No. 22-1218

In the Supreme Court of the United States

WENDY SMITH, ET AL., PETITIONERS

v.

KEITH SPIZZIRRI, ET AL.

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

BRIEF FOR THE PETITIONERS

NICHOLAS J. ENOCH
CLARA S. BUSTAMANTE
MORGAN L. BIGELOW
LUBIN & ENOCH, P.C.
349 North Fourth Avenue
Phoenix, AZ 85003

ANGELA M. OLIVER
HAYNES AND BOONE, LLP
800 17th Street, N.W., Ste. 500
Washington, DC 20006

DANIEL L. GEYSER
Counsel of Record
CHANCE FLETCHER
HAYNES AND BOONE, LLP
2323 Victory Avenue, Ste. 700
Dallas, TX 75219
(303) 382-6219
daniel.geyser@haynesboone.com

QUESTION PRESENTED

This case presents an important question of statutory construction 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.*

* 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases—continued:

Page

Cases—continued:

Statutes:

Page

Miscellaneous:

In the Supreme Court of the United States

No. 22-1218

WENDY SMITH, ET AL., PETITIONERS

v.

KEITH SPIZZIRRI, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 62 F.4th 1201. The order and opinion of the district court (Pet. App. 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 petition for a writ of certiorari was filed on June 14, 2023, and granted on January 12, 2024. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Federal Arbitration Act, 9 U.S.C. 1-16, are reproduced in an appendix to this brief (App., *infra*, 1a-10a).

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. Pet. App. 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. Pet. App. 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." Pet. App. 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. Pet. App. 10a-11a. Having determined that "all claims [were] subject 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. Pet. App. 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." Pet. App. 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." Pet. App. 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.

---

[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.

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." Pet. App. 5a. Like the district court, the panel explained 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." Pet. App. 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." Pet. App. 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*, 596 U.S. 1 (2022), "abrogate[d]" circuit law, "thereby permitting [the panel] to come to a different result." Pet. App. 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." Pet. App. 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. Pet. App. 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.*

SUMMARY OF ARGUMENT

This case presents an important statutory question under the Federal Arbitration Act with a remarkably straightforward answer. Section 3 of the FAA imposes a strict mandate on district courts: "without exception," "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" (Pet. App. 2a, 5a).

---

[2] Petitioners again abandoned any challenge to this case-specific aspect of the Ninth Circuit's decision. In this Court, petitioners maintain that the district court had *no* discretion under a proper construction of Section 3, not that it abused discretion it never had.

The Ninth Circuit's precedent is wrong. The FAA's text, structure, and purpose confirm that Congress meant exactly what it said: a court "shall" issue a "stay" until "such arbitration has been had in accordance with the terms of the agreement." This is not simply a minor procedural error. A court's failure to stay dictates whether parties can immediately appeal an order compelling arbitration (contrary to the FAA's reticulated scheme); it affects whether federal courts have supervisory authority to enforce the FAA's other critical safeguards (consistent with the FAA's design); and it serves as an essential backstop to protect litigant rights if a party compels arbitration but abandons the arbitration process (as contemplated by the plain language of Section 3 itself).

The contrary position flouts the FAA's plain text and cannot be squared with the FAA's structure or purpose. It invites wasteful disputes that needlessly burden parties and courts as litigants fight over whether to stay or dismiss—when Congress has already provided a categorical answer (a stay is required). Because respondents' contrary view cannot account for any of its critical shortcomings and is otherwise indefensible, the judgment should be reversed.

A. 1. The plain text of Section 3 unambiguously mandates a stay pending arbitration: when a case is subject to arbitration, the court "shall on application of one of the parties *stay the trial of the action* until such arbitration" has concluded. 9 U.S.C. 3 (emphasis added). The text imposes a mandatory directive—the courts "shall" stay the case—and does not allow any exceptions. It makes no difference if the entire case is subject to arbitration: Section 3 unambiguously instructs courts to stay the case, and it does not say that a stay is mandatory *unless* all claims are subject to arbitration. There is no mention of dismissal.

The single instruction is clear: a stay is categorically required—and courts have no license to modify Congress's statutory directives.

2. Respondents cannot avoid Section 3's plain and ordinary meaning.

First, respondents say that Section 3 stays only the "trial of the action," and there will never be *any* trial when all claims are subject to arbitration. But there is no way to know if arbitration will indeed eliminate any trial *until the arbitration in fact resolves the claims*. Disputes are not always resolved in arbitration—they return to court for any number of reasons, including failure to pay fees, failure of the tribunal to resolve the case, and failure of the arbitration clause to reach the entire dispute. In each instance, the court itself will ultimately have to litigate the action—which is precisely why Congress insisted that courts stay the matter until the arbitration has been concluded.

Respondents next argue that Section 3 focuses on the *trial* itself—not the entire action—and thus it preserves a court's ability to dismiss. This is a plain misreading of Section 3: the statute requires courts to stay "the trial of the action"—not the trial "in" the action. Section 3's title separately confirms the clause's broader reach ("stay of proceedings"—not just of a trial); this Court has routinely described the provision as staying litigation generally; and the FAA's drafters likewise understood the stay to reach the entire action—to the extent the drafters commented on the issue at all. There is no record (historical or otherwise) of anyone believing that Section 3 reaches only the fact-finding trial itself—an absurd proposition that, by respondents' own admission, would leave courts free to conduct discovery, adjudicate motions, and possibly even decide the merits *of an arbitrable dispute*, so long as the court stops a moment before any "trial" begins.

Finally, respondents say Section 3 does not prohibit dismissing a case; it merely provides "direction on the order of *trials* when related claims are appropriately divided between a court and an arbitration." Br. in Opp. 12. Yet there is no indication that Section 3's stay requirement applies only where *some* claims are subject to arbitration—and respondents have identified no textual hook for that strange proposition. Section 3 simply states that if "any issue" is subject to arbitration, the court "shall" stay the case until the arbitration is over. On its face, that language applies where an entire case is subject to arbitration (just as much as it applies when only *some* claims are subject to arbitration).

B. The FAA's plain-text reading is reaffirmed by its structure and purpose.

1. Respondents' statutory interpretation would directly frustrate Section 16's appellate scheme. Congress authorized an immediate appeal of orders denying arbitration, while expressly barring immediate appeals of orders granting arbitration. A dismissal directly unwinds that calculated choice: once a case is dismissed, the judgment becomes final, which activates a premature appeal—precisely the appeal that Congress otherwise prohibited in Section 16. A stay, by contrast, ensures that each provision (Section 3 and Section 16) work together as designed.

2. A dismissal would also interfere with a court's ability to facilitate the arbitration under the FAA's related provisions. Congress structured the FAA to provide courts with the right to appoint arbitrators, compel arbitration witnesses, and review post-arbitration awards. Yet once a case is dismissed, there is no obvious jurisdictional hook for most parties to ever return to federal court. Again, a stay, by contrast, ensures the statute func-

tions as designed—while also serving as a necessary backstop to protect litigants from limitations issues or forfeiting rights should the arbitration fall through.

3. The failure to follow Congress's categorical directive also invites waste and burdensome disputes. Under respondents' scheme, parties will have the incentive to litigate whether to stay or dismiss. Those fights unnecessarily consume judicial and party time and resources, delay a case's exit from the judicial system into an arbitral forum, and complicate the process—all notwithstanding the benefits typically offered by a stay (and the conversely insubstantial benefits typically offered by a dismissal).

C. Respondents' remaining arguments are makeweights—and they cannot over the FAA's plain text, structure, or purpose.

1. Respondents tout a district court's inherent discretion, including its traditional power to dismiss. Yet that is the very power that Section 3 rejects: the entire point of imposing a statutory directive is to select a legislative choice that replaces judicial authority to make a different decision. The statute itself settles the issue—and respondents have not explained how "inherent authority" could possibly override that statutory command.

2. Respondents also assert that stays unduly burden a district court's docket. Yet Congress made the decision that the benefits of retaining jurisdiction outweigh the minimal intrusion of maintaining an inactive case pending a separate arbitration. This minimal concern is no basis for misreading the statute.

3. Respondents next fault petitioners for filing a lawsuit when their claims are bound by arbitration. Yet respondents do not (and cannot) explain how this has any bearing on the proper construction of 9 U.S.C. 3—which applies exclusively in cases that are filed in court despite

an issue being bound for arbitration. In any event, respondents are incorrect that petitioners did anything blameworthy: arbitration is an affirmative defense; it is subject to the usual defenses of waiver and forfeiture; and parties do not act improperly by filing suit and waiting to see if a counterparty invokes or surrenders its arbitration rights.

4. Nor are respondents correct that petitioners would not suffer any prejudice from dismissal. This dismissal deprived petitioners of a live forum to toll the limitations period and assert their rights—whether to facilitate the arbitration, to return to court should the arbitration fail (as it might—given respondents' past refusal to pay arbitral costs and fees), and ultimately to seek federal review of any arbitral award. Congress granted petitioners a statutory right to a stay in Section 3, and the courts below erred in refusing to honor that statutory directive.

ARGUMENT

THE FEDERAL ARBITRATION ACT REQUIRES COURTS TO STAY CASES SUBJECT TO ARBITRATION UNTIL THE ARBITRATION HAS CONCLUDED

A. Under Its Plain And Ordinary Meaning, Section 3 Mandates A Stay Pending Arbitration—It Affords No Discretion To Dismiss

1. This Court's statutory analysis starts with the text (*Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 81 (2017)), and Section 3's plain text compels a stay: when a case is subject to arbitration, the court "shall on application of one of the parties *stay the trial of the action* until such arbitration" has concluded. 9 U.S.C. 3 (emphasis added). The statutory command is mandatory and permits no discretion. It says nothing about dismissal, and it says nothing about exceptions where all claims are ordered to arbitration. The language is unambiguous: if

"any issue" in the case is subject to arbitration, the court "shall" stay the trial of the action until the arbitration is complete. 9 U.S.C. 3.

Unlike some aspects of the FAA, this provision is not hard to understand. It is a simple, straightforward command to "stay" the litigation until the "arbitration has been had in accordance with * * * the agreement." 9 U.S.C. 3. Congress is well aware how to afford courts the option to dismiss. But it created a categorical obligation and chose a mandatory term—"shall"—that typically "creates an obligation impervious to judicial discretion." *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); see also *Maine Cmty. Health Options* v. *United States*, 140 S. Ct. 1308, 1320 (2020) ("'the word "shall" usually connotes a requirement'"'); *Lopez* v. *Davis*, 531 U.S. 230, 241 (2001) ("Congress used 'shall' to impose discretionless obligations"); contra Br. in Opp. 17-18 (oddly resisting this settled construction). And, in fact, this Court has already construed "shall" in this very context to mean what it says: "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc.* v. *Byrd*, 470 U.S. 213, 218 (1985) (citing 9 U.S.C. 3, 4; emphasis in original). If the same "shall" ties a court's hands in directing parties to arbitration, it must also tie a court's hands in ordering the accompanying "stay."

Put simply, there is a reason that courts authorizing dismissal are stuck conjuring a "judicially-created exception" to Section 3. *Green* v. *SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769-770 (8th Cir. 2011); see also *Anderson* v. *Charter Commc'ns, Inc.*, 860 F. App'x 374, 379 (6th Cir. 2021) (describing the atextual exception). These courts admit they are departing from the actual statutory text

based on policy or other preferences—which is why these holdings are announced "notwithstanding [Section 3's] language." Pet. App. 5a; see also *Alford* v. *Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) (acknowledging dismissal is "contrary to the precise terms of Section 3"). Yet courts have no license to rewrite or supplement Congress's work with judge-made exceptions, no matter how compelling a court may find a competing objective. See *Badgerow* v. *Walters*, 596 U.S. 1, 11 (2022) ("[w]e have no warrant to redline the FAA"). "However the pros and cons shake out, Congress has made its call" (*id.* at 16-17)—and "'[e]ven the most formidable' policy arguments cannot 'overcome' a clear statutory directive." *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1542 (2021) (quoting *Kloeckner* v. *Solis*, 568 U.S. 41, 56 n.4 (2012)).

In sum, on any ordinary reading, Section 3 is unequivocal: when a case is sent to arbitration, the court "shall" stay the case until the arbitration is over. That plain language permits no exceptions; there is no mention of any authority to dismiss; and there is no hint that a stay is mandatory unless all claims are subject to arbitration. "[T]he 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." *Lloyd* v. *HOVENSA, LLC*, 369 F.3d 263, 269 (3d Cir. 2004); see also *Katz* v. *Cellco P'ship*, 794 F.3d 341, 345 (2d Cir. 2015) ("[t]he plain language specifies that the court 'shall' stay proceedings pending arbitration," and nothing in the FAA "abrogate[s] this directive or render[s] it discretionary"). And that makes this question remarkably straightforward: with statutory language as clear as this, the Court's task "begins and ends" with the text. *Puerto Rico* v. *Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016); see also *Green*

Tree Fin. Corp.-Ala. v. *Randolph*, 531 U.S. 79, 88 (2000) (following "the plain language" of the FAA).

2. Respondents attempt to sidestep Section 3's plain and obvious meaning with a cramped view of the statute. See Br. in Opp. 17-18 ("§ 3's language would not oblige courts to stay rather than dismiss"). Their position falls woefully short.

a. According to respondents, Section 3 "stay[s] the *trial* of the action," and there is "no trial to stay" when all claims are subject to arbitration. Br. in Opp. i, 15-17. This argument fails on every conceivable level.

First and foremost, respondents' theory fails on its own terms. Respondents say there is no point in staying the "trial" of the action if the entire case will be resolved by arbitration. But there is no way to know if *there will be a trial* until the arbitration has concluded. Any time the arbitration fails to resolve the claims for any reason, the case will return to court—and there is no way to know that in advance (at least without a crystal ball) when dismissing the case. In short, the mandatory stay is essential "should the arbitrators fail to resolve the entire controversy." *Tice* v. *American Airlines, Inc.*, 288 F.3d 313, 318-319 (7th Cir. 2002); see also See *Arabian Motors Grp. W.L.L.* v. *Ford Motor Co.*, 19 F.4th 938, 943 (6th Cir. 2021) ("[t]he reference to 'trial of the action' more naturally signifies * * * the trial that would otherwise occur if the party did not move for a stay or insist on arbitrating the claims").

This common-sense conclusion is reflected directly in the statute itself. Read in context, Congress did not merely say to stay the trial of the action—it said to impose that stay *until the arbitration has concluded* ("until such arbitration has been had in accordance with the terms of the agreement") or unless a party is in "default" with re-

spect to the arbitration. 9 U.S.C. 3. The surrounding language thus confirms that Congress itself understood the obvious need for a stay: it knew (and embedded in the actual text) that not every case subject to arbitration will *actually be resolved* by arbitration, and a case initially ordered to arbitration could very well return for full-blown litigation.

Respondents simply overlook all the different reasons why a case may return to court—and thus why there may very well ultimately be a "trial" on the merits:

*where the entire dispute is governed by a delegation clause and the arbitrator determines that only certain claims are subject to arbitration—sending the remainder back to federal court, see, *e.g.*, *Arabian Motors*, 19 F.4th at 943 ("[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");

*where the entire dispute is governed by a delegation clause and the arbitrator determines that *no* claims are subject to arbitration—thus sending the *entire* case back to federal court, *ibid.*;

*where the moving party fails to initiate the arbitration, see, *e.g.*, *Bedgood* v. *Wyndham Vacation Resorts, Inc.*, 88 F.4th 1355, 1362-1367 (11th Cir. 2023); *Cargo Carriers* v. *Erie & St. Lawrence Corp.*, 105 F. Supp. 638, 639-640 (W.D.N.Y. 1952);

*where a responsible party fails to pay the arbitrator's costs or fees (a common occurrence that happened in this very case), see, *e.g.*, *Freeman* v. *SmartPay Leasing, LLC*, 771 F. App'x 926 (11th Cir. 2019); *Pre-Paid Legal Servs., Inc.* v. *Cahill*, 786 F.3d 1287 (10th Cir. 2015); *NAVCAN.DC, Inc.* v. *Rinde*, No. 23-2267, 2023 WL 6622207, at *2 (S.D.N.Y. Oct. 11, 2023); and

*where the parties' agreement designates a *specific* arbitrator or arbitral forum as essential and that arbitrator or forum is unavailable, see, *e.g.*, *Reddam* v. *KPMG LLP*, 457 F.3d 1054, 1057, 1060-1061 (9th Cir. 2006); see also *Inetianbor* v. *CashCall, Inc.*, 768 F.3d 1346, 1348-1349 (11th Cir. 2014).

In short, there are countless reasons that an arbitration may be disbanded without resolving the dispute. In each of those situations, the parties will inevitably return to federal court for a full adjudication of the merits—and the mandatory stay preserves the parties' rights in those circumstances. An (atextual) dismissal, by contrast, would leave the parties without a ready vehicle for resolving their claims.

Respondents' theory—and the cases it follows—are self-evidently wrong. Compare, *e.g.*, *Alford*, 975 F.2d at 1164 ("[g]iven our ruling that all issues raised in this action are arbitrable," "retaining jurisdiction and staying the action will serve no purpose"—while ignoring the obvious purpose should the arbitration *not* ultimately resolve the claims).

b. Respondents also misread Section 3 as focused narrowly on the trial itself—as in the single event in an overall case where parties litigate before a fact-finder. According to respondents, Section 3 "does not suspend other proceedings," including "motions to dismiss" or other "pretrial motions." Br. in Opp. 15-17. Respondents are badly mistaken.

Initially, respondents simply misread Section 3. Congress did not limit the stay to the "trial *in* the action," but stayed the entire "trial *of* the action"—as in *trying or litigating the case*. The stay thus captures any further merits adjudication of the proceeding—as one would expect

with a statute designed to transfer the substantive litigation to an arbitral tribunal. This reading is reinforced by every single relevant source.

For one, Section 3's title refers to "stay *of proceedings*," not simply a stay of one *event* in those proceedings. Congress added that language when codifying the FAA (see Act of July 30, 1947, Ch. 392, 61 Stat. 669, 670), and the heading "suppl[ies] cues" for its proper meaning. *Yates* v. *United States*, 574 U.S. 528, 540 (2015); see also *Florida Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) ("statutory titles and section headings are tools available for the resolution of a doubt about the meaning of a statute") (internal quotation marks omitted).

For another, unlike respondents' truncated version, the broader reading is the natural reading of the phrase in its entirety—which is why this Court has repeatedly described the provision as *staying the litigation*. *Coinbase, Inc.* v. *Bielski*, 599 U.S. 736, 745 (2023) ("Section 3 of the Act provides for a stay of *court proceedings* pending arbitration") (emphasis added and omitted); see also *id.* at 749-750 (Jackson, J, dissenting) ("Congress specified a mandatory general stay of trial court proceedings in § 3"); *Morgan* v. *Sundance, Inc.*, 596 U.S. 411, 413 (2022) ("When a party who has agreed to arbitrate a dispute instead brings a lawsuit, the Federal Arbitration Act (FAA) entitles the defendant to file an application to stay the litigation. See 9 U.S.C. § 3."); *Arthur Andersen LLP* v. *Carlisle*, 556 U.S. 624, 625 (2009) ("Section 3 * * * entitles litigants in federal court to a stay of any action that is 'referable to arbitration'"); see also *id.* at 630 (same). The fact that the Court's common-parlance take mirrors the plain text—without once even suggesting Section 3 was somehow cabined to fact-gathering trials—says it all about the statute's natural meaning.

And, of course, Congress itself apparently understood the term the same way when enacting the original FAA. While the legislative record is sparse, the "drafting history is consistent with the mandatory-stay approach and provides no support for the primary textual argument in favor of the discretion-to-dismiss approach." C. Drahozal, *Mandatory Stay or Discretion to Dismiss? Interpreting Section 3 Of the Federal Arbitration Act*, 39.1 Ohio St. J. on Disp. Res. 109, 126, 127-128 (2023) ("the 'trial of the action' phrasing appears to have been used at the time to refer to a stay of the entire proceedings"); see also *id.* at 130 (listing multiple contemporaneous examples that are "consistent with the mandatory-stay approach," whereas "nowhere do the congressional materials or contemporaneous commentaries mention the possibility that a case can be dismissed instead of stayed pending arbitration"). If respondents' unusual reading were correct, one would have expected someone to say something about it before now.[3]

Finally, respondents' understanding of Section 3 is absurd and would eviscerate the parties' arbitration rights. It cannot possibly be correct that Congress meant to enforce arbitration rights by staying the trial—but otherwise permitting full judicial litigation to continue. Br. in Opp. 15-16 (so insisting). That would defeat the core benefits of arbitration: it would multiply costs; it would expose parties to public proceedings; it would permit opposing parties to conduct court-supervised discovery; it would endorse parallel litigation on separate tracks; and it would (apparently?) permit courts to *adjudicate the merits*—so long as the court did so via motion. This is not

[3] To the extent the legislative history is relevant, it accordingly supports petitioners across the board, while (again) shows the utter lack of any support for respondents' theories.

how anyone thinks the process works. Cf., *e.g.*, *Coinbase*, 599 U.S. at 743 ("[i]f the district court could move forward with pretrial and trial proceedings while the appeal on arbitrability was ongoing, then many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost").

Congress specifically designed Section 3 as a "device for enforcing an arbitration agreement." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). A stay would not be a *useful* device if it did not actually *stay the litigation* and channel parties to arbitration. Respondents' contrary view is simply baffling.[4]

c. Respondents further argue that Section 3 applies only where *some* (but not *all*) claims are subject to arbitration. Br. in Opp. 15 (Section 3 "is not directed to a situation where everyone agrees that *all issues* in the suit are referrable to arbitration"); see also Br. in Opp. 2 ("It merely prohibits a court from proceedings with a 'trial' on some claims while others are being arbitrated."). This reading is entirely atextual. The statute applies on its face whenever "any" issue is subject to arbitration—a condition met whenever one, two, three, or *all* issues are subject to arbitration. Congress nowhere restricted Section 3

[4] Contrasting the language of Sections 3 and 12, respondents argue that "Congress chose different language in the FAA when it intended to refer to the case as a whole." Br. in Opp. 16 (citing 9 U.S.C. 12). While this is too thin a reed to override every other textual indication of Section 3's meaning, respondents overlook an obvious basis for the different terminology: Section 12 involved post-arbitration proceedings, not active causes of action; moreover, staying the entire proceeding under Section 3 would arguably prevent courts from entertaining FAA-related motions, even to facilitate the arbitration (since the entire proceeding would be stayed until the arbitration is over). Congress's focus on a stay of "the trial of the action" (9 U.S.C. 3) prevents merits-based litigation (*trying the action*) while keeping the doors open to FAA-based relief.

if the *entire* suit is arbitrable—a point it could have made easily in the actual text. As this Court has repeatedly reminded in the FAA context, respondents cannot graft new limitations on Congress's categorical language. See, *e.g.*, *Badgerow*, 596 U.S. at 11; see also *Henry Schein, Inc.* v. *Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019) ("we may not engraft our own exceptions onto the statutory text").

As a last-ditch effort, respondents cite examples of "mixed" cases with both arbitrable and non-arbitrable claims. Br. in Opp. 15. The fact that Section 3 *also* applies in that setting does not mean it *exclusively* applies in that setting. On its face, the statute is triggered whenever "any issue" is subject to arbitration (9 U.S.C. 3)—there is no linguistic hook for excluding the commonplace situation where *all* claims are subject to arbitration.

The plain text of Section 3 unambiguously mandates a stay pending arbitration, and nothing in Section 3 suggests a stay is mandatory *unless* all claims are subject to arbitration. Respondents' request for dismissal was unsupportable under the Act, and the judgment should be reversed to restore a stay in petitioners' case.

B. The FAA's Structure And Purpose Further Confirm That Section 3 Stays Are Mandatory

The FAA's structure and purpose readily confirm what the text already makes clear: Section 3 stays are mandatory and dismissals are not allowed.

1. First and foremost, respondents' position is irreconcilable with 9 U.S.C. 16. That provision "creates a rare statutory exception to the usual rule that parties may not appeal before final judgment." *Coinbase*, 599 U.S. at 740. But Congress conspicuously restricted the provision's scope: it "provided for immediate interlocutory appeals of orders *denying*—but not of orders *granting*—motions to compel arbitration." *Ibid.*; see also 9 U.S.C. 16(a), (b).

Respondents' view would directly "undercut[]" these "pro-arbitration appellate-review provisions." *Arabian Motors*, 19 F.4th at 942. Congress said that parties can appeal orders denying but not granting arbitration. Yet a dismissal converts a case into a final judgment—which activates the very appellate rights that Section 16(b) otherwise forbids. Congress crafted a reticulated scheme that requires stays in this context, and refused to grant parties immediate appeals; a dismissal upends this approach: "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." *Lloyd*, 369 F.3d at 271; see also, *e.g.*, *Arabian*, 19 F.4th at 942; *Katz*, 794 F.3d at 346.

Respondents have no answer for how an immediate appeal—and thus a dismissal—is consistent with Congress's statutory design. Congress created a statutory bar to immediate appeals challenging orders compelling arbitration. See 9 U.S.C. 16(b)(1)-(2). A dismissal wrongly activates "appellate rights expressly proscribed by Congress." *Katz* v. *Cellco P'ship*, 794 F.3d 341, 346 (2d Cir. 2015). The disconnect is palpable: if a district court can dismiss, then parties can take an immediate appeal that Congress "expressly denied." *Lloyd*, 369 F.3d at 270 & n.8 (citing 9 U.S.C. 16(b)(1), (2)). Requiring a stay, by contrast, ensures that parties resisting arbitration cannot appeal until after the arbitration has concluded.

Petitioners' reading alone is consistent with the FAA's overall structure.

2. A stay also promotes a federal court's ability to "facilitate" the FAA's neighboring provisions, whereas a dismissal would frustrate the FAA and congressional policy. *Lloyd*, 369 F.3d at 270.

By entering a mandatory stay, courts retain jurisdiction to enforce the FAA's other procedural safeguards—

including "appoint[ing] arbitrators" (9 U.S.C. 5), "summon[ing arbitration] witnesses" (9 U.S.C. 7), and ultimately "confirm[ing], vacat[ing], or modify[ing] an award" (9 U.S.C. 9-11). See *Arabian Motors*, 19 F.4th at 941-942; see also, *e.g.*, *Lloyd*, 369 F.3d at 370 (describing role as "significant"); *Green*, 653 F.3d at 771 (Shepherd, J., concurring). A stay also allows oversight and preserves a judicial backstop in the event a party "defaults" on the arbitration or the arbitration is otherwise disbanded. 9 U.S.C. 3; *Tice*, 288 F.3d at 318-319. A dismissal eliminates all of these benefits.

In response, respondents argue this concern is insubstantial since parties can always refile a new federal action. Br. in Opp. 9. Respondents may have been correct (at least in some circuits) before *Badgerow* v. *Walters*, 596 U.S. 1 (2022), but they are undoubtedly wrong now. After *Badgerow*, parties cannot simply return to federal court and invoke the fact that the case involves federal claims; parties must establish an *independent* basis for jurisdiction—such as diversity between the parties or a specific non-FAA right that implicates federal jurisdiction. It accordingly is now the rare dispute that can return to federal court merely to invoke the FAA's rights and protections (596 U.S. at 5, 16-18)—which means that a stay is effectively the only game in town.

Yet if dismissal is an (atextual) option, parties forfeit the ability to re-access federal court—despite Section 3's explicit reservation of a federal forum until the "arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. 3. That not only deprives parties of a federal venue for enforcing rights under the FAA, but it could also cost them their underlying claims. A stay is not merely designed to force parties into arbitration; it also preserves the federal case in the event the arbitration

falls through—which is why the stay lasts until the arbitration is complete.

A dismissal eliminates this necessary backstop. Respondents downplay the danger to parties' rights from eliminating this judicial safeguard. Br. in Opp. 9-10. But multiple lower courts have flagged potential limitation problems (*e.g.*, *Green*, 653 F.3d at 770), and this issue can arise when an arbitration fails for any reason—including a failure to pay arbitral fees. The stay, by design, provides protection if the "arbitration has [not] been had in accordance with the terms of the agreement." 9 U.S.C. 3; see also *Tice* v. *American Airlines, Inc.*, 288 F.3d 313, 318-319 (7th Cir. 2002).

3. Finally, enforcing Section 3's mandatory stay also avoids wasteful disputes about whether to stay or dismiss. Arbitration is designed to resolve disputes efficiently. Congress replaced any discretion to dismiss with a bright-line, categorical rule requiring stays in every case. There are hundreds of cases compelled to arbitration each year. Drahozal, *supra*, at 112 & n.7 (identifying 818 contested petitions from June 2021 through May 2022). That rule has the benefit of avoiding costly litigation every time an entire matter is subject to arbitration.

And while the costs of dismissal are high (as detailed above), the benefits of a stay are virtually always present: for the minimal cost of maintaining a matter on a court's docket, the court remains available to facilitate the arbitration, protect parties against time-barred claims, and encourage movants to follow through on initiating the arbitration. There is no reason to invite a contrary rule that requires case-specific, "stay-versus-dismissal" determinations when parties are supposed to exit court and enter arbitration "as quickly and easily as possible." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

Under Section 3, Congress provided a clear, categorical, efficient answer—each case must be stayed until the arbitration is over. Respondents cannot justify their request for endless disputes over whether to stay or dismiss.

C. Respondents' Remaining Efforts To Evade The FAA's Plain-Text Reading Are Meritless

Respondents' remaining theories cannot overcome their lack of support in the FAA's text, structure, or purpose.

1. Respondents trumpet a court's "inherent discretionary authority" and "inherent power to dismiss." *E.g.*, Br. in Opp. 12. Yet any *inherent* powers are beside the point because Congress *countermanded* those powers by statute. Indeed, this is the entire reason that Congress would mandate a stay—to *override* that inherent discretion. The point is to remove the default authority in this limited context, and replace it with a statutory command.

It is puzzling for respondents to construe the statute by seeking to restore the very default choice (stay or dismiss) the statute was designed to eliminate: "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." *Katz*, 794 F.3d at 346.

2. According to respondents, requiring a stay "puts an undue burden on district courts by bloating their dockets." Br. in Opp. 17. This is bizarre. The short answer: the FAA "is not a docket-management statute." *Arabian Motors*, 19 F.4th at 943. Respondents (and some lower courts) may prefer to "clean[] out" their dockets (*ibid.*), but Congress balanced that concern against the need for retaining a judicial role in a pending case until the arbitration is over.

Nor is the concern obviously substantial—especially when considered against the benefits. Inactive cases present a minimal burden and preserve federal jurisdiction where necessary to effectuate the parties' rights. The sky has not fallen in the six circuits that read (correctly) Section 3 as barring dismissal. And other solutions exist to address concerns over "bloated" dockets: courts can administratively close a case; courts can require only intermittent status reports (say once every 180 days) if frequent reports cause inconvenience. And Congress can always add judicial resources in the (surprising) event that stayed cases pending arbitration are overwhelming the lower courts' workload.

3. Respondents attack petitioners for filing a lawsuit despite the claims being subject to arbitration. This is both irrelevant and wrong.

It is irrelevant because it has no bearing on the question presented (or the proper way to read the statute): nothing in Section 3 turns on whether a party surrendered or resisted an arbitration demand, or filed in court despite having a claim ultimately subject to arbitration. Indeed, that fact-pattern describes *every* instance where Section 3 applies: a party files a lawsuit deemed subject to arbitration. See, *e.g.*, *Morgan* v. *Sundance, Inc.*, 596 U.S. 411, 414 (2022) (describing one such instance). If that were enough for a party to forfeit its rights (or somehow warrant dismissal), Section 3 would have no application at all.

In any event, respondents' position is also wrong. Petitioners had a basis for resisting arbitration (certain defendants were non-signatories), but strategically acquiesced. And there was nothing blameworthy about filing a lawsuit. Arbitration is an affirmative defense and a contractual right; it can be waived or abandoned. Fed. R. Civ. P. 8(c)(1); see also, *e.g.*, *Morgan*, 596 U.S. at 413, 419 ("defendants do not always seek [arbitral] relief right away"

and can "waive[]" or "forfeit[]" those rights). It was up to respondents to assert that right—and petitioners did nothing wrong by pursuing relief initially in court.

4. Respondents maintain petitioners would not suffer significant prejudice from refiling a new suit. Br. in Opp. 11-12. Yet the prejudice is obvious. Respondents have resisted paying arbitration fees—a concern petitioners flagged long ago. J.A. 98 (requesting a stay due to "well-founded belief that Defendants will be unable or unwilling to pay the ongoing arbitration fees" and "th[e] action will ultimately be kicked back to the Court"). Petitioners anticipate seeking confirmation in federal court (assuming the arbitrations are ever completed). *Id.* at 97 (so stating). And time will tell if the FAA's other procedural mechanisms will be necessary—a legitimate concern given respondents' past litigation conduct. Yet there is no obvious jurisdiction hook to refile after *Badgerow*—so a dismissal would likely eliminate petitioners' access to a federal forum.

Petitioners' situation is hardly unusual—indeed, it reflects the same challenges experienced by parties around the country. Congress imposed a mandatory stay for a reason, which is reflected right on the face of the statute—it preserves the federal forum until the arbitration has in fact resolved the parties' rights. Respondents' contrary position would wrongly undermine this statutory objective.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

NICHOLAS J. ENOCH
CLARA S. BUSTAMANTE
MORGAN L. BIGELOW
LUBIN & ENOCH, P.C.
349 North Fourth Avenue
Phoenix, AZ 85003

ANGELA M. OLIVER
HAYNES AND BOONE, LLP
800 17th Street, N.W., Ste. 500
Washington, DC 20006

DANIEL L. GEYSER
Counsel of Record
CHANCE FLETCHER
HAYNES AND BOONE, LLP
2323 Victory Avenue, Ste. 700
Dallas, TX 75219
(303) 382-6219
daniel.geyser@haynesboone.com

FEBRUARY 2024

APPENDIX

TABLE OF CONTENTS

APPENDIX

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

> **Stay of proceedings where issue therein referable to arbitration**
>
> 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.

2. Section 4 of the Federal Arbitration Act, 9 U.S.C. 4, provides:

> **Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination**
>
> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy

between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

3. Section 5 of the Federal Arbitration Act, 9 U.S.C. 5, provides:

Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

4. Section 7 of the Federal Arbitration Act, 9 U.S.C. 7, provides:

Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said sum-

mons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

5. Section 8 of the Federal Arbitration Act, 9 U.S.C. 8, provides:

> **Proceedings begun by libel in admiralty and seizure of vessel or property**
>
> If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

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

> **Award of arbitrators; confirmation; jurisdiction; procedure**
>
> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

7. Section 10 of the Federal Arbitration Act, 9 U.S.C. 10, provides:

Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved

by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

8. Section 11 of the Federal Arbitration Act, 9 U.S.C. 11, provides:

Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9. Section 12 of the Federal Arbitration Act, 9 U.S.C. 12, provides:

> **Notice of motions to vacate or modify; service; stay of proceedings**
>
> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

10. Section 13 of the Federal Arbitration Act, 9 U.S.C. 13, provides:

> **Papers filed with order on motions; judgment; docketing; force and effect; enforcement**
>
> The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

11. Section 16 of the Federal Arbitration Act, 9 U.S.C. 16, provides:

Appeals

(a) An appeal may be taken from—

(1) an order—

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.