 369 F.3d at 270 & n.8 (citing 9 U.S.C. 16(b)(1), (2)). Accordingly, the Third Circuit reasoned, "the effect of recognizing an exception to the mandatory directive of § 3 is to give the District Court the power to confer a right to an immediate appeal that would not otherwise exist." *Id.* at 271.

The Third Circuit concluded that "a literal reading of § 3 of the FAA not only leads to sensible results, it also is the only reading consistent with the statutory scheme and the strong national policy favoring arbitration." 369 F.3d at 271. The court therefore held that "the District Court erred in refusing to enter a stay order." *Id.* at 271. Had the Third Circuit instead applied the Ninth Circuit's approach, it would have reached the opposite conclusion. Compare App., *infra*, 5a ("'notwithstanding the language of [section three],' the district court had discretion to dismiss Plaintiffs' suit"), with *Devon Robotics, LLC* v. *DeViedma*, 798 F.3d 136, 143 (3d Cir. 2015) ("[i]n *Lloyd*, we held that a district court lacked discretion to dismiss, rather than stay, a case under § 3").[4]

c. In *Arabian Motors Grp. W.L.L.* v. *Ford Motor Co.*, 19 F.4th 938 (6th Cir. 2021), the Sixth Circuit likewise held that Section 3 grants parties the "right to ask for a stay," rejecting discretion to dismiss where "all" claims are arbitrable. 19 F.4th at 941. In so holding, the Sixth Circuit rebuffed the conflicting views of "circuits" "go[ing] the

[4] See also, *e.g.*, *Davis* v. *Cintas Corp.*, No. 18-1200, 2019 WL 2223486, at *15 (W.D. Penn. May 23, 2019) ("District courts in the Third Circuit have no discretion in deciding whether to stay or dismiss the proceedings upon determining that any of the claims or issues are referable to arbitration. If one of the parties applies for a stay, a stay must be granted.").

other way." *Id.* at 943 (refusing to follow contrary decisions from, "*e.g.*," the First, Fifth, and Ninth Circuits).[5]

The Sixth Circuit started with the FAA's plain language, declaring that Section 3's "command" to "'stay the trial of the action' conveys a mandatory obligation." 19 F.4th at 941. It then explained how "[o]ther provisions of the Act reinforce this interpretation." *Ibid.* Adopting the Third Circuit's rationale, the panel noted that "stay[ing] a case and retain[ing] jurisdiction" permits parties to invoke the Act's procedures to "facilitate an arbitration," whereas "a dismissal would require the parties to file a new action." *Id.* at 941-942 (by staying a case, courts can "appoint arbitrators" (9 U.S.C. 5), "summon [arbitration] witnesses" (9 U.S.C. 7), and ultimately "confirm, vacate, or modify an award" (9 U.S.C. 9-11); citing *Lloyd*, *supra*).

Like the Second and Third Circuits, the Sixth Circuit also found that dismissals would "undercut[] the [Act's] pro-arbitration appellate-review provisions." 19 F.4th at 942 (describing 9 U.S.C. 16's directives—including the usual bar on challenging "pro-arbitration decisions" until "the end of the action"). "Because a dismissal, unlike a

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[5] Before *Arabian Motors* resolved this issue, the Sixth Circuit had already recognized "[a] circuit split exists on this question." *Boykin* v. *Family Dollar Stores of Mich., LLC*, 3 F.4th 832, 836-837 (6th Cir. 2021); see also, *e.g.*, *Anderson* v. *Charter Commc'ns, Inc.*, 860 F. App'x 374, 379 (6th Cir. 2021) ("[t]he Supreme Court has repeatedly reserved this question," and "the question has split the circuits": "[s]everal circuits interpret § 3 to compel a district court to stay a case if a party requests that remedy, which means that the court may not dismiss the case outright even when sending all claims to arbitration"; "[s]everal other circuits, by contrast, have adopted a 'judicially-created exception' to § 3's stay requirement, one that gives district courts discretion to 'dismiss an action rather than stay it where it is clear the entire controversy between the parties will be resolved by arbitration'").

stay, permits an objecting party to file an immediate appeal," the Sixth Circuit determined dismissals would "upend" the FAA's statutory "approach." *Ibid.*[6]

The Sixth Circuit finally rejected arguments supporting the opposite position. 19 F.4th at 942-943. It explained that dismissals were not necessarily "the more efficient disposition" because arbitrators (especially when considering "gateway arbitrability" issues) might send cases right back to court. *Id.* at 942. And while some circuits found it "efficient[]" to "clean[] out" a district court's docket, the panel responded that the FAA "is not a docket-management statute." *Id.* at 943. On the contrary, "Congress told district courts to grant a stay when a party moves for one in this context and did so in a way that admits of few, if any, exceptions." *Id.* at 942.

The Sixth Circuit then refuted the district court's "textual" point—that Section 3 "stay[s] *the trial* of the action," and there is "no trial to stay" where all claims are subject to arbitration. 19 F.4th at 943 (emphasis added). But under a proper reading, the panel found, "[t]he reference to 'trial of the action' more naturally signifies that the district court is to stay the trial that would otherwise occur if the party did not move for a stay or insist on arbitrating the claims." *Ibid.* And "[t]he only way a district court could know that the trial of the action will not occur is to prejudge the arbitrability decision that is the arbitrator's decision to make." *Ibid.*

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[6] The panel likewise rejected the notion that a stay does not "necessarily" avoid an immediate appeal because "trial courts could authorize an interlocutory appeal under 28 U.S.C. § 1292(b)." 19 F.4th at 943. As the panel explained, Section 1292(b) applies only under specific circumstances where both the district court and circuit court grant permission, and "there is a world of difference between an appeal as of right and an appeal involving the exercise of channeled discretion of two different courts." *Ibid.*

The Sixth Circuit thus "reverse[d] the district court's dismissal" and "grant[ed] the stay." 19 F.4th at 943. This, again, is the opposite of the Ninth Circuit's holding.[7]

d. The decision below likewise conflicts with established law in the Tenth Circuit. In *Adair Bus Sales, Inc.* v. *Blue Bird Corp.*, 25 F.3d 953 (10th Cir. 1994), the district court found all claims were subject to arbitration, "ordered the parties to proceed to arbitration," and "dismissed the complaint"—notwithstanding defendant's "motion for [a] stay pending arbitration." 25 F.3d at 954-955. On appeal, the Tenth Circuit vacated the district court's dismissal and ordered a stay, adopting a position at odds with the Ninth Circuit's approach: "We therefore VACATE the district court's order of dismissal and REMAND for entry of a stay pending arbitration in accordance with 9 U.S.C. § 3." *Id.* at 955-956 (bold omitted).

The Tenth Circuit's rationale was both straightforward and grounded in the FAA's text. As it explained, when a case is subject to arbitration, the FAA "provides the district court 'shall on application of one of the parties

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[7] While the Sixth Circuit technically left the door open for dismissals in rare "situation[s]," none of those possible exceptions involve "conventional" cases like this one—where all claims are subject to arbitration and a party properly requested a stay. See 19 F.4th at 942 (flagging hypothetical exceptions for cases involving "moot[ness]" or "some other pleading or procedural defect," or where "both parties request a dismissal" or "neither party asks for a stay"). Pertinent here, the Sixth Circuit's holding "in the normal course" is unequivocal—"the district court erred in denying Ford's request for a stay"—and that holding is irreconcilable with the Ninth Circuit's position. *Ibid.*; see also *id.* at 942-943 ("some circuits have construed the Act to 'afford[] a district court no discretion to dismiss a case where one of the parties applies for a stay'"; '[i]n one sense, we agree with these decisions, each of which respects the language of the Act"; "[i]n another sense, we see no need to adopt an absolute rule," in light of "other scenarios" hypothesized above).

stay the trial of the action until such arbitration has been had.'" 25 F.3d at 955 (quoting 9 U.S.C. 3). Because the defendant "did indeed move the district court for a stay pending arbitration," "[t]he proper course" was "for the district court to grant Defendant's motion and stay the action pending arbitration." *Ibid.* It therefore "correct[ed] the [district court's] procedural error" and directed the "entry of a stay." *Id.* at 955-966. That categorical directive is irreconcilable with the Ninth Circuit's position. Compare, *e.g.*, *Hill* v. *Ricoh Americas Corp.*, 603 F.3d 766, 771, 776 (10th Cir. 2010) ("Section 3 of the Act, 9 U.S.C. § 3, obliges courts to stay litigation on matters that the parties have agreed to arbitrate."), with App., *infra*, 5a ("'[n]otwithstanding the language of [section three], a district court may either stay the action or dismiss it outright'").

Adair has been settled law in the Tenth Circuit for nearly three decades. See, *e.g.*, *Dreamstyle Remodeling, Inc.* v. *Renewal by Andersen, LLC*, No. 22-127, 2023 WL 246842, at *8 (D.N.M. Jan. 18, 2023) ("The Tenth Circuit has * * * held that when a party moves to stay an action pending compulsory arbitration, '[t]he proper course' is 'for the district court to grant [the] motion and stay the action pending arbitration.'") (citing *Adair*, 25 F.3d at 955, and describing "Section 3's language" as "mandatory"). Accordingly, "[i]n the Tenth Circuit," unlike the Ninth Circuit, "district courts" are "required to stay the proceedings instead of dismissing the case." *Williams* v. *Staffmark Inv. LLC*, No. 21-2456, 2022 WL 910859, at *4 & nn.27-29 (D. Kan. Mar. 29, 2022) (citing *Adair*, 25 F.3d at 955, and explaining that Section 3 "specifically" requires this result); see also, *e.g.*, *Teske* v. *Paparazzi, LLC*, No. 22-35, 2023 WL 2760648, at *5 & n.45 (D. Utah Apr. 3, 2023) (same) (citing *Adair*, 25 F.3d at 955 and 9 U.S.C. 3).

e. The Seventh Circuit has consistently endorsed the same conclusion, establishing "on numerous occasions"

that "'the proper course of action when a party seeks to invoke an arbitration clause is to stay the proceedings rather than to dismiss outright." *Halim* v. *Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 561 (7th Cir. 2008); accord, *e.g.*, *Continental Cas. Co.* v. *American Nat'l Ins. Co.*, 417 F.3d 727, 732 n.7 (7th Cir. 2005). Unlike the Ninth Circuit, the Seventh Circuit has declared this "the normal procedure" when a case is subject to arbitration; it "spare[s] the parties the burden of a second litigation should the arbitrators fail to resolve the entire controversy." *Tice* v. *American Airlines, Inc.*, 288 F.3d 313, 318-319 (7th Cir. 2002) (citing 9 U.S.C. 3; amending the judgment to "convert" a "dismissal" to a "stay").

Had this action arisen in Illinois instead of Arizona, the courts below, "in line with Seventh Circuit precedent," would have "stay[ed], rather than dismisse[d]," petitioners' lawsuit. *Kaba* v. *Aerotek, Inc.*, No. 23-cv-84, 2023 WL 2787958, at *3 (S.D. Ind. Apr. 4, 2023) (citing *Halim*, 516 F.3d at 561).

f. Finally, the Eleventh Circuit also rejected the Ninth Circuit's position in *Bender* v. *A.G. Edwards & Sons, Inc.*, 971 F.2d 698 (11th Cir. 1992) (per curiam). In *Bender*, the Eleventh Circuit held the district court "properly found that [certain] claims were subject to arbitration, but erred in dismissing the claims rather than staying them." 971 F.2d at 699. As the Eleventh Circuit explained, "[u]pon finding that a claim is subject to an arbitration agreement, the court should order that the action be stayed pending arbitration." *Ibid.* (citing 9 U.S.C. 3).

Accordingly, while "[s]ome Courts of Appeals * * * have reached different conclusions as to whether a district court has discretion to dismiss a claim (rather than stay the proceedings) where it finds all claims before it arbitrable," "the Eleventh Circuit has held that the

proper course is to stay the proceedings rather than dismiss the action." *VVG Real Estate Invs.* v. *Underwriters at Lloyd's London*, 317 F. Supp. 3d 1199, 1203 & n.2 (S.D. Fla. 2018); see also *id.* at 1207 (citing *Bender*, 971 F.2d at 699).[8]

In short: Petitioners would have prevailed had this dispute been filed in any of these six circuits, but instead lost because the action arose in the Ninth Circuit.

2. Like the Ninth Circuit, however, multiple circuits have expressly rejected the majority view, "carved out [a judicial] exception" to Section 3, and granted courts discretion to dismiss, rather than stay, when all claims are subject to arbitration. See App., *infra*, 5a & n.4.

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[8] Lower courts in the Eleventh Circuit are split over the status of circuit law on this issue. Compare, *e.g.*, *Perera* v. *H & R Block E. Enters., Inc.*, 914 F. Supp. 2d 1284, 1289-1290 (S.D. Fla. 2012) (recognizing that the Eleventh Circuit "at one point" "suggested only a stay of litigation is appropriate," but noting that "several circuits have said that [Section 3's] mandatory language does not apply when all claims are arbitrable," and "agree[ing] with the line of opinions that have compelled arbitration and dismissed the case where all claims were subject to arbitration"), with, *e.g.*, *In re Wiand*, No. 10-cv-71, 2011 WL 4532070, at *13 & n.26 (M.D. Fla. 2011) (recognizing the circuit "split," stating "the Eleventh Circuit has not specifically addressed the issue," but endorsing the Third Circuit's position that "the FAA does not afford the district court discretion to dismiss a case where one of the parties applies for a stay pending arbitration"). Suffice it to say the Eleventh Circuit itself has read *Bender* as resolving the issue in that circuit. See, *e.g.*, *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union AFL-CIO-CLC* v. *Wise Alloys, LLC*, 807 F.3d 1258, 1268 (11th Cir. 2015) (where "the plaintiff brought claims on issues referable to arbitration, and in response, the defendants sought to compel arbitration," "a stay was mandatory under section 3"). At most, the lower-court division highlights the rampant confusion the issue has generated, and the urgent need for a definitive resolution.

a. In *Alford* v. *Dean Witter Reynolds, Inc.*, 975 F.2d 1161 (5th Cir. 1992), the Fifth Circuit affirmed such a dismissal after compelling arbitration of all claims. 975 F.2d at 1162. The panel acknowledged the plaintiff's argument that a dismissal is "contrary to the precise terms of Section 3 of the Federal Arbitration Act"—a point the panel found generally "correct[]." *Id.* at 1164. But the panel declared this "rule" was "not intended to limit dismissal of a case in the proper circumstances," and it found "[t]he weight of authority clearly supports dismissal" "when *all* of the issues raised in the district court must be submitted to arbitration." *Ibid.* (invoking, *e.g.*, the Ninth Circuit as "expressly holding that 9 U.S.C. § 3 does not preclude dismissal").

The Fifth Circuit also maintained its position made sense: "[g]iven our ruling that all issues raised in this action are arbitrable," "retaining jurisdiction and staying the action will serve no purpose." 975 F.2d at 1164. Even if the parties later seek "post-arbitration remedies," the Fifth Circuit reasoned, those remedies "will not entail renewed consideration and adjudication of the merits," but "would be circumscribed to a judicial review of the arbitrator's award in the limited manner prescribed by law." *Ibid.* Accordingly, the Fifth Circuit concluded, because "all of [plaintiff's] claims were subject to arbitration," "the district court acted within its discretion when it dismissed th[e] case with prejudice." *Ibid.* That holding is directly contrary to the majority approach. See, *e.g.*, *id.* at 1164 ("we do not believe the proper course is to stay the action pending arbitration"), with, *e.g.*, *Adair*, 25 F.3d at 955 ("[t]he proper course" was "stay[ing] the action pending arbitration").

In the subsequent three decades, the Fifth Circuit has recognized the circuit conflict but refused to abandon its position: "Some circuits have held that district courts

must stay a case when all claims are submitted to arbitration, but this circuit allows district courts to dismiss such claims outright." *Griggs* v. *S.G.E. Mgmt., LLC*, 905 F.3d 835, 839 & n.14 (5th Cir. 2018). Moreover, the Fifth Circuit has enforced its views despite acknowledging the obvious tension with the FAA's plain text: "Although Section 3 of the Federal Arbitration Act directs district courts to stay pending arbitration, we are bound by our precedent which states that dismissal is appropriate 'when *all* of the issues raised in the district court must be submitted to arbitration.'" *Adam Techs. Int'l S.A. de C.V.* v. *Sutherland Glob. Servs., Inc.*, 729 F.3d 443, 447 n.1 (5th Cir. 2013) (citing *Alford*, *supra*); see also *Pacheco* v. *PCM Constr. Servs., LLC*, 602 F. App'x 945, 949 n.2 (5th Cir. 2015) (per curiam) (conceding "dismissal" "may be a debatable procedure," but "th[e] point is foreclosed by our circuit's prior precedent"). This longstanding rule is now entrenched in the Fifth Circuit. See, *e.g.*, *Direct Biologics, LLC* v. *McQueen*, 63 F.4th 1015, 1020, 1024 n.9 (5th Cir. 2023) (circuit precedent "holds that where all the plaintiff's claims must be arbitrated, dismissal rather than a stay pending arbitration is appropriate"); *Robinson-Williams* v. *CHG Hosp. W. Monroe, LLC*, No. 21-30659, 2022 WL 3137422, at *2 (5th Cir. Aug. 5, 2022) (per curiam) (applying *Alford*, *supra*).

b. The First Circuit reached the same conclusion in *Bercovitch* v. *Baldwin Sch., Inc.*, 133 F.3d 141 (1st Cir. 1998). The panel acknowledged Section 3's command to "'stay the trial of the action'" "where issues brought before a court are arbitrable." 133 F.3d at 156 n.21. But the panel concluded "a court may dismiss, rather than stay, a case when *all* of the issues before the court are arbitrable." *Ibid.* (emphasis added; citing *Alford*, *supra*, and *Sparling*, *supra*). Unlike the majority approach, because the First Circuit granted "discretion to dismiss the entire

action," it remanded for the district court to "consider whether the case should be dismissed or stayed." *Id.* at 156 & n.21.

The First Circuit has adhered to its position for 25 years despite flagging the circuit conflict: "Where one side is entitled to arbitration of a claim brought in court, in this circuit a district court can, in its discretion, choose to dismiss the lawsuit, if *all* claims asserted in the case are found arbitrable." *Next Step Med. Co.* v. *Johnson & Johnson Int'l*, 619 F.3d 67, 71 (1st Cir. 2010) (applying *Bercovitch*; "*[b]ut see Lloyd*[, *supra*]"); see also, *e.g.*, *Escobar-Noble* v. *Luxury Hotels Int'l of Puerto Rico, Inc.*, 680 F.3d 118, 126 (1st Cir. 2012); *Marie* v. *Allied Home Mortg. Corp.*, 402 F.3d 1, 17 (1st Cir. 2005). Had the First Circuit instead switched sides, it would have reached the opposite conclusion. See, *e.g.*, *Lloyd*, 369 F.3d at 269 ("the plain language of § 3 affords a district court no discretion to dismiss a case where one of the parties applies for a stay pending arbitration").

c. A divided panel of the Eighth Circuit reached the same conclusion in *Green* v. *SuperShuttle Int'l, Inc.*, 653 F.3d 766 (8th Cir. 2011). Although admitting "[t]he FAA generally requires a federal district court to stay an action pending an arbitration," the majority recognized "a judicially-created exception to the general rule"—one "indicat[ing] district courts may, in their discretion, dismiss an action rather than stay it where it is clear the entire controversy * * * will be resolved by arbitration." 653 F.3d at 769-770. The majority thus adopted the First Circuit's view that "a district court has discretion to dismiss, rather than stay, a case 'when all of the issues before the

court are arbitrable.'" *Id.* at 769 (citing *Bercovitch*, *supra*).[9]

Judge Shepherd concurred in the result. 653 F.3d at 770-771. Contrary to the majority's approach, he "believe[d] section 3 affords the district court no discretion to dismiss a case even 'where it is clear the entire controversy * * * will be resolved by arbitration.'" *Id.* at 770. As he read the Act, "the plain language of section 3 and the purpose of the FAA require district courts to stay an action pending arbitration upon a party's application, and therefore district courts should not be afforded discretion to dismiss." *Ibid.*

Judge Shepherd started with the FAA's text. He noted that "Section 3 directs the district court to enter an order staying the proceedings," and "[n]othing in the statute gives the court discretion to dismiss the action when all of the issues in the case are arbitrable." 653 F.3d at 770. He further found "convincing" the Third Circuit's analysis in *Lloyd*, highlighting how the majority's conflicting approach "undermines" Section 16 by "'confer[ring] a right to an immediate appeal that would not otherwise exist.'" *Id.* at 771 (quoting *Lloyd*, *supra*). He also attacked the Fifth Circuit's "rationale" as "unpersuasive," rejecting

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[9] After announcing this rule, the majority still reversed, finding on that particular record that "the district court abused its discretion in dismissing"—as it was "not clear all of the contested issues" "will be resolved by arbitration," and those plaintiffs "may be prejudiced by the dismissal" "because the statute of limitations may run and bar them from refiling complaints in state or federal court." 653 F.3d at 770. But the Eighth Circuit has since applied *Green* to authorize dismissal where all "claims at issue" are indeed arbitrable. *Sommerfeld* v. *Adesta, LLC*, 2 F.4th 758, 762-763 (8th Cir. 2021) (quoting *Green*'s holding and affirming the "dismissal of the action"); see also, *e.g.*, *Schug* v. *MCC Grp. Holdings, Inc.*, No. 22-5101, 2022 WL 4486405, at *4 (W.D. Ark. Sept. 27, 2022) (invoking *Sommerfeld* and *Green* to "dismiss" rather than "stay").

the view "that staying an action serves no purpose." *Ibid.* (citing *Alford*, *supra*). "On the contrary," he maintained, "the district court continues to perform significant functions under the FAA even when all of the claims are arbitrable." *Ibid.* (citing 9 U.S.C. 5, 7, 9-11).

In reaching this conclusion, Judge Shepherd canvassed the circuit conflict and conceded the majority's "approach" was supported by multiple courts. 653 F.3d at 770-771 (flagging, *e.g.*, the First Circuit (*Bercovitch*), Fifth Circuit (*Alford*), and Ninth Circuit (*Sparling*)). But he still agreed with the contrary view, "declining to engage in a tortured interpretation of section 3" and instead "taking Congress at its word." *Ibid.* (citing *Lloyd*, *supra*). He accordingly would have "h[eld] that section 3 required the district court to grant a stay because [a party] so moved." *Id.* at 771.

The Eighth Circuit has now stuck by its position for over a decade, despite Judge Shepherd's (repeated) disagreement with the court's views. See *Unison Co., Ltd.* v. *Juhl Energy Dev., Inc.*, 789 F.3d 816, 821 (8th Cir. 2015) (Shepherd, J., concurring) ("I write separately to reiterate my view that section 3 of the Federal Arbitration Act unambiguously directs a district court to stay an action and does not give a district court the discretion to dismiss an action. * * * Recognizing, however, that we are bound by prior panel decisions from our court, I also concur in the direction that the district court may decide whether it is appropriate to dismiss or stay the action."); see also *Brazil* v. *Menard, Inc.*, 601 F. Supp. 3d 503, 513 (D.S.D. 2022) ("While one judge of the Eighth Circuit has opined that district courts *must* stay arbitration, rather than dis-

miss the matter[,] per the FAA's clear statutory commands, binding case law awards trial judges discretion in making its determination.").[10]

3. For its part, different Fourth Circuit panels apparently endorsed opposite sides of the split, before subsequent panels spotted the internal division. See, *e.g.*, *Aggarao* v. *MOL Ship Mgmt. Co.*, 675 F.3d 355, 376 & n.18 (4th Cir. 2012) ("There may be some tension between our decision in *Hooters*—indicating that a stay is required when the arbitration agreement 'covers the matter in dispute'—and *Choice Hotels*—sanctioning dismissal 'when all of the issues presented * * * are arbitrable.'").

In response to that "tension," the Fourth Circuit now recognizes "[o]ur sister circuits are divided on whether a district court has discretion to dismiss rather than stay an action subject to arbitration," but it has otherwise refused to take sides or resolve the intra-circuit conflict. *Aggarao*, 675 F.3d at 376 n.18; see also *Noohi* v. *Toll Bros., Inc.*, 708 F.3d 599, 605 n.2 (4th Cir. 2013) ("this potential [intra-circuit] tension mirrors a circuit split," but we "again decline to 'resolve this disagreement'").

As a result, regional district courts are left to simply guess whether dismissal is authorized or not: "In the wake of this unsettled dispute, district courts have found that

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[10] Certain state courts have also weighed in on the conflict. In *Wilczewski* v. *Charter W. Nat'l Bank*, 889 N.W.2d 63 (Neb. 2016), the Nebraska Supreme Court noted "the federal circuit courts are split on the issue of whether a stay is mandatory once a court compels arbitration [under Section 3]." 889 N.W.2d at 71 & n.34. "[D]espite the mandatory language of the statute," the court ultimately sided with the minority position: "Upon reviewing the federal court decisions and with our own understanding of a court's inherent authority to manage its docket, we are persuaded that where all of the contested issues are subject to arbitration, a court has discretion to consider whether dismissal is more appropriate than staying a case pending arbitration." *Id.* at 71-72.

either staying the proceedings or dismissing the case when all claims are arbitrable is allowed." *Clarke* v. *Guest Servs., Inc.*, No. 21-524, 2022 WL 567836, at *1 n.1 (E.D. Va. Feb. 24, 2022) (reiterating that "[a]fter noticing the inconsistency, however, the Fourth Circuit has declined to resolve it"); see also *Reed* v. *Darden Rests., Inc.*, 213 F. Supp. 3d 813, 820 (S.D.W. Va. 2016) ("Although the § 3 mandate requires a stay, federal circuit courts are divided as to whether a district court retains the discretion to dismiss an action when all claims are referred to arbitration. * * * In *Aggarao*[], the [Fourth Circuit] recognized the tension between [its] two decisions but deferred resolving the issue.").

Like the broader circuit conflict, this rampant uncertainty—over an issue that arises constantly in lower courts nationwide—is intolerable.

* * *

The conflict over this fundamental statutory question is deep, obvious, and entrenched. The circuits are in complete disarray. Ten circuits have sharply split nearly down the middle; the issue has divided panels on two of those courts; one circuit (the Fourth) apparently went both ways, with later cases recognizing the internal conflict but refusing to resolve it; this Court has twice reserved the question without answering it, and a two-judge concurrence below is now crying out for guidance. The debate has been fully exhausted at the circuit level, and additional percolation is pointless—each side has already confronted, and rejected, the opposing analysis. There is no realistic prospect that *multiple* courts of appeals will suddenly abandon their own precedent—especially when most circuits have adhered to their "long"-held views for decades. App., *infra*, 5a.

This question is binary: one view of the FAA is correct and the other is wrong, and a stay under Section 3 is either

mandatory or not. If petitioners are right, courts and parties are wasting substantial time litigating whether cases should be stayed or dismissed, despite Section 3 already providing a definitive answer to that question (stays are mandatory). If respondents are right, litigants in New York, Pennsylvania, Ohio, Illinois, Colorado, and Florida are guaranteed an automatic stay (unlike their counterparts in California and Texas), even where courts might otherwise dismiss a case. Parties' rights under the FAA should not be determined by geography.

Until this Court intervenes, the deep confusion over this important question will persist. This Court's immediate review is warranted.

B. The Question Presented Is Exceptionally Important And Warrants Review In This Case

1. The question presented is of obvious legal and practical importance. The need for review is self-evident. The circuit conflict has now reached an astounding ten circuits, with courts sharply fracturing down the middle. And the sheer numbers alone justify review: the issue arises potentially any time a court compels arbitration, which is why courts are constantly litigating this issue (as even a cursory Westlaw search readily confirms).

A uniform national resolution will also prevent wasted time and resources for courts and parties alike. Arbitration is about avoiding litigation expense. Yet the extensive ongoing confusion invites endless disputes about whether discretionary dismissal is even an option; whether courts should exercise that discretion to dismiss (if the discretion exists); whether district courts properly exercised that discretion (once a case is on appeal); and whether appellate courts have weighed in or should reconsider their existing position—an unlikely prospect but one responsible litigants (given the deep split) will routinely pursue none-

theless. There is an obvious reason that a two-judge concurrence emphatically urged this Court to grant review. App., *infra*, 8a (Graber, J., concurring).

The issue also has profound consequences for the FAA's proper operation. The practical stakes are palpable. Whether the FAA mandates a stay or authorizes dismissal is a threshold procedural issue. It can dictate whether federal jurisdiction exists to supervise the arbitration and enforce the FAA's procedural protections (see 9 U.S.C. 5, 7, 9-11). And it can dictate whether a party resisting arbitration has a right of immediate appeal—contrary to the FAA's reticulated scheme (see 9 U.S.C. 16). See, *e.g.*, *Arabian Motors*, 19 F.4th at 941-942.

Dismissals can also cause serious prejudice to litigants—where the other side refuses to initiate arbitration, a limitations period has run before a party can refile in court, or the arbitrator resolves some but not all claims (or determines under a delegation clause that an underlying dispute is not arbitrable in the first place). *E.g.*, *Anderson*, 860 F. App'x at 380; *Griggs*, 905 F.3d at 844-845. The FAA mandates a stay to protect rights in the existing lawsuit and preserve judicial supervision while an arbitration is ongoing. See 9 U.S.C. 3. The Ninth Circuit's position distorts the FAA's effective administration—and if the Ninth Circuit's atextual reading is somehow correct, the FAA (as a national policy) should at least apply uniformly across all jurisdictions nationwide.

There is no genuine dispute that the existing conflict is deep, mature, and intractable. *E.g.*, *Ruiz* v. *Millennium Square Residential Ass'n*, 466 F. Supp. 3d 162, 175-176 (D.D.C. 2020) (grappling with the split). Until this Court intervenes, critical procedures under the FAA will continue to vary in courts across the country. The Court's review is urgently warranted.

2. This case is a perfect vehicle for deciding this significant question. The dispute turns on a pure question of law: the proper construction of the FAA and Section 3's "stay" requirement. It has no factual or procedural impediments: the case is indisputably subject to arbitration (App., *infra*, at 3a, 10a); petitioners unequivocally invoked their right to a stay under Section 3 (*id.* at 3a, 9a); and both courts below (the district court and Ninth Circuit) squarely addressed and resolved the issue (*id.* at 4a-7a, 10a). The statutory question is outcome-determinative: If the FAA means what it says, petitioners win; if district courts can dismiss "'notwithstanding [Section 3's] language,'" petitioners lose. App., *infra*, 5a; see also *id.* at 2a (confirming this as "[t]he sole question before us"). There is no conceivable obstacle to deciding this important legal question.[11]

[11] Petitioners are challenging solely whether courts retain discretion to dismiss under Section 3, not whether the district court properly *exercised* any discretion that might exist (a point raised below, App., *infra*, 7a, but affirmatively abandoned in this Court). There accordingly are no alternative grounds for relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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