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

REPLY BRIEF FOR THE PETITIONERS

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A. Under Its Plain Text, Section 3 Mandates A Stay Pending Arbitration—And A Stay Means What It Always Does In Standard English And Every Ordinary Legal Context

The plain text of Section 3 means precisely what it says: if "any" issue is subject to arbitration, a court "shall * * * stay the trial of the action until such arbitration has been had in accordance" with the agreement. 9 U.S.C. 3. This language is not difficult to understand. The term "stay" is a common legal concept with a settled and obvious meaning. The directive is mandatory ("shall") and specifies precisely what a court is supposed to do: "*stay the trial of the action*." And Congress attached unambiguous conditions confirming the stay is of limited duration: unlike a dismissal, a stay lasts only *until the arbitration has concluded* ("until such arbitration has been had"). Congress did not say "dismiss," provide multiple options ("stay *or dismiss*"), create exceptions, or simply instruct courts to enforce arbitration agreements however they see fit. It chose a precise remedy with a common legal meaning known to any legislator or law graduate—which is likely why not a single judge on any court in the past hundred years has even suggested Section 3's "stay" is not an *ordinary stay*.

Indeed, while certain lower courts, wrongly, have adopted "judicially-created exception[s]" (*Green* v. *SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769-770 (8th Cir. 2011)) or dismissed "notwithstanding [Section 3's] language" (Pet. App. 5a), not a single decision has declared a "stay" means anything other than what it always does—a "temporary suspension" of legal proceedings. *Black's Law Dictionary* 1109 (2d ed. 1910) ("Stay of proceedings").

1. Yet, oddly, not according to respondents. Unlike everyone else, respondents argue a "stay" means anything that "stop[s] litigation"—and since a "dismissal" stops litigation, a dismissal necessarily qualifies as a "stay" under Section 3. Br. 15-16. This theory fails on every possible level.[1]

a. Respondents' theory, first and foremost, is at odds with Section 3's plain language. In the legal context, the term "stay" is not some foreign construct; it is a recognized legal term with an accepted and defined meaning. It does not "stop" litigation by any means, but temporarily *suspends* the action. And so when Congress says "stay," it does not mean "dismiss"—just as no one naturally thinks courts agreeing to enter a stay should turn around and *dismiss the case*. Indeed, if this Court instructed a lower court to enter a "stay," it assuredly would be surprised if the lower court responded by dismissing the action. There is no reason to think Congress had anything so unorthodox in mind when drafting Section 3. See, *e.g.*, *Green Tree Fin. Corp.-Ala.* v. *Randolph*, 531 U.S. 79, 86 (2000) (assigning the FAA's terms their "well-established meaning").

And while respondents are correct that a dismissal "stops" an action, it does much more than that—it terminates the case entirely. The matter is no longer pending

[1] Respondents argue their reading is not a "'depart[ure] from the actual statutory text" or "a 'judicially-created exception'" to Section 3. Br. 18. Suffice it to say that even courts on respondents' side of the split disagree. *Green*, 653 F.3d at 769-770; *Alford* v. *Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) (admitting dismissal is "contrary to the precise terms of Section 3"); see also Pet. App. 5a. These courts knew exactly what they were doing and were upfront about it: Section 3 unambiguously requires a stay, and no one thinks (in common parlance or legal practice) that a statutory "stay" is a *dismissal*. Respondents accordingly reject even the (minority) rationale of the lower courts supporting their position.

in a federal court. There is no natural means of reviving it (short of filing a new action). None of that describes how a traditional stay works. A stay takes a pending case and puts it on hold. That does indeed "stop" further immediate adjudication, but it does so only temporarily—and in a manner obviously different from an outright dismissal.

This Court has always treated the two terms as having different meanings, which is why it distinguished between "stay[s]" and "dismissal[s]" in reserving the very question presented here. *Green Tree*, 531 U.S. at 87 n.2. When this Court flagged whether a court could stay or dismiss, it did not drop a note to explain a dismissal *is* a form of stay. It understood the obvious: the two terms are different; each carries a different meaning; each has a different legal effect (including a profound effect on appealability under Section 16); and (at least until now) no one confuses one with the other and believes the terms are synonymous.

b. Aside from misreading the core term itself ("stay"), respondents cannot square their bizarre reading with Section 3's surrounding language—including the adjacent clauses in the *same sentence* of the core provision. First, the neighboring "until" clause ("until the arbitration has been had") confirms the stay is a temporary action of limited duration with an express endpoint. The stay is not permanent or indefinite; by its terms, it applies "until" the arbitration has been had. This temporary duration is incompatible with a dismissal. Once a case is dismissed, *it is dismissed*—there would be no obvious way to lift the "stay" once the statutory condition ("until the arbitration has been had") is met.

Second, the stay applies only "provid[ed] the applicant" "is not in default" with the arbitration. 9 U.S.C. 3. There is no obvious way to square this requirement with respondents' theory of dismissal. The "stay" (and thus dismissal) is imposed at the outset; yet at that point, how

is a court to know whether the applicant will later be in default or not? The statutory condition is framed in the present tense—the stay applies if the application "is not" in default, which necessarily requires an ongoing evaluation. And while such an evaluation is consistent with a traditional stay, there is no obvious means for a court to unwind respondents' (so-called) "stay" once a case is permanently dismissed.

Under respondents' view, there is no telling what the court is supposed to do—wait some indeterminate amount of time and then dismiss? Simply *presume* the party will not default with the arbitration (thus rendering the statutory condition superfluous)? Respondents never say. They weakly suggest Section 3 does not say what a court "must" do after staying a case. Br. 18. But Section 3 details precisely what is required: Congress invoked ordinary terms with settled meaning ("stay the trial of the action") and imposed express conditions for the period in which that stay would be in effect: "until arbitration has been had in accordance" with the agreement, "provided" the applicant "is not in default" with the arbitration. 9 U.S.C. 3. Those conditions are not hard to understand: the stay remains in force until the arbitration is performed or the arbitration fails. Those conditions make sense only if a case is still pending on a court's docket; a dismissal would cement the stay even after the statute's end conditions are satisfied.

Respondents cannot account for these conditions, so they simply ignore them. Their theory never truly grapples with the conditional language attached to the stay command instructing when the stay is over.[2]

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[2] Nor does respondents' sports analogy advance the ball. See Resp. Br. 21 (suggesting an order suspending a player for five games and

In the end, respondents cannot explain why Congress would have opted for a settled term ("stay") when it really meant something else, or why any legislator would even think of invoking a distinct concept with an established meaning ("stay") when it had a contrary, unusual definition in mind. Congress surely would not have paired that term with two clauses that make sense only if an action remains pending (read: it is *stayed*) on the court's docket. Congress was not confused when it selected a bright-line rule for policing arbitration agreements in those pending actions—and if Congress truly meant "stay or dismiss," it would have said *stay or dismiss*. Respondents have no explanation for why Congress would have chosen the "well-developed" phrasing in Section 3 if it did not wish that language to carry its "longstanding" meaning. See, *e.g.*, *Green Tree*, 531 U.S. at 86.

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directing "[t]he team shall keep [him] from playing until the suspension has concluded" would not prevent the team from "releas[ing]" the player "before the five games are up"). This is inapt for multiple reasons. For one, it is a mystery why it helps to take the words of the statute and replace them with different terminology carrying different meanings. The term *stay* is the distinctive term here, and it does not appear in respondents' analogy. The better example would be something like this: If the league's suspension is *stayed pending appeal*, no one thinks the team can take the appeal and declare the suspension *dismissed*. Again, a stay is a *temporary* pause, not a termination.

In any event, respondents overlook that (even on their own terms) the suspension and the team's dismissal are two unrelated events controlled by different actors under different standards. The suspension just says to keep the player away for five games; but that order does not care what players the team retains on its roster. This situation, by contrast, is the opposite: there is a *single* decision about what to do with pending litigation when "any" issue is arbitrable. The stay is an unmistakable directive how courts are required to handle that situation.

c. Respondents further misrepresent the settled definition of this common legal term. Br. 16-17 (citing pre-FAA dictionaries). Contrary to respondents' contention, "stay" in this context does *not* mean merely "[a] stopping." Br. 16 (quoting *Black's Law Dictionary* 1109 (2d ed. 1910)). Glancing down a few more lines, *Black's* directly undermines respondents' position: while stay might *generally* include the concept of "stopping" or "arresting a judicial proceeding" (which itself is consistent with an ordinary stay), *Black's* specifically defines the term most relevant here: "Stay of proceedings": "[t]he temporary suspension of the regular order of proceedings in a cause, by direction or order of the court, usually to await the action of one of the parties in regard to some omitted step or some act which the court has required him to perform as incidental to the suit." *Black's Law Dictionary*, *supra*, at 1109. That definition is an exact match for the term's use in Section 3.

Respondents continue by selectively plucking out definitions while skipping over the most natural understanding of the term. Take their effort to define "English practice" as "sometimes" meaning "a total discontinuance of the action." Resp. Br. 16-17 (quoting *A Dictionary of American and English Law with Definitions of the Technical Terms of the Canon and Civil Laws* 1221 (1888)). Yet this is the *second* definition afforded the term ("*Stay* § 2"); here is what the *leading* definition said: "§ 1. A stay of proceedings in an action is a *suspension* of them; thus, if the plaintiff is ordered to do something and fails to do it, the proceedings may be ordered to be stayed until he complies with the order." *A Dictionary of American and English Law*, *supra*, at 1221. Again, this is a perfect fit for the term "stay" in Section 3. See also, *e.g.*, *A Dictionary of English Law* 840 (1923) ("A stay of proceedings in an action is a suspension of them * * * ").

And, of course, these same sources also define *dismiss*: "To dismiss an action or suit is to send it out of court without any further consideration or hearing." *Black's*, *supra,* at 376. This definition is incompatible with Section 3—and it also shows Congress would have been well aware of this separate term of art if it wished to authorize dismissals rather than stays.

In short, respondents did not even define "stay" correctly. A stay is not a permanent "stopping"—it is a *temporary suspension*. It does not mean the termination of an action, but the *suspension* of an action. There is no authoritative source even remotely suggesting Congress would have said "stay the trial of the action" "until" a specific event had occurred—but actually meant *dismiss* the case.[3]

d. In any event, respondents' textual theory suffers from an obvious logical flaw. Even if a stay "stops" litigation, it does not follow that *anything* that stops litigation is also a stay. Two separate terms can share common features without suggesting *the two things are the same*—just as saying a cat has four legs and a tail does not necessarily mean that a horse is a cat. (The fact that all *X* contain *Y* does not mean the converse is true—that all *Y* are *X*.)

Again, a stay is a *specific* type of legal action with characteristics and features that go beyond simply anything that "stops" a trial. Respondents apparently realize they cannot artificially rewrite the terms of Section 3—but

[3] Even if any of respondents' dictionaries actually supported their view, isolated definitions from random sources is hardly evidence that Congress intended an atypical understanding of a common legal construct with an otherwise-settled meaning.

they have no basis for rewriting the *definition* of those terms instead.[4]

e. Respondents are likewise wrong that their mistaken "understanding of a stay as permitting dismissal is consistent with modern practice." Resp. Br. 17. Respondents offer three examples, and all fail.

First, this Court's decision in *Reiter* v. *Cooper*, 507 U.S. 258 (1993), cuts the other way. Contra Resp. Br. 17. *Reiter* considered "primary jurisdiction" under a provision that requires "referrals" to an agency, not a stay. 507 U.S. at 268. The Court said that once the litigation is stayed (for that referral), the court *then* has the option to retain jurisdiction or dismiss. *Id.* at 268-269 ("Referral of the issue to the administrative agency does not deprive the court of jurisdiction; it has discretion either to retain jurisdiction or, if the parties would not be unfairly disadvantaged, to dismiss the case without prejudice."). But the Court never said that a dismissal itself was a stay—and its language suggested exactly the opposite. See, *e.g.*, *id.* at 268 (primary jurisdiction "requires the court to enable a 'referral' to the agency, *staying further proceedings so as to give the parties a reasonable opportunity to seek an administrative ruling*") (emphasis added).

Nor was *Reiter* an example of the Court interpreting a statutory command to stay proceedings. This was the

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[4] According to respondents, nothing in Section 3 "prohibits a district court from dismissing a case." Br. 10. This is wrong. A stay is *incompatible* with a dismissal. It is a mechanism for temporarily suspending a case. A dismissal eliminates the case entirely. The two are not the same in legal practice or common parlance. No English speaker with passing familiarity with the American legal system thinks that a stay is the same thing as a dismissal—or that a dismissal is somehow a "stay" because it likewise "stops" a case. There is zero chance Congress said "stay the trial of the action" when it actually meant to *dismiss* the action.

Court deciding on its own the best way to effectuate a rule that the agency has to go first. If Congress did not instruct courts to stay in Section 3, this Court might have the same license to authorize courts to choose between the same options here. But Congress eliminated that choice via a statutory directive. And respondents cannot cite a single example (of any court at any level) suggesting that courts can dismiss under a statutory scheme that strictly requires *stays*.

Second, respondents likewise misread Fed. Cir. R. 47.10 as authorizing "dismissal" as "a form of 'stay'" under 11 U.S.C. 362(a)(1). Resp. Br. 17. On its face, the rule explains that the automatic stay requires (unsurprisingly) the court to stay the appeal; once the appeal is stayed, the rule affords the *option* of dismissing the appeal without prejudice: "An appeal *stayed in accordance with the bankruptcy stay provisions* of 11 U.S.C. § 362 may be dismissed by the clerk of court without prejudice to the appellant reinstating the appeal * * * ." Fed. Cir. R. 47.10 (emphasis added). So this is not the Federal Circuit saying that a dismissal *is* a stay; it is saying that a case *that has already been stayed* can be dismissed—as a separate act *after* the stay. The very fact that the rule distinguishes between the stay and the subsequent dismissal undermines respondents' argument.

Finally, respondents maintain that "courts may issue 'permanent' or 'irremovable' 'stay[s]' that are a total bar to proceedings ever continuing." Br. 17-18. But their New York authority involves "stays" that are effectively *injunctions*—orders forbidding parties from pursuing arbitration out of court. That has nothing to do with a dismissal (and looks nothing like a dismissal); it is simply what happens one party proposes extra-judicial action that another party has a right to avoid. See N.Y. C.P.L.R.

7503(b); *State Farm Mut. Auto. Ins. Co.* v. *Diaz*, 223 A.D.3d 674, 675 (N.Y. App. Div. 2024).

f. Respondents argue that pre-FAA courts (in the United States and United Kingdom) held that dismissal was an appropriate way to enforce an arbitration clause. Br. 20-21. These decisions are entirely besides the point. Each simply authorized dismissal as one means of dealing with an arbitration clause—where (unlike here) there was *no controlling statute requiring a stay*. It makes no difference what courts did *before* Congress eliminated any option other than staying a case.

Put simply: According to respondents, without a statutory directive, courts confronting arbitration clauses would either stay or dismiss. Congress has now passed a statute (Section 3) adopting one option but not the other. It is a mystery how the pre-FAA practice possibly helps respondents. *E.g.*, *Matter of Zimmerman* v. *Cohen*, 236 N.Y. 15, 21 (1923) (explaining that New York's Section 5 "provides for a stay where there is an arbitration clause," which "provides a remedy for the party who desires to enforce the arbitration agreement").

And, in fact, the pre-FAA practice only underscores why respondents are wrong. If Congress was aware of this practice at all, it certainly knew how to authorize courts to *stay or dismiss*. Congress often passes statutes that modify preexisting rules or practices. It is not up to courts to revive the old practice that Congress excluded from the new provisions.

Anyway, respondents have again misread their own authority. In the very language respondents reproduce, *Wilson* v. *Glasgow Tramways & Omnibus Co.*, 5 R. 981, 992 (Scot. 1878), laid out three options for handling arbitrable claims—and in doing so distinguished between a "dismiss[al]" and a stay ("suspend proceedings"). Resp.

Br. 20. The separate enumeration of each concept confirms that Congress (again, if it considered this case at all) chose only one of the options, and it was not dismissal.

Likewise, in *Berkovitz* v. *Arbib & Houlberg, Inc.*, 230 N.Y. 261 (1921), the court did not dismiss, but promoted a *stay*: "the court will stay its hand till the extrinsic fact is ascertained, and the condition thus fulfilled." 230 N.Y. at 275. And the court likewise read New York law as "direct[ing] a stay of proceedings 'if any suit or proceeding be brought' when arbitration should be ordered.'" *Id.* at 269.

Finally, *Kelvin Eng'g Co.* v. *Blanco*, 125 Misc. 728 (N.Y. Sup. Ct. 1925), does exactly what Section 3 requires: it did not dismiss anything, but stayed the case until the arbitration is over: "the court should decline jurisdiction *and stay proceedings* until the plaintiff determines to abide by its obligation"; "[a]ccordingly the motion for a stay is granted." 125 Misc. at 734.

In the end, respondents could not cite a *single* case—anywhere over the past *century*—construing Section 3's stay requirement as meaning anything other than what it says on its face: the court must "stay" the case, not dismiss it.

g. Respondents similarly argue that, before the FAA, "when parties to litigation agreed to arbitrate their claims, the agreement operated to discontinue—i.e., dismiss—the litigation." Resp. Br. 23. Yet whatever the "settled" rule was before the FAA, Congress adopted a different rule in codifying these provisions. And respondents' authority again proves *petitioners'* point.

Take, for example, *McNulty* v. *Solley*, 95 N.Y. 242 (1884). The New York court enforced a contract made *during the suit* to *settle* the action by arbitration. This was thus not a pre-dispute arbitration clause invoked as a defense to a pending action. And *McNulty* itself specifically

distinguished between *dismissals* and *stays*—and suggested the parties could have instead stayed the proceedings pending a final decision in arbitration, but elected not to do so: "It was in the power of the parties either to ascertain beforehand whether the persons named would accept the office of arbitrators, or to so qualify their agreement as to make it conditional on their acceptance, or *that proceedings in the suit should only be stayed until an award made, or no longer than a specific time and then cease to be of effect unless an award was made*." 95 N.Y. at 245 (emphasis added); compare 9 U.S.C. 3 (adopting a remarkably similar rule).

When enacting the actual code addressing *this* situation, the New York legislature imposed a mandatory stay, not "discontinuance" or "dismissal." So even if *McNulty*'s case-specific dismissal somehow helped respondents, it would have been supplanted by the New York law that ultimately mirrored Section 3.

h. Respondents also attack petitioners' plain-text reading as "highly implausible." Br. 26-27. According to respondents, because petitioners read Section 3 as a categorical rule, it would eliminate a court's power to do any number of sensible things, including dismissing for "failure to prosecute," "misconduct," an inconvenient forum, a refusal "to provide status updates," mootness, or any number of other defects. *Ibid.*

This is a strawman. Section 3 establishes, categorically, what a court must do when confronting an arbitrable issue in a pending case and a party requests a stay. In *that* realm—focused only on that distinct issue—Congress set out a clear rule of decision. But Section 3 nowhere withdraws a court's power to take any action it would have taken *irrespective* of the FAA. Thus if a court identifies an *independent* basis to dismiss or transfer or punish, it has every right to do so. It is no different from

any other situation where two federal statutes work in tandem without one precluding the other. *E.g.*, *Branch* v. *Smith*, 538 U.S. 254, 273 (2003).[5]

Respondents cannot manufacture non-existent problems to sidestep Section 3's plain text.

2. As a fallback, respondents argue that Section 3's stay provision does not apply where "all claims" "are subject to arbitration": "§ 3 requires a stay only with respect to '*the trial* of the action,'" and "[w]hen no party is seeking a trial of the action, there is nothing to stay under § 3." Br. 22-24.

a. This is baseless for all the reasons petitioners have already explained (Pet. Br. 13-15). Contrary to respondents' contention, there is no way to know if the entire case will be resolved by arbitration *until the arbitration has concluded*. Arbitrations fail for any number of reasons (*id.* at 14-15), and any time the arbitration is not conclusive there will indeed be a "trial of the action." This is precisely why Congress set out an express condition for a stay: it applies "until arbitration has been had in accordance" with the agreement, or the applicant is in "default" with the arbitration. 9 U.S.C. 3. These safeguards protect litigant rights and avoid pointless disputes about the likelihood of arbitration resolving all claims. There is no reason to graft an atextual exception onto Congress's categorical language.

In response, respondents say it is merely "hypothetical[]" that a trial will be necessary in the future, and arbitrations fall through only "based on rare and unlikely

[5] Think of the following example: Suppose a party survives a summary-judgment motion under Fed. R. Civ. P. 56 after a court identifies a disputed fact issue. That finding would not prevent the court from dismissing the same case for separate egregious misconduct. It just means the court cannot dispose of the case on summary judgment contrary to Rule 56.

possibilities." Br. 23. This is profoundly mistaken. It is not a sound use of judicial resources to engage in speculative inquiries about the prospects of any given arbitration. Courts will guess wrong; litigants may mislead (or run into unforeseen challenges); and the case-specific disputes about the stay's propriety will churn up immeasurably greater time and resources than a simple, automatic stay—even one requiring the occasional status report.

Congress designed the statute to usher parties into arbitration as quickly as possible. There is no reason to ask courts to waste time and resources predicting (and resolving party disputes) about whether the parties are likely to return to a federal forum. And the consequence of guessing wrong will predictably impose far greater costs than any offsetting gain: it benefits no one to ask parties to refile the same lawsuit, redo the same service, initiate the same case-opening documents, and burden the court twice with a filing that could have simply stayed pending in inactive status on the court's docket.

b. This case itself serves as the prototypical example why a stay is necessary. Respondents open their brief with bluster: "If ever there were a lawsuit that should not sit indefinitely on the docket of a federal court, this is it." Br. 1. Yet this is what respondents fail to mention: Petitioners' arbitrations were dismissed and remain stalled *because respondents have failed to pay the arbitrators' filing fees* (despite petitioners having paid their share). This litigation is thus highly likely to return to court in the near future—the only question is whether it will return to the *existing* action or burden the court and parties with duplicative filings for a new case. The stay here would thus serve one of Congress's core purposes: it would protect parties where an opponent insists on arbitrating and then refuses to participate as required in the arbitration.

Nor are respondents correct that this is an example of a case where a trial was never in the cards. As petitioners previously noted, they would prefer to litigate in court—but acquiesced in respondents' arbitration demand. Contrary to respondents' contention, the arbitration provisions are *not* between all sides—they are limited to the corporate respondent alone, and the individual respondents are not signatories to the agreement. See J.A. 16-17.

Respondents are therefore incorrect that petitioners were always obligated to arbitrate. They had a viable reason for suing certain respondents at the outset, and they had every right to put the burden on respondents to invoke the arbitration clause as a defense—assuming respondents still wish to arbitrate at all (contrary to their present failure to pay AAA fees).

In sum, there is a reason petitioners urged the court to grant a stay, and flagged the very possibility of respondents' non-payment that has now come to pass. Had the court followed Section 3's command and stay the case, this litigation would have consumed far less resources than it has to date—and the parties would still have an available venue for (finally) litigating their claims.

B. Respondents Have Not Identified Any Inherent Article III Power To Enforce Arbitration Agreements Via Dismissal, and Any Such "Inherent" Authority Has Been Displaced By Congress

According to respondents, the Court should construe Section 3 to preserve the court's "traditional discretion" to dismiss cases subject to arbitration provisions. Br. 24-27. There is no such "ancient" inherent authority (cf. *Link* v. *Wabash R. Co.*, 370 U.S. 626, 630 (1962)), and Section 3 unequivocally forecloses any such authority that might otherwise exist.

1. Respondents' theory fails immediately in its premise. The power to dismiss a case subject to arbitration is

not some immutable authority critical to the proper functioning of Article III courts. This is an ordinary procedural claims-processing rule. Just as courts cannot skip ahead and dismiss without discovery—or must entertain certain procedures before disposing of certain actions—courts can be required to stay cases under specified circumstances for sound reasons.

That is all that Section 3 does. It recognizes that not every arbitration actually disposes of a (theoretically) arbitrable claim. Congress understood the importance of providing a backstop in case the arbitration falls through. And thus the stay remains in effect until the arbitration is over or the case returns for litigation.[6]

While some courts have dismissed to avoid carrying cases on their dockets, petitioners are unaware of a single decision, nationwide, suggesting it is essential to adopt a cramped reading of Section 3 to avoid some impermissible intrusion on inherent judicial power to dismiss cases (largely to avoid the minimal hassle of maintaining an inactive case on the court's docket).[7]

In sum, this situation bears little resemblance to any sacrosanct area of judicial power. This is not the power to sanction; the power to dismiss for misconduct or nonprosecution; or any other traditional judicial authority necessary to ensure a functioning court system. This is a

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[6] While petitioners did note that courts (absent Section 3) would retain the ability to decide how best to enforce an arbitration provision, petitioners never once suggested that selecting this procedural remedy falls among the ancient powers inherent in all Article III courts from time immemorial. Contra Resp. Br. 26.

[7] Respondents effectively wish to claim an inherent federal judicial power to "craft the rule of decision" in this area. *Rodriguez* v. *FDIC*, 589 U.S. 132, 136 (2020). Yet Congress may "shut the door" at "any time" (*Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 729-731 (2004)), and there is every indication Congress has done that here.

procedural directive for processing cases on a court's docket. Nothing in respondents' submission suggests that this area belongs in the narrow fields where Congress must tread lightly before regulating.

2. In any event, "the exercise of inherent power" can always be "limited by statute and rule" (*Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 47 (1991)), which is what Section 3 has accomplished. It eliminates a possible remedy for enforcing arbitration provisions and provides a procedural rule dictating how courts must process the action going forward. Nothing about that ordinary procedural directive intrudes upon any immutable judicial power. And as noted above, there is no plausible basis for reading Congress's text to mean anything other than what it says: courts are required to stay cases pending arbitration—and a stay means what it has always meant for well over the past century.

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

The FAA's structure and purpose confirm what the text makes clear, and respondents' contrary contentions are meritless.

1. As previously established (Pet. Br. 19-20), respondents' theory would undermine Section 16's obvious design.

In response, respondents say this structural argument fails because Section 16 is all about *interlocutory* orders—and a dismissal creates the type of *final* order appropriate for appellate review.

Respondents entirely miss the point. No one disputes that *final* orders are authorized for appeal. But premature dismissals create *unintended* finality—and thus convert otherwise-interlocutory orders into final orders. By dismissing cases subject to a mandatory stay, courts are activating the types of appeals that Congress expressly forbade. There is no reason that Congress wished to grant

courts unilateral authority to randomly decide whether certain parties sent to arbitration can take immediate appeals without satisfying the requirements of 28 U.S.C. 1292(b).

Respondents also contend this structural argument fails because Congress enacted Section 16 decades after Section 3. Respondents are mistaken. Courts construe the *entire* statute together in devising the proper meaning—and will not read earlier statutes to conflict with later revisions to the global scheme. *Vermont Agency of Nat. Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 786 n.17 (2000) ("it is well established that a court can, and should, interpret the text of one statute in light of text of surrounding statutes, even those subsequently enacted").

It thus makes no difference that Section 16 was not passed together with Section 3. "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme"—"because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United States Ass'n of Tex.* v. *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). And courts today cannot dismiss without creating a blatant end-run around Section 16's unmistakable design.

2. According to respondents, petitioners' theory is incompatible with Section 8, which expressly requires courts to "retain jurisdiction" over maritime actions. Br. 19-20. Yet respondents overlook that Section 8 addresses a different question altogether: it says courts shall "retain jurisdiction to *enter [a] decree upon the award*." 9 U.S.C. 8 (emphasis added). It thus carries jurisdiction all the way to the end of the action—and does so in order to effect seizure of a vessel in admiralty cases. *Marine Transit Corp.* v. *Dreyfus*, 284 U.S. 263, 275 (1932).

Section 3's directive is more modest (and designed for entirely different purposes). It stops once the arbitration is finished or disbanded, but it otherwise leaves courts the discretion to exercise supplemental jurisdiction from that point forward. Contrary to respondents' suggestion, Section 8 accordingly does not create any surplusage at all. When Congress wished to retain jurisdiction through finality, it said exactly that. When Congress merely wished courts to stay cases pending arbitration, it said that instead. The two sections have different scopes, objectives, and requirements, and nothing about one casts doubt on how to read the other.

3. Respondents insist that there is no need to safeguard plaintiffs' rights, including because certain jurisdictions toll the limitations period pending arbitration. Resp. Br. 34 & n.3. This is meritless. Not a single one of respondents' cases involved ordinary arbitration scenarios, much less a rule allowing tolling in ordinary cases. *E.g.*, *Rowland* v. *Patterson*, 882 F.2d 97, 99 (4th Cir. 1989) (en banc) (discussing a specific tolling provision tied to a specific state arbitration process for medical-malpractice claims). Respondents' position needlessly puts parties at risk.

4. Respondents say Congress would not want courts to facilitate arbitrations; that courts lack jurisdiction to consider post-arbitration motions; and that parties will often be bound to return to different courts anyway to exercise the FAA's varied rights.

These arguments fail across the board. As this Court already established, courts do indeed retain jurisdiction (28 U.S.C. 1367) after compelling arbitration—and there is no need to establish *redundant* jurisdiction for a *pending* action. And there is every reason to think Congress would prefer parties to access a pending case than trouble a new court with a new lawsuit whenever one of the FAA's supervisory powers are necessary. Finally, this Court has

rejected respondents' venue concerns: the post-arbitration venue provisions *expand* options; they do not restrict them. If a court has proper venue to compel arbitration, it will have proper venue to entertain the parties' post-hoc motions. *Cortez Byrd Chips, Inc.* v. *Bill Harbert Constr. Co.*, 529 U.S. 193, 201-202 (2000) ("the court with the power to stay the action under § 3 has the further power to confirm any ensuing arbitration award"; same with venue).

5. Respondents finally have it upside down on which proposal promises to be the most efficient. It is meritless to say that filing one-paragraph status reports or post-arbitration settlement notifications consume more judicial time and resources than endless litigation regarding whether each case should be stayed or dismissed; the costs of new lawsuits should a dismissed case return to court; the costs of litigating potential limitations issues in those suits; and the costs of immediate appeals in cases that might otherwise be finally resolved in arbitration.

The cost-benefit calculus is not close, and there is no reason to think that a few-times-a-year-check on inactive cases on a court's docket will overwhelm the nation's district courts.

Respectfully submitted.

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